

2021

## Infinite Setlist: Analyzing Pioneer DJ's Catalogue Streaming Partnerships with Beatport and SoundCloud

Nicholas Rivera

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### Recommended Citation

Rivera, Nicholas (2021) "Infinite Setlist: Analyzing Pioneer DJ's Catalogue Streaming Partnerships with Beatport and SoundCloud," *Cybaris®*: Vol. 12 : Iss. 1 , Article 2.

Available at: <https://open.mitchellhamline.edu/cybaris/vol12/iss1/2>

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**INFINITE SETLIST: ANALYZING PIONEER DJ’S CATALOGUE STREAMING PARTNERSHIPS WITH BEATPORT AND SOUNDCLOUD**

Nicholas Rivera<sup>1</sup>

Table of Contents

Introduction.....	36
The Story Thus Far .....	38
The Rise of Streaming .....	39
Brief History of DJing & Pioneer .....	41
Why It’s Important.....	41
The DJ’s Evolution .....	43
SoundCloud.....	46
Beatport.....	48
How the Platforms Work .....	49
Beatport.....	49
Beatport Link Subscription.....	49
Beatport Link Pro & Beatport Link Pro+ .....	50
SoundCloud Go+ Subscription .....	51
Terms of Use.....	52
Generally.....	52
SoundCloud.....	53
SoundCloud’s Terms & Agreements .....	53
SoundCloud Terms of Use – UGC .....	56
SoundCloud Representations, Warranties, & Liabilities .....	57
SoundCloud Go+ Terms .....	59
Beatport.....	60
Beatport’s Terms and Conditions .....	60
Beatport Link Terms of Use .....	66
Rekordbox’s End User Agreement.....	70
Conclusion .....	73

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## Introduction

In the past 15 years, DJing has become a popular art form across the world because of music's low cost and the popularization of personal computers.<sup>2</sup> Personal computers and devices with strong computing power – like smartphones – give easy access to digital platforms that allow anyone to play music, manipulate the music in real-time, play multiple sound recordings over each other, and sample different sound recordings in real-time. Although some of the widely available tools are exciting for hobbyists to use, a professional grade software and hardware combination has become the industry standard for professional grade performances.

Pioneer DJ (“Pioneer”), a brand recently purchased by Noritsu Koki Co., Ltd. (“Noritsu”), is a DJ hardware and software company that has become the professional standard for professional DJs.<sup>3</sup> For the purposes of this research, “professional” refers to DJs who perform at venues that hold more than a few hundred people. Pioneer has become the standard DJ equipment in the music industry because of its near-flawless combination of hardware and software.<sup>4</sup> One of the major ways that Pioneer established itself as the industry standard was by allowing DJs to perform music stored in USB flash drives and SD cards, or an external hard drive.<sup>5</sup> This meant that DJs were no longer required to carry CD cases for performances and now had access to a far greater quantity of music than what a CD could hold.<sup>6</sup>

Recently, Pioneer's flagship software Rekordbox (“Rekordbox”) partnered with SoundCloud Limited (“SoundCloud”), a music streaming and hosting service that allows users to

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<sup>2</sup>Chal Ravens, *A Decade of DJing: How Technology Changed the Art Form*, DJ MAGAZINE (Feb. 5, 2020, 5:00 PM) <https://djmag.com/longreads/decade-djing-how-technology-changed-art-form>.

<sup>3</sup>Dan White, *Pioneer DJ Just Got Sold To Noritsu, A Photo Printer Manufacturer*, DJ TECHTOOLS (Mar. 2, 2020), <https://djtechttools.com/2020/03/02/pioneer-dj-just-got-sold-to-noritsu-a-photo-printer-manufacturer/>.

<sup>4</sup>Jordan Rothlein, *Industry standards: Pioneer CDJ* (Oct. 3, 2013) <https://www.residentadvisor.net/features/1910>.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

upload, download, listen to, like, and comment on other users' music.<sup>7</sup> Rekordbox has also partnered with LiveStyle, Inc., Beatport, LLC, Beatport International LLC and Beatsource LLC (collectively, "Beatport"), a digital music storefront that allows users to buy and download music in various high-quality file formats.<sup>8</sup> The purpose of these individual partnerships is to use the vast libraries of music from the music hosting platforms in Rekordbox without having purchased music from either platform.<sup>9</sup> This is revolutionary for DJs using Rekordbox because the only restraint placed on what a DJ can play is the catalog of each platform.

This research does not intend to argue whether Beatport or SoundCloud's compensation structure is fair to musicians. Compensation structures on each streaming platform are constantly changing. With the passage of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act ("MMA"), the Mechanical Licensing Collective ("MLC") will standardize mechanical license collection and royalty distribution.<sup>i</sup> It is also worth noting that the platforms' policies may change at any time.

The purpose of this paper is to examine the partnerships Rekordbox has with SoundCloud and Beatport, determine if user agreements of each platform legally allow the partnerships to occur, what the implications are of using the music streaming service for live performances at venues, what the implications are of streaming music for live streamed performances via the internet, satellite radio, and terrestrial radio, and determine which types of copyright royalties need to be paid to who and by whom.

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<sup>7</sup> SoundCloud, *YOU CAN NOW MIX SOUNDCLLOUD TRACKS WITH PIONEER DJ'S REKORDBOX* (Sep. 10, 2019) <https://blog.soundcloud.com/2019/09/10/you-can-now-mix-soundcloud-tracks-with-pioneer-djs-rekordbox/>.

<sup>8</sup> DJ Mag, *YOU CAN NOW STREAM BEATPORT'S ENTIRE CATALOGUE TO REKORDBOX DJ* (last accessed Dec. 2, 2020) <https://djmag.com/news/you-can-now-stream-beatport-rekordbox-dj>.

<sup>9</sup> Dan White, *Rekordbox 5.6.1 adds Beatport LINK and Soundcloud Go+ streaming libraries* (Sep. 9, 2019) <https://djtechtools.com/2019/09/09/rekordbox-5-6-1-adds-beatport-link-and-soundcloud-go-streaming-libraries/>.

### The Story Thus Far

Revenue streams in the music industry have changed significantly over the past 25 years. Music sales peaked in the late 1990's when consumers were limited to buying music through physical media such as compact disks ("CD"), cassettes, and vinyl.<sup>10</sup> In 1999, Napster, a free peer-to-peer ("P2P") file sharing program allowed users to upload music from CDs and share the music files with other program users.<sup>11</sup> This was not the first instance of copyright infringement and piracy in the music industry, but Napster's introduction of free P2P file sharing allowed every person with a home computer and an internet connection to share their music collection.<sup>12</sup> One year after Napster was released in the United States, CD single shipments decreased by 39%.<sup>13</sup>

In 2003, Apple launched the iTunes store, an e-commerce music store that allowed consumers to purchase password protected copies of master recordings and save them to their computers.<sup>14</sup> The launch came in the wake of bad press for the music industry as record labels used the judicial system to make examples of small-time music pirating offenders to show copyright law enforcement's full extent.<sup>15</sup><sup>16</sup> iTunes' success came from its creation of a music "singles" marketplace. This meant that iTunes negotiated with rights holders of master recordings – mainly record labels – and convinced them to allow consumers to purchase

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<sup>10</sup> Brian Garrity, *Forecast: Physical Music Sales - Top Out In 2002, Retail Prices Drop*, BILLBOARD, 2000, Billboard.com (last visited Mar 27, 2020).

<sup>11</sup> A&M Records v. Napster, Inc., 239 F.3d 1004, 1011-1012 (9<sup>th</sup> Cir. 2001).

<sup>12</sup> Tom Lamont, *Napster: The Day the Music was Set Free*, THE GUARDIAN (Feb. 23, 2013, 7:05 PM), <https://www.theguardian.com/music/2013/feb/24/napster-music-free-file-sharing>.

<sup>13</sup> The Associated Press, *Napster Said to Hurt CD Sales*, THE NEW YORK TIMES, 2001, NYTimes.com.

<sup>14</sup> Brian X. Chen, *April 28, 2003: Apple Opens iTunes Store*, WIRED (Apr. 28, 2018 12:00 AM), <https://www.wired.com/2010/04/0428itunes-music-store-opens/>.

<sup>15</sup> See *BMG Music v. Gonzalez*, 430 F.3d 888 (7<sup>th</sup> Cir. 2005);

<sup>16</sup> Amanda Holpuch, *Minnesota Woman to Pay \$220,000 Fine for 24 Illegally Downloaded Songs*, THE GUARDIAN (Sep. 11, 2012, 5:10 PM), <https://www.theguardian.com/technology/2012/sep/11/minnesota-woman-songs-illegally-downloaded>.

individual songs (“singles”) from an album instead of requiring the purchase of an entire album.<sup>17</sup> By creating compressed music files that were nearly non-transferable, iTunes helped reduce music pirating and illegal sharing, but, pirating continued to be a major issue for the music industry.<sup>18</sup>

### **The Rise of Streaming**

Streaming is a digital method of continuously transmitting or receiving data over a computer network that allows for immediate playback while the remainder of the data is still being received.<sup>19</sup> Music streaming began in the 1990s and early 2000s with the Internet Underground Music Archive and Last.fm.<sup>20</sup> Pandora Radio, a non-interactive platform, brought popularity to music streaming via the internet.<sup>21</sup> Pandora generated a music station based on a musician, a genre, or a specific song chosen by the user.<sup>22</sup> The platform was considered non-interactive because the user could not choose which song would play on the station and the user was only allowed to skip songs on the station a limited number of times per hour.<sup>23</sup> This form of non-interactive music streaming played an important role in the rise and popularity of streaming music from internet connected devices, but the user still lacked control.<sup>24</sup>

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<sup>17</sup> Jeffrey Philip Wachs, *Searching for Equality: A Conference on Law, Race, and Socio-Economic Class: Note: The Long-Playing Blues: Did the Recording Industry’s Shift from Singles to Albums Violate Antitrust Law*, 2 U.C. Irvine L. Rev. 1047, 1048-1049 (2012).

<sup>18</sup> Paul Boutin, *The Age of Music Piracy Is Officially Over*, WIRED (Nov. 29, 2010, 12:00 PM), <https://www.wired.com/2010/11/st-essay-nofreebird/>.

<sup>19</sup> *Stream*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/stream#h2> (last visited May 5, 2020).

<sup>20</sup> Kish Lal, *Is Streaming Making Listeners Smarter or Complacent?*, RED BULL (Apr. 10, 2018, 11:21 PM), <https://www.redbull.com/au-en/music-streaming-pros-and-cons>.

<sup>21</sup> *Id.*

<sup>22</sup> Amy X. Wang, *Put your lighters Up for Pandora, The Music Service that Briefly Changed the World*, QUARTZ (Jun. 26, 2017), <https://qz.com/1006098/pandoras-p-radio-service-revolutionized-music-but-its-chances-of-surviving-look-shaky-in-an-apple-aapl-and-spotify-world/>.

<sup>23</sup> 17 USCS § 114(j)(6) (2020).

<sup>24</sup> Rob Walker, *The Song Decoders*, THE NEW YORK TIMES MAGAZINE (Oct. 14, 2009), <https://www.nytimes.com/2009/10/18/magazine/18Pandora-t.html>.

In 2007, SoundCloud launched as a music-based social media platform that allowed users to upload music to share with other users of the website. Users could create profiles, listen, like, comment on music, and follow musicians' accounts.<sup>25</sup> Early on, SoundCloud invited artists to post original songs, remixes, and combinations of multiple copyrighted songs into one new piece of music ("Mash-ups").<sup>26</sup> Posting new versions of copyrighted works allowed users to gain popularity among audiences while not paying royalties to the underlying work's rightsholder.<sup>27</sup> Unsurprisingly, allowing users to publish and distribute derivatives of compositions and master recordings marked SoundCloud as the frontline for the battle between fair use and copyright infringement.<sup>28</sup>

In 2008, Spotify launched a two-tier streaming service that allowed users to stream music to the Spotify program on their computers without hosting or storing any music files on the user's computer.<sup>29</sup> The initial platform launch was limited to European countries.<sup>30</sup> The first tier was a free subscription that limited the user's music browsing capabilities and the program would play advertisements between every few songs.<sup>31</sup> The second tier subscription was a paid \$10 subscription that allowed the user to stream music, have full browsing capabilities of Spotify's music library, and no advertisements played between songs.<sup>32</sup>

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<sup>25</sup> Dani Deahl & Casey Newton, *How SoundCloud's Broken Business Model Drove Artists Away*, THE VERGE (Jul. 21, 2017 12:41 PM), <https://www.theverge.com/2017/7/21/15999172/soundcloud-business-model-future-spotify-streaming>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Newsbeat, *How Spotify Came to be Worth Billions*, BBC NEWS (Mar. 1, 2018), <https://www.bbc.com/news/newsbeat-43240886>.

<sup>30</sup> Charlie Sorrel, *Spotify Launches in the U.S at Last*, WIRED (Jul. 14, 2011 8:51 AM), <https://www.wired.com/2011/07/spotify-launches-in-the-u-s-at-last/>.

<sup>31</sup> Amy X. Wang, *Spotify's Fight for Free Music Just Got Real*, QUARTZ AT WORK (2018), <https://qz.com/work/1218831/spotify-is-doubling-down-on-an-unprofitable-strategy-as-it-prepares-to-go-public/>.

<sup>32</sup> *Id.*

In 2011, after two years of contentious negotiations between Spotify and major record labels, Spotify launched in the United States.<sup>33</sup> With the widely adopted expectation of free music brought on by the Napster age of P2P file sharing, Spotify's launch in the United States allowed the general public low cost access to songs by their favorite artists and musicians that were signed to major record labels.<sup>34</sup> This was the first widely adopted instance of interactive music streaming for personal use that included deep catalogs of popular recordings owned by record labels.

Over the next decade, interactive music streaming platforms for personal use began overtaking the music market.<sup>35</sup> Corporate behemoths like Amazon, Apple, Google, and YouTube created their own interactive music streaming platforms and in 2016, music streaming overcame digital sales as the largest revenue creator in the music industry.<sup>36</sup>

## **Brief History of DJing & Pioneer**

### **Why It's Important**

Understanding how DJs have brought music to crowds is crucial in understanding the impact of Rekordbox's partnerships with Beatport and SoundCloud because it has been a determining factor in how rights holders are compensated for use of their works. Prior to the computer-age of DJing, tracking which works were performed at which venues was a matter of estimation.<sup>37</sup> Today, much of the music played in commercial spaces is either pre-set by a

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<sup>33</sup> Ben Sisario, *New Service Offers Music In Quantity, Not by Song*, THE NEW YORK TIMES (Jul. 13, 2011), <https://www.nytimes.com/2011/07/14/technology/spotify-music-streaming-service-comes-to-us.html>.

<sup>34</sup> *Id.*

<sup>35</sup> Jill Serjeant, *Streaming Overtakes U.S. Digital Music Sales for First Time: Nielsen*, REUTERS (Jan. 5, 2017, 10:23 AM), <https://www.reuters.com/article/us-music-streaming-idUSKBN14P1YH>.

<sup>36</sup> *Id.*

<sup>37</sup> *How ASCAP Calculates Royalties*, ASCAP, <https://www.ascap.com/help/royalties-and-payment/payment/royalties> (last visited Apr 17, 2020).

corporate entity or is streamed.<sup>38</sup> Royalty collection entities such as performing rights organizations (“PROs”) work with different data analysis organizations to analyze how and where musical works are used.<sup>39</sup>

Musicians and publishers join a PRO to collect performance royalties whenever a music composition is performed over terrestrial or satellite radio, television, the internet, or performed live at a venue.<sup>40</sup> PROs grant licenses to each platform or venue for an annual fee and rights holders are paid a calculated amount of money quarterly depending on how many times that composition was performed and on where the performance occurred.<sup>41</sup> There are multiple PROs in the United States that represent different publishers and composers.<sup>42</sup> When a venue or platform purchases a public performance license from a PRO, a license holder may only perform works that are represented by the licensing PRO.<sup>43</sup> Multiple PROs may represent publishing and writing rights holders in a single composition so a platform or venue requires a public performance license from each representing PRO to legally perform the composition.<sup>44</sup> These licenses determine performance royalty income for music publishers and composers and determine where DJs can legally publicly perform music.

Rekordbox’s partnership with SoundCloud and Beatport is unprecedented because three highly influential companies are working together to allow DJs to perform songs from catalogs

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<sup>38</sup> Andrew Matson, *Who Picks The Music You Hear At The Mall?*, NPR (Nov. 28, 2012, 1:00 PM), <https://www.npr.org/sections/therecord/2012/11/28/165947927/who-picks-the-music-you-hear-at-the-mall>.

<sup>39</sup> HOW ASCAP CALCULATES ROYALTIES, <https://www.ascap.com/help/royalties-and-payment/payment/royalties> (last visited Apr 17, 2020).

<sup>40</sup> *ASCAP Licensing*, ASCAP, <https://www.ascap.com/help/ascap-licensing> (last visited May 5, 2020).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

that contain millions of works between them.<sup>45</sup> DJing is an easy art form to perform at venues, online, or in personal use settings. However, if a DJ is streaming the music for a performance through the DJ equipment and outputting the audio to a venue, online, or both simultaneously, there are multiple sets of rights being used which then requires multiple royalty collection agencies to be involved in performing a stream of a single copyrighted work.<sup>46</sup> The difference between how past and present DJs stored and performed music is integral in understanding why streaming musical works for live and online performance changes how rights holders enforce their rights.

### **The DJ's Evolution**

Although it is unclear when playing two records on top of each other to create a cohesive sound (“mixing”) began, DJ Kool Herc is credited with starting modern turntablism where he would manipulate vinyl records that were playing at the same time.<sup>47</sup> DJ Kool Herc became known for repeating the drum breaks in songs and speaking over them.<sup>48</sup> He would extend the break by playing the same record on two turntables and switching between them.<sup>49</sup> Throughout the 1970's, artists like Grandmaster Flash began refining mixing techniques and began scratching records on the turntable's needle as instrumentation over the other song that was

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<sup>45</sup> Peter Kirn, *No, Beatport's Subscription Will Not Kill Music - here's how it really works*, CDM CREATE DIGITAL MUSIC (May 17, 2019), <https://cdm.link/2019/05/no-beatports-subscription-will-not-kill-music-heres-how-it-really-works/>.

<sup>46</sup> Billboard Staff, *Infographic: A Basic Explanation of Streaming Money*, BILLBOARD (Oct. 12, 2016), <https://www.billboard.com/articles/business/7540999/infographic-streaming-music-money-basic-explanation>. (last visited Apr 17, 2020).

<sup>47</sup> *The Art Of Turntablism | History Detectives*, PBS, <https://www.pbs.org/opb/historydetectives/feature/the-art-of-turntablism/> (last visited Apr 17, 2020).

<sup>48</sup> Rebecca Laurence, *Culture - 40 Years on From the Party Where Hip Hop was Born*, BBC (Oct. 21, 2014), <http://www.bbc.com/culture/story/20130809-the-party-where-hip-hop-was-born>.

<sup>49</sup> *Id.*

playing.<sup>50</sup> Using vinyl record turntables was the standard practice for DJs during the 1970s and 1980s.<sup>51</sup>

By the 1990s Pioneer had become the standard in automobile audio technology with its CD anti-skip technology.<sup>52</sup> Once established as the standard in the automobile industry, Pioneer later applied its anti-skip technology to other industries.<sup>53</sup> In 1992, Pioneer launched its first “CD turntable” (“CDJ”) known as the CDJ-300.<sup>54</sup> This iteration, though a step forward in technology, did not gain traction among DJs.<sup>55</sup> In 1994, Pioneer launched the CDJ-500 which had many of the standard features that CDJs have today including fast-forward and rewind buttons, a “Cue” button that allows the DJ to return to the DJs’ decided starting point in the song, and a tempo adjustor.<sup>56</sup> The CDJ-500 revolutionized DJ performances.<sup>57</sup> Rather than having to bring two large turntables, the needles for the turntables, and a limited amount of records in a crate to choose from for an event, a DJ could arrive with CDJ-500s and a CD library that carried far more songs than vinyl in a significantly smaller, lighter, and more convenient space.<sup>58</sup>

Over the next 15 years, Pioneer released 14 CDJ iterations, adding features and giving the DJ more music manipulation capabilities.<sup>59</sup> On the 15<sup>th</sup> iteration, Pioneer released the CDJ-400, a CDJ that included a USB drive input that allowed DJs to play MP3 files stored on the USB drive

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<sup>50</sup> *The Art Of Turntablism | History Detectives*, PBS, <https://www.pbs.org/opb/historydetectives/feature/the-art-of-turntablism/> (last visited Apr 17, 2020).

<sup>51</sup> Hillegonda C. Rietveld, Anna Gavanas & Bernardo Attias, *DJs and the Aesthetic of Acceleration*, DJ CULTURE IN THE MIX: POWER, TECHNOLOGY, AND SOCIAL CHANGE IN ELECTRONIC DANCE MUSIC 200–201 (2013).

<sup>52</sup> *History of Pioneer Corporation: Brand / History: Corporate Information*, PIONEER CORPORATION, <https://global.pioneer/en/info/history/chronology/> (last visited Apr 17, 2020).

<sup>53</sup> *Id.*

<sup>54</sup> Adam Chesters, *History of the Pioneer CDJ (DJ CD Decks) & "Forgotten Child"*, THE DMP-555 ADAM CHESTERS | DAZED EVENTS (Jan. 1, 2017), <http://adamch.com/history-of-the-pioneer-cdj/>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Pioneer DJ, Pioneer DJ History - Part 1: Evolution of the CDJ*, YOUTUBE (May 20, 2014), <https://www.youtube.com/watch?v=CgTdAdynUYo>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

as well as the standard CD input.<sup>60</sup> This important addition from only having a CD input to having both a CD input and a USB drive input facilitated DJ culture's transition from playing music from CDs to playing music from USB drives.<sup>61</sup>

In 2009, Pioneer released the CDJ-900 and the CDJ-2000 which both included the same features as the CDJ-400, but included far more music analysis and manipulation tools.<sup>62</sup> Both models included Pioneer created Pro DJ Link which allows DJs to connect CDJs via ethernet cable and play music from the USB drive that is connected to the other CDJ.<sup>63</sup> This meant that DJs no longer had to carry USB drives with identical music, and therefore allowed DJs to widen their music selection for a performance, or only arrive to a performance with a single USB drive. The major difference between the CDJ-900s and the CDJ-2000s is that the latter had built-in visual software that analyzed the music in the CDJ and gave the user a visual representation of the music's wavelength.<sup>64</sup>

In January 2011, Pioneer released the DDJ-S1, the company's first midi-based DJ controller which gave the user two CDJ-like components attached to a digital audio mixer ("controller").<sup>65</sup> This all-in-one collection had a USB B Port that allowed the controller to connect to computer DJ software that stored and analyzed music and then routed the music out of the computer, through the mixer, and into the speakers.<sup>66</sup> This was a relatively low-cost alternative compared to purchasing the CDJ-900s or the CDJ-2000s, but required the user to have a computer capable of hosting DJ programs. If the user did have a computer that was

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Pioneer DJ, Pioneer DJ History - Part 3: The Digital Revolution*, YOUTUBE (Jun. 17, 2015), [https://www.youtube.com/watch?v=IaboGY6\\_oM8&t=5s](https://www.youtube.com/watch?v=IaboGY6_oM8&t=5s).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Tech News, Pioneer launch DDJ-S1 and DDJ-T1 Controllers*, RESIDENT ADVISOR (Jan. 11, 2011 5:05 AM), <https://www.residentadvisor.net/news/13360>.

<sup>66</sup> *Id.*

capable of storing music and simultaneously using a high-powered DJ program, the DJ could access their entire library of music which was almost unheard of 5 years prior.

Finally, in 2012, while releasing new versions of DJ controllers, Pioneer created Rekordbox and released the CDJ-2000 Nexus.<sup>67</sup> This was a groundbreaking development because Rekordbox is both a DJ software that analyzes music, but also a DJ performance software if so desired. When the CDJ-2000 Nexus launched, one of its major selling points was the seamless integration of music, playlists, music analysis, sorting, and audio visualizing between the Rekordbox computer program and Pioneer CDJ hardware.<sup>68</sup> The CDJ-2000 Nexus became the industry standard across the world because it did not require DJs to tour or travel with hardware aside from a computer with Rekordbox installed and USB drives to perform the music with.<sup>69</sup>

The recent partnerships between Rekordbox, Beatport, and SoundCloud have changed DJs' capabilities drastically. The amount of music DJs have access to for live performances is unprecedented, and because Beatport and SoundCloud integrate seamlessly into Rekordbox as a DJ platform, one of the biggest barriers in DJ performances has come crashing down. Because of the massive shift, rights owners must be reassured that they are receiving proper compensation for the musical works used.

## **SoundCloud**

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<sup>67</sup> Dan White, *Pioneer Launches CDJ-2000 Nexus*, DJ TECH TOOLS (Sep. 6, 2012), <https://djtechtools.com/2012/09/06/pioneer-launches-cdj-2000-nexus/>.

<sup>68</sup> *Id.*

<sup>69</sup> Admin, *Tech Review: Pioneer CDJ-2000 Nexus*, DJMAG (Dec. 7, 2012), <https://djmag.com/content/tech-review-pioneer-cdj-2000-nexus>.

SoundCloud has had major influences across multiple music sub-cultures.<sup>70</sup>

SoundCloud's continuing influence permeates throughout hip-hop culture because artists such as Chance the Rapper, Migos, Post Malone, and Kehlani were discovered through posting music on the platform.<sup>71</sup> The phrase "SoundCloud Rap" has become a regularly used term in hip-hop and rap communities because many of the mid-to-late 2010s rap songs posted to SoundCloud had certain stylistic qualities – such as low budget and distorted production, an affinity for pop-punk, and an emphasis on melody over rhythm – that were popularized through the platform<sup>72</sup>.<sup>73</sup>

Groundbreaking artists in dance and pop music were also discovered on SoundCloud including Kygo, The Chainsmokers, and Flume<sup>74</sup>.<sup>75</sup>

Although SoundCloud is still an active platform, its cultural influence has decreased significantly since 2017 due to the company's poor financial management.<sup>76</sup> Using SoundCloud's free services, advertisements play regularly, and this has pushed users away from the platform.<sup>77</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> Peter O'Melia, *10 Rappers Discovered On SoundCloud*, THE DAILY DROPOUT (2019), <https://www.dailydropout.com/articles/2019/3/18/rappers-discovered-on-soundcloud> (last visited Apr 17, 2020).

<sup>72</sup> Missy Scheinberg, *Understanding SoundCloud Rap: Is This Hip-Hop's Most 'Punk' Moment Yet?*, LNWHY (Oct. 2017), <https://lnwy.co/read/meet-soundcloud-rap-hip-hops-most-punk-moment-yet/>.

<sup>73</sup> Jon Caramanica, *The Rowdy World of Rap's New Underground*, THE NEW YORK TIMES (Jun. 22, 2017), <https://www.nytimes.com/2017/06/22/arts/music/soundcloud-rap-lil-pump-smokepurrrp-xxxxtentacion.html>.

<sup>74</sup> Michaelangelo Matos, *Kygo Delivers Dance Beats, With a Side Order of Pan Flute*, THE NEW YORK TIMES (Jan. 19, 2016), <https://www.nytimes.com/2016/01/20/arts/music/kygodelivers-dance-beats-with-a-side-order-of-pan-flute.html>.

<sup>75</sup> Joe Coscarelli, *Music Producers Explain How They Created a Hit*, THE NEW YORK TIMES (Jul. 28, 2016), <https://www.nytimes.com/2016/07/31/arts/music/chainsmokers-flume-clams-casino.html>; *see also* Ben Sisario, *Flume Rises in the E.D.M. World*, THE NEW YORK TIMES (Feb. 25, 2015), <https://www.nytimes.com/2015/02/26/arts/music/flume-rises-in-the-edm-world.html>.

<sup>76</sup> Dani Deahl & Casey Newton, *How SoundCloud's Broken Business Model Drove Artists Away*, THE VERGE (Jul. 21, 2017), <https://www.theverge.com/2017/7/21/15999172/soundcloud-business-model-future-spotify-streaming>.

<sup>77</sup> *Id.*

Overall, the future popularity of SoundCloud is uncertain, but it remains a treasure trove of published songs not available for download that gives Rekordbox and SoundCloud Go+ users the ability to use songs publicly posted to the website.

### **Beatport**

Beatport was launched in 2004 by DJs in Denver who enjoyed digging through record crates for music, digitizing it, and using it in their DJ sets.<sup>78</sup> The platform was focused on working with record labels, especially small dance music record labels, to sell both MP3 and WAV files to DJs and the electronic dance music community.<sup>79</sup> The sale of WAV files was a drastic departure from the standard music definition standardized by iTunes because WAV files are a lossless format.<sup>80</sup> Using lossless files in a DJ set ensures that the DJ is using the best quality version of the recording available.<sup>81</sup> From Beatport's conception, the company was focused on giving great dance music from small independent record labels a platform to be heard.<sup>82</sup>

However, Beatport's mission changed in 2007 when the company accepted a \$12 million investment from a venture capital firm.<sup>83</sup> In 2010, after all three founders of Beatport had left the company, Beatport began investing heavily in upgrading the platform to have features such as mixes, DJ profile pages, event listings, live streaming DJ sets, and dance music industry news. Between 2010 and 2013, Beatport became a cultural hub for DJs and dance music lovers alike

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<sup>78</sup> Jemayel Khawaja, *The Rise and Fall-and Resurrection?-of Beatport*, VICE (Jul. 21, 2016), [https://www.vice.com/en\\_us/article/bmadnw/history-beatport-sfx-jonas-tempell-robert-sillerman-lloyd-starr-interview](https://www.vice.com/en_us/article/bmadnw/history-beatport-sfx-jonas-tempell-robert-sillerman-lloyd-starr-interview).

<sup>79</sup> *Id.*

<sup>80</sup> Peter Kirn, *No, Beatport's Subscription will not Kill Music - Here's How it Really Works*, CDM CREATE DIGITAL MUSIC (May 17, 2019), <https://cdm.link/2019/05/no-beatports-subscription-will-not-kill-music-heres-how-it-really-works/>.

<sup>81</sup> Markkus Rovito, *What Format Should DJs Buy Music In? A DJ's Guide to MP3, FLAC, WAV*, DJ TECHTOOLS (November 8, 2017), <https://djtechttools.com/2017/11/08/format-djs-buy-music-djs-guide-mp3-flac-wav/>

<sup>82</sup> Jemayel Khawaja, *The Rise and Fall-and Resurrection?-of Beatport*, VICE (July 21, 2016), [https://www.vice.com/en\\_us/article/bmadnw/history-beatport-sfx-jonas-tempell-robert-sillerman-lloyd-starr-interview](https://www.vice.com/en_us/article/bmadnw/history-beatport-sfx-jonas-tempell-robert-sillerman-lloyd-starr-interview).

<sup>83</sup> *Id.*

because electronic dance music made its way into popular culture.<sup>84</sup> From 2013 to present day, amid an acquisition and a subsequent parent company chapter 11 bankruptcy, Beatport's relevance plateaued and declined due to the popularity of music streaming.<sup>85</sup> Audiences no longer had reasons to buy digital downloads from the website, but Beatport remains a platform for DJs to find and buy music.<sup>86</sup>

## **How the Platforms Work**

### **Beatport**

In May 2019, Beatport announced its partnership with Pioneer to integrate Beatport Link with Rekordbox.<sup>87</sup> Beatport Link is a three-tier subscription based streaming service for DJs that gives them access to Beatport's entire library.<sup>88</sup> The tiers differ in price, offline access, and quality.<sup>89</sup>

### **Beatport Link Subscription**

Beatport's DJ streaming service's least expensive tier is called "Beatport Link". Beatport Link costs \$14.99 (plus applicable taxes) per month and includes a "cancel anytime" policy, access to "curated & custom playlists", gives the subscriber access to "optimized audio streaming", and allows DJs to download music that they bought through Beatport an unlimited number of times whenever they need to.<sup>90,91</sup>

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Peter Kirn, *No, Beatport's Subscription Will Not Kill Music - Here's How it Really Works*, CDM CREATE DIGITAL MUSIC (May 17, 2019), <https://cdm.link/2019/05/no-beatports-subscription-will-not-kill-music-heres-how-it-really-works>.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Subscription Plans*, BEATPORT, <https://www.beatport.com/subscriptions> (last visited Apr 17, 2020).

<sup>91</sup> Beatport, *Beatport LINK - Beginner DJ*, YOUTUBE (December 18, 2019), <https://youtu.be/uR4vcon-KvU>.

Beatport claims that Beatport Link is for beginner DJs.<sup>92</sup> The introduction video shows many of the major dance music record labels that a Beatport Link user would have access to and also shows Beatport Link's pre-made playlist curation and custom playlist curation capabilities. However, the video claims that Beatport Link allows a beginner DJ to be "party ready" and shows a DJ playing music at a house party<sup>93, 94</sup> Many DJs would likely disagree because Beatport Link's audio quality is not a high enough resolution to portray the original master recording properly over the most basic party speakers.<sup>95</sup>

One of Beatport's claims to fame was that it allowed DJs to buy music at a higher sound quality than was available on platforms like iTunes.<sup>96</sup> According to Beatport's Director of Artist and Label Relations, the music streamed through Beatport Link is compressed to 128 kbps, which is considered a low resolution bit-rate by professional DJs.<sup>97</sup> The Beatport representative does clarify that the Beatport Link subscription is not meant for professional DJs.<sup>98</sup>

### **Beatport Link Pro & Beatport Link Pro+**

The next two tiers, Beatport Link Pro and Beatport Link Pro+ are the more expensive subscriptions, costing \$39.99 and \$59.99 per month respectively.<sup>99</sup> The major difference between the two subscriptions, aside from the cost, is that Beatport Link Pro allows a subscriber to have 50 songs stored to Rekordbox for offline use.<sup>100</sup> Beatport Link Pro+ allows DJs to store

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Dan White, *A DJ's Guide to Audio Files and Bitrates*, DJ TECHTOOLS (Sep. 26, 2012), <https://djtechtools.com/2012/09/26/a-djs-guide-to-audio-files-and-bitrates>.

<sup>96</sup> Markkus Rovito, *What Format Should DJs Buy Music In? A DJ's Guide To MP3, FLAC, WAV*, DJ TECHTOOLS (November 8, 2017), <https://djtechtools.com/2017/11/08/format-djs-buy-music-djs-guide-mp3-flac-wav>.

<sup>97</sup> Peter Kirm, *No, Beatport's Subscription Will Not Kill Music - Here's How it Really Works*, CDM CREATE DIGITAL MUSIC (May 17, 2019), <https://cdm.link/2019/05/no-beatports-subscription-will-not-kill-music-heres-how-it-really-works>.

<sup>98</sup> *Id.*

<sup>99</sup> *Subscription Plans*, BEATPORT, <https://www.beatport.com/subscriptions> (last visited Apr 17, 2020).

<sup>100</sup> *Id.*

up to 100 songs on Rekordbox for offline use.<sup>101</sup> Rekordbox records how many times each song was played offline and once the device reconnects to the internet, the offline plays are attributed to the song's total play count which determines the royalties a song will receive.<sup>102</sup>

The other user-facing difference between the two more expensive subscriptions and the less expensive subscription is the music's sound quality.<sup>103</sup> Beatport Pro and Beatport Pro+ users stream music to Rekordbox at 256 kbps in an AAC audio file format, which, for purposes of this paper, is the same audio quality as a 320 kbps MP3 audio file.<sup>104</sup> Some DJs would argue that this is the bare minimum acceptable audio quality to use while professionally performing, however, Beatport has mentioned that audio quality might change with the expansion of 5G network capabilities in the United States.<sup>105</sup>

### **SoundCloud Go+ Subscription**

SoundCloud Go+ is a subscription that allows users to stream music without advertisements from SoundCloud for \$9.99 per month.<sup>106</sup> This is not the platform that allows music creators to control how their music is heard on SoundCloud.<sup>107</sup> One of the subscription's major features is that a subscription allows users to listen to a limited number of songs while not connected to the internet.<sup>108</sup> The SoundCloud mobile application records how many times the song was listened to while the device was not connected to the internet and then reports those

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<sup>101</sup> *Id.*

<sup>102</sup> Staff, *Beatport Launches Offline Locker for DJs in Pioneer DJ's rekordbox Public Beta*, YOUR EDM (July 4, 2019), <https://www.youredm.com/2019/07/01/beatport-launches-offline-locker-for-djs-in-pioneer-djs-rekordbox-public-beta>.

<sup>103</sup> Peter Kirn, *No, Beatport's Subscription Will Not Kill Music - Here's How it Really Works*, CDM CREATE DIGITAL MUSIC (May 17, 2019), <https://cdm.link/2019/05/no-beatports-subscription-will-not-kill-music-heres-how-it-really-works>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *More Music, No Limits*, SOUNDCLOUD, <https://checkout.soundcloud.com/go> (last visited Apr 17, 2020).

<sup>107</sup> *Become a Soundcloud Pro*, SOUNDCLOUD, <https://checkout.soundcloud.com/pro> (last visited Apr 17, 2020).

<sup>108</sup> *More Music, No Limits*, SOUNDCLOUD, <https://checkout.soundcloud.com/go> (last visited Apr 17, 2020).

numbers to SoundCloud once the device has reconnected to the internet.<sup>109</sup> The offline plays are then included in the total play statistics.<sup>110</sup> Offline listening is only available through products that use IOS, such as an iPhone or iPad, or Android, such as the Samsung Galaxy or the Google Pixel.<sup>111</sup>

The subscription also allows DJs to stream music to compatible platforms including Rekordbox.<sup>112</sup> DJ platform integration with SoundCloud Go+ comes with two limitations that are not immediately apparent when purchasing a subscription.<sup>113</sup> First, SoundCloud Go+ does not allow DJs to record mixes through the digital platform when using music from SoundCloud.<sup>114</sup> Second, SoundCloud Go+ integration does not allow the DJ to export music to USBs to be used with CDJs for a non-computer based performance.<sup>115</sup> This means that a DJ is required to use a computer or smartphone based platform, such as Rekordbox, to use a SoundCloud Go+ subscription during a DJ set.

## Terms of Use

### Generally

There are significant differences between Beatport and SoundCloud as platforms and how each platform creates content. The main difference between the two platforms is that SoundCloud's main attraction is user generated content ("UGC"). This means that most of the

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<sup>109</sup> *Play counts for downloading*, SOUNDCLLOUD HELP CENTER, <https://help.soundcloud.com/hc/en-us/articles/115003562528-Play-counts-for-downloading> (last visited Apr 17, 2020).

<sup>110</sup> *Id.*

<sup>111</sup> *Offline listening with SoundCloud Go*, SOUNDCLLOUD HELP CENTER, <https://help.soundcloud.com/hc/en-us/articles/115003452307-How-to-save-for-offline-listening> (last visited May 5, 2020).

<sup>112</sup> *Rekordbox*, SOUNDCLLOUD HELP CENTER, <https://help.soundcloud.com/hc/en-us/articles/360035613133-Rekordbox-Integration> (last visited Apr 17, 2020).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

music on SoundCloud is content posted by the user rather than submitted by another entity such as a distributor or a major record label. Although UGC is SoundCloud's main product, SoundCloud has also worked with major record labels and distributors to include their catalogues on SoundCloud's paid subscription.<sup>116</sup>

Beatport, conversely, uses music as the main attraction to its platform, however, none of the music is UGC.<sup>117</sup> Beatport only works with music distributors to add music to its platform.<sup>118</sup> However, Beatport does allow users to create playlists, which can be an important feature to customers who want to find new music, and allows Beatport Link users to curate their DJ performances more easily.<sup>119</sup>

This distinction between the platforms will dictate the differences in the terms and agreements and how copyrights are navigated by each platform.

## **SoundCloud**

### **SoundCloud's Terms & Agreements**

SoundCloud has multiple sets of terms depending on the service the user would like to use.<sup>120</sup> Beginning with the general terms of use, the user should not use SoundCloud if the user does not agree to the terms of use, privacy policy, cookies policy, and community guidelines.<sup>121</sup> For purposes of this research, the only applicable documents are the general terms of use, the subscription specific terms of use, and the community guidelines.

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<sup>116</sup> *Soundcloud Go Launches: Uniting Music's Past, Present and Future*, SOUND CLOUD (March 29, 2016), <https://press.soundcloud.com/143497-soundcloud-go-launches-uniting-music-s-past-present-and-future>

<sup>117</sup> *How do I sell my tracks on Beatport?*, BEATPORT CUSTOMER CARE, <https://support.beatport.com/hc/en-us/articles/200353825-How-do-I-sell-my-tracks-on-Beatport-> (last visited Apr 17, 2020).

<sup>118</sup> *Id.*

<sup>119</sup> *How do I create a playlist?*, BEATPORT CUSTOMER CARE, <https://support.beatport.com/hc/en-us/articles/360028442111-How-do-I-create-a-playlist-> (last visited Apr 17, 2020).

<sup>120</sup> *SoundCloud Terms of Use*, SOUND CLOUD (last amended May 25, 2018), <https://soundcloud.com/terms-of-use>

<sup>121</sup> *Id.* at *Acceptance of Terms of Use*

The beginning of the terms of use make clear that the Platform is a hosting service, meaning that, while SoundCloud does host UGC on its servers, it is not responsible for the contents of the UGC.<sup>122</sup> The Digital Millennium Copyright Act (“DMCA”) includes copyright enforcement statutes that allows copyright holders to protect copyrighted work posted online.<sup>123</sup> Included in the DMCA are safe harbor provisions for internet service providers (“ISPs”) and websites that host UGC use to avoid contributory infringement.<sup>124</sup> To avoid liability, ISPs and UGC hosting websites must comply with and implement copyright notice and takedown procedures.<sup>125</sup> SoundCloud would like to maintain the “hosting service” status under the Digital Millennium Copyright Act (“DMCA”) because, if SoundCloud follows the requirements of the DMCA, it will not be considered a contributory infringer if there is a copyright infringement lawsuit brought against an infringer using the platform.<sup>126</sup>

Next, the terms have a section for the user’s use of the platform.<sup>127</sup> According to the terms, the general user receives a “limited, personal, non-exclusive, revocable, nonassignable and non-transferable right and license to use the Platform in order to view Content uploaded and posted to the Website, to listen to audio Content streamed from the Platform”.<sup>128</sup> After the broad licenses and rights granted to the user by SoundCloud, the registered user is given conditions that require “strict compliance” for the licenses and rights to remain valid.<sup>129</sup>

The two conditions that concern the use of music for DJing purposes are the first two conditions which may directly contradict the purpose of purchasing a SoundCloud Go+

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<sup>122</sup> *Id.* at *Description of the Platform*

<sup>123</sup> *See generally* 17 USCS 512 (2020).

<sup>124</sup> 17 USCS § 512(c) (2020).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *SoundCloud Terms of Use, Your use of the Platform*, SOUND CLOUD (last amended May 25, 2018), <https://soundcloud.com/terms-of-use>

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

subscription for use with Rekordbox DJ. First, section (i) of the “Your use of the Platform” section states that the User must not do the following:

copy, rip or capture, or attempt to copy, rip or capture, any audio Content from the Platform or any part of the Platform, other than by means of download or store for offline listening in circumstances where the relevant Uploader has elected to permit downloads or offline listening of the relevant item of Content.<sup>130</sup>

This means that SoundCloud Go+ users who use SoundCloud’s catalog for DJing on Rekordbox are not allowed to record any of their DJ sets for any purpose, even if it is only for personal use. Second, section (ii) of SoundCloud’s terms of use attempt to limit the use of the music on SoundCloud to personal use.<sup>131</sup> The section states the following:

You must not adapt, copy, republish, make available or otherwise communicate to the public, display, perform, transfer, share, distribute or otherwise use or exploit any Content on or from the Platform at any and all times, except (i) where such Content is Your Content at any and all times during your use of the applicable Content, or (ii) as permitted under these Terms of Use, and within the parameters set by the Uploader (for example, under the terms of Creative Commons licenses selected by the Uploader).<sup>132</sup>

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

Broadly, United States copyright law allows rights holders to control reproduction, derivatives, distribution, public display, public performance, and public transmission of musical works.<sup>133</sup> The condition that SoundCloud sets forth in this section does not allow a SoundCloud user to use any music on the SoundCloud catalog for DJ performances in public or via transmission of any kind. This term is problematic because SoundCloud attempts to protect rights holders while simultaneously having a partnership with Rekordbox that could be used to perform, share, and transmit music publicly. Although SoundCloud does give content creators the right to control aspects of how and where their music is used on the SoundCloud platform, there are few integrated barriers in the SoundCloud platform that prevent all forms of copyright infringement.<sup>134</sup>

The main type of copyright infringement that SoundCloud detects is unauthorized use of compositions and sound recordings.<sup>135</sup> This process was automated through a content identification and “copyright strike” system that punishes a user for attempting to upload copyrighted work that the user does not have proper permission to upload.<sup>136</sup> If a DJ integrated a SoundCloud Go+ account with Rekordbox and performed any of the music from the SoundCloud catalog outside of private use, the user would violate SoundCloud’s terms of use, therefore giving SoundCloud the opportunity to terminate the DJ’s SoundCloud account.<sup>137</sup>

### **SoundCloud Terms of Use – UGC**

When agreeing to the terms of use and registering for an account on SoundCloud, if the user posts original works on the platform, the user grants SoundCloud and other users a “limited,

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<sup>133</sup> 17 USCS § 106 (2020).

<sup>134</sup> *SoundCloud Terms of Use, Your use of the Platform*, SOUND CLOUD (last amended May 25, 2018), <https://soundcloud.com/terms-of-use>.

<sup>135</sup> *Copyright methods and notifications*, SOUND CLOUD HELP CENTER, <https://help.soundcloud.com/hc/en-us/articles/115003452067-Copyright-methods-and-notifications> (last visited Apr 17, 2020).

<sup>136</sup> *Id.*

<sup>137</sup> *SoundCloud Terms of Use, Your Content*, SOUND CLOUD (last amended May 25, 2018), <https://soundcloud.com/terms-of-use>.

worldwide, non-exclusive, royalty free” and fully paid for license to “reproduc[e], transmi[t], distribut[e], publicl[y] display, public[ly] perform[], mak[e] available . . . and . . . communicat[e] to the public [] Your Content on the Platform and elsewhere using the Services.”<sup>138</sup> This clause gives Soundcloud a non-exclusive, worldwide, and royalty free license to the music that users upload to the platform. It also grants the same rights to platform users which may be one of the factors in how SoundCloud Go+ is able to integrate with Rekordbox without violating the platform’s terms of use.

The next section gives the same non-exclusive, worldwide, and royalty free license to any authorized linked service.<sup>139</sup> A linked service refers to any partnered service, website, applications, or the like that are authorized by SoundCloud to use or integrate with the platform.<sup>140</sup> After this broad license is granted to linked services, SoundCloud distances itself from anything done by the linked services.<sup>141</sup> According to the terms, SoundCloud “is not obligated to ensure the deletion of Your Content from any servers or systems operated by the operators of any Linked Service, or to require that any user of the Platform or any Linked Service deletes any item of Your Content.”<sup>142</sup>

### **SoundCloud Representations, Warranties, & Liabilities**

By agreeing to SoundCloud’s terms, the user represents and warrants that the content uploaded to the platform does not infringe on any rights, copyright or otherwise, and that any content uploaded to the platform by the user will not create any liability for SoundCloud or its affiliates.<sup>143</sup>

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<sup>138</sup> *Id.* at *Grant of license.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at *Representations and warranties.*

This section’s purpose is for SoundCloud to maintain less liability for the UGC hosted on its platform. However, the next section discusses liability for content and requires the user to acknowledge that SoundCloud “plays no active role and gives no assistance in the presentation or use of the content.”<sup>144</sup> Although the user is required to acknowledge this statement, a copyright holder posting works to the platform cannot agree to it because SoundCloud has created automated systems to put the UGC on its apps, linked services, and other affiliated platforms, unless the automated systems are not considered active roles or assistance.<sup>145</sup> The terms take this a step further in the section “Third party websites and services” by not guaranteeing or representing any connection or protection from “External Services” which include linked services such as Rekordbox and other SoundCloud authorized services including “third party websites, databases, networks, servers, information, software, programs, systems, directories, applications, products or services, including without limitation, linked services.”<sup>146</sup>

In the “Disclaimer” and “Limitation of Liability” section of the terms, which are written in all capital letters for emphasis, SoundCloud clarifies that it makes “NO PROMISES, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER (EXPRESS OR IMPLIED) REGARDING” any of its websites, services, applications, content, linked services, or external services.<sup>147</sup> This means that, if anyone using SoundCloud’s platform, services, applications, or third party programs misuses a copyrighted work posted as UGC on the platform, SoundCloud cannot be held responsible for the misuse. Further, SoundCloud limits its liability to “THE GREATER OF 100 EURO OR THE AMOUNTS (IF ANY) PAID BY YOU TO

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<sup>144</sup> *Id.* at *Liability for content.*

<sup>145</sup> *Copyright methods and notifications*, SOUND CLOUD HELP CENTER, <https://help.soundcloud.com/hc/en-us/articles/115003452067-Copyright-methods-and-notifications> (last visited Apr 17, 2020).

<sup>146</sup> *SoundCloud Terms of Use, Third party websites and services*, SOUND CLOUD (last amended May 25, 2018), <https://soundcloud.com/terms-of-use>.

<sup>147</sup> *Id.* at *Disclaimer.*

SOUNDCLOUD DURING THE PREVIOUS TWELVE (12) MONTHS FOR THE SERVICES GIVING RISE TO THE CLAIM.”<sup>148</sup> The section further limits liability to “ANY LOSS YOU SUFFER WHICH IS NOT A FORESEEABLE CONSEQUENCE OF SOUNDCLOUD BREACHING THESE TERMS OF USE.”<sup>149</sup> Although the SoundCloud and Rekordbox integration is protected by the permissions granted to SoundCloud, third party programs, and SoundCloud users earlier in the terms, combining the partnership with DJ equipment’s recording and audio output capabilities make copyright infringement through reproduction, derivative work creation, and digital audio transmission highly foreseeable.<sup>150</sup>

### **SoundCloud Go+ Terms**

To use the SoundCloud catalog on Rekordbox, a user must purchase a SoundCloud Go+ subscription.<sup>151</sup> Along with the general terms of use that any registered SoundCloud user must agree to, the SoundCloud Go+ subscriber must also agree to SoundCloud Go+’s terms.<sup>152</sup> Most of the additional terms have to do with using SoundCloud Go+ as a paid service, the term, the renewal, and how SoundCloud will notify the user if changes are made to the subscription.<sup>153</sup> However, the SoundCloud Go+ terms create a new set of authorizations and use limitations.<sup>154</sup>

SoundCloud Go+ is unique compared to the rest of the platform because the company negotiated deals with major record labels to host music on SoundCloud Go+.<sup>155</sup> SoundCloud did

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<sup>148</sup> *Id.* at *Limitation of Liability*.

<sup>149</sup> *Id.*

<sup>150</sup> *See* Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417 (1984).

<sup>151</sup> *Rekordbox Integration*, SOUNDCLOUD HELP CENTER, <https://help.soundcloud.com/hc/en-us/articles/360035613133-Rekordbox-Integration> (last visited Apr 17, 2020).

<sup>152</sup> *SoundCloud Go and SoundCloud DJ Terms of Use*, SOUNDCLOUD, <https://soundcloud.com/go-terms-of-use> (last updated July 8, 2020).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *SoundCloud Go+ tracks*, SOUNDCLOUD HELP CENTER, <https://help.soundcloud.com/hc/en-us/articles/115003453667-SoundCloud-Go-tracks> (last visited Apr 17, 2020).

this in an attempt to expand its catalog and make more popular music available to be viable when competing with Spotify, Apple Music, and other major streaming services.<sup>156</sup> However, hosting popular music on the platform requires SoundCloud to limit the countries that SoundCloud Go+ is available in and how many devices the subscription service can be used on at a single time.<sup>157</sup> This limitation creates a legal impact because each country has its own copyright royalty reporting, collecting, and distribution methods, but it also creates a variation on what is available to DJs based on the DJ's jurisdiction.

Overall, the terms for SoundCloud generally and for SoundCloud Go+ give the platform, third party affiliates, and users wide range to use the UGC hosted on the platform. The terms also highly limit SoundCloud's liability for any misuse of the UGC, whether the UGC is misused by a third party or platform users. Although not required by the terms of use, SoundCloud has still created a royalty structure to pay for music streamed through the platform. However, there was no reference to royalty payment for streaming or royalty payment when using SoundCloud's integration with Rekordbox.

## **Beatport**

### **Beatport's Terms and Conditions**

Beatport has multiple sets of terms depending on the service the user subscribes to.<sup>158</sup> Beginning with the general terms of use, Beatport does not mention agreeing to any other policies except those contained in the terms.<sup>159</sup> However, further in the general terms, Beatport requires

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<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Beatport Terms and Conditions*, BEATPORT, <https://support.beatport.com/hc/en-us/articles/215996708-Terms-and-Conditions> (last updated May 13, 2019).

<sup>159</sup> *Id.*

compliance with its cookies policy and its privacy policy, which generally reference data collection about users.<sup>160</sup>

Early in the general terms, the appropriate use of any content used or purchased from the website is as follows:

Without the prior written consent of Beatport or the applicable copyright holder, and except as provided in this Agreement, no Content may be *transmitted*, distributed, translated, *publicly displayed*, uploaded, published, *recorded*, *retransmitted*, rented, sold, distributed, digitized, endorsed, *reproduced*, *altered to make new works*, *performed*, or compiled in any commercial way. Some of the Content is "Products," which is certain Content made available by Beatport for streaming, purchase and/or download. The Content is only for your *personal, noncommercial use*, except for those Products provided for by Beatport Sounds.<sup>161</sup>

These clauses are highly problematic because they do not align with Beatport's reputation as the place for professional DJs to purchase high quality music audio files to include in their sets.<sup>162</sup>

First, according to the terms, the music purchased may not be performed or publicly displayed.<sup>163</sup> This not only goes against Beatport's advertised purpose, it does not allow DJs, many

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<sup>160</sup> *Id.* at ¶ A.27. *Privacy*.

<sup>161</sup> *Id.* at ¶ A.2. *Content and Products*; (emphasis added).

<sup>162</sup> Music Business Worldwide, *BEATPORT LINK STREAMING SERVICE IS NOW AVAILABLE IN THE PUBLIC BETA OF PIONEER DJ'S REKORDBOX SOFTWARE*, <https://www.musicbusinessworldwide.com/beatport-link-streaming-service%E2%80%8B-is-now-available-in-the-public-beta-of-%E2%80%8Bpioneer-dj%E2%80%8Bs-rekordbox%E2%80%8B-software/> (last updated July 3, 2019).

<sup>163</sup> *Beatport Terms and Conditions*, ¶ A.2. *Content and Products*, BEATPORT, <https://support.beatport.com/hc/en-us/articles/215996708-Terms-and-Conditions> (last updated May 13, 2019).

of whom are professional DJs, to perform the high quality sound files that they purchased specifically for performances.<sup>164</sup> Second, this clause does not allow any of the music purchased or streamed from the website to be altered to create new or derivative works.<sup>165</sup> DJing is an art form that requires taking sound recordings, manipulating them, and playing multiple sound recordings over one another at the same time. Abiding by this clause is nearly impossible for any DJ using content purchased or streamed from Beatport. Third, the clauses do not allow any of the content purchased or streamed from Beatport to be transmitted, retransmitted, recorded, or reproduced.<sup>166</sup> These restrictions not only have implications for the Beatport user, but also for third parties to this agreement. For example, if a music promoter who hires a DJ to perform at a music festival and the promoter wants to live stream the performance for viewers on YouTube, the DJ would not be able to maintain its agreement with Beatport for multiple reasons. First, the DJ set could not be transmitted or retransmitted to YouTube. Second, the DJ could not maintain the agreement if the set were recorded for on-demand viewing at a later time. Third, reproduction of any of the content purchased on Beatport would occur in transmission, retransmission, and recording of the DJ set. Although written consent can be given by Beatport or the copyright holder, receiving consent each time a DJ would like to perform music that was purchased on Beatport is not reasonable for the DJ, the copyright holder, or Beatport.

The second sentence of the above section states that content purchased or streamed from Beatport is meant only for the user's "personal, noncommercial use".<sup>167</sup> This clause defies

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<sup>164</sup> Under each plan's details, the file type is included, and Mp3s of any kind are not typically considered "high quality" due to the compression. See Markkus Rovito, *What Format Should DJs Buy Music In? A DJ's Guide To MP3, FLAC, WAV* (Nov. 8, 2017) <https://djtechtools.com/2017/11/08/format-djs-buy-music-djs-guide-mp3-flac-wav/>.

When playing on high-end nightclub systems, lossless file formats sound better. *See id.*

<sup>165</sup> *Beatport Terms and Conditions*, ¶ A.2. *Content and Products*, BEATPORT, <https://support.beatport.com/hc/en-us/articles/215996708-Terms-and-Conditions> (last updated May 13, 2019).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

Beatport’s reputation as the place to buy “club-ready” audio files, but also goes against the advertised and promoted purpose of purchasing a Beatport Link subscription.<sup>168</sup> According to Beatport Link’s introduction videos, the subscription plans are built for DJs with different experience levels.<sup>169</sup> The introduction videos for the Beatport Link subscription show a woman learning to DJ in her bedroom and later on performing for a few friends at a house party.<sup>170</sup> Performing music at a house party can still be considered private, non-public performance use of the content purchased or streamed from Beatport. However, the introduction videos that promote Beatport Link+ and Beatport Link+ Pro show multiple DJs performing at nightclubs and other public events.<sup>171</sup> According to the general terms of the Beatport user agreement, performing the music purchased or streamed from Beatport in the advertised manner would breach the user agreement and would give Beatport the right to terminate the user’s account.<sup>172</sup> The discrepancy between how Beatport advertises content use and how the general terms of use do not allow public performance of the same content may have false advertising implications.

The proper use of the content purchased or streamed from Beatport is re-stated in the “Limitations of Content Usage and Copyright” section of the general terms of use.<sup>173</sup> The section states the following:

Except as otherwise provided herein, you may not copy, reproduce, modify, rent, lease, broadcast, download, transmit, distribute or otherwise disseminate any Streams or Downloads or other Content

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<sup>168</sup> Dan White, *A DJs Guide to Audio Files and Bitrates*, DJ TECHTOOLS (Sep. 26, 2012), <https://djtechtools.com/2012/09/26/a-djs-guide-to-audio-files-and-bitrates/>.

<sup>169</sup> Beatport, *LINK- Beginner DJ*, YOUTUBE (Dec. 18, 2019), <https://youtu.be/uR4vcon-KvU>.

<sup>170</sup> *Id.*

<sup>171</sup> Beatport, *LINK - USB DJ*, YOUTUBE (Dec. 19, 2019), <https://youtu.be/mHdxOkQjGXo>.

<sup>172</sup> *Beatport Terms and Conditions*, ¶ A.2. *Content and Products*, BEATPORT, <https://support.beatport.com/hc/en-us/articles/215996708-Terms-and-Conditions> (last updated May 13, 2019).

<sup>173</sup> *Beatport Terms and Conditions*, ¶ A.17. *Limitations of Content Usage and Copyright*, BEATPORT, <https://support.beatport.com/hc/en-us/articles/215996708-Terms-and-Conditions> (last updated May 13, 2019).

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contained on the Site except for your own personal, non-commercial use, unless otherwise provided for herein. Any unauthorized copying, distribution, use or sharing is not permitted by this Agreement or applicable provisions of the United States Copyright Code, and is in violation of U.S. and international copyright and intellectual property laws.<sup>174</sup>

The terms reiterate the limitations placed on the content purchased and streamed through Beatport's services. The following section titled "Prohibited Uses of Content" again reiterates that the user is not allowed to make derivative works or copies of the content purchased or streamed from Beatport.<sup>175</sup> However, the section emphasizes its prohibition on distribution of the works by specifically mentioning file sharing. The sections state the following:

YOU MAY NOT UPLOAD DOWNLOADS OR STREAMS TO THE INTERNET. PEER-2-PEER FILE SHARING IS STRICTLY PROHIBITED. Any other manner of network file sharing and transfer of Downloads, Streams or Previews to devices for such purpose is expressly prohibited and is a violation of U.S. and international copyright law.<sup>176</sup>

Beatport needs to emphasize the importance of banning P2P file sharing because its digital distribution of music is prone to illegal file sharing.

Beatport does not have its own music player that functions in the same way that Apple used iTunes. iTunes sold copies of lower-quality audio files and used file types that Apple could track

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<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

using iTunes and other computer software.<sup>177</sup> Beatport includes metadata in each audio file that it sells including information that allows Beatport to identify who the original purchaser was of the song.<sup>178</sup> Unfortunately, the metadata is easily removable by users which allows users of the website, including DJs, to share high quality audio files of the songs purchased from Beatport.<sup>179</sup>

Further in the general terms is a section titled “Violation of Intellectual Property Rights”.<sup>180</sup> This section includes the steps that the user allows Beatport to take if Beatport is notified or suspects that the user is violating intellectual property rights by using Beatport’s services or content.<sup>181</sup> As discussed before, the music purchased on Beatport is for personal use only and is not permitted to be used for public performance, live streams, or recordings.<sup>182</sup> If music purchased or streamed from Beatport is used outside of personal, non-commercial use, Beatport would have the right to suspend or terminate the user’s account.<sup>183</sup> Terminating or suspending the account would deny the user access to music purchased on the platform.<sup>184</sup> In the following section, the terms state that Beatport had the right to share user information with authorities to enforce parts of the agreement, including the intellectual property provisions.<sup>185</sup>

Lastly, the general terms of use discuss indemnification, waiver, and liability.<sup>186</sup> The terms require the user to indemnify Beatport and those associated with Beatport for all causes of action

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<sup>177</sup> Adam L. Penenberg, *Digital Rights Mismanagement*, SLATE MAGAZINE (Nov. 14, 2005), <https://slate.com/technology/2005/11/how-apple-cashes-in-on-piracy-prevention.html>.

<sup>178</sup> *Beatport Pro Mac, Getting Started*, BEATPORT, <https://www.beatport.com/mac/gettingstarted.html> (last visited Apr 17, 2020).

<sup>179</sup> *Id.*

<sup>180</sup> *Beatport Terms and Conditions*, ¶ A.30. *Violation of Intellectual Property Rights*, BEATPORT, <https://support.beatport.com/hc/en-us/articles/215996708-Terms-and-Conditions> (last updated May 13, 2019).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at ¶ A.2. *Content and Products*.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at ¶ A.30. *Violation of Intellectual Property Rights*.

<sup>185</sup> *Id.* at ¶ A.31. *Enforcement of These Terms*.

<sup>186</sup> *Id.* at ¶¶ A.33. *Indemnity and Waiver*, A.35. *Governing Law*, A.37. *Disclaimers and Limitations of Liability*.

for the user's breach of the user agreement.<sup>187</sup> It is not until the last paragraph of the terms where Beatport waives all liability in connection with use of its website or services.<sup>188</sup>

### **Beatport Link Terms of Use**

Beatport Link likely has its own terms because the user is interacting with Beatport by paying for a service that is only usable through third party partner services, and there is a monthly fee paid to Beatport after the initial trial period. According to the Beatport Link terms "If there is any conflict between those general terms and conditions and these LINK Terms, these LINK Terms shall apply for your use of the LINK service."<sup>189</sup> This gives the seven sections that make up the Beatport Link terms power over the thirty-seven sections of general terms.

Beatport Link is dependent on third party programs, such as Rekordbox, to function as a streaming platform for DJs.<sup>190</sup> Due to this reliance, the Beatport Link terms do not allow Beatport to be reliable if a third party platform decides to no longer be compatible with Beatport Link.<sup>191</sup> If a third party program were no longer compatible with Beatport Link, the terms include that "Beatport will attempt to preemptively notify all LINK subscribers via email. If you have opted-out of email communication, you may not receive the notification."<sup>192</sup> This means that some users may not be notified prior to a third party no longer supporting the user's paid subscription to Beatport Link, and the terms indemnify Beatport from that notification responsibility.

After discussing third party programs and subscription fees, the Beatport Link terms have a four-sentence section called "Your Use of LINK".<sup>193</sup> The section states the following:

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<sup>187</sup> *Id.* at ¶ A.33. *Indemnity and Waiver.*

<sup>188</sup> *Id.* at ¶ A.37(f) *Disclaimers and Limitations of Liability.*

<sup>189</sup> *Id.* at ¶ D.1. *LINK Terms and Conditions.*

<sup>190</sup> *Id.* at ¶ D.2. *Third-Party Partner Applications and Devices.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at ¶ D.4. *Your Use of LINK.*

LINK enables you to listen to full streams of tracks from Beatport’s catalog of content via the interface of certain Partner Company’s products. Your subscription to LINK will grant access to LINK wherever it is available. Beatport Sounds content will not be available on LINK.

Any content by a Supplier that has expressly opted out of the LINK subscription service, will not be available. Beatport is not responsible for content that is not available to LINK subscribers and your only remedy in such situations is to choose not to renew your subscription the following month.<sup>194</sup>

Aside from the subscription details, these are the only parameters given for a user’s use of Beatport Link.<sup>195</sup>

First, the section states that the tracks from Beatport’s Catalog are meant to be “listen[ed]” to.<sup>196</sup> Although much of DJing is listening to music, using the phrase “listen” does not incorporate the interaction that DJs have with the music that is being played or that is being prepared to be played. Using a phrase like “listen” implies that the user is meant to use Beatport Link like a traditional music streaming service, however, Beatport Link is advertised as a subscription for streaming music for use in DJ sets.

Next, it is notable that record labels who distribute music through the platform have the right to opt-out of its music streaming through Beatport Link.<sup>197</sup> Each record label that opted-in

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<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

receives a proportionate amount of money for the amount of times its records were played out of all of the overall streams on the platform.<sup>198</sup> Some record labels may not want to include their music on Beatport Link because the label may make more money from selling music on Beatport to a small but dedicated fanbase. If the music is available to stream, the fans can still listen to the music, but the record label will receive significantly less money than it would have from a digital purchase.

The next section in the Beatport Link terms discusses the prohibited uses of the service.<sup>199</sup> The first paragraph states “Content streamed on LINK is intended for your personal use only. Use of LINK for public performance purposes will require additional licensing, which is not included as part of your subscription.”<sup>200</sup> As discussed in the general terms, the music purchased through Beatport is meant for personal non-commercial use. The Beatport Link terms are meant to preempt the general terms when applied to Beatport Link, however, the Beatport Link Terms do not specify between commercial and non-commercial use.<sup>201</sup> Therefore, the general terms regarding non-commercial use apply to Beatport Link.<sup>202</sup> This means that professional DJs cannot use Beatport Link in a commercial or professional setting without breaching Beatport’s and Beatport Link’s terms of use.

For example, a DJ would break the terms of use if the DJ were hired by a venue or a promoter to perform a DJ set and the DJ used Beatport Link during that set. The paragraph also recognizes that DJs require further licensing to publicly perform music streamed through Beatport

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<sup>198</sup> Peter Kirn, *No, Beatport's subscription will not kill music - here's how it really works*, CDM CREATE DIGITAL MUSIC (May 17, 2019), <https://cdm.link/2019/05/no-beatports-subscription-will-not-kill-music-heres-how-it-really-works/>.

<sup>199</sup> *Beatport Terms and Conditions* ¶ D.5. *Prohibited Use of LINK*, BEATPORT, <https://support.beatport.com/hc/en-us/articles/215996708-Terms-and-Conditions> (last updated May 13, 2019).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at ¶ A.2. *Content and Products*.

<sup>202</sup> *Id.*

Link, however, it does not give instructions to the user on how to obtain those rights.<sup>203</sup> Instead, it is up to the user to understand that performances at venues or on platforms require the hosting venue or platform to have the correct license for each song played; the terms only state that public performance rights cannot be obtained through Beatport.

The following two paragraphs of the “Prohibited Use of LINK” section of the Beatport Link terms discuss the amount of devices permitted for a single account and account sharing restrictions.<sup>204</sup> Beatport allows a Beatport Link account to be connected to up to five devices, but will only support four concurrent streams at one time.<sup>205</sup> This means that five separate devices with a compatible third party application can be signed into a single Beatport Link account at the same time, but only four songs can be streamed from a single account at one time.<sup>206</sup> The amount of songs streamed at one time is likely limited to four because standard professional DJ equipment typically has between two and four CDJs and a mixer with up to four channels, each channel dedicated to a different CDJ. The next paragraph gives Beatport the right to suspend or terminate accounts based on account sharing, but limiting a subscription to four concurrent streaming songs discourages account sharing because if more than two people are using a Beatport Link account on two different systems, each person will have a maximum of two songs to stream at once, which is the minimum required for a DJ to play a set.<sup>207</sup>

The final two sections of the Beatport Link terms discuss access to past purchases on Beatport and Beatport charts.<sup>208</sup> First, when a user purchases a Beatport Link subscription, the user is given an automatic subscription to Beatport Cloud at no extra cost. Beatport Cloud allows users

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<sup>203</sup> *Id.* at ¶ D.5. *Prohibited Use of LINK.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at ¶¶ D.6. *Beatport CLOUD Accessibility*, D.7. *Beatport Charts and Plays.*

to download a purchased song from the user’s account an unlimited amount of times.<sup>209</sup> Beatport Cloud is important because it allows users to re-download music that the user had not initially brought along for a DJ set.<sup>210</sup> The next section informs the user that streams through Beatport Link do not have an impact on Beatport Charts that show the popularity of a song and if Beatport believes plays are made only to increase a song’s revenue share of the subscription fee, those plays will not be applied to a song’s streaming revenue.<sup>211</sup> Both of these ensure a song’s popularity is not falsified through fraudulent streaming practices, and the terms state that “Beatport will not share any data that was the basis for such decisions.”<sup>212</sup>

Overall, Beatport’s terms of use run into two major issues. The first is that Beatport is known for distributing high-quality versions of songs that are performance ready, however, any content purchased through Beatport is meant for personal, non-commercial use. Second, Beatport Link Pro and Beatport Link Pro+ are marketed as music streaming programs for DJs to use during public performances, but the terms of use do not allow DJs to use the music beyond personal use. The Beatport Link terms allow DJs to publicly perform music in personal use non-commercial settings, however, this type of performance is not how the professional DJ Beatport Link subscriptions are marketed.

### **Rekordbox’s End User Agreement**

Rekordbox’s end user agreement (“EUA”) is brief and only has a single set of terms for the program. However, Rekordbox has a tier-based subscription service that unlocks more features

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<sup>209</sup> *Id.* at ¶ D.6. *Beatport CLOUD Accessibility*.

<sup>210</sup> *beatportcloud*, BEATPORT, <https://www.beatport.com/get-cloud> (last visited Apr 18, 2020).

<sup>211</sup> *Beatport Terms and Conditions* ¶ D.7. *Beatport Charts and Plays*, BEATPORT, <https://support.beatport.com/hc/en-us/articles/215996708-Terms-and-Conditions> (last updated May 13, 2019).

<sup>212</sup> *Id.*

within the program.<sup>213</sup> The lowest tier is free and comes with basic analysis, DJ, and export tools.<sup>214</sup> The top-tier subscription costs \$9.99 USD per month and includes lyric features, video features, live remixing effects, DJ and export tools, as well as cloud music storage library syncing capabilities.<sup>215</sup> The lyric feature in the top-tier subscription is the first copyright concept covered in the program license section of the EUA and it has unique copyright implications compared to solely playing or streaming a song.<sup>216</sup>

The lyrical feature is meant for personal, non-commercial use and the EUA does not allow the user to “reproduce (other than as authorized for your own personal usage), publish, transmit, distribute, publicly display, rent or lend, modify, create derivative works from, sell or participate in the sale of or exploit in any way, in whole or in part, directly or indirectly, any of the Lyrics so provided.”<sup>217</sup> While DJing as a profession takes many forms, concert and club based DJs do not generally display lyrics to songs during a performance. However, DJing as a profession takes place beyond nightclubs and concerts. Many DJs perform for parties and events such as corporate events, b’nai mitzvot, or sweet sixteen parties. It is more common to display lyrics to songs during these performances, and if the DJ used Rekordbox’s database of over 2 million songs to display lyrics during one of these performances, it would violate the EUA.<sup>218</sup> The EUA specifically addresses “karaoke” and “sing-along” rights, and makes the user recognize that these are not part of the license granted by purchasing the top-tier subscription.<sup>219</sup>

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<sup>213</sup> Rekordbox Software End User Agreement, (April 2020) <https://rekordbox.com/en/download/>. The EUA used for this analysis is the most recently available version as of April 16, 2020. AlphaTheta no longer owns Pioneer DJ, and therefore Rekordbox, but is still named as the owner of Rekordbox in the EUA.

<sup>214</sup> *Plan*, REKORDBOX, <https://rekordbox.com/en/plan/> (last visited Apr 18, 2020).

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Rekordbox Software UAE, *supra* note 214.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

The final paragraph of the program license section is titled “No Support.” This section states that “AlphaTheta has no obligation to provide support, maintenance, upgrades, modifications or new releases for the Program or Documentation under this Agreement.”<sup>220</sup> This means that if the user faces any issues with the program AlphaTheta is not required to support the customer in any way. AlphaTheta’s lack of duty is then amplified in the next section stating that the EUA is “WITHOUT ANY REPRESENTATIONS OR WARRANTIES, AND YOU AGREE TO USE [REKORDBOX] AT YOUR SOLE RISK.”<sup>221</sup> These two sections together are AlphaTheta’s attempt to completely remove any expectation of AlphaTheta beyond providing the Rekordbox software.<sup>222</sup>

The last section of the EUA addresses the “Restriction to Infringements of Copyright Protected Data Owned by [a] Third Party.” The section discusses copyright infringement in broad strokes by stating the following:

When using the program, You must agree on the following:

- (a) To follow copyright protection laws, rules and regulations designated in every country and international treaties;
- (b) To legally obtain music data used in the Program;
- (c) Not to bypass or decode Digital Rights Management technology implemented to the data.

In addition, you may not copy music data beyond the extent of private use. You may not give or transfer music data to third party.

You may not share or intend to share the media or storage used to

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<sup>220</sup> *Id.* at 25.

<sup>221</sup> *Id.* at 3.

<sup>222</sup> In section 8 of the EUA, AlphaTheta limits its liability to have essentially no liability and limits the amount of collectable money to the amount of money paid to the company or its subsidiary programs.

save music data with others. You may not save music data to media or storage which allows access to third party. You may not provide live distribution of such music data to third party.<sup>223</sup>

The language used to address copyright infringement is likely broad because it needs to cover jurisdictions across the world rather than being aimed at a single jurisdiction. The terms are vague as to what “music data” means. Contextually, music data appears to mean the analysis that Rekordbox does of any sound recordings. The EUA likely addresses music data rather than music because Rekordbox does not supply any music, and the only information it supplies to the user is the program’s analysis of the music provided by the user or selected by the user from a streaming platform’s catalog.

Overall, the EUA terms do not reference the sound recordings that Rekordbox is meant to analyze and interact with. The only references to music are the lyric service provided by Rekordbox for a paid subscription and the analysis data created by Rekordbox when analyzing sound recordings provided by the user or provided by a compatible streaming service. According to the EUA, aside from the lyric service, there is no implied or expressed restriction on using Rekordbox for commercial purposes.

## **Conclusion**

Overall, the partnership between SoundCloud and Rekordbox and the partnership between Beatport and Rekordbox need to be analyzed individually. Both SoundCloud and Rekordbox have requirements regarding personal non-commercial use, but the companies interact with the concept differently.

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<sup>223</sup> *Id.* at 9.

Beginning with SoundCloud, the terms are explicit that the platform is meant for personal non-commercial use, and has taken steps to ensure that copyrights are not infringed. First, if a SoundCloud Go+ user integrates SoundCloud into Rekordbox, the user loses key functions including recording a set that includes music streamed from SoundCloud. Disabling this function protects SoundCloud from liability for copyright infringement.<sup>224</sup> Although digitally recording a set through Rekordbox is not the only means of recording a DJ set, disabling this function requires the DJ to take steps beyond SoundCloud or Rekordbox's control to record a set.

Next, SoundCloud's play count for music streaming through SoundCloud Go+ is combined with songs streamed through the Rekordbox integration.<sup>225</sup> This means that a stream through the Rekordbox integration pays the same amount and type of royalties that are paid for a stream made through the SoundCloud platform. No additional royalties need to be paid to rights holders because the user agrees that the use of SoundCloud's catalog will only be for personal use. By integrating with Rekordbox, SoundCloud is not changing any part of its streaming service, instead, it is allowing the subscriber to stream the catalog through a different medium for personal use.

Lastly, SoundCloud advertises the partnership with Rekordbox in a manner that does not go beyond the term's intended use of the SoundCloud Go+ subscription. Information about the partnership published by Rekordbox or SoundCloud focuses on use of the platform integration and subscription fees.<sup>226</sup> Although the partnership is meant for DJs, the SoundCloud Go+ terms and the partnership advertising is not misrepresented as a professional tool for commercial use.

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<sup>224</sup> See generally, *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984).

<sup>225</sup> SoundCloud Help Center, *How much will I be paid for SoundCloud Monetization?*, SOUND CLOUD, <https://help.soundcloud.com/hc/en-us/articles/360010335033-How-much-will-I-be-paid-for-SoundCloud-Monetization> (last visited Apr 17, 2020).

<sup>226</sup> Pioneer DJ, *Rekordbox ver. 5.6.1 update brings support for Beatport LINK and SoundCloud Go streaming services*, YOUTUBE (Sep. 10, 2019), <https://www.youtube.com/watch?v=WdcfD423ad8>; SoundCloud Help Center, *Rekordbox*; SOUND CLOUD, <https://help.soundcloud.com/hc/en-us/articles/360035613133-Rekordbox-Integration> (last visited Apr 18, 2020).

Beatport's terms of use are explicit that purchasing music or streaming music from the platform is for personal use. The Beatport Link terms notify the user that performing the music available to the user through Link will require further licensing that Beatport does not provide. With the possibility of contradiction between Beatport's general terms and Beatport Link's terms, Beatport Link's terms preempt the general terms which may reconcile DJs public performance capabilities. Generally, venues pay for a public performance license through PRO's such as ASCAP and BMI.<sup>227</sup> If the DJ is abiding by the other terms and properly paying for a Beatport Link subscription, all of the applicable royalties are paid so long as the performances are not recorded or transmitted. Public performance royalties are paid mostly by the venue, but in part by Beatport, the mechanical license is paid for by the Beatport Link subscription pool, and royalties are paid to the record label for use of the master recording by the Beatport Link subscription pool.

Although public performances are legal through Beatport Link, recording and transmitting works that were purchased on Beatport or streamed through Beatport Link violates the terms of use. This means that DJs are not allowed to perform DJ sets that are streamed or recorded through internet platforms, broadcast or recorded through television platforms, or transmitted or recorded through radio platforms while using music purchased from Beatport or music streamed through Beatport Link. These types of performances were not advertised in the introduction videos to the service; however, it is common for promoters to stream or record DJ sets and it is common for DJs to stream DJ sets over platforms like YouTube or Twitch.

There are multiple ways in which professional and amateur DJs alike could violate the terms of use while performing a DJ set using Beatport Link, however there is a legally sound path

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<sup>227</sup> *Why ASCAP Licenses Bars, Restaurants and Music Venues*, ASCAP, <https://www.ascap.com/help/ascap-licensing/why-ascap-licenses-bars-restaurants-music-venues> (last visited Apr 17, 2020).

available to the user. Overall, Rekordbox's partnerships with SoundCloud and Beatport are legally sound and empower DJs to broaden their musical scope through having vast catalogs available at their fingertips. Like many groundbreaking music technologies, both Beatport Link and SoundCloud Go+ give users the ability to infringe on copyrights of musicians, but terms of use do not permit users to commit infringement without violating the user agreement. Beatport and SoundCloud should continue to evaluate their copyright enforcement tools and determine better ways to enforce the user agreement and protect the copyrighted works that are the basis of their music platforms.

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