



19th January 2016

UK Digital Strategy for the UK – Call for Views

About UK Music

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. The UK music industry contributed £4.1 billion in GVA in 2014, growing by 5%. The sector is responsible for total export revenues of £2.1 billion and employs over 117,000 people.¹
3. UK Music exists to represent the UK's commercial music sector, to drive economic growth and promote the benefits of music to British society. The members of UK Music are listed in an annex.

General

4. UK Music welcomes the opportunity to provide the Government with ideas for the UK's digital strategy, which will set the digital agenda for the next five years.
5. The music industry plays a fundamental role in the production of creative content which is increasingly being consumed and enjoyed in the digital world.
6. Globally, revenues from digital music services now match those from physical format sales for the first time with subscription services firmly embedded within a plethora of music services available.²
7. The UK has over 50 legal online music services. This includes 28 download, 19 subscription and 14 advertising supported services.³ Only behind the USA and Germany, the UK ranks third in the world in terms of the number of legal digital

¹ http://www.ukmusic.org/assets/general/Measuring_Music_2015.pdf

²

<http://www.ifpi.org/news/Global-digital-music-revenues-match-physical-format-sales-for-first-time>

³ <http://www.pro-music.org/legal-music-services-europe.php>

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music services available and thereby a far greater proportion if taken in terms of population.

8. UK Music has recently responded to a number of consultations and inquiries on similar issues relating to this call for views. In addition to this response, we ask that the Government also considers UK Music's complementary contributions to the recent EU Commission consultations on Platforms⁴, Satellite and Cable Directive⁵ and Geoblocking⁶, the House of Lords Internal Market Committee inquiry into online platforms⁷ and the House of Commons BIS Select Committee Digital Economy inquiry⁸. Concerning this final inquiry, UK Music member Jane Dyball, CEO of the MPA, also provided oral evidence to this committee on behalf of UK Music.⁹
9. In responding to this call for views we specifically focus on two of the four key ingredients for success ("Unlocking digital growth" and "Building the foundations") as identified by the Digital Economy Minister in his blog post accompanying the launch of this initiative.¹⁰
10. We also refer the Government to submissions made by UK Music members in relation to this consultation. This includes a paper submitted by the MMF and FAC concerning music and tech start-ups.

Unlocking digital growth

11. The music industry strongly supports the growth of a legal functioning digital market and believes that the creative content produced by our members will continue to enable this significant part of the economy to flourish.
12. The bedrock of the music industry is the copyright framework. It allows companies to invest in talent and musicians and composers to make a living.
13. UK Music was concerned by the general approach of the previous Government towards copyright. In particular, the Hargreaves Review, which was taken forward by the then Coalition Government, was predicated on the basis of changing copyright at the expense of rightsholders for the benefit of the tech industry.
14. This approach was justified on economic projections which have subsequently been downscaled. When the minister states now that "simply updating regulations is not enough"¹¹ we hope that this indicates an acceptance from this

⁴ http://www.ukmusic.org/assets/general/OnlinePlatforms_UKMusic_FINAL.PDF

⁵ http://www.ukmusic.org/assets/general/SatCab_UKMusic_FINAL_Nov2016.pdf

⁶ http://www.ukmusic.org/assets/general/UK_Music_-_geoblocking_draft_FINAL.PDF

⁷ http://www.ukmusic.org/assets/general/HOL_onlineplatforms_UKMusic_FINAL.pdf

⁸ http://www.ukmusic.org/assets/general/DigitalEconomy_UKMusic_FINAL.pdf

⁹ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-innovation-and-skills-committee/the-digital-economy/oral/26202.pdf>

¹⁰ <https://www.gov.uk/government/news/uk-digital-strategy-the-next-frontier-in-our-digital-revolution>

¹¹ <https://www.gov.uk/government/news/uk-digital-strategy-the-next-frontier-in-our-digital-revolution>

Government that altering the legislative framework is not always the right approach and will not guarantee it can achieve its digital ambitions.

15. Any actions taken to change copyright law need to be supported by strong evidence of the need to act and based on maintaining the UK's continued ability to produce creative content for economic growth.

Infringement

16. Online copyright infringement remains a continued problem for rightsholders. Whilst the IPO's latest online copyright infringement tracker (covering March to May 2015) indicated a 10% take up in legal services since 2013, 1 in 5 people still access content illegally. 26% of users have accessed music content illegally.¹²
17. In 12 months up to September 2015, UK Music member the BPI submitted 66,488,717 infringing URLs to search engines for removal from search results.¹³ It was accepted in the "Dancing Jesus" trial in 2014 that criminal property to a value exceeding £242 million was made available on a forum containing illegal links.
18. Demand for music online is high. According to the aforementioned infringement tracker 15.6 million UK internet users accessed music online. 12 million users streamed music and 10.5 million users downloaded music. 16-24 year-olds were the most active in music downloads.¹⁴
19. There is clearly a case for the UK Government, as part of its digital strategy, to consider measures that would improve rightsholders ability to exercise their rights online given the importance to industries like music of the digital market. Domestically, this could include measures that increase controls of illegal content on search engines (for instance imposing a duty of care on intermediaries to prioritise licensed sites in search results, de-list infringing sites and cease auto-complete search suggestions for infringing content) and bring maximum penalties for online copyright infringement in line with those applied to the physical world.
20. There is also an opportunity, as part of the Digital Single Market strategy being conducted by the European Commission, for the UK Government to support cross-border application of injunctive relief to block infringing websites. Similarly, the Government should advocate "notice and stay down". This would guarantee illegal content stays down once notice is given of its infringing nature, as opposed to merely being taken down, to be re-hosted immediately by the same or another infringing party. At present the notice and takedown provision, well

¹² <https://www.gov.uk/government/publications/online-copyright-infringement-tracker-survey-5th-wave>

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461792/ip-crime-report-2014-15.pdf

¹⁴ <https://www.gov.uk/government/publications/online-copyright-infringement-tracker-survey-5th-wave>

intentioned though it may have been, is not only ineffective, it places the copyright owner under a constant administrative burden to keep policing the same content on the same sites. “Notice and stay down” would be a huge benefit and technologically, an easy system for hosting sites to implement. Processes should be expedited to counter the immediate and significant damage caused by illegal uses in the digital space.

Licensing

21. Licensing of copyright enables digital platforms to derive great benefit from music content. As already identified in paragraph 7, the UK is a leading global nation in the licensing of rights. Any legitimate copying and sharing that these services offer must be based on the underlying business-to-business licence that must be in place.
22. The Digital Single Market strategy creates a further opportunity to address problems with the European legislative framework and we look towards the UK Government to also support these efforts as part of their Digital Strategy.
23. Specifically, defences in the E-Commerce Directive have been used as a safe harbour by some content services to avoid paying fair, or in some cases any, royalties for the use of content that drives their businesses.
24. Whilst the provisions are necessary for genuinely “passive” hosts of content and the functioning of the notice and takedown procedure, their use by “active” hosts creates a distortion in the online market. They enable some platforms to make copyright content available without a licence and compete directly with licensed services for similar or equivalent revenues and users.
25. UK Music would like to see a clarification to the Information Society Directive that an “active” host can be defined and then made liable for the content on their service.
26. Separately, the recent “new public” criterion to the “communication to the public” right could be used to argue that a licensable activity occurs only if a service gives access to a completely new audience. This is particularly alarming given the growing number of websites that are based on aggregating multiple services to provide access to content. The criterion of the new public should be dismissed to establish that the acts of communicating to the public or of making available content are copyright protected acts.
27. In this instance we would also seek that the Digital Strategy includes a commitment for the UK Government to support other changes to the Information

Society Directive to ensure that online aggregators are liable for the communication to the public of content.¹⁵

Building the foundations

28. In an increasingly digital market the music industry needs to recruit and retain a workforce that can adapt and embrace new technologies. It is essential that school leavers have a basic level of digital literacy and that graduates are equipped with the digital skills to gain employment in the sector.
29. Research conducted by Creative & Cultural Skills in 2011's Music Blueprint found that whilst the music industry is a highly qualified sector when compared with the UK working population, employers are still concerned that applicants lack work ready skills. A lack of digital skills was seen as the biggest future skills need.¹⁶
30. Anecdotal research conducted by UK Music in November 2013 revealed that over three quarters of music employers surveyed said applicants and new entrants lacked basic digital skills including programming, coding, and web design.
31. Taking on board these challenges, we recommend that as part of its Digital Strategy the Government ensures digital skills and copyright knowledge are embedded in the music curriculum.
32. We also encourage the Government to partner with schools, colleges, universities and industry bodies to provide appropriate information and tools to develop music industry careers, as well as maintaining support for successful schemes that assist creative industry apprenticeships and internships.
33. Finally UK Music has a network of 15 rehearsal rooms across England which act as important spaces for young people to develop their careers. The Digital Strategy should consider what funding mechanisms should be made available to expand these rooms further.

Annex

UK Music's membership comprises of:-

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies.
- BASCA - British Academy of Songwriters, Composers and Authors – BASCA is the membership association for music writers and exists to support and protect

¹⁵ Further detail on both these licensing issues can be found in the following briefing prepared by UK Music for the Secretary of State for DCMS John Whittingdale MP in November 2015 -

http://www.ukmusic.org/assets/general/intermediaries_aggregators_safeharbour_transferofvalue.pdf

¹⁶ http://blueprintfiles.s3.amazonaws.com/1319716452-Music-Blueprint-Web_26_7_11.pdf

the professional interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing

- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- FAC – The Featured Artists Coalition – the voice of the featured artists.
- MMF - Music Managers Forum - representing 425 managers throughout the music industry.
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers.
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music.
- Musicians' Union representing 30,000 musicians.
- PPL is the music licensing company which works on behalf of over 90,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK.
- PRS for Music is responsible for the collective licensing of rights in the musical works of 114,000 composers, songwriters and publishers and an international repertoire of 10 million songs.
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector

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