



Copyright in Europe; Call for Views

11 October 2013

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. UK Music exists to represent the UK's commercial music sector, to drive economic growth and to promote the benefits of music to British society. The members of UK Music are listed in an annex.

Background

3. The music industry contributes significantly to the UK economy, culture and wellbeing. In 2011, the music industry generated revenues of £3.8 billion for the UK. The wider economic impact is even more considerable. For example, music tourism is generating £2.2 billion in spending overall. The UK is one of three net exporters of music.
4. Intellectual property is the economic framework which underpins music and other producers of creative content. Copyright is the currency of that framework. Every song or recording made by a creator or artist can be licensed for value in the UK and globally, therefore generating substantial positive balance for export income for the UK from copyright licensing. It provides an incentive to industry to invest in new creative content. A functioning efficient European Digital Single Market is of key importance for the success of the UK music industry, as well as the rest of the creative sector.

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UK Digital Market

5. The UK digital market is a global example of best practice. At the composer, performer and right holder side the UK framework provides a solid basis for their income based on a robust copyright system. For users of copyrighted works, the current framework provides the certainty required for the respective online service providers. Consumers of music content are also in an unrivalled position in the UK. The UK is a beacon for new digital platforms with over 70 licensed services catering for all consumer demands; e.g. from a la carte downloads, to streaming services, to digital lockers, to ad funded digital radio stations. All these services are based on business to business licensing between right holders and commercial users.
6. UK right holders have been developing progressive and innovative licensing solutions. Given the global nature of music licensing, we believe the licensing expertise of UK right holders can be of use in European countries, thus cementing the leading position of the UK in the digital business of multi-territorial and multi-platform deals. We believe that the leading position of the UK music industry should not be undermined by ill conceived changes to copyright law, such as some of the proposals recommended by Professor Ian Hargreaves.

The UK Music Licensing Solutions group concluded in the report “A Year of Innovation – Licensing Works”¹ from September 2013:-

“The online market is awash with innovation, change, and creativity. Music is an integral part of it all, and music licensing is the switch that converts the passion for music into pounds and pence. This in turn sparks a virtuous cycle of growth and expansion, reinvestment, and replenishing the supply of indigenous musical talent that is the beating heart of the whole edifice.”

Copyright in Europe; Call for Views

7. UK Music welcomes the opportunity to contribute to the call for views on Copyright in Europe. Discussion on these matters within European institutions is at a critical phase. The Licences for Europe stakeholder dialogue, collective management directive and Vitorino mediation on private copying levies to mention a few. It is important for the UK Government to understand UK Music’s views so that we are represented in the strongest possible way over the next 16 months and beyond following the next European Parliament elections and the appointment of a new Commission. In responding to this consultation, UK Music sets out a number of ways in which the UK Government could uphold on copyright in Europe.

¹ http://www.clsq.info/uploads/YEAROFINNOVATION-WEB_1_.PDF

The Government should proactively promote UK business interests in the Digital Single Market by strengthening copyright and its enforcement across the whole European Union.

8. The UK Music industry consists mainly of innovative small and medium enterprises² and individual composers and performers working together with users to deliver music to the consumer. This is enabled by a network of business to business agreements between creators, performers, music publishers, record companies, collecting societies and commercial users which offer their services to consumers.
9. In addition to digital online music services which are licensed, the UK often serves as a test bed for new digital services. The clarity of the UK's copyright and contract law enables this, and there is willingness from all parties to engage. The certainty provided by contracts and existing fair dealing exceptions offers a competitive advantage not comparable to the fair use system in the USA which merely constitutes the "right to hire a lawyer".
10. The Information Society Directive has enabled the establishment of a digital market. This took longer than hoped for, yet we are now in a situation where the legal framework is in place. In addition to the areas covered by the Information Society Directive most areas of the European Digital Single Market are already harmonised. In particular, further harmonisation will be achieved through the directive on collective rights management and multi-territorial licensing of rights in musical works for online uses which is expected to be adopted in 2014. This will not only improve collective management at a pan European level, it also implements one of the main aspects of the European Single Market Strategy of May 2011. The other main element of this strategy, the Orphan Works Directive, was adopted on October 2012. Other areas include the harmonisation of the administration of fair compensation due to right holders in exchange for the private copying exception and a strengthening of moral rights in the UK to the level of European creators and performers.
11. Membership of the European Union enables the UK to act collaboratively across borders on enforcement of copyright. Respect for intellectual property rights globally is paramount in ensuring a sustainable future for copyright based industries. This is increasingly important between member states and emerging markets such as China and other BRIC/MIKT countries. In Europe, the UK Government should prioritise pressing for trade treaties with these countries to recognise the economic and cultural importance of intellectual property rights, as well as speeding up notice and takedown procedures for copyright infringement across member states.
12. Respect for music and not treating it as a free commodity should be upheld across the European Union. The value of creators and performers copyright can be enhanced via education campaigns in this regard. As a specific recommendation, we ask that the IPO take a lead across the UK and Europe on copyright education to enforce creators rights to be paid and to create a level playing field for content services. This underlines the solution of business to business licensing as already set out in this submission.

² 92% of businesses in the music sector employ fewer than 10 people

Licences for Europe

13. The outcome of the Licences for Europe discussions, expected in November 2013, needs to be carefully considered. The UK Government should commit to holding a consultation on any future proposals from Europe that may require legislation on copyright before it commits itself to a particular position. This would avoid a premature position that could be counter to our national interests.
14. UK Music welcomes the notion of User Generated Content as an expression of cultural creativity and notes that creative User Generated Content has been a reality in the digital world for a considerable time now. We suggest that the starting point for discussions at a political level should be a clear description of what is defined as User Generated Content and what the issues are which may need to be addressed by any legal initiatives. The outcome of Licences for Europe will, we hope, be informative in this regard.

“Tools not rules”

15. The main issues for the industry now relate to the application of the legal framework in practice and we should be allowed to get on with this and not be distracted by legislative uncertainty.
16. We dissuade the UK Government from taking a position of advocating new copyright legislation. Our prime concern is that it would waste time and generate unnecessary uncertainty. New legislation can be an inefficient solution in responding to further developments in the digital markets. The number of years legislation in Europe takes from initiation to implementation can be considerable and does not keep pace with innovation. New legislation often deals with yesterday's problems which have been ironed out by commercial and/or contractual factors.
17. The copyright framework is not the main reason for the differences of online access and digital platform offers within the EU. The decisions of platform providers is based on the different nature of the economies in the European Union, the credit card penetration, the consumer laws, consumer attitudes to digital culture, advertising markets, language and cultural interests.
18. For example, we expect that the directive on collective rights management and multi-territorial licensing of rights in musical works for online uses will contribute to already existing multi territorial licenses. We urge the IPO not to call for further legislation before the impact of the Directive can be assessed and the whole market of multi territorial licensing can be assessed properly.
19. Any energy which may otherwise be spent pursuing legislative change should be reserved for a serious consideration of the potential for harmonisation of the

administration of fair compensation due on private copying and of strengthening the moral rights of performers and creators across the European Union.

20. In the spirit of “tools not rules”, several industry initiatives are already in place to help the administration of the rights for the benefit of creators, performers, and right holders as well as commercial service providers.

Global Repertoire Database

21. One of the practical initiatives the music industry has undertaken relates to the administration of data on ownership of rights. For example, the Global Repertoire Database developed by the music industry and with its headquarters in London, will provide a single, comprehensive and authoritative representation of the global ownership and control of musical works. This will improve the licensing of musical works for users and right holders on a global level.
22. Further simplification of the administration of copyright licensing, to avoid duplication and unnecessary costs, has been pioneered by UK collecting societies via the International Copyright Enterprise (ICE). Considerable progress has also been made in the development of hubs between societies from other member states.

Copyright Hub

23. The UK Government should also be looking to promote other developments that have taken place in the UK on copyright. A pilot of the copyright hub (not to be confused with hubs between societies) was launched successfully on 8th July 2013 and can be found at www.copyrighthub.co.uk. This website offers a clear and user-friendly service enabling users to find out about copyright, discover who owns what rights and how to get a licence. In September 2013 the Copyright Licensing Steering Group which has been overseeing this work, published a report assessing the licensing activities of the creative industries in the UK.³ The copyright hub can be used as an example of best practice in the UK, and the engagement of industry-led solutions into this process has been a key to its success.

European Copyright Code

24. With reference to the European Copyright Code, this seems to be a nonstarter. A group of academics (the Wittem Group) looked at this in some detail for a considerable amount of time and seemingly abandoned the project after failing to produce a meaningful European Copyright Code. A single European Copyright law will be impossible to agree at a political level. The Information Society Directive in 2001 was the common level of harmonisation that member states and the European Parliament could agree. It does not seem a good use of the UK Government’s resources to be working on a single European Copyright law. We therefore believe that this project should be abandoned.

³ http://www.clsq.info/uploads/Streamlining_Copyright_for_the_Digital_Age_September_2013.pdf

Research

25. We understand that as part of this call for views, the IPO are also seeking suggestions for what further research should be undertaken. We have two main points to raise in connection to the IPO's research work.
26. Firstly, creators of copyrighted works must be fairly represented in any peer review or advisory function when determining the commissioning and publication of work of this nature when funded by the public purse. More specifically we need people on the research boards and peer reviewers whose own livelihoods are sustained by the commercial exploitation of the copyright they have created or invested in. Too often, the IPO or others will suggest somebody who can claim to be a creator, but in fact, they do not earn their living from the creative work they produced. Much of the criticism of the "evidence" base provided by the IPO could be addressed by bringing in the knowledge and expertise of those whose lives and businesses are primarily sustained by copyright. Sadly, commercial perspectives can be shunned in the inaccurate belief that they represent a vested interest.
27. Secondly, the economic research underpinning the recommendations of Professor Hargreaves in May 2011 which have been taken as a basis of the IPO copyright policy in December 2012 "Modernising Copyright" has been widely identified as lacking in economic rigour. Professor Hargreaves went on to suggest that his reforms could lead to the "cracking of the ice all across Europe". UK Music does not share these sentiments and believes the approach taken by Hargreaves should not provide the context for further consideration in Europe. As a matter of urgency we ask for updated evidence and research on these proposals, including any negative impact on the music sector. We also believe that there should be revised impact assessments to justify the proposed changes to copyright exceptions before any measures are laid before Parliament.
28. We urge the IPO to carry out rigorous research on the issues which are currently being discussed such as exceptions, multi territorial licensing and exhaustion before proposing further changes to the European Copyright Acquis either themselves or in cooperation with other member states/ European institutions. The research we have seen up until now does not fulfil the high standards the IPO set itself.

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 – with over 2,000 members, BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright 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.
- 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, on behalf of over 75,000 members (65,000 performer members and 10,000 recording right holder members), licences the use of recorded music in the UK
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 100,000 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

The MMF have expressed a different view and will be submitting their own response.