



29<sup>th</sup> October 2015

## House of Commons Business, Innovation and Skills Select Committee Inquiry into the Digital Economy

### 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 promote the benefits of music to British society. The members of UK Music are listed in an annex.

### General

3. UK Music welcomes the opportunity to contribute to the BIS Select Committee inquiry into the digital economy.
4. The music industry plays a fundamental role in the production of creative content which is increasingly being consumed and enjoyed in the digital world. In September 2015, over 60%<sup>1</sup> of sales of albums in UK were from digital sources (whether downloads, track equivalent albums or stream equivalent albums) as opposed to physical product. UK Music member *PRS for Music* reported that in 2014 its online revenues contributed £79.7m, an increase of 17.5%.<sup>2</sup>
5. 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.<sup>3</sup>
6. The UK music industry contributes £3.8 billion to the economy, and saw a year on year growth of 9% in 2013. In addition the sector contributes £2.2 billion in

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<sup>1</sup> BPI figures – Monthly Market report – September 2015

<sup>2</sup> <http://www.prsformusic.com/aboutus/press/latestpressreleases/pages/prs-for-music-release-financial-results.aspx>

<sup>3</sup> <http://www.ifpi.org/news/Global-digital-music-revenues-match-physical-format-sales-for-first-time>

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exports and 111,000 in employees.<sup>4</sup> Updated figures for these statistics are expected to be published in UK Music's forthcoming Measuring Music 2015 report shortly.

7. 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.
8. Whilst the digital economy presents important opportunities for the music industry and fans of music, there are certain challenges that also need to be addressed in order to achieve an outcome that enables music to benefit fully from the digital revolution.
9. Individual UK Music members are active in a number of initiatives concerning the impact of the digital economy on their businesses, including:-
  - The Music Managers Forum has recently launched a report, "Dissecting the Digital Dollar – Part One", which looks at how streaming services are licensed and the challenges artists now face.<sup>5</sup>
  - *PRS for Music* has launched Streamfair, which aims to highlight the need for legislative reform to protect creators' rights in the music streaming market.<sup>6</sup>
  - The BPI, with support from a number of other music and creative bodies, has been taking a leading role in the "Get it Right from a Genuine Site" (previously Creative Content UK) public education campaign in support of legal music services.<sup>7</sup>
  - BASCA has initiated a campaign, "The Day the Music Died", concerning fair and transparent deals for writers and better protection from illegal uses of content online.<sup>8</sup>
  - The FAC is participating in the International Artists Organisation of Music (IAO) "Artists in Europe" campaign.<sup>9</sup>
  - The Fair Internet for Performers campaign. The participants in this campaign are international bodies including FIM and the IAO who have amongst their members the Musicians' Union and the FAC respectively.<sup>10</sup>
10. As a means of addressing some of the challenges presented by the digital economy to the music industry, UK Music welcomes financial support from the Government that has enabled initiatives such as "Get it Right from a Genuine

<sup>4</sup> <http://www.ukmusic.org/research/measuring-music/>

<sup>5</sup> <http://themmf.net/digitaldollar/>

<sup>6</sup> <http://www.prsformusic.com/aboutus/press/latestpressreleases/pages/prs-for-music-launches-streamfair.aspx>

<sup>7</sup> <https://www.getitrightfromagenuinesite.org/>

<sup>8</sup> <http://basca.org.uk/public-affairs/thedaythemusicdied/>

<sup>9</sup> <http://www.iaomusic.org/#!/IAO-Speech-in-the-European-Parliament/cd23/5589ef550cf2f97c80e97fe4>

<sup>10</sup> <http://www.fair-internet.eu/>

Site”, as well as funding continued research into online copyright infringement and the work of Police Intellectual Property Crime Unit (PIPCU).

11. In responding to this consultation, UK Music will focus its remarks on specific challenges relating to copyright, skills and finance which impact on the music industries ability to realise its potential in the digital economy and make suggestions for how this may be addressed. We also refer the committee to submissions made by UK Music members to this inquiry.

### Specific Questions

#### **Question 1**

**What are the major barriers to UK business success in the digital economy? What steps could the Government take to help businesses to overcome these barriers?**

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. To achieve success for the UK music industry it is vital that a fully functioning legitimate digital market exists whereby rightholders can derive the correct value for the use of their creative content in the online world.
14. The assessment of online platforms in para 3.3.1 of the European Commission’s Digital Single Market Strategy<sup>11</sup> which states that online platforms “can control access to online markets and can exercise significant influence over how various players in the market are remunerated” is one experienced by members of UK Music and acts as a major barrier in the achievement of a legitimate digital market.
15. We identify specific legal impediments that act as obstacles for rightholders when realising their full potential in the digital economy and steps the Government could take to overcome these barriers in response to question 4 of this consultation.

#### **Question 2**

**How effective are UK financial markets in supporting the digital economy? What actions could the Government take to improve their effectiveness?**

16. The music industry straddles freelancers, multinational companies and everything in between. Access to finance is vital to the growth of businesses

<sup>11</sup> [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)

large and small. The financing challenges faced by music industry businesses and entrepreneurs to some extent vary by their size and scale. The unwillingness of financial institutions to properly value intellectual property is a challenge that cuts across them all.

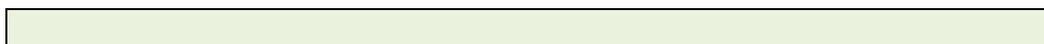
17. The UK Government has developed fiscal incentives for the creative industries.<sup>12</sup> Tax credits have been established and extended for film, high-end television, animation and video games. New tax credits have been announced for orchestras, theatres and children's TV. The music industry does not benefit directly from targeted support which decreases its ability to maximise the financial returns it can generate to the UK economy.
18. The UK music industry is further at risk of falling behind in the digital economy given that it is increasingly out of step with the experience of many other nations when it comes to incentivising music via the tax system. In France funds have been extended for independent phonographic production for 2016 to 2018. Canadian indie labels can also receive public financial support from both federal and provincial governments so that they can continue to develop new Canadian artists. In the US, Georgia gives tax credits for up to 30% of the cost of making an album. Incentives to record are also offered in Tennessee, Louisiana and Texas and are being considered by the New York senate.
19. In order to improve the effectiveness of UK financial markets in supporting the digital economy for music, we recommend that the Government:-
- introduces tax credits for the music industry. Any tax credits should be designed to benefit the whole of the music sector and in particular look at how fundamental industry activities such as recording, touring and the production of music audio-visual content can be incentivised,
  - encourages bodies such as the Business Bank, Innovate UK and the Intellectual Property Office to value intellectual property as akin to a tangible asset and continue work that they are undertaking to contribute to this understanding.
  - maintain funding or support for existing schemes such as AIM Start-Up Loans and the Music Export Growth Scheme which has generated an approximate return on investment of £8.50 for every £1 invested.

### **Question 3**

**What lessons can be learned from the Government's support of tech start-ups and other measures targeted at the digital economy? How is this developing around the regions and nations of the United Kingdom?**

<sup>12</sup> <https://www.gov.uk/guidance/corporation-tax-creative-industry-tax-reliefs>

20. The Hargreaves Review into Intellectual Property and Growth dominated political discourse on copyright issues in the last Parliament. The review proposed a number of exceptions to copyright law with the aim of encouraging the development of new digital technology businesses, estimating that these changes would add between 0.3% and 0.6%<sup>13</sup> to UK GDP, and that the proposals could add up to £7.9 billion per annum to the economy.
21. The benefits of the proposals, which followed an initiative from the Prime Minister that some commentators have referred to as the “googlesburg address”<sup>14</sup> given the potential benefits of this policy approach to tech, remain to be seen. The Government has subsequently downscaled predictions and estimate the policies resulting from Hargreaves will contribute “several hundred million to the UK economy over 10 years”.<sup>15</sup> UK Music remains to be convinced that even this level of benefit will be realised by the recent legislative changes.
22. The open acknowledgement by the Government when implementing the Hargreaves review that the policies would result in a transfer between rightsholders, such as the music industry, and tech<sup>16</sup>, indicates that potential UK economic benefits are further diminished by the negative impact of these policies on the established creative content producing industries, given their ability to licence rights is curtailed in certain respects as a result of legislative change.
23. The Government should learn from the Hargreaves review that there is no shortcut that would not result in the diminution of the rights of others caused by such interventions and that this is an inherent risk of using changes to copyright to provide such support.
24. More broadly, exceptions and limitations to copyright, including the safe harbours of the E-Commerce Directive, remove the consent of rightsholders. Music creates value for many internet businesses, yet these businesses can exercise direct control in capping and limiting the returns from music to rightsholders. Compensation is either nil or reduced, despite the value of music to those so-called intermediaries. Safe harbours in particular impose transactional costs on creators. The result is parasitic growth in which the digital sector grows at the expense of rightsholders.
25. We set out further details in our response to question 4 concerning how this transfer of value can be addressed.



<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32563/jpreview-finalreport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32563/jpreview-finalreport.pdf)

<sup>14</sup> <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140120/debtext/140120-0002.htm>  
col. 62

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/462050/Promoting\\_Innovation\\_and\\_Growth.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462050/Promoting_Innovation_and_Growth.pdf)

<sup>16</sup> See page 9 for the impact assessment of the Copyright Exception for Private Copying - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/308738/ia-exception-dataanalytics.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308738/ia-exception-dataanalytics.pdf) UK Music was an applicant in the case which resulted in the eventual regulations being quashed in July 2015.

**Question 4**

**Does the UK's Intellectual Property regulatory regime provide effective protection for the digital economy and sufficient scope for innovation and competition?**

Platform liability and clarification

26. The lines between hosting service providers and content service providers engaging in the act of communication to the public of protected works under copyright rules have become more difficult to distinguish in the digital economy. This legal uncertainty could create distortions on the online content market where platforms that make content available to the public without a licence compete with licensed services for similar or equivalent services to the consumer. The unclear legal situation can also make it hard for rightholders to licence their content with the platforms, or obliges them to accept licensing conditions that are below the potential value of the content.
27. Specifically, the E-Commerce Directive applies to 'information society services' of a mere technical, automatic and passive nature that consist of storage of information – the defence protects such services from liability for illegal activity of their users.
28. As a result of ambiguity in the law, different European courts have taken different approaches as to whether services that are available generally to members of the public that offer a broad range of content uploaded by users (both professional and amateur) as an entertainment package are active or passive and therefore whether they benefit from a limitation on their liability for acts restricted by copyright.
29. Where the defence has been argued to apply to sites enabling access to user-uploaded copyright content, the consequence is that the sites have been able to profit from giving access to content, doggedly avoiding taking responsibility for it. They either operate without a licence from rightholders or remain under licensed, because the uncertainty in the law has reduced the value of the licence. Rightholders and creators are often faced with the prospect of receiving no remuneration and have been left with the unpalatable option of either starting legal proceedings or playing an endless and dispiriting game of 'whack-a-mole' by attempting to have the infringing content taken down (only to see it pop up again immediately afterwards). These illegal services not only deprive creators and rightholders of the opportunity to properly participate in the value created by their content for the services in question but also compete unfairly with legal licensed services, driving down value across the market.
30. As part of discussions at an EU level on the Digital Single Market and elsewhere we recommend that the Government supports that such services are:-

- clarified, as part of a specific copyright initiative (and not as a broader amendment to the E-Commerce Directive), that they are outside the scope of the hosting defence,
- liable for the works they use uploaded by others.

#### Cross-border enforcement

31. In order to counter potential problems caused to rightholders by some online platforms, it is becoming increasingly important for there to be effective means to enforce copyright infringements across EU borders.
32. Specific civil measures exist in the UK, such as blocking orders against internet access providers available in the UK under Section 97A CDPA (implementing Art 8(3) Information Society Directive).
33. The principles of Section 97A CDPA have now been firmly established in various court cases since 2010 (most notably in the initial cases of *Twentieth Century Fox Film Corp and others v British Telecommunications plc and others* [2011] EWHC 1981 (Ch) and *Dramatico Entertainment Ltd and others v British Sky Broadcasting Ltd and others* [2012] EWHC 268 (Ch)).
34. As part of discussions at an EU level on the Digital Single Market and elsewhere we recommend that the Government:-
  - advocates clarification that injunctive relief provided in Article 8(3) Information Society Directive can apply cross border to promote a legitimate Digital Single Market,
  - monitors the implementation of Art 8(3) Information Society Directive throughout the European Union to ensure compliance with this provision.

#### Notice and takedown

35. The liability of internet intermediaries validly benefitting from the hosting defence (Article 14 e-Commerce Directive) needs to extend to works which have been notified and taken down but subsequently re-uploaded. The effectiveness of Notice and Takedown systems is reduced given their alleged limitation to the specific link. It is clear that even when rightholders engage in issuing notice and takedown on an industrial scale, material taken down invariably re-appears. Technology is available to assist the process and is best applied at the level of the Internet Service Providers, yet its use can be disincentivised by some services as the technology provides evidence of actual knowledge.
36. As part of discussions at an EU level on the Digital Single Market and elsewhere we recommend that the Government:-

- Supports a clarification that the notification of a work triggers actual knowledge regarding the work itself and not only the specific copy of the work uploaded.

### Communication to the Public

37. The “new public” has been introduced in recent decisions of the Court of Justice of the EU when interpreting Article 3 of the Information Society Directive – the communication to the public right.
38. The concept of “new public” brings with it the potential for considerable uncertainty and unfair economic loss for rightholders if an online retransmission of a licensed communication to the public may potentially not require a licence, even if the retransmitting service is building its business on serving up this copyright content.
39. This is particularly troubling for the licensing and distribution of music. Music is mostly distributed without digital rights management (DRM) and many initial transmissions are to a global audience. Assuming the initial transmission is licensed, it would not be unusual for the valuation placed on the relevant licence to have taken into account the consumption of the relevant content by the recipients of the transmission. The licensee carrying out the initial transmission cannot necessarily know, be expected to report on or capture the value of future retransmissions by third-party services.
40. Requiring that licensee to take out a licence that provided for adequate compensation for all potential transmissions is likely to place a significant burden on the licensee. Leaving further transmissions out of the scope of the licence in circumstances where retransmissions cannot be licensed would clearly and directly cause huge prejudice to the interests of rightholders.
41. As part of discussions at an EU level on the Digital Single Market and elsewhere we recommend that the Government:-
- Supports a clarification that a communication to an audience is still a copyright act in all circumstances.

### **Question 5**

**What actions could the Government take to foster the development of potentially disruptive technologies? Are further safeguards warranted to help existing businesses adapt to the impact of these technologies on their traditional business models?**

42. Disruptive technologies can be a good thing in terms of innovating markets and contributing towards overall economic growth. The existence of such

technologies should not however be seen as an excuse to alter the legislative framework which then causes further disruption to other contributing industries.

43. It is important for the Government to monitor potentially disruptive technologies in the digital economy. If the UK's ability to produce creative content is threatened by such technologies then mechanisms may need to be put in place to provide safeguards. UK Music's response to question 4 of this submission sets out the main areas where we believe the Government should prioritise.
44. Any actions 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.
45. As previously indicated in this submission, copyright industries, such as music, have experienced a number legislative reviews in recent years in the UK, notably the Hargreaves Review into Intellectual Property and Growth. The benefits of this review has yet to materialise and its economic projections have been severely scaled back. The legislative uncertainty which the Hargreaves Review contributed to caused unnecessary insecurity for businesses adapting to the evolving digital economy.
46. The necessity for a proper evidence based approach is underlined by the Judgement in *BASCA vs. SoS BIS & Others* which stated "the conclusions and inferences which have been drawn from the evidence the Secretary of State has relied upon are simply not warranted or justified by that evidence"<sup>17</sup> concerning the private copying exception that followed the Hargreaves review recommendations.

### **Question 6**

**What actions could the Government take to ensure the availability of a workforce with the skills to support businesses in the digital economy?**

47. 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.
48. 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.<sup>18</sup>

<sup>17</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2015/06/basca-v-sofs-bis-judgment.pdf>

<sup>18</sup> [http://blueprintfiles.s3.amazonaws.com/1319716452-Music-Blueprint-Web\\_26\\_7\\_11.pdf](http://blueprintfiles.s3.amazonaws.com/1319716452-Music-Blueprint-Web_26_7_11.pdf)

49. 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.
50. UK Music is playing a central role in improving skills and training in the music industry through our Skills Academy. Launched in July 2013, the UK Music Skills Academy is a joint initiative with Creative & Cultural Skills and aims to increase collaborative working between the music business and the education sector for the benefit of young people aspiring to work in the industry.
51. One of the key objectives of the Skills Academy is to improve opportunities for students and ensure graduates are more employable in the music industry. The Skills Academy is developing long-term partnerships between music employers and education institutions to foster genuine engagement and a constructive dialogue to address the sector's skills gaps. The Music Academic Partnership between industry and academia was launched in the last academic year.<sup>19</sup>
52. UK Music has a network of 15 rehearsal rooms across England which act as important spaces for young people to develop their careers. We have also established a schools programme, "Music Skills and Schools", to help young people aged 14-16 and teachers understand how the music industry works. In conjunction with Aardman Animations and the Intellectual Property Office we have developed an app based game, Music Inc, which aims to engage young people in a fun and interactive way.
53. Rights management in the music industry is key to ensuring creators get paid in the digital value chain. This means that many jobs in the music industry are in IT, programme management, systems and software development, managing data standards and databases. These are global projects and require international collaboration. Music employers inform us that they increasingly require employees to have database experience. The sectors interest is not solely in music technology, but in having a workforce equipped with broad technology skills.
54. In order to ensure the availability of a workforce with the skills to support businesses in the digital economy, we recommend that Government:-
- partners with schools, colleges, universities, and industry bodies to provide appropriate information and tools to develop music industry careers,
  - maintains support for successful schemes that assists creative industry apprenticeships and internships,
  - provides funding to expand UK Music's rehearsal rooms scheme and education network,

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<sup>19</sup> <http://www.ukmusic.org/skills-academy/music-academic-partnership/>

- support and fund music education, including fully implementing the National Music plan, whilst ensuring digital skills and copyright knowledge are embedded in the music curriculum.

## 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 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.
- 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 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

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