



Mr George Mudie, MP
Chairman
Joint Committee on Statutory Instruments
Houses of Parliament
London
SW1A 0AA

1 April 2014

FOR URGENT CONSIDERATION

Dear Mr Mudie

The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014

As you may be aware, UK Music is an organisation that represents the interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studios producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.

Last Thursday, 27 March 2014, the Parliamentary Under Secretary of State for Business, Innovation and Skills published five draft statutory instruments relating to copyright exceptions (the "**Draft SIs**"), one of which was the draft Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 (the "**Draft PCE SI**"). As you will be aware, the Draft SIs are to be effected pursuant to the affirmative resolution procedure requiring the instruments to be approved by motions in both Houses of Parliament. The consideration of the Draft SIs by the Joint Committee is the penultimate step in advance of those motions and is an important opportunity for detailed Parliamentary scrutiny of the Government's proposals.

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Further to the laying of the Draft SIs, we understand that the Joint Committee will decide at its meeting tomorrow whether to consider the SIs that day or to defer further consideration until its next meeting, which is likely to be on Wednesday, 7 May 2014. We have been asked to submit further representations in respect of the Draft SIs.

I would urge the Joint Committee to defer its consideration of the Draft PCE SI until its next meeting for the reasons set out below.

Private copying – the requirement for fair compensation

The Draft PCE SI envisages the implementation of Article 5(2)(b) of the EC Directive 2001/29/EC (the “**Copyright Directive**”, sometimes known as the “Information Society Directive”), which enables member states to provide a limited exception from the general strict copyright protection required for copies of works made by a “*natural person for private use and for ends that are neither directly nor indirectly commercial...*” (the private copying exception, or the “**PCE**”). However, Article 5(2)(b) includes a requirement that where a member state provides for a PCE, it must also provide for “fair compensation” to be provided to rights-holders in relation to the harm arising to them from the private copying in question.

The Court of Justice of the European Union (“**CJEU**”) in the case of *Padawan SL v Sociedad General de Autores y Editores de España* (Case C-467/08) established that private copying must be regarded as likely to cause harm to the rights-holders. The CJEU further established in the case of *Stichting de Thuiskopie v Opus* (Case C-462/09) that member states who have implemented the PCE (emphasis added) “**must guarantee...the effective recovery of the fair compensation intended to compensate the authors harmed for the prejudice sustained.**” Recital 35 of the Copyright Directive provides that only where such harm is “*minimal*” that no provision for compensation need to be made.

UK Music is not opposed to the introduction of the PCE as a matter of policy but wishes to ensure that it is implemented along with a system that will compensate fairly and properly rights-holders who suffer harm as a result of private copying as permitted under the PCE.

UK Music's evidence of harm

The Government's case is that although harm will be suffered by rights-holders, such harm will be minimal. As set out at pages 15 to 18 of in the Intellectual Property Office's revised Impact Assessment and paragraphs 13 to 19 of the Memorandum by the Department for Business, Innovation and Skills (both published on 27 March 2014), the Government believes that (a) due to the concept of 'pricing-in', rights-holders will suffer minimal harm from lost sales and (b) in respect of licensing income, due to the transfer of value from rights-holders to the technology industry (primarily cloud service providers), the "*overall cost to business will be zero*". It is on this basis that the Government seeks to justify the laying of the Draft PCE SI without any provision for compensation to be made to rights-holders.

UK Music has recently conducted a detailed consumer survey, the initial results of which support its case that there will be much more than minimal harm suffered by rights-holders as a result of private copying which would be permitted by the Draft PCE SI. Expert economists instructed by UK Music are currently in the process of preparing a report based on these results, which will be provided to the Joint Committee for consideration in advance of your meeting on 7 May.

European case law

In addition, the CJEU is expected to give its ruling in *ACI Adam and Others* (Case C-485/12) next Thursday, 10 April; this case concerns the legality of the source of the private copy. In addition, the Opinion of the Advocate General (the "**AG**") in *Copydan Båndkopi* (Case C-436/12) is also expected shortly thereafter; this case will consider the calculation of copyright levies and, crucially what constitutes 'minimal harm' for the purposes of the Copyright Directive. We believe that reasoning in both these cases may provide substantial assistance to the Joint Committee in its consideration of the Draft PCE SI.

For these reasons, we would respectfully suggest that the appropriate course is for the Joint Committee to defer its consideration of the Draft PCE SI until its meeting in May. By that stage, it will have the benefit of the additional important evidence referred to above and also further clarification of the law from the CJEU and the AG.

I hope this is of assistance. If there are any queries in relation to this matter or if I can assist any further, I would be very pleased to do so. In the meantime, we will endeavor to ready the evidence referred to above concerning harm and look to submit it to the Joint Committee in the very near future.

Yours sincerely

A handwritten signature in black ink that reads "Jo Dipple". The signature is written in a cursive, slightly slanted style.

Jo Dipple
Chief Executive Officer

Copied by email to:

Lord Goodlad, the House of Lords Secondary Legislation Scrutiny Committee (c/o Jane White: whiteja@parliament.uk)

Members of the Joint Committee on Statutory Instruments and House of Lords Secondary Legislation Scrutiny Committee