

Open Consultation Online Harms White Paper

Department for Digital, Culture, Media & Sport,

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. A full list of UK Music members can be found in annex.
3. The Online Harms White Paper rightly focusses on serious harm for society and individuals. We suggest reviewing an expansion of the powers of the regulator to include economic harm so as to ensure that the initiative covers the comprehensive spectrum of online harms in a single and coherent way as the White Paper envisages.
4. UK Music welcomes the new system of accountability and oversight for tech companies proposed in the White Paper. Whilst the White Paper is limited to serious online harms we deem the proposed mechanism of a duty of care for online platforms controlled by an independent regulator appropriate also to deal with economic harm.
5. We would stress that economic harm caused by copyright infringement (and suffered by our members) is frequently and closely linked to serious harm. The monies generated and received by criminals from copyright infringement are often used to fund far more serious criminal activities often perpetrated by organised crime groups. As the IPO stated "IP criminal offences are often associated with organised crime groups who are dealing for profit in fake branded goods, pirated products, enable devices to access unauthorised content or websites offering unauthorised content for free."¹ Extending the regulator's powers to cover economic harm will provide an important additional weapon in the fight against organised crime.
6. There is sustained evidence of the links between copyright infringement and organised crime. FACT's *Cracking Down on Digital Piracy* report quotes the Scottish Police on this

¹ <https://www.gov.uk/government/publications/ip-crime-and-enforcement-for-consumers/ip-crime-and-enforcement-for-consumers>

issue who point out that 'there are organised criminals behind these fraudulent [digital piracy] schemes, often supporting and funding other more serious crime, such as human trafficking and drugs' (2017, p.18)². Although published in 2006, the IFPI in its *The Recording Industry 2006 Piracy Report*³ details examples of how organised crime syndicates have financed their activities through copyright infringements which still bear relevance.

7. Copyright infringement is still a prevalent problem for the UK Music Industry. According to the Intellectual Property Office 2018 Copyright Infringement Tracker, around 31% of online music content is accessed illegally. BPI estimate 1.3 billion tracks were consumed from infringing sources in 2018, equating to an approximate estimated cost of £140 million to the UK music economy (after VAT, retailer and publisher deductions). A study carried out by PRS for Music and the Intellectual Property Office in 2017 found that "stream-ripping"⁴ was the most prevalent and fastest growing form of music piracy in the UK, with nearly 70% of music-infringement dominated by the activity. This requires strong government-supported action to deal with the harm caused by this continued piracy.
8. We welcome that online platforms should have a comprehensive clearly defined duty of care (by legislative or non-legislative measures) to prevent the availability of harmful material. This should be complementary to the mechanism established under Article 17 of the recently adopted European Union Directive Copyright in the Digital Single Market. We note that the implementation of Article 17 either by primary or secondary legislation is subject to uncertainties resulting from the withdrawal from the European Union. Article 17 (4) proposes a mechanism in case online platforms do not obtain such licences. Online platforms who do not obtain licences cause economic harm to right holders as well as ignoring the impact on their users. The licensing of online platforms also covers the activities of their users and legitimises their activities. A duty of care supervised by an independent regulator would provide an appropriate mechanism for users and right holders.
9. Such duty of care can be addressed in sector specific codes of practice developed with the participation of all stakeholders as well as the regulator. This allows sufficient flexibility to address online harms comprehensively. We note that the development of such codes of practice requires incentives such as the provision of regulatory backstop powers as well as dissuasive fines in case of non-compliance.

The duty of care should also extend to private online platforms which have restricted public access, e.g. for subscribers only.

Copyright infringement often occurs in private communications, users exchanging whole files or parts of files often using social media platforms; this file-sharing is illegal and online platforms should work with interested parties such as right holders and police to find solutions.

² <https://asiavia.org/wp-content/uploads/2018/10/PIR-cracking-down-on-digital-piracy-FACT-201709.pdf>

³ <https://www.ifpi.org/content/library/piracy-report2006.pdf>

⁴ Stream-ripping turns streamed music into downloadable files circumventing licensing agreements allowing a user to steal a music track without paying the rightsholders.

10. We note that that the Creative Industries Sector Deal set out an approach to copyright infringement whereby online intermediaries and rights holders are convened to consider the need for and agree new codes of practice in social media, digital advertising, and online marketplaces. It also made a clear consideration for legislative backstops if sufficient voluntary progress is not made. Whilst progress is ongoing since the Sector Deal, this white paper, and any resulting legislation, provides a timely opportunity to develop and make provision for the necessary backstop powers should it not be possible to agree voluntary codes of practice.
11. The online harms regulator should operate as a new public body to tackle its specific remit to ensure that online platforms comply with the duty of care. It should be proactive in its approach to tackling harms as opposed to being reactionary to complaints. A new body would ensure a new and specific approach to supervision; we also note that existing regulators such as Ofcom do not have the resources to deal with online harms. It could be financed by the proposed digital services tax or more directly by online platforms who ultimately benefit from a legitimate internet.
12. The requirement for non-UK/EEA companies to have a nominated representative in the UK or EEA is a crucial measure to hold global platforms to account for their actions. Such representation requirement will add a level of accountability, but it needs to be clarified that the regulator also has the power to compel directors of online platforms to be responsible for their activities including the compliance with the duty of care.
13. A judicial review is a satisfactory mechanism for appealing decisions of the regulator.
14. Parliament has a role to play in scrutinising the work of the regulator examining online harms. Parliament should have oversight over the new regulator including its appointments. Additionally, evidence on how online platforms respond to the regulator's requests should go to the relevant Select Committee for consideration and publication.
15. To help SMEs and start-ups comply with regulatory framework, the regulator should also provide advice and support to online platforms, as well as information about their duty of care. If this is done at an early stage of the development of the online platform duty of care can be in-built in the practical process from the start.

Annex

UK Music's membership comprises of: -

- AIM – The Association of Independent Music – the trade body for the independent music community, representing over 850 small and medium sized independent record labels and associated music businesses.
- 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 represents and promotes the interests of featured recording artists in the music industry.
- The Ivors Academy - The Ivors Academy exists to support, protect and celebrate music creators in the UK. We are the independent professional association representing songwriters and composers in all genres, whether they create song, symphony or sync. Previously known as BASCA, we can trace our history back over 70 years. As champions of music creators, we have three main activities: campaigning, cultivating and celebrating.
- MMF – Music Managers Forum - representing over 650 UK managers of artists, songwriters and producers across the music industry with global businesses.
- 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 100,000 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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