



Mike Weatherley MP
House of Commons
London
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19 January 2015

Dear Mike,

I am writing in response to your request for information in relation to the role of ISPs in intellectual property protection and the safe harbour provisions of the e-commerce directive.

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.

UK Music believes that the role of intermediaries (such as social media sites, ISPs and search engines) in the internet economy should be reviewed. This would consider the development of rules to ensure that copyright right holders receive fair remuneration for the exploitation of their works.

We highlight three particular areas of importance which are relevant to your inquiry.

- **Address the transfer of value to tech sector**

Music creates value for many internet businesses. These businesses have direct control in capping and limiting the returns from music to rights holders.

Exceptions and limitations to copyright, including the safe harbours of the e-Commerce directive, remove the consent of rights holders. Compensation is either nil or reduced, despite the value of music to those so-called intermediaries. Instead safe harbours impose transactional costs on rights holders. The result is parasitic growth in which the digital sector grows at the expense of right holders.

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To reverse this transfer of value, and to acknowledge the reality that many intermediaries exploiting safe harbours do have some knowledge or could gain knowledge of content, we think that it should be accepted that there is a principle that there should be no exceptions or limitations in markets where value is created. As a result limitations of liability for Internet Service Providers provided in the ecommerce directive should not apply to a range of online services. Further clarification to the application of limitations of liability is required.

- **Legislation to require internet intermediaries to take a more proactive approach to infringement occurring on their services (duty of care)**

Whilst it is important to monitor recent changes announced by Google regarding how the service deals with copyright infringing material, there remains a case for legislative intervention.

Articles 14 and 15 of the e-Commerce Directive need to be amended to clarify the duty of care of Internet Service Providers which has been developed by the Court of Justice in Case C 324/09 L'Oreal v eBay. The duty of care for information society intermediaries has not yet been laid down de lege lata. Article 15 provides that there is no general obligation on information society intermediaries to monitor. There is hence no general obligation actively to monitor information which is transmitted or stored, or actively seek facts or circumstances which indicate infringing activity. Whilst the Court of Justice of the European Union (CJEU) has provided guidance in clear-cut cases, it has not positively stated the actual requirements of what information society intermediaries have to do. The Court established some parameters of the duty of care owed by information society intermediaries to monitor content. In L'Oreal and others v eBay and others the Court noted that the internet service provider needs to undertake further activities if he has been playing a more 'active role' in the infringement in order to qualify for the limitation of liability under the e-Commerce Directive. In the SABAM cases (e.g. SABAM v Netlog), the Court stated that the internet service provider cannot be obliged to install a general filtering system, covering all its users, in order to prevent the unlawful use of musical works, as well as paying for it (cf Article 15 e-Commerce Directive). The cases referred to the facts at hand when deciding the duty of care.

Clear parameters of such duty have to be established to ensure a commercial environment for right holders and ISPs alike.

- **The liability of internet intermediaries under 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 the limitation to the actual link claimed by intermediaries. It needs to be clarified that the notification of a work triggers actual knowledge regarding the work and not only the specific copy of the work uploaded. Technology is available to assist the process and is best applied at the level of the DSP. Any such measures are fundamental for the progress of a legitimate market contributing to the UK and European economy.

The UK Government should implement any decisions made in this area.

Should you require any further information from UK Music, please do not hesitate to contact us.

Yours sincerely,



Jo Dipple
CEO, UK Music

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.
- 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

For more information please contact Tom Kiehl, Director of Government and Public Affairs, UK Music on tom.kiehl@ukmusic.org or 020 7306 4465.