UK MUSIC

UK Music response to the Call for Evidence
of the Independent Review of Intellectual Property and Growth

March 2011

FOREWORD:

When announcing this Review, the Prime Minister repeated the viewpoint of Google's founders that the US search giant could never have established itself in the UK because of our copyright framework. It is not, apparently, "as friendly", as that of North America.

The rather fragile conclusion that a series of "fair use" provisions might give birth to innovative digital products and services was quickly dismissed by many – mostly, ironically, by tech commentators and digital experts.

The inconvenient reality that music fans in the UK have access to almost four times as many legitimate and licensed digital music services as their US counterparts hangs heavily in the background.

More than that, our creative talent, perennially impressive, is currently going through something of a purple patch. As I type these words, we have two young British acts – Adele and Mumford & Sons - in the top three of the US album chart. A prestigious achievement built on talent, creativity, support and investment, underpinned by copyright. And that's in the context of some other fantastic music, released in recent weeks by the likes of PJ Harvey, The Streets, James Blake and Radiohead.

In 2010, British acts commanded 9.8% of all artist album sales in the US. The UK remains, per capita, the largest music consumption market in the world. As a nation we still rank at number two in the global list of net music exporters.

We now have hundreds of digital businesses in the UK who are dependent upon this industry's capacity to produce some of the most innovative and diverse range of creative music imaginable. It is that quality 'content' which consumers demand, and is our business to provide them with it. Without it, the remainder of the value chain ceases to exist.

In terms of growth, in our view, Government should make a priority of other factors, such as investment and access to finance. Ironically, these are the barriers faced by UK tech entrepreneurs, hoping to develop their own intellectual property into a viable business. There is no good case to be made that copyright is a barrier to growth.

For at the base of copyright sits a simple ideal - a global system, within which, that unique moment of flair, insight, brilliance and passion can be justly rewarded regardless of the creator's status in society. King, pauper, internet giant or aspiring composer, all are equals.

If we are now to live in an age where some might see IP protection as nothing more than an obstacle to growth and innovation, where we are to be exposed to the worst form of binary neo-colonial imperialism, to treat "with special disfavour the work of the spirit and the mind[1]", I would be expectant that Professor Hargreaves will recall with a ringing clarity the words of my fellow countryman: "Between my finger and my thumb, The squat pen rests; as snug as a gun". (© Seamus Heaney)

Feargal Sharkey
CEO UK Music.

[1] Mark Helprin.

About UK Music

UK Music is the umbrella organisation which represents the collective interests of the UK's commercial music industry - from artists, musicians, record producers, songwriters and composers, to record labels, music managers, music publishers, and music licensing companies:

This submission has the support of the following UK Music members:

Association of Independent Music representing 850 small and medium sized independent music companies;

British Academy of Songwriters, Composers and Authors (BASCA) – the professional association for music writers with over 2,000 members

BPI representing over 440 record company members;

Music Producers Guild representing all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers;

Music Publishers Association, with more than 260 major and independent music publishers representing close to 4,000 catalogues;

Musicians Union representing 32,000 musicians;

PPL representing 45,000 performer members and 5,700 record company members;

PRS for Music representing 75,000 songwriters and composers and music publishers

EXECUTIVE SUMMARY

This rest of this submission offers evidence to support the following points:

1. Government is rightly focused on economic growth. We demonstrate that the UK already enjoys a competitive advantage in its music industry and has significant growth potential. This growth is not assured but is dependent on key variables: access to finance, skills and business support and a fully supportive copyright framework.

2. We wish to highlight that a supportive copyright framework is the most important factor affecting our growth potential, because it underpins the functioning of the entire creative content market.

3. The Call for Evidence starts with the premise that the copyright framework is an inhibitor to growth, and suggests that new exceptions to copyright could open up a greater range of uses of creative content without requiring the permission of (or payment to) copyright owners. This premise unnecessarily and incorrectly pits the growth of the digital technology sector in direct conflict with the growth of the creative content sector. The relationship between creative content producers and digital technology companies is symbiotic and strategies for growth must be predicated on a partnership basis.

4. The rights conferred on creators by copyright law give them the choice as to how or whether their work is exploited, and at what price. Licensing enables copyright owners to grant permissions and set a price for any type of digital exploitation. Licensing is a flexible and adaptable tool, and should always be the route to legitimise new forms of exploitation, or to rectify anomalies (rather than through the courts or through legislation). We provide examples.

5. Digital technology companies that cash in on the appeal of creative content to draw customers and advertisers must secure permissions from copyright owners, just like every other type business in the 'physical' world that incorporates such cost factors into their business planning. We urge the Review team to take care to differentiate between *inefficiencies* in the copyright framework, which should be the focus of this review, and inherent *complexities,* which arise from all forms of commercial trading not just creative works. Industry is investing considerable resources on initiatives designed to overcome inefficiencies in the framework of licensing to the digital market. We provide details of some of these initiatives.

6. The enforcement of copyright is a second critical factor to achieving growth in the digital market. Our growth projections depend on our sector's ability to increase revenues from growing the legitimate market, which in turn depends on persuading the majority of those engaged in digital copyright infringement to use legitimate, licensed services. We provide a particular focus on the challenges that small copyright owners have in protecting their rights digitally.

7. The third critical factor to achieving growth is the ability of our sector to attract investment. Our sector has long reported difficulties in accessing finance to aid growth; however, in recent years, these difficulties have intensified and

now pose a serious threat to our future. We urge Government to help lubricate the flow of finance, which is a vital element to creating the Silicon Valley-style enterprise culture it seeks. This will help create the right conditions for growth not only for the creative content sector, but for the digital technology sector and all high value sectors of the economy.

8. Government should conduct an impact assessment on any proposed change to copyright legislation to gauge how it would affect the growth prospects of the creative industries.

FULL RESPONSE

The strength of UK's music industry and its potential for future growth

9. UK Music is pleased to contribute to this Review of Intellectual Property and Growth. The Review should have a focus on growth in both the digital technology sector the creative content industries.

10. We have a very positive story to tell on economic growth. The UK's music industry is a valuable economic asset. With a turnover of almost £4 billion[2], our sector sustains in excess of 100,000[3] jobs.

11. Foreign earnings form a significant and growing part of our sector's income. The UK is the second only to the United States as a producer of global repertoire. We are one of only three net *exporters* of music in the world, second after the US and well ahead of Sweden[4]. This is in addition to being the world's largest market for the *consumption* of music per capita. The upshot is that even though we buy more music per head than any other population in the world, we also ship more of our music abroad than almost every other country in the world.

[2] Adding UP the UK Music Industry for 2009, by Will Page and Chris Carey, published in Economic Insight issue 20 by *PRS for Music*, August 2010
[3] Music Impact and Footprint, published by Creative & Cultural Skills, 2008-2009
[4] Page and Carey

12. Adjacent to this is the very significant value that music adds to other sectors. Music forms an integral part of the value of other creative industries sectors such as advertising, broadcasting and film, video games and fashion. The nature and extent of the 'spill-over' value of the creative industries to other sectors is also the subject of much interest to policy analysts[5].

13. UK Music is soon to report on the most comprehensive analysis ever undertaken on the contribution that the music makes to the £52 billion[6] tourism economy. Around a third of the adult UK population attended a live music event in 2008/09. Live music revenues grew by 13% in 2008, followed by further growth of 9% in 2009. While the rapid and spectacular growth achieved by the live music sector over the past five years is likely to settle into more sustainable growth over the next five years, concert and festival venues are continuing to fill as the UK reinforces its reputation as the music festival nation of the world.

14. And, of course, music continues to be a driver of growth and innovation in the digital technology sector. The demand for music drove the sales of millions of MP3 players and the penetration of broadband into hundreds of thousands of homes. Music is estimated to account for over 30% of YouTube's traffic[7] and is now central to some of the best selling apps such as Tap Tap Revenge (downloaded over 25m times globally) and Shazam.

Evidence-based policy making?

UK Music welcomes the constructive dialogue taking place between economists and statisticians at the Intellectual Property Office, Imperial College, and the music industry aimed at improving the methodology used to assess the size and value of the commercial music industry to the UK economy.

[5] See, for instance, "A Creative Block? The future of the UK Creative Industries" published by the Work Foundation, December 2010 and "Do the Creative Industries stimulate business innovation in the wider economy?" published by Nesta in 2009.
[6] The economy contribution of the Visitor Economy, UK and the nations, Deloitte and Oxford Economics, June 2010. UK Music's report on the value of music to the tourism economy will be published shortly.
[7] A report by analytics firm Sysomos in 2010, as cited in *Digital Music Nation*, BPI, December 2010

We believe that Government statistics may currently undervalue the contribution that the music sector makes to the economy and therefore, underestimate the contribution our sector can make to future growth.

The underlying data sources that Government use to calculate the national accounts (the Labour Force Survey, the Interdepartmental Business Register, and the Annual Business Survey) assign different types of economic activity a specific code. These standard industrial codes are then totalled up to measure the contribution that each industrial sector makes to the economy.

Government currently have inadequate means of calculating the economic value of the commercial music sector, as music is classified alongside 'visual and performing arts'. In addition, many companies and individuals working in the music industry will be assigned a code which falls outside the classifications used to calculate the 'music & visual and performing arts' category. Thus, the economic contribution generated by these companies and individuals will incorrectly be attributed to other sectors of the economy rather than to music.

We estimate that a significant amount of economic activity generated by the music sector is missed out of the national accounts altogether. For example, the Annual Business Survey is drawn only from VAT-registered companies. Nearly 90% of music industry companies, representing a fifth of the market, is comprised of small or micro enterprises and the majority of these are very unlikely to be VAT-registered.

Government figures published in December 2010 estimated that the GVA of the "music and visual and performing arts" sector is £3.2 billion[8]. Using the same methodology to calculate GVA as Treasury statisticians, but analysing revenue data which more accurately captures the economic activity generated by our sector, industry economists are working on revised estimates of GVA from the music industry.

We believe that weaknesses in the evidence base hampers policy making and we would question the wisdom of Government considering new legislative measures when it lacks robust data about the industries that such legislation would directly affect.

[8] Creative Industries Economic Estimates, published by the DCMS in December 2010

15. Our industry has demonstrated remarkable resilience in its ability to weather storms, a reflection of its underlying strength and staying power. We achieved revenue growth of 5% in both 2008 and 2009, bucking the trend at home and abroad during the deepest global recession since the 1930s.

16. The music industry has also withstood more than a decade of severe disruption and rationalisation in response to technological developments. While we continue to face very significant challenges and pressures today, the growth we have achieved over the past two years attests to our sector's ability to innovate and adapt and successfully license new players in the market. The sector has diversified its revenue streams and increased B2B income which has helped to rebalance the decline in revenue from the sale of recorded music direct to consumers.

17. Of course, at the heart of our £4 billion industry is the creative genius of the British people. A new wave of composers, songwriters, musicians and producers have emerged every year for the past six decades, producing music that is loved and desired by people all over the world. This natural resource is discovered, nurtured and supported by music publishers, managers and record labels who invest significant amounts of both time and money in bringing the expression of this creativity to the consumer in the form of the finished product. So long as we can continue to nurture and invest in the indigenous talent in our population, we will continue to create a product for which there will always be a demand.

18. We have reason to be optimistic about the future. The appetite for UK-originated music around the world is strong and shows no sign of diminishing. Latest BPI figures show that British artists accounted for 9.8% of artist albums sold in the US in 2010, up from 9.6% in 2009. Composers, songwriters and publishers' royalties from music exports have doubled over the past decade, according to *PRS for Music*, the music rights collecting society whose collections have grown from £66 million from overseas markets in 1999, to £166.6 million in 2009. *PRS for Music*'s international revenues grew by nearly 20% last year alone. Likewise, PPL, the licensing agency that collects and

distributes royalties on behalf of performers and record labels, reported growth of nearly 50% in international revenues last year alone.

19. The potential to increase revenue from use of British music abroad is very strong but is dependent on Government support for a favourable environment for licensing and sub-publishing overseas. *PRS for Music* forecasts that overseas revenue has the potential to grow by 40% over the next five years.

20. Reaping the growth potential from digital music is vital to our sector's future. In 2004, the UK's digital market for music was worth around £5 million. Just five years later, its value had reached £280.5 million[9]. Digital revenue now accounts for a quarter of record label income. As digital services continue to diversify and as new developments such as 'cloud computing' gain traction, the potential for digital revenues to continue to growth is very real. This potential could increase exponentially if access providers such as ISPs and mobile operators moved en masse to bundle digital music services into their service offer. *PRS for Music* digital licensing for composers and publishers rose 73% to £36 million in 2009.

21. Achieving our growth potential and capturing the commercial value of the UK's musical talent is to everyone's benefit – the Exchequer, investors in music, the host of talented young musicians, composers and performers that can be found in every corner of the country, and every last one of the digital and hi-tech companies that utilise music to drive demand for their products and services.

22. One of the first questions posed by the Call for Evidence is what the UK must do to gain a competitive advantage in its digital technology sector. We hope that by highlighting that the UK already enjoys a considerable competitive advantage in its music industry, the Government will be minded to consider why and how the UK can maintain and build on this competitive advantage, and take in account the crucial role a robust copyright framework plays in this success.

The role of copyright in achieving growth

[9] Digital Music Nation 2010, published by the BPI in December 2010

23. The music industry's growth potential is not assured but is dependent on a number of critical factors. Intellectual property is one of those critical factors.

24. Copyright is the "currency of creativity". It gives the creator a choice – whether to assign or license their rights to a publisher or record label, whether to sell direct to the consumer, whether to give their creativity away for free, or not to publish or release it at all. Copyright ensures that the creator can earn money from the exploitation of their creativity for a time-limited period, and that those who invest in them have the chance to recoup their investment and grow their business.

25. This intellectual property framework also underpins B2B licensing arrangements, which account for an increasing proportion of music industry revenues, and has been the continuous business model of composers and publishers for over 100 years. The rights which copyright confers provides creators (or, in most cases, their chosen representatives) with the commercial tools necessary to engage in negotiations with other businesses who want to use their work in any way. As such, our IP framework allows a commercial market to function. It is the basis of our creative industries and their national and international success.

Our patents, trademarks, trade secrets, copyrights and all of our other intellectual property rights are important assets for us. There are events outside of our control that pose a threat to our intellectual property rights…Any significant impairment to our intellectual property rights could harm our business or our ability to compete"

Extract from Google's IPO 2004 prospectus

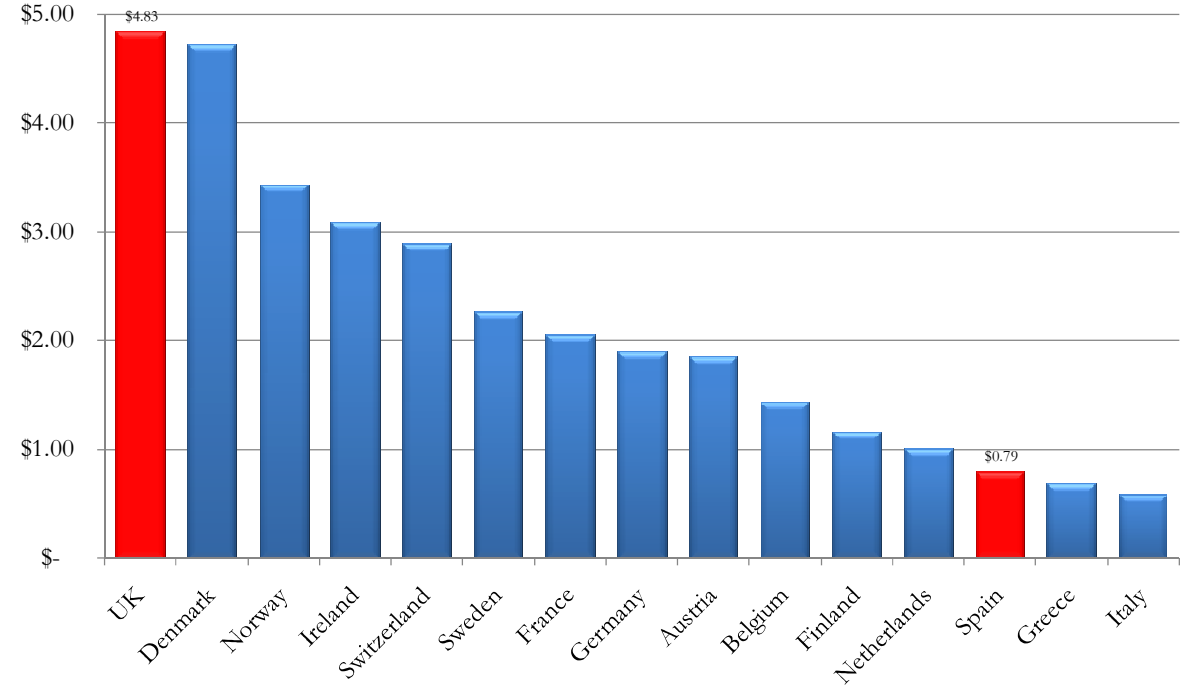
26. We can see the link between copyright and economic growth at work by taking an international perspective. An analysis of digital music revenues in Europe[10] shows that the UK collects more digital revenues per capita than any other European country, at $4.83 per capita. This same per capita analysis can be used to assess the digital potential in other markets. For example, Spain has a population of 46 million people. If digital revenues per

[10] An analysis by Will Page, chief economist at *PRS for Music*, December 2010.

capita in Spain were $4.83 as it is in the UK, the Spanish digital music market would be worth $229 million. As it is, with the difficulties that the Spanish music market has in monetising its digital consumption of music, the Spanish digital market is worth a mere $39 million.

IFPI Digital Revenues per Capita in Europe

Source: IFPI 2010 RIN, no adjustments



27. The effectiveness of the copyright system in other countries can and does have a direct bearing on the amount of revenues that the UK music industry can collect overseas from the consumption of UK produced music, to be distributed back to UK artists. For example, the Indian market is a priority market for music given its vast population and close historical links with the UK. Yet at present, there is very low income collected from India relative to its consumption of British music due in large part to the difficulties in applying and securing its copyright framework. In fact, there is currently a negative balance of trade between *PRS for Music* and its Indian equivalent, IPRS.

28. The United States' response to such intellectual property challenges was, in 2006, to institute an Overseas Intellectual Property Rights Attaché programme to "promote high standards of IP protection and enforcement internationally for the benefit of U.S. economic and political interests abroad."

The United States currently has IPR attaches in seven countries, including India, Russia, and China.

29. China's copyright framework is notoriously weak and the value of its recorded music market is correspondingly low. Only $19 million worth of CDs were sold in China last year. However, between 2003 and 2009, China's patent filing increased by 26% a year and China is now third in the world for patent filing, behind America and Japan. As patents provide the bedrock for high tech manufacturing, so copyright provides the bedrock for high value creative content industries.

30. A report entitled *Nashville in Africa*, produced in 2008 by the International Policy Network, examined how Nashville, Tennessee might serve as a model for cultural and economic development[11] in Africa given the rich musical traditions and abundant talent in many African countries. The report found that chief amongst the obstacles to successful creative industries are weak copyright frameworks which prevent the growth of a functioning market.[12] The report says that to the extent that African creators do succeed, their success fails to produce economic benefits for their home countries because they tend to record and distribute their music from countries where the copyright framework is more robust (such as the UK). The report's chief recommendation: "enact, implement and enforce effective copyright laws."

From Nollywood: Lights, Cameras, Africa, published in the Economist, 16 December 2010

As soon as a film is released, copyright thieves rip it off. It takes the pirates just two weeks to copy a new film and distribute it across Africa. The merchants must take their money during that fortnight, known as the "mating season", before their discs become commodities. As soon as the mating season is over they start thinking about the next film.

[11] Ironically, the Nashville City Paper reported that the Nashville music industry is now being 'crippled' by piracy, as music industry representatives met with the major, governor, congressman, and the US Commerce Secretary Gary Locke for crisis talks in August 2010.
[12] Nashville in Africa, by Mark Schultz and Alec van Gelder, published by International Policy Press, London 2008

31. A robust copyright framework creates underlying conditions necessary for creators to attract investors, for investors to leverage additional finance, and for all investors to make a return, thus oiling the wheels of the virtuous cycle of investment, return and reinvestment. The converse is also true. The weaker the copyright system, the harder it is for those countries and individuals to reap the economic benefits from their creative talents and build sustainable industries.

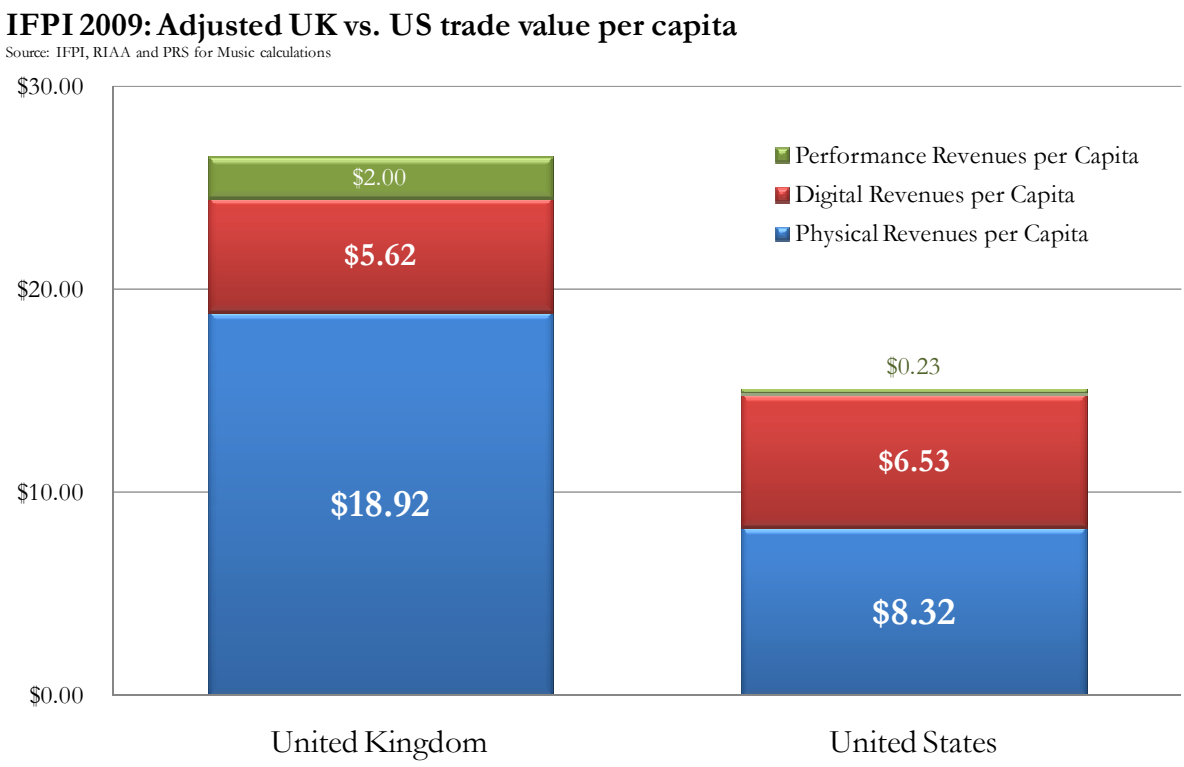
Licensing commercial uses of music

32. We agree with the statement issued by Ed Vaizey on 23 February which stated, "The nature of the internet means the creative industries, internet service providers and others such as Google and Yahoo are completely interlinked. They need each other for sustainable future success.[13]" Given this symbiotic relationship, a growth strategy aimed at increasing the number of internet start-up businesses, which simultaneously undermines the creative content industries, will not succeed. Growth of the digital technology sector and growth of the creative content sector must be pursued in tandem and in harmony.

33. The Review has been asked to consider specifically the barriers that IP might present to new internet-based business models, including information access, costs of obtaining permissions from existing rights-holders and the potential benefits of 'fair use' exceptions to copyright. Latterly, the Review Team have described the cost and complexity of clearing rights as a particular problem that internet start-up companies report, which in turn affect their ability to secure investment for their ventures.

34. We respectfully remind the Review team that the UK has three times the number of licensed digital music services as the United States[14] and more than any other European territory. Revenue from digital per capita is higher in the UK than anywhere else in the world apart from the United States. Relative to size, the UK digital music market is already 86% of the value of the United States digital market, and growing.

[13] DCMS press notice "Government hosts talks on online content" issued 23.02.11.



35. There are now around 70 digital services offering music from every genre and suited to every pocket, with several free at the point of access (such as Spotify and we7, MySpace and YouTube). In addition, there are well over a thousand internet sites and services that have been licensed by *PRS for Music* for some form of musical exploitation online. Additionally, there are literally hundreds of other music-dependent digital businesses, ranging from distributors to mobile app developers and retailers of digital sheet music.

UK music industry embraces IC tomorrow innovation contest

All four major labels - Universal, Sony, Warner and EMI - along with PRS For Music, indie labels and distributors including Beggars Group and The Orchard, and investors including Balderton Capital and DN Capital have agreed to participate in a digital innovation contest for the UK Government backed IC tomorrow project. The rightsholders will help to evaluate applications to the contest, being organised by the UK's Technology Strategy Board, which will invest a total of £200,000 in up to 20 consumer trials. Applicants must come up with new digital business ideas and

[14] IFPI Digital Music Report 2011, p. 30 - http://www.ifpi.org/content/library/DMR2011.pdf

services to test with UK consumers on the IC tomorrow platform. The rightsholders will also potentially license content to the winners. Applications for the contest close on 11th March with the best applicants going through to a final face to face panel session phase at the end of March.

https://ktn.innovateuk.org/web/ic-tomorrow-digital-innovation-contest

36. We refer the Review Team to a statement issued by the Secretary of State for Culture, Media & Sport on 23 February 2011 stating, "I am pleased to hear that real progress has been made by ISPs and the music industry on developing new and attractive services for consumers." The music industry is keen for the digital market to grow and diversify further still. However, it would be incorrect to portray the UK as a place where digital innovation has been stifled.

Natasha Baldwin, Head of Creative Services, Imagem

Imagem are the largest independent music publisher in the UK. They have a reputation of being extremely pro-active in making licensing easier, quicker and more accessible to commercial music users.

The company has 65 staff in the UK and a further 140 around the world with offices in the USA, Holland and Germany.

Their catalogue includes that of Boosey and Hawkes and Rodgers & Hammerstein, with copyrights dating back to the beginning of the 20th Century. As well as this classic repertoire, they also manage music for the most up-to-date acts within the Rondor, Zomba UK & US, BBC and 19 Songs catalogues. They provide this music on a commercial basis to advertisers, film-makers, TV companies and brands, for a wide variety of multi-media uses.

"Within the copyrights we hold and the current restrictions we can be flexible as they need to be to deliver the music uses demanded by our clients. For example, online streaming and other digital uses are absolutely expected by clients, if they license or commission music for an advert, they want to be able to show that on their website, their Facebook page and on YouTube. Our licenses can accommodate all of this. We

have never turned down any licenses simply because of internet rights, and we work out a price dependent on the use required.

For example one client, Nike, is currently running a competition through their Facebook page where fans can film footage of themselves playing football, and set it to the music from their advert, which was created by our writer Karl Jenkins. Our writers view these ideas as ways to make the collaboration and synergy between their work and its commercial use even stronger"

The ability of writers to license and negotiate a fee for these uses of their music are absolutely key to both their ability to generate an income from their music and to pay for professional and efficient management of their work.

There is also the issue of moral rights, the creators right to be identified as the author of their work and to determine how it may be used, protecting it from any derogatory use. Many writers have a legitimate concern with how their work is used, and that it is not undervalued by its association with a product or image that they do not believe in. Examples of this are that we agree with our writers that they should have the right to decide whether their music is used to promote alcohol or a particular political party.

"French electronic music duo Daft Punk, who we represent, are particularly discriminating in what they will or will not agree to. They are highly innovative in the field of music and in tandem with their musical legacy they will only agree to their music being used in ways that fit with who they are and their code. It is important to them personally, and to their reputations that their music is used appropriately."

These writers are no exception and most writers find it difficult to agree to their music being used in party political broadcasts, and some may have moral issues around the ethics of particular companies or products with which they do not want to be associated.

To facilitate the licensing of music, Imagem have invested heavily in the creation of digital and administrative systems to help their customers. Firstly, they have information on their website for potential licensees explaining how to license. For small licensees they have a license request form, which sets out all the information they require to agree a license such as what they music is being used for, where, and for how long.

Secondly, the licenses they offer are variable in price, so they are clear about how the costs are structured. There is a premium for very well known music, or for exclusive use of a piece of music, for example.

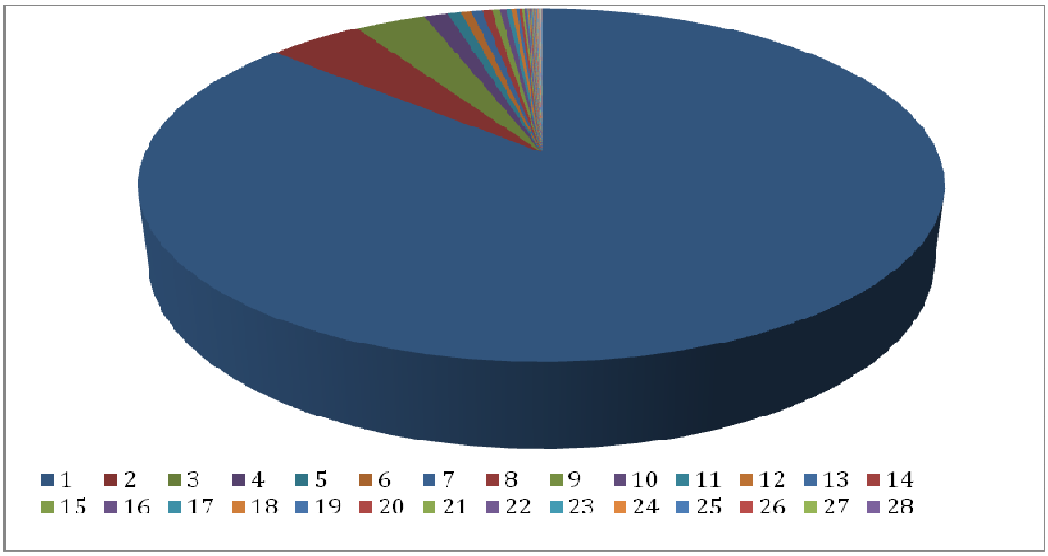
Thirdly, they have pre-cleared music of an extremely high quality for lower value users offering a flexible and modest rate for, say, producers of corporate video. Often such music is written by well-known writers or composers and it provides a useful, easily accessible source of music, widely used in the television industry, which can be adapted in any way the producer wishes. Imagem is developing a partnership with a web service where users can find out exactly what the price is, and be able to access the music immediately.

Fourthly, as a service driven business they offer a 24 hour turn around to licensees by pre-agreeing terms with co-owners in a piece of music, for example publishers who may co-publish a song in their catalogue, or recording companies who own the master rights.

“One of our innovations is an iPhone app for our licensees. It was designed for the busy film, TV or advertising producer. It helps them to find music from our catalogue on their phones’, whilst dashing to post-production studios. We can deliver music digitally to them in real time, index their likes and dislikes, and can include exclusive or unreleased tracks that they may not otherwise be aware of. We can deliver broadcast quality music to them using this system, or email, usb or ftp site.”

37. In terms of barriers to market entry, the Review Team may wish to consider instead the difficulties that UK start-up internet companies face in gaining traction in a market that is dominated by a small number of very large global companies, alongside difficulties accessing sources of finance and the availability of skilled labour.

38. According to AIM, which represents 850 of the UK’s small and medium sized independent music companies, the top three digital download, streaming and subscription sites accounted for more than 94% of all revenues. The remainder 51 companies account for the remaining 5.65% share.



39. In looking at “the necessity, complexity and cost of obtaining permissions from existing rights holders”, we hope the Review team will be minded to make a clear distinction between the unavoidable business costs which arise from all forms of commercial trading (not just creative works), and that which might be considered inefficiencies in the licensing infrastructure, which could be made more efficient. Certainly we would be very alarmed if complaints lodged against the necessity, complexity or cost of obtaining permissions from copyright holders were used as a negotiation tool to drive down the price that commercial service providers pay for the use of creative works.

40. A degree of the perceived “complexity” arises from the reality that music is often a collaborative effort, and so has multiple owners for the underlying rights. In every piece of recorded music, there are basically two different layers of copyright: the copyright created by the composer (often transferred to a music publisher), and the copyright created by the performer of that composition (often owned by a record company). Both rights are sometimes exercised by collecting societies mandated by copyright owners to administer specified uses, when it is judged by the owners to be the most efficient means of administering the rights in which they have invested.

41. For most types of digital exploitation, a user must negotiate with both groups of copyright owners for the repertoire they wish to make available in the UK (or on a more extended multi-territory basis).

42. The music industry is a broad church and there are a wide range of views and strategies being adopted as to how different copyright owners can help streamline the licensing process for digital business users while maintaining the value of the assets they own. Many copyright owners strongly argue that the choice they can exercise over the management of their rights helps fight against inefficiencies in licensing structures and avoids a race to the bottom on price.

43. We would urge the Review Team caution when considering any intervention in the management of rights and refer to the current review of collective rights management by the European Commission. It could be extremely detrimental to the British creative industries to have to cope with two conflicting approaches when conducting businesses.

44. An impact assessment on the creative content sector should precede any change to copyright designed to increase the number of internet start-up companies.

45. The future prospects of both the creative content sectors and the digital technology sectors are closely intertwined because they are mutually dependent on one another. Demand for high quality, investment-heavy creative works has consistently driven innovation and growth in the tech sector. Without the manufacturing of and investment in innovative, high quality creative works, then the commercial viability of a digital service is significantly lessened.

46. For example, the ten most-watched YouTube clips in the UK in 2010 were all music videos[15]. YouTube's 100 most viewed music videos of all time, 93 are 'professionally produced' music videos or outtakes from broadcast TV[16]. Of the remaining seven, six consist entirely of synchronisations whereby master recordings are played against a video backdrop of the relevant lyrics. On

[15] http://www.telegraph.co.uk/technology/technology-video/8207395/YouTubes-most-viewed-videos-in-the-UK.html.
[16] http://www.youtube.com/charts/videos_views/music?t=a

Last.FM, of the 200 most-played artists in the week February 20-27 2011, all are either currently signed to a record label or music publisher, or have benefitted from similar investment in the past[17]. Similarly, in November 2010, the founder of UK-based streaming service We7 confirmed that a pool of 100 artists account for 52% of all music played[18]. Despite licensing upwards of 6.5m tracks, only 22% of the service's catalogue is played in any one month.

47. All offer further evidence of conclusions reached by Will Page of PRS for Music in 2008 that, while digital distribution has enabled retailers to carry a vast inventory of millions of tracks, demand for the "hits" is more pronounced than ever.

Fair use

48. The Review team specifically mentions the USA's system of "fair use" and asks whether such a system might better support innovation. We would strongly caution the Review Team from considering any 'drag and drop' transfer of legal concepts from one country to another. The US system is based on years of case law and precedent, supported by a general culture of litigation and the structural support of a court system resourced for these cases.

49. The purpose of exceptions is to provide a balance between the interests of the author with the public interest in access. Exceptions to copyright should serve the promotion of social good such as access for educational establishments and visually impaired people, and should not be used for the commercial gain of individual companies.

50. Introducing a new exception to copyright – essentially bypassing the requirement of users to secure permission, and make payment, for use of creative content -- particularly an exception for commercial users, would have a serious detrimental impact on the value of all music repertoire. In this context, "fair use" would in effect mean "free use." Digital technology companies that cash in on the appeal of creative content to draw customers

[17] http://www.last.fm/charts/artist
[18] http://www.hypebot.com/hypebot/2010/11/the-long-tail-doesnt-exist-on-we7-surprise-or-no.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+typepad%2FDqMf+%28hypebot%29

and advertisers must secure permissions from copyright owners, just like every other type business in the 'physical' world. Business-to-business revenue now accounts for a quarter of all industry revenue and our ability to grow this revenue as the digital market develops is vitally important to our future.

51. Whilst "fair use" is an often used catchword which implies simplicity and balance, this does not reflect the reality as US lawyers will evidence. Lawrence Lessig for example called the fair use exception a "right to hire a lawyer[19]". The openness of Section 107 of the US Copyright Act on the application of the fair use exception is the cause of considerable legal uncertainty. Hence, fair use has been considered as "the most troublesome in the whole law of copyright" by many academics and judges[20], e.g. *Dellar v. Samuel Goldwyn, Inc. (2nd Cir. 1939)*). Diverging decisions in different jurisdictional instances, often depending on the geographical location of the Court, contribute further to the uncertainty of the interpretation on what constitutes "fair" use.

52. A case by case analysis of fair use litigation in the United States reveals that the outcome is essentially a lottery, depending on the perspective of the ruling judge. This lack of clarity and different interpretations between cases permits judges de facto to determine the law in each individual case. This is antithetical to the UK's legal and legislative traditions whereby Parliament creates laws which are applicable to everyone.

53. Fair use is extremely complex and leads to uncertainty due to the broad judicial interpretation of the factors. This complexity and uncertainty causes over-rulings of lower court decisions, which subsequently lead to further litigation and expense, according to the Association of American IP Lawyers up to $1 million per case.

54. Under UK law there are specific and detailed exceptions for fair dealing provisions enumerated in Sections 29 and 30 of the CDPA 1988. In order for a particular use to fall under the ambit of this section, the use must be fair and

[19] http://www.buzzmachine.com/2007/05/18/pdf-free-the-debates/
[20] http://www.wixenmusic.com/copywrong.htm

be for the purpose of Research or Private Study; Criticism or Review; or Reporting of Current Events. An additional requirement is the "sufficient acknowledgement of the original author" to protect the personality of the original author (the moral right of paternity). There are far fewer legal cases testing the limits of exceptions in the UK because of the clarity of the UK's legislation.

55. Government needs to present solid and dispassionate evidence substantiating the basic presupposition that the existence of a general fair use exception is the reason that search engines first developed in the USA and not in the UK. Following the Prime Minister's announcement of this Review on November 4th, we would point out that Google's rapid growth in the United States had far less to do with Fair Use provisions than it did with its aggressive acquisition strategy and its location in an entrepreneurial cluster of technology and venture capital businesses. Google has acquired over 80 other tech companies, with a large number of these being fellow Silicon Valley start ups.

Greater efficiencies

56. Copyright owners are united in their desire to achieve greater efficiencies in to support the licensing process for digital exploitation and to facilitate cross-border licensing. One initiative is the creation of a musical works and a sound recordings global database (Global Repertoire Database or GRD).

57. The vision driving the musical works and sound recordings global databases is the creation of an authoritative, open, centralised database of information providing for the first time a transparent global view of the ownership, administration and control of musical works and sound recordings. It is intended to contain a pro-active mechanism for ownership dispute resolution. This tool will drive and underpin the digital market by providing users with unequivocal confirmation of where they should go to obtain licences.

58. The musical works GRD will also help to overcome the current administrative difficulties surrounding the operation by the 27 European collecting societies of separate database systems, only a few of which are capable of properly handling multi-territory transactional licensing. The availability of the data

contained in the GRD will ensure that creators can be quickly and efficiently compensated for their work.

59. The musical works GRD will provide the facility for rights owners to register a particular work once into a system which will then be made available to all of the national collecting societies around the world. This will improve accuracy and speed of registrations and provide much needed cost and efficiency savings. Availability of the repertoire of small collecting societies and unpublished writers will be facilitated as the musical works GRD will provide these parties with a tool to register their repertoire directly for global distribution to collecting societies.

60. PPL, which licenses on behalf of performers and record companies, launched the PPL repertoire database of recordings in September 2010 on time and on budget. This features revolutionary data-handling capability and the ability to take online registrations from anywhere in the world. Already, the database has 5 million recordings and receives 1,000 new recordings every day. The record companies and performers are now asking PPL to develop a Global Repertoire Database of sound recordings.

61. We hope this description of investment in digital databases conveys to the Review team the significant human and financial resources which the industry is investing into the infrastructure of digital licensing to make it work more efficiently.

62. Another practical example of how industry is introducing greater efficiencies into the licensing process relates to the licensing of music on a pan European level which right holders - with the support of the European Commission - have been addressing in cooperation with other parts of the value chain.

63. The creation of Merlin is a further example of the music industry working cooperatively to improve the functioning of the digital market. To facilitate the licensing of digital exploitation, independent record companies and trade bodies set up Merlin, a non-profit organisation charged with representing independent music companies in the commercial exploitation of their copyrights on a global basis. Merlin has members in 25 countries and collectively represents 30% of all music sales and has signed licensing

agreements with a wide variety of services, including MySpace Music, Grooveshark and iMesh.

Licensing non-commercial uses of music

64. Our experience over many decades is that licensing solutions are always more flexible and adaptable than legislation, and should always be the preferred route to correcting any anomalies in the copyright system or synchronising the letter of copyright law with common usage. Licensing enables copyright owners to grant permissions and set a price for any type of exploitation. Many different licences are in operation for commercial and non-commercial uses, with an equally broad spectrum of prices reflecting the value of those uses.

The Educational Recording Agency

The Educational Recording Agency (ERA) grants licences in accordance with a Licensing Scheme, which has been certified by the Secretary of State under Section 35 Copyright Designs and Patents Act (CDPA). Uniquely serving the UK educational sector, ERA is one of a range of collecting societies which help copyright owners and performers derive an income from the licensed use of their literary, dramatic, musical and artistic works.

The licence enables the recording from broadcasts made in the UK of the works and performances owned or represented by ERA members for non-commercial and educational uses, and the electronic communication of licensed recordings within an educational establishment.

The licence fee is then divided up between all creators and right holders involved who have signed up to the ERA scheme. The system works for users (educational establishments) as a convenient licensing mechanism as well as for the creators and right holders of the works included in a broadcast.

Since 1 August 2007, ERA has offered its licensees the opportunity to take out an additional licence which will enable licensed ERA Recordings to be accessed by students and teachers on line whether they are on the premises of their school,

college or university, or at home or working elsewhere within the UK. This new licence is called the "ERA Plus Licence".

65. It is against this background that as an industry we continue proactively to examine, digest and detail all aspects of behaviour, uses, and consumption of music in the online environment. As an industry it is clearly vital that we remain sensitive and responsive, not only to market development, but to all aspects of consumer behaviour so that we might better legitimise, licence and monetise that consumption for the benefit of all. It is our belief that such an approach would more closely align consumer behaviour to both the letter and the spirit of copyright law. We anticipate announcing in greater detail some of our proposals following on from this work over coming weeks.

66. Another area in development relates to orphan works, whereby the right holder cannot be identified. Whilst this practically is not an issue for the music industry in the UK given the ownership data available from the UK collecting societies *PRS for Music* and PPL, it is a concern for other creative works and stands in the way of the roll out of a digital European library. We have been working with, and supporting the proposal of the British Copyright Council on licensing orphan works through a hybrid system of collective licensing and the Copyright Tribunal.[21]

67. A further example where a licensing solution offers a preferred solution is in the area of format-shifting (for example, copying music from CDs to a hard-drive, and then transferring onto an MP3 player).

68. There is clearly an *added value* to creative content that can be copied onto a variety of formats. Consumers freely enjoy the flexibility that “copy-able” music provides them. Device manufacturers realise the value through the high demand created for the products that store copied music. There is a significant correlation between the transferability of music, and the growth in sales of devices and technologies that exploit the transferability of music. Apple, for example, has sold well in excess of 220 million iPods to date[22].

[21] Link to BCC proposal

69. Composers and performers are legally and morally entitled to benefit from the value created by copying, but in the UK, they are currently excluded from sharing in that value. The EU copyright levy is a mechanism designed to solve this problem, and composers and performers in 22 European countries share in the revenue raised from it, but the UK music sector has not been able to share the income which could have been generated levies.

70. The UK music industry previously proposed an exception to copyright for 'format shifting' subject to licence[23], and remains prepared to work with Government on such a solution and help to define the scope, provided compensation is provided.

71. Industry's proposal represents an easily implemented, flexible and future proofed solution which:
    • Allows consumers to copy their legitimately owned music onto a device for their private use;
    • Rewards the creativity of our composers and performers;
    • Takes account of the technology industry needs for clarity to develop new business models.

Enforcement

72. All too often, copyright infringement and the sanctity of rights is focused upon in isolation and portrayed as a perpetual (and some would say futile) battle between two irreconcilable forces. UK Music believes that any discussion on the enforcement of copyright should be framed within the philosophical objectives of creativity and the practical context of economic growth and development. The enforcement of copyright is not an end into itself, but a means of establishing a fully functioning, successful marketplace.

73. Enforcement of copyrights is also about equality and justice. Individual creators, performers, right holders should have access to justice when their rights are infringed. Naturally, rights only have value if they are meaningfully upheld.

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[22] http://news.worldofapple.com/category/world-of-apple-events/
[23] http://musicbusinessgroup.blogspot.com/2008/05/music-business-group-unveils-collective.html

74. We believe that the best way of illustrating the straightforward relationship between copyright enforcement, business outcome, and natural justice is through the experience of someone directly affected. This is conveyed through the following case study:

Case Study: Son Records

Al Nicholson is the owner of Son Records, a 12 year-old London based independent record label specialising in hip-hop music. He was excited to work with an established artist in the genre who had written and produced his own album over a period of 2 years, and he invested 6 months making sure the sound quality and presentation of the album was as strong as possible.

> "We'd been creative with the formats, offering a limited run double vinyl version, numbered and signed, with a free download of an album's worth of unreleased material…all painstakingly put together by us, which sold well prior to the digital formats becoming available."

Using this analogue system built around demand for the record, and right up until the digital release of the record in April 2010, there were no files being shared online.

Following the official release, fileshares and one-click free downloads of the albums from blogs took up the first five pages of search results from Google. Only after five pages of search results could potential customers start to find links to the 15 or so licensed sites, which included iTunes and the label's own site.

> "If someone who had heard about the album wanted to buy a copy, they would not have been able to find a legitimate source unless they really put some work in."

Al spent a week trying to use the Digital Millennium Copyright Act to get these links removed from US sites. A third of the sites did not offer any take down procedure. Of those who did, some responded and removed the infringing links. Others ignored the requests, or sent back abusive messages. Google requires hard copies of requests to be sent by post to their offices in California. However even the few days or weeks of delay that it can take to get links removed can cannibalise the demand for an

artist's work. By the end of that first week, download statistics on various filesharing sites showed total downloads of over 50,000 copies.

> "What was particularly notable was that nearly every site hosting or linking to content had advertising. This included hosted adverts for insurance companies, government agencies and supermarkets, alongside numerous Google Adsense adverts for any number of businesses.
>
> Advertising clients want their ads on sites with high traffic, and free downloads of in-demand content generate high traffic. Google gets their money from their Adsense clients, hosting sites get money from Google, affiliate advertising agencies get money from their clients, and the advertisers sell their products. Everyone's happy and earning except me and the artist who created the thing that drives the traffic that adds value to the advertisers and drives all of this business.
>
> The net effect is that by the time the request has been sent and processed, everyone has grabbed their free download and moved on. The ease of access means that many people do not even think about it."

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75. We hope this short case study begins to illustrate the stark and sometimes bleak relationship between difficulties in the investment in copyright and commerce. Infringement clearly distorts the functioning of a market based economy and deprives all those who invest, regardless of their time, energy, talent or financial resources, from ever realising a fair return on that investment.

76. The Call for Evidence asks what the objective of enforcement should be, and how the effectiveness of the framework can be measured. We hold that the objective of the enforcement framework should be to make copyright infringement both uneconomical and inefficient for any party that currently benefits from it, whether directly or indirectly. This would include digital advertising purchasers as well as search engines and website hosts. That wholly 'respectable' businesses and public agencies should unwittingly facilitate copyright infringement through advertising is disheartening, as is the
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fact that the first five pages of a Google search result should yield links to infringing copies.

77. Our industry's growth projections depend on our ability to significantly develop revenues from the digital market. The growth figures charting the increase in the share of revenue from digital sales over the past five years are impressive. Five years ago, 52 million singles were purchased as digital downloads. Last year, there were 159 million. Digital downloads now account for 98% of the singles market[24].

78. These impressive growth figures, however, mask an underlying fragility, specifically within the recorded music market. Unless those who obtain their music from unlicensed and illegal sources can be encouraged to use legitimate services, the digital market could falter. It is far from certain that the future of the 67 licensed digital music services now in existence is secure. iTunes, which dominates the legal download market, still accounts for only a fraction of Apple's overall sales and Apple executives admit that iTunes just about breaks even[25]. Music streaming services, while gaining traction in the UK, have yet to record a profit. It is far from clear that even YouTube, owned by Google, is operating profitably. Unlicensed file-sharing services have a natural deflationary effect on the pricing of consumer music and provide unnatural competition for legitimate commercial platforms.

Daniel Ek, founder and CEO of Spotify:

"Spotify launched in the UK in October 2008. The success of Spotify in the UK has been driven by the 'freemium' business model. Users can register for free accounts supported by adverts, or upgrade to paid subscriptions.

"Piracy continues to be the music industry's biggest challenge. Look at it this way – in the physical world, an enormous supermarket giving entertainment away illegally and for free would be a serious deterrent to setting up and running a shop where you charge for the same products.

[24] BPI, January 2011
[25] Ovum estimates the iTunes Store holds 68% of the UK market share for digital downloads, but accounts for just 4% of Apple's sales, according to an article published in the Financial Times on 9 January 2008.

"Online, we continue to face a comparable challenge where our ability to convert people to paying for music subscriptions, or attracting advertising to our service, will be challenged by the continued availability of that same music on illegal services.

"As ever, a legal playing field remains vital for any business looking to flourish in the digital age.[26]"

79. The effectiveness of any enforcement framework should be measured against the twin indicators of a reduction in infringement and growth in the legitimate market.

80. The Call for Evidence asks to what extent the cost of litigation is a factor in the effectiveness of civil remedies. The costs of litigation are prohibitive for individual creators, performers and SME music businesses, the majority of whom operate on very tight margins with no budget for litigation. In legal infringement proceedings, infringers can raise spurious arguments concerning the title of copyright, which means that the right holders have to provide additional evidence often involving creators based in foreign territories, thus triggering considerable additional costs. Consequentially, even in the case of blatant infringement, the IP enforcement framework is ineffectual for the most part of the music industry.

81. Civil remedies are limited as far as the lack of deterrent damages is concerned. This is not only an issue for the judiciary but also for the law maker who could introduce exemplary damages in Section 97 (2) CDPA. [1] We also hope that Clause 18 of the Digital Economy Act will be introduced clarifying the available remedies e.g. the injunctive relief available under Section 97A CDPA as provided in Article 8 (3) of the Copyright Directive.

Dispute resolution

82. The main dispute resolution mechanism of copyright disputes involving collecting societies is the Copyright Tribunal. Whilst we welcome the long

overdue changes to the procedure of the Copyright Tribunal introduced in April 2010; further changes should be introduced.

83. Whilst right holders, creators and their collecting societies cannot initiate proceedings at the Copyright Tribunal they still are faced with the considerable costs of the proceedings as defendants. Providing access for collecting societies to the Copyright Tribunal is a question of fairness, and a relevant change to primary legislation should be annexed to any suitable upcoming legislation to enable this.

84. We welcome the changes introduced in April 2010 to streamline the process along the lines of the Civil Procedure Rules but stress the importance of the case management conference to ensure the smooth passage of the case through the Copyright Tribunal.

85. Additionally, Government should provide a methodology for the Copyright Tribunal on which to base the calculation of the value of music industry. Statutory bodies such as the Copyright Tribunal which are setting commercial rates need to base their decisions on market economies. By way of example, the Australian Copyright Tribunal applies choice modelling in their calculation which leads to a more accurate reflection of the value of the tariffs in consideration.[27]

Digital Economy Act

86. The music industry continues to aspire to the aims and drivers behind the Digital Economy Act, namely, the creation of a successful, buoyant and sustainable market based economy. We do, however, still harbour reservations with regard to the cost to rightsholders of measures intended to deal with copyright infringement. We remain convinced that action is needed across all parties including ISPs and technology companies to ensure the aims and objectives of the Act are met. While consumers do share a responsibility to act in accordance with the law, for example, by alerting them to instances where their account has been used to infringe copyright, we do

[26] First published in *Digital Music Nation 2010: the UK's legal and illegal digital music landscape*, BPI, December 2010
[27] Reference

however hold that the most effective enforcement strategy is one that encourages or compels other commercial players to take equal responsibility in this effort.

87. We would ask as a matter of urgency that Government present a comprehensive outline as to how they intend to progress on this issue as part of the current review of growth in the creative and digital industries.

Limitation of liability

88. We draw the Review Team's attention to one area of significant importance – that of ISPs limitation of liability. In the 1990s, the internet was in its infancy and ISP's were small start-up businesses operating with nascent technology with limited capabilities. In 2000, the e-Commerce Directive granted 'mere conduit' protection to ISP in response to the situation at that time, to make it clear that ISPs would not be liable for content of which they had no knowledge and no way of managing.

89. The limitation of liability for internet access providers as "mere conduits" does not reflect the technological reality in 2011. Given that internet service providers are already interacting with the data and information they carry (e.g. by actively bundling access with content, and through traffic management tools) few, if any internet service providers legitimately can claim mere conduit status. Notably, the EU Commission stated in their intervention in the case SABAM v Tiscali that the e-Commerce Directive has to be interpreted according to the laws and technologies available today.

90. Moreover, many internet service providers have publicly claimed that they are not mere conduits and that their interests are no longer served by that status. This should be reflected in the current review of the e-Commerce Directive and we hope that the UK Government will convey this view in the relevant discussions at European level concerning the review of the e-Commerce Directive.

91. We welcome voluntary measures aimed at discouraging copyright infringement undertaken by some technology companies in recent months, and hope Government will provide incentives for the technology sector and

creative content sectors to advance a dialogue on further initiatives to limit infringement. Examples would be the signposting of legitimate content by search engines or the provision of traffic lights when providing search results, similar to existing anti virus software.

International IP

92. The robustness of the copyright framework in overseas markets also has a direct impact on our industry's growth potential as it affects our ability to collect revenue from those markets. We would support the creation of intellectual property attachés in the embassies of key markets in a similar vein to the United States' programme, and we would urge Government to prioritise the issue of a strong IP infrastructure in every trade discussion and trade mission.

93. We welcome activities by WIPO providing IP courses as well as practical technical assistance courses to assist emerging countries to implement effective copyright, collective management, as well as enforcement system in their territory.[28]

94. We welcome initiatives such as the European Observatory on Counterfeiting and Piracy as a forum for officials, policy makers and practitioners to exchange experiences and data on counterfeiting and piracy on a European basis.

Growth and access to finance

95. This Review is focused on IP and growth, but we hope it will acknowledge the critical importance that access to finance makes to the growth prospects of both the content sector and the digital technology sector.

96. In a series of articles surrounding the recent Start-Up 100 initiative, headed by the Daily Telegraph and TechCrunch Europe, there were no references made to the "barriers" created by copyright. Conversely, there were

[28] http://wipo.int/academy/en/courses/summer_school/index_all.html

numerous references made to the lack of available capital to European digital start-ups.[29]

97. The development of the digital market is being severely hampered by the reluctance of potential investors and financiers who question whether they can ever secure a fair return on their investment in face of such widespread copyright infringement.

98. Music companies invest considerable amounts of money in developing new talent. Successful acts and writers are rarely – if ever – discovered fully formed. They will have benefitted from the expertise, encouragement and financial support of record labels, managers and /or publishers. The up-front investment required is often considerable, and yet access to finance has proved to be problematic for the sector, in part due to the difficulties in understanding the business models involved.

Paul Bedford, Investment Director, Ingenious Media

Ingenious has been heavily involved in media investment and, more recently, investment into the music space since the late 1990s. As we began investing, it was apparent that the recorded music market was rapidly becoming more and more difficult as the landscape was becoming dominated by illegal downloading. Investment in music content is a 'hits driven' play where the hits must pay for the misses, which are inevitably far more numerous. Our experience across the music investment portfolio is that the successes, as eroded by piracy, are no longer big enough to compensate for the misses in what remains an incredibly risky investment space.

Extract from *Digital Music Nation 2010 – The UK's legal and illegal digital music landscape*, published by the BPI in December 2010

99. According to our research, Facebook, Yahoo, Google and YouTube received more than $50 million seed investment (combined) in the early years of their operation prior to selling or floating. That kind of investment culture is typified

[29] http://www.telegraph.co.uk/technology/technology-startup100/

in Silicon Valley, and that is the crucial growth element missing from the UK. We would urge Government to focus its energies on replicating that culture as a first priority in building a Silicon Valley in London's East End.

Jaron Lanier

Jaron Lanier is known as the father of virtual-reality technology and has worked on the interface between computer science and medicine, physics and neuroscience. This essay is adapted from his book "You Are Not a Gadget".

"Digital collectivism might seem participatory and democratic, but it's painting us into a corner from which we will have to concoct an awkward escape. It is strange to me that this isn't more obvious to many of my Silicon Valley colleagues.

The U.S. made a fateful decision in the late 20th century to routinely cede manufacturing and other physical-world labours to foreign competitors so that we could focus more on lucrative, comfortable intellectual activities like design, entertainment and the creation of other types of intellectual property. That formulation still works for certain products that remain within a system of proprietary control, like Apple's iPhone.

Unfortunately, we were also making another decision at the same time: that the very idea of intellectual property impedes information flow and sharing. Over the last decade, many of us cheered as a lot of software, music and news became free, but we were shooting ourselves in the collective feet.

On the one hand we want to avoid physical work and instead benefit from intellectual property. On the other hand, we're undermining intellectual property so that information can roam around for nothing, or more precisely as bait for advertisements. That's a formula that leaves no way for our nation to earn a living in the long term."

ENDS.