



Technical review of draft legislation on copyright exceptions – Part Three

11 September 2013

PART A: OVERVIEW

About UK Music

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to represent the UK's commercial music sector, to drive economic growth and to promote the benefits of music to British society. The members of UK Music are listed in an annex.

Points of Principle

3. UK Music welcomes the intention of the IPO to enable disabled persons to access creative works according to their specific requirements. The music industry is committed to ensuring that its products can be accessed by everyone and that disabled persons should not be disadvantaged in their enjoyment and use of music. UK Music works directly with organisations such as Attitude is Everything who are committed to improving deaf and disabled people's access to live music. UK Music launched an Equality and Diversity Charter in 2012 to ensure the industry actively supports and promotes those protected under the Equality Act 2010. At international level we are pleased that members of WIPO have recently agreed to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled.
4. The music industry has been providing products that are accessible for visually impaired people for a considerable time now, complying with the requirement under the Copyright (Visually Impaired Persons) Act 2002. This approach has been operating to the satisfaction of users and music publishers.
5. The Music Publishers Association (MPA), a member of UK Music, has developed a licensing scheme under the Copyright (Visually Impaired Persons) Act 2002 which

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governs multiple copying of printed music for the benefit of visually impaired people by educational and not for profit bodies.

6. Companies who wish to reproduce printed music using Braille or large print formats can do so by applying for a license through the MPA by using an application form http://www.mpaonline.org.uk/sites/default/files/Application_for_VIP_Licence_2.pdf
7. The MPA has also agreed a Code of fair practice which was amended to take into account the needs of disabled persons such as dyslexic people. http://www.mpaonline.org.uk/sites/default/files/Code_of_Fair_Practice_1.pdf

PART B: DRAFT EXCEPTIONS

8. We put forward some specific observations on the draft exception on disability exceptions; however, given that access for disabled persons under existing licensing based schemes works well where no problems arise we limit ourselves to some high level observations.

9. Commercial availability and unenforceability of contractual overrides

We welcome the reference to commercial availability on reasonable terms in Section 31B(1) but this is incompatible with the unenforceability of contractual overrides in Section 31 B (12). The unenforceability of contractual overrides does not support the Government objective. It will obliterate the existing schemes which work to the satisfaction of every interested party in the music field (Government has not produced an argument or any evidence that the existing schemes do not work). UK Music, alongside other organisations, has been arguing in earlier responses to the technical reviews of other exceptions and orally at meetings organised by the IPO, that unenforceability of contractual overrides cannot be introduced by Secondary legislation. This presents a significant procedural problem.

10. Given the absence of the assessment of the impact of the unenforceability of contractual overrides and its relationship with available contractual licensing arrangements we urge Government to consult specifically on the unenforceability of contractual overrides. This should take place anyway if the unenforceability of contractual overrides will be introduced in appropriate primary legislation.

11. Reference to Licensing Schemes in law

Given the benefits of existing licensing schemes which operate at this point of time and their importance in being able to take into account future technological developments, we highly recommend introducing wording on such licensing schemes into the draft Section 31B subject to this consultation.

12. Clarity on the definition of “disable persons” by expressly referring to the Equality Act 2010.

We believe as a matter of good lawmaking key points of legislation should not be left undefined. We draw attention to the draft exception and a lack of a definition to “disabled persons”. We therefore suggest that the Government considers such a definition, and in particular looks at existing definitions in law, such as those found in the Section 6 of the Equality Act 2010. This will provide certainty and consistency throughout the UK legal framework.

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 – with over 2,000 members, 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, on behalf of over 75,000 members (65,000 performer members and 10,000 recording right holder members), licences the use of recorded music 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