

Intellectual Property Office

Call for evidence to review 2014 copyright changes

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.

Post-implementation Review (PIR)

3. We welcome the current consultation on the impact of the 2014 changes to copyright and look forward to the Post-implementation Review (PIR). We are confident that at this stage in 2019 an objective and evidence based approach will be used to assess whether the Regulations have met the intended objectives.
4. We urge Government to consider the available evidence comprehensively notwithstanding the procedure used. We are particularly concerned that a de minimis PIR will lead to a less meticulous evaluation. It was central to our argument in the run-up to the introduction of the exceptions, in particular the proposed exceptions for quotation and parody, caricature and pastiche, that they were not justified based on the economic evidence provided.
5. The argument for a de minimis PIR, i.e. that the combined impact assessments either estimated an impact of less than £5 million or could not quantify the impact at the time, is unsustainable in view of the original economic projections. Furthermore, various impact assessments were unable to quantify the impact and expressly refer to the Post-implementation Review (c.f. concerning the evaluation the Impact Assessment on parody states that '*(a) full evaluation strategy and Post-implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post-implementation Review will detail the benefits associated with the introduction of the copyright reforms and will include input from external stakeholders.*')
6. The Hargreaves Review of Intellectual Property and Growth stressed the requirement of any changes being based on solid economic evidence as its fundamental premise:

‘Evidence should drive policy... Throughout the Review, we have sought to base our judgments on economic evidence and we advise Government to frame its policy decisions on that basis (Chapter 2).’

UK Music unequivocally agreed with this fundamental premise of the Hargreaves review. During the Hargreaves review and the subsequent consultations leading up to the 2014 changes to copyright we have highlighted the deficiencies and inconsistencies of the Economic Impact Assessments; both in Document EE of the Hargreaves report as well as in the Impact Assessments accompanying the legislative changes.

7. The Post-implementation Review provides the opportunity to present evidence after five years of the exceptions being in operation. We have been arguing during the consultation process (2010-2014), that the objectives have never been appropriate and thus the changes were not the best option at the time. If this proves to be the case the exceptions need to be removed.
8. The burden to provide evidence for the economic impact of the changes to UK GDP is placed upon the Post-implementation Review. This should be based on information provided from Government resources (e.g. orphan works) and beneficiaries of the new exceptions. We assume that as part of the announced evaluation strategy Government will be able to assess the impact of the exceptions, in particular in relation to the evidence provided in the underlying Hargreaves report which was used as justification for the changes. C.f. the Impact Assessment on the parody exception states that *‘(i)t has not been possible to fully monetise the benefits beyond the initial assumptions made in the Hargreaves Report at this stage but an illustrative level of benefits has been identified on page 5.’*
9. Document EE of the Hargreaves review provided details of the impact of the new exceptions to the UK GDP (notably with considerable caveats) which were widely referred to in order to justify the changes of the copyright framework:

Recommendation	Cost saving p/a	Growth impact p/a
Digital Copyright Exchange	£10 m - £20 m	£2.2 bn
Format shifting	£0.5 m	£0.3 bn - £2.0 bn
Parody and pastiche	£1 m	£0.1 bn - £0.6 bn
Orphan works	£320 m	£0.1 bn - £0.3 bn
Cross border licensing	£10 m	£0.6 bn
Total	£341.5 - £351.5 m	£3.3 - £5.7 bn

The purpose of Professor Hargreaves’s Review of Intellectual Property was to facilitate economic growth. He asserted that the implementation of his ten recommendations, for changing copyright, will add between 0.3 and 0.6 per cent to annual GDP growth – up to £7.9 billion per annum. Together with the impact assessments accompanying the legislation, the figures provided by Professor Hargreaves are the benchmark against which the impact of the exceptions needs to be measured during the Post-implementation review.

10. We particularly wish to highlight that the Impact Assessment argued that a parody exception might benefit the economy by up to £600 million, partly due to internet, TV and radio producers who are able to produce “new types of entertainment programmes”. Again, this should be the benchmark against which to measure whether the legislation on parody has achieved its original objective. We welcome information on these new types of entertainment programmes and the relevant economic data.
11. As far as economic evidence is concerned, only the actual beneficiaries will be able to provide clear, verifiable and peer-reviewed evidence of the annual cost savings and growth impact of the exceptions which have been in force for five years. UK Music has been articulating in all relevant communications¹ our concern that the available economic impact assessments are deficient.
12. It is difficult for UK Music members to provide clear, verifiable and peer-reviewed evidence of the actual costs of the exceptions. Most of the negative economic impact consists of lost licensing opportunities, and it is impossible to prove the negative. Users of musical works have been relying in particular on: the exception for parody, pastiche, and caricature or quotation, to avoid obtaining available and appropriate licences. Rights holders have been reluctant to challenge such claims before The Courts given the costs involved in such legal proceedings; in particular if considered in relation to the actual income due for licensing. Our members have cases which illustrate that commercial users argued that their activities fall under the new exceptions on parody when offered a licence. These cases have been settled out of court, and it is thus not possible for us to monetise the costs of the relevant case, nor their related costs resources for arguing the case.
13. UK Music members have been adapting their business models in order to cater for the impact of the new exceptions, moving forward from the ideological discussions leading to the changes to copyright.
14. UK Music notes the Government response Modernising Copyright² which made commitments on evaluation stating that:

‘The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the copyright system, as well as research commissioned in order to measure the benefits. The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system, will be used by Government to assess the impact of the copyright reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively’.

This has yet to be achieved, nor has evidence been provided to the industry to justify the decisions to make particular exceptions.

15. We request that in the absence of economic evidence Government makes an assessment as to whether these exceptions remain justified, and if not, consider removing such exceptions.

¹ <https://www.ukmusic.org/assets/general/response-2011-copyright-ukmusic.pdf>

² <http://copyright-debate.co.uk/wp-content/uploads/Modernising-Copyright-a-modern-robust-and-flexible-framework-Government-response.pdf>

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 of Music Creators - 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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