UK MUSIC

HM GOVERNMENT:
CONSULTATION ON COPYRIGHT MARCH 2012

UK Music is the umbrella body representing the collective interests of the UK's commercial music industry - from songwriters and composers, artists and musicians, to studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.

UK Music exists to represent the UK's commercial music sector in order to help drive economic growth and to promote the benefits of music on British society.

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

- The BPI representing over 440 record company members

- 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 50,000 performers and 6,500 record companies, 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 85,000 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

This submission is endorsed by UK Music's membership with the exception of the Music Managers Forum (MMF). The MMF has submitted a response which reflects their members' views. Additionally, individual UK Music members are submitting detailed evidence on their specific area of expertise.

EXECUTIVE SUMMARY

- In Government's own words: "UK business invests more in intangible assets than physical ones, and nearly half of that intangible investment – £65 billion in 2008 – was in intellectual property (IP). IP's contribution to the UK's economy is therefore both substantial and vital."

- Government argues that the overriding rationale for changing UK copyright law is economic, to stimulate growth. Accepting the ten recommendations made by Professor Ian Hargreaves' independent review of intellectual property, the Department of Business, Innovation & Skills stated that "sweeping reforms" of the IP framework would "add billions to the UK economy."

- While some reform may be welcome, UK Music suggests that Government will not achieve the scale of economic growth it seeks from the measures proposed in this consultation. Certain proposals could even have the unintended consequence of reversing growth and starving investment in new creative works. The assumptions which underpin the Government's growth projections are unreliable at best and plain wrong at worst.

- Forgetting the economics briefly, we do concede that, if worded with great care, some of the Government's proposals could yield cultural benefits and strengthen the overall integrity of the copyright system. For example, we wholeheartedly agree that the law should be changed so that libraries are in a position to make multiple copies as required for preservation purposes or can digitise orphan works. Also, consumers should not be in a position whereby they inadvertently infringe copyright law when copying the contents of their legitimately-purchased CDs to the MP3 devices they own. UK Music emphasises that we want to work constructively with Government to ensure that any change to copyright will bring such benefits whilst complying with mandatory European legislation.

- Other proposals under consideration might cause direct harm to the UK's creative industries and undermine their potential to contribute to the UK's economic performance. This harm would not be 'balanced out' by benefits to other parts of the UK economy. Nor could they be justified on cultural grounds or for the greater social good. Badly-drafted or ideologically-driven change that leads to a net economic loss to the UK economy is a risk not worth taking. The three areas where the potential harm is greatest relate to exceptions for private copying, parody, and educational use.

- Private copying:
  The most potentially damaging proposal is that of a broad private copying exception, without fair compensation, that extends to 'cloud' services. An open-ended exception would directly interfere in a rapidly developing market, and cut across and possibly halt current licensing negotiations between copyright owners and technology companies. Technology companies require a licence for their activities when it involves building a new customer-based business from the use and lure of rights owned content.

1. http://www.bis.gov.uk/news/topstories/2011/Aug/reforming-ip

The primary beneficiaries of a badly worded exception on private copying would be global technology companies based in the United States or otherwise resident for tax purposes outside the UK, whose dominance already act as a significant barrier to UK-based technology start-up companies. The costs would be borne by UK copyright owners, and ultimately, UK plc. The music industry will strenuously resist such a damaging market intervention.

- Private copying: Parody and pastiche:
  As with music, comedy flourishes in the UK. And particularly so online. This is a phantom "problem". Consequently, we are puzzled by how the Government thinks introducing a fair dealing exception for parody, caricature and pastiche will contribute significantly to the economic growth of the UK – never mind the £600m pa envisaged by the Hargreaves' review. A legal exception for parody, caricature and pastiche will open a loophole to abuse by those who would exploit an exception as a means to escape paying copyright owners for the use of their work for commercial gain. In addition to the financial impact of such an exception, it puts into danger the moral rights of the creator.

- Education:
  UK Music rejects options 2, 4, 5, and 6 which are based on the incorrect assumptions that, without exceptions, educational establishments are limited in the type of creative material they can offer. The licensing system already provides flexible solutions, restricting costs and bureaucracy for right holders as well as educational users. The proposed exceptions for educational use would deprive rights owners of millions of pounds of legitimate income. This measure represents a straightforward transfer of value from the rights holding industries to the public sector. It would destroy an exceptionally efficient rights clearing system already in place in schools via the existing ERA and CLA licences. It would disrupt efforts by rights holders to develop new and innovative licensing solutions such as the MPA reprographic license, scheduled for launch in autumn 2012. We accept option 3 on a qualified basis for the reprographic license but we reject it for sound recordings.

- Other exceptions:
  The costs to copyright owners from the "other exceptions allowed by the Copyright Directive" as clustered in the Consultation Document will deprive copyright owners of further sources of revenue and introduce new costs, thereby harming their legitimate economic interests.

SUMMARY:

We urge Government to rethink proposals which will deprive copyright owners of legitimate licensing revenue. The musician or creator depends on an income generated from licensing their creative works. The investor relies on the income from licensing these works to run their business and invest in new products.

We are happy to work with Government on reasonable measures such as a private copying exception which complies with EU law and gives the British creator parity with their European neighbours. We are also happy to work on measures to free up the use of orphan works and develop exceptions for use where the public and social good is obvious.

We devote the rest of this submission to a detailed analysis of specific proposals.

SPECIFIC PROPOSALS

Orphan works (covering questions 1-21)

1. We broadly agree with Government's preferred option to legislate to allow the use of orphan works through licensing, subject to certain safeguards (Option 1).

2. UK Music cannot contribute specific economic data on the costs and benefits of creating a system enabling the use of individual orphan works (Questions 1 onwards). Orphan works are not a significant issue in the music industry which has comprehensive databases administered by our members *PRS for Music* and PPL. This model of voluntary registration of works, including registering all ownership changes, has prevented the emergence of orphan works as a structural problem for music. Equally, it is established practice in the music industry to attach a copyright notice (©) with the name of the copyright owner and the year of creation on the copy of the work; the producer's rights are referred to in a similar way (℗).

3. Any solution should be based on licensing the use of works and performances which are protected under the Copyright, Designs and Patents Act 1988 ("CDPA"), but in respect of which the relevant right owner or licensor after diligent search cannot be identified, ("orphan works"). This is similar to the British Copyright Council proposal put forward during discussions on the Digital Economy Bill in 2008. Licensing presents a workable and practical solution in the area of orphan works, providing legal certainty for users as well as right holders.

Diligent search

4. The main factor is that the user carries out diligent search to ascertain if a work should be treated as an "orphan work". Right holders should be consulted on the sources that need to be used to conduct diligent search. We support the due diligence search criteria developed by the European High Level Working Group, leading to a memorandon of understanding (MoU). These were agreed by right holders such as collecting societies, as well as by users, such as libraries, who will be the ultimate beneficiaries. Any search conducted has to be fully documented and carried out within a reasonable time frame. This MoU will help cultural institutions to digitise books, films and music whose authors are unknown, making them available to the public online. [2] One of our members, PPL, is offering a mechanism to help users of musical works with diligent search (Question 12).

Licensing

5. We suggest that the licensing of orphan works takes place at UK level via mandated and accredited [3] collecting societies or the Copyright Tribunal. As far as the introduction of collective licensing systems for orphan works is concerned, it should be limited to the UK territory - any collective licensing beyond this would exceed the purpose of a solution to orphan works.

2. http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/mou.pdf
3. Section 143 CDPA

6. Any solution needs to differentiate between the intended use of the work, in particular if it relates to one specific, often commercial, use of a work or if the licensing of orphan works is required as part of a mass digitisation project by a library

7. We agree with the principles set out for orphan works in the consultation on changes to copyright and support Government in implementing them in practice: [4]

   The key principles underlying these proposals are:

- Minimising market distortion between orphan and non-orphan works, by ensuring the owners of rights in orphan works are treated as similarly as possible to comparable 'non-orphan' rights holders.
- Maximising the benefits to economic growth of the scheme.
- Minimising or eliminating perverse incentives or opportunities to 'orphan' works.
- Through these and other appropriate measures, to ensure adequate protection for the interests of absent rights holders.

We agree that the licensing scheme offered for orphan works does not constitute extended collective licensing and should not be confused with such a concept:

"Unlike extended collective licensing, the proposals for the use of individual orphan works require a diligent search to ascertain who the rights holders are and to locate them." [5]

Definition of orphan works

8. Any activity on orphan works should be predicated on a clear understanding about the terminology and definition of what constitutes an orphan work. There are occasional references to "unpublished" or "out-of-commerce" works in the same context as orphan works. In our opinion these are not orphan works but "unpublished" or "out-of-commerce" works. Such works reside in different categories to orphan works. (Question 7). Whilst unpublished and out-of-commerce works can be orphan works, they do not have to be by default. Hence, they should not automatically be treated in the same way.

UK level

9. Any solution can only authorise the use of UK-based orphan works within the UK. We expect a pan-European solution in form of a Directive on certain permitted uses of orphan works with a view to establishing common rules on the digitisation and online display of so-called orphan works being adopted imminently. In our view this is the appropriate forum to address pan-European rules on orphan works (Questions 4 and 5). Nevertheless consideration should be given to the question whether and, if so, how the systems and rules established pursuant to the UK system match and are interoperable with those of the proposed Directive.

4. Para 4.13 of the Consultation document
5. Para 4.36 and intro Para 5 of the Consultation document: "ECL is a type of rights clearance that would allow an authorised collecting society – one that represents the majority of rights holders in a sector – to license for specific uses of works within the UK on behalf of all rights holders in that sector, except for those who choose to opt out. "

For example, should they share the same database? Should the same criteria for a diligent search apply (e.g. search in the country of first publication?)

Extended collective licensing (covering questions 22-46)

10. We urge Government to consider the various collective management models which are being applied before introducing legislation in this area. Whilst some form of legislation could be beneficial in certain scenarios, we are concerned that the envisaged broad-brush approach ignores the fact that different models and traditions of collective licensing exist within the creative industry. There is for instance an important differentiation between whether the collective management covers primary and / or secondary exploitation of works; this needs to be considered.

11. We are looking forward to the conclusions of Richard Hooper in his feasibility study and urge Government to consider his findings before considering legislation; surely, the logical sequence of things (Question 28).

12. We urge Government to analyse the system in Nordic countries referred to in more detail, in particular given that there are different rules in individual Nordic countries. It is our understanding that the extended collective licensing in the Nordic countries is much more restricted to specific uses than noted in the consultation. The Impact Assessment leaves a lot to be desired by simply referring to Nordic countries without differentiation between the relevant extended collective licensing systems in Denmark, Finland, Iceland, Norway and Sweden and their associated territories, the Faroe Islands, Greenland and Åland. These countries have not only different Governments, languages but also different extended collective licensing rules. It should also be noted that the extended collective licensing systems are limited to the respective Nordic territory.

13. We are concerned about the use of the evidence in the Impact Assessment referred to by the IPO. The evidence by EDIMA representing new media companies in the Hargreaves report was aimed at a different setting. The study has been used as part of their lobbying campaign on Pan European licensing (supporting Option 2 of what became the Commission Recommendation on collective cross-border management of copyright and related rights for legitimate online music services of October 2005). We were surprised by this reference in this context since the EDIMA study has nothing to do with extended collective licensing.

14. The Impact Assessment states that, in building the BBC's iPlayer service, it "took five years to create a framework in which the rights for 1000 hours of content are now potentially cleared to be made available weekly on the iPlayer across multiple platforms". Such a blunt statement does not take account that most of the music licences were easily obtained and only one set of licenses were more time-consuming to negotiate. For instance, the PPL iPlayer licence was negotiated in six months. Others were concluded in a similar period.

6. Para 5.6 of the report Digital Opportunity

Code of Conduct for collecting societies (covering questions 23 – 66)

15. We welcome further developments on codes of conduct which are important both for right holders as well as for collecting societies themselves. Our members, in particular *PRS for Music*, have successfully been operating a Code of Conduct [7] for several years. PPL will introduce voluntary codes for members and licensees by Nov 2012 and are already operating an independent complaints procedure. Our collecting society members are also part of the British Copyright Council working group that has adopted Principles of Good Practice for Collecting Societies. Our collecting society members will be responding to these questions in detail.

16. We note that UK composers, performers, right holders and collecting societies would benefit from a European directive on collective management ensuring that common standards of transparency, accountability, and good governance are being observed throughout the European Union. Given that our members' rights are licensed across Europe and the UK is a net exporter of copyright material, UK right holders would benefit by more accountability. The value of our members' right would be enhanced with more transparency in the European system. This would increase the revenue flowing back to the UK and back to the UK treasury as income and corporation tax.

17. We support a model based on the principle of accountability, primarily to the members of collecting societies. This is the basis for imminent EU legislation. We urge UK Government to support the self-regulatory procedure in Europe rather than introducing more red tape in the UK in the form of statutory codes. Any statutory regulation of collecting societies (not just statutory codes per se) would be unwanted red tape undermining self-regulation.

18. We stress the important first principle of copyright that it is the choice and freedom of the creator, performer, or right holder how to exercise their rights, be it individually or collectively. The market should not be unduly regulated in a way which limits this choice.

Private copying exception (covering questions 67 – 71)

19. UK Music believes that consumers should be able to copy their legitimately-acquired music to their own devices without inadvertently infringing copyright. We believe that provision can be made for such a change without harming the interests of copyright owners or the consumer. Indeed, we are eager to work with Government on such a solution. However, none of the options put forward in the consultation document are acceptable.

20. The consultation document puts forward three policy options for a private copying exception, with a preference for Option 1. Option 1 would allow the copying of content legally owned by an individual to another medium or device owned by that individual. The exception would be "technology neutral" and therefore, extend to copying music to "cloud" databases which are owned and managed by third parties, for commercial gain.

7. http://www.prsformusic.com/SiteCollectionDocuments/Complaints%20procedure/Member%20Code%20of%20Practice.pdf
http://www.prsformusic.com/users/businessesandliveevents/codeofpractice/Documents/CodeofPractice.pdf

21. UK Music has analysed the underlying assumptions of the potential costs and benefits of Option 1 and we conclude that they are not accurate, realistic or credible.

22. The immediate beneficiaries of Option 1 will be the leading foreign owned consumer electronics manufacturers and digital technology companies providing direct-to-consumer services, such as Apple, Amazon, and Google. The size and dominance of these businesses in the direct-to-consumer market already dwarf that of their nearest UK competitors. The additional advantages that would accrue to them from a private copying exception in the UK without fair compensation is likely further to entrench their market dominance. From a growth perspective, it will make it even harder for UK-based start-ups to compete. We question how this outcome could benefit the UK economy.

23. All of the costs of Option 1 will be borne by UK copyright owners. Such costs have been dangerously underestimated or ignored in the consultation document. We devote the next section to our analysis of costs borne by music copyright owners. We have not considered the additional costs to copyright owners in other creative industry sectors in the UK, but assume these would be substantial.

24. Options 2 and 3 would amplify the costs to UK based copyright owners, and the benefits to consumer electronics and digital technology firms.

25. UK Music will strenuously resist these three option proposals which would transfer value from UK copyright owners to the global technology sector, without justification and in contravention of EU law.

26. Additionally, any form of legislation on private copying at UK level might be redundant the moment it becomes law given ongoing discussions at European level on the administration of fair compensation potentially leading to a legal instrument as early as 2013.

Analysis of the costs to copyright owners

27. The cost analysis in the consultation document assumes that the costs to copyright owners will be minimal or zero as they will be able to charge for private copying through purchase prices. We refute this completely.

28. In its judgement from 21st October 2010 (Padawan v SGAE Case C-467/08) the CJEU expressly states that "Copying by natural persons acting in a private capacity must be regarded as an act likely to cause harm to the author of the work concerned".

29. In the late 1990s with the development of Napster and CD burners, copying music from CDs started to become widespread. The first portable MP3 players came onto the market in the late1990s. It was not until 2001, and the launch of Apple's iPod, that the portable MP3 player went mainstream. Therefore, even as recently as 2000, it would have been hugely challenging to price the "transferability of music" or private copying into the cost of a CD, simply because there were so few devices onto which to copy music. In the year 2000, the average price of a CD in the UK was £10.98, and more than 220 million CDs were sold in this country.

30. iPods were launched in the UK market in the year 2001. Since then, nearly 50 million MP3 players have been sold in the UK. 70% of the people in the UK over the age 16 currently own a dedicated MP3 player, with an even greater proportion owning an "MP3-enabled" device such as a mobile phone . A significant proportion of the music stored on MP3 players is music that has been copied from CDs.

31. The economic theory expounded in the Impact Assessment suggests that the price of the CD and volume of sales should have increased over this period, to reflect its added utility. Indeed, the consultation documents states that when new products or services enable consumers to increase the utility of music purchases, "consumers may be prepared to pay more for content or purchase more content as a result." Data from O&O (Point 68, P16) clearly charts the change in consumer listening patterns over the past five years. Listening to music copied from CDs onto digital devices has increased significantly.

32. However, the economic theory in the Impact Assessment is not borne out by sales figures. In 2010, fewer than 100 million CDs were sold in the UK. In 2010, the average price of a CD was £7.55. The volume of CD sales has declined by 55% over the past 10 years. The price of a CD has declined by 32%. During the same period, the Retail Prices Index rose by over 26%. These figures defy the Impact Assessment's economic theory and provide concrete evidence that, with all other factors held constant, the added value generated from the transferability of music in a CD is entirely divorced from the price of a CD.

33. There is further evidence to corroborate the divorce of the value of copying music on a CD from the price of a CD. In the 22 countries throughout Europe where private copying levies apply, the working assumption is that the transferability of music is not included in the purchase price and is instead captured through the levy. The price of a CD in countries where levies apply should therefore be lower than in the UK, where it is assumed (by Government) that the value is already reflected in the purchase price. Again, this is not borne out of the figures.

34. By way of example, we looked at the price of new and popular CD releases on sale by Amazon in the UK, France, Germany and Spain on March 12th 2012. In every case, the price of CDs in the UK was lower.

Amazon CD prices – currency conversion from March 12th 2012

Bruce Springsteen: Wrecking Ball
UK - £8.97
France - €14.95 (£12.56)
Germany - €12.98 (£10.90)
Spain - €13.00 (£10.92)
AVERAGE OVERSEAS PRICE = £11.46

Adele: 21
UK - £7.99
France - €10.99 (£9.23)

8. O&O research involving a survey of a nationally representative sample of the UK's population in January 2012.

Germany - €12.95 (£10.88)
Spain – €9.09 (£7.63)
AVERAGE OVERSEAS PRICE = £9.25

Emeli Sandé: Our Version Of Events
UK - £7.97
France - €12.99 (£10.92)
Germany - €13.99 (£11.76)
Spain - €10.09 (£8.48)
AVERAGE OVERSEAS PRICE = £10.39

Ed Sheeran: +
UK - £7.97
France – €12.85 (£10.81)
Germany - €13.95 (£11.73)
Spain - €13.00 (£10.93)
AVERAGE OVERSEAS PRICE = £11.16

AVERAGE AMAZON CD PRICE (UK) - £8.23
AVERAGE AMAZON CD PRICE (FRANCE/GER/SPAIN) - £10.57

35. Clearly, there is simply no evidence to support Government's assumption that copying is factored into the purchase price of a CD in the UK. The only "example" provided in the copyright consultation relates to sales of vinyl records. The consultation document states that "many vinyl records sold today come with a digital download code that allows people to download digital versions of the music they have bought, enabling them to listen on more than one device without the hassle of copying between vinyl and digital formats. This practice has been credited as one factor behind a recent increase in vinyl sales."

36. Other, more influential factors behind the recent revival of vinyl relate to the quality and grade of the vinyl, the purity of sound, and the nostalgic appeal of the format. However, to the extent that the bundling of a digital download with the vinyl record is a factor, we point out that consumers do not copy the music from the vinyl. They simply purchase the music in multiple formats and this permits them to transfer the digital music files they have purchased as part of the package, to their devices, in transactions that are wholly licensed. In such packages, the added value is indeed already factored into the purchase price by the record company. And unlike CDs, whose value has declined significantly, the price of vinyl has increased in recent years. In 2004, the average price of a vinyl album was £9.75. In 2011, the average price of a vinyl album was £16.48.

37. Current economic realities effectively prohibit copyright owners from retrospectively factoring copying into the purchase price of a CD. Deflationary trends persist as they have for the past decade. A significant deflationary pressure continues to come from mass copyright infringement, as producers have found it impossible to hold prices when competing against 'free'. At the same time, the dominant retailers continue to demand very heavy discounting from suppliers, frequently selling music to the public as a loss leader. Such factors have contributed to the liquidation of many high street music retailers (eg Virgin, Woolworths, as well as many independent music shops). The availability of music as digital singles, unbundled from the album, also contributes to the deflation of the price of music.

In any case, UK Music doubts whether Government wish to advocate an across-the-board-price increase for creative content as a means of ensuring that copying is factored into the purchase price.

38. The consultation document and impact analysis make repeated statements interpreting the fact that copyright owners "take no steps to prevent [copying]" music as an indication that the value of that copying must therefore already be factored into the purchase. We refute this entirely.

39. It is imperative to make the distinction between copying that is authorised under licence, and therefore, priced into the purchase, and copying that is not. Where copying is authorised under licence, it is of course factored into the purchase price. The problem arises when copying takes place without authorisation, where there are no licensing arrangements in place.

40. Copyright law sets out six specific economic rights that only the author of the work has the right to do. These are:

- the right to make a copy,
- the right to distribute copies,
- the right to rent or lend,
- the right to perform to the public,
- the right to communicate to the public by making available on the internet or by traditional broadcast,
- the right to adapt.

41. Copyright owners can choose to grant permission for their work to be used in these ways, usually in exchange for a payment, via a copyright licence. This simple exchange underpins the commercialisation of creative content and is the basis upon which the creative industries are built.

42. There are under current laws no licences or agreements in place that authorise the copying of music from CDs. By way of example (or lack thereof), the uses of the copyrights in a CD which are owned by the publisher/composer are set out in the terms of the license they have with the record company. These uses are tightly defined and they do not include the copying or reproduction by a third party.

43. The wording on CDs state the rights of right holders and expressly prohibit the unauthorised copying, reproduction, hiring, lending, public performance and broadcasting of the content of that CD.

44. Not only is the "transferability of music" not implicit in the price of a CD to a consumer, it is expressly and explicitly excluded.

45. In 1988, record companies did sue Amstrad in order to protect their exclusive right to make a copy, (CBS and others v Amstrad).

46. This legal precedent settled the limitations of liability on device manufacturers. However, this decision left unresolved how copyright owners could exercise their legitimate

9. MCPS AP.1 Agreement: For the manufacture and distribution of records for retail sale to the public for private use.

economic rights with respect to copying. The ruling left copyright owners unable to negotiate licences with the manufacturers of copying devices, which could have granted onward authorisation for consumers to copy music on those devices for their own use.
Lord Templeman in the above judgement stated that the state of the law on private copying (under the 1956 Copyright Act) was lamentable and concluded:

"….. These proceedings will have served a useful purpose if they remind Parliament of the grievances of the recording companies and other owners of copyright and if at the same time they draw the attention of Parliament to the fact that home copying cannot be prevented, is widely practised and brings the law into disrepute. …"

47. There are 2 basic models of compensation for creators, performers and right holders in the area of private copying:

    - Licensing the commercial business who are offering private copying services to consumers
    - Fair compensation in a different form, e.g. via a levy scheme. In Germany, the cradle of private copying law – the model of a private copying exception accompanied by a levy scheme was introduced in 1965 because the creators had a right of reproduction which they could not enforce or licence in practice (BGH – German Supreme Court: 1964:"Personalausweise").

48. At European level, the Copyright Directive provides a framework whereby consumers can benefit from a private copying exception, and this exception would be accompanied by fair compensation for copyright owners. Fair compensation has taken the form of a levy on device manufactures.

49. The UK has never adopted an exception for private copying, leaving consumers in breach of copyright law, and leaving copyright owners unable to exercise their legitimate economic rights with respect to copying music from formats such as CDs because they could not enforce or licence them in practice.

50. Copyright owners are unwilling to pursue consumers for private copying infringement in court for sound reasons. The objective of copyright owners is **not to prevent** consumers from private copying. The objective is to find a fair and effective means by which copyright owners can share in the value that arises from this activity, as is their legal entitlement. Remember, the right to make a copy is one of the six exclusive economic rights which copyright confers on creators, precisely so that they can earn from their creative asset.

51. Government may, of course, introduce a private copying exception accompanied by fair compensation as practiced in the rest of Europe. UK Music would be amenable to such an exception provided it is limited to the copying of physical products and expressly excludes copying content to any online services involving third parties such as "cloud" storage services,. However, we regret that this solution is not currently under consideration by Government.

Private copying and the digital marketplace

52. In the previous section we provided clear evidence that:

    a) copyright owners have exclusive economic rights relating to copying music and they have not waived this right

    b) copyright owners remain unable to exercise their legitimate economic rights with respect to copying music from CDs

53. This conundrum does not currently extend to consumers copying music downloads (acquired legitimately) for their own use or copying music to cloud-based locker services. This is because copyright owners are able to authorise, and monetise, the reproduction of MP3 files as part of licensing agreements with online service providers. The service providers then build this into their consumer offer.

54. The conclusion by Lord Templeman in the Amstrad case does not apply to digital service providers. They do authorise users' infringing acts of copying and communication to the public; most of the time their activities go far beyond merely enabling or assisting. This notion has been recently expressed in UK courts, e.g. Entertainment Ltd & Ors v British Sky Broadcasting Ltd & Ors and 20th Century FOX v Newzbin.

55. As far as the private copying activity that can be licensed, there is no need or justification for an exception. Any wording going beyond what is needed conflicts with the normal exploitation of a work and thus contravenes the internationally binding Three Step Test.

Copying music downloads purchased from licensed digital retailers:

56. Copyright owners have licence agreements in place with online music retailers like Apple and Amazon. Both retailers sell music downloads direct to the consumers. Purchase of the download includes provision for the consumer to make copies of the download for their own use, in arrangements which are wholly licensed. This is an example of the market working efficiently.

57. There is a growing number of licensed "cloud" streaming services already operating in the UK market. These include: Apple's iTunes Match, Deezer, Music Anywhere, Napster, RaRa, Spotify and We7. In a competitive market these services all present distinct offers to the consumer. However, their success will ultimately be dependent on the mass adoption of premium subscriptions. They need to build scale. In the words of Beggars Group strategy director Simon Wheeler: "I think we need around 60 to 70 million premium music subscriptions for that to be replacing our [existing download] business. For semi-interactive service like Pandora, we need to increase that still further." [10]

58. Clearly, for such services to reach their potential and to reach such a scale, it is logical that the market-distorting competition offered by unlicensed or rogue services must be kept

10. MCPS AP.1 Agreement: For the manufacture and distribution of records for retail sale to the public for private use.

to a minimum. This challenge has been well highlighted by Daniel Ek, co-founder and CEO of Spotify: "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. Online, we continue to face a comparable challenge where our ability to convert people to paying for music subscriptions, or attract advertising for our service, will be challenged by the continued availability of that same music on illegal services." [11]

Cloud locker services

59. Copyright owners are currently in negotiation with a range of technology companies offering or looking to develop 'cloud' services. Although cloud technology is not new per se (cloud computing has been around since the 1990s) the development of smartphones, tablets and high-speed wi-fi is driving many innovations under the banner of 'cloud' services.

60. The "cloud" in essence signifies a database that is held, operated and owned externally and independent of the consumer's own equipment and devices. The data in the 'cloud' is not stored by the consumer as one might put away a box of CDs into the attic. Instead, cloud-based services are commercial services provided by third parties, built upon the duplication of, and access, to data stored there. Advertising opportunities are also being designed into cloud services, including the prospect of 'personalised' advertisements for the subscriber based on the data they access. [12]

61. For music-based cloud services such as that offered by Apple (iTunes Match), the cloud provider negotiates directly with music copyright owners such as record companies, to store a high quality copy of their entire repertoire in a huge external database. The service provider then offers an onward service to their customers built around this database licensed by record companies and other copyright owners. Apple allows their customers to stream all the same tracks that they have in their own music library, directly from Apple's licensed music database, at the highest sound quality, from anywhere in the world.

62. There are many types of services that fall under the banner of a "cloud" service. Each operates in different ways. For instance, some types of cloud services require customers to manually upload their music files and other data. Others provide an automated copying service on behalf of the consumer. Some cloud services outsource specific technical functions to other companies, further widening the number of external, commercial entities that have access to copies of data. The mechanics of these services, such as where and how data is copied and stored and who has access to the files, are critical questions that arise in licensing discussions and affect the commercial value of these different propositions.

63. Most cloud services predicated on the duplication of music are licensable activities. In this context, it must be remembered that the right to make a copy is one of the six exclusive economic rights which copyright confers on creators, precisely so that they can earn from

11. https://bpi.co.uk/assets/files/Digital%20Music%20Nation%202010.pdf
12. See for example Google's privacy statement for its cloud services: www.googlecloudcomputing.net/privacy-policy/

from their creative asset. There is a real danger that a private copying exception, drafted to be technology neutral, will be incapable of making important technical distinctions, and will encompass copying made by third parties for commercial gain.

64. We draw Government's attention to a further legal consideration. Another one of the six exclusive economic rights conferred onto copyright owners by copyright is the right to "communicate the work to the public." This includes transmission of content from any digital service provider to another party. Any exception to this is not admissible under Article 5 para 2 and 3 of the Copyright Directive.

65. Wholly licensed cloud services have already been launched in the UK and discussions between a number of cloud providers and music copyright owners are underway. Again, this is an example of the market working efficiently. The music industry is meeting consumer demand and responding to changes in technology. As a result, copyright owners are negotiating a market value, enabling cloud providers to build services and features around music.

66. Business analysts predict that "cloud" services are likely to grow exponentially in the future. A report by Business Insights estimates that revenue from consumer cloud services are predicted to reach $71.4 billion by the end of 2018. [13] Clearly, this is a potentially large and lucrative market.

67. Many different strategies are being pursued by ITC companies in recognition of the size of the market and the value that such services can have on customer acquisition and retention. [14] The potential role for cloud services in reducing churn and locking customers into an ecosystem is vast and the value of that to the business may far exceed the 'price' charged by the business to consumers. Consider the statement in the Business Insights report that "Companies such as Microsoft and Apple have a significant opportunity to transfer their desktop dominance to the cloud."

68. To fully understand the role that listening to recorded music (particularly music copied from CDs) plays in consumers lives, and the value they place on this, UK Music commissioned a major piece of research from Oliver & Ohlbaum, (O&O) the leading media advisory firm. O&O are recognised as experts in using detailed consumer research to inform media policy and strategy debate. O&O's research included a nationally representative survey of over 2,283 UK consumers, detailed conjoint research on the value of copying music from CDs to various portable devices and understanding the value consumers place on using cloud locker services to store music.Consumer research by O&O suggests that only 6% of the UK population over the age of 16 currently use a cloud service, but that music will play a very significant role as the cloud market expands:

O&O survey of a nationally representative sample of UK consumers	**Which of these would you pay a subscription to access on registered devices while you are on the move from a safe, online storage system?**
Personal photos and home videos	14%

13. See, for instance, New York Times article of 14 April 2011, "Business Wakes Up to Cloud Computing" or the Business Insight report "Consumers and the Cloud: Quantifying and Exploiting the Consumer Cloud Market Opportunity 2010 to 2018", published Sept 2010.
14. See, for instance, New York Times article of 28 September 2011, "Amazon's Tablet Leads to Its Store"

Personal Documents	14%
Digital Music Collection	12%
Word Documents	10%
Video Game Collection	4%
E-Book Collection	4%

O&O survey of a nationally representative sample of UK consumers	**% who ranked this as the first or second most important data to access from multiple devices**
Personal photos and home videos	39%
Personal Documents	44%
Digital Music Collection	43%
Word Documents	17%
Video Game Collection	10%
E-Book Collection	14%

69. The O&O research tested the value of a "dumb locker" to consumers which enabled them to store and access their own data from multiple devices – data such as home videos, photographs, documents and emails – compared to a "dumb locker plus music" which enabled them to store and access their music collection as well. The survey of a nationally representative sample of 2,283 respondents showed that when music can be stored, the additional value to an annual cloud locker service subscription is £7.10. A further survey of 1,068 consumers who are currently in the market to purchase a handheld device put the additional value to an annual cloud locker service subscription that can store music at £10.46.

70. This data shows that the potential market for cloud computing, and the role that music can play in increasing the value of the service to both the consumer and the provider, and driving the take-up of the service, is significant. Cloud service providers, and music copyright owners, are fully alert to the potential of this new market and are keen to develop it to its utmost potential.

71. Securing this growth from the digital market is crucial for the future of the music industry. Not only does it help offset the fall in revenue from the decline in sales of CDs,

it assures that the cycle of investment in new talent can continue for future generations. But this growth is dependent on copyright owners continuing to innovate and facilitate the growth of the market, licensing new services and being able to monetise usage and appropriately capture the value of such exploitation.

72. The value of digital music rights in the UK to music copyright owners was estimated to be £260 million in 2010.[15] This represents a seismic shift over the past decade when the value of digital music was virtually nil, and serves to illustrate how rapidly the digital music market is developing. More than £46 million of the £260 million can be attributed to licensing rights for the use of music (as opposed to the sale of digital music) to other businesses, which then provide an onward service to their customers built upon that usage. This is precisely the commercial relationship between music copyright owners and cloud service providers.

73. Securing this growth is important for the wider UK economy as well. The UK already enjoys a comparative advantage in its creative industries, and the UK's music industry is a global success story in itself. UK artists account for more than 10% of global music sales and along with the United States and Sweden as net exporter of music repertoire. This boosts the UK's balance of trade and feeds directly into the exchequer. The UK's two music collecting societies, PRS for Music and PPL report strong growth in international revenues over the past five years, and this export performance suggests that "the potential to build on an impressive international track record is huge." [16] The spill-over effects into other parts of the economy are also becoming more apparent, for example, the £864 million of GVA generated by music-driven tourism. [17]

74. UK Music urges extreme caution before considering any legislative measure that would disrupt and interfere in the development of this critically important market. A broad-brush private copying exception that extends to the reproduction of music downloads and copying music to cloud services could have a devastating effect on the music industry's future prospects. It would immediately and irrevocably reduce licensing income by bringing into the scope of an exception usage that is currently permitted only under licence. It would provide a metaphorical crowbar for copyright licensees to reopen negotiations in an attempt to lower the fees for use of music. And it would give succour to those inclined to use music as a tool to build their business without paying for it. UK Music and its members will strenuously resist such an ill-advised, unwarranted intervention.

Analysis of the benefits

The UK economy

75. The Impact Assessment speculates that a format-shifting exception for private use will add up to £2 billion per annum to the UK economy by 2020.

15. Adding Up the UK Music Industry 2010 by Will Page and Chris Carey, published by PRS for Music in August 2011.
16. See "Adding Up the UK music industry 2010" by Will Page and Chris Carey, published by PRS for Music on 4.8.2011:
17. See "Destination: Music" – a study of the contribution that live music makes to the UK's tourism economy carried out by Bournemouth University for UK Music, published May 2011

76. The Impact Assessment arrives at this figure by surmising that the absence of a private copying exception has been responsible for restraining UK technology firms from developing innovative new products and services such as MP3 players over the past decade.

77. Further, the impact assessment assumes that a private copying exception will provide the springboard for UK firms to create new products and markets over the next decade worth up to half the size of the iPod market over the last decade.

78. There is no evidence to support the theory that the absence of a private copying exception played any role, much less a significant one, in restraining UK technology firms from developing new products such as MP3 players. In the late 1990s and early part of the new millennium, different companies around the world were experimenting with the technology that led to the modern MP3 players. The biggest rivals to the iPod were devices manufactured by technology firms such as Diamond Multimedia, Creative Labs, iRiver, Cowon, and Sony, based in the United States, Singapore, South Korea and Japan – all countries defined by their high-tech consumer electronics industries.

79. The UK could never have been fairly characterised as a global leader in the manufacturing of consumer electronics. UK Music has been unable to find any documentation or analyses from the 1990s or early 2000s which links strategic investment decisions in R&D in the UK's consumer electronics manufacturing sector, to concerns over copyright. Instead, we found plentiful academic and industrial analyses from that period of the factors that accounted for the relative weakness of the UK's manufacturing industry in comparison to its global competitors. Those factors ranged from the venture capital investment infrastructure to productivity issues, concerns about managerial capacity to workforce skills, and the impact of macroeconomic circumstances such as the value of sterling. [18]

80. UK Music believes that an underdeveloped capital investment infrastructure in the UK is the greatest inhibitor to the growth of the tech sector. It is ironic to note that Briton Kane Kramer is acknowledged as the "inventor" of the MP3 player. He is formally credited by Apple for the role he played in the conceptual development of the MP3 player. Kane Kramer took out a worldwide patent for his idea of a portable plastic digital music player in 1979 and set up a company in the UK to develop the idea. However, a decade later, his company foundered and he was unable to raise the £60,000 needed to renew his patents across 120 countries. His technology then became public property. Had the UK's investment culture rivalled that of Silicon Valley's, the history of the MP3 player might have been very different indeed. [19]

81. The Impact Assessment makes reference to one single case in an attempt to link the UK's copyright regime to the overall performance of the UK's consumer electronics sector: the Brennan digital jukebox. An unidentified complainant referred an advertisement for the

18. See, for example, the analysis by the National Institute Economic Review (NIER) No. 184, April 2003; and the UK Government's Innovation Performance, a SWOT analysis of innovation, January 2001.
19. http://www.dailymail.co.uk/news/article-1053152/Apple-admit-Briton-DID-invent-iPod-hes-getting-money.html

Brennan player to the Advertising Standards Authority, alleging that the advertisement incited consumers to infringe copyright law. The ASA found that the ad breached the advertising code and ordered the makers of Brennan to amend the ad.

82. This example strikes us as very odd. To our knowledge, the Advertising Standards Authority never received a complaint against Apple for any of its iPod advertisements over the past decade, nor any other manufacturer of any other MP3 device for any other marketing campaign. Yet it received a lone complaint against the manufacturer of the Brennan device in 2010.

83. The Amstrad case of 1988 established that the Court has no power to forbid the sale to the public of all or some selected types of tape recorder or to ensure that advertisements for tape recorders shall be censored by the court on behalf of copyright owners. Brennan could argue that his devices qualify as "tape recorders" with respect to authorising infringing behaviour. The ASA case merely required an amendment in marketing linguistics.

84. Nonetheless, this one mischievous ASA complaint was seized upon by the Hargreaves team to serve as an example of how the lack of a private copying exception has hampered the development of an entire sector.

85. The consultation document states that copyright law "threatened the growth of this innovative British company". The Impact Assessment states that "the costs arising from this threatened a successful and fast-growing UK business." Stating something often, however, does not make it true. The Brennan website boasts that the company has grown by 10,000% in 30 months and warns of waiting lists for products because demand outstrips supply. Whilst the ASA case might have generated publicity for Brennan, it certainly did not threaten its business – and it is absurd to suggest that it undermined the UK's entire technology sector.

86. Government has not produced convincing evidence that the UK's copyright laws have depressed the UK's consumer electronics manufacturing industry during the last two decades. The claim that the lack of a private copying exception in the UK similar to the "fair use" doctrine in the US has prevented the UK from becoming the next Silicon Valley is ridiculous – even Professor Hargreaves in his report recognised that the success of the Silicon Valley has nothing to do with copyright but more with its hundred years of experience as a technology hub and a skilled work force, underpinned by a rich culture of investment in new technology, new ideas and momentum funding.

87. We now consider the next assumption – that should the UK introduce a private copying exception, UK technology firms will create an explosion of new products and markets worth up to half the size of the iPod market over the last decade. We note that none of the 22 European countries providing an exception for private copying invented the iPod.

88. Whilst UK Music hopes that the UK technology sector grows and flourishes, we strongly suggest that other factors will have a much greater impact on the size and shape of the market over the next decade. We have already highlighted the crucial importance of access to capital finance as a determining factor in the prospects of the technology sector. We believe that access to finance should be the most pressing area for action for a

Government intent on growing its technology sector (or indeed, any sector characterised by high levels of innovation, investment, and risk, such as the creative industries).

89. The influence of dominant players in the direct-to-consumer market is another crucial factor that will have a bearing on the ability of UK firms to gain traction and grow. The dominant power of the market leader can act as a significant barrier to competitors in consumer goods and services, even when the competitors are well-established. Hewlett Packard announced last year that it is withdrawing from the tablet market. Many market analysts suggest that this is due to the dominance of the iPad as the consumer's choice. [20]

90. Elonex, the UK company which manufactures tablets (in China) captured 7% of the UK's tablet market at its peak in 2010 but CEO Nick Smith is reported to have concluded that Elonex's share in the tablet market will decrease "as the tier ones buy the market". [21] A report by Forrester in March 2012 listed Apple as having a 73% share of the tablet market with its nearest rival, Samsung, having only 5%. The difficulty of a new and unknown company gaining a foothold in such a fiercely competitive consumer electronics market will be even greater.

91. The influence of dominant players extends to the labour market and can act as a magnet for drawing skilled workers away from other countries and other firms. Briton Jonathan Ive is Apple's leading designer. He set up a consultancy firm in the UK shortly after completing his studies, but moved to the United States in 1992 to join Apple. [22] Sir Jonathan continues to reside in California.

92. Turning from the consumer electronic devices market to cloud computing, we note that the market for cloud computing in the UK is still very young but already expected to generate £5.2 billion in revenue in 2011-2012, with a forecast of growth of 15.8% per annum to total £11 billion in 2016-2017 [23].

93. The companies that already enjoy a dominant presence in the digital marketplace – Apple, Google, Amazon – are seeking to transfer that dominance to cloud computing by integrating the services that they have already invested in and building on the relationship they have already established with their customers. A new private copying exception would have absolutely no impact on the competitive advantage these companies already enjoy and indeed, they would immediately realise any additional benefits from a private copying exception.

94. Notably, a private copying exception would not preclude the necessity for new cloud providers to obtain licences from copyright owners because many cloud services encompassing music and other creative content are likely to require a licence not just for the reproduction right but for the communication to the public right, and perhaps others,

20. See, for example, RIP, TouchPad. Can any non-iPad tablet survive, ever? http://money.cnn.com/2011/08/22/technology/ipad_forever/
21. See "Elonex to branch out from tablet stronghold" article published on CRN Channelweb.co.uk on 17 Feb 2012.
22. See "Return of the Mac" published in The Guardian on 4 June 2003
23. See "Cloud Computing in the UK – market research report" published by IBIS World in February 2012.

depending on the degree of functionality and how they are designed. So-called "dumb" storage lockers that offer no functionality are very unlikely to poach customers away from incumbents likes Apple.

95. It is difficult to see how UK companies would benefit from launching new cloud services against a backdrop of legal uncertainty.

Benefit to (foreign-owned) technology companies

96. We have contested the benefits that a private copying exception would bring to the UK in terms of economic growth. However, we do not contest the incredible benefits that individual companies like Apple have already gained (and continue to gain) from private copying.

97. The consultation document states that "the iPod's success was built on being able to rip CDs and store them as digital MP3 files". It further states that "millions of iPods were sold before legal digital downloads were available, meaning that, initially, all of their content was format-shifted from CDs". The Impact Assessment, however, makes no monetary estimates of these benefits to Apple or to any other company from private copying by consumers in the UK.

98. UK Music commissioned O&O to conduct research in order to isolate the proportion of the value of MP3 devices consumers attribute directly to the ability to store and play music copied from CDs. O&O are leading experts in conjoint analysis and this methodology is recognised as "especially appropriate if a policy maker seeks to understand the value of particular or individual characteristics of a good and how that characteristic relates to others.[24.] " Conjoint analysis is a sophisticated approach to analysis used by economists, social scientists, Government departments and international organisations such as the World Bank. The conjoint analysis was peer reviewed by a leading academic at Newcastle University who has previous experience and expertise of research using this form of methodology, with whom neither UK Music nor O&O had any previous relationship. [25] The data we present here is the most rigorous, market-tested, academically-verified method of determining the value of devices which can be directly attributed to copying CDs.

99. The research shows that consumers today attribute 44% of the price of a basic MP3 player (such as the iPod shuffle) directly to the ability to copy music from CDs, 53% of a mid-range MP3 player (such as an 8 to 16 GB iPod nano), and 32% of a top end MP3 player (such as a 32 to 160 GB iTouch). In monetary terms, this means that today's consumers

24. "Measuring the value of culture: a report to the Department for Culture, Media and Sport" by Dr Dave O'Brien, funded by the Economic & Social Research Council, Arts & Humanities Research Council, and DCMS.
25. The research was peer reviewed by Ken Willis, Professor of Environmental Economics, University of Newcastle: "This project has been carefully designed to derive the economic value of music copied to MP3 players from CDs, iTunes and other sources. The price levels have been realistically defined to cover the range of prices that people might be willing to pay to copy music. And the conjoint analysis has been specified to ensure accurate and reliable estimates are derived for the value of music copied from different sources."

attribute £21.00 of the price of a basic MP3 player, £65.17 of the price of a mid-range MP3 player, and £80 of the price of a top end player – directly to the ability to transfer music copied from CDs.

100. The proportion of the price of an MP3 player attributable to a dedicated MP3 device is likely to have been even higher a decade ago, when the digital download market was very new and most or all of the music on MP3 players was copied from CD.

101. In commercial terms, these apportionments of price represent a good approximation of the share of value that UK copyright owners should be able to accrue by right, as this is the value that consumers themselves currently put on private copying music from CDs to devices.

102. According to data from Future Source Market Analysis, approximately 50 million MP3 players were sold in the UK between 2005 and 2010. A basic calculation of 50 million dedicated MP3 players multiplied by the £65.17 attributable to private copying to a mid-range MP3 player equates to more than £3.2 billion. This is an imprecise sum but serves to show the magnitude of the value lost to music copyright owners in the UK. [A more precise sum is likely to be far greater, given that the total number of MP3 devices ever sold in the UK will be significantly higher, and the proportion of the value attributable to copying music from CDs would almost certainly have been higher in the first half of the last decade.]

103. It is critically important that the Government consider the monetary benefits that have accrued to technology firms from the unlicensed private copying of CDs, because they give shape to the size of the value that copyright owners have been unable to recoup. As stated above, UK copyright law grants copyright owners the exclusive right to monetise value arising from copying music. As we have made explicit, the value of private copying from CDs is not factored into the purchase price of a CD. Music copyright owners in the UK are not compensated by a private copying levy. Yet this value is what copyright owners should have been able to realise. This is our "fair share".

104. Far from UK copyright law frustrating Apple, Samsung, or any other device manufacturer, including Brennan, those same companies have been able to monetise and pocket the entire commercial value – worth many billions of pounds– arising from unlicensed private copying in the UK.

105. Market analysis shows that volume of sales of stand-alone MP3 players may have peaked. This does not suggest that device manufacturers have exhausted the value from private copying. The smart phone and tablet markets have grown rapidly over the past few years and are forecast to continue to do so. Smart phones and tablets are both MP3-enabled. The value of private copying of music from CDs to these devices is still considerable – remarkable even – given their multi-functionality.

106. The O&O research shows that consumers today attribute between 2.59% and 4.13% of the price of a smartphone directly to the ability to transfer music copied from CDs. In monetary terms, this represents £6.67 to £23.60 per smartphone.

107. Around 44% of the UK's adult population is estimated to have a smartphone 26., suggesting that at least 23 million smartphones have been sold in the UK so far. The value to date that consumers put on being able to put music copied from CDs onto smartphones therefore rests somewhere between £153 – £542 million.

108. The O&O research shows that consumers today attribute 6.7% of the price of a tablet directly to the ability to copy music from CDs. In monetary terms, this means that today's consumers attribute £33.50 of the price of tablet computer directly to the ability to transfer music copied from CDs.

109. In 2010, nearly 1.3 million tablets computers were sold in the UK. Future Source market analysis projects UK tablet sales of 3.3 million in 2011, 5.2 million in 2012, 6.1 million in 2013, 7.2 million in 2014, and 7.3 million in 2015. If the value of private copying music from CDs onto tablets is worth £33.50 in every tablet sold between now and 2015, that puts the total value from format shifting music from CDs to tablets over the next five years at an estimated £970 million.

110. Again, we recognise that the sums of £153 to £542 million, and £970 million are imprecise amounts, yet they very accurately illustrate the immensity of value to accruing to devices, directly from private copying music from CDs. We urge Government to incorporate the data established by the O&O research into a proper cost and benefits analysis so that the true impact of the legislation can be established.

111. That manufacturers of MP3 players, tablets, and MP3-enabled phones can build successful businesses partly on the back of music is very positive and UK Music recognises the significant value that music adds to many other sectors of the economy. This is a cause for celebration.

112. However, the fact that manufacturers of MP3 players, tablets, and MP3-enabled phones can build successful businesses, partly on the back of the unauthorised reproduction of music, without music copyright owners being able to recoup any of the value from that reproduction, amounts to a market failure. If Government press ahead with a private copying exception without fair compensation, the market failure will be codified.

113. Licensing – both the granting of licences and payment for them – is central to many IP based businesses, particularly in the technology sector. The basic version of Apple's proprietary video software – Quicktime – is available for free, enabling users to playback audiovisual content. However, for all other functionality, such as recording video or copying content to other devices, requires QuickTime Pro. A licence for QuickTime Pro costs £20. Likewise, Adobe Acrobat enables users to read documents in the PDF format. However, to actually convert documents from, say Microsoft Word, into the PDF format requires the purchase of Adobe Acrobat XPro. This costs £228.

114. There are numerous other examples. Indeed, the MP3 format itself is patented digital audio encoding format. As a result, hardware manufacturers who build devices capable of playing

26. "iPhone Sales in the UK Triple in October" article in The Guardian published 28 November 2011.

MP3-encoded files must pay a licence fee. This licence is available through Thompson which administers the licence on behalf of the Fraunhofer Institute, which owns the underlying IP. In 2005, the Fraunhofer Institute received revenues of €100m from MP3 licences. [27] We note that Government does not propose to 'liberate' the intellectual property in any of these patents in order to make it easier for UK tech firms to innovate around the underlying IP.

Consumers

115. The Impact Assessment states "that consumers will benefit from the removal of legislation that brands their current behaviour as unlawful, providing greater freedom, legal clarity, and building confidence and respect for copyright law." This benefit is the same for Options 1, 2 and 3.

116. As far as this consumer benefit is concerned, we reiterate that we wholeheartedly agree that the law should be changed so that consumers are not inadvertently infringing the law when copying the contents of their legitimately-purchased CDs to their MP3 player. We remain eager and willing to work with the Government on ways of achieving this in such a way as to comply with EU law and ensure parity for both UK consumers and copyright owners. Unfortunately, none of the three Policy Options would achieve this.

117. Beyond the legal clarity, the Impact Assessment notes that "as private copying is already widespread (despite being illegal), an exception is unlikely to deliver new consumer benefits" from Option 1.

118. The Impact Assessment identifies potential additional short-term benefits for consumers in Policy Option 2, which would permit individuals to copy music they own to share with the people in their family and household.

119. O&O's survey of a nationally representative sample of the UK's population show that there is no consensus amongst consumers that copying music even between members of a household and close family members should be legalised. Whilst a clear majority believe that format-shifting one's own CD onto an MP3 player is totally acceptable, only one in 5 respondents believe copying a CD for a friend or 'ripping' music from a CD borrowed from a friend is totally acceptable behaviour.

120. The Impact Assessment believes that the short term benefits to consumers from Policy Option 3 – permitting copying by the individual and family and/or household but the content being copied does not need to be legitimately owned or licensed content – would be higher as "they will have access to a wide range of content and no cost."

121. UK Music cannot accept that Government is giving serious consideration to either Option 2 or 3 as both would effectively rule out the ability of copyright owners to enforce their rights.

27. "iPhone Sales in the UK Triple in October" article in The Guardian published 28 November 2011.

Libraries and archives (covering questions 72-74)

We agree that the relevant exception should be extended to allow multiple copies, also in different formats, to be made up; the allowed copies naturally have to be limited to the amount required for preservation purposes in order to be legally justified. We are surprised that so little progress has been made in implementing this measure given that it had the support of all relevant stakeholders. In fact, we and most right holders voiced our support for such an approach in 2008 in the context of the Gowers Report recommendations. The exception should not apply to more types of cultural organisations, such as museums and galleries (Question 72). Whilst there might be an operational registry for clearly defined museums we are very concerned that any commercial entity will be able to claim the status of beneficiary of such an exception. Including museums and galleries renders the exception too wide-ranging to be a limitation; this is certainly not a special case under Article 5 (5) Copyright Directive.

Research and private study (covering questions 75-76)

121. We disagree that there is any need for extending the copyright exception for research and private study to include sound recordings, film and broadcasts to achieve the aims described in Question 75. There is no requirement for such an extension given that music licenses are readily available for such uses. The justification for changing Section 29 CDPA 1988 to allow copying of all types of copyright works for non-commercial research purposes and private study, i.e. the lack of licensing solution, is inaccurate for the musical sector, at least in its broad description.

122. We suggest that any form of research and private study should be linked to educational establishments and thus covered by the relevant licenses by CLA and ERA. Such licenses will provide certainty and clarity and should be amended as and when required. We suggest that Government continues discussions with ERA on how best to achieve the purpose to enable use by researchers linked to educational establishments.

123. We do not agree that a new broad range of beneficiaries as presumed in Question 76 should be able to benefit from the exception.

124. We are very concerned with definitions and have considerable questions which we don't think have been adequately addressed in the consultation:

125.
- Where are the boundaries between non commercial research and private study, where does the exemption for private copying apply ?
- When is a use for a non commercial purpose, and for whom non-commercial ?
- Is fair compensation required under the Copyright Directive in as far as private study is very similar to private copying ?

Parody exception (covering question 78-84)

126. The UK Government investigated the case for an exception for parody when implementing the Copyright Directive in 2003, and again, following a recommendation put forward in the Gowers Review in 2006. In December 2009, Government concluded that there was no case for change, stating: *"Overall, the information supplied in response to the first stage of the*

consultation was not sufficient to persuade us that the advantages of a new parody exception were sufficient to override the disadvantages to the creators and owners of the underlying work. There is therefore no proposal to change the current approach to parody, caricature and pastiche in the UK." [28] We are at a loss to understand how the analysis underlying this assessment have changed within 2 years.

127. The recommendation for a parody exception in the current consultation is predicated primarily on a belief that it will result in significant economic growth. The basis of these arguments and assumptions are erroneous. We examine them in turn.

128. Introducing a fair dealing exception for parody, caricature and pastiche will not contribute to economic growth in the UK. The economic growth projections in the Impact Assessment rely entirely on the assumption that a parody exception would be directly responsible for a UK firm (such as a television production company) producing a theoretical show/programme/format that it otherwise would not – and in doing so, capture a larger proportion of the global entertainment market.

129. To put the Impact Assessment's growth projections in context, the UKTI estimate that the total revenue from the international sale of UK TV programmes and associated activities was £1.42 billion in 2010. The Impact Assessment forecasts 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". These "new types of entertainment programmes" are not defined by the Impact Assessment. However, their future success equates to over 40% of the value of the entire UK TV programme export revenue.

130. No credible evidence is provided to support the underlying assumptions in the Impact Assessment. The consultation document offers instead an illustrative example in the form of Jon Stewart's Daily Show as the sort of programme that is hindered by a lack of parody exception.

131. It is true that the Daily Show has encountered barriers with parodying copyrighted material from the UK. However, this is not a consequence of UK copyright law. As is well documented, this is due to the fact that, because of Parliamentary rules, recordings from Parliament cannot be subject to satirical purposes by UK broadcasters. Therefore, when Stewart ran a piece parodying exchanges from the House of Commons, the resulting segment from the Global Edition of the Daily Show could not be screened on UK television. It was, however, reportedly broadcast in Syria and Saudi Arabia. [29]
Stewart himself highlighted the issue in a subsequent edition of the Daily Show, joking: *"The House Of Commons is the most basic expression of British democracy. Is that too fragile to withstand a gentle parody? A good natured kick in the clotted creams?"* [30]

28. Paras 294 -311 of the second stage consultation on exceptions Taking forward Gowers http://www.ipo.gov.uk/consult-copyrigh-texceptions.pdf
29. http://www.newstatesman.com/blogs/helen-lewis-hasteley/2011/07/commons-shows-stewart
30. http://www.huffingtonpost.com/2011/08/03/jon-stewart-uk-censorship_n_916913.html

132. More recently, the journalist Charlie Brooker encountered similar barriers – his 2011 Wipe, screened on BBC4, was forced to reconstruct any scenes referring to events inside the House of Commons, and use actors from the docu-soap Made In Chelsea to act as MPs. As Brooker explained to BBC Breakfast: "That was a pain this year. There was a lot of great footage that we weren't allowed to use…There are rules covering footage of any parliamentary proceedings, which you are not allowed to use in any satire, or entertainment. So we can't show anything from the House of Commons, we can't show Murdoch being hit by a pie. They can [be shown] in America..." [31]

133. Here is a real barrier to broadcasters and comedians. As use of Parliamentary footage is governed by MPs, and not subject to UK copyright law, we suggest that Parliamentarians change their own license to permit the use of Parliamentary footage to be used for satire and comedy.

134. A further rationale for a parody exception is that the rights clearing process involves administrative and legal costs to those who wish to use the underlying, original work. We find this statement perplexing because it appears to call into question the underlying principle of copyright and indeed all intellectual property rights. If a work has value, then it has value. It is nonsensical to suggest that a comedy producer should not have to pay for a licence to use music (or any other creative work) for satirical purposes, when a producer of serious drama does have to pay for the use of music in the drama.

135. UK Music searched in vain for evidence that UK producers of comedy and entertainment shows, and broadcasters, are being put at any kind of competitive disadvantage to their global competitors as a direct result of the absence of a parody exception. British comedy has been enjoyed and admired around the world for decades and British formats are enjoying a period of outstanding success in many foreign territories. The UK is second only to the USA as an exporter of programming hours. Revenue from the international sale of UK television programmes grew by 13% last year and comedy is a key element of UK expertise. [32] Far from being held back, the UK comedy sector is surging ahead.

136. Conversely, where exceptions for parody have been enacted, there is little evidence that this has resulted in economic growth. For instance, such an exception was introduced in Australia in 2006 but there has been no discernable impact of the exception in terms of Australia's share of the global comedy market. In fact, according to Screen Australia figures, the value of Australian TV exports has fallen significantly since 2006. [33] Equally, France has had an exception for some time without any noticeable impact on Gallic humour or growth in the French or international comedy market. French TV exports grew by 5.1% in 2010, but this has been attributed to sales of documentary and animation programming. [34]

31. http://www.chortle.co.uk/news/2011/12/30/14596/charlie_brooker_hit_by_parliament_film_ban
32. http://www.ukti.gov.uk/export/sectors/creativemedia/screen.html
33. http://www.screenaustralia.gov.au/research/statistics/atradetv.asp
34. http://www.variety.com/article/VR1118042341?refCatId=14

137. Aside from the supposed £600m boost to the UK economy, Government also asserts that society as a whole will benefit from a parody exception because it will enhance freedom of expression. The IPO impact assessment even states that works of parody in the UK are "illegal". [35] We find the suggestion that copyright suppresses the freedom of expression ludicrous and challenge Government to produce evidence of this.

138. Before we assess the potential societal benefits or commercial damage that might result from an exception for parody, we must first define exactly what uses the term itself – 'parody' - covers. The definition of parody in the consultation document derives from the Oxford English dictionary: "an imitation of the style of a particular writer, artist or genre with deliberate exaggeration for comic effect." In other words, a parody is an entirely new work. For instance, the track "Bowie's In Space" written and performed by the comedy duo Flight Of The Conchords meets the dictionary definition of parody – it is quite obviously performed in the style of David Bowie, but is an entirely new work.

139. Government is, however, far less clear in how it defines the term. Their definition of parody is far-reaching and open-ended. As a consequence, they risk causing real harm to the livelihoods of creators and UK businesses.

140. The examples used in the consultation documents indicate that the IPO's interpretation of parody stretches far beyond "true" parody into the realms of copying, adaptation, sampling, synchronisation and lyric changes. All of these activities are restricted by copyright unless authorisation is granted by the copyright owner, and are part of the normal licensing activity of a music publisher – whether for comic effect or serious use. Licensing these activities provides a valuable income stream for creators.

141. As the submission of our member organisation, the Music Publishers Association, makes clear, these activities are significant for their members: "The majority of music publishers have well established, efficient synchronisation departments, whose purpose is to promote both wider ranging use of a writer's work and to grant clearance for any proposed uses. Synchronisation income is an important revenue stream for publishers. For UK based music publishers, synchronisation income reached £56.2m in 2010 or on average 8% of a music publisher's income."

142. Synchronisation of UK works abroad has grown from £25m in 2009 to £34m in 2010, [36] while synchronisation within the UK has grown £1m during the same time period. It is a significant UK export.

143. Indeed, the MPA, along with the BPI and UKTI annually sponsor specific sync export missions to Los Angeles (and Tokyo) on an annual basis. [37]

144. The majority of parody requests received by music publishers are for synchronisation use, and as such parody forms a subset of normal synchronisation licensing activity. MPA members estimate that between 5% and 20% of their synchronisation licences

35. http://www.ipo.gov.uk/consult-ia-bis1057.pdf
36. MPA Survey of members 2010
37. http://www.songlink.com/news20110317-mpa-partners-with-ukti-and-bpi-for-trade-missions.html

and 20% of their synchronisation licences granted are for uses which could be interpreted as parody – with a large number of requests for radio commercials and television advertising. As such, the size of the parody market in the UK for music publishers could be as large as £11.2m. [38] This would potentially all be at risk were there to be an exception.

145. In addition to this, and belying Professor Hargreaves' recommendation that policy-making on intellectual property should be evidence-based, Government provides scant detail of there even being a parody "problem". Indeed, while 50 hours of video footage are uploaded every minute to YouTube, the only example of a parody "problem" that the consultation document could identify was the spoof video "Newport State of Mind".

146. As detailed above, "Newport State of Mind" does not meet the dictionary definition of a parody. Rather, the underlying backing track is a straight synchronisation of the Jay-Z & Alicia Keys track "Empire State of Mind" with repurposed lyrics about Newport.

147. While hosted on YouTube, the video presented no problems. There are thousands of Jay-Z parodies on YouTube – in many cases, thanks to copyright licensing, a micropayment may be triggered as a result of a musical work being used in this way. However, if that YouTube video is published in another commercial context - for instance, as a digital download - then the co-creators should be rewarded in another way. This was the case with Newport State Of Mind. Its temporary takedown from YouTube was as a result of a planned commercial exploitation by a third party, which the "Empire State of Mind" writers disagreed.

148. We are extremely worried that Government can use one solitary and inaccurate example to justify changing the law.

149. In the music sector, the permission to produce a commercial parody or any transformative exploitation (such as sampling or synchronisation) can be quickly obtained. This is the lifeblood of music publishing. Commercial exploitation is, however, ultimately the choice of the creator. There are many examples, some of which are referred to in the Impact Assessment, where parody has worked to the benefit of the original creator, as well as the parodist, and this shows that the existing system can work effectively. It is key that both the personality and integrity rights of the creator are protected in this context. These rights are particularly endangered by the introduction of a parody exception undermining the right of the creator to agree to the use of his works. Whilst the whole purpose of this review is the (alleged) contribution to economic growth it is unacceptable that the moral rights of the creators are being proactively sidelined; even to a larger extent as is already the case under current UK law. A parody exception as proposed seriously jeopardizes the right of the creator to safeguard his personality (a natural right) against abuse. In France the parody exception is mirrored by strong moral rights. Additionally, under the French system, judges have to decide on a case-by-case basis if a if awork has been parodied 'according to the rules of the the genre' i.e. that the parody is humorous and not malicious (Question 80).

38. MPA Survey of members 2011

150. We would also urge the legislator to analyse the international legal framework for such a parody exception; we are not convinced that a broad exception for parody would be admissible under the binding provisions of the Berne Convention which applies side by side with the European Copyright Directive. There is no specific provision for a parody exception within the Berne Convention so only minimal uses of a work for the purpose of parody might be allowed. We are not convinced that rendering this exception into a fair dealing exception is sufficient to comply with the Berne Convention (and consequentially Art. 13 TRIPS). (Question 83).

Educational use (covering questions 85-89)

151. The licensing system already provides flexible solutions restricting costs and bureaucracy for right holders as well as educational users who acknowledge the value and clarity of the educational licences. Licences are already available on an individual and on a collective basis; the industry is also working on further licenses for currently underlicenced aspects of the educational sector. The licensing systems do not restrict the variety and impact of education provision, particularly when delivered using new technology. The costs incurred by educational establishments from licence fees are very small, and there is no justification to single out the creative sector when educational establishments still have to pay for electricity, water and software.

152. As expressed by Professor Hargreaves in his report there should not be pointless regulations. We have seen and agree with the submissions by ERA and CLA describing their licensing of educational establishments in some detail. Most of our members are members of ERA which provides a functioning framework for recording of broadcasts to be made for non-commercial educational use and be covers distance learning.

153. In their submission, ERA is proposing changes which genuinely would reform the system of educational exceptions in line with the practical needs of educational establishments; their proposed changes legally mirror the ERA Plus licensing system which already allows educational establishments to copy and make available to clearly defined "authorised users" when they connect remotely via a secure network. This goes beyond the current wording of Section 6 Schedule 2 (para 1A thereof) of the Copyright, Designs and Patents Act 1988, which limits the communication to the public to communication "to the public by a person situated within the premises of an educational establishment…." Extending the relevant scope of the Schedule to mirror the ERA Plus licence would provide further clarity.

154. Given the success of the ERA scheme providing a convenient mechanism for right holders as well as educational users we suggest to expand not only the scope of the licensed uses but also promote ERA to act as an administrative front end for the licensing of more activities in educational establishments (Question 85). The ERA scheme under Section 35 CDPA permits recordings of broadcasts to be made for non-commercial educational use and be communicated to the public; as part of ERA Plus this also covers distance learning.

The ERA Licence [39] covers scheduled free to air broadcasts on: BBC television and radio; ITV Network services; Channel Four, E4, More 4 and Film 4; Five Television; and S4C. We recognise the critical importance of responding to users' needs. Copyright owners are continuing to develop new licensing solutions to meet the changing needs of educational users and are committed to making more progress in this area.

155. The DCE could provide a useful tool in marketing and signposting existing licences. [40]

156. The UK is the home of many educational music publishers and removing protection at the home turf takes away the natural competitive advantage of being an English language based publisher. This removes directly benefits to UK publishers and leads to a direct loss in the export income for UK companies and consequentially the UK taxman given that publishers will move away in order to avoid such restrictions (Question 86).

157. According to the Music Publishers Association, the education market for music publishers in 2010, was in the region of £40m. [41] A number of music publishers have a very significant exposure to the education market. In particular, ABRSM (the Associated Board of the Royal Schools of Music), who publish exam syllabus and related material, is almost 100% reliant on sales into schools and to peripatetic teachers who work in schools, (both in the UK and abroad). Faber Music estimates that 60% of their sales come from the education market. The high quality of educational publications produced by UK music publishers is recognised globally. As such, music publishers are also successful exporters. In 2010 ABRSM reported that 48% of their sales were overseas.

158. In addition, it should be noted that the MPA will be starting their "Schools Printed Music Licensing Scheme" for the photocopying of sheet music in schools in autumn 2012.

159. We are looking forward to discussing with educational establishments current restrictions/ unnecessary administrative costs, i.e. costs which do not concern the value of the creative works and develop mutually satisfying solutions. Perhaps the DCE can provide a useful forum to exchange views and find practical solutions.

160. We are opposed to widening the definition of educational establishments as proposed in option 4 (Question 88). This will create uncertainty in the scope of the exception given that various unregistered bodies whose primary objective is not for educational purposes are likely to argue that their activities are for non-commercial educational programmes. Implementing option 4 would render the licensing process more opaque and uncertain.

39.www.era.org.uk
40. E.g. www.licensing-copyright.org/downloads/Copyright_Licensing_In_Schools.pdf
41. Based on 2010 figures from 5 of the largest UK educational music publishers

Exception for use of quotations or extracts of copyright works

161. We are very concerned with the breadth of the preferred option to introduce an exception permitting fair dealing with any extract or quotation, to the necessary extent, as long as sources are identified. The proposed approach undermines the creator's copyright potentially without restriction: "to the extent necessary" is a very casual criterion which contravenes the Three Step test in that it is not a specific case. The whole justification in the Impact Assessment is particularly negligent using the terms fair use and fair dealing as if they were the same.

162. Reference to the "extent necessary" is unacceptable because it will trigger legal costs for right holders to argue that the use was not to the extent necessary. Introducing a law which will only lead to more uncertainties constitutes bad law making; in particular when existing licensing mechanism make the need for such exception redundant. Removing licensing income from the creative sector is not a sufficient justification; it will certainly not lead to economic growth. This represents another example of mere transfer of money at the expense of the creative sector.

Other exceptions allowed by the Copyright Directive (covering questions 96 – 102)

163. We draw Government's attention to the submissions made by *PRS for Music* and PPL which provide details of the potential harm of these exceptions to copyright owners.

164. As a point of principle, we observe that the introduction of exceptions in this area simply represents a transfer of value away from copyright owners and would have the effect of increasing confusion and the cost of licensing. Where PRS for Music is issuing licences for value, such exceptions would lead to harm and would be contrary to normal exploitation, and in breach of the Berne Convention.

165. We refer to licenses made available by our members covering the uses and urge Government not to interfere with a functioning market, e.g. for use during religious or official celebrations.

Exceptions to override contracts (covering question 103)

166. We do not think that Government's preferred option, i.e. to legislate to establish that copyright exceptions cannot be overridden by contract, will achieve any of the alleged benefits envisaged. On the contrary, it will obliterate the certainty and clarity of contractual arrangements which are the basis of the individual commercial relationship.. It should be noted that the contractual negotiation between right holders and commercial users are on a business to business basis and cater for the specific requirements of the parties concerned.

IPO issuing clarification (covering questions 104-111)

167. We reject Government's preferred option to introduce a Notice service via legislation, and introduce a duty on the Courts to have regard to any Notices published.

168. Apart from the overriding constitutional concerns if the legislator is in a position to interpret the law (separation of power), we do not think that this is acceptable to any stakeholder.

169. However, it would be useful to reflect the consensus at the meeting on notices that the IPO should have a duty to deliver high level education and awareness of copyright. [42] If they had a duty then there could be funding to support essential activity that benefits all stakeholders such as explaining copyright to SMEs; in particular how they can use their IP to benefit financially. This should be done with the support of the creative industry.

End

42. http://www.ipo.gov.uk/whyuse/business/business-support/business-masterclass.htm

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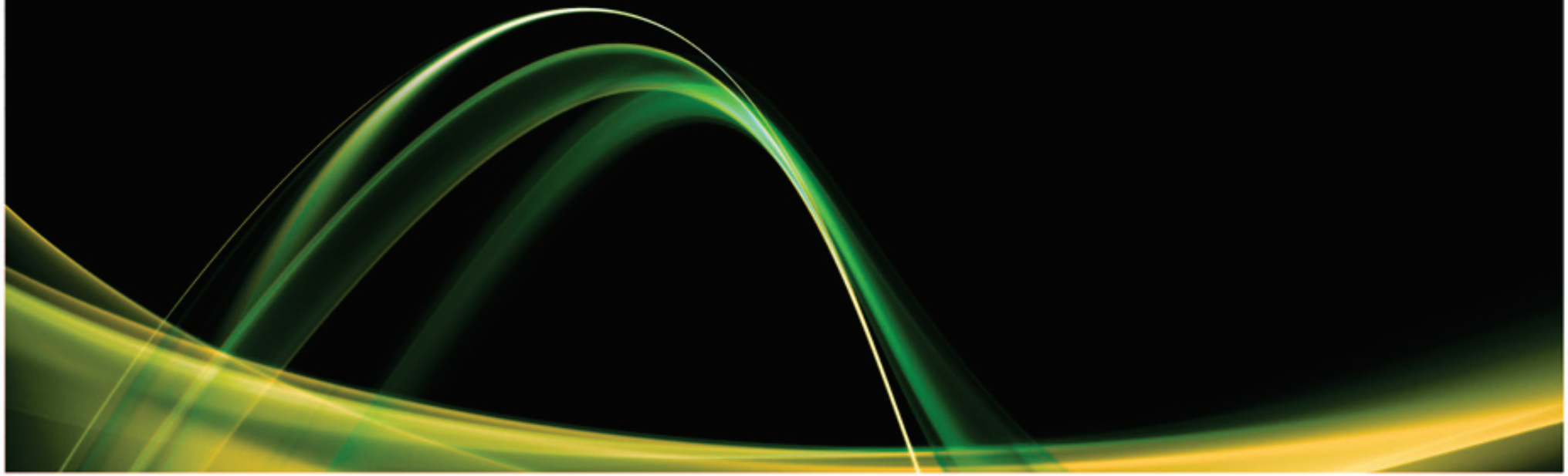
The UK Music Consumer

A presentation for UK Music prepared by Oliver & Ohlbaum Associates

Copyright research
2012



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Executive summary

This presentation outlines our approach to the research, and summarises our findings

Our analysis has provided us with insight into music usage and trends, as well as isolating the value of the ability to play music copied from CD on MP3 players, phones and tablets, and the value ascribed to locker-based cloud storage of music

Summary

Two distinct surveys were commissioned – an initial study, to gain insight into music usage and trends, and a set of conjoint analyses isolating the value of the ability to play music copied from CD on devices.

More than half of respondents to the initial study claimed that more than 20% of their library is 'ripped' from physical format CD's.

The conjoint analysis provided a range of responses for the value of the ability to play music copied from CD for each device:

- Between 32% and 53% of the value of MP3 devices
- Between 0.28% and 4.13% of the value of phones
- Approximately 6.7% of the value of tablets

- 72% of respondents consider music their most valuable commercial data to back-up in the cloud

Research process

Our approach was built on a two-step research process, with an online study followed by conjoint analysis.

An online study among a nationally representative sample of UK consumers to measure current/future market insight/sizing exercise was conducted w/c 16th January and initial results have been summarily analysed.

The results of this initial study helped inform decision making with regards to the conjoint exercise. Presentation of the market sizing exercise determined what level of further analysis was required (how many market conjoint simulators were required to collect a full picture).

A conjoint exercise among people already identified as being interested in various MP3 devices, phones and tablets in initial research began in w/c 13th February. Separate conjoint analyses were conducted sequentially for MP3 devices, phones and tablets, with additional top-up analysis regarding the value of cloud locker storage.

Our approach to conjoint was peer reviewed by Professor Ken Willis (Professor of Environmental Economics) at the University of Newcastle. He confirmed the robustness and validity of our assumptions and approach.

The final set of conjoint analysis results were received w/c 12th March. Having analysed the data and calculated the results, this report comprehensively summarises and presents our findings for UK Music. Additional data to that provided here has been made available to UK Music to support their submissions regarding copyright.

Initial research findings

- Digital libraries are larger than physical format libraries, but CD ownership is both higher and more widespread
- More than half of respondents claim that more than 20% of their library is 'ripped' from physical format CD's
- The value to devices of playing copied CD's was: 14% for feature and 9% for smartphones; 11% for tablets;, 20% for multi-function and 41% for simple MP3 players

Conjoint analysis findings

The value of the ability to copy from a CD to **MP3 player**:

- 44% (**£21.00**) for a basic player (costing £47.45)
- 53% (**£65.17**) for a mid-range player (costing £122.95)
- 32% (**£80.00**) for a top-end player (costing £247.14)

The value of the ability to copy from a CD to a **phone**:

- 0.28% (**£0.25**) for a feature phone (costing £88.37)
- 2.59% (**£6.67**) for a basic smartphone (costing £257.46)
- 4.13% (**£23.60**) for a top smartphone (costing £571.33)

The value of the ability to copy from a CD to a **tablet**:

- 6.7% (**£33.50**) for a tablet (costing £499.79)

Music comes in third place as the most important type of data to back-up in the cloud. However, it is the most valuable commercial data when compared to films, eBooks or video games

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Initial research – Process

The study provided insight on music use and habits, and informed the conjoint analysis

The purpose of the study was to gain a clear understanding of UK consumers current and future music use and demand

Summary of our approach

We split the research into two steps, the first of which provided a clear picture of consumer preferences relating to music use and habits, and device preferences.

In conjunction with our research partners, we conducted an online study among a nationally representative sample of UK consumers to measure current/future market insight/sizing. This research took place in w/c 16th January 2012 and findings are contained within this pack.

The survey was compiled from a sample size of 2,283 respondents, and the results informed our next steps and choices for the conjoint analysis, which sought to isolate the utility and value of copying CD's to a variety of music-playing device types.

Our research focused on understanding consumer behaviour, in order to inform decision making by the UK Music team.

Initial online study

We worked with our specialist research partners and the key stakeholders in the UK Music team to create, revise and finalise a questionnaire to put to a significant and nationally representative sample of UK consumers.

The goal of this initial study was to build up a clear and comprehensive picture of music usage, purchasing, storage, format choice and copying behaviour in the UK.

The initial survey collected data across several areas:

- **Demographics** – standard data such as age, sex etc.
- **Musicographics** - how consumers view and consume music – frequency of listening , size/value of their library, source of purchase and format choice, location of music library/ storage, if they copy onto/ buy/ download/music onto an MP3 player, to what extent does the actual device influence their activity
- **Technology audit** - which devices they own/use the most and for which purposes, how long they have had each, how much they paid for it and when they think they might replace/ upgrade/ buy other device
- **Importance of MP3 device features** - likelihood of buying device types in the near future and select the features that they would expect that device to offer. Which devices they might consider purchasing and how much they would be willing to pay for such a device from that manufacturer (all prices/detail will be fed through to subsequent questions)
- **Value of MP3 device features** - for each device, allocating a proportion they are prepared to pay for each of the features they require the device to offer. Ability to copy music from their own library is included (they could set the amount to zero £ if copying music from a non digital format was not important to them)
- **Other IP -** as per UK Music's request, we also tested the attractiveness (for more advanced devices) of copying other IP – particularly DVDs or games
- **Value of the library** - for existing users, we asked how much the CD collection on their MP3 player is worth – by asking how much they would pay to retrieve the collection if a fault erased it overnight

Key features of the research

This research provided insight specifically into:

Demos (age, sex, income etc.)

Music (formats, types etc.)

Volume (size etc.)

Library (composition , age etc.)

Devices (portable, non-portable etc.)

Features (of players, musical devices etc.)

Copying (from CD, from digital etc.)

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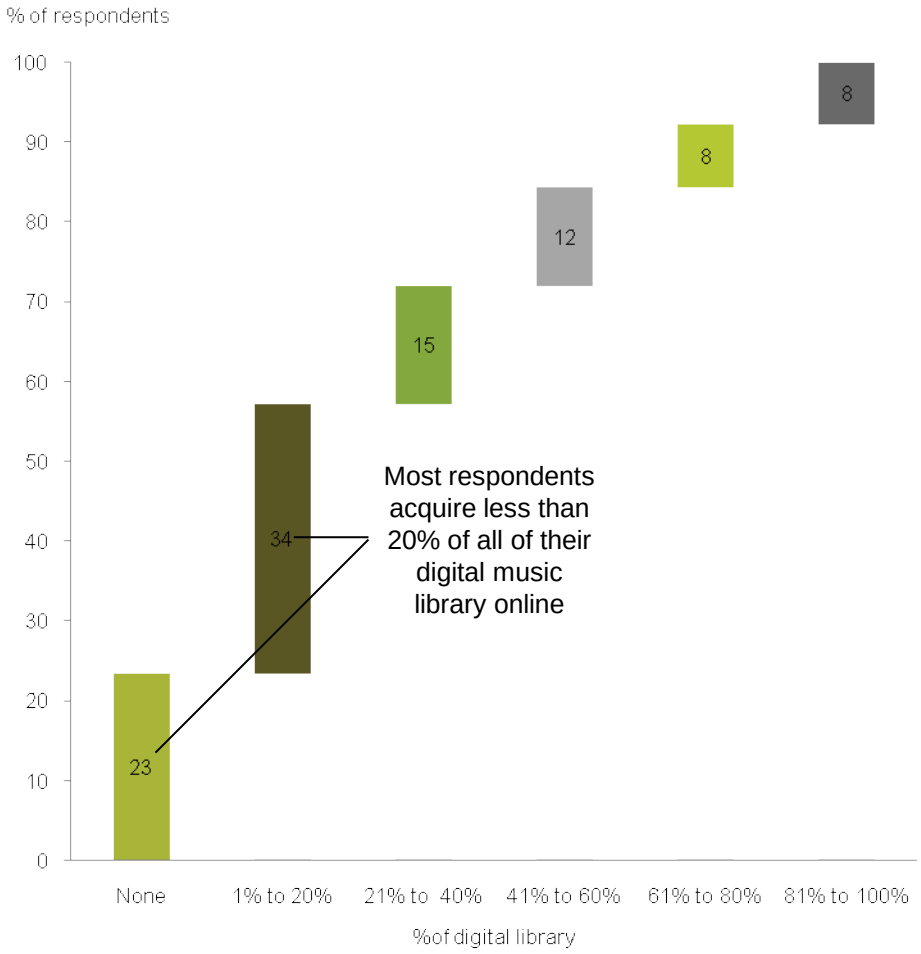
Initial research – Findings

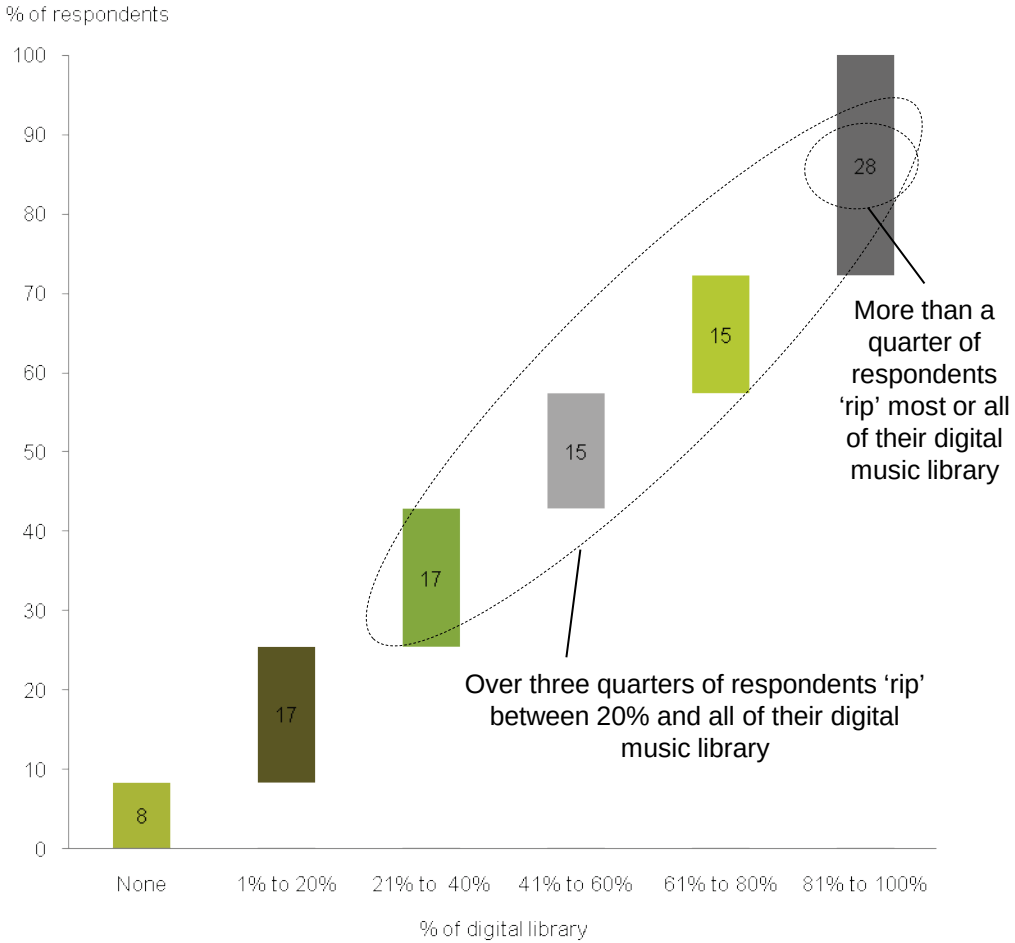
Where does their digital music come from?

Three quarters of MP3 format owners claim that more than 20% of their digital libraries come from 'ripped' CDs. Online purchases in comparison remain marginal

Acquisition sources of digital music libraries: online purchase



Acquisition sources of digital music libraries: CDs



Source: Oliver & Ohlbaum analysis, Fly Research, n=1,630

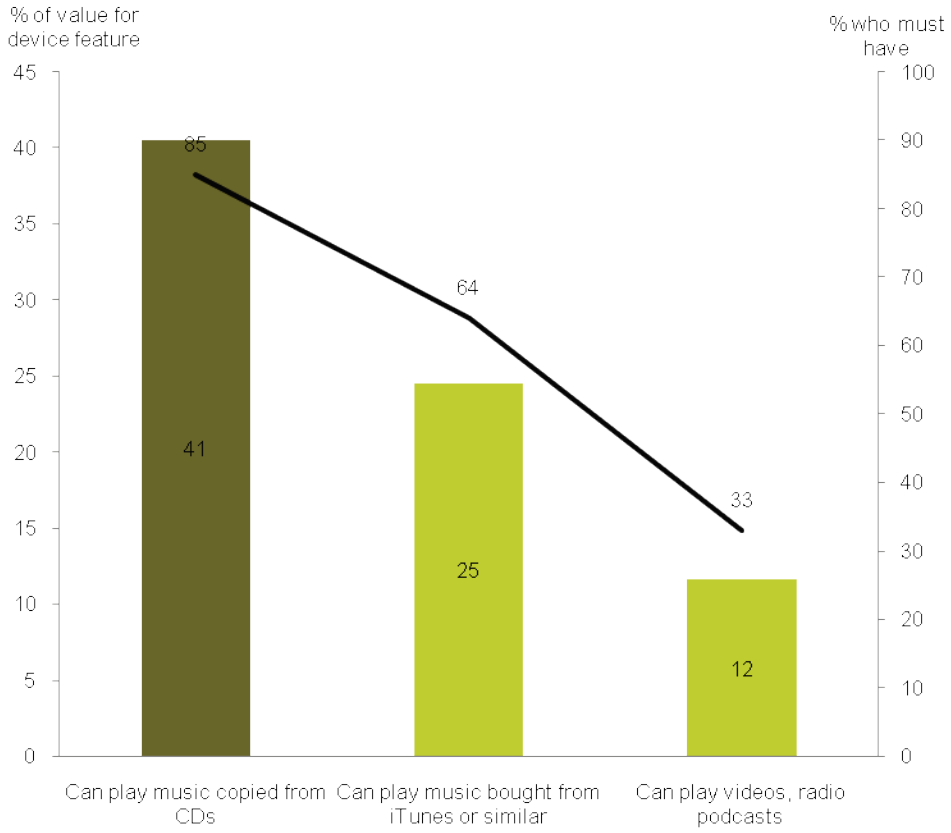
Note: respondents estimations are not expected to equal 100%

Initial research – Findings

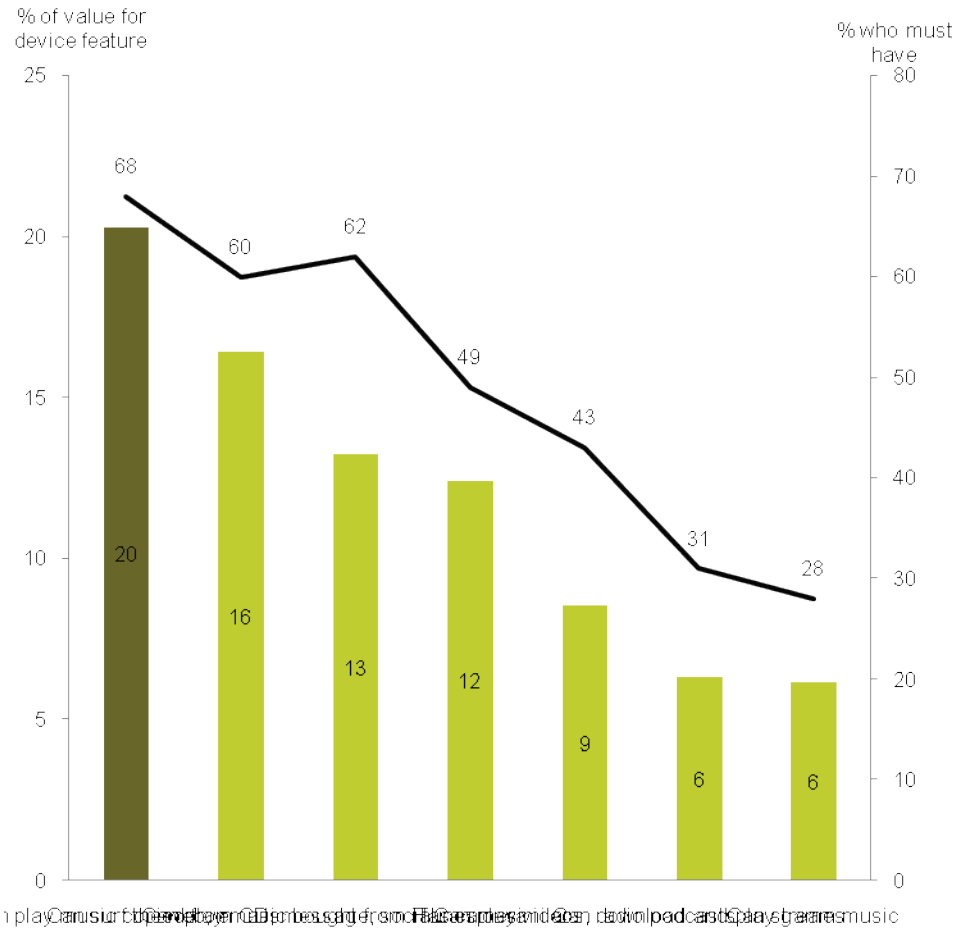
What features and functions do MP3 device users demand most of all?

The value to the device of playing copied CD's was – unsurprisingly – the most valued feature for both simple MP3 (41%) and multi-function MP3 (20%) players, with 85% and 68% of respondents respectively naming this as a 'must have' feature.

Value and importance of features: Simple MP3 player



Value and importance of features: Multifunction MP3 player



Source: Oliver & Ohlbaum analysis, Fly Research (Simple MP3 n=823, Multifunction MP3 n= 602)

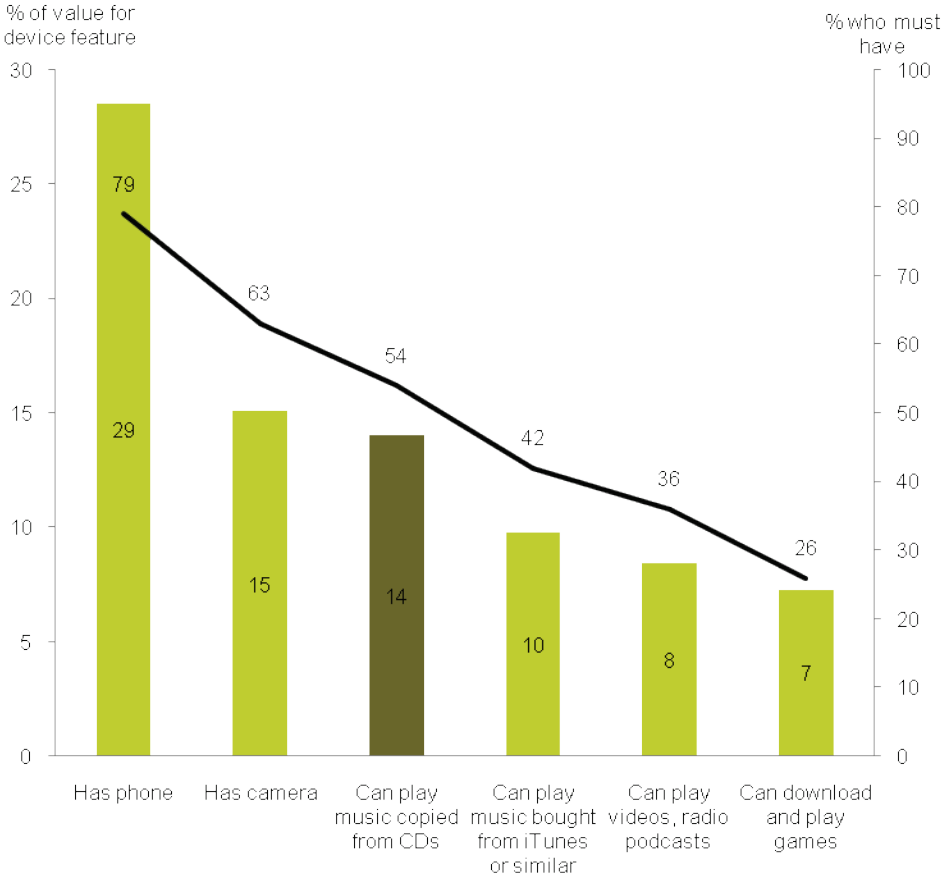
Note: selected results only – these charts do not show the full range of responses equating to 100%

Initial research – Findings

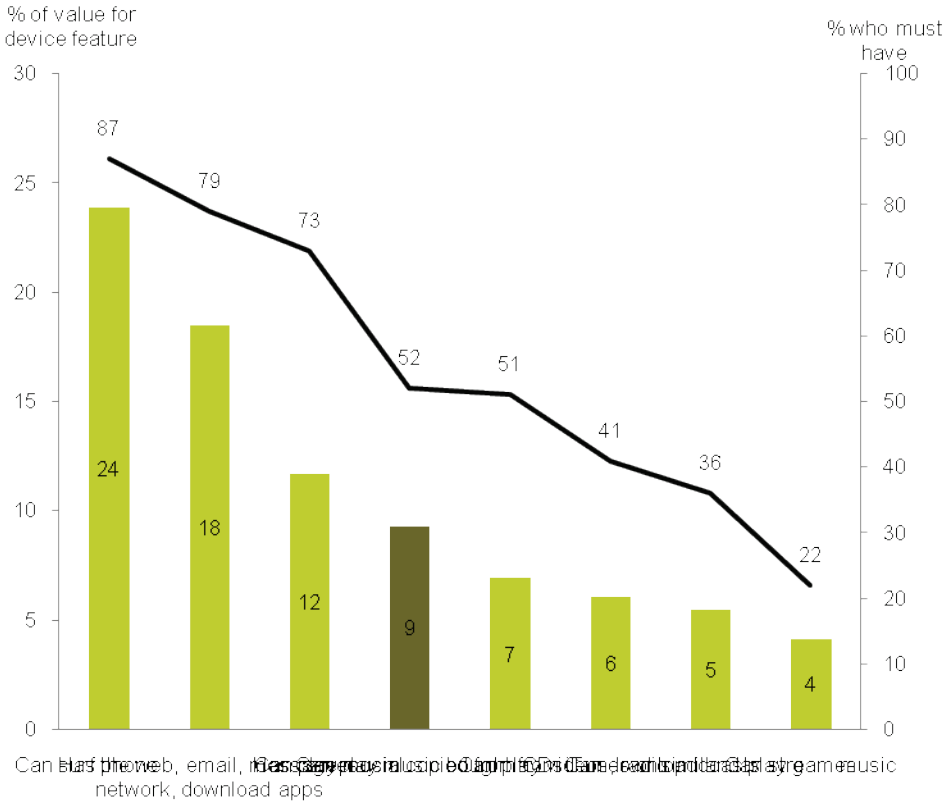
What features and functions do phone users demand most of all?

For Featurephones, the value of playing copied CD's was (14%), half as valuable as the actual telephone functionality itself – for Smartphones the utility was lower (9%) but still comparable to a camera.

Value and importance of features: Featurephone



Value and importance of features: Smartphone



Source: Oliver & Ohlbaum analysis, Fly Research (Featurephone n=337, Smartphone n=921)

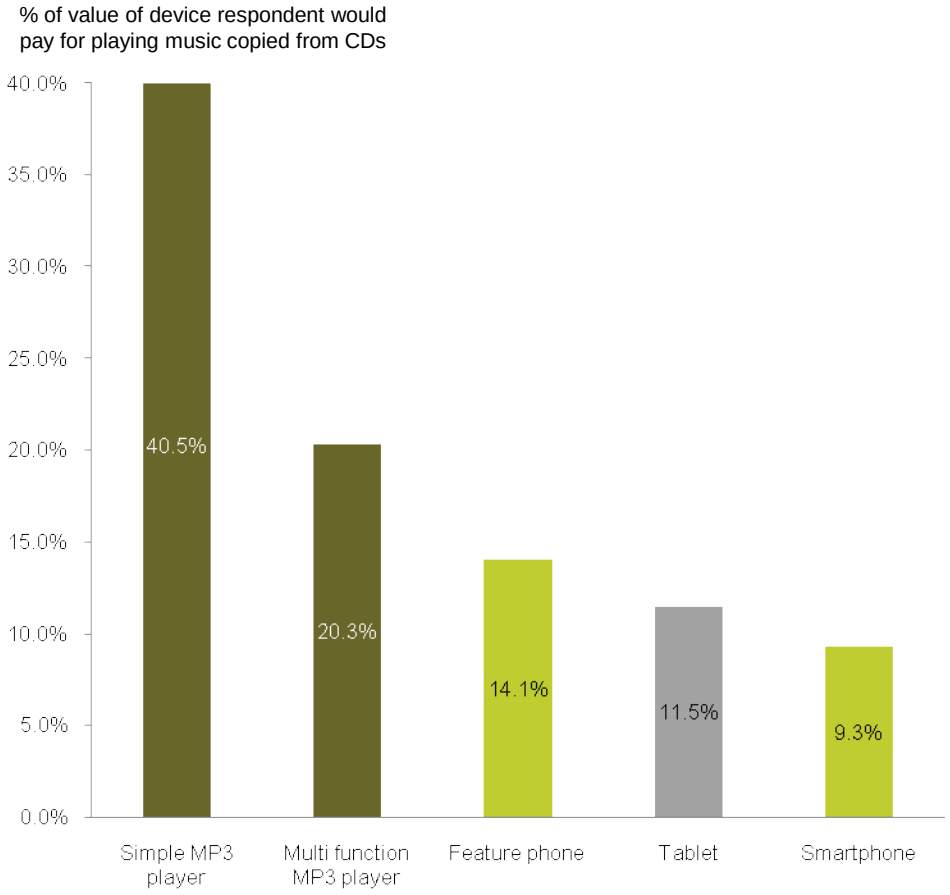
Note: selected results only – these charts do not show the full range of responses equating to 100%

Initial research – Findings

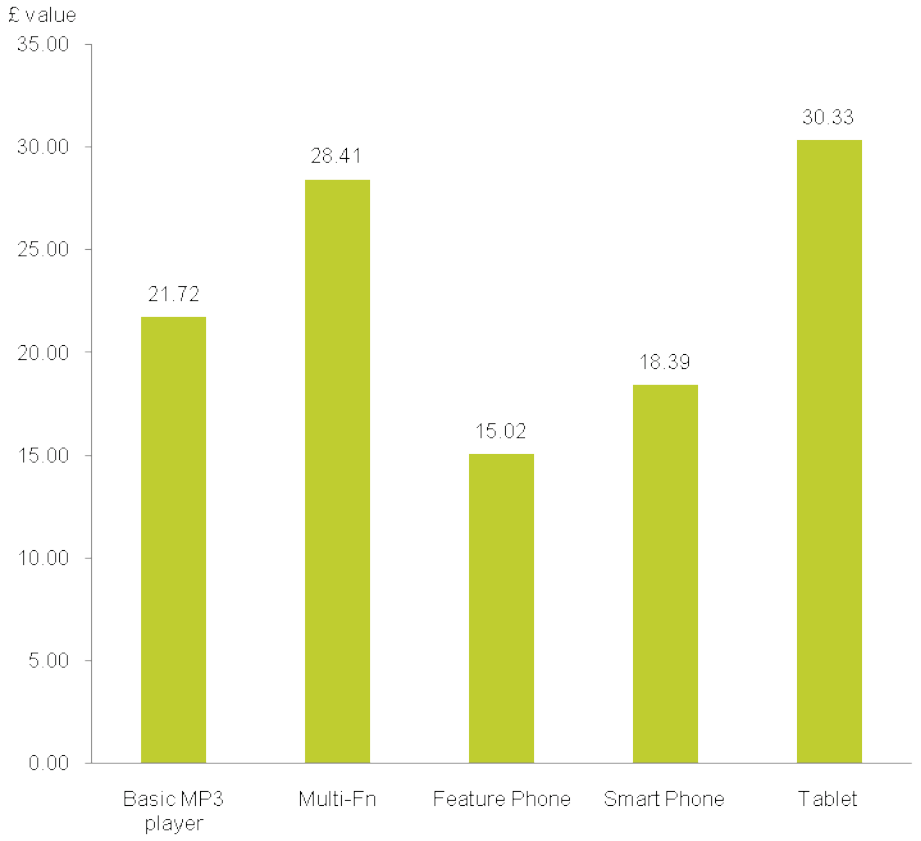
What is the implied value of playing music copied from a CD on each device type?

As expected, the simple MP3 player – the cheapest device – had the highest proportional value from playing music copied from CD. In absolute terms, the range of values was relatively narrow

Relative value of playing music copied from CDs for our set of five devices



Value of the ability to copy music from CD for a range of devices



Source: Oliver & Ohlbaum analysis, Fly Research, n=2,283

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Conjoint analysis – Process

Overview of our approach to conjoint

In conjunction with our expert research partners, we decided to use menu based conjoint (MBC) – and this decision was ratified by peer review provided by Professor Ken Willis of the University of Newcastle (asked by UK Music to review)

Summary of our approach

The initial analysis highlighted that for all devices tested a substantial number of consumers saw digital music (and within that, music copied from CDs) as an important, valuable feature. The conjoint research had to cover all of these devices.

We used the findings of the initial research to ensure that we covered all the features and values – thus avoiding any outliers that may impair findings of the conjoint analysis.

The approach taken was menu based conjoint – this was the most appropriate in terms of configuring an "ideal" device and isolating the values of individual features.

Menu based conjoint allows for features to be added and deleted until the consumer has the device they want, is flexible in terms of the number of features permitted yet still allows a simple and short interview process – which is more accurate.

Variations and value ranges

The initial research highlighted that the ability to copy music from CDs is an important attribute for the majority of portable MP3 enabled devices, so the conjoint methodology design we adopted had to be sophisticated enough to cope with these variations.

The distribution of prices used in the conjoint studies were calculated by selecting the amounts people said they would pay for each device function, removing unrealistic prices, before sorting and calculating the percentage of the amount people were prepared to pay for the device.

Value ranges used correspond to those given by 20% - 80% of respondents for each function.

Peer review

In line with newly issued guidelines for consultation submissions, the research approach was peer reviewed before it went into the field. UK Music asked Professor Ken Willis, Professor of Environmental Economics at the University of Newcastle, to conduct the peer review.

Professor Willis reviewed the proposed methodology, questionnaires upon which the survey was to be based, and provided a critique of the assumptions underpinning our approach, in order to ensure it was fit for purpose.

All of the questions raised by Professor Willis were dealt with and responded to in a timely manner, and further to detailed discussions our approach was fully ratified.

Advantages of MBC approach

The choice of specific conjoint approach was carefully selected based on the specific requirements of this study.

The menu based conjoint (MBC) approach has a number of advantages over other approaches:

- **Mimics the purchase process** – consumer builds the optimum product
- **No need to reduce the attributes** or features list before the conjoint
- **Dominant features are no real problem** as they can be freely chosen
- Allows for both **adding features as well as removing them**
- Allows more **for integrating complex scenarios** into the conjoint
- Can be used for **compensatory and non compensatory approaches**
- Still a **fairly simple exercise** with a **short interview** process
- Allows for i**dentifying individual feature take-up** and **best feature combinations**

Conjoint analysis – Process

MP3 devices

The purpose of the conjoint analysis is to isolate the value to three devices – basic MP3 player, phone and tablet – of playing music copied from CD. Our approach was to use a technique known as 'adaptive menu based conjoint'

Willingness-to-accept (WTA) framework

The study adopts a willingness-to-accept (WTA) framework for three of the key attributes (copy music from CDs; play music from iTunes; play videos, radio, and podcasts) and a willingness-to-pay (WTP) approach for the MP3 brand (premium brand instead of less well known brand).

By running several iterations of this question, with different price points for each identified attribute, the specific value of each attribute can ultimately be revealed for each individual respondent.

When all of the results are taken into consideration, a mean value can be derived for each of the attributes.

Assuming you are about to buy a new MP3 player, please first select which MP3 player you would most likely buy.
Next, we would like you to tick those functions you are not interested in having, and/or select that you would like to have an MP3 player of a premium brand.
The final price to pay for the MP3 player is shown at the bottom.

If you would not want to make changes to the MP3 player you have selected, please select "I would not change the MP3 player".

(Task 1 of 12)

Small capacity MP3 player 400 to 800 songs 2 to 4 GB Less well-known brand	**Mid-range MP3 player** 1600 to 3200 songs 8 to 16 GB Less well-known brand	**Top-end MP3 player** 8000 to 64000 songs 32 to 160 GB Less well-known brand
Base price: £52.00	Base price: £130.00	Base price: £260.00
☑ - £12.00 Cannot play music copied from CDs	☐ - £7.00 Cannot play music copied from CDs	☐ - £70.50 Cannot play music copied from CDs
☐ - £5.00 Cannot play music from iTunes or similar	☐ - £4.00 Cannot play music from iTunes or similar	☐ - £60.00 Cannot play music from iTunes or similar
☐ - £7.00 Cannot play videos, radio, podcasts	☐ - £15.00 Cannot play videos, radio, podcasts	☐ - £23.50 Cannot play videos, radio, podcasts
☑ + £5.50 Premium for brand I know/ trust (e.g. Apple, Samsung, ...)	☐ + £2.00 Premium for brand I know/ trust (e.g. Apple, Samsung, ...)	☐ + £17.00 Premium for brand I know/ trust (e.g. Apple, Samsung, ...)
☐ I would not change the MP3 player	☐ I would not change the MP3 player	☐ I would not change the MP3 player
FINAL PRICE: £45.50	**FINAL PRICE: £130.00**	**FINAL PRICE: £260.00**

Conjoint analysis – Process

Phones

The phone conjoint provided a range of features for respondents to select from and value

Inexpensive Feature Phone MP3 enabled Less well-known brand		Lower-end Smart Phone MP3 enabled Less well-known brand		Higher-end Smart Phone MP3 enabled Less well-known brand	
Actual base price: £106.00		Actual base price: £280.00		Actual base price: £600.00	
☐ Cannot play music copied from CDs	- £7.50	☐ Cannot play music copied from CDs	- £30.00	☐ Cannot play music copied from CDs	- £4.00
☐ Cannot play music from iTunes or similar	- £4.25	☐ Cannot play music from iTunes or similar	- £30.00	☐ Cannot play music from iTunes or similar	- £32.00
☐ Cannot play videos, radio, podcasts	- £7.00	☑ Cannot play videos, radio, podcasts	- £6.50	☐ Cannot play videos, radio, podcasts	- £4.00
☐ Cannot stream music (e.g. Spotify or similar)	- £3.00	☐ Cannot stream music (e.g. Spotify or similar)	- £11.00	☐ Cannot stream music (e.g. Spotify or similar)	- £4.00
☐ No camera	- £5.00	☐ No camera	- £17.50	☐ No camera	- £20.00
☐ No access to games/ ebooks	- £1.00	☐ No access to games/ ebooks	- £6.50	☐ No access to games/ ebooks	- £31.00
☐ No mobile internet (apps, email, web surfing, social networking, ...)	- £17.50	☑ No mobile internet (apps, email, web surfing, social networking, ...)	- £14.00	☐ No mobile internet (apps, email, web surfing, social networking, ...)	- £52.00
☐ Premium for brand I know/ trust (e.g. Apple, Samsung, ...)	+ £9.50	☐ Premium for brand I know/ trust (e.g. Apple, Samsung, ...)	+ £30.50	☐ Premium for brand I know/ trust (e.g. Apple, Samsung, ...)	+ £4.00
☐ I would not change the mobile phone		☐ I would not change the mobile phone		☐ I would not change the mobile phone	
FINAL ACTUAL PRICE: £106.00		**FINAL ACTUAL PRICE: £259.50**		**FINAL ACTUAL PRICE: £600.00**	

Conjoint analysis – Process

Tablets

As with the MP3 player and phone conjoint analyses, the tablet analysis isolated the value of features of the device

Please assume you are about to buy a new tablet on which you want to listen to music.
From the list below, please tick those functions you are not interested in having at the indicated price, and/or select that you would like to pay more for a premium branded tablet.
The final price to pay for the tablet is shown at the bottom.

If you would not want to make changes to the tablet, please select "I would not change the tablet".

(Task 1 of 12)

Tablet
Basic computer
32 GB
MP3 enabled
Less well-known brand

Base price: £536.00

☐ Cannot play music copied from CDs	- £18.25
☐ Cannot play music from iTunes or similar	- £14.25
☐ Cannot play videos, radio, podcasts	- £14.25
☐ Cannot stream music (e.g. Spotify or similar)	- £17.50
☐ No camera	- £25.50
☐ No access to games/ ebooks	- £25.50
☐ No mobile internet (apps, email, web surfing, social networking, ...)	- £104.00
☐ Premium for brand I know/ trust (e.g. Apple, Sony, Samsung, ...)	+ £25.50
☐ I would not change the tablet	

FINAL PRICE: £536.00

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Conjoint analysis – Findings

Headlines from the MP3 player conjoint analysis

Our research showed that there was minimal variation in terms of desired features across the range of MP3 devices, and that 'playing music copied from CDs' was far and away the feature least often removed by respondents (14% only)

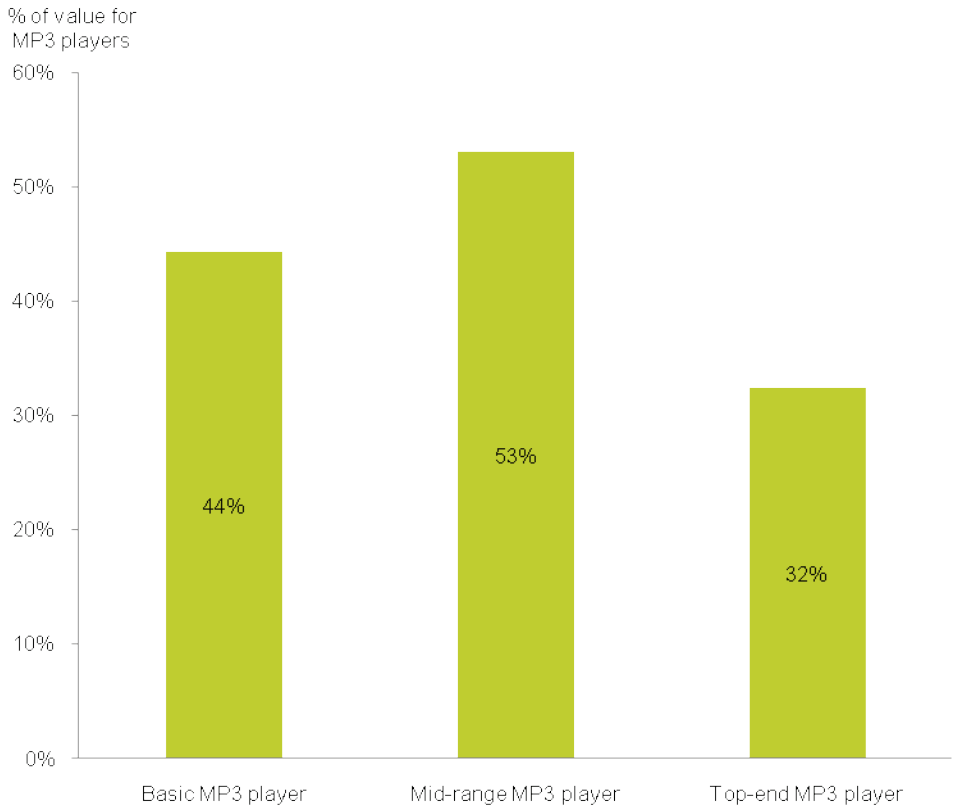
- Basic and mid-range MP3 players were the most popular devices selected by survey respondents (39.1% and 41.8% respectively compared with 19.1% for the Top-end, high capacity MP3 player)
- There was little or no difference between the three types of MP3 players in terms of features added or removed – the utility or value of a feature was broadly similar across all three devices
- No changes were made to the standard device offered for approximately a third of the devices shown
- "Playing music copied from CDs" was the feature least often removed by respondents
- This feature was only removed from 14% of the MP3 scenarios shown (i.e. for 86% of the devices this feature was kept). For the more basic device, significantly more people would remove the facility to play music downloaded from iTunes, than being able to play music copied from CDs
- The most removed feature was the ability to play videos and podcasts (33% of responses)
- The majority of people don't want a premium brand - this was added as a feature in approximately 40% of responses, and added fewer times than any of the other features removed (and this was especially the case for the lower-end, more basic MP3 devices)

Conjoint analysis – Findings

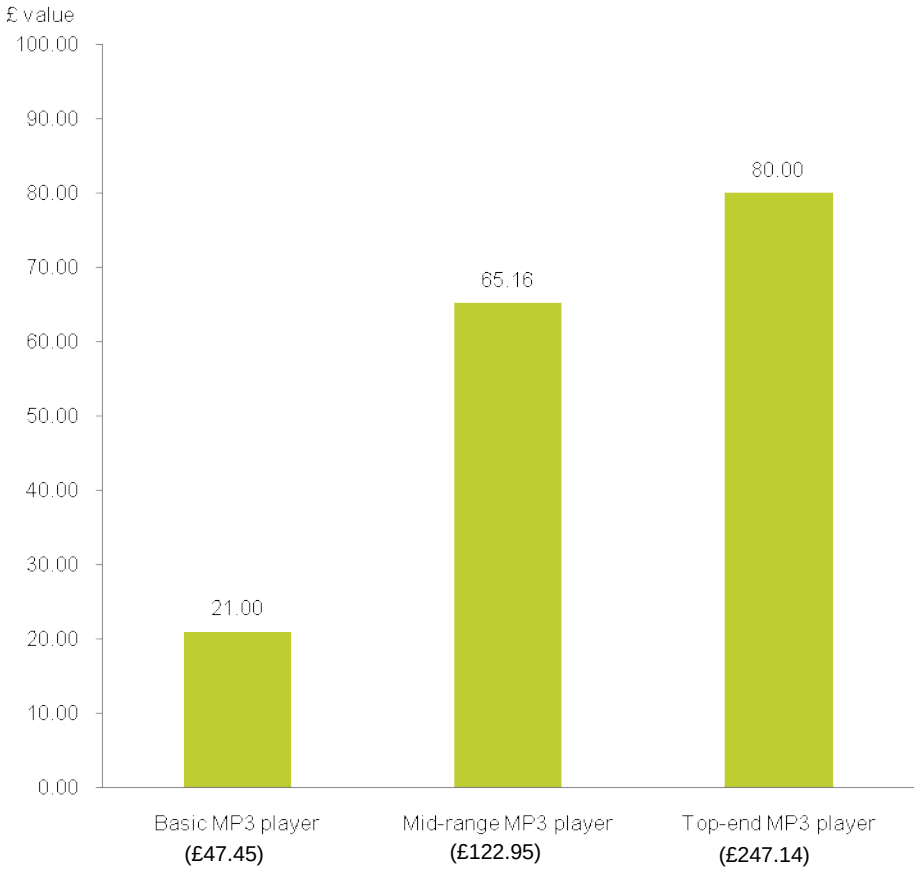
Value of the ability to copy music from CD for a range of MP3 players

The value to each type of device for the ability to copy music from CD ranges from 44% for basic, to 32% for top-end, and 53% for mid-range MP3 players. This provides a range based on device value from £21.00 for basic to £80.00 for top-end

Proportion of MP3 player value of the ability to copy music from CD for a range of MP3 players



Actual value of the ability to copy music from CD for a range of MP3 players



Source: Oliver & Ohlbaum analysis, Fly Research, n=501

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Conjoint analysis – Findings

Headlines from the phones conjoint analysis

Our research showed that there was strong variation in terms of desired features across the range of phones with feature phone buyers seeking a chap basic device and smartphone users a feature rich phone

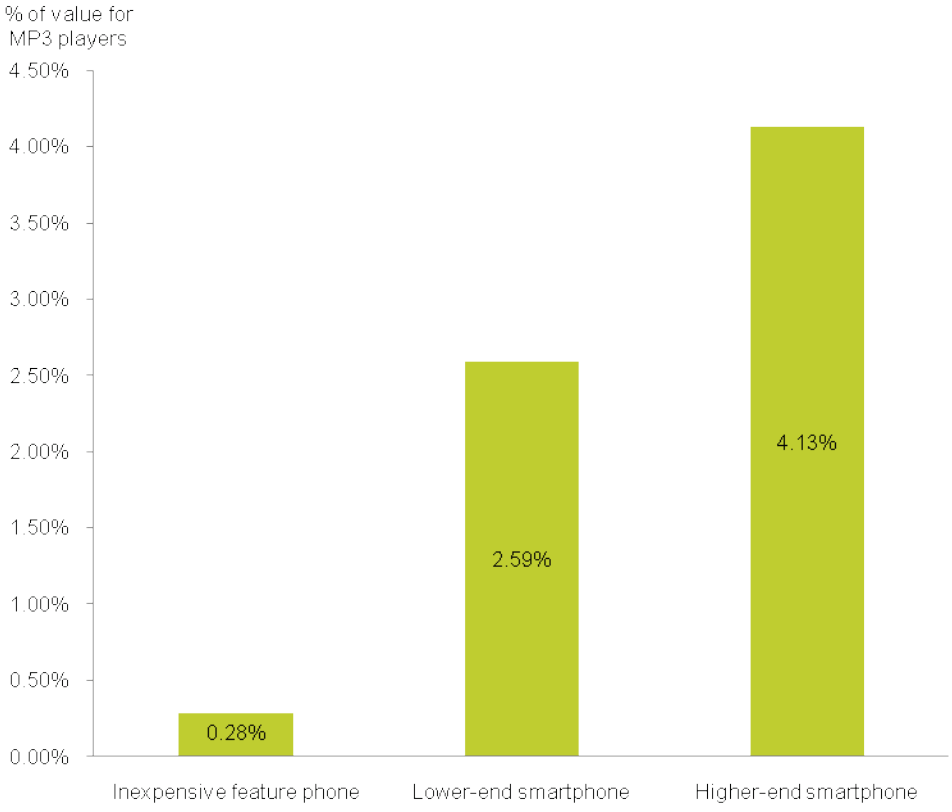
- The lower-end smart phone is selected most often (39.3% versus 28.7% for the cheaper feature phone – and 32.0% for the expensive, high-end phone)
- The cheaper the phone, the more often features are removed. Consumers choosing the least expensive phone, want to make it even cheaper by removing more features (81.9% of respondents) because they want a basic phone that makes/receives calls/texts
- Conversely, buyers of high end smart-phones are less likely to remove features, or in other words attach more value to the features of the phone, even if the base price is already high
- Like tablets, mobile internet was the most important feature for high-end phones and music ranks in the middle-ground. However the feature was removed more on phones than any type of MP3 player or tablet
- The more expensive and sophisticated a phone becomes, the more important the facility of using the device to listen to any music it becomes. Playing music from CDs is most removed for the cheap smart phones (32%) and least removed for the most expensive smart phones (21%)

Conjoint analysis – Findings

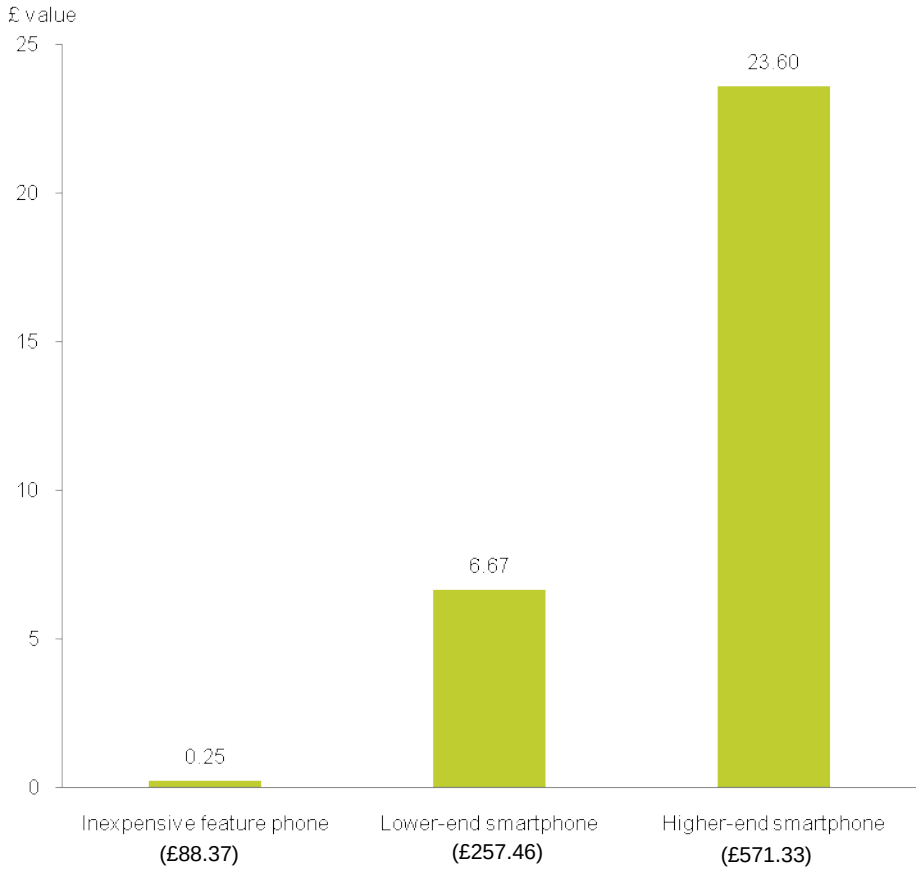
Value of the ability to copy music from CD for a range of phones

The value to each type of device for the ability to copy music from CD ranges from 0.28% for the most basic, to 4.13% for a high-end smartphone. In terms of value, this provides a range between £0.25 for basic and £23.60 for higher-end phones

Proportion of mobile phone value of the ability to copy music from CD for a range of mobile phones



Actual value of the ability to copy music from CD for a range of mobile phones



Source: Oliver & Ohlbaum analysis, Fly Research, n=519

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Conjoint analysis – Findings

Headlines from the tablet conjoint analysis

Our research showed that copying music from CDs was a mid-range feature in terms of desirability. On tablets, consumers ascribe the most value to mobile internet and video functionality.

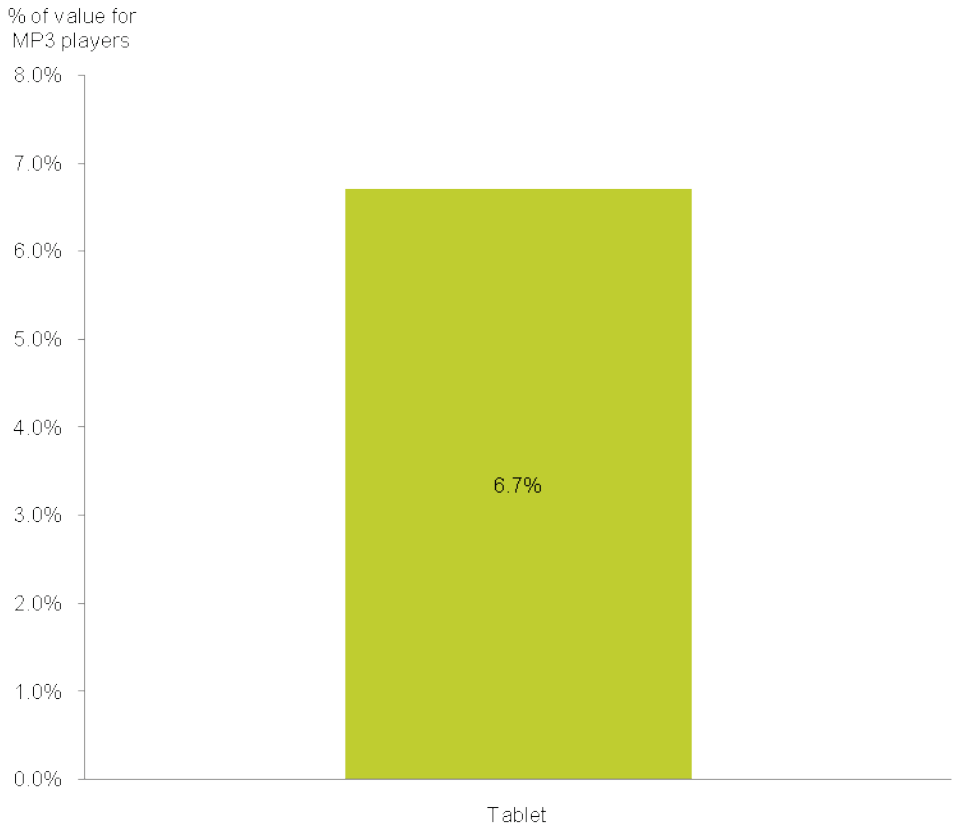
- Unlike the MP3 player, copying music from CDs is not the feature which is least removed. Mobile internet and playing videos are the most important features
- No changes were made to the standard device offered for about one quarter of responses (25.3%)
- On average, for 19.7% of the tablets that were shown, the "copying from CD" feature was removed. This was about 15% for MP3 players and between 21% and 32% for phones depending on their type
- The mid-range percentage is not a surprise as music is an important part of tablets but not an essential feature
- The camera is the most often removed (i.e. least value attached to the camera), which does make sense for a tablet product
- All features are less removed than the premium brand feature is added

Conjoint analysis – Findings

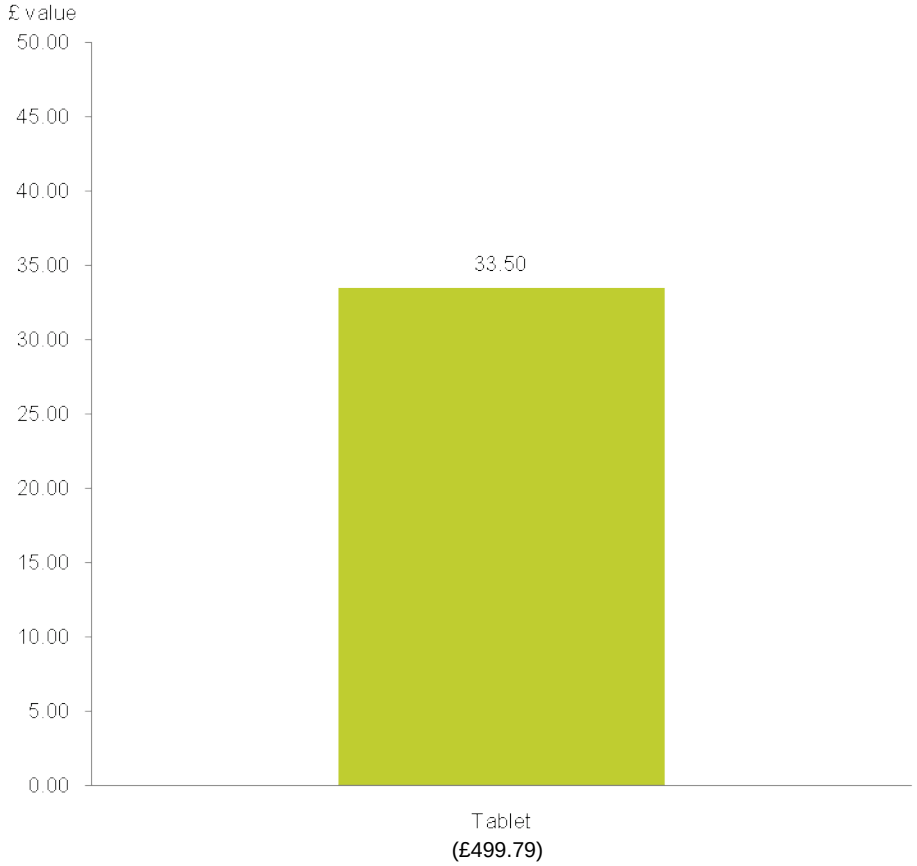
Value of the ability to copy music from CD for tablets

6.7% of the value of a tablet is derived from the ability to listen to music from copied CDs. At the £499.79 price consumers indicated they were willing to pay this equates to £33.50 ascribed to the function

Proportion of tablet value of the ability to copy music from CD



Actual value of the ability to copy music from CD for a tablet



Source: Oliver & Ohlbaum analysis, Fly Research, n=570

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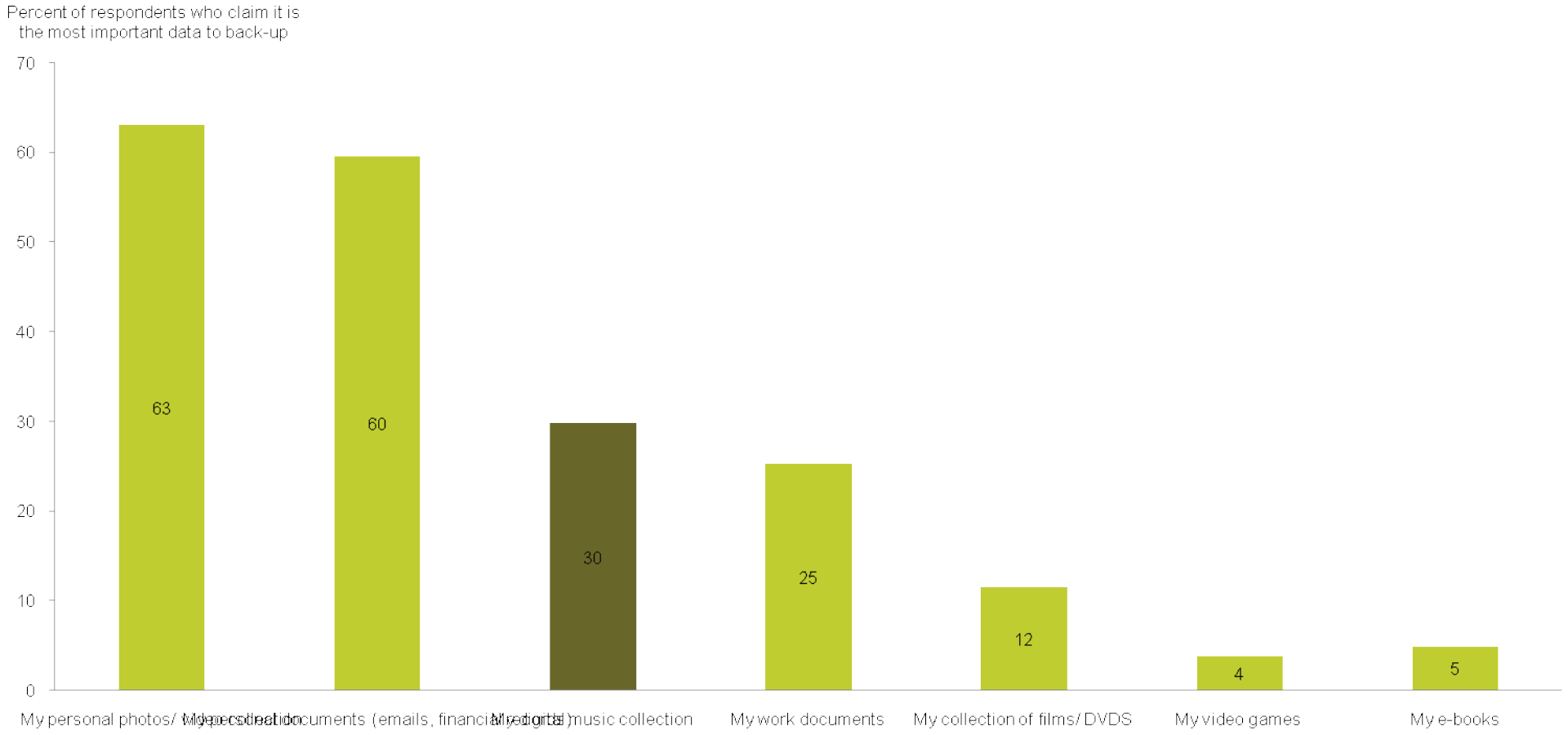
Conjoint analysis – findings

Most important data to back-up

Music comes in third place as the most important type of data to back-up. However, it is more valuable when compared to films, eBooks or video games, as 72% of respondents consider it their most valuable commercial data of any type

Respondents' most important documents or commercial data to back-up



Source: Oliver & Ohlbaum analysis, Fly research (initial research n=2,283, conjoint n=1068)