



Copyright in a Digital World - What role for a Digital Rights Agency?

1. UK Music is the umbrella organisation which represents the collective interests of the UK's commercial music industry - from artists, musicians, songwriters and composers, to record labels, music managers, music publishers, studio producers and collecting societies. The members of UK Music are: AIM, BASCA, BPI, MMF, MPA, MU, PPL, and PRS for Music.
2. **We would like to thank Government, and in particular Lord Carter, for highlighting many of the issues raised in this discussion document and for outlining their potential impact upon the music industry. Whilst recognising Government's request that 'interested parties' should act quickly, we believe, in view of the complexity and depth of some of the suggestions made, it is essential that adequate time be allowed to consider the proposals fully. Clearly, the ideas put forward in this document have considerable potential to affect dramatically the future of the copyright industries and as such any response should not be made in haste. On that basis we reserve our rights to provide further comments.**

Education

3. We welcome Government's recognition of the importance of copyright and the role it can play in bringing cultural and economic value to the UK. We particularly welcome Government's commitment to reducing the incidence of unlawful peer-to-peer file sharing and the acknowledgement that Government and ISPs share responsibility with rights holders to achieve within 2 to 3 years a significant reduction in copyright infringement as a result of peer to peer file-sharing and a change in popular attitude towards infringement.
4. Educating consumers about the illegality of their actions was highlighted in the DBERR review as a valuable step towards addressing unauthorised peer-to-peer file sharing. We are keen that education should play a wider role in communicating to young people and to end users of content the value, and source, of creativity and its contribution to society at all levels.
5. We are encouraged by Government's focus on education, and their recognition, both within this paper and the DBERR consultation, that they need to devote substantial resources in this area and would highlight the work that the industry is already undertaking on education and awareness. (British Music Rights' Respect the Value of Music Campaign; CREATE principles for the future: tools for innovation, enterprise and reward in the 21st century; UK Music teaching resources such as www.soundrights.org.uk; IFPI pro-music initiative on legitimate digital services).

The Digital Ecosystem

6. We further welcome Government's recognition that without intervention to deal with illegal filesharing 'legitimate business will struggle to survive, let alone grow'. This has been the message from many sectors of the music industry in many different forums for a number of years.
7. The driving force for a Digital Rights Agency consequentially arose from the urgent need to find a way of reducing illicit peer-to-peer file sharing or to find a way to monetise the enormous usage of content accessed and shared across various platforms, including internet, mobile. There is broad agreement between music right holders, and the MOU discussions confirm this, that a co-regulatory solution is the ideal.
8. Co-regulation requires underlying legislation together with a Code of Practice to flesh out the detailed provisions, as is acknowledged in the Digital Rights Agency document. We agree that Ofcom is best placed to facilitate or impose a Code of Practice but we remain unconvinced of the need for an entirely separate body to manage that Code, with all the costs associated.

Additional functions for the Digital Rights Agency

9. Since the idea for a Digital Rights Agency was first mooted, a number of additional potential functions have been added. These are:
 - Voluntary register
 - Rights clearance
 - Industry forum
 - Dispute resolution
 - Orphan Works
 - Format Shifting

We have made the assumption that the Government is not seriously proposing that all copyright holders should effectively re-register their works, when this has already been done via their collecting societies. To create a Rights Agency with the enormous amount of data required across the creative industries would carry an enormous cost (much greater than the figures mooted in the paper) and also a very long time-line. Both, Government and industry realise that time is not on the side of the survival of Britain's creative industries.

IN MORE DETAIL:

10. All of these may be valid issues which are being, or should be addressed. However, they can be resolved through existing structures and mechanisms, rather than by creating new bodies. Furthermore those existing structures and mechanisms are not confined to the UK, reflecting the global reach of the creative industries. More troubling is the expectation that the creative industries should bear a proportion of the considerable costs of running the Digital Rights Agency in addition to the structures and mechanisms they already provide.
11. The document rightly highlights the need for a database for copyrights to facilitate rights clearance and payments. The music industry has developed that facility over a number of years for precisely that reason.

The PPL Repertoire Database holds metadata on 4.3m recordings and is updated every day with new releases. PRS for Music holds a similar database of 10m musical works with information on composers, lyricists and publishers. The two are linked on a day-to-day basis through electronic feeds. UK Music opposes the introduction of a system of voluntary registration because it duplicates existing systems and will reintroduce an undemocratic two tiered approach to copyright which has been abandoned on international level in 1908.

12. Commercial imperatives have driven the development of now established standard measures to facilitate rights clearance, such as DDEX, ISRC, ISWC and ISAN on an international level. All these developments have involved a considerable degree of cross industry co-operation and investment.
13. The music industry has further developed tried and tested mechanisms such as blanket licensing that are increasingly capable of overcoming obstacles in the digital world. These mechanisms are not yet as seamless as we would want them to be but we are developing solutions; we will present some of these solutions in further discussions on the Digital Britain.
14. Licensing is an infinitely adaptable tool for ensuring that new services operate on a legal footing whilst delivering a return to creators. We are aware that there can be complexities in the licensing process, but PRS for Music's Joint Online Licence (that licenses both mechanical and performing rights in one transaction) is just one example of how licences can provide innovative and comprehensive solutions. Licensing needs more time to fulfil its potential, and we cannot stress strongly enough that there has to be a dispute resolution procedure to ensure that rights users acknowledge that use of content must be paid for.
15. Orphan works are often cited as one instance where the current legal framework is not sufficient. The issue of orphan works rarely occurs in the music industry because of the comprehensive databases available through the relevant collecting societies. However, we support the proposal by the British Copyright Council put forward to the IPO in November 2008. The British Copyright Council has proposed a licensing solution, whereby, following an unsuccessful diligent search for the right holder, the use of an orphan work would be legitimated by adapting already existing provisions of the UK Copyright Act,. A system based on collective management would provide the means of obtaining the necessary licences, in ways which consider the interests of creators, right holders, and users, without upsetting the existing system.
16. In our response to the consultation, "Taking Forward the Gowers Review of Intellectual Property -Proposed Changes to Copyright Exceptions" (in April 2008), we put forward a detailed proposal which would enable consumers to "formatshift" whilst ensuring that right holders are remunerated. The proposal would enable consumers who have bought a CD to then copy that music onto their iPod. Our proposal for an exception subject to a licence is based on already existing provisions of the UK Copyright Act; it also complies with mandatory European legislation.
17. We also remain to be convinced about the extent of the actual problems which copyright poses; many aspects of the licensing of rights concern commercial negotiations in a business to business relationship, and not individual consumers and citizens.

We expect Government to undertake an impact assessment that fully considers and highlights any real barriers to creativity created by copyright.

18. UK Music recognises the value of having a forum in which rights holders, creators and users can meet and develop better understanding of each others' needs. This is already taking place between ISPs and the music industry through the MOU process which could be broadened to include other relevant stakeholders in the future. Should Government wish to pursue this throughout the creative industries we would be happy to offer such a space as well as best practice and lessons learned.
19. We all share a desire for inexpensive dispute resolution. The legitimate comments on the complexities of dispute resolution would no longer arise if Government had implemented the recommendations on the reform of the Copyright Tribunal put forward by the IPO in August 2007. There are means to fix problems without the creation of a brand new body.

The supporting role of Ofcom

20. We welcome the co-regulatory approach, as preferred in BERR's P2P review, but we question the need for a new body when there are existing bodies, such as Ofcom, who already operate in the digital space and are well positioned to take on the responsibility without the additional sunk costs of creating a new entity. In our view Ofcom is best placed to be the independent regulator in the process addressing P2P file sharing. Indeed, Annex B sets out existing rules that demonstrate their capability to do this job.
21. Ofcom have already been building the relevant knowledge and expertise in this area through their oversight of the current discussions, e.g. in the Working Group discussions following the DBERR Consultation on legislative options to address illicit P2P file-sharing. There seems little need for the involvement of a newly created agency. We reserve our further comments on this proposal for when Government publishes the additional formal consultation taking forward Action 13 of the Digital Britain Interim Report. In that regard, our view is that Government needs to act comprehensively to deliver on its commitments to (a) significantly reduce online copyright infringement and (b) change popular attitude towards it – or risk reinforcing an attitude that such infringement is acceptable behaviour with little consequence.
22. We look forward to working closely with Government to ensure that our collective goals and shared ambitions are met and that copyright, and most importantly the value it represents, is equipped and allowed to continue to bring value to the UK economy for many years to come.

UK Music
www.ukmusic.org

The members of UK Music are: Association of Independent Music (AIM), British Academy of Songwriters, Composers and Authors (BASCA), BPI (British recorded music industry), Music Managers Forum (MMF), Music Publishers Association (MPA), Musicians Union (MU), Phonographic Performance limited (PPL), and PRS for Music.

The Music Managers Forum, representing music managers in the UK, have decided not to sign up to this position paper; they will present a separate paper on the role of a Digital Rights Agency.