



- Public consultation on the role of publishers in the copyright value chain
A new Publishers right
MPA Group submission

(Transparency Register: 012083220153-10)

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1. On which grounds do you obtain rights for the purposes of publishing your press or other print content and licensing it?

- **transfer of rights from authors**
- **licensing of rights from authors (exclusive or non-exclusive)**
- **self-standing right under national law (e.g. author of a collective work)**
- **rights over works created by an employee in the course of employment**

Our assumption is that a new publishers right in the context of sheet music folios would only apply to notation in book form or online and would not interfere with the existing contractual and statutory mechanisms by which publishers derive their rights from composers.

For the purposes of this consultation it might be useful to explain the bases by which music publishers obtain their rights: -

1. Music publishers control copyright in musical and literary (i.e. lyrics) works directly from composers either by an assignment or a licence of rights (pursuant to Sections 90 and 92 Copyright Designs and Patents Act ('CDPA') 1988 as amended). This enables them to exploit those works on behalf of themselves and the composers. Music publishers have been licensing many diverse and innovative business models both in the physical world for over 200 years and more recently the digital marketplace. It is in the very DNA of music publishing to adapt to technological change in the normal course of its commercial operation and therefore any new publishers right should not interfere with its ability to adapt to a changing commercial environment.

Because Article 5(2)(a) of the Information Society Directive excludes sheet music, music publishers are not impacted by the CJEU decision Case 572/13 HP/ Reibel and as such are not precluded from a contractual entitlement to share in that income.

2. Most music publishers will derive revenue from printed music, whether through direct involvement in the sale or hire of scores and parts, or by licensing their copyrights to a third party. As regards public domain works, music publishers can rely on the rights in the typographical arrangements in order to justify their creative and financial investments, and of course it is often only because of the activities of music publishers that culturally important musical works which are out of copyright continue to be accessible. Accordingly, music publishers would welcome pan-European harmonisation of the rights in typographical arrangements which currently only subsist in a few member states (including the UK). This would incentivise music publishers to make more culturally important public domain musical works accessible because they could then enforce their rights throughout the European Union.
3. Further, a separate publishers right would provide an economic incentive to publish anthologies and other collections of musical works where currently no protection exists which would reward the expertise and resources required to curate such collections. In the UK, Section 8 para 2 and Section 15 CDPA 1988 provide a related right for 25 years from the year of publication of published editions. The right protects the publishers' skill and investment in typesetting and gives a new right to the publishers on works which are out of copyright. Such a right is different to the optional rights in critical scientific publications, Article 5 Term Directive.

2. Have you faced problems when licensing online uses of your press or other print content due to the fact that you were licensing or seeking to do so on the basis of rights transferred or licensed to you by authors?

- yes, often
- yes, occasionally
- hardly ever
- never
- no opinion
- not relevant

The problems faced by music publishers are not founded upon their contractual entitlement to licence their rights but rather upon their ability to protect the value of those licences in the face of competition from unlicensed exploitation. Such exploitation is based on business models founded on the artificial protections afforded to distributors by the E-Commerce Directive distorting the market and devaluing the assets.

One additional complication is the inclusion of the making available right (per Article 3 of the Information Society Directive) as part of the wider communication to the public right. The act of making available is a reproduction right in that it gives consumers continued access to a copy of the work; it should be treated as such.

3. Have you faced problems enforcing rights related to press or other print content online due to the fact that you were taking action or seeking to do so on the basis of rights transferred or licenced to you by authors?

- yes, often
- yes, occasionally
- hardly ever
- never
- no opinion
- not relevant

Complexities exist if music publisher enforce their rights because they have to prove chain of title for the rights they endeavour to enforce. Given the amount of infringements taking place in particular online this constitutes a considerable obstacle; this could be addressed in the context of the current review of the enforcement framework. These complexities are not directly linked to the transfer of the underlying rights from the composer.

Music publishers of print publications would benefit from a new publishers right in the notation; this would give them the means to protect and benefit from their financial and creative investment; in particular on a European level.

4. What would be the impact on publishers of the creation of a new neighbouring right in EU law (in particular on their ability to license and protect their content from infringements and to receive compensation for uses made under an exception)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact

- strong negative impact
- no opinion

We expect that a new publishers right which is limited to notation, i.e. the typographical arrangement, will have a positive impact on the music publishers which rely upon it without interfering with the established system of transfer or licence of the rights from composers. Such a new neighbouring right would make it easier for music publishers to enforce their rights as well as to receive compensation for their financial and creative investment. As far as compensation for exceptions is concerned we noted above that the relevant exception for reprographic copies, Article 5 (2a) Information Society Directive does not apply to sheet music. A new publishers right in the notation would thus not be subject to statutory compensation.

5. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on authors in the publishing sector such as journalists, writers, photographers, researchers (in particular on authors' contractual relationship with publishers, remuneration and the compensation they may be receiving for uses made under an exception)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

A new publishers right in the notation will not have an impact on composers; it is a separate right to the rights music publishers obtain from composers directly via transfer or license.

6. Would the creation of a neighbouring right limited to the press publishers have an impact on authors in the publishing sector (as above)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

We do not expect that the creation of a neighbouring right for press publishers will have an impact on composers but we are unable to provide information about other sectors of the publishing industry such as press publishers.

7. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on rightholders other than authors in the publishing sector?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

8. Would the creation of a neighbouring right limited to the press publishers have an impact on rightholders other than authors in the publishing sector?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- **no opinion**

A new publishers right in the notation is unlikely to have an impact on other rightholders. In our experience in the UK the rights in the typographical arrangements are separate and stand-alone rights benefitting the publisher. This is of course under the condition that such a new right does not interfere with the established system of rights transfer under the Information Society Directive.

9. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on researchers and educational or research institutions?

- strong positive impact
- modest positive impact
- **no impact**
- modest negative impact
- strong negative impact
- no opinion

No. In our experience the existing rights in typographical arrangements have not had an impact on educational institutions in the UK.

10. Would the creation of a neighbouring right limited to press publishers have an impact on researchers and educational or research institutions?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- **no opinion**

Not for the MPA to answer.

11. Would the creation of new neighbouring right covering publishers in all sectors have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press or other print content)?

- strong positive impact
- modest positive impact
- **no impact**

- modest negative impact
- strong negative impact
- no opinion

No. We don't expect that a limited neighbouring right would have an impact on online services. Legitimate online service providers will already have licensing arrangements in place with music publishers; moreover, the provision of a publishers right might help music publishers to take steps against illegitimate online service providers and in doing so support the expansion of a legitimate market. This would be to the benefit of legitimate online service providers who at the moment have to compete on the market with online service providers who have not obtained the necessary permissions.

12. Would the creation of such a neighbouring right limited to press publishers have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press content)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Not for the MPA to answer.

13. Would the creation of new neighbouring right covering publishers in all sectors have an impact on consumers/end-users/EU citizens?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

In the UK, the right in typographical arrangement has not had a direct impact on consumers/end-users/EU citizens. However, we note that such a right if available on European level incentivises the making accessible of public domain works which have not been accessible before. This would constitute a positive effect on consumers/end-users/EU citizens given that the underlying works might often be out of copyright and there would have been no incentive for music publisher to invest the production of a version of a musical work which is accessible and performable.

14. Would the creation of new neighbouring right limited to press publishers have an impact on consumers/end-users/EU citizens?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact

- modest negative impact
- strong negative impact
- no opinion

Not for the MPA to answer.

15. In those cases where publishers have been granted rights over or compensation for specific types of online uses of their content (often referred to as "ancillary rights") under Member States' law, has there been any impact on you/your activity, and if so, what?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

The question is outside the field of experience of the MPA.

16. Is there any other issue that should be considered as regards the role of publishers in the copyright value chain and the need for and/or the impact of the possible creation of a neighbouring right for publishers in EU copyright law?

We would welcome a new publishers right which only applies to notation in book form or online; thus not interfering with existing mechanisms of music publishers to obtain the rights from composers.

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The MPA Group is a founding member of UK Music and supports UK Music's response to the consultation. This document comprises the MPA Group's own supplemental responses to the consultation as the online questionnaire is not an appropriate format for all responses.

The MPA Group represents the UK music publishing sector; it consists of:

- The **Music Publishers Association** ("MPA") is the trade association representing and safeguarding the interests of the UK's music publishing industry;
- The **Mechanical-Copyright Protection Society Ltd** ("MCPS") licenses mechanical rights to music users, collects fees and distributes royalties to (a) twenty thousand, mostly unpublished, writer members and (b) six thousand five hundred publisher members who in turn represent tens of thousands of writers;
- **Printed Music Licensing Ltd** ("PMLL") licences and collects income, on behalf of over 75 music publishers, for the copying by schools of their repertoire in reproduced in sheet music form; and
- **Independent Music Publishers European Licensing** ("IMPEL") licenses and collects income on behalf of music publishers in respect of the digital mechanical rights in their Anglo American repertoire for pan-European (and wider) online activities.