



**THE RESPONSE OF THE MUSIC PUBLISHERS ASSOCIATION  
AND THE BRITISH ACADEMY OF COMPOSERS SONGWRITERS  
AND AUTHORS**

**TO THE CALL FOR EVIDENCE OF THE INDEPENDENT REVIEW  
OF INTELLECTUAL PROPERTY AND GROWTH**

**MARCH 2011**

## **ABOUT THE MPA AND BASCA**

The Music Publishers Association (MPA) is the trade association for music publishers in the UK, with over 260 members, representing nearly 4,000 catalogues, covering every genre of music. A current directory of the MPA's member companies can be found on our website at [www.mpaonline.org.uk](http://www.mpaonline.org.uk). They include all four of the UK's "major" music publishers, independent pop publishers, classical publishers, library music publishers and also printed music publishers. We estimate that our members represent around 95% of publishing activity in the UK.

Every one of our member companies is a small or medium enterprise. Many of our member companies are multi-disciplinary music companies, operating not just as music publishers but as record labels, managers, promoters, manufacturers, distributors and retailers.

The British Academy of Songwriters, Composers and Authors (BASCA) has over 2,000 members and is the professional association for music writers. BASCA 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 MPA and BASCA are members of UK Music. We have been fully involved in the UK Music response to the Independent Review of IP and Growth and are entirely supportive of the arguments and proposals set out on behalf of the UK's commercial music industry therein.

The MPA is the owner of the Mechanical Copyright Protection Society (MCPS), which is in alliance with the Performing Right Society under the PRS for Music banner. The MPA and BASCA have also contributed to and fully endorse the PRS for Music response to the Review, which focuses on the areas of licensing and collective rights management. Again, we are entirely supportive of the views expressed therein.

The MPA is a member of the British Copyright Council (BCC) and fully supports its response to the Independent Review.

We do not wish to repeat the contents of these three submissions here. We feel that it is important however that Government hears the particular perspective of music publishers and the writers and composers they represent, as distinct, for example, from the recording business which is so often conflated incorrectly with "the music industry".

## **A VERY BRIEF HISTORY OF OUR BUSINESS**

At the time of the MPA's formation in 1881, the business of music publishing consisted of the manufacture and sale of printed music, dealing directly with the customer. The advent of broadcasting in the 1920s gave rise to public performance licensing. The invention of the phonogram and the birth of the recording industry gave rise to mechanical licensing, the manufacturer of a record paying a fee to the rightsowners for the use of the works included. The first talking pictures gave rise to synchronisation licensing, whenever a copyright work is employed alongside moving images. The advent of the digital age saw these principles extended to take account of the myriad ways in which copyright music is made available online.

The history of our business then is one of successful adaptation to technological advances and growth in other sectors. We have continued to adapt during the various ages of publishing – paper, plastic and digital – in the process transforming from a business-to-consumer proposition to nowadays, primarily a business-to-business role. Throughout this transformation, the guiding principle of the music publisher has remained the same – to make available, and license the use of music whenever and wherever the demand exists.

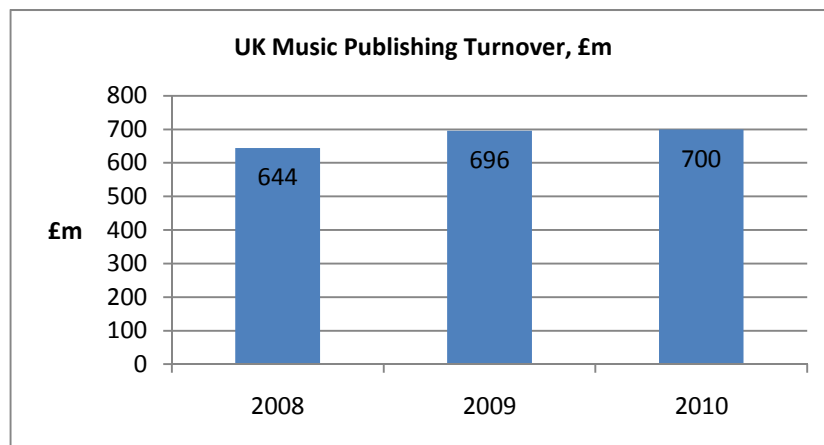
## GROWTH

The purpose of the current Review is, rightly, to encourage economic growth. The Review's Terms of Reference however risk prejudicing its outcome by characterising the present IP system as a barrier to growth.

We wish to demonstrate that the music publishing sector has exhibited significant economic growth in recent years, and through its creativity both in terms of composition and business innovation has the potential to maintain further significant growth in the future. A stable and supportive copyright regime is vital to the sector's continued success. What's more, the benefits of growth in the music writing and publishing sector, and in the wider creative industries, ripple out to provide a boost to other sectors, including in particular the information and communication technologies (ICT) sector.

The music publishing business in the UK is worth in the region of £700m. Against a difficult economic backdrop, and a challenging industry ecosystem, music publishing grew 8.7% between 2008 and 2010.

<sup>1</sup>



Underlying this overall story of growth is a more complex picture as the industry once again adapts to technological advances. Mechanical licensing remains an important source of revenue, but has shown a steady decline as sales of CDs continue to fall. Digital income has exhibited strong growth, but in terms of overall revenues has not closed the gap created by the fall in income from physical sales.

Growth in the sector has been made possible because ours is a 360 degree business model which has adapted over time to encompass a healthy mixture of revenue streams. Publishers have been particularly successful in the area of direct licensing. UK music publishing revenues from direct licensing – primarily synchronisation licensing but also including the licensing of Grand Rights, lyrics, and print – grew by 16% between 2008 and 2010. <sup>2</sup>

The ability of composers, songwriters and music publishers to continue to derive value from their works in the digital market relies upon effective enforcement of their copyright. The enormous volumes of online file sharing seriously imperil the growth of digital music revenues. It is not just publishers and writers who stand to lose from this, but also those legitimate digital music services that are competing on an uneven playing field against the very compelling prospect of free music. Reducing the level of unlicensed file-sharing is not a matter of protecting the existing business models of an outdated music industry. Rather, it is a necessary condition for the development of a sustainable digital marketplace for the benefit of entrepreneurs working in both the music industry and the digital sector.

<sup>1</sup> Source: MPA survey of members, 2011

<sup>2</sup> Source: MPA survey of members, 2011

To this end, both BASCA and the MPA support the principles of the Digital Economy Act, most significantly in making clear that internet service providers share a responsibility for creating the conditions in which the legitimate digital marketplace will thrive.

Growth in our sector is not confined to these shores. British songwriters and composers are responsible for much of the world's favourite music. The catalogues represented by UK music publishers are amongst our most successful exports.

Income collected by PRS for Music on behalf of the UK's songwriters, composers and music publishers grew by 250% in the decade from 1999 to 2009. During 2009 (the most recent figures available) international income was £167m from 155 countries globally, up 19.4% on 2008 (2008 = £140m).<sup>3</sup>

### **ABRSM PUBLISHING**

ABRSM Publishing is a small firm, of 17 employees, which is responsible for the sheet music publishing of the Associated Board of the Royal Schools of Music. Turnover has grown by 67% over the last 10 years, to a record £6.9m in 2010.

ABRSM Publishing's main business is publishing sheet music used by students studying for examinations in the UK and internationally. They have invested in foreign language versions of their publications, and now generate 48% of their total unit sales through export. Growth has also been generated by developing new products such as new types of examination and attendant publications.

Unlicensed copying is a problem for them, and can be a challenge to their international growth.

In spite of this, ABRSM Publishing sells widely in Asia; its top four markets are Hong-Kong, Malaysia, Singapore and the USA. They work with a partner in China to offer a range of their products.

Leslie East, Executive Director, ABRSM: "As a small company, it is extremely difficult and costly to contest infringement. The case to be made to prove that the copied products are not legitimate is very complex."

"We are very keen to license our products, as long as the use is legitimate. We want our copyright to be exploited as widely as possible. For example each exam is based on the syllabus, which is our copyright, but we are prepared to offer others a licence to base publications on that syllabus if they extend choice to teachers and learners."

ABRSM have invested in some digital services to help them deliver their products. Their main investment internally has been to invest in podcasts for the use of teachers to show them how to use their syllabus and products. They also invested in recordings of their repertoire for students to download, and a small selection of digital sheet music downloads.

Leslie East: "We have developed a partnership with a company called Pure Solo, they provide sheet music on screen and a recording so you can practise playing with the accompaniment to your exam piece. We are also developing a mobile phone app which could support students taking music theory exams."

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<sup>3</sup> Source: PRS for Music Financial Review, 2009

## INVESTMENT

One of the myths of the digital age is the claim that by democratising the distribution channels, the internet has fundamentally altered the relationship between creators and consumers. According to the theory of disintermediation, the creator and the consumer have been mutually empowered by their direct access to one another, without the need for the music industry to act as middleman.

The theory is demonstrably false – only a handful of successful writers or performers of the present age have achieved that success without the involvement of publishers and record labels. The few high profile examples of creators cutting out the middleman – Marillion's fan funded albums, Radiohead's experiments with alternative forms of distribution – have involved generally already well-established acts.

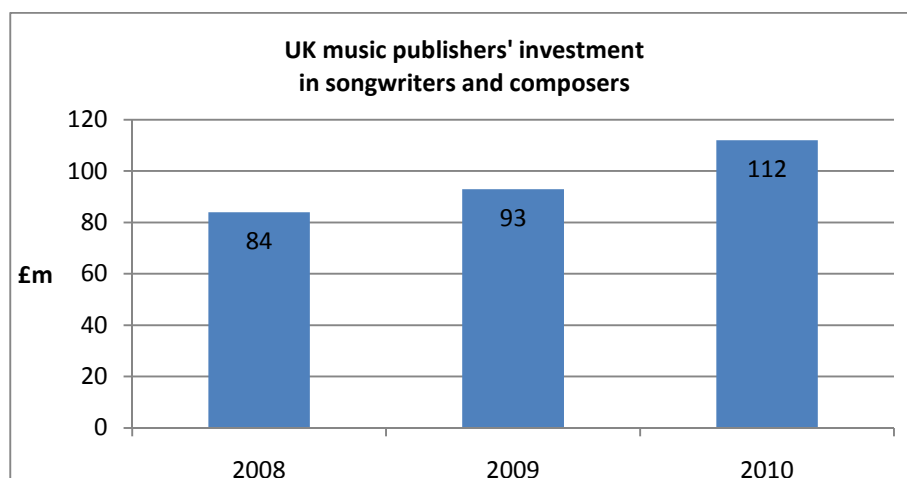
The reason is this. The most important role of the music industry remains essentially unchanged. That is, to find, nurture, fund, and develop musical talent and to deliver a finished product to the music fan.

Music publishing is not simply a matter of administering and exploiting copyrights. It is an active and creative endeavour. The music publisher seeks out great writers and composers, and then spends time, invests money and applies expertise in developing and marketing that raw material.

The role of the music publisher is integral to the very genesis of musical works. Music publishers play a vital role in the creative process generally, and specifically by way of teaming up writers with collaborators, the commissioning of new works to a specific brief in the case of library publishing, or the securing of new commissions. Music publishers are also responsible for the creation of new copyright works by way of the 100s of printed music (typographical) editions published every year.

Financial investments in songwriting and composing talent by music publishers are very substantial. In addition to the A&R costs, and the advances paid to sign new writers, publishers provide financial support in a variety of other areas – promotion of live showcases, studio time, production of recordings, manufacture of performance materials (printed scores and parts). Nor should it be forgotten that the investment made by the individual writers from their royalty income in home studios, equipment and education is considerable. Creators are often early adopters of new technology and their investment in it often drives the market.

The total amount invested by UK music publishers has grown by 33% between 2008 and 2010. Investment has increased both in absolute value and as a percentage of turnover. The £112m invested in 2010 represented 16% of total turnover, up from 13% in 2008. <sup>4</sup>



<sup>4</sup> Source: MPA survey of members, 2011

These levels of investment, creating the next generation of successful UK writers, are only sustainable if underpinned by a robust and stable copyright regime.

## **BUCKS MUSIC**

Bucks Music Group is an independent music publisher, whose core business evolved from a strong 60s and 70s catalogue of copyrights including classic songs A Whiter Shade Of Pale, Space Oddity and much loved TV themes such as Black Beauty, Upstairs Downstairs and On the Buses. Over the last decade the Bucks catalogue has developed and expanded. The roster includes Mercury Prize winner Roni Size, Oscar winning composers David Arnold and Rachel Portman, Ivor Novello winner John Lunn and international chart topper Jay Sean.

In 2010 alone Bucks Music invested in the signing of 46 writers, of which 25 of these writers were signing their first publishing deal.

In addition to the advances paid to support new writers financially Bucks invests in songwriters' long-term development in a variety of other ways. Writing camps were held in the UK, US and Holland in 2010, with a similar programme planned for 2011. Bucks also hosts showcases, funds the release of recordings, actively pursues synchronisation usages (the placement of works in film, TV and advertising) and seeks potential songwriting partnerships with other writers. The total value invested in the development of its songwriters by Bucks Music in 2010 was well in excess of half a million pounds.

Creating sustainable success requires not just considerable investment, but also a long term commitment to new talent. Bucks Music signed Professor Green as a writer in 2004, developing all aspects of his career - management, live, recording, teaming him with other writers and artists, and securing a record deal. In 2010 Professor Green's debut album *Alive Till I'm Dead* went to #2 in the UK album chart.

The success created in the UK is also exported around the world. Jay Sean, for example, became the first UK urban act to top the US Billboard Hot 100 in 2009 with debut single *Down*.

## **LICENSING**

Our mantra is simple and repetitive: the three Ls - to license, license, license. It is a poor publisher (and writer) who hides the light of music under a bushel.

Publishers benefit from a sophisticated and global licensing structure:

### **1. Directly by the publisher or sub-publisher in a foreign territory:**

- The creation, production, distribution and sale of printed sheet music, both on and offline in a variety of different formats. An important market for our print publishers is the educational market where members are continually developing new products for learning and performance in schools.
- The synchronisation of music with audio visual (films, videos games and commercials)
- The licensing of lyrics
- The licensing of the right to arrange or adapt a musical work, thereby enabling the creation of a new work
- The licensing of "grand rights" in for example an opera or ballet
- Classical publishers also hire out their performance materials for use by, for example, orchestras and other ensembles.

**2. Indirectly via the global collection society network as mandated by the publisher and composer:**

We refer the reader to the PRS for Music submission, endorsed by the MPA and BASCA, for further details. One of the areas that we are particularly enthusiastic about is the development of Pan European online licensing of music put in place by publishers, working in partnership with collection societies. These licences have realised for the first time the possibility of granting multi-territorial licences to digital music services, as called for by those services.

In this connection we were interested in question 6 of the Call for Evidence: Copyright which asks “What evidence is there that the necessity/ complexity/cost of obtaining permissions from existing rights holders constrains economic growth”. In the setting up of any business (music, coalmining or otherwise) these three elements may all have to be factored in and we comment as follows:

**“Necessity”**: yes, creators do have the right to say no, e.g. some artists/songwriters refuse to allow any digital exploitation of their work full stop. If the form of that exploitation prevents the creator from being credited for his or her work or associates the work with a cause, product or service that the creator considers vile or reprehensible, how monstrous would that be? The moral right of creators is a fundamental right which must surely survive the digital era.

**“Complexity”**: yes, there are many contributors to a musical work - part of the joy of the creative music process is collaboration in composition; there may be inefficiencies in the collective licensing infrastructures but these are being addressed (e.g. by way of the Global Repertoire Database (GRD) proposals for back office consolidation (Hubs)) and we welcome an element of legislative involvement at a European Commission level regarding the transparency and governance of collection societies. Both the GRD and Hubs are referred to more fully in the PRS for Music submission.

**“Cost”**: music has value. It therefore must by definition be an appropriate business cost to a business seeking to make money out of music. The issue is the price of music that the user is prepared (or not) to pay not the availability of a licence of that music.

## **FABER MUSIC**

Faber Music is an independent British music publisher of classical, contemporary, media, printed pop and educational music.

Faber is taking part in a knowledge transfer partnership, whereby government have supported the recruitment of a talented researcher into their business. This individual has been employed by London South Bank University, and has worked at Faber Music for two years. They are part funded by the business, and use the resources of the university for research and development.

Sarah Holcroft, Head of Digital Operations, Faber Music: “If you do an internet search for sheet music, you find thousands of guitar tab arrangements that have been uploaded by guitarists who don’t realise that they do not have permission to do this. ‘Ultimateguitar’ is a large, and now lucrative site, that allowed people to upload their guitar tabs to share online. If the work is in copyright, its illegal to do that. This site has been going for ten years, despite various attempts it has not been possible to shut the site down.”

The main problem affecting the print music industries, is that because of the dissemination of this unlicensed music online people producing legitimate arrangements struggled to obtain rights from the rightholders, who were scared to license. Also, poor quality arrangements proliferated online.

Now Faber have pioneered a scheme which enables people to make arrangements and sell them online in a legal way. They approached all the major and large independent publishers and negotiated

a single system through which all of these companies could make their writers' works available to arrangers.

Sarah Holcroft: "With the epartners scheme, we will clear the rights and create a website and online store for the arrangers. Faber is the hub controlling all of the content, and arrangers can resell their arrangements on Faber's site, as well as on their own. Faber also handle all of the royalties and transactions, so that small companies don't have to worry about it – they simply get the income from their work."

The scheme has found favour with music publishers. The moral rights of writers are always reserved, Faber can take down arrangements within 24 hours at the writers' request. This gives them confidence because it is an industry-led arrangement. Also customers know they are buying approved material, and that the songwriter will receive a royalty payment. Faber do due diligence on the content, to make sure that the arrangements are good representations of the original work by the creator of the song.

There are now 20 partners selling sheet music online through the scheme, and they have also produced sites for individual songwriters. For example, there is now a sheet music download stores for bands like Muse, Queen, Elbow, and even one for Classic FM.

Fans can buy individual songs from the site, and know that they are getting the correct arrangements endorsed by the group.

## **IN CONCLUSION AND BY WAY OF RECOMMENDATION**

Dear Professor Hargreaves,

This is a review of IP and Growth but for us IP is only part of the picture. Music publishers on behalf of their writers and composers have been in the growth, innovation and licensing business for about 500 years since the invention of the printing press – guided by Kipling along the way we have met triumph and disaster but we have treated those two imposters just the same. We believe it would have been mutually beneficial for us to have had an opportunity to explain and reveal to you personally the magic and strength of our business but we appreciate that you are subject to a tight timetable – imposed, we consider, unnecessarily for you and for us.

Please consider the following in deliberating your recommendations:

### **1. THE SUPREMACY OF THE MUSICAL WORK**

Without the poetry of the song broadband pipes can merely dream of consumers.

### **2. EDUCATION & CULTURAL**

Music publishers and writers are very engaged with the musical education of young Britons. We supply tools for the creation and performance of music by young people. We fully support the recommendations of the Henley Review.

Without composers to write, and music publishers to publish, promote and distribute music, the professional and amateur musicians who contribute so much to the cultural life of this country would be playing from empty music stands.

The creation of music may lead to growth but not just economic growth - personal, social and cultural as well.

### **3. WHAT THE GOVERNMENT CAN DO**



### **3.1 National statistics and measuring the value of the creative industries:**

We know the UK's creative industries are world beating but we are not able to measure them. Can we do something about this please?

How are we to measure how economic growth has been stimulated in the music publishing or any other sector as a result of any proposals you put forward, especially if the measurement of copyright in the national accounts (ONS) isn't actually truly reflective of the contribution it currently makes to the economy; and will you be inclined to suggest to Government that an impact assessment be conducted before any policy suggestions are implemented, just so we can ensure that any outcomes are as desirable as possible for all parties affected?

### **3.2 Creative Industries Cabinet Committee**

We recommend the establishment of a high level cross government body to drive and deliver all government policy relating to the Creative industries. This proposal and the need for a more structures approach from government (most recently articulated in UK Music recommendations in "Liberating Creativity") has recently been recognised by the DBIS Select Committee which recommended the establishment of an Industrial Council for the Creative Industries.

### **3.3 IPO**

Given the avowed importance of our creative industries, is the IPO fit for purpose? What happened to SABIP - it had such potential as a strategic think tank for our industries - it was opened with a fanfare and then closed. The music writing and publishing community needs, the country needs, such a body.

### **3.4 Access to finance for publishers**

We believe access to finance is a problem for businesses whose stock in trade is IP and we urge the Government to put pressure on banks to be more responsive, informed and entrepreneurial in this area. This issue is linked to the manner in which we are able to protect our musical works in the marketplace. What investor in goods would invest in a business in competition with a market where the same goods are available for free?

### **3.5 Enforcement**

Effective enforcement of IP is crucial to continued growth in what is already a successful sector. Government must support the UK's world leading creative industries. The Digital Economy Act is in the doldrums and yet we feel that the UK government should be in the vanguard of pushing the EU to adopt clear provisions that encourage and ultimately may require ISPs to cooperate in reducing online infringement so that all – music publishers, other rights owners, digital service providers and consumers – can benefit from the growth of a licensed digital market.

### **3.6 Gowers**

There is unfinished business here. For example, as regards orphan works, this is not an issue so much for us as the vast bulk of music will have been registered with one or more of our collection societies but we have supported all along the proposal put forward by the British Copyright Council.

## **4 LICENSING**

### **4.1 Regulation**

In a developing, changing, dynamic marketplace we urge the government to apply a light touch to regulation. We believe the government has a real and valuable role to play in bringing various parties to the table. In the varied patchwork quilt of licensing there are areas which need attention but an example of good practice is the initiative of the DCMS (Vaizey) to bring ISPS, DSPs and rights owners together to discuss the issues of licensing and what practical measures may be taken to reduce unauthorised file sharing and downloading. Government engagement is welcomed to push back against the intrusive and blunt force of Competition Law which can be a barrier to collaboration in the development and roll out of services.

#### **4.2 Greater collaboration**

We have a very proactive approach to licensing and will continue to work with our colleagues within UK Music to explore licensing opportunities that bring value to rights owners and users and customers. For example we will encourage more collaborative licensing by PRS for Music and PPL.

#### **4.3 Non disclosure agreements [NDAs]**

In various licensing deals that are struck by digital music service providers they insist on rights owners signing NDAs. This inhibits the ability of rights owners and their collecting societies to operate transparently. What steps can be taken to stop this coercion?

#### **4.4 The digital market**

Neither music publishers nor writers are in favour of a regime of compulsory statutory royalty rates - the market is developing and we believe that market forces should prevail but always subject in the case of collective rights management to the ultimate determination by the Copyright Tribunal; we will continue to engage with and respond to new business opportunities and business models (and in parenthesis we confirm that we are very supportive of the Technology Strategy Board) conscious of the inevitable and immutable law of nature that some businesses will succeed and some will not, some will grab the public's attention and purse and others, no less worthy, will fail for myriad reasons.

#### **4.5 Format shifting**

We refer in our UK Music Submission to our Format shifting proposal devised partly in response to Gowers but more in light of the fact that it was a licensing solution to enable format shifting to be authorised in return for fees to be paid to rights owners in the same way that they are to our competitors and colleagues in most of the rest of Europe. Our proposal was submitted to government by our Music Business Group in 2008, the forerunner to UK Music but we have not had a reply.

#### **4.6 "Fair use"**

These two words have been repeated a 100,000 times and more since the announcement of the Review. It is not at all clear to us how importing this provision into the UK would stimulate economic growth, save for members of the Law Society.

#### **4.7 The "freedom" of the internet**

We take comfort in the judgment of Mr Justice Peter Charleton in the Dublin High Court who, whilst reviewing the settlement in the case of EMI v Eircom pointed out that the internet is merely one communication tool of many, and not "an amorphous extraterrestrial body with an entitlement to norms that run counter to the fundamental principles of human rights".

We, as publishers and songwriters, do not see music as mere content, as a widget, to be accessed, compressed and shoved down pipes. Were Sir Peter Maxwell Davis, as Master of the Queen's Music, to compose a special piece of music for the occasion of the royal wedding this year, is he and indeed Her Majesty not permitted to exercise their "fundamental human right" to determine how and when such music be first performed?

Yours sincerely,

Stephen Navin  
Chief Executive, MPA

Patrick Rackow  
CEO, BASCA