



MUSIC PUBLISHERS ASSOCIATION

RESPONSE TO THE IPO CONSULTATION ON COPYRIGHT

21 MARCH 2012

MUSIC PUBLISHERS ASSOCIATION (“MPA”): RESPONSE TO THE IPO CONSULTATION ON COPYRIGHT

EXECUTIVE SUMMARY

1. We accept and in some cases welcome a number of Government’s proposals for changing UK copyright law. We are, however, concerned by the general approach taken in the consultation. The evidence base for many of the proposals is flawed and often cites copyright as a barrier to growth, without the acknowledgement that copyright provides an income stream and incentive to both creators and investors in the creative industries.
2. In working through the Consultation Document, with our members and colleagues across the creative industries, we have been guided by some basic principles: we champion creativity, we uphold the rights and integrity of our composers and their works, we defend the exclusive property right that copyright gives our members and we assert that regulation and limitation (outside the norms of international convention) on our right to license is an unwarranted interference by Government in the marketplace.
3. These basic principles have informed our thinking and mean that the proposed exceptions for private copying, parody and education are of particular concern for our members. Each of these proposed exceptions cuts directly to the bone of well-established and thriving areas of the music publishing business:
 - a) **Private Copying:** The introduction of a broad private copying exception interferes in the marketplace and would have an immediate and damaging impact on the licensing activities of our members. We would support Option 1 if it is in the form of a narrowly worded exception which would allow legally purchased content to be copied from one device owned by an individual to another device owned by the same individual for their own, private use. There must also be fair compensation for the rights owner, in order to be compatible with European Law.
 - b) **Parody, Caricature and Pastiche:** The proposed exception for parody would undermine the integrity and moral rights of publishers and cut across their normal licensing activities, whether for the purpose of synchronisation or straight forward adaptation of the lyrics or musical style. Carving out an exception which meant that “parodists” would not have to pay for comic use of musical material undermines the business model of a music publisher. It is preposterous that a third party who wishes to use a musical work for a serious purpose will pay a licence fee, but for comedic effect, no fee will be due.
 - c) **Education Exceptions:** UK music publishers produce educational materials which are used throughout the world. Any widening of exceptions for educational use (in particular Options 2, 4, 5, and 6) will have an immediate impact on the ability of music publishers to invest in high quality materials for the educational market. It will inevitably damage the export market for UK educational publications and over the long term it will impact the quality of music teaching in our schools.
4. We struggle to understand how the introduction of these and a number of the other exceptions will generate the forecast levels of growth for UK Plc. We are concerned that the growth projections and cost savings put forward in the Impact Assessment are highly speculative, based on false assumptions and as a result are grossly overstated. Set against these questionable projections must be a proper consideration of the potential negative impact on our members’ existing business.

The Government must tread carefully. There is a great risk that the introduction of a number of these broad exceptions will inhibit rights holders from investing in talent and developing their businesses. They will also deprive creators of a crucial source of income.

ABOUT THE MPA:

The Music Publishers Association (“MPA”) is the trade association for music publishers in the UK, with over 270 members, representing nearly 4,000 catalogues covering every genre of music. Our members include all four of the UK’s “major” music publishers, independent pop publishers, classical publishers, production music publishers and also printed music publishers. We estimate that our members represent around 95% of publishing activity in the UK.

The vast majority of our member companies are small or medium sized enterprises. Many of our member companies are multi-disciplinary music companies, operating not just as music publishers but as record labels, managers, promoters, producers, manufacturers, distributors and retailers.

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. We shall refer to our collection society hereafter as “PRS for Music”.

SUMMARY OF MPA POSITION:

The MPA is a member of the British Copyright Council (“BCC”) and UK Music and we have contributed to and support their submissions. In addition we have contributed to and support the submission from PRS for Music. Where appropriate we have referred you to their submissions.

Referring to the Impact Assessments published by the IPO, the MPA’s positions on those proposals likely to impact music publishers are as follows:

Orphan Works: Option 1. We support the position held by UK Music, PRS for Music and BCC that Option 1 is acceptable, subject to certain safeguards.

Extended Collective Licensing and Codes of Conduct: We support the positions held by UK Music, PRS for Music and the BCC. We defend the exclusive property right that copyright gives our members and writers. We do not see this as obstructive regulation but as a framework to enable us to license our rights freely and without coercion, either directly or through collective rights managers and this is our approach to Extended Collective Licensing and Codes of Conduct.

Exceptions to Copyright:

Private Copying: Option 1. The introduction of a broad private copying exception would have an immediate and damaging impact on our members. We would support Option 1 if it is in the form of a narrowly worded exception which would allow legally purchased content to be copied from one device owned by an individual to another device owned by the same individual, for their own, private use. There must also be a mechanism to provide fair compensation for rights holders, in order to be compatible with European Law.

Parody, caricature and pastiche: Option 0. An exception for parody would cut across the normal licensing activities of music publishers, whether for the purpose of synchronisation or straightforward adaptation of lyrics or a musical work. We also doubt that an exception would ever be able to include both a flow of income back to the underlying rights owner and creator or adequately protect the moral rights of the creator.

Use of works for education: Option 1 is our preferred option. Option 3 is acceptable subject to the following limitations: it must be based on the existing educational exceptions, the transmission of works must be over secure networks and we must retain the ability to license out. All other options would damage both the primary sales of music publishing product and future licensing income.

Quotation and reporting current events: Option 0. Widening the exception for quotations would cut across the normal licensing activities of music publishers.

Other exceptions allowed by the Copyright Directive: We support the PRS for Music and UK Music position that licensing solutions are already in place for the proposed 'other exceptions' and that introducing exceptions would increase harm for rights owners and the cost and complexity of licensing for users.

Exceptions and contract override: Option 0. We support the BCC, PRS for Music and UK Music position that a contract override clause is likely to create greater complexity and uncertainty and lead to a reduction in innovation and choice for the consumer.

Copyright Notices: Option 0. We do not support the introduction of a Copyright Notice Service. We would, however, like to see the role of the IPO broadened to include the delivery of high level education and raising awareness of copyright.

EXCEPTIONS TO COPYRIGHT: PRIVATE COPYING

The proposed private copying exception, without fair compensation, which extends to 'cloud' services and therefore cuts to the bone of our licensing business, is of particular concern to MPA members.

UK Music has provided a full and detailed response to this proposed exception and we refer you to their submission. We also refer you to the submissions from the BCC and PRS for Music.

Preferred Option: Option 1

We would support Option 1 if it is in the form of a narrowly worded exception which would allow legally purchased content to be copied from one device owned by an individual to another device owned by the same individual for their own, private use. There must also be fair compensation for the rights holder, in order to be compatible with European Law.

EXCEPTIONS TO COPYRIGHT: PARODY, CARICATURE AND PASTICHE

Background

In 2008 the Government rejected the recommendation put forward in the Gowers Review to introduce an exception for parody in the UK. It was rejected on the grounds that the Government believed that a change would create uncertainty and prejudice rights holders.

We do not believe that either the illustrative or economic evidence (what little has been adduced) put forward in the Hargreaves Review, the Consultation Document or the Impact Assessment in any way support a move away from the stance taken by the Government in 2008. Furthermore, the illustrative examples and economic evidence used to support the case for change, throughout all the consultation documents, are flawed and contain many inaccuracies.

1. Definitions

We are concerned by the breadth of the Government's interpretation of the definition of parody, pastiche and caricature.

For our members a "true" parody should not infringe copyright. A "true" parody is an original work which pays homage to a certain style or artist but does not copy any individual or existing work in any substantial sense. "True" musical parodies are widespread. A recent example of a very successful band, relying almost entirely on parody for their work, is Flight of the Conchords, "Inner City Pressure"¹ is an obvious parody of the Pet Shop Boys and "Bowie"² is a parody of the works of David Bowie. Another example is the Hee Bee Gee Bees, who had a hit with the song "Meaningless Songs in Very High Voices"³, which parodies The Bee Gees. Flight of the Conchords and the Hee Bee Gee Bees provide perfect examples of the OED definition of parody as "an imitation of the style of a particular writer, artist or genre with deliberate exaggeration for comic effect". Both are also examples of parody being far enough removed from the original underlying work, so as not to infringe copyright.

The examples used in the consultation documents, however, indicate that the Government's interpretation of parody stretches far beyond "true" parody into the realms of copying, adaptation, sampling, synchronisation, mash ups and lyric changes. All of these activities require the consent of the rights holder if they are not to infringe copyright 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.

For the purpose of this submission, the MPA has interpreted the term "parody", as the Government has, to include copying, adaptation, sampling, synchronisation, mash ups and lyric changes. For simplification, the term "parody" will also encapsulate caricature and pastiche.

¹ <http://www.youtube.com/watch?v=7wqfcwgT0Ds>

² <http://www.youtube.com/watch?v=f4zV4pJ8MwM>

³ <http://www.youtube.com/watch?v=T-gZKRKNy4w&feature=channel>

2. Parody and Music Publishing

Copyright in the UK does not prevent the creation of parody. It simply prevents the copying of protected works. For a parody to infringe copyright it must substantially copy an existing work, and when this is the case, it should be approved by the creator. It is licensed as an adaptation of the original work, whereby all rights in and to the adaptation are vested in the copyright owner of the original work. The copyright holder will sometimes agree with the adaptor a share of the copyright and/or the related revenue.

The Consultation Document and the Impact Assessment appear to misunderstand the role of copyright in relation to licensing parodies, and as a result they completely fail to address the economic cost to the creative industries of a parody exception.

a) Synchronisation:

Synchronisation (or sync for short) is the term used in the creative industries for the setting of a musical work with visuals, including the use of music in film, television, video games or advertising.

For those involved in the creative industries, whether film production, TV production, video games or advertising agencies, the clearing of copyrights is a routine part of their business. Every time you hear music in an advert or a film, permission will have been granted by the music publisher – and importantly in most cases by the creator as well (the majority of authors have a contractual right of approval – in addition to their moral rights - over adaptations and synchronisations which includes samples, remixes and arrangements, lyric alterations, new lyric versions etc.).

The majority of music publishers have well established, efficient synchronisation departments, whose purpose is to promote both wide 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 £56.2m⁴ in 2010 or on average 8% of a publisher's income. The UK is also a successful exporter

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. Our members estimate that between 5% 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. Recent examples of parody advertising campaigns are as follows:

Case Study: Warner /Chappell Music

Song:	"Amarillo" (Sedaka/Greenfield)
Brand:	Zamaretto (liquor)
Territory:	UK
Media:	TV & Client/Agency websites
Term:	9 months
Recording:	Full re-record with lyric change featuring Tony Christie
URL:	http://www.youtube.com/watch?v=lqICARcBPk0

⁴ MPA members survey 2010

Case Study: EMI Music Publishing

Song: "Ghostbusters"
 Brand: 118 118
 Territory: UK
 Media: TV, Radio, Cinema and Internet
 Term: 1 year
 Recording: Full re-records with lyric change
 URL: <http://www.youtube.com/watch?v=LZw87CSV-o4>

Case Study: EMI Music Publishing

Song: "Flash"
 Brand: Innocent Smoothies
 Territory: UK
 Media: TV, Radio, Cinema and Internet
 Term: 1 year
 Recording: Full re-records with lyric change
 URL: http://www.youtube.com/watch?v=x_HMrOd2_QI

Case Study: EMI Music Publishing

Song: "Y.M.C.A."
 Brand: Confused.com
 Territory: UK
 Media: TV, Radio, Cinema and Internet
 Term: 1 year
 Recording: Full re-records with lyric change
 URL: http://www.youtube.com/watch?v=pPAfh_2Cdlk

b) Adaptation:

It is common practice in the music industry to authorise the copying and adaptation of existing works to enable the creation of new ones. This practice has been integral to the growth of a number of relatively new styles of music including rap and much modern dance music. Economic growth that has come from these new styles of music has not been restricted by the need to clear the use of copying (sampling).

We have found no evidence to support the assertion that the need to obtain licences to copy has restricted the growth of comedy through parody, any more than the need for a licence has restricted the growth of new music genres.

Our members estimate that between 6% - 10% of requests for adaptation of a work are for uses which could be interpreted as parody.

The following example is a typical example of a parody adaptation of a work:

Case Study: BBC

Song: “We Built This City”

Client: BBC Radio 2

Request: Lyric change for spoken word element to “We Built This City”

New Lyrics: *“I’m looking out over the UK’s Green and Pleasant Land
On another gorgeous sunny Radio 2 day
Lynne Bowles is bumper to bumper with Sally Traffic*

*It’s online and on digital,
It’s the station that rocks, the station for the nation
It’s BBC Radio 2”*

Original Lyrics: *I’m looking out over that Golden Gate Bridge
Out on another gorgeous Sunny Saturday,
not seein’ that bumper to bumper traffic,*

Don’t you remember (‘member ‘member) ...

*It’s your favorite radio station, in your favorite radio city,
The City by the Bay, the city that rocks, the city that never sleeps*

(Published by Universal Music)

c) User Generated Content:

YouTube came into existence on the basis of so-called user generated content (“UGC”) – much of which could be classed as parody. The consultation document states, “parodies have become part and parcel of online social interaction with parody works adorning Facebook walls and trending on Twitter.” In general, these sorts of parodies are rarely a problem as our members report that they do not actively scan sites such as YouTube looking for material which is infringing copyright.

There are, of course, instances when our members do seek to take down content. Take down notices tend to be issued for derogatory use of material, when an author objects to an unauthorised adaptation of their work or if a parody becomes commercially available. These instances very much support the need to protect the ‘moral rights’ of creators.

A good example of why a music publisher should retain the right to control the use of their content in the case of parody, came from one of our major publishers: last year they became aware that one of their works, Noel Coward’s “Let’s Not Be Beastly to the Germans”, had been changed to “Let’s Not Be Beastly to the Muslims”, with potentially offensive lyrical changes.

The primary concern we have in relation to UGC, is that an exception would lead to a weakening of the moral rights of creators and which will limit their ability to object to derogatory or offensive use of their content.

3. Further information on examples used by Hargreaves/IPO

There are a number of examples given in the Hargreaves Review, the Consultation Document and the Impact Assessment which point to a very broad interpretation of the term 'parody'. As we have said in the section on definitions (see above), a true parody would not infringe copyright. The examples given below all infringe copyright in some form and are all examples of normal licensing activity for a music publisher.

- a) Peter Kay's video, "Is This the Way to Amarillo", is referenced in the Impact Assessment, as a 'comedy cover version' - but it is in fact a straightforward **synchronisation**. The Peter Kay video uses Tony Christie's 1971 recording of the song written by Neil Sedaka and Howard Greenfield. Peter Kay and other actors mime a performance of the song. The owners of the musical work by Sedaka and Greenfield and the owners of Christie's sound recording were quite entitled to license the synchronisation of their works to Kay's film. In fact, in this case the synchronisation licence for the musical work was granted for free as the Peter Kay video was for charitable use.
- b) The illustration used in the Impact Assessment of 2 Live Crew's "Pretty Woman", shows that both the Government and Consumer Focus missed a crucial point. While it is true that 2 Live Crew's "Pretty Woman" was held by the US court system to be a 'fair use' parody of Roy Orbison's "Oh Pretty Woman", the underlying work does make money from the 2 Live Crew recording. This is a perfectly normal example of licensing for an **adaptation** of an original work. If an exception rather than a fair use defence had been used in this instance, the rights holders of Orbison's work would have faced a substantial loss.
- c) "Newport State of Mind" was originally posted on YouTube as a spoof of "Empire State of Mind". It is a **synchronisation** with a **lyric change**. The video was streamed millions of times, with no objections from either the publisher or the songwriters. The issue came about when the creators of "Newport State of Mind" planned to make a commercial release of the song, with which the writers disagreed. The takedown was temporary, and "Newport State of Mind", along with many other Jay-Z parodies, is still available on YouTube.

4. Financial Implications of a parody exception

Given that parody, as per the broad definition used by the Government, is just a subset of normal licensing activity, it is difficult to break out its exact economic value to UK Music Publishers. The impact, however, would certainly be felt. A major UK publisher estimates that "income generated over the past 2 or 3 years for lyric changes which may or may not parody the *song* (but where the entire advert would be classed as a parody), is estimated to be between \$500,000 to \$1,000,000, taking into account global licensing for UK copyrights only." This income stream would be severely threatened, if not lost entirely, were there to be an exception for parody.

The section of the Impact Assessment headed 'Costs', therefore completely fails to evaluate the loss to the owners of works from the loss of the ability to license the copying of their works in a parody – for the music industry licensing works for parody is a normal part of business and has been for a very long time.

5. Conclusion

Preferred Option: Option 0

As we have illustrated, the examples used by the Government in the consultation documents suggest a very broad interpretation of the term parody. As such, the proposed exception would cut across the normal licensing activities of a music publisher, whether for the purpose of synchronisation or straight forward adaptation of the lyrics or musical style. Carving out an exception which meant that “parodists” would not have to pay for comic use of musical material undermines the business model of a music publisher. It is preposterous that a third party who wishes to use a musical work for a serious purpose will pay a licence fee, but for comedic effect, no fee will be due.

Furthermore, we do not believe that a parody exception can both drive economic growth and not disadvantage the owners of the parodied work. If a parody can drive economic growth then the owners of the parodied work are entitled to a share in that growth by licensing their work. If, on the other hand, the owners of the parodied work do not lose out by being unable to licence that must be because the parody has not generated economic growth. Either way an exception for parody would be unjustified.

Questions

Q. 78 Do you agree that a parody exception could create new opportunities for economic growth?

We do not understand the basis of the growth projections used either in the original Hargreaves report or in the Impact Assessment. We refer you to the UK Music submission paragraphs 137 to 139.

Q. 79 What is the value of the market for parody works in the UK and globally?

As licensing musical works for use in parody is a subset of the normal synchronisation and adaptation activities for music publishers, it is difficult to determine the exact value of parody to the music publishing industry. Synchronisation income for UK music publishers totalled £56m in 2010. Members have estimated that between 5 – 20% of their synchronisation activity is for parody work (mainly radio and television advertising). As such, the size of the parody market in the UK for music publishers could be as large as £11.2m. This could all be lost were there to be an exception.

Q. 80 How might a parody exception impact on creators of original works and creators of parodies? What would be the costs and benefits of such an exception?

As it currently stands, if a parody copies or uses a substantial amount of an underlying work then consent is required. If the parody is acceptable to the creator, the consent is generally forthcoming as rights owners are commercially motivated to licence. Removing the creators' entitlement to license puts the money directly into the pocket of the parodist. This would, as we have illustrated above, certainly impact the licensing income for music publishers and creators.

Q. 81 When introducing an exception for parody, caricature and pastiche, will it be necessary to define these terms? If so, how should this be done?

As we have already explained there are many ways of interpreting parody. The risk of introducing a parody exception is that it will cause a mass of confusion about what is and what is not a parody, and that copiers will be able to hide behind that uncertainty. This could significantly undermine the ability of music publishers to license works for the purpose of comedic use.

A very likely outcome is increased litigation costs. Copyright litigation is a particularly complex field, practised by specialist lawyers and requiring substantial expert evidence (as in the case of 2 Live Crew's "Pretty Woman"). Such cases can run for up to 2 years and costs at trial can run into hundreds of thousands of pounds. As such in the current climate it is unlikely that rights holders would trouble the courts on defining the scope of parody. This would lead to a lengthy period of uncertainty for rights holders.

Q. 82 How should an exception for parody, caricature and pastiche be framed in order to mitigate some of the potential costs described above?

We vehemently oppose any exception for parody, caricature or pastiche as such an exception would cause significant economic harm to rights holders whilst failing to provide a flow of income back to the underlying rights holder and creator or adequately protect the moral rights of the creator.

Q.83 Would making this a fair dealing exception sufficiently minimise negative impacts to copyright owners, or would more specific measures need to be taken?

The existing fair dealing exceptions in the CDPA are a careful implementation of the possible exceptions embodied in the Berne Convention and transposed into the EU Copyright Directive. The existing fair dealing exceptions are not based on the simplistic test of commerciality that Consumer Focus's study quoted in the Impact Assessment suggests as a means of assessing fair dealing. The test that must be applied to any proposed exception must be the "Berne Three Step Test" which appears in Article 5 paragraph 5 of the EU Copyright Directive. It is entirely unclear what is proposed as a "fair dealing exception for parody, pastiche and caricature"; but it is very hard to see how a straight forward copyright exception could fail to conflict with the normal exploitation of a copyright work through licensing derivative works and how such an exception could fail to unreasonably prejudice the legitimate interests of the rights holder since it would remove the right to collect licence revenue.

Q. 84 Are you able to provide evidence of the costs and benefits of such an exception?

As explained above in "Financial implications of a parody exception", the potential negative impact of such an exception on UK music publishers could be significant.

EXCEPTIONS TO COPYRIGHT: USE OF WORKS FOR EDUCATION

1. Background

In past reviews of the copyright regime, the fragility and specialist nature of the education sector has been fully recognised and its status protected.

This has been particularly relevant for small, specialist providers of educational material. Music Publishing is a clear example of a market which would be severely damaged by the proposed broadening of copyright exceptions for schools.

For many of our printed music publishers, the provision of educational publications and related materials is at the heart of their business. These publishers produce a wide range of products, including sheet music, CDs and downloads, each one tailored to meet the wide ranging requirements a school has for music. We estimate that the value of the education market for music publishers in 2010, was in the region of £40m⁵.

A number of our members have a very significant exposure to the education market. In particular, ABRSM (the Associated Board of the Royal Schools of Music), who publish exam syllabuses 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. Other UK based publishers who rely on the music education market for a substantial proportion of their sales are Hal Leonard, Peters Edition, Music Sales and Joseph Weinberger.

The provision of music education into schools is entirely different to the provision of other compulsory subjects such as maths or english. Over 90% of music publications for education are used outside the classroom. Our members estimate that 80% of their products are used for individual or small group tuition, 15% by school choirs or bands and just 5% for classroom teaching. This very fragmented end market – with a huge number of end users with very specific requirements – demands a high level of investment in product development.

The stability of the educational market over recent years has allowed music publishers to meet the demands of the end user and invest in developing high quality products and related materials for schools. Of the £40m income UK music publishers received in 2010, they estimate that between 20 – 35% of this was reinvested in new products for the education market (i.e. investment directly associated with the development of new product, including origination, recording, design, production costs and a percentage of editorial and production staff overheads).

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.

Our members feel very strongly that any widening of the copyright exceptions for educational use will have a negative impact on the income they receive from both primary sales of product and licensing. This will damage their ability to invest in new product development. Whilst the longer term impact is difficult to quantify, it is highly likely that we would see a reduction in the range and quality of music publications and related materials, a poorer music education for our children and lower sales of UK music educational publications abroad. The effects would also ripple out to

⁵ Based on 2010 figures from 6 of the largest UK educational music publishers (ABRSM, Faber, Music Sales, Hal Leonard, Peters Edition and Joseph Weinberger).

supporting industries. It is likely that small specialist print retailers, who are valuable sources of advice to schools and already contending with the online availability of unlicensed sheet music, would also struggle to survive.

As the fourteenth (1999) edition of Copinger and Skone James on Copyright explains: *“One of the clearest examples of a strong public interest in limiting copyright is in the field of education. However, just because education is a worthy cause does not mean that some form of blanket exception to copyright should be allowed. It must be remembered that it is works made for educational purposes that will often be copied in educational establishments. A wide exemption would therefore undermine the markets for such works, so that a publisher would be unlikely to invest in their production.”*

2. Case Studies

The following case studies, from three of the largest UK educational music publishers, clearly demonstrate the breadth of material being developed for the educational market, the level of investment in developing new and innovative products and just how damaging the extension of copyright exceptions would be to this specialist area of educational publishing.

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. ABRSM also publishes educational books of general interest.

Turnover has grown by 67% over the last 10 years, to a record £6.9m in 2010. Virtually 100% of their turnover is from the education market, with 99% of their sales coming from the sale of printed music, CDs and downloads.

Every year ABRSM produces between 80 – 120 new products and invests 30-35% of its turnover each year in new product development and in keeping existing products up to date and in print. 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.

Profit from its core business is used to subsidise the less profitable and even non-profitable publications that nevertheless still have an educational value. Examples of this are their scholarly edition of The 35 Piano Sonatas of Beethoven, an edition that took ten years to produce and cost in excess of £100,000 and at the other end of the scale, CD exemplar recordings of exam pieces for oboe, bassoon, trumpet and viola, on none of which they break even but yet are seen as part of an essential offering to the education sector.

ABRSM have also 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, Executive Director, ABRSM: *“An education exception would have a devastating impact on the ability of ABRSM to continue to deliver high quality solutions to the education sector.”*

FABER MUSIC
Trinity Rock and Pop

A confidential case study to be provided under separate cover.

PETERS EDITION
Music Education Case Study: GCSE Music Classroom Resources

Background

Since the Curriculum 2000 syllabus revision, Peters Edition Ltd has published a succession of GCSE printed music and CD recording classroom resources. The inclusion of a wide range of licensed repertoire covering all the Areas of Study within the exam syllabuses, for both Edexcel and AQA, quickly established the publications as highly valuable teaching resources: teachers grappling with a new and much wider range of musical styles had legal access to correctly licensed and arranged music at the appropriate levels. The anthologies included useful teaching notes and background information on each title written by a highly regarded educational specialist, linking each work to the syllabus.

In addition practice papers were produced by Peters Edition Ltd for the Edexcel GCSE music syllabus – providing valuable guidance to both students and pupils for mock exams.

Teachers were forthcoming with their praise for the resources, indicating that they had saved them weeks of research and were particularly grateful of the assurance that the printed music and CD recording resources from which they were teaching had been licensed correctly.

Most importantly, classically trained teachers were particularly appreciative of the teaching assistance in the areas of pop and world music provided by the background notes.

Investment & Sales

This significant range of educational resources demanded a high level of financial investment from Peters Edition Ltd and expertise, especially in the areas of licensing and syllabus knowledge.

Sales of classroom packs of each title justified the high levels of investment and encouraged Peters Edition Ltd to extend the resources to include GCSE Composition Handbooks, BTEC publications and resources to further assist classically trained music teachers in the teaching of pop music.

Conclusion

Nicolas Riddle, CEO – Edition Peters Group: *“Without the high levels of sales of multiple anthologies to schools these essential resources would not have been a viable project for Peters Edition Ltd to pursue. Any photocopying exemption applied to such resources would make this type of valuable educational publishing project unrealistic in terms of investment.”*

“It is our belief that these resources have encouraged both students and teachers to reach higher levels of attainment and explore far wider areas of repertoire as a result of publication. They have also prevented large-scale abuse of copyright law by teachers photocopying from music scores published by publishing houses around the world. Within these resources teachers are able to purchase a high level educational product at viable prices, achievable within their annual budget expenditure.”

A further example of an important music provision to schools, which would be threatened by further educational exceptions, is the Government backed 'Sing Up' initiative. This is a national singing programme for all primary schools (including independents), which is designed to deliver high-quality singing provision in schools. It requires a balanced combination of expert support and access to resources.

SING UP

Music Education Case Study: Transition to paid membership scheme for primary schools, launched February 2012

Background

Sing Up's vision is to put singing at the heart of every educational setting. To date, 98% of England's 18,861 state primary schools and close to 94% of all primary schools (including independents) are Sing Up registrants.

Between 2007 and 2011, Sing Up received full funding from Government to support its work. In 2011-12, Sing Up was granted a further year of funding, on a reduced level, in order for it to develop a self-sustaining business from April 2012 onwards. As a result, from April, Sing Up will charge schools a membership fee (price dependant on school size) in return for continued access to Sing Up resources and training.

The new Sing Up model

In order for Sing Up to be sustainable beyond March 2012 it needs to generate an income. This will come from the development of new content, resources and training for schools, and the continuation of important specific aspects of its work, for example its commitment to Accessible Learning. It will 'up-sell' these and other extras to its members, including the training and magazine, but predominantly songs and song resources. There is very little margin in the training and magazine, but by selling song resources (in the form of audio tracks, sheet music and activity notes), Sing Up will generate an income in order not just to sustain itself but to invest in new opportunities for the benefit of schools, teachers and children.

Earned income will also allow Sing Up to extend the reach of its activities beyond England to other UK nations, and internationally. Sing Up's plans include the research and development of an offer to support other areas of education, particularly Secondary schools and Early Years settings. Without revenue from its principal areas of activity, it will be unable to invest in research, development and new materials for these extended educational settings. Sing Up's financial aims are for self-sufficiency, with surpluses flowing back into the project for use in Research & Development, extensions of services to other educational sectors and the deepening and broadening of the resource and training products.

It has carried out extensive market research with its users to understand school budgets and measure willingness to pay. Its system of pricing is completely in line with the market for digital sheet music and audio downloads, and is something it believes the educational market is both able and willing to bear. The sign-up rate of schools through its pre-launch phase (January-March 2012) to date has more than borne out this research in practice.

Technology

Technology has been developed by Sing Up to enable all teachers in a school to access resources purchased by the school in a legal, legitimate way, thus ensuring rights holders are properly compensated for

the use of their material, whilst minimising the possibility and potential of illegal file sharing between users.

Sing Up has also developed the technology for schools to use resources digitally – minimising the environmental impact of photocopying, and the cost for schools. This aligns closely with current best practice in teaching resources, including use of Virtual Learning Environments and Interactive Whiteboards.

Partnerships

To date, Sing Up has had the backing of nearly 50 publishers, and hundreds of composers and lyricists. It also partners with numerous other organisations delivering training, content and support for teachers and schools. Through their relationships with Sing Up, these partners all rely directly or indirectly on schools' on-going investment in printed and audio music educational resources. The proliferation within schools of printed music and audio reproduced for free resulting from an educational copying exception for music would significantly undermine the activities of such partners within schools.

Conclusion

The value of Sing Up through its 5 years to date is recognised universally by teachers, pupils, parents and politicians. Its continuation from April 2012 (post-funding) depends critically on Sing Up's ability to monetise the proven resource and training services it provides, at the heart of which are the provision of online printed and audio materials. A perception amongst the schools market that copyright materials for practical music making may be freely reproduced by users would fundamentally undermine the Sing Up financial model. Sing Up's paid-for online resources would effectively be competing with 'free', a backdrop against which it would be impossible for Sing Up to achieve long term financial sustainability.

3. "Schools Printed Music Licensing Scheme"

Under s36 of the CDPA 1988, schools are allowed to copy 1% per quarter of a given work. This allows the use of reprographic processes to make copies to help teachers deliver instruction without conflicting with the normal exploitation of the work. It also exists to allow the licensing of copying as part of the normal exploitation of the work. As Copinger and Skone James explains, "Overall.....the real importance of this section (s36),...is in providing an incentive to ensure that licences are available."

As a result, licensing has become a simple, efficient and accepted method for the distribution of specific proportions of copyright works in schools. Licensing not only enables teachers to access works and improve the provision of classroom teaching, but the process of licensing also delivers information back to the rights owner. This is absolutely key in enabling publishers to understand how their products are being used in schools, and to further improve and develop better or related product offerings.

The Music Publishers Association will be launching a "Schools Printed Music Licensing Scheme" later in 2012. For many years we have had a comprehensive code of fair practice⁶ in place, which explains to schools (amongst others) their copyright obligations when making copies of sheet music. It has always been clear, however, that schools continue to make copies of music and also arrangements of music without any licence and without asking rights owners for permission. In order to address this issue, the MPA has developed a licence that authorises schools to make copies of printed music and arrangements of musical works for use in schools. The licence has some restrictions designed to protect publishers' primary market.

⁶ <http://www.mpaonline.org.uk/content/code-fair-practice>

The licence will legitimise current practice in schools, at a reasonable cost, without either subjecting schools to a heavy burden of administration or authorising uses which damage publishers' business. The tariff will be approximately 50p per child studying music, per annum.

The scheme is projected to generate income of c. £2.5m- £3m by 2016. This income will flow back to music publishers and their writers and will enable them to continue to research, develop and invest in new products to support the vibrant culture of music in our schools and help to bring on the next generation of musicians. Importantly the licence will also allow a flow of data back to rights holders, which gives them much needed information about how their products are being used in schools.

4. Financial Implications

Creating a further education exception would of course deliver an economic upside to schools - as would asking electricity companies to provide discounted bills to schools. When balanced against the negative impact on rights users, further educational exceptions would not deliver overall economic growth for UK plc, which was the stated aim of the Hargreaves Review.

It is difficult to quantify the exact financial impact the range of proposed exceptions would have on music publishers, but it is quite clear that Options 2, 4, 5 and 6, suggested in the Impact Assessment, would disadvantage our members – whether from lost sales of primary product or from losing the ability to license into schools, either directly (our own “Schools Printed Music Licensing Scheme”) or via third parties.

Third party licensing income from educational establishments is almost entirely from the Educational Recording Agency (“ERA”). In 2011, PRS and MCPS received £700,000 in the form of distributions from “ERA”.

5. Conclusion

Preferred Option: We reject Options 2, 4, 5 and 6.

We have been heartened that the current Government has repeatedly stated that music in schools is a clear priority in education. The Henley Review has made a number of positive suggestions as to how music teaching in our schools might be improved. In November 2011, Michael Gove, commenting on the proposed ‘National Plan for Music Education’, said: *“[the] National Plan for Music Education has set out a central vision for schools, arts and education organisations to drive excellence in music education. The National Plan is clear about the importance of music: it will ensure not just that children have access to the greatest of art forms, but that they do better as a result in every subject.”*

Any widening of exceptions for educational use (in particular Options 2, 4, 5, and 6) will have an immediate impact on the ability of music publishers to deliver this vision. A reduction in income, either from sales of product or licensing income will impact the ability of music publishers to invest in high quality materials for the educational market. It will damage the export market for UK educational publications and over the long term it will impact the quality of music teaching in our schools.

In addition to this, we believe that the proposed exceptions are in contravention of the Berne Three Step Test, as embodied in the Berne Convention itself, in TRIPS and in the EU Copyright Directive which states that:

“An exception must be for certain special cases” – the proposed blanket exceptions are too wide and they are not restricted to certain special uses.

“An exception must not conflict with normal exploitation” – these exceptions may allow copies to substitute for purchased product and will also cut across normal licensing activity.

“An exception must not unreasonably prejudice the legitimate interests of the rights holders” – since these exceptions will threaten both primary sales and licensing income for rights holders, they would undoubtedly prejudice rights holders’ legitimate interests.

Option 1 would be acceptable to music publishers on the grounds that the 1% copying rule remained intact and that use of works via interactive displays is strictly limited to use within the school or the school’s intranet. Any digital provision of musical extracts must not be disseminated beyond the students directly involved. Option 3 is acceptable subject to the following limitations: it must be based on the existing educational exceptions, the transmission of works must be over secure networks and we must retain the ability to license out.

Questions

Q. 85 How should the Government extend the education exceptions to cover more types of work? Can you provide evidence of the costs and benefits of doing this?

n/a

Q. 86 Would provision of “fair dealing” exceptions for reprographic copying by education establishments provide the greater flexibility that is intended? Can you provide evidence of the costs and benefits of such an exception?

We have a number of members whose business is built upon the provision of high quality music material for the education market. On this basis we do not think it is possible to introduce a “fair dealing exception” in this context, especially since the Secretary of state has powers (which have never been exercised) to order the extension of existing licensing schemes or even to promulgate a new licensing scheme under ss137-140 of the CDPA. These powers provide the opportunity for a properly constituted enquiry to establish the need (or not) for extensions to existing schemes or for new schemes. The copyright users in the education sector have not clearly articulated the scale and nature of the problems they are facing. It cannot be right to propose a raft of copyright exceptions – with all the risks of unintended consequences that can entail – without having used the provisions in the existing law.

Q.87 What is the best way to allow the transmission of copyright works used in teaching to distance learners? What types of work should be covered under such an exception? Should on-demand as well as traditional broadcasts be covered? What would be the costs and benefits of such an exception?

Allowing the transmission of copyright works to distance learners is acceptable subject to the following limitations: it must be based on the existing educational exceptions, the transmission of works must be over secure networks and we must retain the ability to license out. We are currently looking at the possibility of extending the availability of our “Schools Printed Music Licensing Scheme” to distance learners.

Q. 88 Should these exceptions be amended so that more types of educational body can benefit from them? How should an “educational establishment” be defined? Can you provide evidence of the costs and benefits of doing this?

We fully support the position of UK Music, as follows:

“We are opposed to widening the definition of educational establishments as proposed in Option 4. 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.”

Q. 89 Is there a case for removing or restricting licensing schemes that currently apply to the educational exceptions for recording broadcasts and reprographic copying? Can you provide evidence of the costs and benefits of doing this, in particular financial implications and impacts on educational provision and incentives to creators?

Please see section 3: “Schools Printed Music Licensing Scheme”.

EXCEPTIONS TO COPYRIGHT: USE OF WORKS FOR QUOTATION AND REPORTING CURRENT EVENTS

PRS for Music has provided a full and detailed response to this section and we refer you to their submission. We also refer you to the BCC and UK Music submissions on this exception.

Preferred Option: Option 0

We are concerned that a widening of the current exception would cut across the licensing of short clips and extracts from musical works which forms a substantial and routine part of the music publishing business.

COPYRIGHT NOTICES

We support the responses made by the BCC, UK Music and PRS for Music. We do not agree with the proposed system of copyright notices.

Preferred Option: Option 0

We do not support the proposal that the IPO, as legislator, should be in a position to interpret the law. We would like to see better education from the IPO to drive greater awareness of copyright.

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