

The logo consists of the letters 'U' and 'K' in a stylized, bold, sans-serif font. The 'U' is a simple U-shape. The 'K' is composed of two parallel lines that meet at a point, creating a sense of depth and movement. The letters are dark grey with a lighter grey shadow or outline effect.

UK

UK MUSIC

Response to:

Digital Copyright Exchange (DCE) Feasibility Study: Call for Evidence

February 2012

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

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

UK Music's membership comprises of:

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies
- BASCA - British Academy of Songwriters, Composers and Authors – with over 2,000 members, BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- The BPI representing over 440 record company members
- MMF - Music Managers Forum - representing 425 managers throughout the music industry
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music
- Musicians' Union representing 30,000 musicians
- PPL is the music licensing company which, on behalf of 50,000 performers and 6,500 record companies, licences the use of recorded music in the UK
- PRS for Music is responsible for the collective licensing of rights in the musical works of 85,000 composers, songwriters and publishers and an international repertoire of 10 million songs
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector

1. UK Music is the umbrella body that represents the collective interests of the UK's commercial music industry. This submission is endorsed by all of our members with the exception of the Music Managers Forum (MMF). The MMF has submitted a response which reflects their members' views and experiences of the copyright licensing process.
2. Several of our members (BPI, PPL, PRS, MPA) have submitted individually to this call for evidence to complement the UK Music submission. These individual submissions provide more detailed information about the licensing process for the copyrights that they (or their members) own or manage.
3. UK Music does not agree with the Hargreaves hypothesis that copyright licensing in the digital age is not fit for purpose. We respectfully point out that the UK has more licensed digital services for recorded music than any other country in the world, including the United States.
4. The UK's music industry is very open and eager to consider new ways to improve copyright licensing (while maintaining the value of rights) in the digital age. The notion of an industry driven, voluntary Digital Copyright Exchange can play a significant role in increasing the efficiency of the licensing process and merits further consideration. It is in the interest of the entire music industry to make the licensing process as straight forward and simple as possible.
5. UK Music acknowledges that copyright licensing in the digital age does pose particular challenges *which the music industry has been addressing over the last decade, and is continuing to do so*. There are many reasons for this:
6. Some of these challenges are infrastructural in nature, and require the construction of complex and intricate data management systems.
7. Serious challenges arise from digital copyright infringement which have not only affected the bottom line, but has also had a bearing on commercial relationships, investment decisions, and consumer expectations.
8. Some challenges of licensing in the digital age relate to the very newness of the digital marketplace, where there are few precedents and where new ground is often being trodden for the first time. This aspect of the untried and untested, when muddied by the reality of mass copyright infringement, can make tough negotiations even tougher.
9. All copyright owners have the choice as to whether to licence the work they own directly or through a collective. This decision reflects their creative as well as their commercial judgement. There does not exist a single licensing body that can grant licences on behalf of every copyright owner, covering every type of exploitation in every territory.
10. The digitisation of copyright material has made it possible for consumers to 'play around' with copyright protected works in all manner of ways. Unsurprisingly, this poses challenges. However, more and more of these consumer activities are being addressed in the business to business negotiations between the music industry and online service providers.

Licensing solutions are the most flexible, responsive, and fair way of aligning copyright permission with usage.

11. In meetings with Mr Hooper related to this call for evidence, it has been put to us that the music industry is often singled out for being particularly difficult. Without doubt, the past decade has seen many changes and challenges with the development of new, innovative business models online. Music was the first copyright industry to feel the full effects of digitisation, and the music industry needed to understand these developments. That said, the digital market for music is now more advanced than other copyright industries by a considerable margin.
12. Finally, we would caution that the economic growth projections attributed to the creation of a Digital Copyright Exchange are fantastical. Efforts to improve efficiencies and minimise complexities are worthwhile for all parties, but they will not in and of themselves stimulate an additional £2 billion in overall economic growth. There simply is no evidence of any kind to support this.

We expand on all these points in our answers to the specific questions in the study.

SECTION ONE: THE HARGREAVES HYPOTHESIS

Hypothesis: Copyright licensing involving rights owners, rights managers, rights users and end users across the different media types, in the three defined copyright markets, is not fit for purpose in the digital age.

The licensing process and the cost of rights is expensive

13. It is extremely important to us to differentiate between the cost of the licensing process, and the cost of rights.
14. It is in everyone's interest to minimise transaction costs in the rights clearing process wherever possible. High transaction costs frustrate all parties. Copyright owners are no less exposed to transaction costs in complex negotiations than commercial users. Collective licensing can play an important role in reducing transaction costs for creators, performers and right holders as well as commercial users where appropriate.
15. A contributory factor in transactional costs is the very innovation that characterises music-based services in the online market. For instance, in 2011, the entire music business was faced with the question, posed by Apple, of the value and price of their iMatch cloud service. Negotiations were successfully concluded and this service has now been launched, offering fans yet another way to access and enjoy music and delivering royalties back to right holders. Our members are licensing such new services regularly, albeit mostly for start-ups on a less sound financial footing than Apple. It is resource intensive to cater for such a wide range of licensing requirements.
16. Music *is* valuable. Businesses wishing to use the appeal of music to attract customers are in no doubt of its value. In 2011, Apple, Amazon and Google

all launched new cloud-based strategies based around music in the US. In January 2012, levels of VC investment in music-focussed digital companies rose year-on-year by more than 26.5%.¹

17. At the same level, prospective licensees, often digital start-ups, have limited experience with licensing, and UK Music members are proactively supporting programmes that bring rights holders and the start-up community together – for instance, the IC Tomorrow initiative² operated by the Technology Strategy Board, the BPI's Innovation Panel, individual 'Sandbox' initiatives operated by EMI³ and Universal Music Group⁴ or support for 'Hack Day' events⁵. The latest IC Tomorrow initiative was announced on 10th February 2012 to "challenge start-ups and companies to develop innovative systems and services that help the exchange of licensing information between copyright holders and users in music, publishing or museums and galleries."⁶

Copyright licensing is difficult to use and difficult to access

18. We urge the Review team to take care to differentiate between *inefficiencies* in the licensing framework, which should be the focus of this review, and inherent *complexities*, which arise from all forms of commercial trading, not just creative works.
19. The licensing process can be complex for certain types of commercial exploitation, just as many commercial transactions can be, such as property transactions. Similarly, just as there are specialists who help property buyers navigate their way through the legal requirements, there are specialised lawyers and legal teams who help prospective commercial licensees navigate their way through the rights clearing process for complex types of exploitation. In fact, very often music copyright owners act as mentors and advisers to help their licensees set up the back room admin systems which make the process simpler for all parties.
20. Our members report that the greatest source of friction in the licensing process arises from uncertainty with respect to interpreting copyright law. Our members regularly experience delays in the licensing negotiations with potential licensees, as the latter often claim that they and their customers' activities benefit from exceptions to copyright when they clearly cannot (based on the letter of the law and jurisdiction).
21. There can be no other objective from taking such an approach but to delay and frustrate the conclusion of commercial negotiations. Ironically, extending the scope of copyright exceptions, as is currently being proposed by the UK Government, is likely to exacerbate this environment.
22. We are aware that some very specific uses of music are unlicensed or under-licensed; this is particularly the case when the high volume, low value nature

¹ <http://www.digitalmusicnews.com/permalink/2012/120131funding>

² <https://www.ictomorrow.co.uk/home/about>

³ <http://www.billboard.biz/bbbiz/industry/record-labels/emi-echo-nest-announce-5000-prize-contest-1005582752.story>

⁴ <http://the.echonest.com/company/press-release/13/>

⁵ <http://london.musichackday.org/2011/>

⁶ <http://www.recordoftheday.com/news-and-press/article.php?contentID=1892>

of the intended uses render the licensing process uneconomical for all parties involved (both licensors and licensees). The music industry continues to address such areas, often through collective licensing solutions. We are increasing the availability of such very specific licenses. For example, the Music Publishers Association is proposing a licensing scheme to license reprographic uses in schools via a collective licence. This licence might become operational by end of 2012 (provided the Government does not remove the ability of copyright owners to licence educational uses). Another example is the use of music from production music libraries for use in corporate presentations.

Current initiatives – repertoire databases

23. The digital marketplace is without doubt a more complicated market than the linear 'offline' world. New demands are constantly being placed on copyright owners to licence novel uses of copyright content and to support "new business models". Online services can face fewer barriers to entry than traditional businesses based on physical carriers, and are often multi-territorial in their reach. These represent exciting opportunities but represent significant challenges to the underlying licensing infrastructure.
24. Digital services can generate vast amounts of detailed information about how copyright works are being used. Many deal in micropayments of a fraction of a penny. Matching usage information to copyright owners on a global basis, across different parts of the industry, requires significant infrastructure.
25. Processing rights management information and usage, while essential, does not in itself generate additional revenue. Efficiencies to achieve cost savings are therefore highly desirable. The music industry, working with technology partners, has been investing significantly in creating digital repertoire databases that provide comprehensive and authoritative information about ownership and control of musical works and sound recordings.
26. Musical works: A working group has been established to develop a Global Repertoire Database (GRD) for musical works. The vision driving the GRD is the creation of an authoritative, open, centralised database of information providing for the first time a transparent global view of the ownership, administration and control of musical works. This tool will drive and underpin the digital market by providing users with unequivocal confirmation of where they should go to obtain licences.
27. The GRD will also help to overcome the current administrative difficulties surrounding the operation by the 26 European collecting societies of separate database systems, only a few of which are capable of properly handling multi-territory transactional licensing.
28. Availability of the repertoire of small collecting societies and unpublished writers will also be facilitated as the musical works GRD will provide these parties with a tool to register their repertoire directly for global distribution to collecting societies.
29. The GRD is not a licensing platform, but it will help facilitate business and provide a definitive source of information for music users.

30. Sound recordings: PPL, which licenses on behalf of performers and record companies, launched the PPL repertoire database of recordings in September 2010. It holds information on all the recordings that are managed by PPL, including where the music was recorded, who owns the rights to the recording and who has performed on it. The repertoire database features revolutionary data-handling capability and the ability to take online registrations from anywhere in the world. It is envisaged that data held on the PPL repertoire database of sound recordings will communicate directly with a GRD.
31. The music industry has more experience and a longer history of licensing copyright in the digital marketplace than other creative sectors. We are at the forefront of initiatives designed to bring greater efficiencies to bear and to simplify where possible. We hope this description of investment in digital databases conveys to the Review team the significant human and financial resources which the industry is investing into the infrastructure of digital licensing to make it work more efficiently.

Insufficiently transparent

32. Established tariffs by collecting societies (for instance regarding the tariffs for public houses) are subject to oversight of the Copyright Tribunal and often published on the web.
33. The question of transparency arises in relation to new services where tariffs are being negotiated between right holders and the business user wishing to offer the innovative service. Digital businesses want to offer services that distinguish them from competitors. By definition, these are new services and the value of the rights involved for new forms of exploitation have to be negotiated. Different users also have very different requirements as to which territories they wish to operate in.
34. The reality is such that every participant in licensing negotiations for innovative digital exploitation, whether licensor or licensee, faces many competitive pressures and will seek to secure an outcome that gives them a competitive advantage. A global company that enjoys market dominance in the digital landscape will make demands and seek concessions regardless of what a price guide or rate card might suggest..
35. New digital service providers typically demand NDAs, presumably to ensure that information subject to negotiation is not disclosed to their competitors.
36. UK Music appreciates that the propensity for digital businesses to insist on NDAs can have the effect of making the licensing process for digital services appear opaque. This is equally true for individual creators, performers and right holders who are not directly party to the negotiations.
37. Additionally, in order for transparency to achieve its objective, i.e. to build confidence and trust between all parties, it must apply equally to all parties. For example, copyright users and licensees should declare what uses they intend to make of music and report their actual uses in a transparent manner, to enable labels and publishers to distribute the licence fees to their contracted artists, and enable collecting societies to distribute the licence

fees collected to their individual members, on the basis of the actual use of their respective works.

Siloed within individual media types:

38. It is impossible to bypass the fact that, at the heart of every copyright-related business is the creative genius of the individual - be it an author, architect, composer or performer. Different sectors have developed, each with vastly different histories, organised around different systems, serving different audiences and users, with different infrastructures and different degrees of sophistication as to their processes and systems.
39. We envisage that a central directory, advising users of what they need, and where to go to secure the rights for different uses, would help users navigate their way around. We suggest that the Digital Copyright Exchange could and should play a significant role here. The Digital Copyright Exchange should proactively inform, educate and signpost prospective users as to what their responsibilities are in terms of respecting copyright, and signpost them to the relevant licensing authority for each type of media.
40. It should be noted that useful licensing solutions have already been developed which bring together owners of rights across the full range of works and performances included within films, television and radio programmes. The Educational Recording Agency (of which most of our members are a member) provides a good example of the way in which rights owners have come together within a forum that has facilitated licensing for the educational use of recordings of television and radio programmes within all forms of educational establishment.

Victim to a misalignment of incentives between rights owners, rights managers, rights users and end users

41. The shared commercial incentive of rights owners, rights managers, and commercial rights users is to deliver to the end user what they want, and to earn a fair return in exchange for the part they play in the chain.
42. In our experience, the biggest obstacle to the development of a fully-functioning digital marketplace, and greatest source of misalignment, is mass copyright infringement and the resultant confusion about legitimate and illegitimate offers by the potential consumer. We do not claim that it is the only obstacle, but it is the most significant, because not only does it deprive legitimate businesses of revenue, it discourages investors and lenders, strains the relationship between copyright owners and those businesses that benefit from infringement, puts disproportionate legal costs on small copyright owners, encourages unrealistic expectations amongst consumers, and makes everyone jittery about taking risks, in a business defined by hits and misses.

Insufficiently international in focus and scope

43. At present, there is no one-stop-shop for pan-European digital online services, although for some time copyright owners have been making their

repertoire available for pan-European licensing, and collecting societies are actively engaged in discussions aimed at aggregating society owned repertoire into administrative and licensing “hubs”.

44. However, it is worth pointing out that that most users have not actually sought a pan-European license, and even when licenses are available or granted on a pan-European basis, most services choose to operate in only a limited number of territories for commercial and practical reasons.

Saul Klein, Index Ventures

Speaking at the Midem conference in 2011, Saul Klein, partner at Index Ventures (early-stage investor in the likes of Skype, Betfair, Moshi Monsters and SongKick) advised start-ups to focus their business on a single territory: *“You can build a pretty amazing business in terms of revenues by not being in every market,”* he explained, while stating that licensing music was, in his experience, more straightforward than licensing film. *“Look at Spotify in Sweden. It is the number one source of income for the labels, not just digital, but physical as well. Period. Because it’s hit a certain amount of scale...Pick your market, win big and then go back and say ‘hey, what are you going to do for me now?’. Don’t obsess about this regional, global, intergalactic rights. Focus on a market, kill it, then go to another one!”*⁷

45. Other services, most notably the French streaming service Deezer, have embarked on a global licensing strategy. According to Mark Foster, MD of Deezer UK, one of the main reasons that the company established itself in the U.K as the first international territory outside France was that it provided a strategic platform to negotiate rights for the rest of the world. He added that Deezer would not be entering the US market for the short-to-medium term, due to the prohibitively high costs and complexities of the North American market.⁸
46. On the recording side, a digital business wanting to provide a pan-European digital download or interactive streaming service, that offers a comprehensive catalogue of major and independent label content, needs to secure a minimum of five licences. For non-interactive streaming and webcasting services, one license is often sufficient for a pan-European licence, given that there is a simulcasting agreement between the collecting societies administering this (recording) right.
47. Most music publishers are structuring their licensing arrangements to provide a multi-territorial licence for the mechanical rights and are working with selected European collecting societies to also be in an position to offer the performing right as part of a bundle, whilst simultaneously paying due regard to European competition law: EMI Music publishing set up a licensing body for its Anglo-American repertoire in Europe with *PRS for Music* and GEMA (“CELAS”). Sony ATV publishing works with GEMA (“PAECOL”), Universal with SACEM (“DEAL”) Warner Chappell chose an non-exclusive approach with several collecting societies (“PEDL”). Leading independent publishers in the UK (under the IMPEL banner) have appointed and mandated PRS for Music to grant Pan European Licenses on their behalf.

⁷ <http://blog.midem.com/2011/01/liveblog-index-ventures-saul-klein-talks-music/#comments>

⁸ <http://www.billboard.biz/bbbiz/industry/digital-and-mobile/deezer-to-launch-in-130-international-markets-1005473702.story>

48. It is true that not all repertoire owned by collecting societies outside of the UK is being made available for licensing on a pan-European basis. For this reason, PRS for Music is actively engaged in discussions with its sister societies to encourage the aggregation of repertoire owned by collecting societies into so-called licensing “hubs” which will reduce the number of ex-UK collecting societies that a user must obtain licences from in order to operate a pan-European service,
49. The creation of Merlin is a further example of the music industry working cooperatively to simplify and improve the copyright licensing process.. To facilitate the licensing of digital exploitation, independent record companies and trade bodies set up Merlin, a non-profit organisation charged with representing independent music companies in the commercial exploitation of their copyrights on a global basis.

The size of the pie for rights owners/managers is smaller than it could be

50. Our members hold that addressing the challenge of mass digital copyright infringement, and migrating users of unlicensed services to licensed alternatives, would lead to significant growth in the digital marketplace, resulting in a larger pie for everyone.
51. Our members fear that the size of the pie is smaller than it could be, and will decrease further still, due to certain copyright exceptions and lack of clarity over the extent of the liability of digital intermediaries. We are confounded that Government claims it wants to change copyright law in order to stimulate economic growth, while developing proposals that will subvert the growth potential of the copyright industries.

The share of pie going to rights owners smaller than it could be

52. Smaller copyright owners within the music industry have painful experience of their rights being infringed by large mainly-US-based technology companies who launched music-based services, having secured *some* copyright licences from *some* copyright owners, while declining to enter into discussions with them. This left small copyright owners with the unenviable choice of initiating costly legal action against a much better resourced adversary, or filing thousands of notice and takedown requests for infringement every day, or doing nothing in the face of flagrant abuse.
53. Driven by the short-termist nature of VC investment and the vagaries of the DMCA, the digital marketplace has been characterised by such practices⁹. It was partly in response to such circumstances (ie that smaller rights holders wanting to licence found themselves unable to) that Merlin was established to represent the global independent music sector. The situation is much improved today as a result, but these practices have been hugely destabilising and it has taken time and effort to move beyond the legacy of mistrust.

⁹ http://www.theregister.co.uk/2012/01/09/lastfm_accounts/print.html

54. The distribution of the pie for streaming and subscription services is currently a matter of debate as services like Spotify gain traction in the market. These debates serve to highlight the sensitivity of negotiations for the use of rights in the digital marketplace. Once deals are made, they set a precedent and are hard to recalibrate in the future. The digital market is developing very rapidly. For instance, in terms of licensed streaming services, there are currently at least six companies in the UK jostling for identity and market share. These are competing, not only against YouTube, but also a proliferation of unlicensed one-click services and torrent sites.
55. Interventions by policymakers in this market can have a significant impact. That is one reason that the music industry remains so anxious about proposals for new copyright exceptions, and also why the industry remains anxious about the lack of progress on measures to tackle infringement and help migrate users from unlicensed services to licensed alternatives.

New digital businesses within the creative industries being held back and innovation is being held back

56. We would like to establish one important point here. There are more digital music services in the UK than in any other country in the world. In terms of recorded music, there are more than 70 digital services offering music from every genre and suited to every pocket, with several free at the point of access (such as Deezer, Spotify, Vevo, We7 and YouTube). To state the obvious: it is a good time to be a fan of music, and it is getting better. Music has never been so accessible or affordable. In the United States, the largest digital market in the world in absolute terms, there are just over 20 licensed digital music services.
57. The share of industry revenue from digital has increased year on year in the UK from 0.2% in 2004 to 27% in 2010. Revenue from digital sales is higher in the UK per capita than in the rest of Europe. In France, digital sales accounted for 17% and in Germany, just 13%¹⁰
58. In addition, there are well over a thousand internet sites and services that have been licensed by *PRS for Music* for some form of musical exploitation online. This would suggest the very opposite to the hypothesis – that the UK is actually the best place in the world for a digital start up in the creative industries. According to Mike Butcher, editor of TechCrunch Europe and founder of Coadec, this is particularly the case in London where “start-ups reference the cultural surroundings, and fashion, music and art really influence what people are producing. We are seeing a lot of ideas that simply wouldn't come out of Silicon Valley.”¹¹
59. We just do not think that this broad statement that innovation is held back is true, but in order to counter these arguments properly we would need to see details of the ‘evidence’ put forward. We are looking forward to the discussions with the music industry and digital businesses proposed by

¹⁰ BPI Statistical Handbook, 2011

¹¹ <http://www.thisislondon.co.uk/standard/techandgadgets/article-23996866-london-is-perfect-place-to-create-next-facebook.do>

Richard Hooper to identify and discuss possible 'blocks' to innovation. These would be useful discussions.

60. We are all united in our ambitions for higher growth, and the continued expansion and diversification of the digital market is absolutely crucial to achieving overall growth. However, it would be a huge distortion to portray the UK as a place where digital innovation has been stifled.
61. We emphasise that music has been at the forefront of developments in the digital marketplace. 29% of global revenues for the recorded music industry now come from digital, compared to 2% for books and 1% for film.¹²
62. We suspect that a far greater barrier to new digital businesses gaining traction in the market is the dominance of the market leaders. According to an Association of Independent Music survey, three online music services accounted for more than 94% of all their members' global digital revenues. That left 51 companies competing over the remaining 6%.¹³
63. A lack of high risk financial investment is arguably the single greatest barrier to growth and innovation in the UK's digital marketplace. Government is focused on the relationship between IP and growth, but we urge policy makers to acknowledge the critical importance that access to finance makes to the growth prospects of both the creative content sector and the digital technology sector.
64. The UK does not have an investment culture comparable to that found in the United States, and particular, in Silicon Valley. Facebook, Yahoo, Google and YouTube received more than \$50 million seed investment (combined) in the very early years of their operation prior to selling or floating. That kind of investment culture is typified in Silicon Valley, and that is the crucial growth element missing from the UK. We would urge Government to focus its energies on replicating that culture as a first priority in building a Silicon Valley in London's East End.
65. Net lending by Britain's five main banks to business shrank every quarter in 2011 despite the Project Merlin agreement, suggesting the problems are becoming even more entrenched.
66. Access to finance is further hampered by the reluctance of potential investors and financiers who question whether they can ever secure a fair return on their investment in face of such widespread copyright infringement.
67. Such factors should be taken into account. Licensing might be a challenge for digital start-ups, but it is by no means the only or most significant one. According to IFF research jointly submitted to the Hargreaves Review by Google and Coadec, 72% of digital SMEs disagreed with the statement that UK copyright stops them innovating. Only 5% considered that their company's performance had been negatively impacted because of UK copyright law.¹⁴

¹² IFPI Digital Music Report 2011

¹³ <http://www.musicweek.com/story.asp?sectioncode=1&storycode=1044606>

¹⁴ <http://www.ipo.gov.uk/ipreview-c4e-sub-googlereport.pdf>

Infringement of copyright content remains persistent

68. Mass infringement of copyright clearly distorts the functioning of a market-based economy. It deprives all those who invest, regardless of their time, energy, talent or financial resources, from ever realising a fair return on that investment.
69. By way of example of the impact that copyright infringement has on the legitimate market, the Association of Independent Music (AIM) and the MPA report that a search on Google of one artist contracted to their record company and publishing member yielded 54 pages of results to links of *illegal* sites before the first legal link appeared.
70. Our industry's growth potential depends on our ability to significantly develop revenues from the digital market. In terms of recorded music, growth figures charting the increase in the share of revenue from digital sales over the past five years are impressive. Five years ago, 52 million singles were purchased in the UK as digital downloads. Last year, there were 159 million. Digital downloads now account for 98% of the singles market. Digital album sales increased last year by 26.6%¹⁵.
71. These impressive growth figures, however, mask an underlying fragility, specifically within the recorded music market. Unless those who obtain their music from unlicensed and illegal sources can be encouraged to use legitimate services, the digital market will never reach its potential. Beyond the tech corporate giants of Amazon, Apple and Google (companies that dwarf the UK music industry) the vast majority of licensed digital music services remain investment-led. If they are to succeed – and we, as an industry, want them to – then more must be done to tackle infringement. Unlicensed services that profit from the endeavours of the UK's creators and creative businesses – such as the Pirate Bay or Megaupload - have a natural deflationary effect on the pricing of consumer music and provide unnatural competition for legitimate commercial platforms.
72. For UK Music, the overriding purpose of the Digital Economy Act was to reconnect a proportion of consumers with the legitimate digital music market, and to encourage consumption on licensed services. We have never viewed legislation as the means to an end but as a first step towards responsibility of the Internet Service Provider community to ultimately deliver economically viable legal markets.¹⁶
73. The IFPI's Digital Music Report 2012¹⁷ points to statistics regarding the impact of France's "Hadopi" law. Since warning letters were first issued in October 2010, IFPI says that digital infringement has fallen by a quarter. The report also quotes a new academic study¹⁸ in the United States which estimated that iTunes sales in France were an average of 22.5% higher for singles and 25% higher for digital albums than they would have been prior to the introduction of Hadopi laws. IFPI additionally points to the impact of laws

¹⁵ BPI, January 2011

¹⁶ <http://www.ukmusic.org/news/post/30-uk-music-welcomes-the-digital-economy-act>

¹⁷ http://www.ifpi.org/content/section_resources/dmr2012.html

¹⁸ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989240

in New Zealand and South Korea which both saw levels of infringement falling and music sales rising.

Daniel Ek, founder and CEO of Spotify:

“Piracy continues to be the music industry’s biggest challenge. Look at it this way – in the physical world, an enormous supermarket giving entertainment away illegally and for free would be a serious deterrent to setting up and running a shop where you charge for the same products.

“Online, we continue to face a comparable challenge where our ability to convert people to paying for music subscriptions, or attracting advertising to our service, will be challenged by the continued availability of that same music on illegal services.

“As ever, a legal playing field remains vital for any business looking to flourish in the digital age.¹⁹”

End user deprived of commercially and culturally valuable content

74. As far as orphan works are concerned we agree that a solution based on licensing the use of works and performances which are protected under the Copyright, Designs and Patents Act 1988 (“CDPA”) but in respect of which the relevant right owner or licensor is unknown, or cannot be located, after diligent search (“orphan works”).
75. As a starting point the main element of the proposed system must involve agreed procedures for the conducting of diligent search to ascertain if a work is properly to be treated as an “orphan work” for the purposes of required licensing. It should be for rightholders to agree at UK level on the sources that need to be used to conduct the diligent search in an accurate way.
76. We suggest that the licensing of orphan works takes place at the UK level via collecting societies or the Copyright Tribunal. As far as the introduction of collective licensing systems for orphan works is concerned, it should be limited to the UK territory; any form of extensive extended collective licensing at EU level would exceed the purpose of a solution to orphan works. Application of extended collective licensing, in particularly if compulsory, undermines the exclusive rights of creators, performers and right holders and will be unacceptable to right holders in the music industry and the other creative industries.
77. We broadly agree with the principles set out for orphan works in the consultation on changes to copyright (para 4.13).

UK GDP should grow by an extra £2 billion per year by 2020, if barriers in the digital copyright market were reduced.

¹⁹ First published in *Digital Music Nation 2010: the UK’s legal and illegal digital music landscape*, BPI, December 2010

78. The £2.2 billion growth projection is based on assumptions published in Document EE which accompanied the Hargreaves Report on IP and Growth.²⁰
79. Document EE seems to arrive at the £2.2 billion figure in a roundabout way. It takes as its starting point a report entitled *The Economic Impact of a European Digital Single Market* published by economics consultants Copenhagen Economics. Copenhagen Economics were commissioned to write the report by the European Policy Centre, whose partners are Vodafone, Microsoft, Nokia, Ericsson, Intel, Sitra (the Finnish Innovation Fund) and the Central Denmark Region.
80. The purpose of the Copenhagen Economics report was to provide an initial assessment of the economic benefits of a “European digital single market”. The report estimates that the net impact of an acceleration of the digital economy on the EU27’s GDP would be around 4 percent over a 10 year period. Whilst UK Music offers no critique of the Copenhagen Economics report, we observe that the focus of the report and its recommendations spanned issues such as investment in infrastructure, harmonisation of legal frameworks, skills and training in ICT, as well as consumer attitudes towards privacy and security in the online market. The report’s projection that GDP across Europe could grow by 4% was predicated on concerted action across all of these fronts.
81. Document EE seizes on the 4 percent growth projection for the whole of the EU, and attempts to apply it directly to the impact of a Digital Copyright Exchange in the UK, in complete isolation of all of the other factors considered in the Copenhagen Economics report. It appears to do this simply by applying 4 percent growth to the 4 percent of the UK’s economy which is ‘copyright intensive’, which apparently yields £2.2 billion.²¹ As the focus of the Copenhagen Economics report is cross-border market unification -- and not a study of how changes in the UK market can improve growth and productivity in the UK – it would be impossible to extrapolate the impact of a digital copyright exchange.
82. Furthermore, it appears from Document EE that the growth projections relating to the DCE would arise from this function as a *licensing platform*, mandated to represent rights holders of the worldwide repertoire for licensing of services in the UK and for other territories.
83. UK Music is well-placed to question the growth projections related to the creation of a Digital Copyright Exchange. The UK’s commercial music industry is at the forefront of developing a database of copyright ownership information for both music recordings and musical works, with support from the European Commission and with partners from the technology sectors

²⁰ For a detailed critique please see: UK Music evidence to the Business, Innovation and Skills Committee inquiry into the Hargreaves Review of Intellectual Property

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbis/writev/1498/m68.htm>

²¹ We are trying to identify the source of this statistic that the UK’s copyright intensive industries account for 4% of the economy. It is not referenced in Document EE.

who would make use of such a facility (see the section above relating to repertoire databases.),

84. This database of ownership information would be the *first step* to any Digital Copyright Exchange, as Government correctly acknowledge, and not a licensing platform. Innovation by rights holders (in terms of licensing structures) and online services (in relation to new business propositions) can *only* occur if the data and data exchange standards necessary to ensure the smooth administration of agreed licences have been put in place. To fail to resolve these issues ahead of any other aspect of licensing is to put the cart squarely in front of the horse.
85. The costs of developing these databases of ownership information are considerable. Experts involved with the GRD project have estimated a set up cost in the region of £20-30 million with an annual operating budget thereafter of around £15 million. PPL spent £10 million establishing its state of the art rights management system, part of which is outsourced to a third party process. Yet Document EE takes little account of the time, effort, complexity and costs involved in this 'first step.' The Government only measures outcome without considering the investment and ongoing costs.
86. The Digital Copyright Exchange, if it develops primarily as a signposting body, could be a very good thing. It may well alleviate some of the problems that Professor Hargreaves initially identified in his argument that the copyright system is 'not fit for purpose'.

SECTION 2 - DEFINITIONS

Rights users and End users

87. Historically, the relationship between copyright licensor and licensee was a business-to-business relationship. There was neither a public interest nor a commercial imperative to involve consumers in the detail of copyright licensing. The consumer was often not even aware of copyright beyond that of a legalistic term.
88. Today, it is still the case that the vast majority of copyright negotiations are B2B transactions. The difference today is that technology makes it possible for *anybody* to use and distribute copyright protected works to potentially a global audience.
89. This difference clearly has significant implications. Consumer education of copyright issues has now become very important, for example.
90. However, copyright licensing is still primarily a B2B function. The call for evidence uses the example of YouTube. YouTube is a business and it is fully licensed by the music industry. (And these music licences are clearly of significant value for YouTube. The 10 most-watched YouTube video clips in the UK in 2010 were all music videos, and music is estimated to account for 30% of all YouTube's traffic.)
91. However, we recognise that there are some types of uses of copyright content that fall beyond the scope of existing licences between copyright owner and copyright user. As an industry we continue proactively to

examine, digest and detail all aspects of behaviour, uses, and consumption of music in the online (and indeed any) environment. It is clearly vital that we remain sensitive and responsive, not only to market development, but to all aspects of consumer behaviour so that we might better legitimise, licence and monetise that consumption for the benefit of all. Many consumers have become rights users, in new environments. Existing licensing structures do need to adapt to the new demands, and we are keen to work on developing those solutions, in a cross sectoral way, and supported by more education and awareness.

Three defined copyright markets

92. We appreciate efforts to differentiate between the experience, expectations and demands of different types of copyright users. Certainly, negotiations with Google and Apple will be very different in nature than negotiations with a digital start-up. However, the definitions given in the call for evidence are not formal market definitions and the reality is that the demarcations are less clearly defined and more complex than suggested in A, B and C. Greater focus might be more usefully put on differences between the bespoke market and the 'standardised' market.
93. As this call for evidence is focused on copyright licensing in the digital age, our focus has been on developments in the digital marketplace. We have emphasised that this market is still very new and overwhelmingly 'bespoke' in terms of what copyright users are seeking from us. It is conceivable that, in time, as the market matures, off-the-shelf licences for some types of digital exploitation could be developed, as already exists in the 'linear' world.
94. Both PPL and PRS recognise the value in presenting a common face to licensees and already offer joint licences for schools, churches, DJ's and, since January this year, community buildings. This was launched on time as planned following consultation with the sector. They are actively engaged in exploring further joint initiatives. UK Music will work with PPL, PRS and all our members to ensure we are fully committed to improving the licensing experience for users

The digital age

95. Disintermediation: the middlemen, or intermediaries, continue to play a significant role in the digital marketplace. Consumers, faced with a seemingly endless amount of information and content, turn to trusted intermediaries to help them prioritise, recommend, curate, filter out, etc. The only difference is that the *face* of the middlemen has changed.
96. Low barriers to entry and the erosion of monopoly status: the digital marketplace has created new giants and while they may not have monopolistic status, their dominance creates huge barriers to new entrants. There is no significant competition against Google, for example.
97. Passive consumers become active creators, UGC. We offer two observations. First, for all of the digital content available that is created by amateurs and "passionistas", consumers continue to seek and demand high quality, investment-heavy, professional standard work. Secondly, user-

generated content is often no more than a user synchronising music to a video clip. Care should be taken not to over-state the degree of originality in much UGC.

98. Finally, it is perhaps worth noting that for all that is new about the digital age, many things remain the same. To succeed in the digital market, you still need investment, you still need to offer something that other people want, you still need customers, you still need to promote and market, you still need to (eventually) make a profit, and you still need to pay your bills.

Conclusion

99. Our paper has focused on explaining **why** copyright licensing in the digital age can pose particular challenges, and **what** is being done to make the process of copyright licensing for digital uses work better. The music industry remains open to new suggestions and proposals to improve the copyright licensing process.

100. Our concluding observations are that the music industry was the first to feel the effects of the digital age; the digital market for music based services is now amongst the most advanced; the copyright licensing process for digital uses is more efficient now than it was a decade ago, and, as a result of ongoing efforts across many fronts, further improvements can be expected.