

# Consultation on the requirement to pay royalties for playing recorded and broadcast music by charitable and not-for-profit organisations



Amending the Copyright Designs and Patents Act 1988

Short form of the main consultation paper issued by the United Kingdom Intellectual Property Office  
on behalf of the Minister of State for Innovation Universities and Skills

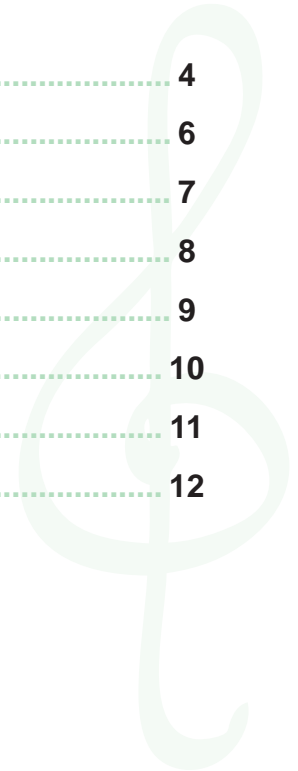






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# Music copyright and licensing

A piece of music will be protected by a number of different rights. There will be copyright in the music itself, owned by the composer; copyright in the lyrics, owned by the lyricist; copyright in the sound recording, owned by the record producer and performers' rights owned by the musicians and singers.

When recorded music or TV or radio broadcasts containing music are played in public the owners of the rights within that music are entitled to royalties. Generally, music is played in public if it is played anywhere other than in a private home. This ensures that the creators of these works receive fair rewards for their creativity. These royalty rights are administered by organisations owned by the right holders in the UK. These are known as 'collecting societies'. Phonographic Performance Limited (PPL) manages performance rights in the sound recordings and performances and the Performing Right Society (PRS)

manages performance rights in the music and lyrics. These collecting societies will offer blanket licences for particular uses.

So, unless the use is exempt from royalties, anyone who wants to play recorded or broadcast music in public needs to obtain permission, through a licence, from both PRS and PPL. For example, if a restaurant owner wishes to play background music to enhance the ambience of his premises, he needs to purchase a licence from both PRS and PPL to cover use of all the rights in the music he wishes to play. These two licences will cover a very wide repertoire of music. Similarly, an office which has a television playing in a staff room will also require licences from both PRS and PPL.

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## Exemptions

It is recognised that the public interest requires that there is some free use of copyright material and these exemptions from copyright are set out in the Copyright Designs and Patents Act 1988 (“CDPA”) in the UK.

This consultation considers copyright in recorded and broadcast music and the exemptions which apply to not-for-profit bodies when they play this music in public. We are examining the dividing line between licensed use and free use and also the nature of the rights granted to copyright owners.

This consultation considers two exemptions which apply to the rights managed by PPL only. The first applies where charitable groups play CDs or other recorded music, if certain conditions are met, and is set out in section 67 and paragraph 15 of Schedule 2 to the

CDPA. The second applies where not-for-profit bodies play radio or TV broadcasts containing music, and the audience has not been charged entry, and is set out in section 72(1B)(a) and paragraph 18(1)(a) of Schedule 2 to the CDPA. We want to redraw these exemptions so that they reflect the public interest in both meeting the needs of copyright owners and users and being easy to understand.



## The current position

Currently, any charitable group that wishes to play recorded music for the purposes of the group only is required to pay royalties to PRS only. The exemption for charitable groups applies so it does not have to pay a second royalty to PPL.

So, if a charitable youth centre currently plays CDs or tapes to entertain the children attending sessions, it has to purchase a licence from PRS only.

Similarly, not-for-profit organisations that play TV or radio broadcasts containing music as part of their activities are only required to pay a royalty to PRS if they do not charge for entry to the premises where the broadcast is played. The exemption for not-for-profit groups applies so they do not have to pay a second royalty to PPL.

So, if a local authority runs a free children's play scheme which plays the radio or television to entertain children in its care, it has to pay a royalty to PRS only.

There has been concern expressed from both right holders and users that the dividing line drawn by these exemptions is not correctly focussed at present. PPL has argued that its members are entitled to payment from organisations that are currently exempt. Small organisations frequently write in to Ministers unable to understand why they are required to pay any royalties to either PPL or PRS for their very limited use of TV or radio broadcasts or playing of CDs or tapes.

We want comments on the following three options for changing the current arrangements. UK-IPO considers that these sections need amending to ensure the correct balance is drawn between the interests of right holders and these small organisations in a way which is consistent with legal obligations.



## Option 1

**Option 1** will repeal the exemptions, giving record companies exclusive rights over the public playing of sound recordings in all the circumstances which are currently exempt. Performers will also get a right to payment of royalties.

So, if the exemption for charities is repealed, a charitable play group run by a church which currently plays CDs or tapes to entertain children attending its sessions, and which has a licence from PRS only, will in future require two licences (one from PRS and one from PPL) to continue to do this.

Similarly, if the exemption for not-for-profit organisations is repealed, a free local authority summer play scheme that currently has a PRS licence for use of televisions for children attending the scheme, will in future require a licence from PPL as well as from PRS for this use.





## Option 2

**Option 2** will narrow the scope of both the exemptions so that they are only available to small charities. It will also extend the exemptions so that they apply to both the PRS licence and the PPL licence. The exemption from both licences may also be extended to some limited uses of TVs and radio broadcasts containing music by NHS trusts.

So, a small charity, such as a youth group having a turnover of less than £20,000 a year, which currently has to pay royalties to PRS, will be exempt from both the PRS and PPL royalty payment. These small charitable groups will not have to pay any royalties for their use of recorded or broadcast music.

A larger charity, having a turnover exceeding £20,000, will now have to pay royalties to both PPL and PRS.





## Option 3

**Option 3** will remove both the exemptions but record producers and performers will only be able to charge royalties at a rate which is considered to be fair to both them and the users. This is referred to as equitable remuneration.

So, all users of music, whether charitable or profit making, will continue to be required to pay royalties to PRS. PRS will continue to set the royalty rates and users may challenge these by bringing a complaint to the Copyright Tribunal. All users who were previously exempt will also have to pay royalties to PPL. However, the rate at which these can be charged will be one that is considered to be 'equitable remuneration'. This may need to take into account a number of factors.

### **We suggest that the following factors are relevant:**

- The size and nature of the audience
- The extent to which the broadcast or recording shown or played is likely to include copyright sound recordings of music
- What commercial benefit the user is likely to obtain from playing the sound recording
- The extent to which the owners of copyright in the sound recordings and the performers will receive equitable remuneration from other sources for the inclusion of their recordings in the broadcast or recording being used
- The size and turnover of the organisation using the work



# Responding to this consultation

We are interested in hearing views from anyone who may be affected by the proposals outlined above. The question sheet attached, lists questions which we are particularly keen to answer, to allow us to make an assessment of the impact of each of the options outlined above.

If you wish to submit any views or evidence in relation to these proposals, please send them by post, email or fax to:

## **Music Licensing Review**

Copyright and Intellectual Property Enforcement  
Directorate  
UK Intellectual Property Office  
Concept House  
Cardiff Road  
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NP10 8QQ

Email: [musiclicensingreview@ipo.gov.uk](mailto:musiclicensingreview@ipo.gov.uk)

Fax: 0044 (0) 1633 814922

**by 31 October 2008**

If you would like to be involved in any meetings or further consultations which take place in relation to this issue, please also:

Email: [musiclicensingreview@ipo.gov.uk](mailto:musiclicensingreview@ipo.gov.uk)

indicating the nature of the organisation you represent and whether you would be able to visit our offices in London or Wales. If there is sufficient interest we would also be willing to host meetings in Scotland and Northern Ireland. We can also arrange for meetings to be held via a video conference.



# The full consultation

This document is a shortened version of the full consultation document. If you require a more detailed analysis of the legal situation and the options available, please see:

<http://www.ipo.gov.uk/consult-musiclicensing.htm>

or request a copy of the full consultation document from:

**Emma Karidian,**

Tel: 0044 (0) 1633 813834;

E-mail: [musiclicensingreview@ipo.gov.uk](mailto:musiclicensingreview@ipo.gov.uk)





# Summary of questions

## About you

1. **What type of organisation do you represent?**  
**Are you:**
  - a. A user
  - b. A right holder
  - c. A representative body of users
  - d. A representative body of right holders
  - e. Other [Please specify]
2. **If you are a user, what use do you make of music within your organisation?**
3. **If you are a user, do you currently rely on either of the exemptions in Sections 67 and 72? If so, which one?**

## The proposed changes

We are particularly keen to receive answers to the following questions. Please provide evidence and examples where possible to support your views.





# Questions for option 1

1. **Is the removal of the exemptions so that PPL and its members have exclusive rights over public performance of recorded and broadcast music, in the public interest?**
2. **Can copyright owners charge a higher rate of royalty where they have exclusive rights (as opposed to rights to equitable remuneration)?**
3. **We would be interested in hearing from PPL, its members, others who own copyright in sound recordings or performers' rights and their representative bodies:**
  - a. How many organisations will they be able to license if the exemptions are removed?
  - b. How will royalties for these users be calculated?
  - c. How much money will these additional powers to license generate per annum?
  - d. What percentage of these royalty revenues will be spent on administration and collection of these royalties?
  - e. How will this be divided between record labels and performers?
4. **We would be interested in hearing from organisations that are currently exempt:**
  - a. What are the practical consequences for your organisation if you have to obtain a copyright licence from PPL in terms of the cost of the licence and the administration in obtaining it?
  - b. Are there any circumstances in which your organisation would stop using recorded or broadcast music rather than obtain a copyright licence?



## Questions for option 2

1. **Is the removal of exclusive rights over public performance of music and lyrics in the limited circumstances proposed in this option in the public interest?**
2. **What groups should be within the scope of the new exemption and why?**
3. **We would be interested in hearing from PPL, its members, others who own copyright in sound recordings or performers' rights and their representative bodies:**
  - a. How many organisations will you be able to license if the exemptions are removed?
  - b. How will royalties for these users be calculated?
  - c. How much money will these additional powers to license generate per annum?
  - d. What percentage of these royalty revenues will be spent on administration and collection of these royalties?
  - e. How will this be divided between record labels and performers?
4. **We are interested in hearing from PRS members what impact the proposed exemptions in option 2 will have**
  - on their income from royalties
  - on their rights generally.
5. **We would be interested in hearing from organisations that are currently exempt:**
  - a. What are the practical consequences for your organisation of this option?

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- b. If your organisation will now be exempt from both licences (ie you are a charitable group with a turnover below £20,000), what benefits will this bring?
  - c. If your organisation will not be exempt, what are the practical consequences for your organisation if you have to obtain a copyright licence from PPL in terms of the cost of the licence and the administration in obtaining it?
  - d. Are there any circumstances in which your organisation would stop using recorded or broadcast music rather than obtain a copyright licence?



## Questions for option 3

1. **What is the practical difference between exclusive rights and equitable remuneration?**
2. **Are the following factors relevant when assessing what constitutes equitable remuneration? Please specify any additional factors that should be considered.**
  - a. The size and nature of the audience
  - b. The extent to which the broadcast or recording shown or played is likely to include copyright sound recordings of music
  - c. What commercial benefit the user is likely to obtain from playing the sound recording
  - d. The extent to which the owners of copyright in the sound recordings and the performers will receive equitable remuneration from other sources for the inclusion of their recordings in the broadcast or recording being used
  - e. The size and turnover of the organisation using the work
3. **Should UK-IPO issue non-statutory guidance on what constitutes equitable remuneration for these purposes?**
4. **We would be interested in hearing from organisations that are currently exempt:**
  - a. What are the practical consequences for your organisation of having to pay equitable remuneration to PPL?

b. Are there any circumstances in which your organisation would stop using recorded or broadcast music rather than pay equitable remuneration?

**5. We would be interested to receive evidence on the level of increased revenue PPL, its members, representative bodies and any other owners copyright in sound recordings or performers' rights, believe the introduction of equitable remuneration would generate. In particular:**

- a. Who would you be able to license that you are currently unable to license?
- b. How many extra premises or organisations do you estimate will require licences?
- c. How much extra revenue per annum do you anticipate that these changes will generate?

- d. What will the costs of collection of this extra revenue be as a percentage of that revenue?
- e. How would the rates of equitable remuneration differ from rates that would be set under an exclusive right?
- f. Do you consider that the changes which will result in you receiving equitable remuneration in place of licence fees under an exclusive right mean that your revenue will decrease?
- g. If there is to be a decrease in revenue, could you estimate what that decrease will be per annum and how it is calculated?





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