



**ASSOCIATION OF
INDEPENDENT MUSIC**

**Submission to the Hargreaves
Review of Intellectual Property and Growth**

**AIM is the UK's trade body representing the Music Industry's
Independent Sector.**

The UK's independents represent the most economically, politically, socially and culturally diverse sector of the market. Independent music businesses are generally owner-managed SMEs that have grown out of a strong affiliation or involvement with music. The independents are the market innovators and risk takers in the music business. They discover and incubate new musical trends and artists and tend to focus on specific niches or genres. They have an "early adopter" mentality. The sector also secures a significant market share (25% of sales of recorded music in the UK). The independents are, however, highly fragmented – there are 8,000 SMEs in the music industry alone, 92% of which employ less than 10 people, and often only one or two people; therefore collective initiatives are crucial to ensure their IP is valued at market rates.

The independents tend to focus on their core skills. They are rarely vertically integrated and outsource what they do not see as core. They therefore enjoy a symbiotic relationship with third parties who provide vital elements in the development, production and sale of recorded music, such as distributors, retailers, manufacturers, designers, session artists and concert promoters.

The focus of independents and general absence of vertical integration helps them remain agile and responsive. This explains why they are such good innovators.

However, it also makes them fragile, often dependent on 'gatekeepers' - third parties for distribution and access to vital markets. They are also

vulnerable to concentration and restrictions on their ability to gain market access.

AIM gives its full support to the UK Music response on behalf of all its music industry members to the Hargreaves Review of IP and Growth.

Alongside that collective, industry-wide response, AIM wishes to make the following additional submission on behalf of the independent music sector in the UK.

1. The independent sector IS the UK's IP music business

Independent music companies are now the only UK-owned, UK-run music industry sector: all the major multinationals are now foreign-owned. The UK independents, from one-man-bands to large companies employing sizeable staffs, are producing, selling and often globally exporting creative content in an inventive and sustainable way through true innovation and entrepreneurship. Independents are investing in R&D – the finding and nurturing of new talent and new ways of using technology. They are innovators and seed investors. They are very much in tune with the spirit of global, IP rights-based business, making their content available through collective licensing.

Most importantly, they are maintaining and building a creative sector which delivers a financially and intrinsically valuable contribution to innovation and growth – including online growth – as part of indigenous UK business. The significance of this can be illustrated by the contrast between the UK independent music sector and the once also independent, adventurous, innovative and significantly UK-owned electronic games sector: while the creative talent in that sector is still largely British, the ownership of and profits from that creativity have migrated to other countries.

To avoid such a development UK independents are willing and keen to look well ahead- beyond today's online distribution (downloads, streaming, file sharing via existing, mostly illegal, sites and applications) – to a future where cloud computing will have effectively severed all ties to past and even current ways of running businesses based on creative, copyright content

When revenue from physical formats of cultural creations is reduced to utter insignificance, and online paid-for delivery of content enters a new and totally different era of technology, IP rights will be a potentially huge contributor to the UK's earnings, but only if there is a practical, legally protected way of earning from them. Music independents will be in the forefront of the entrepreneurial innovators offering their content via any

new online technology, but will only be able to sustain their businesses in a licensed market environment.

2. Balance and Bias

Licensing

We note that the Terms of Reference for this Review give weight to the claim that where music is concerned difficulties and complexities in licensing IP (including exclusivity of some rights and the hold-back mindset of the major multinationals) are supposedly frustrating income generation by internet services.

We acknowledge some historic difficulties with content licensing, as also acknowledged and explained in the UK Music submission. However, the independent music sector can state firmly and with pride that it has always had and continues to have an active, responsible and approachable attitude to making independent music companies' content accessible to all those who wish to use it in a legitimate and licensed way.

We independents were the first to realise that a global scale music business requires us to provide "one-stop shop" IP rights licensing for companies whose operations require, facilitate or are in other ways dependent on others' creative content. So we acted in a practical and balanced way over three years ago by creating **Merlin** as a global collective licensing agency for independent digital licensing. But, as detailed below, this initiative has not been met with corresponding balance and co-operation from the major online and telecoms service providers.

Yahoo, You Tube, AOL, MTV, MySpace and now Google generally only pay for content "because they have to" and that generally applies only to larger copyright owners. They continue to demonstrate an unwillingness to recognise the value of aggregated independent repertoire offered via Merlin, our one stop shop global rights agency, preferring instead to fragment the sector and potentially dilute the value. A fragmented independent sector means that many small copyright owners will simply not be remunerated properly for the use of their copyrights

Merlin continues to encounter difficulties when attempting to fulfil its brief to license independent music copyrights on equal terms with those of the majors.

Merlin is a not-for-profit global rights licensing body for the independent sector, set up by the independent trade bodies and companies to enable independents to overcome the historical problems of market fragmentation that have typified the independent music sector, in cases where fair licences are not available individually. Facilitating this process opens up the market to independent music in a way that creates the opportunity to capture previously unavailable revenue streams.

Merlin is about:

Protecting the copyrights of our members in cases of infringement and abuse.

Establishing effective access to independent copyrights

Acting as an efficient, broad reaching and direct entry point to our sector.

Merlin Case Studies:

AOL resisted all attempts to engage AOL in licensing discussions, the (US) company has refused to negotiate with Merlin, and only pays for the use of significant independent copyright holdings, usually after legal action

Yahoo is on public record saying they paid the majors for video content "because they had to". Likewise they have been selective in their paid use.

MTV has a deal with independent companies via VPL (Video Performance Ltd, licensing and collecting agency) which was only negotiated through collective management and a firm stance on the value of our copyrights, creating significant remuneration for use of videos supplied by UK and other European copyright owners. In 26 years of operation, whilst paying the majors tens of millions of dollars per year for global use of video content, they do not pay for the use of independent content outside the VPL deal, for example in North America.

MySpace eventually did a deal with Merlin after significant bad press generated over their refusal to provide equitable terms of remuneration for independently produced music. The deal does not include the same terms and conditions as the majors.

You Tube has not remunerated the independents for past copyright infringement and refuses to enter into a collective deal for independent copyrights.

Google, as has been publicly reported, has been in discussion with the major labels since the middle of last year with regard to their proposed music service. These discussions were confirmed to Merlin by a representative of Google (Nick Ashton Hart) at Popkomm, the German Music Trade Fair, in September 2010. Despite this, and several letters from Merlin to Google, there has been little engagement with Merlin to date.

This attitude has been endemic in all of our communication with US based companies, going right back to YouTube.

Therefore we conclude that this is not a failure to license, or a failure of business models: this is simply about paying less for content 'unless they have to'.

NB – Spotify, who embraced the efficiencies Merlin brought to licensing, has had a deal in place since launch; the independents have all the same terms as the majors, and the business is contributing very significantly to online

trade for all independent IP owners. This is a good example of how fair, transparent and inclusive digital licensing works.

Financial barriers to the UK technology market.

The UK's financial industry's mindset is one of the main barriers to a successful UK technology market. We believe that there is a massive investment culture in the US which is largely absent in the UK, due to an acute under-appreciation of high growth (and high risk) opportunities in this country. The attitude towards IP based business opportunities, whether as owner or service provider to IP content in this country is appalling, and this attitude is completely different in the US both historically and in the 21st century.

Case study: A personal case study relates to AIM Chairman Alison Wenham's own independent company. In 1992 it sought urgent additional funding after the collapse of its (non-music related) parent company. UK banks which were approached valued the copyright catalogue at £0.00. US banks valued the same catalogue at \$34 million.

Competing with FREE

All licensed music service companies are competing poorly with the overpowering problems of "free" and, in our view, it is the persistence of free that is creating the monopolistic environment now to be found on the internet. Whilst independent companies have licensed many Internet service companies, the data on performance of those services proves unequivocally that, unless you are a global brand such as iTunes or Amazon, gaining market traction is extraordinarily hard for licensed services.

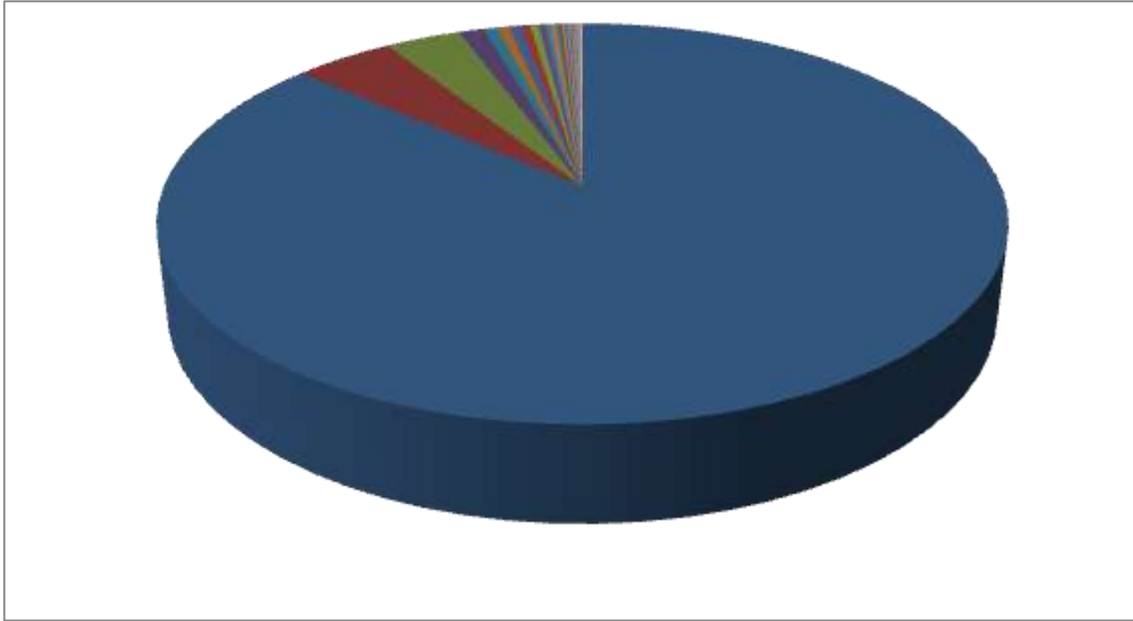
This is neither a failure of IP law, nor is it a failure to diversify towards consumer-friendly business models. Competing with free is killing all legitimate green shoots in the digital economy, and the whole Internet system is now geared towards control by a very small number of monopolies who wish to dictate terms to copyright owners. The only way to rebuild confidence in the UK market opportunity is to protect, not dilute the exclusivity of copyright.

We provide below confidential data from a number of music companies' digital revenues to prove this point.

Global Digital Music Revenues from a selection of AIM members: derived from download, streaming and subscription sites – 2010

The top three companies account for 94.35% of all revenues. (2 are US, one is European)

The remainder, 51 companies (from the UK, US and ROW) account for the other 5.65%



You can't kill creativity, but ...

We are equally convinced that should Fair Use provisions, of the kind established in the USA, be brought into UK Copyright Law so that rights owners cannot control certain usage of their IP (and the question immediately arises as to how such a change in UK legislation would be viewed in the EU) the act of creativity will go on regardless. Creativity in the UK is very healthy; nothing can stop it, whether creators get paid for it or not. However, it seems to us that the Government is about to gamble half a million jobs employed in IP creation in the belief that IP is somehow to blame for the lack of a Silicon Valley in the UK. We would cite research and investment culture, homogeneity of language, a huge land mass and tax free online trading as the simple driving forces behind the US lead in technology based business. It is not about Fair Use: Creative Commons Founder Lawrence Lessig's own view of Fair Use is that it is simply the right to hire a lawyer...

3. ...you should make sure it is a fair fight

AIM represents SMEs which have diversified to take advantage of new income streams and they will use their ingenuity and flexibility to survive changes in Copyright Law, whatever it is.

However, we would like to say, and it would make growth much easier, that a fair balance between the protection and proper exploitation of IP, and the innovation and growth of internet businesses using or built on the use of IP, can only be achieved through proper control. Currently this should be via:

- Site blocking for flagrantly illegal websites
- The blocking of advertising on demonstrably unlicensed and illegal websites. The presence of advertising for established and reputable products and companies on a website legitimises that site in the eyes of the consumer. Since it is obvious that the advertisers have no scruples about using illegitimate sites for their own purposes, it should be possible to prevent them from supporting illegal online activity in this way.
- A legal requirement for Google and other predictive search engines to run in a fair and transparent way. At present this search engine appears to be designed to set up what is for creative rights owners a vicious circle which works only in Google's own commercial interests, and seems to actively promote unlicensed and illegal content sources while relegating legitimate content providers to low rankings which make it difficult for consumers to use them. Even iTunes and Amazon are relegated to the lower ranks in this ecosystem. The Google search engine should be required to remove or downgrade search criteria involving "torrent", MP3 etc.
- An important issue for SMEs is the cost and time resources for takedown notices. They have a right to demand take-down of unlicensed content on websites, but in practice this is often a right they cannot afford repeatedly and continually to exercise to protect their IP. It would be fairer and more efficient if the online search companies used technology to promote legitimate websites. But IP protection needs also to look ahead, and be framed in a way that will allow content creators and those who use that content to do business safely and sustainably in future technological environment.

This is an appropriate point to stress that a level playing field can be created, and sustained to the benefit of IP owners and IP users. The UK is already an exemplar: the BBC, which as a broadcaster is one of the biggest and arguably the most influential in the world, treats all providers of creative content equally. As a result its music services offer greater variety to mass and niche audiences than anywhere else in the world.

4. Allow the Digital Economy Act to work in the market.

The previous Government and the creative industries worked long and hard to arrive at a good, practical and forward-looking piece of legislation. It should not be ditched without being allowed to prove its worth. AIM asks that the DEA should be brought into effect and reviewed after a suitable period of time in terms of its effect on the market on which the Hargreaves review is focusing – to measure, for example, whether online piracy is growing or shrinking.

5. Format Shifting.

We are keen that a way should be found to licence this activity in a private, domestic, non-commercial context. But we believe equally strongly that the creators of the content should retain their exclusive right, and should in an appropriate way exercise that right to be remunerated through licensing. The economic harm to smaller rights owners from total loss of this right would be devastating, and any attempt by the UK Government to bring in format shifting without compensation will be vigorously challenged.

Conclusion.

We in the independent music sector believe in the quiet and uninterrupted enjoyment of our music by our fans. We do not feel that copyright education is at the forefront of solutions - consumers should be left to enjoy their music as they see fit. We want and need a business and legislative environment which allows the consumer to find the music they want quickly and easily on legitimate, licensed websites and to pay a fair and reasonable price for it as a way of supporting the creativity of the performers they love and admire.

Copyright protection may to some extent be inhibiting the kind of growth which internet services want to achieve, but that must be balanced against damage to the IP based creative industries - now and in a technologically much more advanced marketplace in the future - if that protection is weakened.

Submitted by:

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Chairman and Chief Executive Director

On behalf of The Association of Independent Music, representing 800 UK registered music businesses.