

Musicians'
Union



Musicians' Union
60-62 Clapham Rd
London SW9 0JJ

Contact: Isabelle Gutierrez
Tel: 020 7840 5507
Email: Isabelle.gutierrez@theMU.org

MU response to the Hargreaves review into intellectual property and growth

1. The Musicians' Union (MU) welcomes the opportunity to respond to this review into intellectual property and growth. We represent over 30,000 musicians working in all genres of music. As well as negotiating on behalf of our members with all the major employers in the industry, we also offer a range of services tailored for the self-employed by providing assistance for professional and student musicians of all ages.
2. We are responding to this review in order to protect our members' rights and careers, and we will therefore focus on the areas that are of direct relevance to them. The MU also fully supports the submissions made by our colleagues at the Educational Recording Agency (ERA), UK Music and the Alliance of Artists, Managers and Performers (AMAP).

ERA

3. ERA is one of a range of collecting societies which help copyright owners and performers derive an income from the licensed use of their works and it is vital that it is protected.
4. We firmly believe that the current ERA Licensing Scheme works well and that it should not be changed. The licences are fair, there is no problem with licensees and rights holders across the board are fairly rewarded.
5. ERA deals successfully with places of education ranging from primary schools to universities and it provides the facility not just to record programmes but to keep a library of them. They are also making programmes available online for places of education using new technologies.
6. The MU is a member of ERA, and has endorsed ERA supporting changes to the scope of s 35 and paragraph 6 Schedule 2 of the Copyright, Designs and Patents Act 1988 to support educational use of extracts from licensed

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recordings, and facilitating use of licensed recordings for distance learning by students when working from home.

7. Practical steps for changing the scope of s 35 and paragraph 6 Schedule 2 CDPA have been (and continue to be) debated with the IPO. On the back of these discussions, ERA has launched a licensing scheme known as ERA Plus (particularly targeted as assisting distance learning).
8. Development in the application of copyright exceptions in this way can promote and support access to copyright works, whilst providing fair compensation to rights owners and certainty for users over the scope of licences.

Orphan Works

9. We fully support the British Copyright Council (BCC)'s proposal on orphan works.

Format Shifting

10. The MU has no problem with private format shifting by members of the public. We do, however, object to the multi-national companies who have made enormous amounts of money through the selling of iPods, mp3 players and other devices that enable format shifting not paying a fair or indeed any remuneration to the performers.
11. This issue is dealt with very successfully in much of the rest of Europe by way of a levy on the hardware itself, with the money then being distributed to rights owners and performers. It is also interesting to note that iPod/mp3 player penetration in markets which have a levy is just as high as in countries which do not and that levies have a very minimal impact on price when compared to variations in, say, VAT rates between countries.
12. We believe that the perceived problems with the system at the moment are not related to the levies themselves – which have been proved to work very well – but with the lack of harmony throughout Europe. Indeed, the European Parliament had plans for a review seeking to harmonise copy levies several years ago. We believe that implementing fair copy levies across Europe would solve the issue, and we would then be happy to allow private format shifting.

Performers' Rights

13. The statutory recognition of performers' rights required years of hard work and campaigning and this long history means there is no question that they have been scrutinised at the highest levels across the world. The international community recognised performers as deserving of intellectual property rights and it would be a travesty if these long fought for rights were removed or damaged because of business interests.
14. It is also important to note that even though the recording industry has changed beyond all recognition, intellectual property rights are still a major source of revenue for performers, many of whom struggle to earn enough to

make a living as it is. The following theoretical example shows how important these rights are to individuals:

Musician A receives a flat fee of £120 for spending three hours in a recording studio recording a single. Ideally the Consent Form he signs grants his performers' consent for use of his recorded performance in respect of the single release only. He receives no further payment for this work except equitable remuneration from PPL if he is a member and the single is broadcast or publicly performed.

Two years down the line, the track is chosen to be used in a film. **Musician A** initially only agreed to record a single, and this new use therefore means that he is entitled to negotiate a further payment.

Subsequently, the track is also used in an advert. Again, with the introduction of a new use, **Musician A** is again entitled to claim more money.

In this way, a relatively unimportant sum like £120 can grow into a more significant sum if the recording is successful. Without this **Musician A** would have received his original £120 only. His work would then have been used in a film and an advert and would have made a significant amount of money for others – but he would not have received anything further.

15. A lot of MU members are Small and Medium Enterprises (SMEs), whether they are sole traders or members of a band, and they therefore rely on their copyright and performers rights to make any income. In essence, their copyright and related rights are their product, and like any SME they have to protect their product.
16. The MU is asked to assist in numerous cases of performers' rights being infringed. In one case, an Orchestra hired some 70 plus musicians to perform at a series of concerts, which were then recorded without the knowledge or agreement of all the players, and CDs and DVDs made available for sale with no further payment to the players beyond their live performance fee. The Union negotiated a session recording fee for its members.
17. In another case a well-known singer recorded a number of live performances with an orchestra from which a live CD was compiled which was then sold/given away with a studio CD. Again the Union negotiated a settlement; as individually or even jointly the players would have been unable to afford to take the matter to court as the high legal costs of court proceedings inevitably prevent legal action over performers' rights being cost effective.
18. Two other cases involved studio session musicians who signed MU/BPI Consent Forms granting their performers rights for specific uses of their recorded performances. However the actual uses of those recordings went far beyond the consents granted and paid for, involving use of the stripped down recorded performances live onstage as a means of avoiding the hiring of musicians to play those parts live, and the Union was again left to try and

settle the alleged infringements as again litigation was unlikely to have been cost effective.

19. We have anonymised these examples in order to protect the confidentiality of agreements reached. We do, however, have more detail on these and further cases that we would be happy to reveal on a confidential basis.
20. It is also worth noting that musicians and artists are now comfortable with the idea of micropayments, for example from companies like We7, Spotify and last fm. This is now the way the music business works and no payment should be deemed too small to be important. It is the sum of these small payments that make a career viable to many thousands of performers.

Conclusion – Copyright is a protection, not an impediment

21. The MU has lobbied for the rights of performers ever since the 1920s. In all of this time, we have never once seen a legitimate example of copyright creating a barrier to business and innovation.
22. Copyright is and was always intended to be a protection for creators, as with neighbouring rights for performers and we are concerned that they are increasingly being talked about as an impediment to business.
23. We accept that there have been teething issues in transferring and applying copyright from the era of the physical product to the digital world, and we think that this has largely been due to the dominance of the four major record labels and competition between them. The industry is, however, attempting to adapt and deal with the issues thrown up by the digital world and is achieving success in this area – as proved by the advent of UK Music.
24. We must return to talking about copyright and performers' rights as a protection for performers and creators rather than as an unfair impediment, and the only way to successfully do this is to focus on the way in which it protects musicians and artists who would be unable to maintain a career without it.