



BRITISH MUSIC RIGHTS' RESPONSE TO THE INDEPENDENT REVIEW INTO UK INTELLECTUAL PROPERTY RIGHTS

April 2006





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British Music Rights response to the independent review into UK intellectual property rights

Introduction

British Music Rights¹ represents over 50,000 composers, songwriters, music publishers and their UK collecting societies (MCPS and PRS). The music and lyrics which they write and in which they invest are sold as sheet music, licensed (either directly or by a collecting society) for use in live events, recorded music, films, adverts, broadcasts, shops, pubs, restaurants, schools, online and mobile music services.

This response concentrates solely on the questions relating to copyright. In addition to the points below, British Music Rights is a member of the Music Business Forum (co-chaired by BMR); British Copyright Council; Digital Content Forum and the Alliance Against IP Theft and supports their submissions without reiterating them in detail.



¹ British Music Rights is the consensus voice of Britain's composers and songwriters, music publishers and the UK collecting societies. The members of British Music Rights are the British Academy of Composers and Songwriters, the Music Publishers Association (MPA), the Mechanical-Copyright Protection Society (MCPS) and the Performing Right Society (PRS).



Executive Summary

Copyright is the currency of the creative economy in which our members operate and on which the UK's knowledge economy and long term economic interests will increasingly be based.

For individual composers and songwriters, copyright provides an income, which in turn provides time and space to go on writing²; for music publishers, copyright is the pledge against which they invest in the development of new British talent. For collective management societies, the value of the rights in the repertoire they administer is the basis of the commercial negotiations they conduct on behalf of their writer and publisher members with a wide range of music users.

Creators want to have their work enjoyed and shared with as large an audience as possible and they want to be remunerated for the use of their music. Distribution and remuneration are their livelihood - the two go hand in hand.

Copyright is an efficient and flexible system to enable both to happen. There are no barriers to obtaining copyright protection. It rewards individuals for their creativity, rewards creative businesses for their investment, and enables creative output to be disseminated as widely as possible through licensing.

Music publishers and creators have sought to exploit the opportunities which exist in the digital world by actively licensing new uses of music and exploiting new revenue streams. Music publishers also continue to develop their A&R role by finding and investing in new talent at the earliest stage in a writer's career.

Licensing of musical compositions is greatly facilitated for both rights owners and users of music by the existence of collecting societies. The MCPS/ PRS Alliance was among the first to develop online licensing models for the UK territory and is now developing multi-territorial licensing arrangements to streamline licensing procedures for cross border services such as Skype.

The challenges facing the creative community do not arise from copyright itself, but from the transition from the offline to online market, which threatens ownership of rights because control of distribution is passing from rights-holders to a new generation of network providers, hardware manufacturers and mobile operators. Cooperation between the two is of paramount importance.

We understand that because there is uncertainty as to whether rights owners can challenge IP theft at network provider level (e.g. against illegal Peer 2 Peer service operators themselves), the recording industry has taken litigation against individual consumers uploading large numbers of music files. A confrontation has resulted between the record industry and the consumer, putting the reputation of copyright on trial.

Furthermore, rights owners have sought to use DRM technologies to set usage rules in the digital environment and to track usage of content so that royalties can be accurately distributed. DRMs are key element of the future of digital content. However, isolated

² With 94% of composers earning less than £10,000 per year, this income is usually modest and is often supplemented by other income. Yet however paltry the sums involved, PRS royalty cheques (for example) for budding songwriters represent evidence that their song has been played on the radio which is an endorsement of their work and an incentive to continue writing.

incidents of heavy handed use of copy control technologies have provoked consumer outrage and contributed to a negative perception of copyright.

These developments should not be allowed to undermine copyright per se. The solution is to oil the wheels of the new digital environment, not overhaul the copyright system itself. That is why a programme of IP education and awareness features prominently alongside other practical solutions in our recommendations below:



Summary of Recommendations:

General Questions:

Copyright Education (Q. 1b + Annex A):

If the Government is to realise its ambition of making the UK “the world’s creative hub” it needs to instil a greater understanding of copyright as the currency of our creative economy and the means by which creators are remunerated.

- A basic understanding of intellectual property and its relationship to creativity should be taught as part of the national curriculum starting in primary school.
- A broad understanding of intangible assets and rights should be embedded into the secondary school curriculum, enabling young people to learn about the currency of the creative economy within broader subjects such as enterprise, the arts, media, design, technology and citizenship.
- A mature understanding of intangible assets and rights should be incorporated into the new creative and media specialist diploma announced by the DfES last year, the content of which is currently being developed by the relevant sector skills councils, QCA and LSC.
- All vocational-related FE and HE qualifications should include courses tailored for creative entrepreneurs in how to exploit and protect their IP as well as e-commerce, business strategy, leadership and finance.
- IP education should be embedded in lifelong learning as a vital part of the skills set for the future.
- Government should support media literacy programmes (which, as recognised by OFCOM, includes copyright awareness) in every community throughout the UK; for example, a media literacy programme is currently being scoped by a partnership, led by BECTA, to create practical media programmes in community centres throughout the UK.
- Information, advice and guidance should be made available throughout the UK for creators, innovators and SMEs on how to recognise, value, exploit, manage and protect intellectual property. There is scope to build upon support services, such as London’s “Own It”, by extending its availability nation-wide through regional development agencies, to ensure resources meet demand.

Business Support (Q.2d + 2g)

The DCMS study published last month, *SME Music Businesses: Business Growth and Access to Finance*, revealed that business skills are particularly short in music businesses, holding back growth in the sector. The UK is good at music and could be even better. We propose:

- The Gowers team should endorse the study’s recommendations for targeted specialist support services for the music sector at this crucial time to underpin its development and growth.



- The Government should look again at closely targeted incentives to encourage investment at the cutting edge of innovation in the music sector given that music does not benefit from R&D tax credits and venture capital schemes.
- The Government should explore how closer collaboration between publicly funded initiatives designed to encourage innovation in the music sector and the industry itself could unlock greater efficiencies and lead to better designed and targeted investment.

Licensing (Q. 3i)

The MCPS/PRS and its membership want to initiate cross border licensing, currently restricted to a territorial basis. In support of that aim, the Gowers team should:

- Ensure that the EC Recommendation on the Management of Online Rights in Musical Works is upheld as the best starting point for the development of pan-European or even global licensing systems;
- Ensure the effective dismantling of any barriers imposed by other Member States that undermine the ability of UK collecting societies to provide pan-European licensing services or establish operations elsewhere in Europe – in particular any onerous and discriminatory authorisation and registration requirements of the sort that the European Commission is fighting to outlaw through its proposed Services Directive.

Enforcement (Q. 4a)

Solutions to the challenges facing music in the digital value chain are founded upon working with technology and promoting greater cooperation between rights owners and the network operators controlling the means of distribution. BMR is launching a report shortly on how interests are currently unaligned. This could be achieved by:

- Clarifying and strengthening liability for *authorising* copyright infringement to enable rights owners to enter into licensing talks with currently illegitimate P2P operators. This could lead to legitimisation of P2P usage for consumers and remuneration for creators for the distribution and copying of their works.
- Abandoning DTI plans to extend exceptions to the e-Commerce Directive for internet intermediaries' hyper-linkers, search engines etc.
- Encouraging network operators such as ISPs and mobile companies to:
 - Adopt and implement advertising and sales policies which discourage rather than encourage copyright infringement;
 - Co-operate with rights owners in removing infringing material from their services;
 - Inform customers through terms and conditions of use of the potential consequences of copyright infringement such as suspension of their accounts.

Copyright Tribunal (Q. 4c)

The Copyright Tribunal is instrumental in setting tariffs where parties cannot agree – yet it needs to operate more efficiently. We recommend that the Gowers team:



- Implement procedure and best practice such as those introduced by the Leggatt and Woolf reforms neither of which were directly applied to the Copyright Tribunal. In addition, promote a more commercial and less regulatory approach to tariff setting, greater transparency for the appointment of chairmen and a review of the selection and the training of lay members of the panel to improve their expertise.

International

Government ministers should:

- Put pressure on US Authorities to comply with the WTO decision on “bars and grills” exception which is in breach of the WTO TRIPS Agreement – by reviewing compensation payable to European rights owner with a view to repealing the law subsequently.

Specific Issues

In response to each of the specific issues raised below, we recommend the Gowers Team should:

Term of protection

- Review the term of protection on sound recordings.
- Support European harmonisation of the rules determining the term of protection on co-written works during the review of the Term Directive (EC/93/98) scheduled for 2007.

Exceptions

- Take into account industry considerations on possible solutions to legitimise and remunerate private copying, which are still being developed, before making any firm proposals to Government.
- Clarify that the “timeshifting” exception (s70 CDPA) does not cover the use of Digital Audio Broadcasting technology for locating and copying specific recordings in order to create a permanent personal library.

Digital Rights Management Technology

Digital Rights Management (DRM) has become synonymous with copy control technology when it is a much broader concept. The terminology needs to be clarified in order to distinguish rights management information from technical protection measures (copy control) with a view to:

- Promoting a greater understanding of the role of *rights management information* as an enabler allowing music usage to be tracked so that songwriters, artists and labels are paid the correct royalties.
- Restoring consumer confidence by encouraging industry to develop a voluntary code of conduct covering the use of *copy control* which could, for example, stipulate clear labelling to indicate whether copy control has been applied, what uses it permits, what uses it restricts and what software would need to be installed on the consumer's hardware.



Orphan Works

- Consider the introduction of a regime under which users can use an orphan work without authorisation provided:
 - they make *and are able to demonstrate* reasonable efforts to find the copyright owner;
 - that they act reasonably in the event that the copyright owner emerges;

Parallel imports / Exhaustion

- Maintain the current regime of European exhaustion.

PART 1

GENERAL QUESTIONS

1. HOW IP IS AWARDED

1 (a): Are there barriers to obtaining IP rights due to system complexity? What could be done to improve this situation?

There are no barriers to obtaining copyright protection for musical works. With no formalities to acquire copyright (it is in fact a requirement of the international Berne Convention that no formalities should be applied to the granting of copyright), obtaining rights could not be simpler.

In fact copyright is awarded to anyone who creates and *records* (on any media – paper, tape, or in digital form) anything that is *original* in the sense of not having been copied. There are no formalities such as registration, deposit or notice requirements; nor are any costs to be incurred as is the case with industrial property rights such as trademarks and patents.

The automatic nature of copyright is a powerful and necessary safeguard for creators against the misappropriation of their creative output by those who might wish to exploit it without remunerating them (perhaps by arguing that the creator had not fulfilled certain bureaucratic formalities were there ever to be any).

In addition to the economic rights, copyright encompasses moral rights which protect the creator's right to be identified as the author of a work and the right to challenge any derogatory treatment of the work.

1 (b): What could be done to improve awareness for businesses and innovators?

The digital world is changing the traditional means of exploiting rights and opening up new possibilities for innovative and entrepreneurial creators and the companies who invest in creativity.

British Music Rights has been working for some time to highlight the importance of copyright education as an essential tool for those wanting to work in or with the creative sectors, and we strongly welcome Government's engagement with IP education and awareness agenda³.

Why education is needed:

Too few businesses and enterprises understand intellectual property and its potential to unleash value as a potential catalyst for new products and services.

The Cox Review of Creativity in Business found that “with a few honourable exceptions, the UK has not been good at carrying its creative capabilities through into consistently world-beating products and services. Indeed, others have often made far more use of these ideas and capabilities.” The ideas and creative capabilities referred to are the very foundation of IP. Yet the report continues, “Surveys by the leading business organisations and wide discussions with businesses of all types reveal that the main obstacles [include] lack of awareness and experience; lack of belief in the value of, or confidence in, the outcome, not knowing where to turn for specialised help...”

³ Please refer to Annex 1: IP education and awareness



A British Gas Time survey of small businesses revealed that UK small businesses are potentially wasting time developing new products and ideas - because they don't protect them. The survey found that 79% of respondents did not know how copyright and patent protection works, with 74% operating without any form of intellectual, patent or copyright protection. The survey also revealed that UK small businesses are not implementing proper development procedures and are in danger of missing potential growth opportunities. While 31% of small business owners relied on flashes of inspiration to come up with product ideas, only 3% undertake any form of market research.

Innovators and creators are seeking out advice on how to exploit and protect their IP, but demand is outstripping supply.

For example, Creative London runs an IP service "Own It", which we have actively supported. After just 18 months in existence, demand is already out-stripping supply. Their free 45 minute advice sessions with lawyers are heavily oversubscribed and there are waiting lists for their events. The British Library Intellectual Property Centre, launched only last month, is also putting on extra seminars to cater for the high demand for its services.

Perhaps most worrying of all, there is evidence that the next generation is growing up with an insufficient grasp of IP, yet this is the generation that has most to gain – or lose – according to its level of mastery in understanding and exploiting IP.

Nearly 70% of 14 to 16 year olds did not know what IP was before learning about it at school, according to a Patent Office survey.

There is an only partially-met demand by teachers for educational resources that can help them impart a better understanding of how to value and exploit intellectual property more generally in a way that is accessible and engaging. In 2005, British Music Rights launched a *Respect the Value of Music* resource pack to introduce 11-14 year old music students and their music teachers to the importance of copyright in music and its role in protecting creativity and encouraging innovation. Over 1,800 packs have been requested by schools to date. The Patent Office's "Think Kit", designed to teach 14-16 year olds how enterprising organisations make the best possible use of intellectual property through case studies, has now been requested by 80% of the UK's secondary schools.

BMR is now working on a new project related to IP education with Young Enterprise. Young Enterprise was asked by teachers to develop a 'learn by doing' programme that would fulfil the curriculum requirement for enterprise education. As an increasing number of young people are choosing to set up 'creative' businesses as part of their enterprise education, tapping into the areas that interest them, Young Enterprise is working with British Music Rights to design a programme that includes music sector-specific elements, of which IP education is a crucial part. Other creative sectors are similarly developing educational materials in response to growing demand from teachers.

What should be done:

To build a robust knowledge economy and the skilled workforce to fuel it will require transforming IP from an obscure and opaque subject into a concept people learn about at the points at which it touches their lives⁴. We recommend:

⁴ Please refer to Annex A for details about the work that we are currently engaged with to promote IP education and awareness



- **A basic understanding of intellectual property and its relationship to creativity should be taught as part of the national curriculum starting in primary school.**
- **A broad understanding of intangible assets and rights should be embedded into the secondary school curriculum, enabling young people to learn about the currency of the creative economy within broader subjects such as enterprise, the arts, media, design, technology and citizenship.**
- **A mature understanding of intangible assets and rights should be incorporated into the new creative and media specialist diploma announced by the DfES last year, the content of which is currently being developed by the relevant sector skills councils, QCA and LSC.**
- **All vocational-related FE and HE qualifications should include courses tailored for creative entrepreneurs in how to exploit and protect their IP as well as e-commerce, business strategy, leadership and finance.**
- **IP education should be embedded in lifelong learning as a vital part of the skills set for the future.**
- **Government should support media literacy programmes (which, as recognised by OFCOM, includes copyright awareness) in every community throughout the UK; for example, a media literacy programme is currently being scoped by a partnership led by BECTA to create practical media programmes in community centres throughout the UK.**
- **Information, advice and guidance should be made readily available and accessible throughout the UK for creators, innovators and SMEs on how to recognise, value, exploit, and manage and protect intellectual property. There is scope to build upon services such as London’s “Own It”, extending them nation-wide through regional development agencies, and ensuring they have the resources to meet demand.**

The role of public sector bodies:

Public sector bodies also have a responsibility to promote copyright awareness, particularly where there is a perception of material being supplied free of charge. The BBC has a central role to play as a copyright education facilitator because of its unparalleled access to audiences on a variety of levels and in a multiplicity of ways. In the context of the BBC White Paper and the recognition of the duty to promote media literacy, the BBC should fulfil its public service obligations and act as a beacon of good practice in this area.

For example, the BBC’s Creative Archive’s stated objective is to create a million new creators. This is a noble objective. However, the BBC should promote professional as well as amateur creativity. Instead of new creators being encouraged to immediately give away their work on the Creative Archive system, they should be informed of their choice to launch their work commercially by re-engaging with the BBC or a commercial operators, rather than simply feeding their work back into the creative archive ‘share-alike’ system.

1 (c): Are there barriers to obtaining UK IP rights on grounds of cost? What drives these costs?

As explained in our answer to question 1(a) there are no costs occurred in the obtaining of copyright.

2. HOW IP IS USED

2 (a): What types of IP does your organisation use and why?

Copyright can be used in a multitude of different ways. Copyright ensures that a creative work is also a tradable asset. How you trade it – or choose not to trade it - is a business and a personal choice. And while the choices available are multiplying in the digital age, copyright continues to provide the foundation for all trade in creativity.

Composers & Songwriters

For the **composer and songwriter**, copyright is the essential means by which, as creators, they have control over the use by others of their creative work. Through copyright composers and songwriters have the exclusive right to authorise others to copy their work; issue copies of their work to the public; perform, show or play their work in public; adapt their work; broadcast their work and make their work available online. Copyright is also, of course, the means by which the majority of music writers are able to earn royalties, usually by registering their works with the appropriate collective management society.

While the on-line environment has made it easier for **pop songwriters** and bands to promote their music themselves, many songwriters depend on publishers for early development deals and deals to tide them over between recording contracts. Publishers also provide crucial creative, financial and administrative support to established songwriters. It is part of the publisher's function to seek the exploitation of their writers' work through deals with record companies and other deliverers of music.

Media composers initially depend on receiving commissions from broadcasters and film makers but the larger part of their income is likely to come from royalty payments paid as a result of licence agreements between the broadcaster and the Performing Right Society (PRS) for the use of their music in the UK and reciprocal agreements between PRS and overseas collecting societies for its use abroad. Many television composers do their deals with broadcasters directly or through an agent.

For many **classical composers**, royalty payments based on their copyright do not provide a reliable source of revenue because there are few live performances or broadcasts of their work and only limited sales on recordings. Their regular music income is provided through commissions and activities such as teaching and composer in residence projects.

Of particular importance to all composers and songwriters is their right to assert the moral rights in their work through which they can claim recognition as authors and object to their works being distorted, mutilated or modified in any way which would be prejudicial to their honour or reputation.

Music Publishers

Music publishers take an assignment of copyright in the written music and/or songs (such assignment often being only for a limited period) in exchange for their investment in the development of songwriters, composers or new bands, often at a very early stage



in their careers prior to securing a recording deal. In the world of recorded music, it is often the publisher that continues to support a band between record deals.

New technologies are bringing sweeping changes not only in how music is delivered, but also in the roles and functions of the component parts of the industry. Diminished profits for record labels and publishers due to piracy and the transition from album sales to single track sales (e.g. online), has meant that their existing business model has come under pressure. In this digital world, the traditional A&R role of publishers has again come to the fore and the opportunity for publishers to remain close to the creative process and to help build the careers of the writers they represent has never been clearer.



Early involvement helped turn James into a diamond

VIEWPOINT DECLAN MORRELL



As an A&R executive, there can be no greater satisfaction than to sign an artist you respect and admire, with songs that you truly enjoy. Even better should that artist go on to sell millions of records.

However, to develop an artist/songwriter requires time, creative nurturing and a great deal of belief, both in the artist's talent and the executive's A&R skills. When one takes into account the huge investment required to break an artist, this is proving increasingly difficult for the major record company. At EMI Music Publish-

ing, we believe there is a greater role for the publishing A&R community in this area.

we could add positive creative input to James's undoubted talent and potential as a writer and artist and, with a creative manager, help shape this diamond in the rough. With full management support from Guy Moot, the company signed James in October 2002. Over the subsequent 18 months EMI Music Publishing was able to contribute not only A&R expertise, but also recording facilities, co-write input and opportunities, film and TV/sync and licensing access and moral support.

James had the time and space to write, co-write, compile a body of work, put a band together and discover himself as songwriter and recording artist. As a good publisher, we could take any immediate pressure off him, allow his songwriting to evolve and broker label and producer introductions.

James is not a one-off. We are proud of his success, but also of the facilities that allow for such artistry to flourish. Our role now is a creative one and the reward for writers will come from publishers with the right skills, belief, resources and desire to get involved early, as well as being patient.

Declan Morrell is senior A&R manager at EMI Music Publishing UK

As a good publisher we could take any pressure off him

ing, we believe there is a greater role for the publishing A&R community in this area.

In 2002, I met a singer/songwriter named James Blunt. He had a handful of beautiful songs and had just taken good management with Todd Interland at 21st Artists, but there was no label interest and James was still officially a "military man". We felt that, despite the risk, and even at this formative stage of his career,

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Collecting Societies

The existence of **collecting societies** such as the MCPS and PRS brings significant efficiencies to the licensing process to the benefit of both members (composers and music publishers) and users. MCPS and PRS administer respectively the mechanical right (comprising the right to make copies and issue copies to the public) and the





performing right (comprising the right to perform in public and the communication to the public right, the latter of which includes broadcasting and making available to the public). MCPS issues licences to record companies, DVD producers and a whole raft of “media” users from karaoke producers to manufacturers of novelty toys. PRS’ public performance licensees include concert venues, pubs, bars, restaurants, shops, hairdressers and so on. MCPS and PRS issue a joint licence for online use (please see our description of the Joint Online License below) and in addition are moving towards joint licensing in the area of broadcasting. In each of these areas of exploitation, MCPS and PRS are able to offer a one-stop-shop licence covering worldwide repertoire for use within the UK. This simple approach provides great value for licensees.

In addition to licensing, collecting societies audit and monitor actual use of music, distribute royalties and enforce rights. Generally, these activities cannot be done by individual composers and music publishers, most of them SMEs with insufficient financial, technical and human resources.

2(d): How does your company value its IP? Are there problems with raising finance against intangible assets based on IP? What improvements could be made in this area?

Historically, banks (and particularly high street banks) in the UK have not very well understood the real value of copyright being an intangible asset. Generally accounting policies for valuing copyright for balance sheet purposes have been very conservative.

Despite this legacy, established music publishers with a history of steady royalty streams are able to borrow from banks against their music copyright. Banks are also willing to lend money to buy music catalogue if it has demonstrated a steady royalty flow over a period of years.

However, some sections of the music sector, in comparison to SMEs across the whole economy, appear to suffer disproportionately from difficulties accessing finance:

A DCMS study published earlier this month, *SME Music Businesses: Business Growth and Access to Finance*, found that the most commonly reported barrier to growth is cash flow or lack of money, reported roughly twice as frequently by music businesses when compared to SMES as a whole. This was put down to one or a combination of factors: “the structure of royalty payments in the sector, the sometimes long lead times (and therefore upfront costs incurred) associated with producing a product, or the ability of businesses to manage their finances and cash flow in general.”

The report concluded that access to equity finance remained important to a minority of companies, and these enterprises are likely to have strong growth potential. “It is therefore important for those looking to grow and support the sector to be able to identify these companies in order to target specialist support services that will underpin their development and growth.”

- **We strongly endorse the report’s recommendations for targeted specialist support services for the music sector at this crucial time to underpin its development and growth.**

We are working closely with Government and other partners, through the Creative Economy Programme, to identify potential solutions.





2 (g): To what extent does your organisation make use of other methods used by Government to encourage innovation, such as public funding?

The market for popular music is mature, crowded and increasingly competitive. Margins are often very tight. The music industry as a whole is in transition, moving from a traditional off-line to an online marketplace. The environment is therefore less attractive for high-risk investments – in new, untried, innovative creative talent.

A study by the DCMS published earlier this month *SME Music Businesses: Business Growth and Access to Finance* found that while the profit trend across music businesses as a whole is positive, the ability to make a profit is concentrated within the older businesses, and that young businesses seem very vulnerable.

As noted in a recent report by the Taskforce on Research and Knowledge Transfer, “The question of where and how risk is enabled and supported in [creative industries] is a central one; particularly for those industries where R&D takes place in the market, increasingly in interactions with the user, and where failure is not permissible and risk is not easily financially enabled or absorbed without potentially damaging the enterprise or individual practitioner concerned.”

Government fiscal measures to encourage investment in the economy through R&D tax credits does not apply to investment in new artistic talent; and its incentives to encourage innovation in the economy through venture capital schemes do not apply to music publishing.

The result is potentially an adverse long-term effect on innovation in the sector.

- **We therefore recommend that the Government look again at targeted incentives to encourage investment in innovation in the sector.**

Public Funding

The Arts Council is currently the main channel for public funding in music. The Arts Council allocates £500 million a year into the Arts in England. Over the past decade, £457 million in lottery money has been invested in music but we are unaware of any analysis of the impact of Arts Council funding on innovation in the music industry.

Industry itself also invests in music innovation. The UK’s largest independent organisation for funding purely new music is the PRS Foundation. The PRS Foundation receives support from the membership of the Performing Right Society. It was set up in 2000 with a proportion of the interest from the PRS collections that accrue before being distributed back to members. Since its launch in March 2000 it has successfully invested over £5 million into over 1000 new music initiatives. The PRS Foundation has become a model of good practice within the arts funding system - widely praised for its culture of efficiency, easy access and fast decision making and for its free expert advice service for potential applicants⁵.

- **We recommend that closer collaboration between publicly funded initiatives designed to encourage innovation in the music sector and the industry itself could potentially unlock greater efficiencies and lead to better designed and targeted investment.**



⁵ For further details see <http://www.prsfoundation.co.uk>



Skills

The British music scene is vibrant and successful despite comparatively low levels of financial skills.

The DCMS study *SME Music Businesses: Business Growth and Access to Finance* raised concerns about the low levels of skills in financial and business management, and warned that without intervention, many music businesses will struggle to achieve their growth potential.

Its conclusions suggest that for the majority of SMEs in the music sector, targeted business support is what is needed most: “If this gap persists, it is likely that many of the music businesses will continue to struggle with the day to day running of their businesses, have low profitability and will not be able to achieve their (laudable) ambitions for commercial and, arguably, creative growth.”

We strongly agree that tailored skills development programmes - such as those being drawn up by Creative and Cultural Skills - could potentially unlock considerable growth provided sufficient focus and resource are given to the particular needs of music.

We are working closely with Creative & Cultural Skills to ensure that the music sector can take full advantage of management and leadership opportunities through the Cultural Leadership Programme.

We further recommend Government support for:

- **Brokerage services in establishing a closer relationship between the creative industries and the wider financial community, potentially through creative industry secondments in financial services posts, to help plug attitudinal and skills gap identified in the report.**
- **Incubation projects and creative clusters - linking FE colleges, universities, regional development agencies and the financial and creative sector - to spur investment in innovation while ensuring the next generation of innovators are equipped with business and financial skills.**
- **Business support for e-commerce opportunities, especially in the light of new digital technologies, should be made available across the UK. The *SME Music Businesses: Business Growth and Access to Finance* study concluded that “there may be a role for business support related to the more specific areas of e-commerce, given its present and future importance across the music industry and the difficulties some music firms have expressed related to the capacity, skills and costs involved in expanding/starting e-commerce.”**

However, awareness of business support is low amongst music sector SMEs. Within the current streamlining of DTI business support services there also needs to be better signposting of services across the UK.

- **Business support services should work strategically with sector trade bodies and other member organisations to reach businesses that could benefit from support.**

The creative industries face similar problems but can assist one another greatly. The music industry is a key component and plays a vital role supporting other sectors such as film, the arts, design, digital media, and other related disciplines. The interdependent

success of these other creative sectors should be recognised further supported by Government and RDA's through:

- **A creativity and innovation centre in every region to nurture emerging talent and play a central role in coordinating, streamlining and signposting business support and skills development programmes for the creative industries.**

Music Sector Representative Body

The music industry and the DCMS are jointing funding a feasibility study into the creation of a Music Sector Representative Body. Such a body might function to assist in exploiting the potential synergies between the music sector and key government policy objectives such as enterprise, innovation and competitiveness [as well as urban regeneration, media literacy and the digital divide, social inclusion, tourism and health]. The body could also provide a coordinated gateway for sector specific services, working with the proposed creativity and innovation centres and Creative & Cultural Skills sector to improve the supply of relevant skills into the industry through a range of government and business backed initiatives. The body could also help ensure a more coordinated approach to public and private investment in innovation in the sector.

3. HOW IP IS LICENSED AND EXCHANGED

3 (a): How easy is it to negotiate licences to use others' IP for commercial or non-profit purposes?

Composers, songwriters and music publishers are always looking for new opportunities to exploit their songs by licensing. In a sector that has very little direct contact with the consumer (other than through sales of sheet music), licensing is their business *raison d'être* to a greater degree than many other creative sectors whose core business remains the marketing of a final product.

As we have seen above, composers, songwriters, publishers and societies license an enormous range of commercial uses of music from live events, recorded music, films, adverts, broadcasts, shops, pubs, restaurants, schools and online and mobile music services.

In this respect, publishers have the *licensing mind set* required for the digital world. With collecting societies employed as scale engines for the majority of licensing, they also have the structures in place to license quickly and effectively in the digital age.

This is demonstrated by the early introduction by the MCPS/PRS of a fully flexible online licence known as the Joint Online Licence – the JOL.

The Joint Online Licence (JOL): The MCPS - PRS Alliance developed their first licences for online exploitation as early as 1997 and in 2002 created a dynamic new approach to the licensing of content for online exploitation.

The Joint Online Licence (JOL) grants users the rights to use an enormous catalogue of UK and international musical compositions within the UK territory in a one-stop procedure. The licence is sufficiently flexible to enable the user to experiment with different business models without having to return to renegotiate the licence.

The JOL demonstrates the commitment from the composer and music publisher community to facilitate the expansion of legitimate digital music services in the UK since it enables large portals, mobile providers and individual artists' sites alike to offer music services to consumers according to their chosen delivery method and to take full advantage of the opportunities afforded by the advent of broadband.





Since its inception, the JOL has been used to license a diverse range of online and mobile business models using and selling music. The Alliance currently has over 100 such licensees. These include:

- Major ISPs providing free music streaming services as part of their broadband product bundles;
- A broad spectrum of online music download stores ranging from iTunes to independent record label sites selling their own recordings and niche genre sites specialising for example in folk, classical, traditional Scottish and dance music;
- Subscription on-demand streaming services such as Napster;
- Webcasters;
- Mobile Networks selling downloads and streaming songs and music videos to mobile handsets.

However, progress is required to facilitate multi-territorial licensing for online and mobile use – as recognised by the European Commission in its Recommendation on the collective cross-border management of copyright - see our response to section (i) on international licensing below.

Non-Profit / Non-Commercial Licensing:

It is important to note the difference between “non-profit” and “non-commercial”. Many *commercial* uses of musical compositions are not for profit – the BBC’s use of music is a case in point. We understand “non-profit” in the context of the question to mean non-commercial use by individuals.

First of all, some non-commercial uses are covered by exceptions – for example, these include research and private study, as per section 29 of the Copyright Design and Patents Act 1988 (see our comments on specific issues regarding copyright exceptions).

Where other non-profit uses are not subject to exemptions it is right that they are licensed by the right holders and MCPS/PRS strive to ensure that such licences are accessible and on terms and at rates that are commensurate with the type of use being made.

Furthermore, new technologies have opened up opportunities for individuals to use broadcasting, multi-copying systems, podcasting, filesharing and other technologies as a means of distributing their own content and remixing and distributing other people’s. Music is at the forefront of this phenomenon, as highlighted by the following examples:

- The website MySpace - a networked community of people freely sharing their own music (as well as other content) - famously launched the career of the Arctic Monkeys.
- Individual artists (particularly rap artists) use their websites to provide fans with clips of their music to remix and put back onto the site for others to listen to (see website of Sri Lankan born rap artist M.I.A. at www.miauk.com)

Particular copyright licences have been developed to underpin these situations.

Amateur creativity of this kind should be encouraged because it enriches artistic experience and also because it can be a pathway to professional creativity. In the physical/analogue world, amateur creativity has always co-existed with professional creativity. In the digital age it is essential that we preserve such an environment. In order to do so, there needs to be an understanding of the difference between the copyright licensing regimes that apply to each. Above all, there needs to be an appreciation that it





is in the gift of the creator to allow or prohibit non-commercial (as well as commercial) use of his or her work not least because sufficient “non-commercial” activity can significantly lower commercial values. Furthermore, creators must be able to exercise their moral rights to ensure that they receive proper acclaim as authors and to prevent derogatory treatment of their work.

For this reason, examples of non-commercial licensing working well (e.g. via MySpace or artist websites) tend to be those where creators themselves voluntarily license the non-commercial use, sharing or remixing of their work.

The situation is more complex when a third party such as the BBC seeks to authorise “ripping, mixing and burning” in the context of the Creative Archive on behalf creators many of whom continue to rely on royalty income from their work. Blanket rights clearance in this context is not possible as adaptation rights and moral rights need to be cleared directly by the creators themselves. Many are concerned that while a “non-commercial” creative archive fits the remit of public service broadcasters well, it risks becoming in practice a means of curtailing the term of copyright that exists in musical compositions and which underpins composers’ and publishers’ businesses. We are working with the BBC to find solutions.

3 i): Are there barriers to trade and exchange of IP internationally?

In the age of the world wide web, music licensing is still administered on a territory by territory basis. So, currently, a company such as iTunes wanting to provide a multi-territorial music service needs to obtain a separate music licence for each territory in which the service is available. Rights owners, collecting societies and music service providers unanimously agree that this needs to change.

Recently, the European Commission issued a Recommendation on the management of online rights in musical works obliging collecting societies to comply with minimum standards of transparency and good governance. The Recommendation also requires that societies open themselves up to competition for the online exploitation of members’ rights by facilitating choice among rights holders to withdraw and self-administer their rights and/or to transfer their rights from their national society to whichever society they believe can administer their rights for online use most effectively.

The desired result (following a certain transitional period) is the streamlining of collective management via the creation of online rights hubs which deliver maximum value and efficiency of licensing, usage monitoring and distribution to rights owners and from which users could obtain licences.

British Music Rights and its membership have wholeheartedly supported the European Commission’s Recommendation and have been among the first to act upon it – see the MCPS-PRS submission which provides details of new initiatives undertaken with (1) EMI Music Publishing and the German society GEMA; and (2) the Spanish society SGAE to develop a new technology platform for licensing, eLos. We recognise that licensing of music needs to reflect the multi-territorial nature of online and mobile services. We also believe that rights owners stand to benefit from efficiencies generated by greater competition between societies for members.

In the autumn of 2006, the EC is set to review actions taken by industry to implement the Recommendation. We would urge the Government to:

- **Ensure that the Recommendation is upheld as the best starting point for the development of pan-European or even global licensing systems – mainly because it recognises that societies are the trustees of their members’ rights**





and that therefore any competition between societies should not be for users (which would lead to ‘forum shopping’ and a race to the bottom on price) - but for members.

- Ensure the effective dismantling of any barriers imposed by other Member States that undermine the ability of UK collecting societies to provide pan-European licensing services or establish operations elsewhere in Europe – in particular any onerous and discriminatory authorisation and registration requirements of the sort that the European Commission is fighting to outlaw through its proposed Services Directive.

4. HOW IP IS CHALLENGED AND ENFORCED

4 (a): Are there specific problems with enforcing the main different forms of IP: patents, copyright, trade marks, and designs?

Legitimate online music use is gathering pace with the volume of legal digital downloads experiencing exponential growth - 26 million tracks were downloaded legally in the UK in 2005, a four-fold increase on 2004⁶. However, despite the rise in legitimate consumption, music remains the main driver of illegal Peer to Peer activity to date. According to Cache Logic, 60% of all internet traffic by data volume is Peer to Peer filesharing with a significant number of unauthorised music files being exchanged over unlicensed Peer to Peer systems.⁷ The resulting losses to the music sector are substantial.⁸

There are 3 main areas where Government could assist the music sector in tackling the illegitimate use of music online and building the legitimate market. All 3 proposals would seek to establish greater responsibility and less “agnosticism” among network operators regarding copyright.

A. Introduce clear provisions to cover the liability of P2P operators

Unauthorised services such as KaZaA, Grokster and eDonkey actively promote the use of Peer 2 Peer technology for copyright infringement and sell advertising on the back of it. Despite this blatant profiteering, the law is unclear on whether such Peer 2 Peer service providers are liable for authorising copyright infringement.

Some countries around the world are beginning to recognise that Internet intermediaries which are building their businesses around the authorisation of copyright infringement via their networks should be made liable for such infringements and are reacting by introducing or clarifying provisions on authorising copyright infringement either in case law⁹ or legislation¹⁰.

Most notably, the US Supreme Court decided unanimously on 27th June 2005 in MGM Inc et al vs. Grokster Ltd et al that someone “who distributes a device with the object of

⁶ IFPI Digital Music Report 2006

⁷ And at least ten times as many music files are shared as video files. Source: CacheLogic research

⁸ TNS Worldpanel estimate the cost to British music in 2005 of people illegally file-sharing rather than paying for music was £414m; and the cost to British music of illegal filesharing reached £1.1bn in the three years to 2005. See BPI press release April 2006 http://www.bpi.co.uk/index.asp?Page=news/legal/news_content_file_984.shtml

⁹ E.g. Taiwan, Korea, Australia and most notably the US decision over Grokster in 2005.

¹⁰ E.g. Australian Copyright Act (section 36 (subsection 1A10))





promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.”

- **We recommend the introduction of clear provisions to cover the liability of P2P operators, premised either on clarification of the legal concept of authorisation of copyright infringement or a new specific act of secondary infringement to cover the provision of software and/or services for the making and/or communication of infringing copies. We hope to collaborate with the British Copyright Council on this proposal and have some draft wording in the near future. Such a provision would oblige the less scrupulous P2P operators to enter into licensing negotiations with rights holders on pain of litigation should they fail to do so. This would legitimise P2P usage for consumers and remunerate creators for the distribution and copying of their works.**

B. Abandon consultation looking to extend safe havens for Internet intermediaries

Ironically, rather than tightening provisions on liability, the DTI recently opened a consultation into the possible extension of safe havens from liability (for copyright infringement, defamation and other matters) for internet intermediaries such as search engines, hyper-linkers and content aggregators.¹¹ The decision to open this consultation was curious given that the E-Commerce Directive struck a careful balance between protecting legitimate internet intermediaries that inadvertently commit infringements and supporting rights owners’ ability to ensure respect for their rights online.

Numerous sites promoting illegal infringements exist both in the UK and other EU territories, providing links solely to illegal mp3 music files, download sites, Peer 2 Peer services and sites selling pirate or counterfeit discs. These links are more often than not based in foreign territories with little or no copyright legislation or actual enforcement in practice. In the absence of other options, rights owners need to be able to oblige hyper-linkers to remove their links to these sites.

- **We recommend no extension of exceptions to the e-Commerce Directive for Internet intermediaries hyper-linkers, search engines etc. This would be akin to granting an implied consent to any such linking activities and at the same time making it impossible for right holders to exercise their rights in practice.**

C. Promote greater responsibility towards copyright among network operators such as ISPs and mobile companies

British Music Rights will shortly be publishing a report which evidences the growth potential of digital music and the enormous value that music delivers to digital platform operators such as Internet service providers (ISPs), such as BT and AOL, as well as mobile operators. Many of these operators use access to music as a key selling point of their products or services (broadband, mobile handset with Bluetooth) yet they appear agnostic as to whether consumers access to music is legitimate or not.

We propose that platform operators could do more to promote legal use of music by:

- **Adopting and implementing advertising policies which discourage rather than encourage copyright infringement**

¹¹ <http://www.bmr.org/html/submissions/submission112.htm>



- **Co-operating with rights owners in removing infringing material from their services**
- **Informing customers of the potential consequences of copyright infringement such as suspension of their accounts (to be provided for in terms and conditions)**

The Business Opportunities Group of the Creative Industries IP Forum chaired by Lord Sainsbury and Baroness Morris of Yardley (followed by James Purnell MP) went some way to promote discussion and understanding between rights owners and platform operators. We are encouraged that the IP Stakeholders Group has been set up to oversee the implementation of the recommendations of the IP Forum and trust that it will take the discussions between platform operators and rights owners further.

4 (c): To what extent does your organisation make use of the Copyright Tribunal?

Licences and licensing schemes operated by music collecting societies are subject to referral to the Copyright Tribunal by music users. The remit of the Copyright Tribunal Reform is to determine what is fair and reasonable in any licence or scheme but not specifically to regulate monopolies (this falls to the OFT). However, for many right holders, there appears to be an underlying presumption by the Tribunal that the terms initially proposed are unreasonable simply because of the *de facto* monopoly nature of the collecting society. We would welcome the introduction of reforms to promote a less *regulatory* and more *commercial* approach to disputes which are in reality about the commercial terms which should apply.

Notwithstanding an industry dispute over inline royalty rates currently before the Copyright Tribunal, the whole music sector is in agreement that the Copyright Tribunal is in urgent need of reform. The Copyright Tribunal should apply the reforms made to other courts and tribunals, as initially proposed by the Lord Woolf and the Leggatt review.

The following measures should be introduced to improve the Copyright Tribunal:

- **Reforms to promote a more commercial and less regulatory approach by the Tribunal**
- **Greater transparency for the appointment of the chairmen**
- **A review of the selection and training of the lay members to improve the balance and expertise available**
- **Urgent implementation of the reforms published by Lord Woolf in April 1999 to provide an easy, timely and cost-efficient procedure for the Courts and Tribunals. The overriding objective of the Woolf reforms in civil proceedings is the resolution of a conflict rather than successes based on procedural strategy.)**

We will provide more detailed comments in response to the Patent Office's review of the Copyright Tribunal and ensure that these considerations are communicated to the review team.

4 h): What are the principal barriers to efficient and successful challenge and enforcement internationally?

We are encouraged by the steps taken by Patent Office officials following the G8 statement on piracy and counterfeiting agreed at Gleneagles in 2005. Whilst we welcome the spirit of international co-operation being fostered there remains much work





to be done in terms of enforcement to protect the intellectual property of British companies.

- **We urge officials in the DTI (and the Patent Office), and the FCO to continue their collaborative efforts in this area. The experiences and expertise from enforcement officers in the UK should be exchanged where possible to inform the respective authorities of 'best practice' approaches to enforcement.**

The music industry has a good working relationship with the DTI on the need for international implementation of the TRIPS Agreement both in terms of copyright legislation and enforcement, with particular focus on rampant piracy in Russia and China.

British Music Rights has a particular concern with Section 110 (5) of the US Copyright Act (introduced by the Fairness in Music Licensing Act in 1998) exempts some 70 per cent of US bars and restaurants from the requirement to pay copyright royalties for public performance of music on their premises.

In July 2000 a WTO Panel decided that this provision was in breach of the WTO TRIPS Agreement and ordered the US to amend its legislation and to pay compensation. The US paid compensation of \$1.1 million per year for three years running up to the end of 2004. At the end of December 2004 the period covered by the arbitration expired. Over two years later there has been little indication that the law will be changed – or that compensation payments will be reviewed for a further period pending the change to the law.

US non-compliance with the WTO ruling not only causes losses to European music estimated by the European Commission at US\$ 25,486,974 per annum, it also establishes a dangerous precedent of TRIPS non-compliance which is not limited to copyright based trade.

- **We urge UK Ministers and officials to put pressure on US Authorities to renew compensation as a first step – with a view to changing the law at a later date.**

British Music Rights is a member of and supports the comments of the Alliance Against IP Theft relating to enforcement.

Part 2

Specific issues

Term of protection:

Current term of protection on sound recordings and performers' rights

(a) What are your views on this issue?

Strong rights help encourage the investment in creativity which leads to consumers to having the widest choice of music available to them. The EU currently provides a shorter term of copyright on sound recordings than a number of its global competitors. British Music Rights therefore supports Government reviewing whether the EU 50 year term of protection on sound recordings should be extended. As part of its review Government should assess two key areas:

- **Firstly, how a 45 year divergence between EU/US terms of protection impacts on UK and EU competitiveness;**
- **Secondly, what term of protection for rights in sound recordings, particularly as far as performers are concerned, is fair and equitable.**

Co written works

Another issue not directly addressed in the review relates to the harmonisation of the criteria for calculating the term of protection in the musical sector, more specifically in respect of literary and musical works which are written specifically for use together (e.g. the words and music of a 'song').

In some Member States, such works are regarded as works of joint authorship where the term is calculated from the death of the last surviving author (e.g. France, L. 113 of the French Copyright Act); in other Member States, such as the UK however, these works are considered to be completely separate with the consequence that the term for each work (the literary work and the musical work) is calculated independently (i.e. 70 years after the death of each individual author).

This has led to a disparity in the term of protection throughout the Community leading to complexities in the administration of rights as well as confusion amongst users.

For example, Puccini's *Nessun dorma* from the opera *Turandot* and *O mio babbino caro* from the opera *Gianni Schicchi* are both published by Ricordi and have probably more arrangements than anything else in the Ricordi catalogue. The musical element of these arias is public domain in the UK (notwithstanding that the libretto is out of copyright) but protected in Italy where copyright in co-written works is indivisible. This means that an instrumental arrangement made in the UK without Ricordi's permission is legitimate in the UK but an infringing use in Italy. This leads to confusion in particular for an arranger who does not understand that they are infringing.

- **We recommend that Government proactively supports further European harmonisation during the review of the Term Directive (EC/93/98) scheduled for 2007 possible introducing a similar rule for co-written as for film works in Article 2 (2) of the Term Directive.**



Copyright exceptions – fair use / fair dealing

a) What are your views on the current exceptions of the copyright law

UK law creates specific areas in which exceptions to copyright apply. These can be broadly categorised as:

- General exceptions (e.g. regarding the Making of temporary copies; Research and private study, Criticism, review and news reporting, use by visually impaired people);
- Education;
- Libraries and archives;
- Public administration;
- Lawful uses for computer programs databases, designs, typefaces and works in electronic form;
- Miscellaneous exceptions for literary, dramatic, musical and artistic works and the lending of works and films and sound recordings;
- Specific exceptions for broadcasts.

Three step test:

In accordance with international law (the Berne Convention), whether an act falls within any of these exceptions is determined on a case by case basis with reference to the so-called three step test which states that any exception to copyright must be:

- limited to certain specific cases;
- which do not conflict with a normal exploitation of the work; and
- do not unreasonably prejudice the legitimate interests of the right holder.

The three step test provides crucial flexibility to enable the law to keep pace with advances in technology and to safeguard the creative economy from overly prescriptive exceptions that may be logical in one technological context – but not another.

(b) Could more be done to clarify the various exceptions?

A natural corollary of flexibility is a degree of uncertainty and lack of clarity which we acknowledge exists in the field of copyright exceptions.

However, the answer to such uncertainties does not necessarily lie in altering the exceptions regime (other than possibly by introducing a new exception for private copying together with a system of remuneration – see below). Prescribing specific exceptions that will remain relevant as technology continues to alter how we interact with content is an almost impossible task. As we have seen in section 3 (a) on “non-commercial licensing”, greater freedom and clarity is being achieved via new forms of copyright licences under which creators can permit remixing and/or sharing. In addition, greater emphasis on copyright awareness and education would promote greater clarity for consumers.

Digital Audio Broadcasting

Having said that, we do have a specific concern regarding the “timeshifting” exception (section 70 Copyright Design and Patents Act 1988). relating to the use of Digital Audio Broadcasting technology for locating and copying specific recordings in order to create a permanent personal library. Any copying carried out from subscription systems or the

on-demand supply of content clearly falls outside the intended purpose of the timeshifting exception

- **We propose a clarification of the wording of section 70 to reflect this.**

(c) Are there other areas where copyright exceptions should apply?

(d) Are the current exceptions adequate or in need of updating to reflect technological change? For example, copyright law in the UK does not currently have a private “fair use” exception. Such an exception might allow individuals to copy music CDs onto their PC and MP3 player for their personal use. Should UK law include a statutory exception for “fair use”?

(e) How would you see content owners being compensated for such use?

The UK is one of the few countries in the European Union without an exception for private copying linked with a “blank tape” levy system. This means that under UK law any act of copying that takes place without the authorisation of the right holder is illegal in the absence of an applicable exception or a licence permitting certain non-commercial usage. Consequently, almost all unauthorised acts of private copying constitute an infringement of the right of reproduction protected by copyright.

With 50 million iPods sold globally compared to around 1 billion tracks sold on iTunes – there is only an average of 20 legitimately paid for tracks on each iPod. This appears to be an unsustainable “lose-lose” equation where most of the UK population are acting outside the law while creators are not remunerated for the ever more widespread copying of their works.

Attempts to use technology to prevent copying from legitimately purchased CDs have been extremely unpopular and sometimes controversial¹². Furthermore, they are easily hacked. Even if we were to imagine the introduction of an unhackable copy protection that could be applied to all future releases, there would still be the problem of a vast legacy of unprotected music already in the market place.

- **British Music Rights are working with industry partners in an attempt to resolve the complexities of possible solutions to legitimise and remunerate private copying. We strongly recommend the review team takes into account these considerations before making any firm proposals to Government.**

In the meantime, we would like to make the following points:

- Under European law, any exception for private copying must be accompanied by remuneration which in other EU countries takes the form of a levy;
- Exceptions and levies are by nature arbitrary in their application and should be considered only as a last resort to legitimise and remunerate creators for copying where no licensing based solutions emerge. For example, any copying that takes place over networks is capable of being licensed provided government assists by introducing new measures to make unlicensed Peer 2 Peer service providers liable for *authorising* copyright infringement (see our answer to question 4(a)). Government should not consider any ISP levy system of the kind recently considered and then dismissed by the French lower House;

¹² C.f. Sony BMG’s rootkit fiasco

- Any private copying exception should be restricted to the copying of **legitimately purchased** music onto a different format or device for the consumer's own **personal use** – it should not legitimise or compensate for piracy.

(f) To what extent has technological change presented difficulties in use of copyrighted material in the field of education?

Technological change has greatly facilitated the use of copyright material in the field of education. For example, MCPS/PRS has recently licensed a service called Playtime¹³ which provides schools with online access to millions of recordings for use in assembly, to create school radio stations, for use in school plays, and in support of the national curriculum to enhance music teaching and learning from Foundation Stage and KS1 right through to GCSE and A level. The cost is between £400 and £900 per year – less than the price of a CD per week.

In addition, British Music Rights supports the Educational Recording Agency's proposal for a review of section 35 of the Copyright Design and Patents Act 1988 in order to facilitate pupils having access from their home computers to copies of broadcasts made by their school or college for educational purposes.

(g) Are there issues concerning the archiving of material covered by copyright?

Existing legislation already takes into account the *raison d'être* of libraries in particular for research and private study. Sections 37-44A of the Copyright Designs and Patents Act provide for an exception to specific acts of reproduction for libraries, educational establishments, museums and archives, provided these acts are not for direct or indirect economic or commercial advantage. The same provisions allow libraries to make works available to members of the public for the purpose of research or private study via dedicated terminals on their premises.

Libraries, search engines such as Google, or other companies such as Microsoft wishing to digitise libraries with a view to making content available *outside* libraries via the Internet do not fall within these provisions. By moving outside the traditional library sphere they put themselves in competition with the commercial market for online content and need to seek a licence. The European Commission is reviewing this as part of the i2010 Digital Libraries initiative and we have contributed to these discussions¹⁴.

Copyright – Digital Rights Management

(a) Do you have a view on how the use of digital rights management technologies should be regulated?

Digital rights management is a key part of a creative digital future. Unfortunately, DRMs have become almost synonymous with copy control and recent debacles such as the SonyBMG root-kit fiasco have seriously undermined consumer confidence in DRM technologies as mechanisms for setting usage rules for the digital world. In fact, copy control is just one small element of DRM, an element that is not as widely employed as the public perceives. To simplify, DRM terminology (as based in UK / EU law) falls broadly into two camps.¹⁵

¹³ For further details refer to <http://www.broadchart.com/Playtime/PThome.htm>

¹⁴ link to British Music Rights' submission to the European Commission on i2010 Digital Libraries: <http://www.bmr.org/html/submissions/submission%20117.pdf>

¹⁵ link to British Music Rights' submission to the APiG inquiry on DRMs: <http://www.bmr.org/html/submissions/submission%20116.pdf>

- Technological protection measures (copy control);
- Rights management information (for auditing, monitoring use and distributing royalties).

We would welcome initiatives to:

- **clarify the terminology in order to separate out these two very different concepts;**
- **promote greater understanding of the role of *rights management information* as an enabler allowing music usage to be tracked so that songwriters, artists and labels are paid the correct royalties;**
- **restore consumer confidence by encouraging industry to develop a voluntary code of conduct to be applied to the use of *copy control* which could, for example, stipulate clear labelling informing the consumer whether copy control is applied to the content and if so what uses it permits, what uses it restricts and what software would need to be installed on the consumer's hardware.**

Copyright - Orphaned Works

- Have you experienced any difficulties in identifying the owners of copyright content when seeking permission to use that content?**
- Do you have any suggestions on how this problem could be overcome?**

We believe that orphan works are not a major problem for music users in the UK. Collecting societies have developed comprehensive databases of works to assist in the identification of performances and distribution of royalties and this data is of considerable help to potential licensees in identifying the owners of musical works.

Nevertheless, we would support a pragmatic approach to this issue similar to the proposal under discussion by the US Copyright Office which has two main components:

- **Users can use an orphan work without authorisation provided:**
 - they make *and are able to demonstrate* reasonable efforts to find the copyright owner;
 - that they act reasonably in the event that the copyright owner emerges.
- **There are some limits to the remedies available to the right holder (e.g. s/he cannot request recall from market of derivative works.**

It may be useful for the review team to consider exploring a possible adaptation of the model already provided in section 190 of the Copyright Designs and Patents Act 1988 dealing with the recording of a performance "where the identity or whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry".



Copyright - Licensing of Public Performance

(a) Have you encountered problems with the system of licensing and paying royalties to collecting societies for public performance of music and/or sound recordings?

A PRS Music Licence for public performance in bars, restaurants, shops, hairdressers etc provides permission to play just about any copyright musical work in the world repertoire. Tariff rates are agreed with national trade associations or representative bodies of particular sectors and are variable according to the type and size of premises and the nature and extent of which the music is played.

In addition to a PRS licence for use of the musical compositions, businesses using music need to obtain a further licence from PPL for the use of the sound recordings. Public performance licensing could be simplified for the business community by some form of working together in the process of granting and monitoring of public performance licences. Talks between MCPS/PRS and PPL to put this into effect are ongoing.

Coherence between competition policy and IP policy

(a) Has your organisation experienced any activity linked to IP rights that you regarded

as unfair competition?

(d) Should competition law have a greater role to play in regulating IP?

(c) Has your organisation experienced any activity linked to IP rights that you regarded

as unfair competition?

(d) Should competition law have a greater role to play in regulating IP?

Competition law already plays a profound role in the music industry, in particular, the collective management of rights, both regarding members and users of collecting societies.

Collecting societies such as PRS and MCPS have been subject to close scrutiny of European competition authorities since 1971 (Re: GEMA) and in the UK (c.f. Report of the Monopolies and Mergers Commission into the administration of performing rights in the UK, 1996).

The findings of the European Commission and the European Court of Justice have made it clear that the activities of collecting societies are within the parameters of Article 82 of the EC Treaty concerning both their members and their users as long as they do not abuse their dominant position. An example of a dominant position would be to impose on their "*members' obligations which are not absolutely necessary of the attainment of its object and which thus encroach unfairly upon a member's freedom to exercise his copyright*" (BRT vs SABAM, 1974). As regards users, the main claim against collecting societies regards the fees imposed for the use of its material (e.g. Ministere Public v Tournier, 1989).

Competition authorities have broadly acknowledged that collecting societies provide essential benefits both for their members by ensuring remuneration for the use of their works and for users of music by facilitating non discriminatory access to a global repertoire of music for their respective territory, broadly establishing a balance between the interests between the members and users of collective management. Please refer to our response to the general question 3 (i) which also elaborates on our considerations regarding the Commission Recommendation on the management of online rights in

musical works published 12th October 2005. It would be regrettable should Competition Law be abused to thwart the principles set out in the Recommendation.

Parallel Imports / International Exhaustion

- (a) Has your company been affected by parallel trade?
- (b) What would be the impact on your organisation of a change in the current rules?
- (c) What evidence is there of the costs and benefits, both for consumers and firms of the current rules?

The European Commission has reviewed the current system of European exhaustion on a number of occasions over the past 10 years and each time has upheld *European exhaustion of rights* as the correct balance between promoting free movement of goods while maintaining the value of our creative industries. This is compliant with the EU's Internal Market rules, as per Article 4 of the Copyright Directive.

International exhaustion would lead to creation of "free culture havens" with copyright material being distributed from countries where copyright law and the administration of rights are weakest.

In addition, it would completely undermine the ability of companies to tailor their pricing to suit developing markets. For example, in order to operate in the Russian market, for example, record companies sell CDs at a considerably lower price than in Europe. This would not be possible if those CDs could legally be imported back into the EU.

- **We recommend upholding European exhaustion of rights as the correct balance between promoting free movement of goods while maintaining the value of our creative industries.**

Annex to British Music Rights response to the independent review into UK intellectual property rights

Annex 1.1: “Respect the Value of Music” lesson plans

Annex 1.2: Enterprise and Creativity - Young Enterprise ‘Quickstart’ Programme

Annex 1.3: Statement of Principles, the “CREATE” statement

British Music Rights has been working for some time to highlight the importance of copyright education as an essential tool for those wanting to work in or with the creative sectors, and we strongly welcome the government’s engagement with IP education and awareness agenda.

Further details on the activities in which we are engaged follows:

- **Music Manifesto (www.musicmanifesto.co.uk):** The music manifesto is the result of a unique collaboration between the DfES and DCMS with music organisations, musicians, teachers and composers, the music industry, broadcasting, teacher and musicians’ unions, arts and education charities and Trusts. British Music Rights is on the steering group of the Music Manifesto. At the heart of the music manifesto is a desire to see more opportunities in music for more young people – from high quality curriculum tuition to out of school hours youth and garage bands; from composing to live performance, from classical concerts to DJing and gigs. Crucially, the programme seeks to better relate current music education sector activity through the Music Manifesto to broader Government strategies ranging from the out-of-classroom manifesto, creativity review, specialist schools and city academies to wider education and workforce reforms.
- **“Respect the Value of Music” lesson plans:** British Music Rights designed a series of copyright education less plans for use in schools for 11-14 year olds. The ‘Respect’ lesson plans were launched in 2004/2005. These lesson plans aim to give young people an understanding of how the music industry works, what it means to be a creator and how they too might earn a living from their creativity. The lessons include case studies and examples from people working across the business, including composers David Arnold and Simon May, and are designed to engage young people by using everyday examples they can relate to – ie. the ‘Eastenders’ theme music, the ‘James Bond’ film scores, Dizzie Rascal’s song ‘Dream’. See attached annex 1.1.

The lessons were created by educational agency EdComs and written by Leonora Davies (Chair of the Music Education Council) and whilst they have initially targeted music teachers and students we anticipate that they will expand into other areas of the curriculum including enterprise and citizenship. We are keen to build on these lessons and we want to ensure that they will be embedded in the curriculum in future years as part of the learning process for all pupils.

- **Enterprise and Creativity - Young Enterprise ‘Quickstart’ Programme:** Over recent years, and specifically with the introduction of funding for enterprise education in schools, teachers are seeking a short and sharp practical introduction to enterprise for students aged 14 to 16 which can be delivered in-curriculum in a short time frame. British Music Rights is working with leading education provider Young Enterprise (YE) to design an imaginative programme for schools that brings together creativity and enterprise education along with traditional business skills. See attached annex 1.2.

This would be achieved by producing a music specific option within YE’s ‘QuickStart’ Initiative - a condensed version of their Company Scheme where young people aged 14-16 set up their own mini-company, and create a product or service to sell at the end of the programme. Currently YE companies have a free choice of the industry sector

their company will trade in, and the product or service they provide. Young Enterprise has identified that an increasing number of companies are choosing to establish IT, music and fashion-based companies, and this presents an opportunity to provide more sector-specific guidance related to the students' choice.

In this way, participants could explore how a creative sector of the economy works and the way in which copyright awareness and wider business skills can help people to develop viable careers and businesses in music and other creative sectors. The aim is also for this initiative to dovetail with the evolving Creative and Media Skills Diploma. Young Enterprise currently reaches a quarter of a million secondary school pupils annually, and are planning to extend this further. They have been selected recently to run the Government's trial Enterprise Summer schools, and will be piloting the short company programme at two of these later in 2006.

- **IP Stakeholder Group (formerly the Creative Industries Forum on Intellectual Property) and the CREATE Group:** British Music Rights will be working with the IP Stakeholder Group, a cross- government and industry body set up to monitor the implementation of the recommendations of the Creative Industries Forum on Intellectual Property. These recommendations centred on education and communication; enforcement; and business opportunities.

A separate working group has also been established to continue the work of the education and communication strand, known as the CREATE group, which is co-ordinated by the Patent Office and DCMS and with participation from the DfES and representatives from the creative industries. The CREATE Group's objective is to attempt to coordinate the efforts of all those engaged with IP awareness and education and to improve the way IP is communicated. The Group therefore developed a Statement of Principles, the "CREATE" statement to capture and enunciate the importance of IP as a social, creative and economic tool. See Annex 1.3.

The CREATE group is currently working with the CBI to promote the principles and their application amongst their membership.

The CREATE Group is also exploring the best way to teach IP in schools, and is arranging a joint IP Education Seminar with ministers from the DfES and DCMS, teachers and education providers, and the creative sector later this year.

- **DCMS Creative Industries Higher Education Forum:** British Music Rights sits on the DCMS Higher Education Forum, which is currently looking at creative and enterprise education and at knowledge transfer.
- **Music Panel of Creative & Cultural Skills sector skills council (www.ccskills.org.uk):** Creative & Cultural Skills (CCS) was established in spring 2005 and has an extensive 5 year work programme. British Music Rights sits on the CCS Music Panel.
- **DCMS Creative Economy Programme:** British Music Rights is feeding into the DCMS' Creative Economy Programme through regular liaison meetings with DCMS officials. We are currently advising ministers and officials on the Creative Economy Programme's first industry summit to be held in June.



RESPECT

THE VALUE OF

MUSIC:

**Introducing 11-14 year-olds
to the value of creativity in music**

European
music Copyright
alliance

BRITISH
MUSIC
RIGHTS:

introduction

RESPECT THE VALUE OF MUSIC has been developed to introduce 11–14 year-olds and their teachers to the importance of copyright in music, and its role in protecting creativity and innovation in the music industry. Through the materials, students can explore the importance of music and copyright in our lives, understand how the issues affect their own work, and hear stories from real people working in the music industry. The resource has been written by Leonora Davies MBE (chair of the Music Education Council and the Curriculum Task Group for the National Association of Music Educators) and developed by education experts on behalf of British Music Rights and the European Music Copyright Alliance (see below). The RESPECT THE VALUE OF MUSIC booklet includes: Lesson plans 1 and 2; Homework tasks; Fact sheets 1-4; References and useful links. All the information may be photocopied for use within the school or institution. The booklet is supported by a poster for classroom display.

Teacher's notes

The overall intentions of and outcomes from this work are:

- to give an understanding that people (including students) can be rewarded and recognised for their creations via copyright
- to empower students to make informed decisions about how they create and consume music
- to encourage understanding and raise awareness of opportunities and different careers within the music industry
- to raise awareness of the value of music to society and the economy.

The two Lesson plans are based on the three-part structure suggested in the Key Stage 3 strategy of the National Curriculum. Curriculum relevance for England, Scotland, Wales and Northern Ireland, as well as cross-curricular links, are shown in the table on the back page of this booklet.

The Lesson plans are based on a time allocation of 1 hour. Within each lesson, you may wish to adjust the timings suggested to suit your students. The lesson plans give a choice of activities that you can select according to the age and experience of your students. It is not intended that there will be time to cover all these activities in one lesson, and some could be used for extension activities or homework.

Teachers/facilitators should spend adequate time preparing the background information given in the Lesson plans, Fact sheets and suggested references. Many of the discussion and research topics have important cross-curricular links so the work may be shared or planned with colleagues in other departments. Some of the activities suggest accessing websites, so you may wish to visit the sites in advance, as well as checking with the ICT department or school library that suitable facilities are available.

British Music Rights and EMCA

British Music Rights is an umbrella organisation that represents the interests of composers, songwriters and music publishers in the UK. It is also a member of **The European Music Copyright Alliance (EMCA)**, a collection of organisations across Europe with an interest in copyright awareness. EMCA is running a pan-European educational initiative which aims to give young people an understanding of copyright, and **RESPECT THE VALUE OF MUSIC** has been developed on behalf of British Music Rights as part of this. More information is available at www.bmr.org and www.emcaweb.net.

lesson plan 1

Time allocation: 1 hour

Learning objectives

- Students should understand the value of creativity, feel empowered to be the creators of the future and understand that revenue can be earned from creative ideas.
- Students will begin to understand the issue of copyright by developing a growing sense of pride in their own creative work and developing a respect for the intellectual property (IP) of others.
- Students will begin to understand some of the issues involved in securing the copyright in a work (the lyrics and/or music) and issues concerning royalties.

Resources required

- Board/flipchart/interactive white board
- CD player
- Fact sheet 1 (The music business)
- Fact sheet 2 (The influence of music)

References for sourcing songs are given at the end of Lesson plan 2 (page 6).

| ACTIVITY | TEACHING POINTS |
|---|--|
| <p>WARM UP (15 mins)</p> <p>EITHER:</p> <p>Whole class discussion (5-8 mins) Conduct a general discussion with the whole class to find out how much they 'think' they know about copyright issues and intellectual property (IP). Make a note on the board/chart of all contributions.</p> <p>Work in pairs/small groups (5-8 mins) Copy and distribute Fact sheet 1. Ask students to read this together and discuss, making brief notes on the most important facts.</p> <p>OR:</p> <p>Whole class (15 mins) Conduct a general discussion on the number of different ways in which students have purchased music (e.g. ringtones, CDs, internet downloads, online shopping, music libraries, on-line music subscription services, sheet music) and how frequently they do this. Make a list of the findings and build up a purchase picture for the class.</p> | <p>The points that arise may be very general, but will indicate the level of students' awareness, and may help you to choose the most appropriate development activity. Level of awareness may vary according to age group. You can use the RESPECT THE VALUE OF MUSIC poster as a prompt.</p> <p>Findings from the warm up could be presented as a bar chart (e.g. of purchasing habits), to give a cross-curricular link with mathematics.</p> |

lesson plan 1 (cont'd)

| ACTIVITY | TEACHING POINTS | | | | | | |
|---|---|------------|--|------------|-----|------------|-------|
| <p>DEVELOPMENT ACTIVITIES (30 mins each)</p> | | | | | | | |
| <p>ACTIVITY 1 (whole class)</p> <p>The influence of music Use Fact sheet 2 as the basis for a whole class discussion about the influence of music and dance on our lives and related social issues, e.g. fashion/culture/politics.</p> <p>Related research task Students should find out more examples of composers/performers for some of the categories on the music timeline on Fact sheet 2. Discuss the changes in other genres - e.g. music, art - across the decades.</p> <p>Related listening activity Students compare and contrast two versions of the same song recorded by different artists at different times, commenting on devices used and how these alter the original song. Which version do they prefer? Examples include: <i>Killing Me Softly</i>: Roberta Flack/The Fugees <i>Adagio for Strings</i>: Samuel Barber/William Orbit <i>Emotion</i>: Bee Gees/Destiny's Child <i>Lady Marmalade</i>: Labelle/Christina Aguilera</p> | <p>Activity 1 This is intended for whole class work and could take the full 30 minutes. Cross-curricular links could be made with history/environmental studies. Questions to prompt discussion include:</p> <ul style="list-style-type: none"> ■ Why has music (along with clothes/fashion) been at the forefront of social and cultural revolutions over the last 50 years? ■ Without music there would be no dance. Why are music and dance essential 'human needs'? <p>Related listening activity Listen a number of times to one version, drawing out the main musical features before listening to the comparison track. Focus on basic musical elements, i.e. rhythmic devices/riffs or ostinatos, any particular melodic treatment/instrumentation and texture. Discuss with students the difference between a music creator and an artist/performer.</p> <p>If you choose to work with activities 2 and 3, you could divide the class so that both topics are covered in groups at the same time, covering the 30 minutes.</p> | | | | | | |
| <p>ACTIVITY 2 (discussion in small groups, 3-4 students)</p> <p>A world without music Students discuss and make notes in response to the different questions below, then feed back to the whole class.</p> <ul style="list-style-type: none"> ■ What would our world be like without music? ■ Where do we hear music? ■ How do we listen to music? | <p>Activity 2 Possible questions to prompt the discussion include:</p> <ul style="list-style-type: none"> ■ What effect does music have on people? ■ How do you think it influences us, e.g. when played in shops, used in commercials, etc.? ■ How does it affect our feelings and emotions? <p>Extra resource reference: Report of research into the impact, effects and benefits of music from the Performing Right Society at www.prs.co.uk/powerofmusicreport.</p> | | | | | | |
| <p>ACTIVITY 3</p> <p>Our own creative works Begin with a brief introduction for the whole class to enable students to understand how creators earn a living. Explain that not all creators are well-known, or well-off. You can, and should, be able to earn money from your creations.</p> <p>Students split into small groups (3-4), and each student makes a list of any 'recent' original creative work - e.g. art, written work, musical compositions - completed in or out of school, plus the date on which it was created. Students could devise a small symbol to indicate their own copyright.</p> | <p>Activity 3 Make sure students are familiar with the universal copyright symbol © plus name which can be used to denote copyright (although it is not required).</p> <p>Devise a landscape table for each student to enter the details of their works, as a 'running tally' of their creations.</p> <table border="1" data-bbox="794 1771 1417 1921"> <thead> <tr> <th colspan="2" data-bbox="794 1771 938 1809">Name</th> <th data-bbox="938 1771 1417 1809">Year group</th> </tr> </thead> <tbody> <tr> <td data-bbox="794 1809 938 1921">Art</td> <td data-bbox="938 1809 1187 1921">Story/poem</td> <td data-bbox="1187 1809 1417 1921">Music</td> </tr> </tbody> </table> | Name | | Year group | Art | Story/poem | Music |
| Name | | Year group | | | | | |
| Art | Story/poem | Music | | | | | |
| <p>PLENARY (15 mins)</p> <p>This will depend on which of the activities you have decided to undertake. Activities 2 and 3 require feedback from each group.</p> | | | | | | | |
| <p>HOMEWORK</p> | <p>See page 7 for suggested activity.</p> | | | | | | |

lesson plan 2

Time allocation: 1 hour

Learning objectives

- Students will understand what copyright infringement means.
- Students will understand how to access music legally.

Resources required

- Board/flipchart/interactive white board
- CD player
- Fact sheet 3 (Protecting the value of music)
- Fact sheet 4 (Case studies)

References for sourcing songs are given at the end of this Lesson plan.

| ACTIVITY | TEACHING POINTS |
|---|--|
| <p>WARM UP (15 mins)</p> <p>Class discussion based on the information collected from Homework task for lesson 1 (page 7). Students could share information in small groups.</p> | <p>Teacher to make notes on the board/chart.</p> <ul style="list-style-type: none"> ■ How many composers/songwriters also perform their works or songs? ■ How many performers use other people to write music for them or use music already written? ■ Which composers/songwriters have the same publisher? Are these composers/songwriters similar in style? |
| <p>DEVELOPMENT ACTIVITIES (35 mins in total)</p> | |
| <p>ACTIVITY 1 (whole class)</p> <p>Copyright infringement Introduce issues concerned with copyright infringement (Fact sheet 3), focusing on:</p> <ul style="list-style-type: none"> ■ illegal copying of CDs ■ downloading from unlicensed websites ■ copying/downloading sheet music illegally. <p>Other issues to raise include:</p> <ul style="list-style-type: none"> ■ Why should we respect copyright (Fact sheet 3)? ■ Royalties and why a creator is entitled to earn money from their work (Fact sheet 4). ■ The industry is not just about the big names; the smaller names (and especially those working in collaboration) may suffer more from piracy. <p>Distribute Fact sheet 3 for further paired discussion (15 mins).</p> | <p>Activity 1</p> <p>The initial discussion should establish students' level of awareness of the issues and introduce important vocabulary, e.g. counterfeiting, bootlegging, pirate recordings, illegal peer-to-peer ('p2p') file sharing.</p> <p>Additional discussion could focus on the difference between pirate and legal copies, e.g. cost, quality, legal/illegal.</p> <p>Extra resource references:</p> <ul style="list-style-type: none"> ■ 'At-a-glance guide to licensing in schools' available at: www.licensing-copyright.org ■ NAME (National Association of Music Educators): Information bulletin No. 1/02: Copyright Information bulletin No. 2/02: Music internet resources Both £1.50 from NAME administrator Helen Fraser at: musiceducation@name.org.uk |
| <p>ACTIVITY 2</p> <p>Moral issues Select one of the case studies (Fact sheet 4) as a starting point for a class discussion of the moral aspects of copyright, for example:</p> <ul style="list-style-type: none"> ■ Why should the creator have a right to be identified as the creator? ■ Why should the creator have any control over changes made to his/her creation or uses to which it is put? | <p>Activity 2</p> <p>In addition, you could encourage students to talk about what would happen if creators did not have a 'moral' right, i.e. people could use 'your' music in adverts for products you aren't happy about, porn sites or even in programmes about terrorism. How would you feel about that? What would you do about it?</p> |

lesson plan 2 (cont'd)

| ACTIVITY | TEACHING POINTS |
|--|---|
| <p>ACTIVITY 3 (whole class)</p> <p>Covering and sampling songs A listening activity to compare and contrast a 'sampled' version of the song 'Happy Talk' with the original track/s (see Fact sheet 4 for 'Happy Talk' case study).</p> | <p>Activity 3 You will need to have access to all three versions. Decide in what order you will listen to these versions, e.g. from the original 'Happy Talk' through to Dizzee Rascal's version, or the reverse. Students will need to listen at least 2-3 times to each version in order to absorb any musical detail.</p> <p>Encourage students to use appropriate music terminology when they discuss and describe changes and differences, e.g. riff/ostinato, rhythmic and melodic features, basic ideas about structure and 'how' the song works.</p> |
| <p>PLENARY (10 mins)</p> <p>Using the main points raised in Lessons 1 and 2, draw up a Code of Conduct for your own school on the use of copyright musical material.</p> | <p>Extra resource references:</p> <ul style="list-style-type: none"> ■ 'Copyright use and security guide' for academic institutions at: www.ifpi.org (home page). ■ Code of Fair Practice - At a glance guide to licensing in schools at: www.mpaonline.org.uk (publications section). |
| <p>HOMEWORK</p> | <p>See page 7 for suggested poster design activity. This could be organised as a competition with technology/art colleagues.</p> |

References for sourcing songs:

| Song | Performers | Album | Record company | Copyright holder |
|--------------------|--|--|----------------|--|
| Killing Me Softly | Roberta Flack | Killing Me Softly | Atlantic | Bucks Music |
| Killing Me Softly | The Fugees | The Score | Columbia | As above |
| Adagio for Strings | Samuel Barber | Barber: Adagio for Strings; Symphony No. 2; Bristow: Symphony in F sharp minor | Chandos | G Schirmer (Music Sales) |
| Adagio for Strings | William Orbit | Pieces In A Modern Style | WEA | As above |
| Emotion | Bee Gees | Their Greatest Hits: The Record | Polydor | Warner Chappell Music Ltd/BMG Music Publishing |
| Emotion | Destiny's Child | Survivor | Columbia | As above |
| Lady Marmalade | Labelle | Nightbirds | Epic | EMI Music Publishing |
| Lady Marmalade | Christina Aguilera, Li'l Kim, Mya and Pink | Moulin Rouge - Original Soundtrack | Interscope | As above |
| Happy Talk | Rodgers and Hammerstein | South Pacific - Original Soundtrack | RCA | As above |
| Happy Talk | Captain Sensible | The Collection | Spectrum | As above |
| Dream | Dizzee Rascal | Showtime | XL | As above |

HOMEWORK

Lesson 1

Researching a CD/record collection

In this activity, you will be researching a collection of music to investigate the roles of the different people involved.

- Select approximately 8 to 10 CDs/records from your own collection of music, or that of your parents, grandparents or local music library. Choose from some singles and some albums if possible. Try to choose from a variety of styles of music, and different groups/singers/performers.



- Examine the inserts/covers and for each track chosen find out:
 - who performed
 - who wrote or composed the material (music, lyrics)
 - who published the music
 - what record label it is on
 - who produced the song/album
 - where it was recorded.

Fill in a table like the one below (an example has been given).

- Compare artists from previous decades with those recording now. Did more artists write their own music then or now?
- Look at CDs to see the copyright symbol/s used. Add another column to your table to show any mark used.

| Title | Performer/s | Writer/ composer | Publisher/ record label | Producer | Recorded |
|-------------------------|---|-----------------------------|------------------------------|---------------------------------|----------|
| Song: Fields of Gold | Eva Cassidy (vocals/guitar) Keith Grimes (guitar) | Sting (music and lyrics) | EMI Blackwood Music (BMI) | Eva Cassidy and Chris Biondo | USA |

Lesson 2

Designing a poster

Design a poster to go in every music room (as well as other areas in the school) to remind people of the importance of copyright to those people working in the music industry, and how people lose out when others use music illegally. Think carefully about the main issues and the use of key words in order to get your message across. You could look at the RESPECT THE VALUE OF MUSIC poster for help.

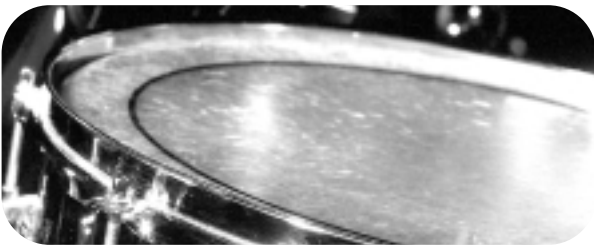


the music business

Did you know?...

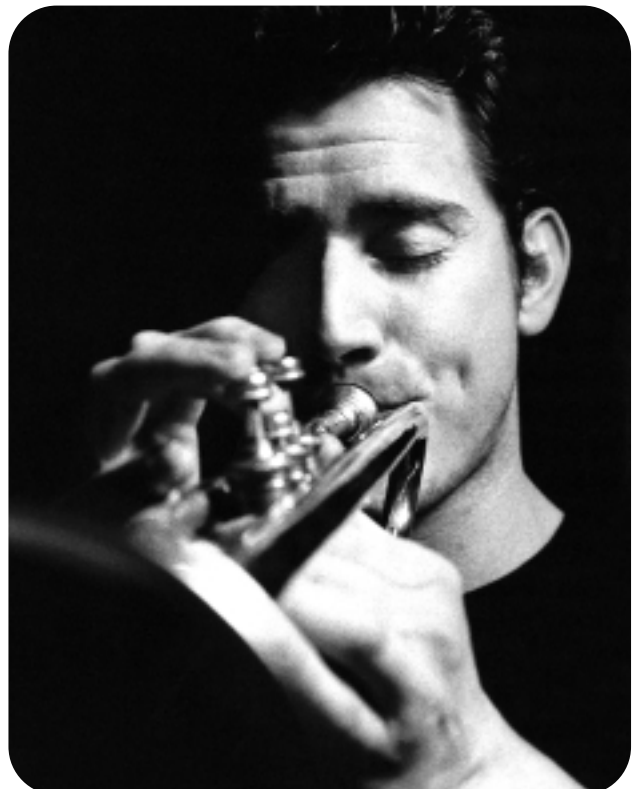
- The UK is the fourth largest music publishing market and the third largest recording market in the world.
- During the year 2000, the industry employed well over 125,000 people.
- The UK is the second largest source of music compositions in the world, after the USA.
- In 2000, ticket sales for live non-classical concerts in the UK were worth £487million.
- In 2000, ticket sales for classical concerts in the UK were worth £360million.
- In 2000, the domestic turnover of UK music publishing companies was £261.7million.
- In 2000, music composition/publishing contributed £448million to the UK economy.
- There are over 200 music publishing companies (representing well over 3000 catalogues) and over 3000 record companies (representing over 14000 labels) in the UK.
- In 2000, musical instrument and related sales in the UK were worth over £600million.
- In 2002, over £4billion was spent in the UK on music of all kinds.
- Sales of printed music in the UK are worth over £30million a year.
- In 2001, nearly £120million was spent on venues for live performances.
- In 2001, the value of sales of music of pre-recorded music products (CDs, tapes, records, DVDs etc.) was £2.15billion.
- In 2002, there were over 6000 outlets selling pre-recorded music products in the UK.
- The UK writers and publishers annually receive over £300million in royalties from overseas, and the UK pays £173million in royalties to foreign writers and publishers.
- There are 40,000 music creators in the UK and 94% of them earn less than £10,000 a year.

Source: 'Counting the Notes': A report by the National Music Council (Nov 2002), www.musiced.co.uk/features/counting_the_notes.html



Tasks

- What is the music industry? How many different kinds of jobs can you think of which contribute to the music industry? Try to list up to eight different jobs.
- What are royalties? How much do UK writers and publishers receive in royalties each year?
- Which had the largest ticket sales in 2000: classical concerts or non-classical concerts? Give three reasons to suggest why.
- What sort of outlets sell music? From where do you purchase your music?



the influence of music

Did you know?...

- Music has played an important role in society for many thousands of years. In fact, no human culture appears to be without music.
- Music forms part of most major occasions and celebrations.
- Music can set a mood or ambience. In bars and restaurants, research has established a link between the tempo of music played and the speed of customer activity. For example, faster music may be used in a fast-food outlet, but a relaxing dinner in a restaurant may be enhanced by more gentle music.
- Music can be used to create positive environments. In the workplace, music can increase productivity and improve the morale of workers.
- Music may affect behaviour in ways that we are unaware of. Research shows that, when calling a business, callers remain on hold for 20% longer if they listen to music rather than to silence or a recorded voice messages.

Source: Statistical references cited from the original research in 'The Power of Music', a study commissioned by the Performing Right Society (2001) and authored by Professor Susan Hallam, Institute of Education, London University. www.prs.co.uk/powerofmusicreport

Tasks

- Music forms part of almost all major occasions and celebrations. List five occasions when music is used in celebrations (e.g. singing 'Happy Birthday' at a birthday party). Try to suggest happy and sad occasions.
- Look at the timeline showing some of the main trends in music from the 1920s. How would you describe the trends for the current decade? What other milestones would you add to the timeline?
- Think of another example in the right-hand column for each of the decades.
- Draw another timeline table to show the main trends in art or fashion from the 1920s to the present day. Comment on whether or not these are related to the trends in music.

| Music style | Timeline date | Examples |
|--------------------------------|---------------|-------------------------------------|
| Ragtime | 1910s | Scott Joplin |
| Trad jazz/Dixie | 1920s | Louis Armstrong |
| Big band/Swing | 1930s | Duke Ellington |
| Swing/Be-bop | 1940s | Glenn Miller |
| Rock 'n' roll | 1950s | Bill Haley and the Comets |
| Pop/Rhythm 'n' Blues/Motown | 1960s | The Beatles |
| Reggae/Disco/Punk | 1970s | Bob Marley/ ABBA/ Sex Pistols |
| Funk/Hip-hop/ New Romantics | 1980s | Kool and the Gang |
| Garage/Techno/ Britpop | 1990s | Oasis |
| | 2000? | |

protecting the value of music

What is copyright?

- Copyright is a form of protection for creators of 'original' works, and ensures that the creator decides how their work, or intellectual property (IP), can be used by others. Copyright ownership is often shown by the symbol ©.

Why have copyright?

- Copyright protection encourages people to develop new creative works (e.g. music, songs) because it helps to ensure that everyone involved is paid for their contribution. The price you pay for a CD covers the value of the creativity and rights involved, as well as manufacturing and other costs.
- Copyright protects those who create, produce or invest in creative work, and so it is important in supporting new talent as well as established artists and writers.
- The creator of an original work also has the 'moral rights' in that work. This means that they are able to make decisions about where and how the work is used. This includes the right to ensure they are always credited for the work, and that the work is not changed or distorted without their permission or attached to something derogatory.

How does it work for music?

- A work is only in the public domain when all aspects are out of copyright. For a piece of music, this would be 70 years after the death of the composer (and also of the lyricist for a song).
- Owning the copyright in a song or piece of music means that you are generally the only person who can **reproduce, distribute, display** (e.g. on the internet), **change** or **perform** the work without permission. But you may give, or sell, to others the right to do these things.
- The MCPS (Mechanical-Copyright Protection Society) licenses its members' (composers, songwriters, music publishers) works whenever they are recorded and/or sold (e.g. CD, DVD, film etc.) and pays the royalties back to its members.



- The PRS (Performing Right Society) licenses its members' (composers, songwriters, music publishers) works whenever they are performed in public (e.g. in concert halls, on TV or radio, in shops, restaurants, cafés, on the internet, and at school performances or fêtes) and pays the royalties back to its members.

Copyright for your own work

- Copyright exists as soon as you create a piece of original work, as long as it has been written down or recorded in some way.
- Although copyright is automatic for original work, you may wish to record the formal date when you created the work (to use in legal arguments if required). You can do this by sending a recording or a copy to yourself by registered post and leaving the envelope unopened in a safe place.

Useful links

British Music Rights: www.bmr.org

British Academy of Composers and Songwriters: www.britishacademy.com

Music Publishers Association: www.mpaonline.org.uk

Performing Right Society: www.prs.co.uk

Mechanical-Copyright Protection Society: www.mcps.co.uk

A list of legal music download websites is available on the IFPI Pro-music site at: www.pro-music.org

case studies

Did you know?

Most of today's genres borrow from the music of the past very successfully. For example, Indie bands like Oasis borrowed from the Beatles, while The Darkness are influenced by the Glam Rock bands of the 1970s. The case studies below show the importance of copyright in today's music industry.

Case study 1 Sampling 'Happy Talk'



Photo by Dean Chalkley

Dizzee Rascal, on his single 'Dream', used a sample of Captain Sensible's version of the song 'Happy Talk'. Captain Sensible's song was in fact a complete cover version of

Richard Rodgers' and Lorenz Hammerstein's 'Happy Talk', written in 1949 for their musical South Pacific.

Rodgers and Hammerstein own the copyright in the words and lyrics for 'Happy Talk' and receive all royalties on their version. This means that, when Captain Sensible recorded his direct cover version, all the royalties in the words and lyrics go back to them (but royalties for the sound recording - the record - go to Captain Sensible).

When Dizzee sampled and changed the song, the royalties again go to Rodgers and Hammerstein, but they agreed a small amount to go to him for his own rap contributions. Dizzee would also have needed permission from Captain Sensible's record company for sampling the master recording of the cover version. He may have paid a flat fee, or agreed a small royalty. Therefore, 'Dream' belongs almost entirely to Rodgers and Hammerstein, and Dizzee would even have needed permission to change the title!

Case study 2 The Grey Album

DJ Danger Mouse created The Grey Album using rapper Jay-Z's vocals plus beats made by sampling music on The Beatles' White Album. However, the sale and distribution of the new album was blocked by record label EMI, which releases Beatles records. DJ Danger Mouse's album infringes copyright by using the music, lyrics and sound recording of The White Album without permission, and so any sales, reproduction or downloading of his album is illegal.

Case study 3 Making money from music



Simon May: 'Copyright is my principal source of income.'

Simon May is the composer of the EastEnders theme tune, and he receives a royalty every time the music is played. Simon is a modern languages graduate and gave up a career in teaching to become a full-time composer. Today his main source of income is from royalties from the copyright in his compositions. These include theme tunes for a number of TV shows (EastEnders, Howard's Way), hit songs ('Anyone Can Fall in Love', 'Every Loser Wins'), music for documentaries and films, and an international stage musical (Smike).

Case study 4 Music for movies



David Arnold: 'People should be aware of the craft that is involved in making music. Artists spend a lot of time and money putting together their music and there is no reason why they shouldn't be rewarded for it.'

David Arnold is a composer and producer who has written film music for a number of box-office hits,

including Independence Day, Stargate, Zoolander, 2Fast 2Furious and most recently Stepford Wives. He also wrote the music for three of the James Bond movies: Tomorrow Never Dies, The World Is Not Enough and Die Another Day. David is also a successful record producer, having worked with artists such as Garbage, Björk and kd lang. He is able to make a living from his craft because copyright protection ensures he is fairly paid for his work, and no-one can use it without his permission.

RESPECT THE VALUE OF MUSIC supports the following curriculum areas.

England

NC, KS3 Music, links to:

- Controlling sounds through singing and playing - performing skills
- Creating and developing musical ideas - composing skills
- Responding and reviewing - appraising skills
- Listening, and applying knowledge and understanding

Appendix 7 contains advice about copyright.

In KS3 students are expected to:

- Develop skills, attitudes and attributes that can support learning in other subject areas and are needed for employment and life.

The content of the programmes of study should enable students to acquire and apply knowledge and understanding of:

- How music is influenced by time and place.
- How music is constructed e.g. the use of musical elements and devices.

Cross-curricular links:

- Speaking and listening
- Independent research
- Numeracy (thinking about and presenting data)
- ICT
- Design/Technology
- Citizenship
- Enterprise
- Developing presentation skills.

Scotland

The 5 to 14 Curriculum, levels E/F:

- Expressive Arts - Music
- English Language - Speaking and listening
- ICT
- PSD
- Environmental studies - Social subjects

Wales

NC, KS3 Music, links to:

- Performing
- Composing
- Appraising, e.g. students to discuss and evaluate live and recorded music including their own compositions and performances

Cross-curricular links:

- Speaking and listening
- Independent research
- Numeracy (thinking about and presenting data)
- ICT
- Design/Technology
- Citizenship
- Enterprise
- Developing presentation skills.

Northern Ireland

NI Curriculum, KS3 Music:

- Pupils should become aware that the capabilities they develop through making and responding to music are relevant to any future career.
- (Pupils) might consider the emotional impact of music and how it is, or can be, used for manipulative purposes.
- The use of IT in present day music-making means that pupils should have access to, and develop skills in the use of music technology as a resource for composing, performing and preserving their music.

The Young Enterprise QuickStart Programme – Overview

| | |
|----------------------------------|---|
| <p>Concept</p> | <p>The Young Enterprise QuickStart Programme will offer groups of up to 50 students aged 14 to 16 a taster of the skills and experience required for business and enterprise through the experience of setting up and running their own real company through an intensive 10-day programme.</p> <p>Working in teams of 7-10 individuals, supported by a mentor from the business community, students interview and appoint each other to job roles within the company, raise share capital, and research, design, produce and market a product or service offering for their company. Towards the end of the programme they participate in a trade fair where they have the opportunity to gain direct sales experience, before drawing up a report and accounts and presenting the results of their experience.</p> <p>Each of the ten days begins with a seminar themed around a different step in the business process e.g. Human Resources, Marketing or Finance. These seminar sessions are supported with hands-on learning activities, and led by an expert from the world of work. For the remainder of the day, the students are split into their company teams and, with the support of their business mentor, they apply the theory to their own company.</p> <p>At each step of the business process, students are asked to consider their intended actions in light of their company's responsibilities both within the local community, and within society in general. At the end of the programme they have the opportunity to donate their company's profits to a charitable cause of their choice.</p> |
| <p>Structure</p> | <p>Each day will be structured around one or more themes (see "THEME" column below), and each theme will be introduced with a seminar-style session of 1-2 hours including practical games, activities and role-play exercises to enable students to explore the theme through learning-by-doing (SEE "ACTIVITIES" column below). Each of these sessions will be led by an expert volunteer drawn from the world of work.</p> <p>Following the seminar session, students will form into their company teams and hold a meeting to agree the next actions for their own business in light of what they have learnt in the seminar (see "COMPANY" column below). The rest of the day will be spent in their company teams, implementing their action points.</p> <p>The programme will run over 10 sessions with a flexible structure to allow for delivery :</p> <ul style="list-style-type: none"> - Over 2 weeks as a summer school or intensive full-time programme - Over two separate intensive weeks with a break of up to a term in between during which time students will continue to plan extra-curricular - Over 10 weeks as a structured in-curriculum series of full days - Over 10 to 15 weeks with just the workshops of each day run in-curriculum and the remaining company activity extra-curricular |
| <p>Anticipated core outcomes</p> | <ul style="list-style-type: none"> - Business-start-up exploration through hands-on experience - An understanding, and experience, of key business functions e.g. Finance, Human Resources, Marketing, Sales - First-hand experience of the product or service development process - Decision making (particularly under conditions of uncertainty; taking calculated risks) and Solving Problems (from the real world) - Leading and managing (including risk management and ability to handle conflict) - Strategic thinking (the ability to look ahead and see the "bigger picture") - Presentation skills (personal and ideas presentation) - Experimentation and innovation - Enterprising qualities - adaptability, perseverance, determination, flexibility, creativeness, improvisation, initiative, self-confidence, autonomy, action-orientation. |

| | |
|---|---|
| <p>Delivery</p> | <p>The QuickStart programme will be delivered via the Young Enterprise regional network. Young Enterprise Development Managers will work with the schools in their locality to implement the programme, recruiting and training volunteers and teachers for delivery, and identifying industry experts to present each of the themed seminars.</p> <p>The first two pilots of the core programme will be run as two-week summer schools in the East of England and the South East during the summer of 2006. Following the production of final programme materials, the core programme will be rolled out to other Young Enterprise regions for delivery pilots during the 2006/7 year and full roll-out in 2007/8.</p> |
| <p>Materials</p> | <p>Materials will be produced to support delivery of the programme. It is expected that these will include:</p> <ul style="list-style-type: none"> - Guides for the Business Volunteer and Teacher - Powerpoint-based presentation materials for the Industry expert volunteers - Materials for games and activities that form part of each seminar (e.g. card games, board games etc) - Magazine-style workbooks for students (possibly presented as filofaxes) - Templates for the production of documents e.g. Mem & Arts, Business Plan, Final Accounts - A multimedia CD resource for all participants, containing video accounts from industry experts and web site-style guidance information - A supporting web site for all participants |
| <p>Legal & Insurance</p> | <p>All companies set up through the QuickStart programme will be set up as branches of Young Enterprise. Insurance cover and instructions on how to comply with legal, insurance and health and safety requirements will be provided by Young Enterprise and paid for through registration fees.</p> |
| <p>Requirements for Sectoral Versions</p> | <p>Currently Young Enterprise companies have a free choice of the industry sector their company will trade in, and the product or service they provide, and this will continue to be the case with the core version of the QuickStart programme.</p> <p>However we have identified that an increasing number of YE companies are choosing to establish IT, Music and Fashion-based companies, and this presents an opportunity to provide more sector-specific guidance related to the students' choice.</p> <p>In order to address this, in the second phase of the QuickStart programme's development, Young Enterprise intends to create sectoral/ industry-specific versions of the programme with additional bolt-on materials and interchangeable workshops/seminars. In agreement with the core funding supporter and with further support from British Music Rights the first target sector for this will be Music.</p> <p>The QuickStart Music programme will trail-blaze the development of other sectoral versions, and so is charting new territory. Initial actions are:</p> <ol style="list-style-type: none"> 1) Agree adaption of generic themes to music industry e.g. IP, Research, Marketing etc. - and how these differ in terms of content from those outlined as key themes in "THEME" column below 2) Sector specific considerations re. key parts of the industry, plus possible case studies for inclusion in activities sector of the programme – and what these might replace or combine with in the "THEME" column below 3) Review the types of companies/ products/ services that might be practical in the 10-day timescale and make recommendations 4) Following 1, 2 & 3, review the games and activities included in the core programme and agree how these might be replaced/ adapted |

The Young Enterprise QuickStart Programme – Structure of themes for Core Programme

| Day | THEME | CONTENT | ACTIVITIES | COMPANY |
|-----|----------------------------------|--|--|--|
| 1 | INTRODUCTION | <ul style="list-style-type: none"> ➤ Overview – (inc. Competition/ Trade Fair) ➤ What is a Company? ➤ Business Planning | <ul style="list-style-type: none"> ➤ Ice Breaker ➤ Brainstorm examples of companies ➤ <BUS PLAN GAME> | <ul style="list-style-type: none"> ➤ Form into company teams ➤ Mem & Arts to complete ➤ Bus Plan template |
| | HUMAN RESOURCES | <ul style="list-style-type: none"> ➤ Intro to HR/ Personnel/ Recruitment ➤ Skills/ Experience/ Knowledge ➤ People Management + How to run a company meeting | <ul style="list-style-type: none"> ➤ Guest Speaker – HR ➤ <SKILLS GAME> (Make Own Way) | <ul style="list-style-type: none"> ➤ Job descriptions ➤ Appoint Managers |
| | CORPORATE IDENTITY | <ul style="list-style-type: none"> ➤ Corporate Identity ➤ Reputation/ Company Ethos/ CSR | <ul style="list-style-type: none"> ➤ <NAME MATCHING GAME> | <ul style="list-style-type: none"> ➤ Name Company |
| 2 | MARKETING - INTRODUCTION | <ul style="list-style-type: none"> ➤ Marketing – Intro to the 4 Ps ➤ Product design – Briefing on materials | <ul style="list-style-type: none"> ➤ Guest Speaker – Marketing ➤ <WATER BOTTLE ACTIVITY> | <ul style="list-style-type: none"> ➤ Corporate Logo ➤ Badges/ Business Cards ➤ Product Brainstorm & initial designs |
| | FINANCE | <ul style="list-style-type: none"> ➤ Costing & Pricing (info on Loan) | <ul style="list-style-type: none"> ➤ Costing activity using catalogue | <ul style="list-style-type: none"> ➤ Cost product designs |
| | MARKET RESEARCH | <ul style="list-style-type: none"> ➤ Market Research – Knowing the customer | <ul style="list-style-type: none"> ➤ <PRODUCT MATCHING GAME> ➤ Training - Interview technique | <ul style="list-style-type: none"> ➤ Design Market Research questionnaire (4Ps) |
| 3 | MARKETING: <u>PLACE</u> | <ul style="list-style-type: none"> ➤ Visit to Trade Fair Venue (+ tour) | <ul style="list-style-type: none"> ➤ Briefing from Venue Manager | <ul style="list-style-type: none"> ➤ Conduct Market Research |
| | MARKET RESEARCH | <ul style="list-style-type: none"> ➤ How to analyse & use Market Research information | <ul style="list-style-type: none"> ➤ Guest Speaker – Market Research | <ul style="list-style-type: none"> ➤ Analyse research |
| | MARKETING: <u>PRODUCT/ PRICE</u> | <ul style="list-style-type: none"> ➤ Recap on 4 Ps | | <ul style="list-style-type: none"> ➤ Final PRODUCT Choice ➤ PRICING – Set price for product ➤ Order materials/ make shopping list |

The Young Enterprise QuickStart Programme – Structure of themes for Core Programme (CONT.)

| Day | THEME | CONTENT | ACTIVITIES | COMPANY |
|---|---|---|--|---|
| 4 | <u>MARKETING PRODUCT/ PROMOTION</u> | <ul style="list-style-type: none"> ➤ Product Design ➤ Sales Display/ promotion/ Advertising ➤ Presentation/ Sales techniques | | <ul style="list-style-type: none"> ➤ Design product ➤ Design Trade Fair Stand ➤ Complete Business Plan (4Ps/ 7Ms) |
| 5 | SECURING FINANCE | <ul style="list-style-type: none"> ➤ Sources of Start-up Finance ➤ Registering a company ➤ Corporate Banking | <ul style="list-style-type: none"> ➤ End of Week 1 - Team Building | <ul style="list-style-type: none"> ➤ Present Business Plan ➤ Receive Loan Approval ➤ File Mem & Arts ➤ Open "Bank Account" ➤ (Buy Materials) |
| WEEKEND BREAK IF 2-WEEK PROGRAMME | | | | |
| 6 | OPERATIONS | <ul style="list-style-type: none"> ➤ WELCOME BACK ➤ Planning Production ➤ Manufacturing techniques ➤ Health & Safety ➤ Risk Assessment | <ul style="list-style-type: none"> ➤ Ice-breaker/ Motivational Activity | <ul style="list-style-type: none"> ➤ Plan Production ➤ Complete Risk Assessment ➤ Manufacture Product ➤ Create Promotional materials ➤ Make final plans for Trade Fair |
| 7 | | | | |
| (8) | | | | |
| 8 or 9 | TRADE FAIR | | | |
| 9 &/or 10 | | <ul style="list-style-type: none"> ➤ Debrief Trade Fair ➤ Report Writing ➤ Closing down – Where next? | <ul style="list-style-type: none"> ➤ Motivational Guest Speaker | <ul style="list-style-type: none"> ➤ Debrief Trade Fair ➤ Close down company ➤ Pay back loan ➤ Write Company Report/ Presentation |
| COMPANY COMPETITION EVENT & PRIZEGIVING | | | | |

CREATE

Principles for fairness and shared understanding in IP

Creative work should be available to as many people as possible in sustainable way. A fair and flexible IP regime makes this viable. The CREATE principles express key aspects of the value of IP in the modern economic and social setting.

CREATE

C Creativity promotes communication, science and the arts, which, in turn, improve the quality of our lives, our economic prosperity, international understanding and opportunity. Creativity and innovation are the premium products of advanced knowledge economies.

R Respect for rights is vital to promote future investment in innovation to stimulate the economy. Respect will help ensure that artists, authors and rights holders are empowered to create and to receive appropriate reward and respect for their work.

E Education and awareness about the significance of, and the benefits deriving from, intellectual property are increasingly important to foster an informed marketplace and encourage those entering the creative industries.

A Access to art and creativity enhances diversity of expression and quality of life for all. It is a key goal of all IP creators and rights holders. Appropriate reward and recognition must accrue for those creating and investing in work in balance with this principle.

T Trust between the creators and consumers of intellectual property is an essential part of the landscape. This is promoted through a balanced legislative framework underpinned by international treaties and fair commercial relationships. Working to develop and maintain this trust is central to the effective operation of the IP regime.

E Economic benefits from intellectual property are increasingly the basis for employment and business and economic growth. Fairness and a sustainable approach to distributing economic value throughout the value chain to reflect IP rights are essential.