

Emailed to gowers.review@hm-treasury.gov.uk

25th January 2006

Andrew Gowers
Gowers Review of Intellectual Property Team
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

Re: Music Business Forum

Dear Mr Gowers,

Congratulations on your appointment to lead the intellectual property review team. This review is timely and important in view of the government's agenda to promote creativity and innovation as core tools for the UK's global competitiveness.

UK's creative industries are a major cultural and social force in the UK and internationally. They also generate 8% of UK GDP. The Chancellor of the Exchequer, Rt. Hon. Gordon Brown MP acknowledged this recently when delivering his speech to the Advancing Enterprise Conference: *"in the last eight years Britain's knowledge intensive sector has grown twice as fast as the overall economy - highlighting the extraordinary creative talent Britain possesses. The opportunity now is to build on this extraordinary promise and ensure Britain becomes the world leader in creative industries"*¹

All these industries depend for their economic success on the copyright system, which is a strong and flexible instrument which stimulates innovation by creating incentives to invest and measures to protect that investment effectively. Former Secretary of State for the Department for Trade and Industry, Rt. Hon Patricia Hewitt MP, recognised this when she said: *"without IP protection the creative sector could not exist, let alone prosper. In a digital world, intellectual property is the key to our future prosperity. Because in an increasingly competitive global economy any attack on our intellectual and creative capital is an attack on our economy itself"*².

Music has long been at the sharp end of digital developments and is a trail blazer for other creative industries in developing new and innovative ways for consumers to access music. These new services and the creative industries as a whole rely on a strong IP system so your review is critical to this cornerstone of the knowledge economy. The member organisations of the Music Business Forum (MBF³) look forward to working closely with you over the course of the year long review, both collectively and individually.

¹ 2nd December 2005

² Speech to Citigroup: "Creativity in the Knowledge Economy", 29th June 2004

³ See annex for MBF membership

We enclose a transcript of a Smith Institute roundtable discussion between representatives of film, music, design, games, publishing, and a representative from Intellect held in the autumn of 2005 and published as a supplement to the New Statesman magazine. The core proposals of direct relevance to your review which would help to promote economic growth, long term productivity and facilitate the inward investment positioning of Britain as the 'World's Creative Hub'⁴ include:

- Provide a better cross-departmental Government structural framework for the creative industries by bringing greater coherence to the current fragmented approach to policy making, perhaps by establishing a dedicated copyright office accountable to a new cross-departmental Government unit with a remit to promote the creative industries;
- Compile annual statistics on the value (including value added) of the creative copyright industries;
- To help potential investors in creative businesses better appreciate the real value of creative assets by allocating a fair and commercial value to copyright (intangible) assets identified in the balance sheet;
- Promote greater awareness of copyright as the economic driver of creativity – to financiers, business, educational establishment and the public; to creators themselves to help them turn their ideas into viable careers and enterprises; and to young people by encouraging them to value their own creative work in schools.
- To equalise copyright term for sound recordings with other major music territories, such as the USA.

Yours sincerely

Emma Pike & Alison Wenham

Co-Chairs MBF Business Focus Sub Group

Cc Lord Sainsbury
James Purnell MP

Enclosed: C8 'Capitalising on Creativity' - *New Statement Supplement*

⁴ James Purnell MP speech to IPPR, 'Making Britain the Worlds Creative Hub', 16th June 2005

Music Business Forum

The MBF is an informal group of music business organisations that, since its inception in the spring of 2002, has gained a reputation as an effective representation of music business interests in its widest sense to Government and beyond. The members of the MBF represent interests from all aspects of the UK music-making community, ranging from composition, adaptation, performance, use, licensing, publishing, recording, investment, distribution, marketing, training, education and business development in all the ways that reflect the vibrant diversity of the industry.

- AIM (Association of Independent Music)
- APRS (Association of Professional Recording Services)
- AURA (Association of United Recording Artists)
- British Academy of Composers & Songwriters
- BARD (British Association of Record Dealers)
- British Music Rights
- BPI (British Phonographic Industry)
- Sound Connections
- Equity
- The MCPS-PRS Alliance
- Music Education Council
- MIA - (Music Industries Association)
- MMF (Music Managers Forum)
- MPA - (Music Publishers Association)
- Musicians' Union
- Music Producers' Guild
- National Music Council
- P@MRA
- PPL (Phonographic Performance Ltd)
- VPL (Video Performance Ltd)

Music Business Forum (MBF) response to the Gowers Review

The Music Business Forum¹ welcomes the opportunity to respond to the Gowers independent review of intellectual property (IP). Our response covers the broad copyright arena and where possible we have indicated a number of recommendations which could help promote further economic growth, long term productivity and facilitate the inward investment positioning of Britain as the 'World's Creative Hub'². Many of our member organisations have responded to this review independently; and this submission reflects the consensus position across the broad music sector.

Overview

*"Without the right intellectual property framework our creative industries could not survive. And given the pace of technological convergence, intellectual property will increasingly be the key to the UK's future economic success. I believe that an effective intellectual property regime is a competitive advantage for the UK and helps make this country the location of choice for innovation and creativity"*³

Rt Hon. Tessa Jowell MP, Secretary of State for Culture Media and Sport

The music sector has long been at the sharp end of digital developments and is a trail blazer for other creative industries in developing new and innovative ways for consumers to access content. These new services and the creative industries as a whole rely on a strong IP system so this review is critical to this cornerstone of the knowledge economy.

The music industry has been widely acknowledged as a British economic success story contributing approximately £5 billion per annum to the UK economy (significantly, £1.3 billion being derived from exports), employing more than 120,000 people⁴. The UK is the third largest market in the world for sales of music, behind only the USA and Japan. Another factor, although more difficult to quantify, are the cultural benefits that the British music industry provides: - it widely promotes the UK in an international context and encourages further creativity in other sectors, particularly in the creative industries, and thus facilitates inward investment.

Copyright is the key means for rewarding creativity and the foundation for future commercial success; and the copyright regime has proved its flexibility over the years and is fundamentally different from the patent system. If the UK is to maintain its very strong position in the knowledge economy, Government support for the creative industries must be translated into strengthening the copyright system and its enforcement and valuing creative product in education, fiscal and economic policies. The co-ordination of Government support should be improved.

¹ The MBF is an informal group of music businesses organisations that, since its inception in the spring of 2002, has gained a reputation as an effective representation of the interests of the music business in its widest sense to Government. A list of members is annexed to this paper.

² James Purnell MP speech to IPPR, 'Making Britain the Worlds Creative Hub', 16th June 2005.

³ Rt Hon. Tessa Jowell MP, Secretary of State for Culture Media and Sport speech at Bloomberg 14th March 2006.

⁴ Further information can be read in a National Music Council report: *Counting the Notes* published in November 2002.

Recommendations

- This review should propose a better cross-departmental Government structural framework for the creative industries by bringing greater coherence to the current fragmented approach to policy making, perhaps by establishing a dedicated Creative Industries Unit with a remit to promote the UK's creative industries.
- Furthermore, we propose the creation of a dedicated Copyright Office to administer and oversee policy direction both domestically and at an international level.
- There is a need to monitor the value added, growth, employment and export revenues of the copyright industries through annual economic analysis. This would help industry and Government better understand the drivers of growth as well as anticipate any trends and inform fiscal policy and legislative changes.
- Government should help encourage a greater awareness of copyright as the economic driver of creativity in schools, higher and further education, amongst creative entrepreneurs, SME's, as well as more broadly with financiers, public sector bodies, and the public.
- Government should broker new ways for creative businesses and banks/investors to come together and understand each sector better. The objective should be to encourage potential investors in creative businesses to better appreciate the real value of creative assets by allocating a fair and commercial value to copyright (intangible) assets identified in the balance sheet.
- The copyright tribunal should be brought into the 21st Century through the application of principles adopted in the Legatt review and the Woolf reforms.
- 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. The MBF 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 performers, is fair and equitable;
- Government should uphold the European exhaustion of rights as the correct balance between promoting free movement of goods while maintaining the value of our creative industries.

Substantive Comments

1. Government structures adequately support the copyright/creative industries

Government needs to consider how best to encourage closer links between each department when developing policy as a matter of best practice and better regulation. Currently the Government deals with the creative industries in a somewhat piecemeal fashion with some sub sectors being the responsibility of DCMS, and others falling within the DTI remit. Similarly, cross-cutting themes such as innovation, education and skills policy for the creative industries fall within various Departments. This creates a lack of focus and the potential for a lack of understanding and cohesiveness within Government. As a result, other Departments such as Treasury and DfES do not have enough input from the creative industries, either from the industry itself or from its Whitehall sponsors. In addition, funding currently allocated by the Arts Council could be more effectively channelled and utilised than at present through better collaboration with the wider music industry.

Mechanisms are required to ensure that full cooperation between officials can transpire as effectively as possible in order to both maximise opportunities as well as to avoid the unintended negative consequences ensuing from restricted and silo policy formulation.

At a recent roundtable discussion called by the Smith Institute, the creative industries unanimously called for a cohesive approach to the sector from Government⁵. A possible model is offered by UK Trade & Investment. This is a single Government organisation, created by bringing together the FCO and the DTI. It has a clear role, promoting UK trade overseas and inward investment from abroad. It works closely with industry sectors, including the creative industries, and retains close links with other areas of Government. A similar structure could work for the creative industries, bringing together DTI and DCMS in a single organisation that could work with the creative industries and ensure that other areas of Government, such as Treasury and education, had informed input from the creative sector.

In light of the Labour Party manifesto commitment to reform the Patent Office, the Government must equip itself with the resource and expertise required to tackle copyright issues. The Government needs the greatest possible understanding of the dynamics of the copyright system and how it is driving value added and growth in the economy. A number of leading thinkers in the creative industries have called for a Copyright Office, charged with promoting the UK's copyright interests. The USA has taken a similar approach and taken the lead in copyright creation and distribution. The UK should likewise take a pro-active approach to copyright as this becomes a key factor in international competitiveness and global success.

Recommendation:

- This review should propose a better cross-departmental Government structural framework for the creative industries by bringing greater coherence to the current fragmented approach to policy making, perhaps by establishing a dedicated Creative Industries Unit with a remit to promote the UK's creative industries.
- Furthermore, we propose the creation of a dedicated Copyright Office to administer and oversee policy direction both domestically and at an international level.

⁵ See c8 Transcript annexed to the MBF letter to the review team, dated 25th January 2006.

2. Compile annual statistics on the value (including value added) of the creative copyright industries

Given that copyright is an acknowledged key to a successful knowledge economy the Government can take steps to encourage the full recognition of the economic value of IP. Public policy in relation to the creative industries should be evidence based and for this the Government needs basic facts on the value-added, growth, employment and export revenues of the creative sector. The most recent data on the copyright industries comes from a European study which revealed that they contribute over 8% of GDP. Before that, the DCMS conducted a mapping exercise for the creative industries but it was done independently of other Government economic analysis and has not been updated on an annual basis.

Recommendations:

- Government (HM Treasury or new Creative Industries Unit) monitor the value added, growth, employment and export revenues of the copyright industries through annual economic analysis. This would help industry and Government better understand the drivers of growth and anticipate any trends and inform fiscal policy and legislative changes.

3. Copyright education

In the digital world copyright is the currency of the creative economy. In order to develop a greater understanding of this fact there is a vital need to promote a better awareness of copyright as an economic driver of creativity to a number of audiences.

To maintain Britain's capacity to compete on ideas, creativity and innovation, it is crucial that the UK develops a contemporary 'information age' curriculum in which copyright, and the creative entrepreneurship that translates rights into profits, jobs and economic growth, are central.

Producing creative work and understanding how it is owned should therefore be a core part of the curriculum from Key Stage 1 right through to Higher Education. Future generations need an understanding of the way intangible assets are owned and made available and at the heart of this is the principle of ownership, a concept that is well respected for physical goods. The easiest way for children to learn this concept of ownership is for them to apply it to their own creative work which would help both engender pride in their own work as well as respect for the work of others.

Future creators need to understand their rights in order to manage and exploit these effectively. This is particular relevant to SME's and potential creative entrepreneurs if we are to develop the creative economy further. Being able to reach the non formal learning sector and develop collaborations with grass roots and underground communities are crucial steps; and the music industry is already establishing strong relationships with practical advice services. In London, the 'Own It' programme is a free Intellectual Property Advisory Service offering advice to creative professionals with the music industry already developing specific components offering advice to businesses on what intellectual property is and how to best protect and exploit it. There is strong demand for such a business focussed services and such support mechanisms should be made available across the regions.

With the streamlining of DTI business support services there needs to be further encouragement by Government for individuals and businesses to access to services across the UK. We recommend targeted policy solutions, such as Government further developing the Cox review consideration of a network of 'Creativity and Innovation' centres throughout the UK in order to strengthen the interaction between the various parties involved in promoting and representing creative skills and service, as well as promoting the export dimension and encouraging interaction and networking in a practical sense.

Future financiers need to understand the value of the intangible assets of companies in order to play a key role in lending money to start up and growing creative businesses, as well as better comprehend the skills base being offered by the creative community. Our members have reported that too often they don't speak the same language as bankers and investors, despite the fact it is in both their interests to do so. The Creative Economy Programme (CEP) work strand in DCMS is considering improving the possible support mechanisms available to creative industries and the MBF fully supports this initiative. There is a recognised need to further encourage potential investors in creative businesses to better appreciate the real value of creative assets by allocating a fair and commercial value to copyright (intangible) assets identified in the balance sheet. Government can play its role by brokering new ways for creative businesses and banks/investors to come together and understand each sector better

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.

Recommendation:

- Develop a contemporary 'information age' school curriculum in which intellectual property, and the creative entrepreneurship that translates rights into profits, jobs and economic growth, are central.
- Develop IP business support mechanisms to creative entrepreneurs and SME's on a national basis.
- Government broker new ways for creative businesses and banks/investors to come together and understand each sector better. The objective should be to encourage potential investors in creative businesses to better appreciate the real value of creative assets by allocating a fair and commercial value to copyright (intangible) assets identified in the balance sheet.

4. Copyright Tribunal

Whilst we welcome the steps taken by the Patent Office in terms of mediation and alternative dispute resolution (ADR) the Copyright Tribunal remains in urgent need of reform. The Copyright Tribunal is antiquated having been exempted from the application of reforms to other courts and tribunals such as the Woolf and Leggatt reforms and measures should be introduced to improve the Copyright Tribunal

Recommendation:

- Reforms to promote a more commercial and less regulatory approach by the Tribunal.
- Greater transparency for the election of the chairmen and the training of the lay members.
- 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. Any external supervisory body should have to adhere to similar principles to guarantee inexpensive and timely proceedings (not always the case with the UK Copyright Tribunal).

5. Term of Protection for Sound Recordings

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. The MBF 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 performers, is fair and equitable.

6. Parallel imports/exhaustion of rights

The impact of any change to the current system of Community exhaustion (as laid down in Article 4 of the Copyright Directive) would be detrimental. If wholesale parallel imports were permitted and those parallel imports were sourced from countries which do not observe European standards, the overall returns to UK economy would fall with more music being sourced / licensed through non-royalty paying countries.

Parallel imports bring with them a substantial reduction in the ability of the primary businesses to prevent financial profiteering from piracy and counterfeiting.

The justification for international exhaustion for Industrial Property relies on the possible global registration of Trademarks and Patents, which is not the case for copyright. 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.

Recommendation:

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

Annex 1: Contact details for the Music Business Forum

For further information on the Music Business Forum, please contact:

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Music Business Forum Coordinator
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Annex 2: Membership details for the Music Business Forum

- AIM (Association of Independent Music)
- APRS (Association of Professional Recording Services)
- AURA (Association of United Recording Artists)
- British Academy of Composers & Songwriters
- BARD (British Association of Record Dealers)
- British Music Rights
- BPI (British Phonographic Industry)
- Creative and Cultural Skills (observer status)
- Equity
- The MCPS-PRS Alliance
- Music Education Council
- (MIA) Music Industries Association
- Music Managers Forum (MMF)
- MPA - (Music Publishers Association)
- Musicians' Union
- Music Producers' Guild
- National Music Council
- P@MRA
- PPL (Phonographic Performance Ltd)
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- Welsh Music Foundation