Contract Transparency Working Group – 11.01.22

Attendees:
Antony Bebawi, Sony Music Publishing
Brian Message, ATC Management / MMF
Chris Cooke, Consultant
Colin Young, Young & Co. Accountants
Debbie Stones, The Ivors Academy
Florian Koempel, UK Music
Horace Trubridge, Musicians' Union
Jonathan Aitken, General Counsel – PRS for Music
Jules O'Riordan, Sound Advice LLP
Kirit Joshi, Sony Music Entertainment
Roger La Haye, The Royalty Consultancy
Rupert Skellett, Beggars Group
Simon Conroy, Consultant Solicitor
Sue Thomson, Warner Music UK
Tim Fowler, Lee and Thompson LLP
Nadia Vally, IPO (Chair)
Ian Jenkins, IPO
Robin Stout, IPO
Pauline Beck, IPO
Laura Howells, IPO
John Davies, DCMS

Apologies:
Gee Davy, Association of Independent Music

1. **Welcome - Nadia Vally, IPO (WG Chair)**

The IPO opened the meeting and thanked members for their attendance.

2. **Working Group: Short introductions**

Each member was invited to introduce themself to the Group.

3. **Terms of Reference (TOR) & Ways of Working**

The following action points were recorded:

Action 1: IPO to consider whether Universal should be represented on this Group, given that Sony and Warner had seats at the table.

Action 2: IPO to consider how Streaming Platforms can be represented on the Group or assist with the work of the Group.

Action 3: The Group's Terms Of Reference (TOR) cited Recommendation 9 from the DCMS Select Committee, but Government had said in its response that it would not be taking forward the recommendation. IPO confirmed this was the case but would clarify why recommendation 9 was included in the TORs (please see footnote at Annex where further clarification is provided).

Postscript: The IPO responded to these actions on 12.01.22, via email, and this response is annexed to the note of this meeting

4. Roundtable discussion of key Issues

4.1 Members were invited by the Chair to briefly outline what issues/problems associated with contracts they wanted to see fixed with a view to helping formulate an overall statement of the issues/problems that the Group could agree to address. The following points were raised.

Context

4.2 Members were interested in the different perspectives represented within the Group and considered that contractual 'transparency' had to be looked at within a wider context, but also with greater specificity as to what needed addressing. There needed to be broader understanding and clarity within the sector of how IP rights translate into revenue and how that income moves down the value chain to creators.

Business practice & trust

4.3 The importance of business practices in the sector in building trust in contracting, licensing and royalty statement information were highlighted. It was noted that communication and information-sharing between intermediaries along the supply chain, and barriers to achieving this, could be a focus for future discussion. Specific issues in relation to business practice and trust included:

- ➢ the desirability of contractual negotiations being conducted by trained representatives
- ➢ a need for contract provisions to be framed with the goal of achieving informed consent, as opposed to fostering opaqueness
- ➢ whether there should be greater openness within the sector around who exploits which rights along the value chain
- ➢ whether there was a willingness to acknowledge the existence of vertical business relationships with Digital Service Providers (DSPs)

> the desirability of having clauses in contracts about what data will ultimately be available to the signatory.

4.4 A set of issues, grouped thematically below, were also raised and were said to work against greater transparency - including commercial confidentiality, corporate policy, logistical constraints, and perceived legal barriers and challenges.

<u>Royalty statements</u>

4.5 Members considered that proven, systematic and industry wide digital practices needed to apply to royalty statements arising from contractual agreements.

4.6 There was a desire for greater clarity and detail in the information provided in royalty statements, but also a recognition that the systems and data flows that sit behind statements are increasingly complex. The range of plans and packages offered by DSPs, as illustrated by one member of the group, has a knock-on impact in terms of the scale and complexity of calculating, allocating, and reporting income from music streaming.

4.7 Members raised a need for better classification and presentation of royalty payment information to aid comprehension and build trust that income reporting is accurate. Concerns were voiced that information was not being reported in sufficient detail. The use of loosely defined headings and a brigading of detail in royalty statements were reported as having knock-on implications for the necessary use of audits to ascertain more detail.

4.8 Members also reported that digital solutions were increasingly providing detailed breakdowns of income earned from each DSP, by distribution channel and individual contract, and this was becoming increasingly mainstream within the sector

<u>Auditing</u>

4.9 Audits were costly and impacted upon relationships and perceptions of trust across the sector.

4.10 The need to audit source data to understand calculations and attributions and provide assurance as to revenue accuracy was raised. There was concern that contractual audit provisions were too time-limited, and that claimed commercial confidentiality could restrict access to granular information. Non-Disclosure Agreements (NDA) in contracts also impacted upon audits.

4.11 The complexity and scale of information needed to undertake a successful audit, and the cost implications, were noted for further consideration. Issues raised in relation to audits included:

- ➢ making audits more affordable through a collective process and/or financial contributions
- ➢ a greater need (than in the past) to audit back catalogue income
- ➢ the rise of accounting requirements to confirm to contracted parties that income is being correctly attributed.

Content-sharing platforms

4.12 Members commented that lump sum payments from content-sharing platforms were not transparent in terms of the treatment of recoupable costs, deductions and revenue splits.

Metadata

4.13 The Group noted the read-across from contract transparency to the TORs of the metadata technical group in terms of consideration of data standards and the earliest possible registration of data associated with creating recorded music

Code Of Practice

4.14. Members raised how a code of practice might enshrine desirable behaviours and business practices and underpin ordinary expectations of 'fair and free' contracting. Reference was made to the code of practice model for Collective Management Organisations (CMOs) and the use of self-regulation in other sectors. Specific issues in relation to a Code Of Practice included:

- ➢ whether an industry-wide code of practice might be legally enforceable
- ➢ the relationship between seeking to bring in a voluntary code of practice and its possible future imposition, if not adopted voluntarily on an industry-wide basis.

5. Next steps

The Group agreed to meet monthly, but with meeting frequency to be reassessed as work progressed.

Action 4: Based on the discussion, IPO to draft a paper for the next meeting that acts as a statement of the issues/ problems associated with contracts that the Group would want to see addressed, with a view to taking forward work on a Code Of Practice via thematic task & finish groups.

Annex

<u>E-mail from Nadia Vally to Group members - Wed 12/01/2022 @16:41</u>

Hi All,

Thanks very much for coming along to the first meeting of the transparency group yesterday. I thought it was a rich and productive discussion- thank you.

We are working on a summary of points made at the meeting which we'll send out shortly. Once agreed, it can become the foundation for the issues paper that we've undertaken to circulate for our next meeting. Meanwhile, I said I would get back to you on the following questions which were raised during the course of the meeting:

Absence of Universal from the group
We asked the contact group to put forward nominations for both the transparency and metadata groups. It turns out that we liaised with BPI in getting nominees from the labels for the group. The list was a long one which would have made overall numbers for the group unmanageable, so we asked BPI to cut back and ended up with the nominees that we did. That said, I can see that there is a gap there and am happy for Universal to join the group. I will get in touch with the BPI but am happy to take nominations/recommendations from the group.

Absence of platforms
ERA responded to our call to the Contact Group for nominations from the platforms but only put forward nominations for the metadata group. I can get in touch with them and the contact group members to see if they have any suggestions for our group.

In both cases, we are also of course free to bring in expertise for particular subjects as our work progresses, and you should feel free to make suggestions as appropriate.

Recommendation 9
There was a question about why Recommendation 9 was included in the Terms of Reference when Government had said in its response that it would not be pursuing this. For clarification, Recommendations 9 and 16 are cited for context in the TOR, but the former falls outside the scope of the group's work- Government is not pursuing Recommendation 9.[1]

I hope this helps, and please let us know if you need anything further.

Thanks

Nadia

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[1] By way of clarification, the Government gave a combined response to Recommendations 9 and 16 of the DCMS Select Committee Report. The Government Response said that it would not be taking forward that part of Recommendation 9 that recommended that it should require all publishers and collecting societies to publish royalty chain information. However, Recommendation 9 and the Government Response do address further points. The Government Response picked up the Committee's recommendation on global licensing deals. While the issue of data conflicts and their resolution is slated for consideration within the other Technical Group - the Metadata Working Group. That Group will be looking at a range of issues relating to quality, accuracy and timeliness of data in the streaming system, and possible solutions to them. Members of this Group will be appraised of the discussions on metadata in the other Group.

Technical working group on transparency– 09.02.22

Attendees:

Adam Barker, Universal
Antony Bebawi, Sony Music Publishing
Chris Cooke, Consultant
Colin Young, Young & Co. Accountants
Debbie Stones, The Ivors Academy
Gee Davy, Association of Independent Music
Horace Trubridge, Musicians' Union
Jonathan Aitken, General Counsel – PRS for Music
Jules O'Riordan, Sound Advice LLP
Kim Bayley, Digital Entertainment and Retail Association (ERA)
Kirit Joshi, Sony Music Entertainment
Roger La Haye, The Royalty Consultancy
Rupert Skellett, Beggars Group
Simon Conroy, Consultant Solicitor
Sue Thomson, Warner Music UK
Tim Fowler, Lee and Thompson LLP
Nadia Vally, IPO
Ian Jenkins, IPO
Robin Stout, IPO
Pauline Beck, IPO
Laura Howells, IPO

Apologies:
Brian Message, ATC Management / MMF
Florian Koempel, UK Music

1. Welcome to new members - Nadia Vally, IPO (WG Chair)

The IPO welcomed Adam Barker and Kim Bayley to the Group. The note of the 11 January meeting was agreed, as was the Action Log.

2. Transparency: Issues to be addressed

2.1 Members were invited by the Chair to discuss the paper that had been circulated on issues to be addressed in a Code of Practice (CoP). The following points were raised.

<u>Royalty chain information</u>

2.2 The importance of royalty chain information to considerations around a CoP were highlighted. There was a discussion around:

- the importance and availability of usable royalty chain information
- the roles of intermediaries in communicating information along the chain
- a desire to focus on evidence to establish the extent of the issue for the sector
- the tension between being methodical and thorough in all respects of providing information and the cost of doing so
- the importance of educating and awareness raising across the sector on this issue
- the business purposes for which the information was, and could be, used.

2.3 The Chair noted that the Government Response to the DCMS Select Committee's Report clearly stated that Government did not intend to pursue the specific recommendation on the publication of royalty chain information. However, royalty chain information and the transparency of royalties more broadly were clearly in scope of discussing a CoP.

Recoupable costs

2.4 The issue of recoupable costs was raised for inclusion in the overall problem statement, and specifically a clear explanation/account of marketing and promotion costs and how the treatment of other deductions differ between types of record deal.

2.5 There was a broader discussion around the importance of fostering understanding of contractual options and terminology in plainer English and how a CoP written at the level of general principles could aid sector-wide dissemination of knowledge.

Task and Finish Group A: 'Overall Transparency'

2.6 The headline objective for Group A of achieving informed consent on contract provisions was discussed and the importance of high quality independent legal advice for contracting parties was raised.

2.7 It was suggested that the issues proposed for Group A were key to deliberating on the foundations for a CoP and could be better discussed by the Working Group as a whole. This could then help build a framework for CoP considerations for the other Task and Finish Groups.

2.8 There was agreement that members should seek to unpack what is meant by transparency by articulating a 'wish-list' of issues that should be covered by a CoP, and that these should be illustrated by concrete examples.

2.9 One member made detailed comments about: the importance of the process being fact and evidence based; that consultation with the Music Publishers Association on publisher issues was important as there was only one publisher representative on the Group; and that there should be greater representation on the Group from the Digital Service Providers. Verbatim comments were not included as the meeting note is intended to be a "short summary of the discussion and actions arising from each meeting" (January paper on Ways of Working: 'Ground Rules'). The Chair commented that subject matter experts, as per the agreed 'ways of working' document, could be invited to particular meetings.

2.10 Further points included the inherent tension between greater transparency and commercial confidentiality and whether the provision of information to the wider public was in scope when considering overall transparency.

Task and Finish Group B: 'Commercial Confidentiality'

2.11. The read-across to Competition law was noted as a consideration for this Group.

Task and Finish Group C: Access to information

2.12 The discussion covered the following themes:

- the role, scope and cost/benefit of audits and the reference in the paper to contractual time limits and whether those applying to payments in the music sector should differ from standard expiration dates

- how contractual terms with Digital Service Providers shape what information intermediaries in the sector can provide to other parties in the supply chain on income distribution
- striking a balance between access to granular information and the constraints of commercial confidentiality
- the relationship between information provision and cost to business, particularly for smaller entities in the sector.

<u>Task and Finish Group D: Business Adoption</u>

2.13 There were no comments in relation to the objective of Group D.

3. Next Steps

The following action points were recorded:

Action 1: IPO to finalise, on behalf of members, the list of issues/problems to be addressed in a Code of Practice document

Action 2: IPO to consider how to take forward a framing discussion of 'overall transparency' and when to set up Task and Finish Groups

6 May 2022

Technical Working Group on transparency – 12.04.22

Attendees:
Adam Barker, Universal
Antony Bebawi, Sony Music Publishing
Chris Cooke, Consultant
Colin Young, Young & Co. Accountants
Debbie Stones, The Ivors Academy
Gee Davy, Association of Independent Music
Horace Trubridge, Musicians' Union
Jonathan Aitken, General Counsel – PRS for Music
Jules O'Riordan, Sound Advice LLP
Kim Bayley, Digital Entertainment and Retail Association (ERA)
Kirit Joshi, Sony Music Entertainment
Roger La Haye, The Royalty Consultancy
Rupert Skellett, Beggars Group
Simon Conroy, Consultant Solicitor
Sue Thomson, Warner Music UK
Tim Fowler, Lee and Thompson LLP
Nadia Vally, IPO
Ian Jenkins, IPO
Robin Stout, IPO
Pauline Beck, IPO
Laura Howells, IPO

Apologies:
Robin Stout, IPO
John Davies, DCMS

1. Welcome - Nadia Vally, IPO (Working Group (WG) Chair)

1.1 The Chair thanked the group for their contributions to the paper, *Framing transparency in a Code of Practice,* that was circulated previously. The 'wishlist', established in previous meetings, had been aligned with possible objectives on transparency to help shape what the Code of Practice (COP) might look like. It was stressed that the wording was tentative, pending further detailed work, for example, on whether and how to explore detail through sub-groups.

1.2 The Chair invited a member to speak about a nascent best practice document that would contribute to developing a COP. A paper was being drafted and the authors were in the process of receiving inputs from Members and industry organisations. While only brief discussions had taken place to date, there had been a positive reception and the authors understood the importance of sharing it widely.

1.3 The Chair advised that progress towards a COP would be reported to Ministers, before the end of the month, as part of a broader update on music streaming. The Chair would provide an update on any points of note at the next meeting.

1.4 One Member was concerned that the note of the last meeting did not correctly reflect a point.

Action: The meeting note would be re-circulated after amending it to capture the point correctly.

2. Transparency: Framing Paper

2.1 Members were thanked for their contributions to the paper which clearly illustrated that transparency comprised a complex sets of problem statements (real or perceived).

2.2 A short slide presentation invited members to consider, in high-level terms, what a COP could say on any headline issue, based upon contributions from Members against each of the transparency objectives in the paper.

Contractual provisions

2.3 Members discussed the nature of contracting in the music industry and the read-across to a COP. The following points were made:

- Whether high-level generic text about transparency in contracts could usefully be applied to the multiplicity of contracts that existed in the music industry, e.g., contractual agreements between artists and record labels and between streaming services and rights holders, all of which contained specific provisions relating to assignment of creator's rights or licensing of rights as part of distribution agreements etc.
- It might be possible to draft high-level text to support a general principle of transparency in all contracts but that this could be sub-divided in a COP into separate sections by type of contract to be more meaningful.
- The main exclusive recording agreements between artists and record labels were not enforceable without both parties having had legal advice. The limited evidence of disputes between artists and labels appeared to support the view that access to independent legal advice was not a fundamental issue to be resolved in a COP.
- Inequality of bargaining power in contract negotiations between emerging artists and labels and how to counter a perception that some labels might take undue advantage of.
- There was a perceived lack of transparency in contracts between streaming services and rightsholders on how works are used and the degree to which creators have assurance that they receive all due remuneration.
- There was a perceived lack of clarity on how pre-digital record deals are interpreted when new revenue streams emerge and how streaming income is shared with artists, e.g., how Roblox income is shared.
- A point was made about the more innovative grass-roots end of the market, where creators are now negotiating electronic contracts without legal advice, although these are short term distribution agreements rather than exclusive recording agreements. This was used to illustrate some concern that a rigid requirement for legal representation could have the unintended consequence of stifling innovation.
- Contractual provisions had implications for the level of detail in royalty statements and the ability to audit remuneration. Blended statements did not provide detailed information on how royalty payments are calculated and broken down. It was suggested that there needed to be a shift away from music streaming platforms predominantly deciding what information was provided, towards rights holders specifying what information they require. Contracts needed to include specific provisions on access to information of economic value that are enforceable as a contractual right.
- The practicality of providing full granularity of information on streaming revenues, across all platforms and countries, without consolidating for processing purposes, and the real-world usefulness of such large volumes of data for creators. While larger

music companies had their own accounting systems, there was a long tail of smaller companies that used third party accounting systems and consequently had less control over the level of detail that could be extracted.
- There was consensus that the specifics of the issue might be better unpacked in a sub-group. It was also acknowledged that there were overlaps with thinking underway within the Metadata Working Group.

Vertical Business Relationships

2.4 Members discussed transparency of around vertical business relationships between rights holders and Digital Service Providers (DSPs) and managing conflicts of interest and reputational risk. The following points were made:

- Talking about transparency in vertical business relationships was difficult in the abstract.
- Some music companies held equity stakes in some streaming services that were not fully disclosed. This had historically been of concern, but there was now greater disclosure.
- The major music companies were huge international conglomerates, with business entities operating separately and independently from one another. Consequently, clarity was needed about potential conflicts of interest. This could help determine a proportionate and practical approach to disclosure of relevant interests.
- A COP could acknowledge the issue and commit to improving industry understanding of vertical business relationships and how such agreements relate to converting streams to revenue/royalty payments.

3. Concluding Remarks

3.1 It was suggested that a more detailed analysis of what information artists and songwriters, and their managers and advisers, would like access to would be helpful before proceeding to draft the COP.

3.2 Reflecting on past lessons of handling and resolution of issues in the industry could provide an opportunity to extract a set of principles for a COP. It was important to future-proof a COP, but also to support innovation in the market.

3.3 While a COP could set out principles, another product - such as an accompanying best practice guide – might be needed for the detail.

3.4 There would need to be continued constructive challenge to ensure that the drafting of the COP reflects the nature of underlying evidence.

3.5 It was acknowledged that issues could be fluid in a changing music market, and that unpacking issues was helpful, even if their resolution ultimately fell outside of a COP.

4. Next Steps

4.1 The following action points were recorded:

- The IPO will process the points raised in the discussion and consider how more detailed discussions on specific issues can be explored.
- The IPO will hold further bilateral conversations with Members after Easter.
- The next meeting in May will be planned as a hybrid meeting.

6 May 2022

Transparency Working Group – 10.05.22

Attendees:
Adam Barker, Universal
Antony Bebawi, Sony Music Publishing
Brian Message, ATC Management/MMF
Chris Cooke, Consultant
Colin Young, Young & Co. Accountants
Debbie Stones, The Ivors Academy
Florian Koempel, UK Music
Gee Davy, Association of Independent Music
Jonathan Aitken, PRS for Music
Horace Trubridge, Musicians' Union
Kim Bayley, Entertainment Retailers Association (ERA)
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Sue Thomson, Warner Music UK
Tim Fowler, Lee and Thompson LLP
Nadia Vally, IPO
Ian Jenkins, IPO
Pauline Beck, IPO
Kim Varis, IPO

Apologies:
Robin Stout, IPO
John Davies, DCMS
Roger La Haye, The Royalty Consultancy
Jules O'Riordan, Sound Advice LLP
Kirit Joshi, Sony Music Entertainment

1. Welcome - Nadia Vally, IPO (Transparency Working Group Chair)

1.1 The Chair thanked the Group for industry led progress so far.

1.2 The Chair reported that Minister Freemen was pleased with progress across the streaming work, including that being made in both the Transparency and Metadata Working Groups and wanted IPO's close collaboration with DCMS to continue. He had also indicated that he supported the option of legislating if necessary.

1.3 The revised notes of the February meeting and that of the April meeting were agreed.

2. Working Document: Compiling a 'wish list' of data and information artists and songwriters, and their managers and advisors, would like access to.

Update from Chris Cooke

2.1 Chris explained that the working document that had been circulated was designed to capture the specifics of data and information that artists, lawyers, managers and accountants had said they wanted transparency on. Artists would need to explain how this information would be used so that labels, publishers, distributors etc could understand why providing it was important. There were likely to be a range of possibilities that could arise from producing the working document:

— some data and information might already be available but could be better signposted;
— some companies might make data and information they hold available while others do not, and so one of the outcomes may be developing best practice about what data and information is provided in the interests of transparency;
— if certain data and information was not available, it would be useful to understand if it could be made available and what should be prioritised; and
— some data might require further input from the Digital Service Providers (DSPs).

As well as informing what the Code of Practice (CoP) might say, the exercise would facilitate an exchange of information and identify where problems lay in the supply chain.

2.2 Chris talked through the sections in the document on: Deal Structure; Supply Chain; and Financial Reporting.

2.3 It was envisaged that in the coming week more details would be gathered from artists, lawyers, managers and accountants after which labels, publishers, and distributors could input, and have their feedback collated.

Q&A

2.4 Chris responded to questions from Members:

- It was hoped that agreement could be reached on what data and information was needed and that this could be used to develop a 'best practice' document and/or perhaps an educational tool alongside a CoP. The process could be valuable in itself, e.g., to help close the gap, or delineate between, perceived issues and those that could be more clearly evidenced.

- It was recognised that deals, covered in Section 1 on deal structures, differed and could be modified over time, leading to refinements in the information that would be made available to managers and others. How the artists' side would be kept informed of changes would need to be worked through. There could be a focus on basic deal structures in the larger global markets. There could be a one-page document on each basic deal structure, but no more than 100 such documents in total. There was a discussion around expectations and practicality. Consideration of deals involving DSPs could begin by looking at current market-leading DSPs and/or emerging platforms considered to be key future revenue generators.

- It was also recognised that music publishing operates differently with respect to territorial rights. This meant that data and information identified as required from global companies to meet songwriters' needs would need to be balanced against what was practically possible to provide and what level of transparency would be meaningful.

- Once the final rounds of input had been gathered, the next phase would look at the nature of the information being requested and how greater access to it would serve transparency objectives.

- An extended and clarified 'wish list' capturing potential issues would be shared with the Group shortly.

3. Working Document: BPI co-ordinated Good Practice Guide

Update from Adam Barker

3.1 The BPI-led consultation process on a 'Good Practice Guide' was continuing.

3.2 The BPI paper would seek to set out broad principles of transparency and dovetail with the work of the Metadata Working Group. It was intended to cover all the key areas on transparency that had been discussed within the Group.

3.3 The work should be ready to be presented at the next meeting.

4. Thematic Sub-Groups

Exploring granular detail on specific issues through Sub-Groups

4.1 The Secretariat presented proposals for creating three thematic sub-groups to progress work strands on transparency issues.

Discussion

4.2 The Group discussed how work strands might be best progressed:

- There was little support for thematic sub-groups.

  There was support for sectoral sub-groups, covering recording and publishing. It was suggested that sub-groups should focus on the same set of issues and could call on external expertise.

- It was acknowledged that further work in the sub-groups should be reported to the Group.

- There was overall support for combining the issues concerning '*Royalty information and reporting issues*' with '*Striking a balance between confidentiality, accountability and cost burden*'.

- It was highlighted that May and June were busy conference times, and therefore the Group needed to be realistic about the timing of upcoming meetings to secure engagement.

- It was agreed that (a) the 'wish list' working document and (b) the BPI co-ordinated Good Practice Guide should be drawn upon in any further work.

- The Group was content that the issues (real and presumed) had been captured to date, and that these could form the basis of the work of the sub-groups and shape the focus of the CoP.

5. Next Steps

5.1 The following action points were recorded:

- June meeting to be diarised.
- The IPO will liaise with relevant Members to coordinate next steps, including on setting up sub-group discussions.
- Members should let the IPO know of any particularly problematic dates for May/June.

Transparency Working Group – 16.06.22

Attendees:
Adam Barker, Universal
Antony Bebawi, Sony Music Publishing
Chris Cooke, Consultant
Colin Young, Young & Co. Accountants
Debbie Stones, The Ivors Academy
Florian Koempel, UK Music
Gee Davy, Association of Independent Music
Horace Trubridge, Musicians' Union
Jonathan Aitken, General Counsel – PRS for Music
Kim Bayley, Entertainment Retailers Association (ERA)
Rupert Skellett, Beggars Group
Sue Thomson, Warner Music UK
Tim Fowler, Lee and Thompson LLP
Nadia Vally, IPO
David Burns, IPO
Ian Jenkins, IPO
Kim Varis, IPO
Rhian Davies, DCMS
Emily Jarratt, CDEI

Apologies:
Brian Message, ATC Management/MMF
Jules O'Riordan, Sound Advice LLP
Kirit Joshi, Sony Music Entertainment
Roger La Haye, The Royalty Consultancy
Lorelei Bere, DCMS
Pauline Beck, IPO
Robin Stout, IPO

1. Welcome - Nadia Vally, IPO (Chair)

1.1 The Chair thanked the Group for industry-led progress so far.

1.2 The note of the May meeting was agreed.

2. Working Document: BPI Code of Good Practice

Update from Adam Barker

2.1 The BPI had begun informal consultation in the sector and was liaising with Chris Cooke to incorporate relevant elements of the transparency 'wish-list'. The aim was to conduct an inclusive process that recognised that compromise would be necessary if this document was to form the basis of an industry-wide agreement.

2.2 It was envisaged that the code would be a high-level, principles-based document. It would require a broad constituency to sign up to it so it needed to reflect a cross section of views on what a Code or Guide might cover without being too prescriptive. It remained a work in progress, e.g., gaps in the songwriting clauses and work to be continued that would dovetail with the Metadata Working Group.

2.3 Members thanked the BPI for the positive steps taken to date and the importance of striking a balance between a principles-based code and meaningful change. It was recognised that principles and practice would need to develop over time.

- Members commented that a separate publishing sector meeting was being convened to work on publishing-specific content. It was noted that the publishing landscape was complicated and publishers often had contractual relationships with third parties based outside the UK who would not be obligated to comply with a UK code.

2.4 The Chair affirmed that the IPO could facilitate any industry-led meetings.

2.5 The terms of the French Agreement granting music performers with a guaranteed minimum royalty rate for on-demand streaming was discussed amongst the Group.

Action: The IPO offered to circulate any relevant documents it held to the Group to further understanding of the specifics of the French deal.

2.6 There was a discussion of:

(i)   levels of data transparency and/or information required to identify and challenge irregularities in royalty payments when auditing;

(ii)   levels of data transparency and/or information required by creators to understand what royalties they received e.g. payments from DSPS and why particular royalty rates had been applied;

(iii)   what commercial confidentiality and competition issues (i) and (ii) raised and if Non-Disclosure Agreements might be entered into to facilitate access to data/information; and

(iv)   the extent to which these issues could be covered in a COP or best practice guide.

- There was discussion about granular, source data on royalties for auditing purposes and the extent to which the rate per stream might be consistently available for individual streams on a plan-by-plan basis. It could be the case that only headline information on blended streams was available in certain instances, such as free trial subscriptions. There was discussion about whether standardised reporting, for industry-wide consistency, could be adopted to ensure that label/publisher contractual licensing arrangements with Digital Service Providers (DSPs) reflect downstream royalty information considerations between labels/publishers and creators. However, it was also noted that DSPs tended to report data in different ways and therefore the extent to which standardisation was possible would need to be explored further. It was agreed that a meeting with DSP representatives would facilitate further discussion.

- The Group discussed how greater access to DSP source data (enhancing creators' understanding of how royalty rates are applied) could be granted without impinging on confidentiality and competition concerns. One argument was that each stakeholder was responsible for monitoring their step of the royalty chain, as everyone individually auditing the whole chain was unrealistic. Another was that labels/publishers needed to demonstrate greater cognisance of the importance of creator relationships by articulating what contractual information the sector needs, rather than framing the conversation in terms of what was received from DSPs. It

might be possible to provide information on the relevant contractual models, without touching on commercial terms and specific stream rates. If access to DSP source data was justified, Non-Disclosure Agreements might be entered into for audit purposes, to check whether the creator was being correctly remunerated based upon labels receiving correct contractual payments from the DSPs and other content providers.

2.7 The Group acknowledged that questions around information standardisation had raised issues about contract transparency and commercial terms. The Chair suggested that should be discussed at the meeting with DSPs.

Action: ERA agreed to liaise with DSPs to convene a meeting.

2.8 The issue of proportionality in the code was also raised. The limited resources of SMEs could make complying with the code more onerous than for larger companies. Conversely, having a carve out for SMEs could place large companies at a competitive disadvantage. It was argued that the code needed to be applied universally, while including detail on what 'good' looks like from an SME perspective.

2.9 It was also noted that there was a role for distributors in fostering good practice. Moreover, there was also discussion around the need to enable innovation and for the Code/Guide to be future-proofed.

3. Working Document: Compiling a 'wish list' of data and information artists and songwriters, and their managers and advisors, would like access to.

Update from Chris Cooke

3.1 Chris explained the changes that had been made to the working document since the last meeting. Input was still required from labels, managers, collecting societies and others.

3.2 As had been discussed in previous meetings, the exercise to understand what data was available and could be shared via portals was continuing. The extent to which this informed the code was to be determined. But it was a useful exercise in itself to set realistic expectations about what data could be shared or what alternative solutions could be explored. The work might ultimately feed into a best practice guide or wider education project and it was envisaged that competition would encourage industry to exceed the minimum standards.

3.3 The Group agreed that the next step would be to get further feedback from labels/publishers as part of considering the two working documents side-by-side and to then approach trade bodies.

3.4 It was also acknowledged that the precise scope of the Code needed to be discussed further: whether the code was restricted to covering transparency issues related to creator's contracts entered into directly with parties, e.g. labels etc, or wider in scope to cover issues along the royalty chain, which are much broader and complex.

4. Sub-Groups

4.1 Whether sub-groups would be an appropriate vehicle to progress work strands on transparency issues was discussed. It was suggested that rather than sub-groups, separate key meetings could take place, and like sub-groups they could incorporate external

expertise, if required. It was proposed that meetings take place in July to maintain momentum.

4.2 The Chair suggested keeping sub-groups on the table as an option and that other key meetings could be held first. The IPO could help coordinate.

4.3 The Chair raised the point that enforcement of the code would be an issue to be addressed in the future, and the degree to which language in the code was permissive or peremptory would impact on any enforcement mechanisms for it.

5. Next Steps

5.1 The following action points were recorded:

- July meeting to be diarised. It was proposed this be diarised for the week commencing 25 July.
- The IPO to circulate any relevant documents it held to the Group to further understanding of the specifics of the French Agreement.
- ERA agreed to liaise with DSPs to convene a meeting.
- Sub-groups to be further considered.

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Meeting Note - Transparency Working Group

28th July 2022

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Attendees:

- Adam Barker, Universal
- Chris Cooke, consultant
- Debbie Stones, The Ivors Academy
- Gee Davy, Association of Independent Music
- Jonathan Aitken, General Counsel – PRS For Music
- Kim Bayley, Entertainment Retailers Association (ERA)
- Lucie Caswell, Music Publishers Association
- Naomi Pohl, The Musicians' Union
- Roger La Haye, The Royalty Consultancy
- Rupert Skellett, Beggars Group
- Susan Thompson, Warner Music UK
- Lizzie Bracegirdle, DCMS
- Rhian Davies, DCMS
- Nadia Vally, IPO
- Ian Jenkins, IPO
- Kim Varis, IPO
- Pauline Beck, IPO
- Ben Thomas, IPO

Apologies:

- Antony Bebawi, Sony Music Publishing
- Brian Message, ATC Management/MMF
- Colin Young, Young & Co. Accountants
- Florian Koempel, UK Music
- Horace Trubridge, Musicians' Union
- Jules O'Riordan, Sound Advice LLP
- Kirit Joshi, Sony Music Entertainment
- Tim Fowler, Lee and Thompson LLP
- Lorelei Bere, DCMS
- Robin Stout, IPO

1. **Welcome - Nadia Vally, IPO (WG Chair)**

   1.1. The Chair thanked the Group for the work everyone had done so far.

   1.2. The note of the June meeting was approved.

   1.3. The Chair provided an update on recent developments in Government.

      1.3.1. Minister Freeman had resigned, and Lord Callanan had replaced him.

1.3.2. The new Prime Minister expected to be appointed on 5th September; this might mean a new IP Minister.

1.4. The CMA Market Study Update Paper had been published on 26th July.

   1.4.1. The update had included references to the Transparency Working Group.

   1.4.2. The CMA wished to share some information about transparency with the IPO, and a first conversation was scheduled for 28th July.

   1.4.3. Some concern was expressed about the interplay between transparency and competition that had not been addressed in the CMA's report, and it was agreed that the CMA's expertise could be drawn on in the future if needed.

2. Working Document: Latest draft of the BPI initiated Good Practice Guide

Update from Adam Barker

2.1. The BPI reported good progress with strong engagement and feedback from all. There was still a way to go, with recent comments to be incorporated. A further draft would hopefully be ready in the week commencing 1st August.

2.2. The processes for Code review and assessing compliance were areas that needed further consideration and agreement.

2.3. There were other workstreams, such as the wish list, where discussions were on-going. It was hoped that elements from these could be incorporated into a final document, on the basis of compromise.

2.4. The Chair reported that she had had several constructive bilateral conversations about review mechanisms; it was imperative to get measurement and monitoring of the Code right for it to deliver a meaningful code.

   2.4.1. There had been a discussion in the previous Contact Group about the timeline for delivery of the Code. The Chair noted that progress towards a draft framework for a Code of Practice was hugely encouraging, and it would be important to take the time to bottom-out remaining issues. It was important that the Code had a wider buy-in, so the Group should consider how to get grassroots buy-in.

2.5. The following issues were raised in discussion:

   2.5.1. Membership organisations would need to get buy-in from their memberships and this could take time.

   2.5.2. When asked what wider buy-in meant, the Chair explained that it entailed taking soundings beyond the the Working Group, though this would obviously not be able to engage every individual with an interest in the Code.

2.5.3. It was suggested that the interests of a wider audience were already being funnelled into the Code through the BPI-led process, including taking views of small publishers and indie labels, and outreach to the grassroots through distributors. The Chair commented that the Group could consider if more outreach was needed.

2.5.4. The thoughts of DSPs such as TikTok and Meta had not been represented in the Group, so outreach to them would be needed.

2.5.4.1. **Action: ERA to reach out to these platforms after the meeting.**

3. **Working Document: Latest draft of a 'wish list' of data and information artists and songwriters, and their managers and advisors, would like access to.**

Update from Chris Cooke

3.1. Chris explained that he was continuing to have wide-ranging conversations to gather feedback on the wish list. When there was a next draft of the BPI working document, he would go back to individual parties to explain what they could expect to see in the future draft Code.

3.2. The following points were discussed:

3.2.1. The use of "on request" wording was intended to recognise that a proportionate approach was required in terms of administrative burden on smaller entities but greater clarity on how this would work in practice was needed.

3.2.2. The take-up of royalty portals could be looked into, as it was important to facilitate greater access to information. The Group recognised that 'portal overload' could be an issue for managers due to artists having different labels/publishers and each platform having its own bespoke approach. Catalogue artists could also struggle to access information due to not having extant relationships and contact details.

3.2.3. It was noted that digital solutions such as 'Revelator' were becoming available to enable royalty payment information to be pulled from different sources into one place to reduce portal overload.

4. **Ivors/Publishers/PRS Meetings**

Update from Debbie Stones and Lucie Caswell (deputising for Antony Bebawi)

4.1. Text covering publishers and songwriters had been exchanged and there had been honest and robust discussions about achieving a draft that worked for everyone.

4.2. There were concerns from songwriters that the provisions in the Guide were too generic, and they expected to see less permissive language in a more mandatory code.

4.3. The meetings had explored what could be agreed on a sectorial basis while it was acknowledged that the Code would be industry-wide and focus on matters of general interest, in line with the structure of the BPI document. The wording needed to be wide enough to cover the publishing sector, taking into account that smaller entities such as micropublishers lacked resources.

4.4. Monitoring and reviewing had been key themes in discussions which had also noted that it must be inclusive and strike a balance between being aspirational to encourage higher standards and being practical enough for micro-entities to implement.

4.5. The following points were discussed:

4.5.1. When raised by the Chair, it was explained that there were no big outstanding issues; it was more a question of conveying how the Code would make a difference to those with outlying positions. Some nuance was needed on phraseology, but this wasn't currently a roadblock. The crucial discussion of how to monitor the Code without imposing huge burdens had not yet taken place. There was also a desire to bring out in the Code the links to other pieces of work, such as metadata, remuneration and contract adjustment, as the Code needed to be considered within this broader context.

4.5.2. The Chair appreciated that the Group had recognised that specific work needed to be done on monitoring and reviewing the Code. She said that the Secretariat could commence some work over the summer on structures and processes needed for the Code.

4.5.3. The Chair noted that it would be key to have a repository for complaints where a party alleges a breach of the Code, and the Group would need to consider how this would work. It was possible that the IPO could have a role in this, and this could be discussed further in future.

5. ERA convened meeting with DSPs

Update from Kim Bayley

5.1. Spotify, Amazon, and YouTube had been present at the ERA meeting at which auditing and the wish list had been on the agenda. The DSPs explained that they provided different data to different people, on a contractual basis which would be difficult to interrogate holistically.

5.2. The DSPs had a general view that enhancing transparency was desirable and were supportive of the BPI document but felt it should be led by principles rather than detail which could hinder take-up. They also feel it needed further work on how it would work practically and who would sign up to it.

5.3. The DSP meeting had been useful in terms of hearing their reservations, given they were best placed to comment on aspects of the wish list; this would help manage expectations of what the services could provide.

5.4. The following points were discussed:

5.4.1. ERA members were broadly happy with the current draft Code, but it was hard to gauge non-members. It was important to ensure that everyone was on the same page, while recognising that for some content-sharing platforms, music was only part of their business model. In response, Kim Bayley reiterated that she would reach out to other Platform service providers, such as Meta, TikTok and Apple, to broaden out the dialogue around the Code.

5.4.2. The question of who would be expected to sign up to the Code elicited a view that trade associations, representing members, were ideally placed to be signatories. The Code would create a new benchmark and would influence who people chose to work with in a highly competitive industry.

5.4.2.1. It was suggested that the Code should be considered a beacon of good practice, or a Kitemark that trade associations signed up to, rather than a set of prescriptive rules to be applied to all, including those not predisposed to sign-up. There was also comment that the Code would enhance the reputation of the music industry, aid sectoral educational efforts, and particularly influence who artists/songwriters chose as their business partners.

6. Distributors

Update from Gee Davy

6.1. The distribution industry had formed a working group which thought that the Code's approach was good, particularly for artists and management. They appreciated the ongoing conversations that had been had with DSPs and that views were still being inputted into the draft.

6.2. The distributors acknowledged their role as information conduits for smaller labels and do-it-yourself (DIY) artists, and that their proximity to the information under discussion made them well-positioned to help smaller labels with data obligations.

6.3. Contractual relationships were noted, and it was recognised that in some distribution agreements, a distributor would be acting as a pseudo-label. The nuances of such contractual relationships might need to be recognised in the Code.

6.4. There was some concern over wording around portals, where language reflected the major label experience e.g., around portals where smaller labels wouldn't have infrastructure that provides information in different ways. Specific references risked restricting access to the market especially as smaller labels were yet to be that convinced third-party portals have merit.

6.5. The distributors' group echoed comments elsewhere about: the variety of deals now on offer to artists; respecting commercial confidentiality, avoiding putting smaller businesses at a competitive disadvantage; and a desire for pragmatism and proportionality in terms of the volume of information needed (and what was analysed) by those connected to artists to avoid this becoming a barrier to adoption.

6.6. Distributors were waiting for further detail in the draft Code before commenting and there would be further discussions with the DIY sector about areas that could be administratively burdensome for them.

7. **Next Steps**

7.1. The proposed 13th September date for the next meeting was not suitable, so this would be agreed by correspondence. The Secretariat would consider preparing a roadmap of implementation topics that would need to be given fuller consideration in meetings for the rest of the calendar year.

Transparency Working Group

21st September 2022 Note

In attendance:

- Adam Barker, Universal
- Antony Bebawi, Sony Music Publishing
- Chris Cooke, consultant
- Colin Young, Young & Co Accountants
- Debbie Stones, The Ivors Academy
- Florian Koempel, UK Music
- Gee Davy, Association of Independent Musicians
- Jonathan Aitken, PRS for Music
- Kim Bayley, Entertainment Retailers Association
- Naomi Pohl, Musicians' Union
- Roger La Haye, The Royalty Consultancy
- Rupert Skellett, Beggars Group
- Susan Thompson, Warner Music
- Tim Fowler, Lee and Thompson LLP
- Nadia Vally, IPO
- Ian Jenkins, IPO
- Kim Varis, IPO
- Pauline Beck, IPO
- Ben Thomas, IPO
- David Burns, IPO

Apologies:

- Brian Message, ATC Management/MMF
- Jules O'Riordan, Sound Advice LLP
- Kirit Joshi, Sony Music Entertainment
- Emily Jarratt, CDEI
- Lorelei Bere, DCMS
- Rhian Davies, DCMS
- Robin Stout, IPO

1. **Welcome – Nadia Vally, IPO (WG Chair)**

   1.1. The Chair welcomed everyone, particularly Naomi Pohl who was attending her first meeting after replacing Horace Trubridge.
   1.2. The note of the July meeting was approved.

1.3. The last meeting of the Contact Group (CG) was discussed, and the following points were noted:

    1.3.1. The CG had discussed and was very grateful for work done by the Transparency and Metadata working groups.

    1.3.2. The (CG) thought that the remaining two to three meetings of the working groups should try to get as close as possible to agreement on end products which, for this Group, meant the Transparency Code. The draft Code would then be taken to the (CG) to try to resolve any outstanding issues and create the overall package to take to ministers.

1.4. The IPO had circulated some questions about underlying processes for the Code, but there were also outstanding questions of substance. The Chair added that bilateral conversations had been useful in helping focus on the outstanding issues and questions, and she remained available for further bilateral discussions on the remaining issues.

1.5. Questions:

    1.5.1. Was there an existing list of the outstanding issues that might need to be taken to the Contact Group? The Contact Group might not have the necessary expertise to deal with some of the issues, which may need to be addressed in the working groups.

        1.5.1.1. Work was ongoing to compile these points and circulate them to the Group.

    1.5.2. Feedback on the latest draft of the Code would be put to the Group for response. A finalised version of the wish list would also be circulated before the next meeting, to inform a discussion of the outstanding issues of the Code.

    1.5.3. There was a question about the lack of reference in the Code to the structure of different streaming platform plan types and the implications for audits.

        1.5.3.1. In response, reference was made to the 14th July meeting between members of the Transparency Group and certain Streaming Platforms at which they had strongly indicated that the structure of streaming plan types was commercially sensitive and had to remain confidential as otherwise, information would be available to competitors. Revenue reporting differed depending on the platform and rights holders. It was virtually impossible to map out the plan types for all services as these were complex and subject to frequent change in a dynamic market. Even if this complexity could be overcome, there would be a need for some independent competition advice on the implications of disclosure.

1.6. One member considered that greater transparency over unit pricing and plan type was essential if the Code was to get buy-in from artists and rights-holders and this should be given further consideration.

2. Working Document: Latest draft of the Code of Good Practice (dated 26th August 2022)

2.1. Several bilateral conversations were held prior to the meeting, including on:
- the language of the Code being too permissive; and
- what 'on request' would mean in practice.

2.2. The BPI was waiting for further comments from distributors.

2.3. The work on drafting the final version of the Code was nearing conclusion:
- Another iteration of the Code would be shared in due course.
- There were upcoming internal meetings within BPI to make sure everything was being fed into the next version of the draft Code and Group feedback could be given directly to the BPI.
- Creator-facing organisations could come together to collate feedback on the latest version of the draft Code e.g., via the UK Council of Music Makers (CMM).

2.4. As the draft Code had not been updated since the last feedback round with distributors, there would need to be another round of feedback with smaller members and distributors once a further iteration of the draft Code was made available.

3. Working Document: Latest draft of a 'wish list' of data and information artists and songwriters, and their representative, would like access to

3.1. There was still work to be done on the wish list.

3.1.1. Work needed to be done with CMM to get feedback back to BPI.

3.1.2. There was resistance to information being available 'on request' instead of there being proactive work from platforms to provide information.

3.1.2.1. It might be beneficial if the Code, or a supporting document, could indicate more on the mechanics of how, for example, representatives of catalogue artists should make a request, or where a request for details on lump sum payments from a particular content-sharing platform should be lodged.

3.1.3. Where independent labels worked with distributors, there needed to be more work on the extent to which there would be an expectation on distributors to pursue information requests on their clients' behalf.

3.1.4. There was also a need to specify whether the provision on the clarity of about how the royalty rate would be applied included both new and existing contracts. There was concern that the draft did not recognise that, in a supply chain, one party could blame another for its inability to meet a transparency obligation.

3.1.5. Further feedback was also likely to be forthcoming from auditors on the draft auditing provisions.

3.1.6. There was an understanding that most questions in the wish list were enquiries that labels, publishers, and distributors should reasonably be willing to answer 'on request' as part of their normal business relationships, but BPI and publishers considered that the 'on request' wording was necessary as each request would be bespoke in terms of what it sought and the ability (or otherwise) of another party to respond in detail.

3.1.7. It was agreed that a programme of education alongside the Code would help managers, labels, and artists know what information they could expect to obtain to assist their business affairs, while also managing expectations in terms of how the Code interfaced with individual deal terms.

3.2. It was stated that it would be difficult for publishers to respond to all questions on the wish list but there was a willingness to sit down and discuss practicalities e.g., international partner agreements.

3.2.1. While a corporate entity could agree to meet obligations in principle, it could be difficult to ensure that there was a total consistency of approach to external flows of information right across all business units, as resources and systems would differ across organisations. A further catch-up was agreed to discuss this issue, and it was suggested that a meeting with the MPA (Music Publishers Association) group would be useful to have the views of more than one publisher.

4. **Updates on meetings**

4.1. Updates on multiple meetings:

4.1.1. No more meetings were likely between the Ivors and publishers, and the next steps were to go through CMM to reach a consensus.

4.1.2. A date for follow-up meetings after the 14th of July meeting with DSPs (Digital Service Providers) was yet to be fixed. Feedback from smaller labels and distributors was still pending and but a further round of collecting feedback was likely to be required.

4.2. There was disappointment that certainty on royalty rates in plan types was not being challenged through the transparency work to include how rate bundling mechanism were applied. There was a concern from one member that transparency was being interpreted too narrowly, arguing that the accuracy of information on a percentage royalty rate was intrinsic to the transparency debate.

4.2.1. A question was raised on how artists could make decisions if they didn't know the monetary values of the percentages they agreed.

4.2.1.1. There were many more aspects to decision making, and a very big disparity in deal types.

4.2.1.2.   It was stated that it was not realistic for a level of rate per stream information to be available, as deals between DSPs and publishers were renegotiated regularly, making it hard to predict which deal would be better than others. It was explained that extremely complicated data models were used that could not be published, and that even where information was published, such as the USA compulsory rate, with its four prongs, it was not possible to calculate the pay out to an individual party. Even if a full suite of information were made available, it would still not be possible to predict the best options, or best deal over time for a creator. The reality was that pricing within streaming was more nuanced and complicated than that for physical products and sourcing granular information at the point that creators wished to seek to predict future income was not achievable. It was the nature of competitive commerce that granular pricing was not divulged. To disclose unit pricing would require a radical anti-competitive shift in label/platform relationships.

4.2.1.3.   It was stated that decision-making by creators was not just about the headline royalty rate and seeking to pinpoint relevant future revenue. Artists tended to work with a label that had similar goals to them, as they would have a shared interest in the revenue stream. Comparing labels against each other by granular royalty information, even if practical, would be underplaying the importance of other decision-making factors for artists.

4.2.2. Having listened to the discussion, one member of the Group maintained that transparency over royalty rights required change, as he could not justify an audit finding that 1/6th of the income for an artist had no units allocated to it. He considered the lack of such detail to be an unfair outcome for artists.

5. Deployment of a Code of Practice.

5.1. A discussion was held on the key process points that needed to be decided.

5.2. *Who should be a signatory to the Code?*

5.2.1. The Contact Group's view was that it Trade Associations (TAs) would be signatories in the first instance, with a suggestion that businesses and individuals, such as self-releasing artists, could sign through TAs without being members.

5.2.2. It was recognised that, in the independent sector, a business might be a member of multiple TAs, which raised a question of how a complaint against the business would be assigned to a TA.

5.2.3. There was a suggestion that artists would be unlikely to need to sign up to the Code as there might not be any obligations that fell on them.

5.3. *How should signatory compliance with the Code be monitored?*

5.3.1. There was a suggestion of a layered approach of different TAs, where each would establish standards for their sector which would include, for example, remedies for breach with education guiding the monitoring of compliance.

5.3.1.1. It was recognised that there was a risk that TAs might be unlikely to take a robust approach with their own members or hold them to account in a layered approach, and that there would be an issue of policing new platforms that were outside of TAs.

5.3.2. There was also a suggestion of a standardised approach for consistency.

5.3.3. Obligations in other areas of law, such as modern slavery, to publish statements of compliance, were highlighted as examples which could be drawn on.

5.3.4. There was overall support for Government involvement, but with recognition that removing members from TAs over non-compliance was a difficult process.

5.4. Does the Code, or the process that will sit behind the Code, require any further form of consultation?

5.4.1. Education, outreach, and interpretation were seen as primarily a role for TAs.

5.4.2. There was no appetite for coordinated consultation with the 'grassroots' of the music sector.

5.4.3. Organisations would need to consult with members again if the Code changed radically in the future, as consultation had already taken place.

5.5. Should there be a settling-in period, or any form of staged implementation?

5.5.1. There was agreement on this as the sectors would have discrete requirements.

5.6. What yardstick or KPIs might be used to measure the success or otherwise of the Code?

5.6.1. Any complaints against the Code should be assessed quantitatively and qualitatively.

5.6.1.1. A satisfaction survey could help measure improvements and identify shortfalls, including whether the Code is considered to be proportionate for all parties.

5.6.2. Any future review of the Transparency Code would be more difficult to assess than the Metadata Code.

5.7. And what guidance might accompany the Code, so it can make a difference?

5.7.1. There was no argument against this, although it was unclear whether guidance should fall to individual TAs, or be a single product coming from the wish-list.

5.7.2. On the point of educating those outside of signatories, it was noted that outreach from this Group and TAs had been detailed and broad. There was scepticism that much more could practically be done without an education piece.

5.8. Follow-up points:

5.8.1. The Group felt that the review of the Code should be a part of a broader government review of the package of work being undertaken, but exactly how Government would monitor and review the Code still needed to be considered in detail.

5.8.2. A continuing role for IPO as a neutral party, such as a monitoring body, had support.

5.8.3. There was some desire to recognise the background behind why a voluntary self-regulatory Code was being pursued, perhaps in a preamble.

5.9. The Chair thanked the Group for the constructive nature of the discussion.

6. Next steps

6.1. The Secretariat would aim to schedule the October meeting for approximately a month's time.

Technical Working Group on transparency – 20 October 2022

Attendees:

Adam Barker, Universal
Antony Bebawi, Sony Music Publishing
Brian Message, ATC Management/MMF
Chris Cooke, Consultant
Colin Young, Young & Co Accountants
Debbie Stones, The Ivors Academy
Florian Koempel, UK Music
Gee Davy, Association of Independent Music
Jonathan Aitken, PRS for Music
Kirit Joshi, Sony Music Entertainment
Regan Smith, deputising for Kim Bayley, Entertainment Rights Agency (ERA)
Roger La Haye, The Royalty Consultancy
Rupert Skellett, Beggars Group
Tim Fowler, Lee and Thompson LLP
Rhian Davies, DCMS
Ben Moore, CDEI
Nadia Vally, IPO (Chair)
Ian Jenkins, IPO
David Burns, IPO
Conor O'Loan, IPO
Ben Thomas, IPO

Apologies:
Jules O'Riordan, Sound Advice LLP
Kim Bayley, Entertainment Retailers Association
Naomi Pohl, Musicians' Union
Sue Thomson, Warner Music UK
Pauline Beck, IPO

Welcome - Nadia Vally, IPO (WG Chair)

1. The Chair welcomed Regan Smith (deputising for Kim Bayley) and Conor O'Loan (IPO) who were attending their first meeting of the working group. The Chair acknowledged that, in bilateral conversations prior to the meeting, certain members had expressed concern that it had taken until October for detailed comments on the draft Code to become available. The Chair noted these concerns but welcomed that the draft articulated in detail all the issues that members wanted to see reflected in the Code and hence there was now a single document on the table. The note of the September meeting was agreed.

Working Document: Draft of the Code of Good Practice

2.1 Chris Cooke gave an oral update on the Council for Music Makers' (CMM) amendments to the draft Transparency Code, that had been circulated as a meeting paper. He said that it had made sense to brigade 'Wish-list' input to the Code through the CMM, to avoid multiple conversations.

2.2 Although not a spokesperson for the CMM, he acknowledged that other members were frustrated by the number of amendments tabled, but that was possibly a misunderstanding of the 'Wish-list' process that was intended to inform the production of the Code. He said that while a good framework for the Code had emerged in August, with plenty of agreement, there were always going to be subsequent additions and amendments emerging from the 'Wish-list process.

2.3 There were three broad categories of amendment proposed by the CMM:

　　(a) those that sought to make the Code more proactive than reactive (e.g., suggested changes to 'on request' commitments)

　　(b) others that sought to create clear channels of communication (e.g., because cultural change and greater ambition on transparency was being sought)

　　(c) new amendments flowing largely from statements in the 'Wish-list' on which there had been previous conversations in the Group, but no consensus.

2.4 Chris noted that some members had previously expressed concern about the administrative burden on small independent labels and smaller businesses of being required to provide information to creators, that had led to the "on request" wording" in the Code. He said that in principle CMM favoured a more pro-active approach whereby those responsible for licensing music to digital music services, including distributors and licensing partners, would be expected to cascade information and so the amendments would bring certainty for independent entities on how transparency was intended to work.

2.5 Chris took the Group through the proposed amendments, as follows:

　　(a) the changes in the introduction were intended to clarify the kind of companies anticipated to be in scope of the Code.

(b) the amendment on compliance was a suggestion, but with an acknowledgement that compliance had only been touched upon at the last meeting.

(c) there was a change in terminology, to use the term 'music makers' instead of listing the different roles that contribute to the creation of music.

(d) under '*Contracting with creative talent*' there was an amendment regarding contributing to legal costs.

(e) the amendment to paragraph 1.5 turned a reactive commitment into a proactive one.

(f) the change to paragraph 1.8 would make the provisions applicable to existing and new contractual deals.

(g) section 2 on 'Supply Chain', essentially a 'cut and paste' from the wish-list, was addressing concerns on the songwriting/publishing side of the industry. While it was acknowledged that supply chains were complex and differed by country, this was essentially a data issue, and the industry possessed many talented data experts who could be tasked with improving transparency. If there were bad supply chain practices elsewhere that led to information not coming through to the UK, then these practices should be called out under the Code.

(h) the amendment to 3.2 was intended to clarify that royalty information would be available to managers or advisors.

(i) the amendments to 3.3 and 3.4 incorporated detail from the Wish-list.

(j) the amendment to 3.8 sought to strengthen text in relation to obtaining information from parties outside of UK.

(k) paragraph 3.10 was a new addition, as the topic of payment terms had come up through conversations with music managers.

(l) the amendment to 3.11 sought to reflect the nature of the relationship between artists and managers.

(m) on *auditing*, the main change was that paragraph 4.5 replaced 4.3. The new paragraph gave greater emphasis to auditors being able to see the reporting that streaming services provide, on the basis that accountancy firms had professional standards and were subject to Non-Disclosure Agreements. It was noted that there were data challenges here, but music-makers considered that these could and should be solved.

(n) the amendments to section 5 - *Agreements with Digital Service Providers* - were about parties demonstrating pro-activity and defining clear channels of communication in relation to negotiated licensing deals.

(o) the new section 6 - *Music Maker Communication* – was intended to put in place communication channels as best practice, so that music-makers knew

who to contact to get information. While information could be provided in FAQ documents, there would always be questions that fell outside.

(p) 6.4 was reflective of a desire to have catalogue sales in scope of the Code.

2.6 Chris said that CMM organisations recognised the amount of work that had gone into the production of the Code to date, and that improvements to transparency could not be delivered overnight. Some commitments would require financial investment, but the CMM believed it was an investment worth making. There was a moral argument, or dimension, to improving access to information in the same way that companies invested heavily into diversity and equality and inclusion strategies. Products flowing out of the Code, such as the Deal Memo and educational materials, could be used internally by companies, as well as externally, to promote understanding of how streaming worked. The CMM recognised that the existing framework was a good starting point, but wanted the Code to be more tangible, so that everyone could get behind it.

Q&A and discussion

2.7 There was a view that the changes submitted to the draft Code were so material and late in the process, that the Code needed to be immediately escalated to the Contact Group to deliberate on why this had occurred and to negotiate on the substantial amendments that had been submitted. It was noted that the CMM did not represent the entirety of music-makers, for example self-releasing artists. As there was limited time to re-consult within membership-based organisations, there was a suggestion that the amendments should be considered as part of a 'phase 2' review once the Code has been road-tested. Concern was expressed by some members that the amendments did not seem to take account of prior discussions on what was possible and reasonable under each section of the Code. However, there was an appreciation and understanding of the position that Chris occupied with respect to discussing the amendments.

2.8 Concerns were raised about the perceived value judgements that had been entered as comments alongside the textual amendments that some members felt were unwelcome and not in line with the desire to reach a workable Code. There was frustration expressed by some parties that wholesale changes had been proposed at the "11th hour", when others wished to progress swiftly to implementation based upon the existing text. A view was expressed that the changes could be interpreted as seeking to undermine the work that had been undertaken so far.

2.9 In discussion, it was emphasised that the amendments were a genuine attempt to construct a practical consensual Code, and that music-makers felt that the pre-existing draft was too anodyne and just upheld the status quo. The amendments were not intended to be partisan, and while the accompanying comments could have been expressed more constructively, they were representative of the frustrations felt by music-makers that their views, linked to themes of trust and communication, were not cutting through. It was suggested that the perceived lateness of the amendments could be linked to what some thought had been an unsatisfactory consultative process that had led to ideas and proposals from music-makers not appearing in earlier drafts, and a lack of feedback on why this had occurred. There was a view that this had been first opportunity the CMM organisations had had to amend the drafting of the Code to reflect the Wish-list. The next important step was to reach consensus on standards and commitments in the draft Code.

2.10 There was concern that a shift from information being available 'on request' to a commitment to producing documentation automatically, would create administrative burdens without sufficient evidence that such information was highly desired and would be read. Smaller players wanted transparency and good practice, but Code provisions had to be capable of being met by them and moving away from 'on request' could create an unmanageable set of burdens. Some argued that it would be disproportionate to make a failure to make information available on an automatic basis a serious breach of the Code.

2.11 There was a view that including more prescriptive requirements in a Code could translate into these being adopted as contractual obligations (e.g., on auditing). This could shift the perception of the Code from one of flexible guidelines that everyone endeavoured to adhere to, to a harder document with a direct line of sight to individual contractual agreements and business deals. Prescriptive obligations would then get passed down domestic supply chains, while multinational companies might question why they needed to invest in systems solely to facilitate obligations applying to the UK. It was suggested that industry should test out the 'best practice' 'on request' type phraseology of the Code and then review it, if necessary, as there was no evidence of a 'race to the bottom' in terms of standards.

2.12 Points were made about the need for clarity about which digital music services were in scope of the proposed Deal Memo. Detail was also desired on how the constant renegotiation of deals could be catered for, without either unrealistic administrative burden, or an undermining of the usefulness of the concept of a Deal Memo. It was thought that there would need to be clear parameters around what granular information (e.g., by which jurisdictions) could be provided in a Deal Memo, while still respecting commercial confidentiality and competition law.

2.13 There was concern that the amendment on compliance was too subjective, as the Code related to best practices rather than hard contractual obligations. Any trigger for a statement of public admonishment would have to be operated proportionately (e.g., for repeated breaches of the Code, rather than a single instance).

Next Steps

3. The Chair thanked members for the engaged discussion and appreciated that, while encouraging progress had been on the Code, there remained significant points of disagreement on the text. A possible way forward would be for a smaller group to come together - drawn from those most closely connected to the drafting so far - to discuss the detail of the Code and the suggested amendments. The Secretariat would be in touch with information about further steps and the next meeting date.

15 November 2022

Technical Working Group on transparency – 14 December 2022

Attendees:
Adam Barker, Universal
Antony Bebawi, Sony Music Publishing
Brian Message, ATC Management/MMF
Chris Cooke, Consultant
Debbie Stones, The Ivors Academy
Florian Koempel, UK Music
Gee Davy, Association of Independent Music
Jonathan Aitken, PRS for Music
Kim Bayley, Entertainment Retailers Association
Naomi Pohl, Musicians' Union
Roger La Haye, The Royalty Consultancy
Rupert Skellett, Beggars Group
Sue Thomson, Warner Music UK
Tim Fowler, Lee and Thompson LLP
Emma Pike, HK Strategies
Rhian Davies, DCMS
Nadia Vally, IPO (Chair)
Ian Jenkins, IPO
Conor O'Loan, IPO
Laura Howells, IPO
Pauline Beck, IPO

Apologies:
Jules O'Riordan, Sound Advice LLP
Colin Young, Young & Co Accountants
Kirit Joshi, Sony Music Entertainment

Welcome - Nadia Vally, IPO (WG Chair)

1.1 The Chair welcomed Emma Pike, who was attending her first meeting of the working group, and thanked Group members for helping to progress the Code with wider representatives of industry organisations. She also thanked members for agreeing to have their names published at the request of the DCMS Select Committee. The Group was advised that Minister Freeman was back as the Minister for BEIS, and Minister Lopez for DCMS.

1.2 The Chair welcomed that the draft Code was getting closer to completion and noted that that industry bodies were likely to have to negotiate on any outstanding issues. In a short debate in Parliament on 7 December, initiated by Kevin Brennan MP on Songwriters, Composers and: Remuneration, Minister Freeman had committed to a stakeholder roundtable meeting, possibly at the end of January 2023, to push for agreement on the transparency and metadata codes. It was likely that the membership of the contact group would be used as a basis for the roundtable.

Transparency Code: Compliance & Review

2.1 Since the September meeting, there had been discussions on compliance and review mechanisms with MMF, FAC, ERA, Sony, BPI, MPA and the Ivors Academy and further discussions were planned.

2.2 Discussions to date had underlined the importance of an implementation period to allow parties to become compliant with the Code and to effectively communicate its purpose. It

was suggested there should be an iterative process for dealing with non-compliance based on communication and good-faith dialogue - e.g., in a scenario of a company failing to comply with the Code, a complainant would initially get in touch with them to resolve any issues and only escalate to a Trade Association (TA) if unsuccessful. Creator representatives wished to see a firm date for a review of the impact of the Code (with potentially some stop-off points before this) to include an assessment of complaints and compliance, with the involvement of IPO seen as essential.

2.3 The meeting discussed the role of Trade Associations (TAs) in complaint escalation and monitoring and measuring the success of the Code and how non-members of TAs might be covered by the Code, if at all.

2.4 There was a view that a voluntary code needed to operate proportionately, so that businesses large and small could comply with meaningful standards. There were, for example, many smaller publishers and the Code needed to provide a clear statement of what good practice looked like for all entities. In discussion, a six-month socialisation period was suggested, to be followed by an eighteen-month implementation period during which any required changes to the Code could be raised. It was agreed that the IPO should remain in close contact with TAs during any implementation period. There was a suggestion that larger businesses could publish an annual Code compliance statement, modelled on the modern slavery statement requirement, to help embed transparency.

2.5 The Chair noted that the continuing ambition was for self-regulation by industry, including the continued regular involvement of IPO. It was likely that Ministers would want to retain a potential legislative backstop option just in case self-regulation did not deliver outcomes. Minister Freeman had also expressed an interest in kite-marking and traffic light systems as a way of building understanding of the Code's requirements and measuring success.

2.6 Action: Text on compliance and enforcement would be suggested by the drafters for inclusion in the next version of the Code, with input from IPO as desired.

Agreements with DSPs: Deal Memo proposal

3.1 Conversations around a Deal Memo proposal had highlighted an appetite for proactive communication and discussions were ongoing to understand the parameters of this in the context of the Code. It was likely that the focal point for any pro-active communication model would be the services provided by the leading Digital Service Providers (DSPs) as defined by revenue share and consumption. The information to be pro-actively communicated would include an explanation of the nature of a DSP agreement (e.g., whether lump-sum payments were envisaged) and when creators might reasonably expect to receive monies from a Deal. A Deal Memo proposal had to set out what commentary, or disclosure, was in the interests of transparency (with recognition that this information would then be in the public domain) and ensure that companies were not put at serious risk of breaking competition law and could translate a Deal Memo into company policy that could be understood by investors. Drafters were working on a model 'deal memo' proposal and this could be reviewed in terms of whether it met expectations.

3.2 In discussion, points of detail were raised on: DSP coverage; digital 'breakage', how the Memo could map onto licensed services; on whom the obligation to pro-actively communicate should fall; the risk of creating demand for a running commentary on Deal re-negotiations; the ability to share information about proceeds of an equity sale; relationships between independent distributors and DSPs; and where the boundary lay in terms of proportionate pro-active communication on a Deal.

3.3 Some members saw the Deal Memo proposal as key to demonstrating tangible progress on proactive communication, as creators invariably did not fully understand the digital landscape or know what questions to ask. The 'Fair Digital Deals Declaration' was cited as an example of a pre-existing commitment to explain how revenues translated into earnings.

3.4 There was discussion around the timeliness of pro-active communication, whether this could be achieved by annual statement reporting on Deals, and what the administrative burden could be in relation to smaller DSP Deals. The drafters would consider how a revenue threshold could apply to provide proportionality on when new DSP Deals would become subject to a Deal Memo type proposal, as the intention was that it should only apply to music services and revenues generated by the relatively few leading DSPs and their Deals.

3.5 There was discussion of the practicality of pro-active communication for the publishing sector where Deals were more territorial, rather than global, and hence communications were inherently songwriter specific, bespoke, and reactive. It was recognised that considerations for publishing were more complex because of the models of licensing and that the level of detail already available via royalty statements needed to be factored into determining what pro-active information 'gap' remained to be filled taking into account administrative burden. Discussions were ongoing on the appropriate mix of proactive and reactive communication for the publishing sector.

3.6 Action: A follow-on conversation would be arranged to discuss differing experiences of reactive and proactive communications in terms of the ability of creators to articulate questions and understand their digital earnings.

Code Section on 'Audits'

4.1 It was noted that the auditing section of the Code was one where least progress had been made, as members had a range of contrasting issues with the text, including whether the present level of auditing access was acceptable and whether there was a realistic understanding of the underpinning data access issues. It was proposed that, given the specialist nature of this section of the Code, it warranted a separate expert discussion between auditors, accountants, royalty experts, and third-party royalty services to find a workable solution. The IPO could help facilitate this discussion.

4.2. **Action: An expert meeting on the auditing section of the Code would be arranged for the New Year**

Code Section on 'Supply Chain'

5.1 The supply chain section of the Code had a read-across to the discussions on proactive and reactive communications and the views of members on the degree of change that the Code was intended to help bring about. Some members expressed a desire for better explanations of the roles of business partners and licensing processes across markets and the royalty collection barriers that existed. Other members noted that explanations could be found within existing royalty reporting and hence a communications piece could help highlight what was already available and how to find it. There was a desire for greater transparency on the application of fees, commissions and other deductions to the revenue as it flowed along the supply chain. It was argued that if royalties were always accounted for on an 'at source' basis, then transparency would be less of an issue as the end impact on creators' earnings would be known.

5.2 There was a desire for a common set of principles to apply to information exchange links in a supply chain. This would help ensure that all parties, from DSP to music-maker, were agreed on the information flow, and would avoid any one party having to answer a complaint about the information actions of another party in the chain. Conversations on the supply chain section would continue into the New Year.

Next Steps

6.1 It was noted that several sections of the Code would require further consideration before a next iteration of it could emerge. This would need to be shared within member-based organisations to elicit views and a mandate for agreement.

6.2 It was agreed that the drafters would work with representatives of the labels and publishers to produce a new draft of the code, section by section, taking on board the Council of Music Makers (CMM) inputs/requests that had been discussed since the October meeting. Following on from the compliance and review discussion, an introductory section to the Code would now be drafted.

6.3 In terms of workflow, the Chair advised that members should aim to resolve as many of the remaining sticking points asap through sub-discussions with a view to enabling the drafters to produce the next iteration of the complete Code, with caveats, if necessary, before the Ministerial roundtable meeting at the end of January 2023. The Chair encouraged members to make one last big push to produce a near-final version of the Code that would help provide solutions to the transparency issues.

6.4 The Chair thanked all members of the Transparency Group for their work over the past nine meetings. Although this was the final meeting of the whole transparency group, there was still work to be done and the IPO would communicate updates to the group, so everyone was aware of how matters were progressing.

6.5 Action: The drafters, together with representatives of labels and publishers, to work towards a new draft of the code, section by section, taking on board the CMM's inputs/requests.

Meeting Closed @ 15:30