

# **Competition and Markets Authority case**

## **Performing Right Society undertakings review submission.**

### **1. Background**

When a writer's song is performed live, the promoter of the concert needs a licence to exploit the writer's work. Basically the concert promoter is generating income from the performance of the writer's song, so the writer should get some money for it. The mechanism is usually that a percentage of the ticket income from the show is paid to the writer. In the UK the published rate is 3% of the net of VAT ticket income, in The Netherlands that published rate is 7% of the net of VAT ticket income. The standard process is that the writer mandates the Performing Rights Organisation (PRO) in their country, to collect this money on their behalf. If the concert is in a foreign country, then the writer's PRO will have a reciprocal agreement with the PRO in the country where the concert is happening, to collect this money on their behalf and send it to them (there is normally only one PRO per country who are authorised by statutes). Once the money is received by the writer's PRO, they will then distribute it to the writer. Its a chain:

Door income > Concert promoter > PRO (concert country) > PRO (writers country) > Writer.

About 2-and-a-half years ago the [Music Managers Forum \(MMF\)](#) discovered that concert promoters in The Netherlands were getting a kickback of up to 25% (twenty-five percent) from their domestic PRO, [BUMA](#). This kickback was taken from the live public performing rights income the promoters were deducting from concert ticket income to pay for the licence to exploit the writers works at the concert. So they were reducing the available income from which to pay the performing artist, claiming this reduction was to pay the songwriters, but then only paying some of that money to the songwriters and publishers (via the PRO), and pocketing the difference. It was described as a 'volume rebate' and agreed with BUMA. To put it in numbers, the published Tariff for the live public performance right for concert promoters in The Netherlands is 7% (seven percent) of the net of VAT ticket income. The promoters were deducting 7% from the net of VAT ticket income, so the artists, tour managers, booking agents and artist managers didn't question this deduction. However, the promoter had agreed a deal with BUMA, so that they would receive a kickback on this money of up to 25% (this was done without the knowledge or agreement of the performing artist or the songwriter). So instead of the promoter paying BUMA 7% to secure the licence for the live public performance right, they only paid them as little as 5.25%. The promoters didn't declare this amount to the performing artist or their representatives, and pocketed the difference. For writers that mandated PRS to collect this income for them, BUMA then sent the PRS their income (on the basis of the reciprocal deal). Once the PRS received this income, they sent it the writers. However, PRS didn't notice that there was a chunk on the money missing, and because the royalty statements that PRS issues are lacking in so much relevant information, its incredibly difficult for writers and their representatives to work out what if any money was missing.

On behalf of the MMF, I then engaged with the PRS, the large concert promoters in The Netherlands, and the [VNPF](#) (Dutch venue & festival industry body), to investigate the situation, and try to find a solution for MMF members, and in turn their client artists and writers. We discovered that this kickback system has been in place since 1999, and represented a substantial transfer in value from songwriters, publishers and performing artists - without their knowledge or consent - to promoters. This situation has cost songwriters, publishers and performing artistes millions of Euros of income from The Netherlands. We also discovered that the PRS had been informed about these kickbacks in The Netherlands in 2010, by Paul Crockford (Mark Knopfler's manager).

Myself and the MMF initially thought that we would provide information, experience, contacts and general assistance to the PRS, and that we would work in coordination with them to deliver a positive resolution to the promoter kickbacks problem for both our Memberships. (See Mail 1) We expected our position and the PRS's position would be wholly aligned with regards to this situation, and approached it accordingly. Over the next 30 months, and after a lot of work, time spent, many meetings and discussions with all the stakeholders, and trips to Amsterdam - there was even a Supervisors Board Of Collection Societies tribunal in Amsterdam which we attended and gave evidence at (See Document 1) - it became depressingly apparent that the PRS were not prioritising an appropriate resolution for their Members, and we got the sense that they would prefer that the whole situation would just go away.

For the two years we'd been engaged with PRS regarding the situation in The Netherlands, we'd been asking

them if promoter kickbacks were happening in any other territories. For those two years, they avoided really answering the question with vague responses about looking in to it. After two years of there being no material change happening with the situation in The Netherlands, and no actual response from PRS about other territories, frustration finally got the better of me, and I started contacting PRO's and promoters across Europe to see what I could discover. I found promoter kickbacks were happening in Switzerland, Portugal and Hungary. Only then did PRS start to let us know that they were also happening in Belgium, France, Spain, Italy, Germany, Austria and Bulgaria. However, six months further on, PRS is yet to report on a list of other territories, so its wholly possible there are promoter kickbacks operating in further territories as well.

## **2. Deductions and Concert Promoter kickbacks**

One of the undertakings that the PRS made to the Mergers and Monopolies Commission (MMC) in February 1997, was to send you on an annual basis:

14. (c) (ii) aggregated details of the overseas earnings of members.

PRS have failed to deliver this information to you in each and every year. The overseas earnings would include monies that were deducted from PRS Members' due to:

- 1) The Affiliated PRO's granting their users rebates, discounts and/or kickbacks.
- 2) The Affiliated PRO's expenses and cultural deductions.
- 3) The Affiliated PRO's policy towards income splits with the supporting performers' writers.

Despite the PRS agreeing to deductions in their reciprocal agreements, they are unaware of exactly what deductions have been applied to each performance (or if they are aware they are keeping it hidden from their Members), and they do not track or know how much money this represents, and therefore can't report the information to you or its Members. Since your initial review in February 1997, this represents a huge transfer of wealth from PRS Members, to foreign PRO's, foreign users and foreign writers & publishers. Over the years the amount of this lost income could be measured in the millions of pounds. And as the vast majority of PRS Members are UK tax residents, the result of these deductions is a loss of this money to the UK economy, and a loss to the UK exchequer of taxation on a majority of that amount. To discover the exact number would require a great deal of forensic auditing. While we are proud of the GBP£4.1 billion the music industry contributed to the UK economy in [2015](#), this amount would have been larger if the PRS had used their, "best endeavours to license on the best achievable terms". We're surprised that the PRS has not costed these kickbacks, as they should have all the information.

### **2.1 Lack of awareness:**

I have spoken or had meetings with most of the major and large publishers (BMG, Universal, Warner Chappell, Peermusic, Kobalt), and none of them were aware of the promoter kickbacks, or the scale of the amounts they were losing. The same is true of all the specialist music industry accountants/business managers I've spoken with on both sides of the Atlantic. The same is true of all but one of the artist managers I've spoken with (Paul Crockford) on both sides of the Atlantic. It has come as a great shock to all those stakeholders when I've explained the situation to them, explained the length of time this has been happening, and explained the amounts of money involved. It is safe to say that the industry at large has not been aware of the true situation with regards to the losses of income due to utilising the traditional model and current deals of the PRO system.

### **2.2 Lack of transparency:**

The PRS have not been transparent with their Members that these deductions exist, or the scale of them. The issue of promoter kickbacks was first apparently brought to the attention of the PRS in 1992 by Amanda Harcourt (who was working on behalf of U2). However, no actions were taken at the time by the PRS to either address the kickbacks or to notify their Members of them. Even though this situation has existed for many years, the PRS has not proactively or willingly informed their Members that the promoter kickbacks exist. Its only been over the last few months they've started to share information with their Members, and that's only been after years of pushing from myself and the MMF. And even then, the information they are sharing is incomplete and lacking in practical application due to the missing promoter specific information. (See Document 2)

Shockingly, in the promoter kickback situation in The Netherlands, the PRS has continually argued against their Members' best interest, by arguing against transparency. Myself and the MMF have been pushing both

the PRS and BUMA to publish a list of promoters/venues in The Netherlands with what kickback % each receives (See Mail 2). We understand why the venues and promoters would not want their net of kickback public performance rates published, as then artists, writers and publishers would have transparency, and would be able to negotiate concert agreements based on that information. As for BUMA, we appreciate that having those rates published would be a very uncomfortable situation, because then their songwriters and music publishers would have transparency on the system they operate. Once their system became transparent, it would quickly become apparent that their system does not distribute a large amount of the monies deducted on behalf of the songwriters and music publishers to those songwriters and music publishers that the PRS & BUMA claim to represent. Myself and Jon Webster (then CEO of the MMF, now President of the MMF) had a meeting with Robert Ashcroft (CEO of PRS), Hein van der Ree (CEO of BUMA), Iain Black (Senior International Manager at PRS) & Chris Butler (Publisher Director of PRS, "throughout his time on the PRS Board he has been associated particularly with issues relating to classical music publishers and composers.") on 25th February 2015 at the PRS offices. In that meeting both the PRS representatives and BUMA argued against publishing a list of promoters/venues in The Netherlands with what kickback % each receives. Their arguments were:

- That they don't publish rates/tariff's they charge radio, therefore why should they publish them for the live sector. However, they are plainly different sectors, with differing variables. Is anyone negotiating multiple deals (on a daily basis) with the radio sector that are based on the money they pay BUMA?

- That if they do publish the rates, that might set a precedent, and other sectors might also want rates published. That is the equivalent of saying that PRS & BUMA don't want to be transparent with regards to this, because then other people might also want PRS & BUMA to be transparent...!

- That if the the promoters and venues would see what their competitors were receiving, that there would then be a "push to the bottom" by the venues and promoters wanting the lowest rate:

- i) We find that argument wholly ludicrous, as even if venues and promoters did push for the lowest rate, as at the time BUMA had published a set of thresholds for kickbacks on their website (<http://www.bumastemra.nl/en/music-users/playing-music/types-of-music-use/volume-discount-regulation/>).

Therefore if a venue or promoter wanted a larger kickback than they qualified for, it would be a very simple discussion to point out to the venue/promoter in question that they didn't qualify for the larger kickback, and end the discussion. However, we suspect that another reason that BUMA don't want to publish the list of kickbacks, is that it would become apparent that they haven't maintained their own system, and have agreed larger kickbacks with certain venue/promoters than they would qualify for.

- ii) And what if the promoters and venues did push for it? BUMA can say 'no', and BUMA has argued that they apparently don't need the agreement from the users to apply the rebate.

PRS & BUMA's position was that instead of publishing a list of kickback rates for each venue/promoter, it should be sufficient if upon request from the writers' PRO they agree to inform the PRO of the kickback rate on an individual show basis. So the suggested system would involve each agent/manager/tour manager/publisher having to ask the relevant PRO for each show their artist may perform, who in turn would ask BUMA, and upon response from BUMA the PRO would inform the agent/manager/tour manager/publisher. Bearing in mind that according to BUMA they license "40,000 events per year", this would be a horribly inefficient, time consuming, cumbersome and admin-heavy system, which would no doubt have a negative cost impact on PRS Members' income. All these extra delays and extra work, just to avoid full transparency. And let's not forget, as the present kickback system is re-calculated every year, then this waste of time, money and effort would be repeated annually.

Even more shocking, is that despite the PRS management having known about the promoter kickbacks for years, and having recently been forced to admit the scale of these kickbacks, they have decided not to bring this situation to the attention of the PRS Board. We have confirmation from a PRS Board member that at the time of this response being submitted, that the PRS Board have still not been provided with a full report from the PRS management about the kickbacks situation or even discussed it. One can only speculate as to the motivation of the PRS management with regards to this.

### **2.3 Lack of results:**

Whilst none of the present PRS management were in tenure in 1992, "Karen [Buse] has headed up the International department since 2003, responsible for all International activity from revenue generation, inter society relations, international standards". Not only did the PRS Management, staff and systems fail to discover the millions that were being deducted from the international earnings of their Members over the

years, they have failed to do anything about it even when it has been uncovered for them! To be specific, in the many years that the PRS has been aware of their Members suffering these huge losses of income due to these deductions, what tangible success have they achieved on behalf of their Members?:

- Nothing in terms of the user (concert promoter) rebates, discounts and/or kickbacks.
- Nothing in terms of income splits with the supporting performers' writers.
- A small reduction in BUMA expenses in The Netherlands, but no reductions in PRO expenses anywhere else in the world.

The specific present PRS employees who are in a position to deliver results are:

[Robert Ashcroft](#) - Chief Executive

[Debbie Stones](#) - General Counsel

[Karen Buse](#) - Executive Director, Membership and International

Iain Black - Senior International Manager

Myles Keller - Membership Development Director

As an example, here is the timeline with regards to the situation in The Netherlands with BUMA:

23/27 March 1973 - BUMA and PRS sign a reciprocal rights agreement (RRA).

22 December 1999 - BUMA signs deal with Mojo to give them a 25% kickback.

28-30 June 2010 - Mark Knopfler plays shows in The Netherlands.

Q4 2010 - Paul Crockford discovers deductions from the Mark Knopfler shows in The Netherlands and informs PRS, who were unaware of the kickbacks (therefore the PRS missed them for over 10 years).

September 2013 - MMF becomes aware of kickbacks in The Netherlands and engages with PRS to help resolve the situation.

09 December 2014 - PRS informs the MMF that the situation in The Netherlands is resolved. Unfortunately its not at all resolved. (See Mail 3 & Document 3)

20 April 2015 - Robert Ashcroft informs Hein van der Ree (CEO of BUMA at the time) that BUMA are still not compliant with their RRA due to the kickbacks. (See Letter 1)

02 July 2015 - Debbie Stones writes to the MMF informing them that BUMA are no longer in breach of their RRA, as they have changed their kickback to promoters from a 'rebate' to a 'discount'. But she says that PRS can recoup any rebates given by BUMA from the royalties it collects on behalf of BUMA. (See Mail 4)

Situation in 2000:

- Promoter kickbacks (rebates/discounts) of up to 25% exist in The Netherlands.
- There is no transparency on which promoters receive what kickback.
- PRS Members are not receiving the money being given to the promoters as a kickback.

Situation when PRS were notified about the Mark Knopfler kickbacks in 2010:

- Promoter kickbacks (rebates/discounts) of up to 25% still exist in The Netherlands.
- There is no transparency on which promoters receive what kickback.
- PRS Members are not receiving the money being given to the promoters as a kickback.
- No historic rebated money has been paid to PRS Members.

Present situation in 2016:

- Promoter kickbacks (rebates/discounts) of up to 25% still exist in The Netherlands.
- There is no transparency on which promoters receive what kickback.
- PRS Members are not receiving the money being given to the promoters as a kickback.
- No historic rebated money has been paid to PRS Members.

So no material change has been achieved by the PRS with regards to historic, current or future promoter kickbacks since it started in The Netherlands over 15 years ago, or since it was uncovered for them over 5 years ago. And presently there is no timeframe/roadmap being delivered by the PRS for any change with regards to this situation.

As evidenced by Debbie Stones e-mail (See Mail 4), the Management seem satisfied that a purely semantic change from 'rebate' to 'discount' which provides no material change, is sufficient cure for BUMA breaching their reciprocal agreement for around 15 years, and that the opaque promoter kickbacks that are costing their Members millions, continue. The response and actions from Management to this situation over the many years, has allowed this situation to continue and is alarming.

#### **2.4 Mandate?:**

Do the PRS Standard Terms of Assignment, Memorandum of Association, Articles of Association and Rules & Regulations, give the PRS a mandate from the Members to grant Affiliated Societies the right to give a discount, rebate or kickback to their users on PRS Members' income? If that is the situation, then the PRS has agreed to give away millions of pounds of Members' money, without their knowledge, agreement or mandate. At which point does the PRS become liable for this money? But as the PRS is operated with Member's money....

#### **2.5 Conclusion:**

Replacing the present senior management (namely Robert Ashcroft, Debbie Stones, Karen Buse, Iain Black, Myles Keller) needs to be considered. And the internal PRS international systems, protocols, processes and staff need to be overhauled. They also need to readdress their relationships with other PRO's.

### **3. Direct Licencing (DL)**

One other undertaking that the PRS made to the Mergers and Monopolies Commission (MMC) in February 1997:

The Company will not propose any amendment to the Agreement which would:

(a) prevent or inhibit its members from self-administering their live performing rights;

#### **3.1 History**

At a meeting on the 25th November 2014 at the PRS to discuss the ongoing issue in The Netherlands, one of the PRS staff members let it slip that it was possible to re-assign certain rights from the PRS, while leaving other rights unaffected. This was a revelation! We had no idea that was even a possibility. We were aware that you could opt out for all rights on a territory or work specific basis, but not on a specific rights basis. We had been under the impression that with regards to the rights given to the PRS, it was either all in or all out. The PRS had no information about it on their website, had no prepared document available, no set protocols in place for it, and they were quite vague about it, and directed me to the Memorandum and Articles of Association (7g), which in turn references the Rules and Regulations (11A).

By the time February 2015 came around, we'd spent 18 months dealing with the PRS and other stakeholders regarding the situation in The Netherlands, and there was no resolution in the foreseeable future. We'd also experienced the PRS giving us factually incorrect information more than once (See Mail 3 & Document 3), and not engaging with the issue in any productive way, so the organisations credibility was in question. We were wholly exasperated with the situation. Facing imminent live shows in The Netherlands (for an artist I was the agent for), and the prospects that the live public performance right monies from those shows would suffer:

- Promoter kickbacks of up to 25%.
- Deductions from both BUMA (15%) and PRS (2%).
- Long delays in receiving the money (the standard distribution time for live rights monies going through BUMA & PRS from show date in The Netherlands to the writer receiving the money, is between 21 - 27 months).

Myself and the artist manager decided to try direct licencing the shows in The Netherlands on the March tour. The setlist was only songs that were written by the writers in the band were performed, and I received the mandate from the writers and publisher to collect the live performance rights money on their behalf. We received the full monies for the live performance right licence from the promoter within a week of the shows with no deductions.

Over the subsequent few months I discovered the extent of the promoter kickbacks issue. We're now aware that it exists in The Netherlands, Belgium, France, Spain, Portugal, Italy, Switzerland, Germany, Austria, Hungary and Bulgaria.

A specialist music industry accountant asked me to run some numbers on the amount of money that was being deducted from the live public performance right for PRS Members selling 10,000 tickets with a ticket price of GBP£30.00 (or equivalent). I did so, and for Belgium and Switzerland (on separate tabs), I created a spreadsheet. (See Document 4) It shows that the headline writers & publishers would be losing 47.12% of their live public performance rights income from Switzerland, and 41.37% of their live public performance rights income from Belgium. These demonstrate how large these deductions are, and how much money is being lost by PRS Members.

Faced with promoter kickbacks across most of Europe, an uncooperative PRS, a lot of time and effort having been expended, as well as performing artists, writers and publishers suffering huge deductions from their income and long delays in receiving it, as well as a lack of transparency. There had to be a better option. After having mulled it over for a while, in April last year I decided to create a business delivering Rights Management for the Direct Licencing of the live public performance right on behalf of writers and publishers (which would also benefit the performing artist (who in the vast majority of cases would also be the writer). I believe I am the first person globally to offer Rights Management for Direct Licencing of the live performing right for publishers and writers. A handful of people have Direct Licenced internationally, but they have all been done on behalf of the writer they are the artist manager for.

### **3.2 The Direct licencing solution:**

The basic 'lift' pitch is:

Do you want more money, do you want to receive it quicker, and do you want to receive it more transparently?

Direct Licencing delivers:

- 1) Increased income: It hugely reduces the deductions that the songwriters and publishers suffer, so they receive far more money. Also, it sidesteps any undiscovered kickback systems.
- 2) Distribution time: It vastly reduces the distribution times to the songwriters and publishers, so they receive their money far quicker (days/weeks instead of months/years).
- 3) Transparency: As promoters and the PRO's can no longer operate a kickback system for that concert, the performing artist will know exactly how much the promoter is actually paying. Also, it sidesteps any undiscovered kickback systems.
- 4) Transparency: As the royalty statements are so lacking in relevant detail (to the point that tracking income can become almost impossible), Direct Licencing allows the songwriter and publisher to know the actual amount they are receiving from each concert (to the cent/penny).
- 5) Transparency: For the headline writers and their publishers on what the support writers receive, so the amount the support writers receive can be agreed prior to the confirmation of the support performing artist (as depending on the territory, the support songwriters can receive as much as, or more than the headline artist's writers).

As above, I spoke or had meetings with a number of the major and large publishers (BMG, Universal, Warner Chappell, Peermusic, Kobalt), and none of them were aware of the promoter kickbacks, or the scale of the amounts they were losing. Once they understood the situation, all of the publishers have been interested in finding a solution to the undeniable problem, and all of them have been interested in the Direct Licencing solution. The same is true of all the specialist music industry accountants/business managers I've spoken with on both sides of the Atlantic. The same is also true of all but one of the artist managers (Paul Crockford) I've spoken with on both sides of the Atlantic.

### **3.3 Experience with the PRS**

The first tour I Direct Licenced was for the Fink [October-November 2015 European tour](#). The tour went through: UK, The Netherlands, Belgium, France, Switzerland, Germany, Norway, Sweden, Finland, Lithuania, Belarus, Ukraine, Poland, Czech Republic, Austria, Hungary. I received the mandates from the band writers, their co-writer, and the publishers (Just Isn't Music and BMG Rights Management), and then engaged with PRS to re-assign the rights (See Mail 5), and then with the concert promoters, and PRS's Affiliated PRO where required.

Dealing with the PRS through this Direct Licencing process has not been smooth or easy. You get the feeling they would prefer that Direct Licencing doesn't happen, so maybe trying to deliberately undermine the process.

### 3.3.1 Lack of knowledge? -

Despite the PRS knowing about the re-assignment request since the 06th May 2015 (See Mail 5), they delayed informing me of issues in a couple of territories (See Mail 6):

- 1) Hungary - They waited until 25th September 2015 (barring in mind that the tour started on 10th October) to notify me that there maybe an issue in Hungary. Surely the PRS knew before that date? If they didn't know, what does that say about their understanding of international? Why did they wait so long to notify me? But a more worrying point is that the law that the PRS is quoting is the wrong piece of law, as what they are quoting has been superseded, twice. First in 2001 and then in 2007. Here is the relevant law: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=325838](http://www.wipo.int/wipolex/en/text.jsp?file_id=325838) . Why do the PRS not know this? Why are they giving their Members incorrect information? Do they not do due-diligence in to what other PRO's tell them, or do they just blindly accept what other PRO's apparently tell them, even if its incorrect and to the detriment of their own Members?
- 2) Switzerland - They waited until 07th October 2015 (barring in mind that the tour started on 10th October) to notify me that there maybe an issue in Switzerland. Surely the PRS knew before that date? If they didn't know, what does that say about their understanding of international? Why did they wait so long to notify me? But a more worrying point is, that again the PRS have given incorrect information as to the legal position. When I confronted SUISA (the equivalent PRO in Switzerland) with the law: <https://www.admin.ch/opc/en/classified-compilation/19920251/index.html#a40> , SUISA actually confirmed that we could legally Direct Licence. Why did the PRS not know this? Why are they giving their Members incorrect information? Do they not do due-diligence in to what other PRO's tell them, or do they just blindly accept what other PRO's apparently tell them, even if its incorrect and to the detriment of their own Members?

How is giving Members factually incorrect information as to their legal position not, "prevent[ing] or inhibit [ing] its members from self-administering their live performing rights"? They actively tried to prevent me from Direct Licencing on behalf of their Members in Hungary and Switzerland by giving wrong information. Additionally, what does this say as to the competence of the PRS legal department?

### 3.3.2 Indemnification -

An example of their lack of experience at re-assigning (ahead of a Direct Licence) is despite the PRS knowing about my re-assignment request since the 06th May 2015 (See Mail 5), the first time they mention their requirement for an indemnification was on 01st September 2015 (See Mail 7). The negotiation of which would have been more efficient if initiated far earlier. The impression I got was that they hadn't prepared such a document previously. Which would indicate a lack of re-assignments previously. Also, the PRS's position of wanting their Members to indemnify the PRS against the PRS's own actions and conduct, speaks volumes as to the culture at the PRS.

### 3.3.3. PRO contacts -

Trying to ensure Direct Licencing is an efficient system that will deliver the least workload for all concerned, I asked the PRS to provide a list of the contacts from their Affiliated PRO's they'd confirmed the re-assignment for the tour with. (See Mail 6) "As per any organisation, not everyone [in the organisation] has all the knowledge, so its most efficient to notify the relevant person with the correct contact who has knowledge of the situation." It would obviously be most efficient, "to give the concert promoters a contact [at their PRO] who is aware of this situation to liaise with. Equally,...we will need to have this information available to the sub-publishers as well. If we don't have that list, I think we'll have both promoters and sub-pubs potentially contacting the wrong person within the PRO, who might not know the situation, and would therefore give incorrect information, which in turn will lead to confusion."

The PRS's response was, "it would not be appropriate to provide our contacts to you, as they are senior management and do not necessarily deal with promoters/sub-publishers on a daily basis."

My response was that, "I can appreciate that senior management wouldn't want to deal with this, but if you can ask them to provide a more junior contact that is aware of the situation, that would be good."

The PRS still refused. The PRS's attitude and approach with regards to this has been deeply frustrating and counter-productive, but I'm sure they knew that. How is this not, "inhibit[ing] its members from self-administering their live performing rights"?

For future re-assignments the PRS should provide:

- 1) Immediately after they have received confirmation of the re-assignment, a contact (name, position, e-mail, direct telephone number) at each PRO, who is aware of the re-assignment process and that the works have been successfully re-assigned.
- 2) An (automated?) e-mail/document from the Affiliated PRO confirming the re-assignment of the works.

### 3.3.4 Supports -

In the Mergers and Monopolies Commission (MMC) report in February 1997:

"1.11. We recommend the adoption of a detailed system of cost allocation and the publication of sufficiently detailed accounting information for members to be able to tell where costs arise and which activities are being subsidized."

The PRS have not published any accounting showing that the headline writers subsidise the support writers with regards to the live public performance right. Currently the PRS policy is that all works performed have an equal weighting (meaning each work is valued the same, irrespective of which artist performed it, its length or how many people were in the audience when it was performed). However, this leads to headline writers subsidising support writers. This fact is not publicised or even acknowledged by the PRS, but it is true. The PRS licenses live 'popular' music under their [Tariff LP](#).

This Tariff states:

"PRS for Music's charge for a licence or a permit under this tariff is, subject to a minimum charge of £38.00 (previous year £37.00) in respect of each entertainment, 3% (three per centum) of the gross receipts from the entertainments covered by the licence or permit."

Also, "gross receipts means all monies paid or payable in respect of admission charges in connection with any entertainment to which this tariff applies, less library and party booking discounts and Value Added Tax or any other government tax or imposition of like nature for the time being in force."

Therefore the value of the rights is based on the "monies paid...in respect of admission charges in connection with any entertainment to which this tariff applies". Arguments have been made that the works have equal weighting because:

- People buy tickets based on the bill that is advertised, therefore you can't know what entertainment they are specifically paying for, and the different artists on the bill may impact on the decision to buy a ticket. However, often concerts are put on sale before support artists are announced, and the rate of sales might impact on when a support artist is added, and who they are. If people have bought tickets prior to any support artist being announced, those people can't have paid any monies in respect of admission charges in connection with the support. At which point a large portion of the monies paid in respect of the admission charges in connection with the headliner, are actually being given to the support.
- A further argument is that people did buy a ticket due to the support. However, this is generally not the case. And if it was, then the support should be able to provide evidence of that.
- Another argument is that the relevancy is about how many people the works were performed in front of. However, no information is collected or shared as to how many people had been admitted to the venue before the support's performance had ended. To support this particular argument, that information would be required. Often the support artists perform to less people than does the headliner at the concert. Again, even if this argument is mounted, it means that a large portion of the monies paid in respect of the admission charges in connection with the headliner, are actually being given to the support.

In other territories, the formula for calculating the support writers can be different depending on the territory, they can be the same as in the UK, but could be 50%, 25%, 20%, or 10% to the support. Not only does the PRS not publicise the effect on headliners and support income due to Tariff LP in the UK, but they don't give any information to their Members as to what the calculations are internationally. This is negligence on the part of the PRS, as its meaning their Members have no knowledge to the extent of the deductions they are suffering.

However, if you Direct Licence, at that point you can engage in discussion/negotiation with regards to the support writers. Which is what we did with for the Direct Licenced tour. As part of the confirmation for their inclusion on the tour, the support artist writer signed an agreement as to the remuneration for the writers from the live public performing rights from the tour. The payment agreed, far over-valued the actual amount

of the support writer's live public performance rights (while still far below the amount the headline writers and publishers would have lost had the agreement not been made), it also delivered more rights income to the support than they would have achieved through other options available to them in the period of the tour.

Instead of the PRS being supportive of their Members, they ignored their Member's wishes (both the headliner and support), and tried to enforce Tariff LP on behalf of the support (See Mail 8), so that the support would receive 100% of the live public performance right income. There is no other way to view this other than the PRS directly trying to "prevent or inhibit its members from self-administering their live performing rights".

I have repeatedly asked them how they justify their argument of wanting to take 100% of the live public performance income for the support based on Tariff LP, when Tariff LP doesn't support their position. However, they have refused to answer that, but instead they've depressingly reverted to type, and shamefully opted to try to bully, intimidate and obfuscate using the 'law'. (See Letter 2) Other than their position being wrong in point of fact, but also wrong in point of law, its also a highly inappropriate approach to the issue. The Management made this move without consultation of the Board. I responded to their ridiculous letter. (See Letter 3). For the record, I haven't had a response to my letter.

### **3.4 60 Days?**

In the PRS Rules and Regulations its written:

"RULE 11A (a)

The Member shall give the Society 60 days' written notice ("the Notice") that such Member requires the assignment;"

Why do the PRS require sixty (60) days? The answer is that they don't. If they have efficient systems, and have an established and open communication with the Affiliated PRO, then it shouldn't take them more than 24 hours. And if they don't, they should establish them. Its a simple e-mail to the other PRO with the details of the works, writers, publishers, splits and concerts, and an e-mailed response. Frankly the whole 'Notice' should be able to be delivered online, with an automated response.

With so many managers, writers and publishers still discovering the multiple issues and Direct Licencing solution, the sixty (60) days requirement from the PRS has been a stumbling point for some PRS Members to DL. The discovery of the issues and the solution, and the time to communicate and collect mandates from writes, co-writers and publishers, and deal with support performers and writers, has in a number of cases meant that the Members were within the sixty (60) day period, which has meant the DL hasn't happened.

The PRS should hugely reduce the Notice period required.

### **3.5 Publicising Direct Licencing**

According to the MMC's recommendations:

"44. The PRS to publicize the changes to Article 7."

Despite the PRS have having agreed with the MMC in February 1997 not to "prevent or inhibit its members from self-administering their live performing rights", to date the PRS has not publicised this option to their Members. Why is that?

In the Writers mandate from the PRS:

"3. Our Obligations

We will:-

(c) use our best endeavours to license on the best achievable terms as many users of the rights as practicable"

As Direct Licencing enables PRS Members to receive more money, receive it quicker, and receive it more transparently, why are they not publicising that to their Members? Surely if the PRS understands and takes its fiduciary responsibility to its Members seriously, then they should have been publicising this option to its Members since February 1997. However, they hasn't. And the PRS continues to attempt to hide this option from its Members. This evidences an inability to treat member issues with a seriousness and attention that they require.

### **3.6 Consequence of failing to Publicize**

According to the MMC's recommendations:

"44. The PRS to publicize the changes to Article 7."

Another issue to be noted, is that due to the PRS having failed to publicize the changes to Article 7, Members and their representatives were unaware of this mechanism. So the PRS Members and their representatives haven't negotiated the Members' publishing deals taking in to account this mechanism. With the results now that there is a standard clause in the vast majority of publishing deals, which basically says that any rights not signed to a PRO become the publishers. In practical terms this means that when a PRS Member re-assigns its right from the PRS under Article 7, that right then probably become their publishers. At which point the writer can't Direct Licence their rights, as the publishers (some of which are PRS Board Members) now control these rights. Therefore even if a PRS Writer Member triggers Article 7, they can't benefit from the re-assignment. I trust this wasn't a desired outcome from the MMC's original investigation in to the PRS.

### **3.7 Arguments against Direct Licencing**

PRO's have so far only mounted two arguments against Direct Licencing:

- That it could weaken their 'collective bargaining' on behalf of their Members. But as the PRO's collectively don't seem to be trying to terminate promoter kickbacks, or substantially decrease their expenses, or substantially decrease distribution times, or make the royalty statements more transparent, they can hardly claim this as a meaningful argument. And even if they are trying to use 'collective bargaining' to impact some of these issues, they would have to deliver a superior situation than is delivered by Direct Licencing for this argument to carry any weight.
- That certain distributions of 'black box income' (income that is collected but is not linked to specific works having been performed, e.g. a licence income from a shop) for writers is partly calculated using the live performance right income. This has been mentioned by [GEMA](#) (the equivalent to the PRS in Germany). However, when asked for exact examples and specific information on the black box income distribution formulas, nothing has so far been forthcoming. So a high level of skepticism exists with regards to this argument.

### **3.8 Conclusion:**

Looking back to when we first found out about the promoter kickbacks in The Netherlands in the late summer of 2013, and then through the autumn of 2013 engaging with the PRS about it, setting up a company to Direct Licence was not at all in my headspace. Its only as a reaction to PRS's approach and their lack of delivery, and how much the deductions are negatively impacting the artists, writers and publishers, have I reached my present position. If the PRS had engaged in a manner that demonstrated how seriously they took their fiduciary responsibility to their Members, and had delivered for their Members, the present situation would be very different.

Replacing the present senior management (namely Robert Ashcroft, Debbie Stones, Karen Buse, Julie Baskett, Iain Black, Myles Keller) needs to be considered. And the internal PRS International systems, protocols, processes and staff need to be completely overhauled, as does the Legal department and Membership services department. The culture within the PRS also needs be completely altered. The PRS need to accept that Direct Licencing is in the best interests of their Members, and establish efficient systems and protocols for it.

## **4. Other Areas:**

### **4.1 Collective Bargaining?**

It was reported to me that in late November, Myles Keller hinted that U2 were receiving different deduction rates on their live public performance income from Affiliated PRO's. It was confirmed by Robert Ashcroft, Karen Buse and Iain Black in a meeting they had on 21st January with some managers and a publisher, that better rates were achieved for U2 in 2015. The PRS have e-mailed the other attendees at the meeting with these rates. However, apparently the rates obtained in Germany and Italy are still confidential.

What is shocking about this is, that the PRS has:

- Achieved a better rate for one performer member, but has completely failed to use its mandate for collective bargaining on behalf of all of its Members.
- Not published this achieved rate or informed its Members of its actions.
- Is still maintaining that some of the rates achieved are confidential from its Members.

What is even more shocking is that we had it confirmed that the Board of the PRS were unaware of the PRS Management's actions with regards to this situation, weren't aware that the Management were intending on negotiating or had negotiated on behalf of only one of its performer members, were unaware that an agreement had been reached, and are still unaware of what rates were achieved. Yet again, we have the PRS Management no reporting important situations to the Board, having no oversight on its actions, and its actions running quite contrary to its role and mandate.

#### **4.2 Governance, Structure, Communication & Staff**

In your initial review in February 1997 you wrote:

"1.6. We found that the PRS failed to consult the membership adequately and that its policies and procedures were not sufficiently transparent."

The situation the MMC found in 1997, might still exist.

##### 5.2.1 The Board -

This is the current [Board](#) and current [Executive Board](#).

(i) Whilst there are 'Writer' and 'Publisher' Directors (often described as Writer and Publisher Representatives), what constituency do the individual Board members represent/serve? Who are they there on behalf of? The titles are somewhat misleading, as they aren't on the Board as representatives or on behalf particular constituencies of Writer or the Publisher Membership, they are on the Board either as individuals (Writers) or representing their companies (Publishers). By way of evidence, have there ever been two Publisher Directors from the same company on the Board?

(ii) If the Board members are meant to be representatives of their constituency, why do Publishers get to vote on Writer Directors, and visa versa? Shouldn't publishers only vote for Publisher Directors, and writers vote for Writer Directors? Often writers and publishers share an agenda, but that is not always the case. A situation where publishers could feel that a certain Writer Director candidate might be more sympathetic or easily swayed to positions more favourable to publishers', so maybe they vote accordingly, and the same can be true visa versa. What could further skew the voting, its my understanding that the major publishing companies don't just get a single vote. When they buy another publishing company, they also buy the vote that publishing company has. Over the decades the major publishers have bought quite a number of smaller publishing companies, so they can operate a block vote.

(iii) If a Board member is seeking re-election, how do the Members know what their track record as a Board member has been? Is the information available as to which Board meetings they attended, or what input they had at Board meetings, or how they voted? No, none of those things. The general Membership has no mechanism for knowing how engaged or effective a Board member has been during their term. Are the Members given any details of what the candidate would do if elected, or what issues they feel are relevant over the life of the next Board, or their position on any particular issues? No. So on what information are the Members being asked to cast their vote for their Board?: In the PRS Regulations:

- "(3) Each candidate shall supply in writing with his/her acceptance of the nomination (or in the case of a Director who is proposed by the Board for re-appointment, within 14 days of such proposal);
- (i) a short biography of his/her career not exceeding 300 words in length (but if longer, such biography may be edited by the Secretary as he shall in his absolute discretion think fit), and
  - (ii) if applicable, a complete list of directorships held currently and within the preceding five years."

Is this really sufficient information with which to elect an engaged and effective Board that reflects the wishes of the Membership?

(iv) Is there an argument for the Board members to run regular surgeries for PRS Members, as Members Of Parliament do? So the Board members can have direct engagement with Members, to be made aware of any issues, and be given an opportunity to address them.

(v) Currently there are eleven (11) Writer Directors on the Board, and four (4) of those Writer Directors are on the Executive Board. However, there is an absolute difference in experience and priorities between Writers and Writer Performers. Writer Performers both write the music and - as the title would suggest - perform the music. Whereas straight Writers, don't commercially record or perform the music. Its the difference between someone sitting at home or in a studio writing a song, and then trying to get that song placed with an artist to

commercially release and perform it. And someone writing the song, recording the song themselves, trying to get a commercial release of their recordings themselves, creating and maintaining social media to try to engage with fans to buy that recording (when a recording is bought it also creates mechanical income for themselves as a writer), doing media promotion for the recording, going out on the road and touring the songs, etc, etc. Although being a Writer Performer can deliver more rewards, it requires far more investment of effort and resources, and far more engagement with a much larger part of the music industry. We ran a poll at the MMF to discover how many of our members' performer clients were also the writer of the works being performed, and the figure was 98% (ninety-eight percent). The vast vast majority of touring (performing) artists today, are also the writers of the songs being performed. Writers Directors (as opposed to Writer Performers), might not be as invested or involved with issues that effect live performing rights, and therefore issues that do effect a great number of Writer Members. To my knowledge, none of the current Writer Directors are performers (and if they did have a performing career, it was many years ago). Therefore the present Writer Directors have a distinct lack of experience and maybe lack of true understanding of the impacts of for instance, the promoter kickbacks. Anecdotally the vast majority of working writers today are Writer Performers, and those stakeholders are not being represented on either the Board or Executive Board by specific representatives. If the Board and Executive Board want to be truly representative of today's working PRS Members, then the majority of Writer Directors should be replaced by a new category of director, the Writer Performer Director. A writer that is still actively commercially releasing and performing their own songs.

(vi) An observation of the current Board structure is the potential lack of engagement, experience and/or knowledge of the Board and Executive Board.

- Publisher Directors: While the Publisher Directors do have a lot of experience and knowledge and can be very talented, they are very busy individuals running large companies. As most people in similar positions, they probably have a lack of available time outside their core jobs. Similarly, they are understandably focused on ensuring they are delivering for their companies and maintaining their jobs. Although some also have additional roles, for example, Jackie Alway is also the Chair of the Music Publishers Association (MPA), and on the boards of the Mechanical Copyright Protection Society (MCPS), Printed Music Licensing Ltd (PMLL), and UK Music, and attends the UK Music Rights Committee. So there is a question as to how much time the Publisher Directors have to drill down in to issues that are effecting the PRS, and holding the PRS Management to account.
- Writer Directors: As mentioned above, the present Writer Directors are lacking in personal experience in some aspects of the music industry that directly impact on their Writer Members, and those Members' income. Additionally, while there is no doubt Writer Directors can possess the knowledge, experience and talents to effectively engage with all facets of the music industry, in the vast majority of cases, successful and active writers engage Managers to advise on and deal with the business side of their careers. Which raises additional questions as to individual effectiveness of the present Writer Directors.

(vii) Serious questions have to be asked about the effectiveness of the present Board structure of the PRS, based on the frequency, length and agenda of Board and Executive Board meetings.

- The Board only meets five (5) times a year. The agenda of these meetings is largely comprised of reports (CEO report, Chair of Executive Board report etc), and this is usually followed by a presentation from one of the business units in the afternoon. That leaves very little time to discuss or raise issues. I had it reported to me that one of the Board had stated that when they ask Management a question, it can easily take between six (6) months - three (3) years to get a meaningful response. So how effective is the Board, and what role does it fulfill?
- The Executive Board only meets monthly.

#### 4.2.2 Communication -

(i) The Writer Directors/Representatives don't disseminate the information they learn from being a Board member to the PRS Writer Membership, and seek feedback. And the Publisher Directors/Representatives don't disseminate the information they learn from being a Board member to other PRS Publishers Members or the Writers that are signed to their company and seek feedback.

(ii) When a Board Member finds out a piece of information, what then happens to that information? There is no established mechanism for the Board Members to disseminate the information to the general Membership, and seek feedback. The reverse is true for a general Members wanting information as to what the Board is discussing or what decisions have been made (unless they have a personal relationship with one of the

Board). The result of which is that the Membership aren't aware of topics or issues being discussed or subsequently decided by the Board. The Board operates in isolation from the Members, other than at the AGM.

(iii) The general Membership only find out about a decision taken by the Board, well after the fact, and only if the PRS Management decide to send out a communication regarding it. Equally, as you can imagine, the communications from the Management to the Members don't mention any failures of the PRS or anything that would paint the Management in a negative light, one might almost say its propaganda.

(iv) For example, has the PRS Management notified its Members of the CMA review? I would imagine the CMA review would be of interest to the Members, and a number of them would have views they would want to share. If the PRS Management were taking their fiduciary responsibility seriously, surely they would have alerted their Members in a timely fashion as to your review, how to send a submission, and what the deadline was?

(v) Why are the minutes of the Board meetings not available to the Members? While some of the information might be commercially sensitive, a simplified or redacted copy could be issued so Members can understand what is being discussed and who is voicing which thoughts. After all, is the PRS not a organisation run on behalf of its Members?

(vi) Equally, why are the contents of deals done on behalf of PRS Members kept secret from them? For example, the terms of the recent [deal with Soundcloud](#) (that PRS has been patting itself on the back for all over the media), are completely unknown by the Membership it was agreed on behalf of. Its taken the Management five (5) years to do a deal, and that deal might be very unfavourable for the Members, we just don't know. Maybe the reason the Management are so pleased is that they've done a deal (irrespective of the terms of that deal), so they are can get it off their plate. If Robert Ashcroft/Karen Buse have taken the same approach to the Soundcloud deal, as they did with BUMA - which was to suggest a 'resolution' that left their Members incredibly disadvantaged, but they then could offer the Members some small placating gesture so they could attempt to, "draw a line under this issue" (See Letter 4) - maybe they've taken the same approach to the Soundcloud deal? Its ironic that Robert Ashcroft has often complained about confidentiality of agreements between record and streaming companies (due to NDA's), and how that negatively impacts on PRS Members, while at the same time keeping the material contents of deals that he does on behalf of Members secret from those same Members.

(vii) The only member of the Management on either the Board or the Executive Board is Robert Ashcroft, so what mechanism is in place for the rest of the Management to discover what was discussed and decided by either the Board or the Executive Board? Do they get to see the minutes, or does either Board issue communications to the Management, or is it reliant on Robert Ashcroft to communicate what he feels relevant/appropriate?

#### 4.2.3 Committees -

Looking at the PRS [Committees](#):

(i) None of them have any responsibility for live. Considering this is such a nuanced, complex and relevant area, the lack of a responsible committee seems a glaring omission.

(ii) Who is on the, "Nomination and Remuneration Committee (which supervises, amongst other things, succession planning and the appointment of senior executives and whose remit includes oversight of executive and non-executive remuneration)"? Quoting from this [Music Business Worldwide article](#):

"The other significant 'people cost' at PRS in 2014 was the Directors' remuneration.

This amounted to £996,000 in the year in basic terms – up 12% from the £888,000 paid out in 2013. The money was divided between nine serving directors during the 12 months.

The vast majority of this remuneration (77%) was taken home by PRS For Music CEO Robert Ashcroft, who received £765,000 – a £15k annual increase compared to 2013.

As Executive Director, Ashcroft was also the only director to receive a pension contribution, which amounted to a further £19,000. He received the same pension contribution in 2013.

Additionally, Ashcroft was attributed a deferred annual bonus of £223,032 last year. The aggregate amount of this bonus now deferred for future payment is £433,236.

PRS For Music Chairman, Peter Bamford, took home £106,250 of the remaining Director's pay – an 11.5% increase on his remuneration of £95,312 in 2013."

Does this really represent value for money for the Members? Would most Members would find it grotesque that the CEO's remuneration package requires so much of their money?

- Who decided the CEO's remuneration package?
- Were they independent?
- How is his bonus calculated?
- Are the criteria for his bonus too simple to achieve?
- Are the periods for measuring his bonus too short?

#### 4.2.4 Management, Staff & Culture -

There are serious questions to be asked about the effectiveness and experience of the personnel, and the corporate culture in the PRS.

(i) If you're entrepreneurial in nature, do you want to go to work at the PRS? Management & staff are often described as 'lifers', the view being that they are generally well paid and comfortable, and are not looking for anything to change that, and as most people would be, are looking at 'preserving the pension' and bonuses. But does that lead to a company culture of never rocking the boat, and the status quo being just fine? If a negotiation doesn't result in a favorable outcome for their Members, would that impact on their ongoing employment, and frankly would the Members even ever find out? Is there any pressure to deliver for the Members? With so many of the big deals done by the PRS being hidden from their Members behind confidentially and NDA's, are the Members going to be able to hold Management & staff to account even if they don't do their jobs well? Also, that the common perception is that the PRS have very cozy relationships with their 'colleagues' in other PRO's, which often seems to be of a greater importance to them than the relationship they have with their Members.

(ii) As a number of the PRS Management & staff have been in the closeted world of the PRS for years, there is a distinct lack of relevant experience from around the music industry that the organisation can call upon internally. How many of the Management or staff have worked in user companies ('poacher turned gamekeeper'), and posses that knowledge and experience that would be of huge benefit in the very diverse, specialised and nuanced world of the music industry? This situation can't be to the benefit of the Members when the PRS is representing their rights, and engaging and negotiating with those users.

(iii) Currently the PRS has no international intelligence gathering mechanism, other than asking their Affiliated PRO's. This is a ludicrous position, and not at all in their Members best interest. And what makes it worse is that even when they are presented with information and evidence from a source with relevant experience, they ignore it, and prefer to accept whatever information is getting fed to them by the Affiliated PRO. For example, the situation regarding the Effenaar venue in Eindhoven, where it was stated by Hein van der Ree (CEO of BUMA), and later by BUMA staff that the Effenaar operated under a HORECA tariff. When we challenged Iain Black about this, he stuck to the party line from BUMA. Even after us providing him with evidence as to how erroneous his position was, he maintained BUMA's statement, and only later did he aqueous and say he'd look in to it...but then we never heard back from him about it. (See Mails 9 & 10) With regards to the whole BUMA situation, there were numerous occasions where the PRS stated a position as factually correct, despite it seemed having done no due diligence and having no supporting evidence other than BUMA telling them, and it turning out that the reality on the ground was wholly different. (See Mail 11) It got to the point that instead of representing their Members' best interests, PRS had become just the mouthpiece for BUMA. (See Mails 12 & 13).

In meetings and conversations I've had with the PRS, it's become obvious that they have little grasp of the reality on the ground internationally and the impact on their Members. They just seem to accept whatever they are told by the Affiliated PRO, which often seems to be platitudes accompanied by a pat on the head. And given that the Affiliated PRO is representing their members and not directly the PRS Members, the Affiliated PRO is quiet rightly prioritising their own members, and if that means keeping funds in their own territory (through high expenses, or 'cultural deductions' or promoter kickbacks, or black box income, etc, etc, etc), so be it. It's the PRS's job to collect intelligence and do the due diligence internationally to

properly represent their Members, this role they are failing at. Additionally, the Affiliated PRO's know that the worse that the PRS will do is maybe have Robert Ashcroft "write a stiff letter", (See Letter 1) but nothing else will probably happen, so there really are no material consequences.

(iv) The Management & staff need to fully understand and appreciate that they are not a public company that creates income, and that they are a not-for-profit organisation that is run on behalf of their Members, who are the people that do create the income, and engage with all stakeholders accordingly. This seems to have been forgotten by the Management & staff. Decisions on how they interact with Members, how they interact with users and Affiliated PROs', what to spend their Members' money on, what remunerations are awarded, all should be impacted by strong governance, and the driving principle of whatever is on the best interests of the Members. In fact, to remind Management & staff, above every door in the PRS offices and on every screen saver in those office, the words should appear large, 'Whatever is in the best interests of our Members.'

(v) What has the Management achieved for its Members? For the large amount of the Members' money that the Management are being paid, and the huge amount of staff and resources at their disposal, during their tenure how have they added value or benefited the Members? Are the Members getting value for money? The Management sometimes claim that revenues have increased (although not so in 2014), and this has mainly been driven by the growth of live, and particularly international live. However, the Management has not made any progress in making the international live collections more efficient or instigating any initiatives to increase income. All that would have happened was that a greater number of larger performs using PRS repertoire will have coincidentally been touring during that year, and the revenue will have risen. The rise in revenue will not be connected with any actions the Management have taken, yet are their bonuses linked to this coincidental rise in revenue?

The present Management have been responsible for some large expensive projects and initiatives funded by the Members' money. What return on investment has Robert Ashcroft and/or Karen Buse delivered over their tenure?

Have the present senior Management (Robert Ashcroft, Karen Buse, Debbie Stones) added value or been value for money? If not, then replacing them with more effective, and more cost effective people should be considered.

#### **4.3 GRD (Global Rights Database)**

As we understand it, this project was championed by Robert Ashcroft. Whilst in principle nobody disagrees that a global rights database is a bad idea, the decision to invest PRS Members' money in to this failed project has to be questioned. The exact amount of investment made by the PRS needs to be verified, but from conversations we've had, it would seem to be in the millions. However, the project failed as all the required stakeholder partners decided not to proceed with it (See Mail 14). The failure of the project leads to four main questions:

- Who was consulted about the project, and shown the business plan for the project?
- Did the PRS management fully understand the requirements of the project with regards to the necessary stakeholder partners being confirmed, to ensure the success of the project prior to investing the Members' money?
- If they did, why did they not ensure the necessary stakeholder partners were contracted and/or had indemnified the PRS for their investment of Members' money in case of withdrawal?
- Did the Management and Board seek feedback or approval from the Membership for this investment? If so, how and when?

#### **4.4 ICE (International Copyright Enterprise)**

Another project that in principle nobody disagrees with; Minimising IT spends by utilising economies of scale for PRO's who often replicate systems, trying to ensure that replication of registration is unrequired, sourcing reporting from a common system, and allowing users a single location for pan-European licensing, are all good ideas. However, as with any project, there is a cost-benefit analysis. Many ideas that have practical applications and resolve a genuine need, never come to fruition due to unviable financial requirements. Currently ICE is costing PRS Members just under millions of pounds of their money. Prior to ICE coming online, PRS were (and are) able to collect the exact same income that ICE can collect. Which raises many questions, to my knowledge, the answers to which have not currently been shared with the Members whose money has been used to fund this project:

- Who was consulted about the project, and shown the business plan for the project?
- Who authorised the business plan and decided to invest the Members' money?
- Is the project coming in within the initially projected budget?
- How much further investment of Members' money will be required prior to the Members starting to see a return on their investment?
- How much has this project cost the Members to date?
- From the authorised business plan, when is the project scheduled to make a net profit for the Members?
- Is the project on track to achieve the initially scheduled net profit?
- Do the ICE Board members receive further remuneration for their role with ICE? If so, where does that money come from, and who decides on it?
- Who decided not to share the above information with the Members, and why?

#### **4.5 Kings Cross office**

Quoting from this [Music Business Worldwide article](#):

"In 2014, PRS made two major office changes: modernising its Streatham office in London, and opening a flash new HQ in the city's Kings Cross.

According to PRS For Music CFO Craig Nunn, speaking at the organisation's AGM in May, these offices now accommodate PRS's 200 staff members, but have reduced total office space by 40%.

"Alongside these savings in square footage, savings in energy bills, printing costs, and maintenance have allowed us to save well over £1m annually," he said.

According to PRS's 2014 financials, though, these changes certainly hit the wallet of PRS members in the year. In fact, the cost of PRS's London property has continually risen over the past half-decade.

At £7.3m in 2014, it cost more than three times what it did just five years before."

The comment at the bottom of the article reads:

"According to Craig Nunn, the sale of the leases for PRS For Music's previous HQ at Berners Street in London allowed it to invest £35m into its pension scheme." -this is an odd statement as staff at all levels have always been told that from the sale of Berners Street £19 million went to the Pension fund with the remaining £12 million being poured into MCPS ....Berners street was sold in Dec 2013 for £30 odd million. Staff and the Members were told it was to save money. PRS having owned the lease for the prime london location paid less than £4k per year in service charge . Most companies in the west end of London could only dream of having a building housing 700 staff so so so cheaply. PRS have spent several hundred thousand pounds on renovating Streatham to house some staff. They also now pay 100's of thousands per year renting in KIings Cross to accomodate 250 staff. Its never really been explained how the sale of Berners' Street benefitted the members ."

This situation raises questions about the transparency and governance of the PRS:

- Who made the decision to sell the Berners Street office, and why?
- Who made the decision to move to the expensive Kings Cross office, and why?
- How were these decisions communicated to the Members?
- Did the Management and Board seek feedback or approval from the Membership for these moves? If so, how and when?
- Surely it can't be in the Members' best interests for the PRS to be based in a very expensive office in prime real estate in London, as opposed to another more cost effective location in London?

#### **4.6 Rights Ownership**

Currently, when a Member mandates the PRS, they transfer ownership of the relevant rights to the PRS. Since the PRS was founded in 1914, the world and music industry have changed greatly. The understanding and usage of copyright and licensing has matured. Why does the PRS need to own the rights to be able to carry out its role? The answer is they don't. The PRS sole purpose is to collect income on behalf of its Members, they don't proactively generate income. Shouldn't the PRS require the least onerous situation from its Members to carry out its role? At which point why couldn't they still fulfill their role under an administration deal or a licence deal?

#### **4.7 Mandate**

The mandate that a Member signs when they initially join the PRS, will most probably be the first and last mandate they ever sign with the PRS. Which raises a number of points:

(i) If you've been a Member for 10, 20, 40 years, is it appropriate that a document that you signed decades ago, is still relevant and enforceable by an organisation that has a monopolistic position, but is meant to be a service run as a not for profit organisation on behalf of its Members? To focus both the PRS and Members, would there be a benefit in the mandate only lasting for a fixed term, of say 5, 7 or 10 years (unless terminated prior to that)? And therefore require the PRS to justify themselves for a renewal.

(ii) The mandate the Member signs is a simple two (2) page document. However, the mandate states:

"1. Definitions

In this Agreement:-

"Constitution" means our Memorandum of Association, Articles of Association, Rules and Regulations (which are all available from us upon request) and any changes or additions made from time to time to those documents;"

Those two (2) documents total 78 (seventy-eight) pages. Is all the information in those documents really required for a mandate? Due to the length of the documents its more challenging and disincentivising for a Member to find relevant information. Surely there's an argument for rationalising and simplifying the document(s) that are required for the mandate?

(iii) If any of the terms and conditions of the mandate are changed, the PRS should have to inform all the Members direct.

(iv) If we want the PRS to be more transparent and engaged with the Members, much as banks or local councils have to do, shouldn't the PRS send yearly updates to all Members detailing their fees, rates, distribution times and accounts overview (rather than just having it somewhere on their website)?

#### **5. Conclusion**

There are endemic and systematic failings throughout the PRS.

- Replacing the present Management of the PRS (including Robert Ashcroft, Karen Buse, Debbie Stones, Julie Baskett, Iain Black, Myles Keller) with more effective and cost effective people should be considered.
- A complete overhaul of the present Governance of the PRS should be considered.
- A complete overhaul of the present International approach and structure of the PRS should be considered.
- The Culture of the PRS should be addressed with regards to the fiduciary responsibility of representation of the Membership.