



Performing Right Society undertakings review

MPA comments to CMA

The Music Publishers Association welcomes the review of the Performing Right Society undertakings by the CMA; this review is timely given developments in business models, legislation, and new technologies.

The Music Publishers Association (MPA) is the trade association representing and safeguarding the interests of music publishing companies. The significant investment made by our members in the careers of songwriters each year enables the creation of the repertoire which generates the revenues collected by PRS for Music. We provide some high level comments in addition to the more specific separate submissions of our individual members.

PRS for Music is a fundamental and economically very substantial part of the music business; its proper operation is key for all its members including music publishers, both large and small.

We ask the CMA to continue assessing PRS for Music' compliance with the findings of the MMC report 1997. There have been changes to the circumstances relevant to the undertakings from PRS for Music following the MMC report of 1997; and, more specifically, we expect further improvements on governance following the implementation of the Collective Rights Management Directive. This will enable the CMA to consider how PRS for Music has complied with the provisions of the original MMC Report as well as the Collective Rights Management Directive and how it continues to address the outstanding concerns relating to the original undertakings of PRS for Music. Individual music publishers will respond to the CMA review with evidence specific to their companies and we expect that PRS for Music who ultimately holds the information necessary for a comprehensive review will provide all relevant information.

We suggest looking at the practical impact of changes which followed the original MMC report; it is important to consider how changes to the technical structure translate into practical improvements for individual members of collecting societies. At a generic level, we have identified three areas which still need improvements:

- Governance of PRS for Music
- Withdrawal of rights - Ease of the procedure and availability of information on the exercise of this fundamental right for members
- Mandates – Specific limitations in the scope of the mandates granted to collecting societies

1. Governance of PRS for Music – size of Boards

We note that PRS for Music has implemented many changes to its governance since the MMC review in 1997 and most recently following a comprehensive internal governance review. We mainly suggest further reduction of the size of the various Boards of PRS for Music. This was addressed in the original MMC report in 1997 which called the number of directors of PRS for Music “unusual” when there were 12 writers and publishers directors respectively. In 2016, there are 11 writers and publishers directors respectively. There is still room for improvement.

We note that PRS for Music has introduced an executive board consisting of 4 writer and 4 publisher members in addition to the non executive members; this might be a good example of a tight Board structure for the purposes of good governance.

2. Withdrawal of rights - Ease of the procedure and lack of information on the exercise of this fundamental right of members

The withdrawal of rights has been addressed in the original MMC report. The withdrawal of rights is an established right for members of collecting societies since the original GEMA decisions in 1970 (as well as the additional category relating to live performance that the MMC Report introduced) and it is also reflected in the Collective Rights Management Directive; however, the practical exercise of this right is not as straight forward as it could be. We ask that PRS for Music provides clear information that members have the right to withdraw their rights on a prominent place, e.g. on their website, and also advises on how members can withdraw their rights based on a simple process; a mere reference to the withdrawal option in the Articles of Association is not sufficient. We are hoping to work with PRS for Music on the details of such advice and the practical impact of specific scenarios of information sharing between PRS for Music and its members on the withdrawal of rights. We hope that the CMA can oversee such discussions. The withdrawal is part of the service PRS for Music provides and should be communicated clearly to members; clear information on the option to withdraw rights and how that works for both writers and publishers will also lead to more accountability of PRS for its actions.

3. Mandates – limitations in specifying the scope of the mandates granted to collecting societies

Another issue relates to the non-negotiable exclusive mandate which right holders grant to PRS for Music. In practice right holders have no option as to what rights and for what uses they mandate PRS for Music. Rights holders who want to become members of PRS for Music have to sign the membership agreement accepting the terms provided without option to change or specify them according to their individual needs. As the original MMC report identified PRS for Music is de facto the sole supplier of services administering musical works in the UK and as such has a dominant position regarding its members.

This has also been looked at in the original MMC report, in particular regarding the extent to which the bundling of rights given to PRS for Music is operationally required. In our view, technologies which enable PRS for Music to deal with more flexible mandates are available now (which were not available at the time of the MMC Report); this would enable PRS for Music to be more receptive to changes on the scope of individual mandates.

In conclusion we recognise that PRS for Music has undertaken steps following the MMC report in 1997 but some issues such as the ones identified above have not been sufficiently addressed. There is a role for the CMA to update all of the MMC recommendations and to continue reviewing the compliance of PRS for Music of them and to expand on the original recommendations in the light of the additional provisions of the Collective Rights Management Directive.