

IPO consultation on Industrial Strategy

1. BPI (British Recorded Music Industry) Ltd. is the representative voice for the recorded music industry. Our membership comprises over 400 independent record labels and the three major record labels – Universal Music, Sony Music and Warner Music. Together, these account for more than 85 per cent of the sound recordings legally consumed in the UK every year.
2. Our members provide the majority of the risk capital for the music industry in the UK. It is record companies that invest in new artists, fund their initial careers and help market and promote them to a public in the hope of breaking through. The successes pay for the failures, and record companies work in a business where only one of the artists out of ten they invest in will recoup that investment.

Introduction

3. The BPI welcomes the focus that the Government has put on the creative industries as an important growth sector and one that will benefit from an “early sector deal”. The UK is the largest cultural economy in the world relative to GDP and its creative industry is one of the most successful in the world. The UK should be taking the opportunity now to secure that future and encourage future investment in the UK creative sector.
4. This response should be read alongside the submission of the IP subcommittee of the Creative Industries Council which represents a broad agreement on the importance of protection and enforcement in supporting growth in the UK Creative Industries. BPI also endorses the submission to this consultation by UK Music.
5. Copyright is the legal construct on which the entire music industry is based – and Intellectual Property promotion and protection should be the focus for an industrial strategy that will benefit the UK.
6. The UK copyright framework is generally strong, and there are tools that BPI can use on behalf of its members that can help to enforce our rights. The availability of injunctive relief, for instance, has allowed the BPI to block 63 wholly or mainly infringing websites.
7. The IPO’s work in setting up and supporting the Search Voluntary Code of Practice has allowed the UK to take a lead in co-operative solutions to creating greater barriers to piracy.
8. Through the IPO’s commitment, the UK has also led the way on trying to disrupt piracy through its enablers – advertising, payment providers and hosting services. The work that PIPCU has done through Operation Creative has helped the UK’s legal market and has genuinely shown the way forward for other countries. BPI has also supported the unit by providing secondees with specialist expertise.

9. That said, continuing to tighten up the framework and staying ahead of other countries on enforcement will continue to give UK creative industries a comparative advantage. Global success comes from the ability to invest in artists in the UK and grow their careers. A small number of interventions could make a very big difference to the music industry, namely:
 - Removing the distortion in licensing that arises from a misapplication of the safe harbour in European Law that leads to a significant gap between the commercial value of our rights and the licence fees from tech giants that run certain user upload sites;
 - Intervening to go faster and further to reduce the prevalence of digital piracy/the online black market;
 - extending the principle of fiscal incentives in the creative industries, with the objective to make the UK the most attractive country in which to invest in the production of recorded music; and
 - encouraging our trade representatives to improve the conditions for copyright producers in export markets to unlock potentially huge future growth in revenues.
10. The biggest single barrier to growth in the recorded music sector is the distortions in the digital economy that undervalue music compared to the consumption and revenues of some of the digital platforms that exploit it. This is revenue that can be reinvested in a greater pool of artists, increasing our ability to compete and grow in the global competition for listening. This is what BPI calls “the value gap”. BPI would refer to its submission on the Green Paper for further detail.
11. The BPI would like the Government to see the importance of investment in IP and copyright as the “research and development” of the creative sector. In Music, specifically, our equivalent is “Artist and Repertoire” – the investments our members make in new artists and in the production and marketing of new sound recordings.
12. BPI members are the risk capital in the music business, its “banking sector” and is the investor in the constant innovation in music that helps to continue to keep our industry at the forefront of the world. Ensuring there is additional risk investment in new copyright works should be a priority for the test of success of the industrial strategy.
13. The strategy as a whole also needs to look at the ecosystem that has supported music and the creative industries. The UK historical approach to education, access to the chance to engage with the creative industries from trying an instrument to performing at a school concert and the network of small venues that give people opportunities to watch and perform music of all sorts are all part of the UK success story.

14. BPI also agrees with UK Music that the IPO should now provide a thorough empirical review of the impact of the changes to copyright implemented following the recommendations by Professor Hargreaves. If there is insufficient proof to back up the assertions of the impact assessments that accompanied the Statutory Instruments in 2014, in the light of experience, then they should be withdrawn.

Recommendations from BPI in the Green Paper Consultation

15. BPI put a number of recommendations to the Government as part of its Industrial Strategy consultation, many covering the protection and investment in IP/copyright. From the list of proposals from the BPI the following cover areas of the IPO's interest:

- i. **The UK Government should support the clarification in the EU legislative framework** to tackle the value gap and ensure that providers that intervene in the offering of content are liable for making available to the public and therefore (a) need to obtain licenses to make content available, or take active steps to prevent infringement; and (b) cannot take advantage of safe harbours in the E-Commerce Directive;
- ii. **The UK should end the Value Gap in the UK** by updating Copyright Law to reflect the decisions of the CJEU on the copyright liability of user uploading sites;
- iii. The Government should ensure the Code of Conduct on Search is enforced and it should bring forward a **duty of care on online intermediaries** to ensure reasonable steps are taken to ensure that piracy and counterfeiting are reduced online;
- iv. The IPO should have a **statutory duty to reduce Intellectual Property infringement**. To support this duty the IPO should bring forward a report every year that surveys the current landscape for IP infringement and tests the effectiveness of the current legal and enforcement regime against emerging threats, making recommendations to Government to deliver any necessary improvements;
- v. The Government should commit to the long term funding of PIPCU to give it security and stability;
- vi. The Government should **extend its commitment to partnership funding of the Get it Right from a Genuine Site** campaign of education around legal content. It is making a significant difference to attitudes, and its success aids all of the creative industries and the retailers/tech companies operating legitimately;
- vii. **Government should extend the principle of the creative tax credit to music production**. This would potentially cost a modest amount – in the region of £5m in year one – but would aim to be returned in increased economic activity and tax revenue, and in increased export value by domiciling copyright in the UK;

- viii. **IP should be a focus for UK in its ongoing political dialogues with exporting partners.** The UK Government should work with creative industries to analyse major potential markets and identify the significant barriers for UK creative industries through weak copyright regimes and/or a lack of reciprocal rights. In some territories this includes issues where international treaties have been misapplied or not applied at all; and
- ix. The Government should now **bolster its IP attaché network** in major export territories including the EU, by making it the responsibility of a specific member of embassy staff to represent the creative sector in country and on IP issues.

Recorded Music and exports

- 16. BPI Members are active globally, and the British music industry is a world leader. The UK is the second largest exporter of music after the United States and the UK artists accounted for a 17.1% share of global sales of recorded music in 2015¹.
- 17. The British recorded music industry continues to produce global success:
 - In 2016 seven of the top 10 (and 15 of the top 20) biggest selling albums in the UK were by a British act;
 - The top-selling global artist album has come from a British act in eight of the last eleven years (2005-2015);
 - Five of the top 10 biggest selling global recording artists in 2015 were British;²
 - Adele's third album 25 became the fastest-selling album of all time in the UK, with more than 800,000 copies sold in its first week. By the end of 2015 it had sold almost 2.5m copies. In the US it became the first album to sell 3m copies in a week and ended the year as the best-selling album. It was the best-selling album in the UK for a second successive year in 2016, selling another 750,000 copies;
 - British artists once again featured heavily amongst the winners at music award ceremonies around the world in 2015/2016 – Ed Sheeran (2), Mark Ronson (2) and Muse were all winners at the 58th Grammy awards in February. Pink Floyd and Ed Sheeran both picked up international awards at Germany's Echo Awards and One Direction were voted Best International Artist at the ARIA Awards in Australia;
 - In 2015, representation from British albums in the US was as strong as ever with 137 titles in the top 1,000, higher than any year since BPI began analysing US sales data in 2003;

¹ BPI

² IFPI Global Music report 2016

- UK artists accounted for 17.6% of artist album sales in the US in 2015, the largest market in the world. The biggest sellers were Adele, One Direction, Sam Smith, Ed Sheeran and Mumford & Sons; and
 - The revenues of the recorded music industry were higher than the combined revenues of the top 50 fastest growing UK tech companies in 2014.³
18. The trade in invisible services for music is a significant net benefit to the UK economy. Taking income abroad and payment made overseas from UK record companies for public performance royalties, synchronisation and licensing for use on sound carriers and digital income, figures compiled by the BPI based on an annual survey of its record label members reveal that overseas earnings from recorded music rose by 11.1 per cent to £364.6 million in 2016, up by £36.4 million from £328.2 million in 2015.
 19. This is the strongest performance since the BPI began its annual survey in 2000 and represents an increase of £153 million on the £211.6 million recorded at the start of the decade – a rise of 72.3 per cent since 2000. International revenues climbed 72.3% this decade, adding to an overall total of £4.4 billion earned by British artists and labels since the turn of the millennium.

Support for Exports

20. Music is an export business. Selling records overseas, streaming globally, and touring the world. British artists are constantly undertaking export activity. Most of this needs no financial Government support, but that which it attracts pays back for itself many times over. The main support BPI members need is on the framework for rights.
21. The most important barrier to exports for the recorded music industry is the variable level of rights protection and enforcement in major potential markets. To help work to improve this, the IPO's attaché network has been a very welcome addition to the Government's capacity to help support the case for long term change. BPI greatly appreciates the work they have undertaken and the source of knowledge they provide of local markets.
22. BPI has supplied IPO with information on the challenges recorded music companies face in a number of countries and will continue to update this for Government. Some of these are issues that will require long term engagement, helping growth economies realise the value of their own copyright and IP as part of a move to higher standards of legal protection and enforcement over the world.

³ <http://www.deloitte.co.uk/fast50/index.cfm>

23. In the future world of bilateral trade agreements with the UK Government following EU withdrawal, the importance to the UK of copyright protection must be given due prominence in agreements. The importance of trade agreements as a vehicle for growth can be seen in the recent EU/Japan agreement in which Japan agreed to the extension of the term of copyright for recorded music to bring it in line with the EU.
24. One very welcome initiative is the Music Export Growth Scheme, through which BPI works closely with the UK Government to help small independent music companies grow their overseas export markets.
25. Many smaller to medium-sized music labels, distributors and management companies, which are often independently owned, achieve remarkable success when launching their artists in the UK. However, their limited resources and the sheer cost of marketing overseas means it can be a real challenge for them to replicate this success internationally. This, in turn, creates the risk that significant commercial opportunities may be missed, not just for these companies and their artists, but ultimately for the wider UK economy through lost exports.
26. The Music Export Growth Scheme was created to help address this issue, offering small and medium-sized music companies with the potential to achieve increased international success the opportunity to apply for grants ranging from £5,000 to £50,000. The grants support their marketing overseas and the promotion of specific artist releases.
27. Applications are open to all UK independent record labels and music management companies meeting the application criteria. Decisions on individual awards are made by a panel of music industry experts with marketing expertise.
28. The scheme is incredibly popular with a music sector that is either micro-businesses or SME and that do not usually qualify under the Government's enterprise schemes (e.g. SEIS) due to the investment going to intangible assets. These are companies that also find it incredibly difficult to borrow from banks for the same reason – there is nothing to secure loans against.
29. In total so far, 162 projects supporting British music exports have received more than £2.4 million of funding through the Music Export Growth scheme (MEGS). The scheme which is jointly run by the Department for International Trade (DIT) and the UK record label association, the BPI, helps raise the international profile of developing British artists and their music companies.
30. The Government and BPI, together with other partners in the music industry also work together to promote UK music talents abroad through the provision of overseas trade missions. Last year these partnerships led to missions to the following countries:

India

- The Indian Trade Mission had 30 delegates attend a week long packed programme of events, site visits and showcases. Delegates reported £2.8M in potential business from the mission. Horus Music who attended for the third consecutive mission were recently awarded a Queen's Award for Enterprise for International Trade for their work in India. This was a joint Music mission with the Department for International Trade (DIT) and AIM.

China

- The China Trade Mission had 25 delegates attend this mission to Beijing for Sounds of the City and other activities. The mission had close to £4m in expected business reported by the delegates. This was a joint Music mission with the Department for International Trade (DIT) and AIM.

Rotterdam, Holland (Classical:Next)

- The British Music Stand (a joint venture between BASCA, BPI, DIT, PPL and PRS) had 29 delegates registered. Delegates have reported close to £750,000.00 in new business as a result of the event.

Midem – Cannes France

- The British Music Stand (a joint venture between AIM, BPI, DIT, MPA, PPL and PRS) had 178 delegates registered. Tuesday 6th June saw a UK Music Showcase on the Majestic Hotel Beach with Public Service Broadcasting, Jake Isaac and Dream Wife performing. The delegates reported over £4m in potential new business from the event.

Los Angeles

- The LA Sync Mission had 48 delegates attend a week long collection of panels, receptions and Site Visits. The delegates have so far reported £3.5M in potential business. A rundown of the delegates can be seen at www.lasyncmission.com.
- For the second year in succession we had a showcase with three acts selected; Akala, Charlie Cunningham and Ten Fé. For the first year we sponsored 8 songwriters attending the 1st Songwriting camp attached from the mission where UK and US songwriters wrote music to fit various briefs sent by film and TV music supervision companies. Both the showcase and song writing camp were funded by the Arts Council International Showcasing Fund.

South Korea

- A UK music industry trade mission to South Korea took place in September providing an open door for music businesses to explore business opportunities in a fast growing music market. A DIT mission jointly with AIM and BPI.
31. In addition to these countries we also provided Members with discounts for Reeperbahn in Germany and Sync Sessions in Barcelona, BIME in Bilbao and Amsterdam Dance Event (ADE).
 32. So far the estimated return from all the delegates was £14M (not including S Korea). As such they represent fantastic value for money for Government, which only had to put in £57,000 for the year's missions to help generate this return.
 33. Given the importance of international trade, BPI would like to see IPO and DIT, as well as DCMS, working increasingly closely, to ensure that the trade programme maximises UK interests by working to link trade missions to IPO bilateral meetings and visits by DIT and DCMS Ministers to ensure that we are leveraging our opportunities to help improve IP frameworks and trade discussions as part of our overseas export programme.
 34. The popularity of British music overseas is one of the UK's unique selling points, and we need to maximise the benefits to the UK as well as to the industry from the future programme of international trade talks and export showcases.

Voluntary IP exchanges

35. As a starting point, BPI believes that the right to license is held by the creator of a copyrighted work. Their rights to choose when, how and on what terms their rights are used are their creative, as well as their commercial, judgement. In the absence of any evidence of anti-competitive behaviour there should not be a presumption of any requirement to register rights with any exchange.
36. BPI made clear at the time of the Hargreaves Review and the Hooper consultation process on the Digital Copyright Exchange that any participation should be genuinely voluntary, with no artificial "incentives", including penalties for non-registration or restrictions on the use of enforcement mechanisms.
37. BPI therefore welcomes the IPO making clear that "the UK is a member of a number of international agreements which prohibit signatory states from making copyright protection dependent on complying with mandatory formalities".

38. BPI believes that any moves to improve the efficiency of the market in connecting rights owners with those who wish to purchase licenses to use those rights should ultimately create greater value in content and in rights ownership. There is no market impediment to creating registers or exchanges if the market participants felt this would reduce costs and increase revenues through licensing. Yet aside from the comprehensive data bases built up by the collecting societies to administer collective rights, there has been no value for money case that has led to the market wishing to develop such an approach.
39. Access to copyright ownership of sound recordings in the UK is reasonably simple. All commercially released music in the UK is issued with what is known as a P notice which asserts the ownership of copyright in the recording and the year of publication. Usually the notice is placed on the CD, cassette or LP itself, and one is included on any accompanying sleeve or booklet. As such the information is clearly in the public domain already
40. This information is easy to find even if the person seeking to use the track does not own a physical copy. The information set out under a P notice is also set out in many different places such as Amazon, Wikipedia, Discogs⁴, iTunes, or the Official Charts Company⁵ website.
41. Someone wishing to licence a particular track (for example in connection with a presentation, use in an advertisement etc.) can therefore simply find out the relevant record label via the P notice and then approach the label responsible to license the track. If the rights have been licensed on or sold, the label concerned will be able to provide the relevant information to the person making the inquiry. Responding to requests of this type is a regular activity of record labels, and details of who to contact are published online.
42. In many cases, there are online services that help to deal with this kind of licensing, for instance Sony Music⁶: Demon Music Group (DMG) has its own online B to B search and licence function⁷. A business wishing to licence a track from its repertoire of over 10,000 songs can register with the service and search the database and request a licence.

⁴ <http://www.discogs.com>

⁵ <http://www.theofficialcharts.com/>

⁶ <https://sonymusiclicensing.co.uk/>

⁷ <https://www.tracklicensing.com/sync>

43. There are also independent services such as Ricall⁸, and Cuesongs,⁹ that work as aggregators and have searchable databases of tracks from a variety of labels including the ability to search by genre/mood etc where a specific track is not sought. These services allow a person to listen to full length streams and download broadcast quality tracks and to request licenses to use any of the music in productions worldwide. Some of these licences are “off the shelf” and allow a web based instant transaction for those tracks that are pre-cleared and pre-priced.
44. New ways of experiencing music have been developed and digital markets are maturing. Content licensing has led to a vibrant market in the UK. Business models have changed, and consumers have a rich economy of services to choose from and are choosing their preferences. Almost every track ever recorded can be bought, streamed or viewed in digital or purchased in physical form through a freely accessible UK service.
45. BPI absolutely agrees with the IPO’s statement that “we hear from many businesses that the introduction of such a register would not be welcomed due to the increased legal and administrative burden”. The idea of a voluntary IP register seems to have few advocates within the rights holder community, and it is not apparent to BPI that there is broad support outside of it from businesses wishing to licence rights. There may well be a small number of vocal individuals that are engaged on this issue but in general it is not obvious what the constituency for this is. Yet the transaction costs of setting such a register up and the burden on business to engage would be real.
46. Rights users would use a register if it simplifies administration and reduces costs associated with licensing. Again, it is not clear why a market solution would not have found the solution if there was an economic case to do so.
47. If IPO wants to consider this approach again, there needs to be a clear market failure case built up on real examples of problems in the whole value chain. This is not a question of just at the ease or otherwise for rights users, but also at the incentives and return for rights creators. The right over the data and information our members hold is an important economic right. The desire for simplicity has to consider possible unintended consequences of greater collective solutions, including on the return to rights holders, as well as carefully examining the merits of trying to fuse together the licensing processes of content industries that bear little in common save for the legal framework of copyright. The benefits of a rights register, in any form, must accrue to rights holders as well as those utilising rights if there is to be a case made.

⁸ <https://ricall.com/music-licensing>

⁹ <https://www.cuesongs.com/>

New Financial Products

48. In the music industry, the major source access to finance for artists is provided by record companies. The major labels are the source of risk capital – the “banks” for music. They are experts in valuing the potential from the IP that is created by artists and songwriters and provide all of the services that are provided by other kinds of angel investors – from mentoring to distribution and product marketing.
49. The success of British music reflects the long term investment in A&R by UK record labels, as they look to sign and develop outstanding new British music talent and promote it at home and around the world. UK record labels – ranging from the three so-called ‘majors’ Universal Music UK, Sony Music UK and Warner Music UK to hundreds of independent labels also represented by the BPI – typically invest on average around a quarter of their annual revenues into new music each year, comparing favourably with the ‘R&D’ spend of other industries, such as pharmaceuticals (13%) and the automotive sector (5%).
50. BPI believes that the Government tends to ignore how the music industry works, and talks about access to finance in the same general way that it looks at other sectors of the economy. As a result it consistently focuses on the banking and venture capital sector, instead of looking at the unique forms of venture capital that fund music.
51. The approach to record companies should be to look at how they can be incentivised to make more risk capital available to emerging artists. The business structure in music is akin to bank/small business. If record companies can invest more money, more artists will be able to start their career.
52. That is why BPI has argued specifically for tax credits to be extended to recorded music – to encourage the major labels to put more of their budgets into UK recordings, to help increase the number of artists supported, and create more UK copyright in the UK for export. It would also create spill over benefits e.g. for studios and equipment manufacturers.

B2B model IP agreements

53. BPI members now have many standard licensing contracts for recorded music. As experience and expertise has developed, the process of negotiation for rights for digital services is increasingly quick and simple for established business models, based on standard terms.

54. Licensing by UK labels goes beyond use for music services, into cross-media offerings, games and brands and the UK has been at the forefront of innovative digital service launches. Cross-media/cross-platform licensing has been commonplace in the digital music market since the beginnings of the digital market, thus many digital music services are available on mobile platforms and via the set-top box. Similarly, labels have a thriving business synchronising the use of recordings into films, TV programmes and games.
55. BPI has regular members' sessions to improve the expertise of record labels in licensing digital platforms. BPI's "Innovation Hub" sets up sessions with record labels (both Indies and Major Labels) and Tech companies with a view to helping both work together on tech based solutions to Label needs. BPI would be happy to engage further with IPO on what could be done to improve business understanding of music licensing.