Comments from PACE Rights Management

Please find below comments from PACE Rights Management regarding the Competition and Markets Authority's "Music and streaming market study".

1. In point 82. "Scope of the market study" in your Statement of Scope you include, "*other intermediaries (including CMOs)*". Additionally, in point 3 in your "Market Study Notice", you include, "*other intermediaries (including collective management organisations)*" within the scope. We suggest that greater attention should be given to PRS within your study.

If the purpose of your study is to assist in the creation of a more efficient market, and ensure that the creatives are appropriately remunerated, then a significant amount of money, data creation and management, and administration is controlled by the Management of PRS. If you are a UK resident music writer, the majority of your income from writing will probably flow through PRS.

PRS Management are a pure monopoly and its inefficiencies and opacity have a major impact on the market and the Rightholders (both music writers and music publishers).

2. It must be remembered that the Management of PRS have distinct and different motivations and priorities than those of the Rightsholders, and the two must be viewed as different stakeholders, and stakeholders that can be in competition with each other. PRS Management compete against Rightsholders for access to, and usage of the license fees.

When you are conducting your study it will be important to understand what is in the best interests of Rightsholders, which can only be ascertained by consulting with Rightsholders (and their representatives: managers, lawyers and accountants) direct.

PRS Management unfortunately cannot be relied upon to represent the best interests of Rightsholders, and any submissions you receive from PRS Management must be viewed as their own submissions, representing their own interests, and not necessarily those of the Rightsholders.

3. To evidence the point above, in publicly available High Court papers from the Delicious Digital vs. PRS case (IL-2020-000106), PRS Management has asserted:
a) That the Code of Conduct that PRS Management created, "*is not a contractual document.*" As such, despite having created the Code of Conduct, their position is that they don't need to comply with it. This is in stark contrast to the Code of Conduct they created in 2019 without consulting the Membership and without receiving the Membership's consent for, that they do demand that Members comply with. According to PRS Management, it's one rule for them, and one rule for everybody else.

b) That, "*only members of the Distribution Committee and management employees of the [PRS] attend its meetings. Its meetings (and the minutes thereof) are confidential. It is denied (if it be so alleged) that the [Members] had any entitlement to be provided with copies of the minutes of the meetings of the Distribution Committee.*" i.e. it is PRS Management's view that Members (and their representatives) have no right to know what goes on in the Distribution Committee, despite it directly impacting the income they receive and therefore their livelihoods.

c) That, "*it is denied that anything in the Membership Agreement, the Code of Conduct or the Implied Terms requires that any decisions in relation to distributions should (a) entitle or require that the [Members] should be permitted to participate in the decision- making or should be consulted about such decisions. Any such requirement would be impractical and absurd.*" i.e. it is the view of PRS Management that Members (and their representatives) have no right to, and should not participate or be consulted about distribution policies that directly impact on the income they receive and therefore their livelihoods. Whatever PRS Management decide in secret, the Members should be subject to and obligated to comply with.

d) That, "*The Membership Agreement, and in particular clauses 3(a) and (b)…., do not, and are not alleged to, contain any express term requiring the [PRS] to act reasonably or fairly or in a transparent manner towards the [Members].*" This is both self-explanatory, and damning.

4. You stated in your Statement of Scope:
"*40. Collective management organisations (CMOs) such as PRS for Music and PPL in the UK, assist music creators and music companies in the licensing of rights and the administration, collection and distribution of royalties. CMOs are subject to certain obligations under the Collective Management of Copyright (EU Directive) Regulations 2016 (as amended following the UK's exit from the EU). In the UK, these obligations are monitored by the IPO.*"

While this is theoretically how the market should operate, the statement above is actually factually incorrect. The Intellectual Property Office ("IPO") does not monitor the obligations within the Regulations. Instead the IPO ignores the Regulations and does not enforce the obligations within it. The IPO has failed to enforce any part of the Regulations for the entirety of its competency. This is because the management and staff of the IPO do not possess the necessary expertise, knowledge, experience or understanding of the market, the Regulations or of the organisations subject to it. Equally they have displayed a strong bias in favour of the Management of PRS. The IPO is not fit for purpose with regards to its competency for the Regulations. That is one of the reasons the need for the CMA to regulate is so great and urgent.

5. PRS Management deliberately and cynically operate an opaque system, keeping financial and operational matters secret from Rightsholders (and their representatives) in order to protect their pure monopoly. PRS Management are able to maintain this system and act with impunity, because: (i) they are a pure monopoly in the UK, and Rightsholders having no meaningful alternative if they wish to license all their rights in the UK, and; (ii) regulators (such as the CMA) have to date, failed to regulate them appropriately.

6. In order to enable Rightsholder to have more control over their livelihoods, and transparency over their income streams, our recommendations to the CMA are that:
a) Rightsholders are given a right to freedom of information about PRS, for all operational and financial matters. This will enable Rightsholders to have transparency about their income flows for their rights and the deals (both reciprocal and licensing) that they are subject to.

b) Rightsholders have the right to audit PRS. Currently PRS Management refuse Rightsholders the right to audit them. Which does rather raise the question about what they are trying to hide.

c) PRS is obligated to consult with the Membership about all distribution policies.

d) In order to have transparent, appropriate and effective decision making and governance of the organisation, PRS is obligated to be transparent with the Membership about matters before the Members' Council, Board and subcommittees, attendants at each meeting of those bodies, and recommendations made and decisions taken by those bodies.

e) PRS is obligated to act in a reasonable, fair and transparent manner towards their Members. This should be an obvious requirement, but not so to PRS Management.

f) In order to create a more transparent and efficient system, PRS is obligated to clean up its repertoire data by:
(i) Removing control of Members' work registrations from ICE, and it is given back to each Member for their own rights.
(ii) Immediately issuing a separate ISWC to all works that don't currently have one.
(iii) Immediately issuing a new ISWC when a new work is registered.
(iv) That separate ISWC's are issued for each recording of a work, rather than amalgamating all recordings under one ISWC.
(v) That there is only one registration of each right in the repertoire, rather than maintaining multiple incorrect registrations on the system.