

IN THE COPYRIGHT TRIBUNAL

IN THE MATTER OF A REFERENCE UNDER SECTION 120 OF
THE COPYRIGHT DESIGNS AND PATENTS ACT 1988
TO VARY THE PPL JUKEBOX TARIFF

11 December 2024

Colleen Keck (Chair)

Ian Whitlock

Christine Jackson

DECISION

The Reference

1. On 30 July 2024 Phonographic Performance Limited (**PPL**) made a reference to the Tribunal to vary the PPL Jukebox Licensing Scheme (the **Jukebox Tariff**) filing its Statement of Grounds the same day and including a revised proposed Jukebox Tariff. On 27 November 2024 PPL filed a witness statement which updated the Tribunal on developments since the filing of the Statement of Grounds. The update requested that the revised Jukebox Tariff take effect from 1 July 2025 rather than 1 January 2025 to ensure those affected by any change have adequate time to implement any change.
2. PPL has consulted with the following trade associations, who represent those primarily affected by the proposed changes to the Jukebox Tariff, namely the suppliers of jukeboxes (**Jukebox Operators**) and their customers:
 - 1) **BACTA** (previously known as the British Amusements Catering Trades

Association). BACTA was the other party in the original 1991 reference that led to the current Jukebox Tariff and is the main trade association for:

- (a) suppliers of gaming machines; and
- (b) Jukebox manufacturers and Jukebox Operators.

- 2) **UK Hospitality**, who represent the vast majority of the customers of Jukebox Operators and whose members are responsible for over 100,000 hospitality venues within the UK.
 - 3) **The British Beer and Pub Association (“BBPA”)**, whose members are responsible for over 20,000 pubs in the UK.
3. Following consultation BACTA has indicated to PPL its support for the proposed changes to the Jukebox Tariff, and UK Hospitality and BBPA have consented to the proposed changes provided certain practicalities regarding timeline and changeover are managed as proposed by PPL in this reference.
4. No person or organisation has applied to intervene in this reference. No person or organisation other than PPL has made any representation to the Tribunal in regard to this reference. In particular, we note that BACTA, UK Hospitality and BBPA were sent a copy of the Statement of Grounds and accompanying schedules on 30 July 2024. None of these bodies has made a representation to the Tribunal in respect of this matter.
5. In this decision we refer to the owners or occupiers of premises using or authorising the use of jukeboxes as **Site Owners**. Under the proposed changes the Site Owners would be the only licensees under the Jukebox Tariff and would pay the relevant licence fees directly to PPL PRS Limited, the joint venture created by PPL and the Performing Right Society Limited (**PRS**) and which has been operating since 2018.

The Jukebox Tariff and the Proposed Changes to the Jukebox Tariff

- 6. The current Jukebox Tariff creates an arrangement whereby the public performance fee payable for the playing of PPL’s sound recordings at business premises via the medium of a jukebox is payable not by the Site Owner where that jukebox is located but by the Jukebox

Operator who leases the jukebox to the Site Owner. The Jukebox Operator is able to recover the fee from Site Owners under their commercial arrangements with the Site Owners. We understand from the Statement of Grounds that this licence fee is often included in the rental arrangement between the Jukebox Operator and the Site Owner. The relationship between the Jukebox Operators and their customers is explained in more detail in the Statement of Grounds but in the interest of brevity is not repeated here. Although some Site Owners have a direct licence with PPL for the use of a jukebox on their premises and pay the fees under the Jukebox Tariff directly to PPL, for example where the Site Owner owns rather than hires the jukebox, we understand this represents a minority of cases.

7. The current Jukebox Tariff has two licence fees: a Multiple Rate applicable to a licensee (i.e. a Jukebox Operator) “who owns or supplies two or more jukeboxes” (a “Multiple Operator”); and a Single Rate for all other licensees (“Single Operators”). The Single Rate also applies to Multiple Operators who fail to comply with the terms of the Jukebox Tariff.
8. PPL wishes to amend the current Jukebox Tariff so as to exclude Jukebox Operators from the scope of the Jukebox Tariff. As a result, the relevant public performance fees will in all cases be payable directly by Site Owners, rather than these fees being paid by the Jukebox Operators.
9. This change would also result in a consequential change, namely removal of the fees for Multiple Operators. The result of this is that the Single Rate under the Jukebox Tariff will apply to all Site Owners, whether or not their jukeboxes are supplied by a Jukebox Operator and whether or not they have more than one jukebox. PPL’s explanation for this is that the differential between the Multiple Rates and Single Rates appears to be a proxy fee that was retained by the Jukebox Operator as recompense for the cost of the collection of licence fees on PPL’s behalf by the Jukebox Operator. (In other words, the Site Owner would pay the equivalent of the Single Fee to the Jukebox Operator and, where relevant, the Jukebox Operator would pay the Multiple Fee to PPL, retaining the difference as a collection fee.) If that collection service is not provided by the Jukebox Operator then there is no reason for there to be a Multiple Rate as all Site Owners will pay the Single Rate direct to PPL and there will be no need for a collection fee.

10. As outlined in detail in PPL’s Statement of Grounds these proposed changes to the Jukebox Tariff are driven by the fact that there have been very significant changes to both the jukebox market and the licensing of music by PPL since the current Jukebox Tariff was set by the Tribunal in 1991. The key details of those changes are outlined in paragraph 1.5 and Section 6 of the Statement of Grounds and again, for brevity, the details of those changes are not repeated here.
11. PPL also submits that the proposed changes will simplify the collection of licence fees and the monitoring and enforcement of licences. Under the current arrangements it is difficult for PPL to enforce rights against Jukebox Operators who are unlicensed, who under report the number of Jukeboxes or who do not pay the fees. PPL estimates that the missing fees for those unlicensed or under-reported jukeboxes could be in excess of £600,000 per annum, to the detriment of its members.
12. Also, as explained by PPL in more detail in the witness statement filed 27 November 2024, PPL and PRS grant “rolling licences” to owner/operators via PPL PRS Limited. This includes, for example all public performances of PPL’s sound recordings covered by PPL’s tariffs and all public performances of the musical works controlled by PRS and covered by its tariffs. This provides a convenient ‘one stop shop’ for Site Owners whereby they can obtain the required licences of all the relevant music rights held by these two collecting societies through a single licence. Having the Jukebox Tariff apply only to Site Owners will enable Site Owners to include their PPL jukebox licence into this single rolling licence, rather than holding it separately via the Jukebox Operator. (The PRS rights for jukeboxes are already covered by this single rolling licence.) PPL submits that this is a more efficient method of licensing both for PPL/PRS and for licensees.

The effect of the changes on Site Owners and Jukebox Operators

13. Under the Jukebox Tariff those Site Owners that currently pay the jukebox public performance fees to a Jukebox Operator will instead pay those fees directly to PPL PRS Limited. The timing of those payments may change as fees will be payable at the start of the relevant 12-month licensing period for that site, rather than on a monthly basis to the Jukebox Operator as is the most usual case currently. To mitigate this change in how the licence fee is paid PPL has stated that PPL PRS Limited allows licensees to pay their annual

licence fees over a number of monthly instalments and this should ameliorate the effects of this timing change.

14. In response to concerns raised by the relevant trade associations PPL has indicated it has taken and will take steps to ensure that Site Owners do not remain obliged to pay the equivalent fees to the Jukebox Operators. Firstly, PPL has advised the Tribunal that it is only licensing Jukebox Operators up to 30 June 2025 and that it has provided adequate notice to the trade associations mentioned above such that that Site Owners have had sufficient time to take steps to ensure that they are not bound to pay Jukebox Operators after the changes to the Jukebox Tariff take effect. Secondly, in order to manage the transition period, PPL PRS Limited will implement the following measures to limit the impact of the transition:

- (a) If the site's licence renewal date is within sixty (60) days after 1 July 2025, then a pro-rated fee (covering up to sixty days) will be added onto the site's next licence renewal to cover the period from 1 July to the licence renewal date. At the same time the PPL jukebox fees will be charged for a full year going forwards from the renewal date in line with the other fees due under the licence for the site.
- (b) If the site's licence renewal date is more than sixty days after 1 July 2025 then a short term "gap" licence invoice will be issued to the site for the period from 1 July 2025 to that renewal date.

Finally, although PPL has indicated that it is not aware of any customers who have paid a Jukebox Operator fees for usage beyond 1 July 2025, it has provided reassurance to the Tribunal that if such a situation arose, PPL PRS Limited would take this into account on a case by-case basis in order to ensure that no Site Owner pays twice for the use of their jukebox to play sound recordings in PPL's repertoire.

15. There is another potential consequence for some Site Owners as it appears that Jukebox Operators have not always collected the public performance licence fees under the Jukebox Tariff from some customers, but simply borne those costs. Under the proposed new Jukebox Tariff those customers will now have to pay the jukebox public performance fees as they will be paying it directly. However, PPL submits that is no reason for PPL not to be paid for the playing of its sound recordings on those jukeboxes and that those payments

to be on the same basis as the customers of jukeboxes that were, prior to the change sought by PPL, licensed via a Jukebox Operator.

16. The changes will also affect Jukebox Operators. To the extent they were recovering the Single Rate from their customers but paying the Multiple Rate to PPL they will be losing the amount of the difference. PPL submits that (i) any loss in revenue should be offset by the considerable reduction in administration and reporting that the Jukebox Operators have to undertake under the Jukebox Tariff; (ii) the difference between the Multiple Rates and the Single Rates effectively represents a commission for a service that the Jukebox Operators will no longer be providing; and (iii) the changes have the support of the relevant trade associations. The change will also positively impact the cash flows of Jukebox Operators.

Duration of the Revised Jukebox Tariff

17. Whilst recognising that the Tribunal's practice in references of licensing schemes has been to make an order whereby the revised tariff applies for an indefinite duration, PPL has submitted that such an approach is unfair and inconsistent with the Tribunal's wider practice in respect of licences. It says that if the Tribunal orders that the Jukebox Tariff remain in force for a period of indefinite duration PPL cannot revise the tariff without reverting to the Tribunal which places PPL in an unequal bargaining position with licensees. It also submits that where a tariff is not (or is no longer) the subject of a Tribunal order, licensees are already protected given that PPL must comply with its Code of Conduct and its obligations under the Collective Management Regulations. This requires, amongst other things, PPL to consult with trade bodies of those potentially affected by any material change to a licence before implementing any such change. Also, licensees (and their representative associations) can at any time apply to the Tribunal under Section 119 of the 1988 Act (in respect of an existing licensing scheme) or Section 118 of the 1988 Act (in respect of a proposed licensing scheme) if they object to the terms of any proposed or existing licensing scheme.
18. PPL has accordingly requested that any revised Jukebox Tariff we might approve should apply for five (5) years from 1 July 2025 until 30 June 2030 when it would expire. On expiry PPL has submitted it should then be free to vary or withdraw the revised Jukebox

Tariff without PPL needing to make any application to the Tribunal, which is the process it follows with its other licences. This is, of course, always subject to any licensee or representative body having the right to refer any proposed or actual licensing scheme to the Tribunal should it feel aggrieved by its terms, as outlined in the paragraph above.

Other relevant points

19. Currently the fees under the Jukebox Tariff are increased on 1 July of each year by reference to the Retail Prices Index. PPL submits this approach should be retained.
20. In the proposed revised tariff PPL has updated and simplified the definitions of jukeboxes but without seeking to make any substantive changes.
21. The proposed terms of the revised tariffs for jukeboxes with background music facility and for jukeboxes without background music are much shorter than the terms of the current Jukebox Tariff. PPL has submitted this is solely as a result of removing the provisions relating to the licensing of Jukebox Operators, rather than making any other substantive changes to those terms.

Our Decision

22. Subject to PPL implementing and following the protections and mitigations as set out in paragraphs 13 and 14 above, the Tribunal is satisfied that the changes proposed to the Jukebox Tariff as proposed by PPL should be approved by the Tribunal. The Tribunal is persuaded by PPL's submissions that these changes will result in a more efficient licensing process for both PPL and for licensees. In coming to this decision, the Tribunal notes that trade organisations representing a significant proportion of those persons and organisations principally and directly affected by the changes have consented to the proposed changes, and that no one has objected to the proposed changes.
23. The Tribunal is also persuaded that the Jukebox Tariff implemented by this Order should be for a period of 5 years expiring on 30 June 2030, rather than be of indefinite duration. Although we do not consider that a tariff of indefinite duration is inherently unfair to PPL, or that it adversely affects PPL's bargaining power with licensees, it does seem to be a

matter of history rather than logic that PPL must come to the Tribunal to approve a change to the Jukebox Tariff, even when, as in this case, the relevant trade associations have consented to the changes. We are persuaded that there are other adequate protections for licensees and proposed licensees if, in future, PPL proposes a change that an affected person does not agree with. We also consider that it is more efficient for all affected parties and the public purse if the Tribunal becomes involved only when a disagreement arises. In coming to this decision we note that the request for this change was clearly set out in Part 12 the Statement of Grounds a copy of which was provided to each of the relevant trade associations on 30 July 2024, and that no one objected to this proposed change.

Conclusion

24. For the foregoing reasons we approve the revised Jukebox Tariff in the form proposed by PPL (and attached as an Annex to this Decision), such revised Jukebox Tariff to come into effect on 1 July 2025 and remain in force for a period of 5 years expiring on 30 June 2030 *provided that* in transitioning to the new Jukebox Tariff PPL shall implement the measures outlined in paragraphs 13 and 14 of this Decision and in particular take all reasonable steps to ensure no Site Owner pays twice for the use of their jukebox to play sound recordings in PPL's repertoire.

For and on behalf of the Tribunal

Colleen Keck

Colleen Keck (Chair)



PPLPP310

TARIFF FOR THE PUBLIC USE OF SOUND RECORDINGS

PHONOGRAPHIC PERFORMANCE LIMITED, 1 UPPER JAMES STREET, LONDON, W1F 9DE.
TELEPHONE: 0207 534 1000.

Jukeboxes with Background Music Facility Tariff

THIS TARIFF IS EFFECTIVE FROM 01 JULY 2025 TO 30 JUNE 2026

For the public performance of Sound Recordings by way of Jukeboxes with Background Music Facility.

Definitions

A **Jukebox** means a device (or combination of devices) that:

- plays Sound Recordings for money or another financial equivalent at a premises;
- may be operated by the insertion of a coin or token (whether operated from one or more coin or token entry points) or by an electronic payment method; and
- uses one or more sets of speakers wherever situated within the premises for the playing of the Sound Recordings at those premises.

A **Jukebox with Background Music Facility** means a Jukebox which actually plays more than four (4) Sound Recordings in any one hour of the day without payment in money or money's worth.

Responsibility for obtaining a licence.

The owner of the business at the premises or the occupier of the premises (rather than the supplier of any jukebox to those premises) is required to take out the correct licence to cover all public performances of sound recordings by way of any Jukebox(es) at those premises.

Scope

This tariff covers the playing in public of Sound Recordings by way of a Jukebox. The playing in public of Sound Recordings by any other means will be covered by the appropriate tariff(s).

Indexation

The fee in this tariff is subject to annual adjustment by reference to the official Index of Retail Prices (All Items) as published by the UK Government.

Fee (£)

The Single Jukebox Rate effective from 1 July 2024 (£239.64) as increased in line with the percentage change in the official Index of Retail Prices (All Items) between March 2024 and March 2025

VAT should be added at the current rate to the above charge.

The Minimum PPL Licence Fee will be applied.

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PPLPP311

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A **Jukebox without Background Music Facility** means a Jukebox which actually plays no more than four (4) Sound Recordings in any one hour of the day without payment in money or money's worth.

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The owner of the business at the premises or the occupier of the premises (rather than the supplier of any jukebox to those premises) is required to take out the correct licence to cover all public performances of sound recordings by way of any Jukebox(es) at those premises.

Scope

This tariff covers the playing in public of Sound Recordings by way of a Jukebox. The playing in public of Sound Recordings by any other means will be covered by the appropriate tariff(s).

Indexation

The fee in this tariff is subject to annual adjustment by reference to the official Index of Retail Prices (All Items) as published by the UK Government.

Fee (£)

The Single Jukebox Rate effective from 1 July 2024 (£179.78) as increased in line with the percentage change in the official Index of Retail Prices (All Items) between March 2024 and March 2025

VAT should be added at the current rate to the above charge.

The Minimum PPL Licence Fee will be applied.

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