

**Association for Electronic Music
(AFEM)**

**Response to the CMA Review of PRS
Undertakings**

January 2016

1 Summary

The Association for Electronic Music (AFEM) is the not-for-profit global trade body representing the genre. Our membership includes rights-holders, festivals, creators, technology companies and music retailers.

Our music represents around 30% of 2015 downloads and streams. Despite this value, PRS fails to identify our music in clubs, at festivals and on-line leading to significant shortfalls in royalty distributions. In light of this, a number of AFEM campaigns are focussed on the need for PRS to radically improve accuracy, efficiency and transparency using readily available technology and changes to policy.

<http://www.recordoftheday.com/news-and-press/dance-music-chases-100m-in-lost-royalties>

<http://www.musicbusinessworldwide.com/prs-vs-soundcloud-an-opportunity-to-transform-music-biz-royalties/>

PRS argue that it is more efficient to distribute by analogy than utilise technology to pay out accurately. Payments made by analogy therefore favour the publishers who sit on the PRS Board and its Licensing and Distribution Committee.

An examination of the PRS Board highlights a further issue. The turnover of organisations and representatives on the elected PRS Board is small due to the significant annual earnings required by any single member to stand for election. With most writers and publishers earnings being reduced significantly by streaming rates (set by the PRS Board), a change in leadership and governance is unlikely. It is worth noting that over 80% of PRS members earn less than £10,000 pa yet less than 50% of all streams are matched and paid to the correct writer.

It is our view that PRS have failed to deliver nearly every undertaking requested by the CMA. Furthermore, with the advent of the Hubs Back Office, there is now a greater lack of transparency and governance than during the original investigation.

2 The scope of the CMA review

We note that the CMA's review of the PRS undertakings is focused on whether there has been a change of circumstances such that the undertakings should be superseded, varied, or released as follows:

- whether there are undertakings related to the MMC's findings which have now served their purpose such that the undertakings are no longer appropriate and should be revoked;
- whether there are undertakings which remain relevant in addressing ongoing adverse effects as identified by the MMC, and where either:
 - (i) the undertakings should be retained; or
 - (ii) the undertakings should be varied.

We also note that the CMA highlighted three potential changes that provided grounds for the CMA to consider there to be a realistic prospect of finding a change of circumstances.

- Internal changes within the PRS – The undertakings and MMC recommendations included a significant number of internal changes to the PRS. In this area, we are keen to hear from stakeholders as to whether the MMC's adverse findings in relation to the internal structure of the PRS are still present or whether:
 - (i) the undertakings and recommendations in this area have served their purpose, such that they are no longer required and can be revoked; or
 - (ii) the adverse findings remain relevant and the undertakings should remain in force or be varied and if so, how.
- Legislative changes – The undertakings and the MMC's recommendations overlap, at least to some extent, with the Collective Rights Management over standards of governance, financial management and transparency of all EU CMOs. The government has stated its intention that new Regulations will implement the CRM Directive which must be transposed into national law by 10 April 2016.

3 Specific responses to previous undertakings

a) Governance

In matters of corporate governance, the PRS had failed to organise itself in such a way so as to ensure it operated efficiently;

Despite nearly half of all uses of music on-line (ie Spotify and Itunes) being unidentified by PRS leading to uncollected and unpaid royalties to its members, PRS is not investing strategically in readily available technology to identify music streamed, sold and performed (this is called Music Recognition Technology).

PRS blocks members sending representatives that are not members of PRS to meetings at PRS.

PRS directors are not P & L responsible and there are inadequate expenditure control mechanisms, as evidenced by consistent over spend on projects, running into multiple millions.

Investment and licensing decisions are not based on a communicated cost allocation or cost benefit model.

PRS prevents members from self-administering their own live performing rights and other categories of rights;

PRS members cannot, as per the 'GEMA Categories' entitlement, administer their own rights. There are no known plans to invest into the systems and policies that will allow this, unlike their Dutch equivalent, BUMA Stemra.

b) Cost Reduction

PRS had failed to adopt efficient management practices and systems for distribution of royalties

There is no known strategic cost reduction programme shared with PRS members, indeed costs are increasing.

c) Transparency

PRS had failed to provide adequate information to its members and to operate with sufficient transparency.

PRS now concludes many of its largest and most important deals under Non Disclosure Agreements, meaning that PRS members cannot know the rates on which their royalties will be paid, cannot identify if payments are correct and if the deals are 'good value'. Coupled with no ability to withdraw and administer their own rights, we suggest this is anti-competitive.

4 In summary

There is no plan communicated to PRS members, approved by the Board or otherwise to deliver the recommendations of the original MMC report, nor is there any reporting or monitoring of the recommendations.

AFEM proposes that many of the original undertakings remain necessary and in many cases have not been delivered by PRS to the detriment of its members. We find very few undertakings have served their purpose on the basis that over half have failed to be delivered.

Furthermore, AFEM proposes that market changes have heightened the need for many of the original undertakings. For example, the new 'hub' appears to place large amounts of repertoire, process and decision making away from PRS members reach.