

The Music Industry

An intelligent Creator's view



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Performing Rights Organisations

PRS for Music - A safe haven for oligopolies?



Brief history: The **Performing Right Society** was founded in 1914 for collecting fees for live performance from [sheet music](#). Initially it was distinct from the activity of the Mechanical-Copyright Protection Society, originally founded in 1911, and renamed in 1924, and [Phonographic Performance Limited](#), founded in 1934 by [Decca](#) and [EMI](#), which collected fees for playing gramophone recordings.

The **Mechanical-Copyright Protection Society** began as MECOLICO, the Mechanical Copyright Licenses Co. in 1911 in anticipation of the [Copyright Act of 1911](#), and merged with the Copyright Protection Society in 1924.^[2]

Another agency, the British Copyright Protection Company or Britico was founded in 1932 by Alphonse Tournier, specialising on collecting royalties in the UK on French and German musical copyright, and becoming the British Copyright Protection Association in 1962. This company, Britico, started to share computer facilities with PRS in 1970.

Originally the Performing Rights Society was a composers' society, conceived and orchestrated by Creators for and on behalf of Creators and not by Major Publishers as depicted historically by the PRS for Music website. This historical distortion perpetrated and perpetuated by the PRS, can influence the un-initiated into believing that the Major Publishers are a philanthropic group of individuals who have only the interests of Creators at the very heart of their whole business reasoning. Total nonsense. Major Publishers' interests are parasitic in nature and emanate from a small group of corporate elite who have no real interest in the individual or collective Creator(s) other than simple questions consisting of, are they viable producers of saleable musical product and, what is the yield to investment ratio in the short, medium and long term? This rationale is how the corporate music industry is operated. A harsh reality, but nevertheless a reality. No different perhaps from other industries, except music is intellectual property (IP) with important residual qualities and, therefore, extremely valuable. The acquisition and control or percentage stake of such IP is at the heart of every major publisher's 'raison d'être'.

The music industry can roughly be broken into two camps, Creator and Administrator as follows:-

CREATOR

Composer, Arranger, Orchestrator, Performer, Recording Professionals etc.

ADMINISTRATOR

Publisher, Performing Rights Organisations (PROs), Mechanical Rights Organisations (MROs), Lobbying and information gathering satellites, Distributors etc.

The music industry of the UK and its constituent parts, especially the Administrator camp, cannot be viewed in isolation due to its global nature. Therefore an examination of the PRS for Music should also include the MCPS and PPL and consequentially, their relationships with their European and global counterparts. Strategic agreements between international royalty collection agencies, the oligopolies of Major Publishers (and large independents) and Major End Users (e.g. Broadcasters) at present, through what can arguably be termed concerted practice, exert near total market control. This control, whilst completely obvious to all participants and stakeholders within the industry itself

seems to escape the attention of every legislator seeking to 'level the playing field'. Only one example from a multitude of abuses enacted is necessary to demonstrate the primary cause. All other issues are symptomatic.

'Cashback' Agreements became Administrative Agreements

When the original MMC enquiry into the PRS was initiated (1997), the MMC was aware of 'Cashback' agreements between Major Publishers and Major End Users. These 'Cashback' agreements covertly circumvented the blanket agreements between the PRS and the Broadcasters and the MCPS and Broadcasters. These 'Cashback' agreements were simply a secret written agreement between Major Publishers and Major End Users (i.e. Broadcasters) which stated that for all music utilised by the Major End User, they would be reimbursed between 30-40% of the value of the documented usage paid in the original blanket agreement once the collection agencies had done their job and distributed the income to the Major Publishers. This percentage *supposedly* came out of the publisher share of the royalties collected and not the composers'. Unless forensic accounting is utilised, you could neither prove nor disprove the statement. The 'Cashbacks' had the effect of inducing the Major End Users into using music from those publishers secretly offering the 'Cashback', obviously distorting competition. The reason why I know is because I supplied the regulatory authority with the documentary proof of these agreements and forced the actions of the Major Publishers into the open. No real action was taken by the regulatory authority, if anything, it was light touch. This gave the green light from regulators and legislators alike to the Major Publishers that it was fine to abuse their dominant market position. This failure to act also had the effect of alerting the Major End Users to the value of the IP and became an incentive to acquire interests in the music (IP) they were using. The 'Cashback' agreements evolved into what is today deemed 'legitimate' administrative agreements between the Major Publishers and Major End Users. The Major End Users began to acquire and develop interests in the music IP and employ the Major Publishers to administrate their interests. In fine, what happens today is that the market is polarised, Major End Users are in administration agreements with Major Publishers forcing Creators who wish to get music used (and thereby generate income) to give away 16.66% of their original 50/50 Creator/Publisher share to the Major End User (creating a three way split

33.33% Creator, 33.33% Major Publisher and 33.33% Major End User) for the opportunity.

So, the major end users negotiate blanket agreements with the PRS and MCPS. They then pay these blankets. PRS and MCPS then pay the Major Publishers. The Major Publishers take their cut and they in turn give the residue of the money back to the Major End Users. This competitive issue is further compounded, and where the competition authorities are again oblivious, is they have completely disregarded the fact that the Major Publishers influence heavily the workings of the PRS for Music, MCPS and PPL (PPL through their affiliated Record Labels). Their companies are represented by directors on the PRS for Music board and sit on key committees which determine the rates at which end users pay. They also sit on committees that determine Distribution to PRS for Music members. Couple this with the fact that the MCPS is owned by the Music Publishers Association (MPA) which is dominated by the Major Publishers, and you begin to understand why a certain tone of cynicism towards the competition authorities creeps into this missive. In fine, with the present royalty system, a zero sum game for the membership, the Major Publishers actually determine (with a high degree of accuracy) how much they're going to earn year on year by determining the rates Major End Users pay, manipulate the distribution policy and administrate the major end users IP whilst getting a fair amount of their material used in the bargain. Complete 'Win Win' situation for dominant interests as the Creator interests are very poorly represented at all levels within the industry and government. One of these administrative agreements involves the BBC (public service broadcaster) and Universal yet there is absolutely no transparency in Universal's involvement with the PRS for Music who sets the rates and their administrative involvement with the BBC.

Competition, what competition?

If these facts were placed before the relevant Select Committee, the only term that would be applied once understood would be 'a stitch up'. Unless something is done to restrict these and other abuses, the intelligent Creator (and Symbiotic Administrator - yes, there are some honourable smaller independent publishers) can only draw the conclusion that this country institutionally disadvantages the SMBs and intentionally aids the oligopolies. Very few in key positions in this industry would either argue with my knowledge or openly debate the points. In

fact the CMA in its review will be interviewing some of the very same people who quietly agree with me and could provide the evidence in a very expedient manner with special attention to Distribution policy abuses. Some complainants with submissions will demonstrate the symptoms in varying areas such as Distribution or Rates where they believe their royalty income has been targeted by abusive influences on the Board, what I have given is the foundation framework showing the primary ‘modus operandi’ on which all abuses develop.

Conclusions

Whilst not exhaustive, I list some conclusions (with brief explanations) at which I have arrived, which will begin to address issues with this ‘de facto’ monopoly.

1. The PRS needs to have all member influence at board level removed and external governance employed in the key areas of Rates and Distribution with special attention to removing all Major Publisher influence from the negotiation of blankets if they are to maintain their administrative agreements.

Fact. Less than 3% of the membership vote for Director positions. The 3% of the membership that do vote is represented in the main by the major publishers who, through present PRS rules, utilise block votes and therefore, decide who goes on the Board.

2. The PRS needs to stop funding lobbying satellites like UK Music. Although funded by the membership, the information derived by this quango only reaches the membership, if at all, in a diluted form and is, fundamentally, a political information gathering tool for a small group of corporate individuals who represent their company interests above those of the collective membership on the board of the PRS for Music. Lobbying initiatives are initiated mainly by the Board of the PRS or the Executive of the PRS under instruction by the Board.

Fact. At the last enquiry into implementing joining fees, it was found that 7.2% of the composer membership earn 90% of the composer royalties and 5.2% of the publisher members earn 90% of the publisher royalties. The PRS has 115,000 members. A simple question to expose the iniquity would also be to assess how many of the 7.2% of composers are actually published by the 5.2% of publishers?

3. The PRS needs to undertake a review of their systems and communications with their members with an in-depth membership consultation. Input to the PRS is extremely difficult in many ways. For example, the system to input and register new works is extremely labour intensive for the individual Creator. There is no way to prepare batch input of new works with the present system. Likewise, from an analysis viewpoint, there is no way to link performance royalties with mechanical royalties even though both sets of data are contained within the PRS for Music framework of computers and these royalties are inextricably linked. All communications with the membership are one way and there is no unfettered access for the membership to communicate with each other on the PRS for Music platform where membership views can be publicly exchanged (e.g. membership blogs in which views of the PRS, positive or negative, can be seen publicly).

4. The PRS needs to cease utilising members' monies sponsoring and/or funding other organisations such as the IVORS, BASCA and other events not directly connected with the duties of royalty collection. This leads to accusations of cronyism as Composer Directors who sit on the Board of PRS for Music are beneficiaries in one form or another. In fact, all relationships between Composer Directors and Publisher Directors should be transparent (i.e. Composer Directors who are published by Publisher Directors etc.).

5. The PRS needs to restrain and reverse excessive remuneration for all PRS for Music employees at executive levels. PRS for Music accounts are over simplified and actually leave out too much detail that would otherwise be spotted by the membership.

6. There needs to be an external review undertaken by government of all strategic relationships of PRS for Music with other PROs, MROs and all political affiliations and lobbying undertaken. This would demonstrate the conduits of potential control abuses that the Major Publishers can, and do, exert worldwide on music markets through instruments like PROs and MROs.

7. Complete transparency at all levels of PRS for Music with the facility for members to force the direct equivalent of Freedom of Information requests on this 'de facto' monopoly. At present, all board minutes are kept confidential for varying reasons.

8. PRS for Music should review all Complaints procedures and vary the categories in which complaints are organised. Complaints procedures appear restrictive, especially serious complaints. They also appear ad hoc and whilst run by experienced external industry individuals, these people have no real understanding of the Music Industry or royalty collection per se.

9. Open political channels for smaller UK based PROs to compete with PRS for Music as in other UK industries, by forcing PRS for Music to open their network. It worked for telecommunications and utilities.

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