

Provisional decision on the CMA’s review of the Performing Right Society Limited undertakings

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Summary

1. The Performing Right Society Limited (PRS)¹ gave undertakings in February 1997 following an investigation by the Monopolies and Mergers Commission (MMC).² The aim of the undertakings was to address the specific adverse effects the MMC identified as arising from its market position and were designed to help the PRS become more efficient, transparent and equitable in its operations. This required significant changes in the governance structure of the PRS, including changes to the PRS’s conditions of membership so that

¹ Now known as PRS for Music.

² CM 3147, February 1996.

members could withdraw certain categories of rights and improvements in the transparency of the PRS amongst other requirements.

2. The CMA undertook this review under its statutory duty³ to keep the undertakings under review and to consider whether the undertakings remain appropriate, or need to be varied or superseded, by reason of a change in circumstances. Of particular focus in this case were market developments and legislative changes since the undertakings were given and the extent to which these act as effective constraints on the activity of the PRS.
3. The PRS has taken action to comply with all the recommendations imposed through the undertakings, with a number of specific reforms having taken place shortly after the undertakings were given in 1997. While a small number of recommendations were for one-off changes within the PRS, most recommendations involve the Office of Fair Trading (OFT) and subsequently the CMA in monitoring ongoing progress, with annual reporting by the PRS to the OFT (now CMA).
4. The CMA published an issues statement to which it received 12 responses.⁴ Respondents made comments on a wide range of subjects. Some covered issues that were outside the scope of the review but the main themes raised which were within the scope of the review involved the following:
 - (a) the PRS's lack of transparency and consultation with its members;
 - (b) the PRS's information technology (IT) strategy and data;
 - (c) cost allocation;
 - (d) governance; and
 - (e) the withdrawal of rights.
5. The CMA analysed all responses together with all other evidence in its possession leading to its provisional decision. The evidence considered showed that although the PRS's market position in the supply of administration services for performing rights has not changed significantly, the CMA has identified changes in circumstances that it considers will constrain the PRS's activities in the absence of the undertakings.

³ Paragraph 16 of Schedule 24 to the Enterprise Act 2002 by virtue of SI 2006 No. 355 (The Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2006).

⁴ The CMA received two other responses concerning matters that were outside the scope of this review. These responses have not been published.

6. The main change in circumstances identified by the CMA is the introduction of a new legislative regime that deals with the type of issues identified by the MMC. At the time of the undertakings, there was no legislative regime specifically addressing the conduct of collective management organisations (CMOs) such as the PRS.
7. The Directive 2014/EU on the collective management of copyright ('the Directive'),⁵ introduces a number of requirements that a CMO, such as the PRS, must meet and various protections for the members of a CMO. The Directive aims to 'lay down requirements applicable to collective management organisations, in order to ensure a high standard of governance, financial management, transparency and reporting'.⁶ The Directive must be transposed into the national law of each member state by 10 April 2016 and the Collective Management of Copyright (EU Directive) Regulations 2016⁷ ('the Regulations') were laid before Parliament on 25 February 2016.
8. The CMA has also analysed the current market position of the PRS and the extent to which it is still in a significant market position, such that it may not be incentivised, in full, to respond effectively and efficiently to the requirements of the full range of its members.
9. We have provisionally found that the music sector has undergone significant change since the undertakings came into force in 1997, with the administration of performing rights now more international in scope than was previously the case. The PRS has also evolved over this period, entering into a joint venture with CMOs in Germany and Sweden. We have provisionally found that these changes, while substantial in scope, do not appear to have eroded the market position of the PRS in the UK to a significant extent, and it appears to continue to hold a significant market position.
10. We consider that the Directive covers the same broad aims as the original undertakings including certain areas in the undertakings that are not specifically addressed. For example, the undertakings concerning IT strategy to take account of the need to streamline processes and integrate major systems is not specifically addressed by the Directive. However, the Directive places an obligation on CMOs to distribute payments to its members in a timely manner. Moreover, the growth and ubiquity in the use of IT since 1997 make the undertakings in this area no longer appropriate. We therefore

⁵ Directive 2014/26/EU of the European Parliament and the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

⁶ Recital 9, Directive.

⁷ SI 2016 No. 221.

consider that the provisions of the Directive provide an appropriate framework for regulating the PRS's activities on an ongoing basis.

11. Therefore, on the basis of the evidence in the CMA's possession, which is summarised in this document, the CMA's provisional decision is that the undertakings are no longer appropriate. Consequently, the CMA's provisional decision is to release the PRS from these undertakings.
12. We are now consulting on this provisional decision. The consultation closes on **22 April 2016**. Please submit responses to:

Peter Hill
7th Floor North
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

Email: remedies.reviews@cma.gsi.gov.uk

13. Following this consultation, the CMA will consider the responses received and the evidence and views presented and will assess the impact of these responses on its provisional decision before reaching a final decision. A final decision is expected to be published later in 2016.

CMA's duty

14. Responsibility for deciding on variation or termination of these undertakings lies with the CMA under the Enterprise Act 2002⁸ as amended by the Enterprise and Regulatory Reform Act 2013. The CMA has a duty to keep under review undertakings made under section 88 of the Fair Trading Act 1973. From time to time, the CMA must consider whether, by reason of any change of circumstances:
 - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or
 - (b) an order is no longer appropriate and needs to be varied or revoked.

⁸ Paragraph 16 of Schedule 24 to the Enterprise Act 2002 by virtue of SI 2006 No. 355 (The Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2006).

Background

15. The PRS is one of the main collecting societies for royalties in respect of music performance in the UK⁹ and it also qualifies as a CMO under relevant EU legislation. The PRS is a member organisation with over 100,000 songwriter, composer and publisher members. The PRS grants licences to users of musical works, such as broadcasters, radio stations and live music venues. Royalties become due to the authors of such works when they are played in public or broadcast on the radio or television. The PRS collects the royalties and then makes a distribution to the authors after the PRS has deducted a commission. The PRS's turnover in 2014 was £513.5 million, with a net distributable income of £457.2 million.¹⁰
16. Following a reference from the Deputy Director General of Fair Trading in November 1994, the MMC investigated whether a monopoly situation existed in relation to the supply of services of administering performing rights and film synchronisation rights. The MMC delivered its report in February 1996 and accepted associated undertakings from the PRS in February 1997.

The MMC's 1997 report into the PRS

17. In making its reference to the MMC, the OFT drew attention to concerns that the revenue distribution policies of the PRS were not equitable, misgivings about the PRS's requirement that members assign their rights to it exclusively, and claims of managerial inefficiency.
18. The MMC found that a monopoly situation existed in favour of the PRS concerning the supply of the services of administering performing rights and film synchronisation rights. The MMC also investigated whether any action or omission on the part of the PRS was attributable to the monopoly situation and whether any facts found in the course of its investigation operated against the public interest. The MMC identified various issues which led to a number of adverse findings.
 - (a) The MMC found that there were tensions within the PRS between writers and publishers and between those who were involved in different musical genres. These tensions contributed to the development of a corporate organisation and a way of working which was cumbersome.

⁹ The PRS and other collecting societies operate internationally through a network of reciprocal agreements which provide access to their respective repertoires.

¹⁰ Report and Financial Statements, Performing Right Society Limited, April 2015.

- (b) The MMC found evidence of deficiencies in the corporate structure and management practices. It found there to be too many sub-committees and found the lack of clearly defined objectives and a long-term strategy by the executive was leading to poor policy decisions. Further, the PRS had not appointed a chief executive for almost two years which had a prejudicial effect on the way in which the PRS was managed.
- (c) The MMC also found considerable deficiencies in IT at PRS. Management of the PRS, while aware of this issue, had been too slow to link business strategy and IT strategy and little progress had been made in remedying deficiencies in essential databases identified several years previously.
- (d) The MMC found that PRS failed to consult the membership adequately and policies and procedures were not sufficiently transparent. As well as making substantial cross subsidisation of costs across its activities it had failed to adopt an appropriate cost allocation system and to make clear to members how costs were allocated. Nor did it have in place adequate systems for ensuring that the distribution of royalties was carried out equitably and for assessing the consequences to the membership of changes in its distribution policies. There was no mechanism by which members could appeal against decisions, particularly those regarding the distribution of royalties, where members considered such decisions to be unfair.
- (e) The PRS refused to allow members to self-administer their own live performance rights. The PRS acknowledged that its members were entitled to self-administer entire categories of rights listed in the *GEMA* decisions¹¹ including public performance and broadcasting. But these were not necessarily the only categories of rights which members wished to self-administer.
- (f) The MMC concluded that if members considered they could administer live performances themselves at least as effectively as the PRS then they should be free to do so, but should bear any reasonable additional costs caused to the PRS.
- (g) The MMC found that PRS's refusal to allow members to self-administer their own live performance rights were acts or omissions of the PRS which were attributable to the monopoly situation and which operated against the public interest.

¹¹ European Commission decisions in *Re GEMA (No 1)* CMLR D35 and *Re GEMA (No 2)* 24 CMLR D115

(h) In the light of the adverse findings, the MMC made 44 recommendations. In making the recommendations the MMC stated that it was seeking to promote efficiency, equity and transparency.

19. The MMC's findings and its recommendations covered the following five areas:¹²

(a) corporate governance and management practices;

(b) management and distribution practices;

(c) lack of transparency;

(d) lack of right of appeal in matters of dispute; and

(e) exclusivity in relation to rights administration.

The PRS undertakings

20. The undertakings given by the PRS in February 1997 included the following obligations:

(a) The PRS undertook not to make changes to its Memorandum and Articles of Association (and Rules and Regulations made under them) which would:

(i) prevent or inhibit members from self-administering their own live performing rights or other categories of performing rights;

(ii) prevent writers from sending representatives that are not members of the PRS to speak or vote for them at general meetings of the PRS;

(iii) significantly alter the structure or operation of its appeals board; or

(iv) be contrary to any recommendation in the MMC's report.

(b) The PRS also undertook to notify the OFT (now CMA) of proposals to make amendments that would affect the above obligations.

(c) In relation to corporate governance, the PRS undertook to keep separate:

(i) its chairman and chief executive roles; and

¹² See the Annex for details of the individual recommendations.

- (ii) its board on the one hand, and its Chief Executive Committee and Executive Committee on the other.
 - (d) The PRS undertook to provide the OFT (now CMA) with an annual report specifying the measures taken to comply with the recommendations made by the MMC.
 - (e) The PRS undertook to provide the OFT (now the CMA) with a copy of each of the following documents within seven days of publication:
 - (i) its PRS News publication; and
 - (ii) the PRS Yearbook containing the PRS's annual report and accounts which would set out a simplified description of the cost allocation scheme and aggregated details of the overseas earnings of members.
 - (f) The PRS also undertook to provide the OFT (now CMA) with the text of any amendment to its member's handbook within seven days after amendment.
 - (g) The PRS also agreed to provide the OFT with such other information as it may reasonably require from time to time to monitor compliance with the undertakings.
21. Details of the MMC's 44 recommendations referred to in the undertakings can be found in the Annex.

Decision to review the undertakings

22. The CMA's annual plan for 2015/2016¹³ committed the CMA to a systematic review of existing merger, market/monopoly remedies, which may lead to the removal of measures that are no longer necessary and/or may be restricting or distorting competition.
23. In July 2015, the CMA commenced a consultation which sought views on whether to carry out reviews of 13 sets of market and monopoly remedies that had been put in place by the CMA's predecessors prior to 2005.¹⁴ Following that consultation, on 20 November 2015 the CMA commenced a review of the PRS undertakings.

¹³ [CMA annual plan 2015/16](#) (CMA34, March 2015), paragraphs 4.12 & 4.17.

¹⁴ Review of monopoly remedies put in place before 1 January 2005: Invitation to comment, July 2015.

24. The CMA decided to conduct this review of the undertakings because it considered there was a realistic prospect of finding a material change in circumstances since the undertakings were given.
25. The remainder of this document is structured as follows:
 - (a) examining the views and concerns of respondents that are related to the areas of concern set out by the MMC, the undertakings and MMC's recommendations;
 - (b) considering the extent to which there are other constraints, including legislative and competitive, on the activities of the PRS in the areas covered by the undertakings; and
 - (c) identifying whether there are changes of circumstances relevant to the undertakings such that they should be varied, superseded or released.

Stakeholder views

26. The issues statement was published on 9 December 2015 with a response deadline of 15 January 2016. The CMA received 12 responses from third parties. In addition, the CMA liaised directly with the PRS and the Intellectual Property Office (IPO, the official UK government body responsible for intellectual property rights) concerning this review.

The PRS

27. The PRS considered that there had been extensive changes both internally and externally over the last 20 years which meant that the undertakings were no longer appropriate and should be revoked. The PRS pointed out that the advent of online exploitation had fundamentally changed the music industry and cross border markets. In addition, the PRS had invested considerable resources to comply with relevant obligations imposed by the European authorities.¹⁵ This was following an in-depth examination by the European authorities of market developments and the impact on CMO operations.
28. The PRS stated that the adverse findings by the MMC no longer applied because:
 - (a) it had implemented many changes to address the concerns of the MMC; and

¹⁵ The legislation referred to is the Directive and the implementing UK Regulations.

- (b) it had no ability and/or incentive to reverse efficiency enhancing changes because it now operated in a much more regulated and competitive environment.

The IPO

29. The IPO provided information concerning the Directive, which must be implemented in the UK by 10 April 2016 and which sets minimum standards of behaviour for CMOs established in EU member states. It noted that the definition of CMO in the Directive included most organisations generally described as collecting societies in the UK, which included the PRS.
30. The IPO noted that the Directive placed requirements on CMOs across their operations, including several areas with significant overlap with some of the undertakings given by the PRS in response to the 1997 MMC investigation. It considered relevant areas to include:
 - (a) Granting and withdrawal of mandates: The Directive establishes an explicit right for right holders to grant mandates for their rights to any relevant CMO established in a member state, and allows right holders to withdraw their rights from a CMO within specific timeframes.
 - (b) Governance: The Directive codifies the rights of a CMO's membership to participate in decision-making processes, and also requires CMOs to operate a supervisory function in relation to the activities of management.
 - (c) Distribution: The Directive requires CMOs to distribute rights revenue accurately and diligently.
 - (d) Complaints: The Directive requires CMOs to operate an effective complaints process which can deal with complaints from members.
31. The IPO stated that the Directive would be implemented in the UK by The Collective Management of Copyright (EU Directive) Regulations 2016, which were laid before Parliament on 25 February 2016 and are due to come into force on 10 April 2016.¹⁶ It clarified that the Regulations created a duty on the Secretary of State for Business, Innovation and Skills to monitor compliance with their provisions – fulfilling the role of National Competent Authority as set out in the Directive. In practice, this monitoring function would be carried out for the Secretary of State in the UK by officials at the IPO. The Regulations enabled enforcement of the obligations on CMOs through powers to: request

¹⁶ [The Collective Management of Copyright \(EU Directive\) Regulations 2016](#).

information; to issue compliance notices requesting a person to take particular actions; and to impose financial penalties.

32. The IPO noted that it had published guidance¹⁷ on the Regulations and would be producing separate guidance on how it will carry out its investigation and enforcement activities. It intends to publish this shortly. It intends to set out criteria under which the IPO may choose to carry out an investigation.

Views of third parties

33. The CMA received responses from 12 third parties that were either linked with, or members of, the PRS. A number of concerns were raised on a broad spectrum of issues including withdrawal rights, cost allocation, transparency and data processing. Some views also highlighted the significant improvements made by the PRS to its governance structure that now reflects an improvement in its consultation with members and transparency. However, the majority of views expressed a preference for the undertakings to be retained citing a number of reasons including transparency governance and concerns around the withdrawal of rights. The detailed comments are explored further below.
34. In addition, some concerns were raised concerning specific competition issues that are not within the scope of this review.¹⁸
35. The aim of this analysis is to explore whether there has been a change of circumstances such that the undertakings are no longer appropriate and consider whether they should be superseded, varied or released. The following section provides a summary of the main comments considered relevant to the review. The comments fall under the following broad categories:
 - (a) limited transparency and consultations;
 - (b) IT strategy and data;
 - (c) cost allocation;
 - (d) governance; and
 - (e) the withdrawal of rights.

¹⁷ IPO (2016), *Guidance [Guidance on the UK Regulations implementing the Collective Rights Management \(CRM\) Directive](#)*.

¹⁸ These concerns were allegations of breaches of both the Chapter I and Chapter II prohibitions of the Competition Act 1998. Where appropriate, these matters may be considered separately by the CMA.

Limited transparency and consultations

36. The CMA received some allegations that the PRS might not be providing details of its policy approach or consulting its members to ensure they were able to influence decisions made in committees or at PRS board level. One stakeholder noted that members often found out about a new policy or a change of policy after the PRS had made its decision, while another noted that the PRS had not consulted members on policies in important areas. The CMA considered these comments to be related to the MMC's recommendation 40.¹⁹
37. A number of stakeholders also raised concerns around the lack of transparency in licence agreements with digital service providers (DSPs). Some attributed this to the PRS's use of non-disclosure agreements (NDAs), in contrast with other areas where the PRS was more transparent in the information supplied to members.
38. The PRS submitted that licence agreements had contained non-disclosure obligations for many years and that this applied to licences agreed at the time the undertakings were given. It noted that, for example, the total fee paid by a broadcaster was not typically disclosed as this amount was part of an individual negotiation. The PRS noted that individual members were able to work out an effective distribution rate for a given service over a given time period from detailed distribution statements it provided its members.
39. Furthermore, the PRS noted that there appeared to be a general misconception among some of its members that multi-territory online licensees imposed unreasonable non-disclosure obligations on the PRS. The PRS stated that these obligations arose from the fact that the licences covered calculations which were based on commercially sensitive information relating to each licensee. Accordingly, the PRS stated that these non-disclosure obligations were, in fact, both reasonable and necessary and stemmed from the need for compliance with competition law.
40. The CMA has reviewed material such as annual general meeting (AGM) communications and other information sent by the PRS to its members which shows that the PRS engages with and consults its membership on key policies. In relation to the use of NDAs, the CMA acknowledges that it can be necessary to protect some information in licences for DSPs where the PRS is also seeking to negotiate with other competing DSPs, in order to prevent anti-competitive information exchange between the PRS's licensees. Therefore,

¹⁹ The PRS to introduce a formal consultative process to take members' views on proposed changes in policy or strategy.

the CMA considers that the PRS's explanation for the use of NDAs in these specific circumstances appears to be reasonable.

IT strategy and data

41. A number of stakeholders raised concerns that the PRS had not invested sufficiently in IT or sought to improve its data systems. These comments included: allegations that the PRS was continuing to use legacy IT systems for processing royalties; that there were improvements to data processing that could be made; that the PRS had failed to invest in music recognition technology and was overly reliant on sampling; and that it had failed to deal with data backlogs that had not been processed or paid to members. The CMA notes that these comments related to recommendations in category B (management and distribution practices) in the Annex, concerning some of recommendations 11 to 34.
42. The CMA has received details of evidence from the PRS that it has made significant investments in IT. This included the PRS's technology gap analysis showing the extent of obsolescence in end user services between 2013 versus 2016 and upgrades made. The PRS stated that IT was at the heart of its operations and its business strategy was constantly requiring decisions to be made about IT investment. The PRS also submitted that it had taken significant steps to improve, modernise and streamline its systems and processes in recent years.
43. The PRS stated that it had invested in many upgrades to its IT systems including the ICE joint venture²⁰ copyright database, Lion/Max (and relevant support systems) for online processing and matching systems used for online multi-territorial licensing, allowing for transactional based invoicing; and Bifrost, an IT system mainly used for recorded media processing. The PRS also noted that there were a number of further upgrades planned and that it continually assessed its systems to guide its business strategy. In relation to sampling, the PRS submitted that it considered using new technologies to replace this on a cost-benefit basis, and was trialling music recognition software [X] in order to more accurately record music usages.
44. Concerning data and processing, the PRS acknowledged that there were some occasions where it might not receive data within the expected timeframes because of delays with the DSPs providing the data, while some data may be reported incorrectly or in unloadable formats. In such situations

²⁰ ICE is a joint venture among the PRS and its Swedish and German counterparts, STIM and GEMA.

the PRS submitted that it worked with the DSP to support them in being able to deliver the required usage reporting.

45. The CMA notes that at the time of the original MMC investigation, IT used in the PRS was piecemeal and required substantial manual intervention.²¹ The MMC noted that, 'Best practice in the use of IT is, therefore, the key to the efficient operation of the PRS.' The MMC's recommendations therefore showed a particular focus on IT and data systems with a baseline of the previous piecemeal position. The MMC provided eight recommendations covering improvements to IT and/or data to some extent.
46. Since the MMC's investigation, IT and data use in the UK, both in relation to the numbers of individuals, businesses and others that make significant use of computing technology,²² or have access to and use the internet, has grown substantially to the point where the use of IT has become ubiquitous both for businesses and consumers, and data has become a valuable and often traded item.²³
47. This development makes it difficult for the PRS to be able to operate effectively and make payments to its members without investing in appropriate IT, data and sampling technology, and the CMA notes that the Regulations stipulate how and when right holders are to be paid which provides an indirect constraint on the PRS in this area.²⁴ Consequently, the CMA considers that the PRS now has incentives to maintain and develop these technologies (where the benefits to members outweigh the costs) in the absence of the undertakings.
48. The CMA is satisfied that it has seen evidence that the PRS is investing in improving IT and data to the benefit of its membership. The CMA considers that the PRS would still be incentivised to invest appropriately in this area in the absence of the undertakings.

Cost allocation

49. A small number of respondents raised concerns regarding the allocation of costs within the PRS. Specifically, they were concerned that the costs of the ICE hub joint venture should be borne purely by those using its services.

²¹ The MMC attributed this to the failure of the PRS's IT project PROMS, started in 1987 and abandoned in 1992. Paragraph 2.53 MMC report.

²² See for example [ONS statistics](#) on daily computer use in 2006 and 2015 as well as daily internet use 2006 and 2015.

²³ See for example the CMA's [report on its call for information on consumer data](#), June 2015 (CMA38 June 2015).

²⁴ Regulation 12.

Respondents linked this issue to recommendations 18 to 20 around equitable cost allocation.

50. The PRS has told the CMA that there is an activity-based cost allocation model in the PRS, and that this is separate to any cost allocation analysis conducted by the ICE hub Joint Venture for itself.
51. The CMA notes that the MMC recommendations in this area do not extend to the ICE joint venture which is considered and accounted for separately by the PRS and funded through various loan arrangements. Indeed, the joint venture was established several years after the undertakings were given. The CMA notes that the transparency report specified in the Regulations²⁵ will provide members with comprehensive information on the costs of the PRS and the reasoning for the allocation of common costs in addition to other information about the PRS. The CMA notes that the extent of the controls as regards transparency would appear to be greater under the Regulations than the undertakings.

Governance

52. Respondent comments in relation to the governance of the PRS were mixed. A number recognised the significant positive effect of the undertakings on the PRS, with significant internal changes having taken place since, noting that the senior management were now more willing to engage with the concerns of writers and their representatives. Others raised concerns that the PRS might seek to reverse the changes made in the absence of the undertakings, while one respondent sought to restrict the power of publishers at board meetings and adopt external controls to ensure more equitable distributions. The CMA notes that some concerns related to the MMC's recommendation 40, while others referred more generally to the changes made and the extent of the PRS's ability to reverse such changes in future.
53. The CMA notes the positive comments made by a number of stakeholders concerning significant improvements made by the PRS in this area. The CMA evaluates the extent of different constraints on the PRS in the following section (Market developments) to explore the extent to which concerns may arise about the PRS seeking to reverse the change put in place since 1997 in the absence of the undertakings.

²⁵ Regulation 21.

The withdrawal of rights

54. A number of respondents commented on the possibility of withdrawal of rights from the PRS. Some noted that they had found the process of withdrawal to be difficult, with descriptions including a complex, cumbersome, and clunky process, while one respondent noted that it had received inaccurate information concerning withdrawal. A small number raised questions on the need for exclusivity in favour of the PRS, while others noted that they had not found much information on the possibility of withdrawal of rights on the PRS's website. The CMA notes that these issues concern the main area of the MMC's report about the ability to withdraw rights, as well as recommendation 44 concerning publicising changes to Article 7 of the PRS's Articles of Association.
55. The PRS submitted that the process of withdrawal of rights required the consent of those members whose rights were being withdrawn, and it did not allow third parties to make decisions on the withdrawal of such rights. The PRS explained that this was necessary as publisher and writer members' interests could diverge, and writers may not wish others to be making decisions regarding their rights. The PRS explained that it did not consider the fact that a member had to implement a withdrawal request in favour of a new administrator or self-administration in writing to be a practical barrier and it was a legal requirement.
56. In relation to information about the possibility of withdrawal, the PRS submitted that members were made aware of the ability to exclude categories of rights when they joined the PRS as part of the membership application, and on an ongoing basis in the PRS Code of Conduct. It also stated that the categories of rights were set out in Article 7(cA) of its Articles of Association, which were highlighted to members at the most recent AGM. It also had a team dedicated to answering questions about rights withdrawals from members.
57. The CMA is aware that the possibility of withdrawal of rights has some necessary complexity which ensures that rights owners themselves have to decide whether to withdraw these from the PRS. The CMA considers that, as explained by the PRS, there are a number of ways in which new and existing members can become informed of the possibility of withdrawing rights as a member of the PRS, in the event that they were not already aware of this.
58. In the light of the information provided by the PRS to members, the CMA considers that both existing and new members have information available to them from the PRS on the possibility of withdrawal of categories of rights.

Market developments and constraints on the PRS

59. This section analyses the main developments that have taken place in this sector in recent years that are relevant to the undertakings and assesses the nature and extent of the constraints on the PRS other than the undertakings. This section considers:
- (a) legislative changes including the extent to which the Regulations provide an ongoing constraint on the activities of the PRS; and
 - (b) the extent to which there is a greater competitive constraint on the PRS than was the case at the time of the MMC's investigation.

Legislative changes

60. At the time of the MMC's inquiry into the PRS, there was no sector-specific legislation governing CMOs. Instead, the main constraints were general company, contract and competition law in operation at the time.
61. While there have been a number of developments in the intervening years that relate to CMOs, the focus of this analysis is on the Directive,²⁶ which must be transposed into national law by 10 April 2016. The implementation of the Directive in the UK and the detail of draft implementing Regulations (the Regulations) have been consulted upon by the IPO which will have responsibility for monitoring and enforcing compliance with the Regulations.
62. The main aim of the Directive (and hence the Regulations) is to ensure that CMOs in the EU act in the best interests of the right holders they represent, and substantially overlaps with the aims of the undertakings and the MMC's recommendations. This is described in the Directive as to 'lay down requirements applicable to collective management organisations, in order to ensure a high standard of governance, financial management, transparency and reporting'.²⁷
63. This section considers the specific requirements of the Regulations and considers whether they would represent an ongoing constraint on the behaviour of the PRS in the areas of concern identified by the MMC, in the absence of the current undertakings. This section also considers the extent to

²⁶ Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

²⁷ Directive, Recital 9.

which the concerns raised by stakeholders could be addressed by the Regulations and their enforcement.

Corporate governance and management practices

64. The high-level requirements of the MMC recommendations in this category are addressed in general terms by the Regulations, as the Regulations are concerned with ensuring governance procedures are appropriate and that CMOs are well run organisations. We note that the Regulations require CMOs to:
- (a) have a body which exercises a supervisory function for continuously monitoring the performance of the persons who manage the business of the CMO;²⁸ and
 - (b) 'ensure that each CMO takes all necessary measures so that the persons who manage the business do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures'.²⁹
65. The CMA considers that the Regulations provide similar constraints on the PRS as those imposed by the undertakings in this area, and as such, the CMA considers that the Regulations would be sufficient to constrain the activities of the PRS in this area in the absence of the undertakings.

Management and distribution practices

66. There are a number of safeguards against the potential for future inefficiency of the PRS in the Directive and Regulations by the fact that they require the management of the business operations of CMOs to be more closely overseen. This is specifically set out in the Directive/Regulations in that CMOs must now have in place a supervisory function for monitoring the persons managing the business and must also take measures so they do so in a sound, prudent and appropriate manner using sound administrative and accounting procedures.³⁰ Moreover, both the Directive and the Regulations stipulate how and when right holders are to be paid; the arrangements a CMO must put in place to try and locate absent right holders; and what must happen if they are unknown or cannot be found.³¹ The punctuality and accuracy of distribution payments in particular, as required by the Regulations, are reliant on the CMO having effective IT systems.

²⁸ Directive Article 9 and Regulation 8.

²⁹ Directive Article 10 and Regulation 9.

³⁰ Directive Article 9 and 10 and Regulations 8 and 9.

³¹ Directive Article 13 and Regulation 12.

67. The CMA has considered the degree of constraint provided by the Regulations given the concerns raised by respondents to its issues statement. Given the developments in IT highlighted in paragraphs 45 and 46, and the requirements in the Regulations for how and when rights holders are to be paid, the CMA considers that the PRS would still be incentivised to invest in efficient IT and data technologies in the absence of the undertakings. Therefore, concerning the management and practices of the PRS, the CMA concludes the Regulations should be sufficient to constrain the activities of the PRS in this area in the absence of the undertakings.

Lack of transparency

68. The Regulations include the following requirements in this area:
- (a) rights holders' rights must be set out in the statute and membership terms of a CMO;³²
 - (b) CMOs must provide for fair and balanced representation of members in their decision-making processes;³³
 - (c) the publication by a CMO of an annual transparency report (no later than eight months following the end of that financial year) showing, for example, financial information on the costs of rights management and other services provided, with a comprehensive description of costs by category of right;³⁴
 - (d) the general distribution policy must be approved at the AGM of a CMO and published on the CMO's website;³⁵ and
 - (e) members can appoint another person or proxy holder to participate and vote at the AGM of a CMO.³⁶
69. The CMA considers that the Regulations and the undertakings provide broadly similar coverage in relation to imposing obligations on CMOs around members' rights, decision making, cost allocation and transparency. In the annual transparency report required by the Regulations, the requirements go further than the detailed MMC recommendations and will provide members and others with significant and detailed information about the organisation of CMOs. The CMA considers that the constraint in this area from the Regulations should be sufficient to constrain the activities of the PRS in this

³² Directive Article 5 and Regulation 4.

³³ Directive Article 6 and Regulation 6.

³⁴ Directive Article 22 and Regulation 21.

³⁵ Directive Articles 8 and 21 and Regulations 7 and 20.

³⁶ Directive Article 8 and Regulation 7.

area in the absence of the undertakings and to address the concerns raised by respondents to the issues statement in this area.

Lack of right of appeal in matters of dispute

70. The undertakings impose a number of specific requirements on the PRS concerning appeals and the operation of the PRS's appeals board. The Directive takes a principles-based approach to addressing complaints and disputes involving members of a CMO. The Regulations provide that:
- (a) a CMO must make available to its members effective and timely procedures for dealing with complaints, in particular, relating to matters such as deductions and distributions; and
 - (b) a CMO must also ensure that disputes between it and one of its members concerning compliance with the Regulations can be submitted to an independent and impartial dispute resolution procedure.³⁷
71. The CMA considers that the Regulations provide an effective constraint on the PRS and should be sufficient to constrain the activities of the PRS in this area in the absence of the undertakings.

Exclusivity in relation to rights administration

72. The need to balance different interests, including those of individuals and those of CMOs is acknowledged in the Directive:

It is important that the rights and categories of rights be determined in a manner that maintains a balance between the freedom of rights holders to dispose of their works and other subject matter and the ability of the organization to manage the rights effectively, taking into account in particular the category of rights managed by the organization and the creative sector in which it operates.

Taking due account of that balance, right holders should be able easily to withdraw such rights individually or to entrust or transfer the management of all or part of them to another CMO or another entity.³⁸

73. More specifically, the principle underlying the undertakings is addressed directly in the Regulations. In general terms, the Regulations stipulate that rights holders must be able to: authorise their chosen CMO to manage some

³⁷ The Directive Article 34 and Regulation 32.

³⁸ The Directive Recital 19.

or all of their rights; decide in which territory those rights should be managed; withdraw all or some of those rights; and be fairly represented in the decision-making process.³⁹ Although the Regulations have not sought to specify the rights that can be withdrawn, the nature of those rights can be inferred from the *GEMA* decisions.

74. Given that the Regulations addresses the area of withdrawal of rights directly, the CMA considers that this, together with the categories of rights as set out in the *GEMA* decisions⁴⁰ should be sufficient to constrain the activities of the PRS in this area in the absence of the undertakings.

Enforcement of the Regulations

75. The CMA has also considered how members may enforce their rights under the Regulations and has drawn a comparison with the obligations of the PRS pursuant to the undertakings.
76. There are various provisions of the Regulations concerning enforcement:
- (a) A breach of the requirement that a member should be able to withdraw relevant rights which causes that right holder to sustain loss or damage is actionable by the right holder. In other words, if PRS was to prevent a member from administering their live performing rights, withdrawal could be directly enforced by the right holder against PRS.⁴¹
 - (b) The Secretary of State must monitor compliance of CMOs with the Regulations⁴² and must have regard to evidence which is notified to him/her of breach of the Regulations.⁴³
 - (c) The Secretary of State has information gathering powers and may require information and documents from a CMO for the purpose of ascertaining whether the Regulations have been complied with.⁴⁴
 - (d) The Secretary of State may impose a financial penalty on a CMO or the director or member of a CMO who manages its affairs. The financial penalty is up to £50,000.⁴⁵
77. The CMA is satisfied that the Regulations should give PRS members an effective mechanism to enforce their rights, irrespective of whether the

³⁹ The Directive Article 5 and Regulation 4.

⁴⁰ European Commission decisions in *Re GEMA (No 1)* CMLR D35 and *Re GEMA (No 2)* 24 CMLR D115

⁴¹ Regulation 33

⁴² Regulation 34

⁴³ Regulation 35

⁴⁴ Regulation 36

⁴⁵ Regulation 38.

undertakings are in place. The enforcement regime should be sufficient to constrain the activities of the PRS in this area in the absence of the undertakings.

78. Furthermore, the CMA notes that the Regulations are designed to regulate the obligations owed by a CMO to its members, while the detailed wording of the undertakings is largely concerned with the PRS's reporting requirements to the OFT (now CMA), following the initial changes the PRS was required to make.

The competitive constraint on the PRS

79. This analysis considers evidence in four areas when considering the competitive environment within which the PRS operates:
- (a) whether the possibility of members' withdrawing rights acts as an effective constraint on the PRS;
 - (b) whether the development of online music is increasing or decreasing the competitive constraint on the PRS;
 - (c) whether the share of supply of the PRS has declined significantly such that the PRS is facing increased competition from alternative suppliers; and
 - (d) whether the possibility of entry might be expected to constrain the PRS.

Withdrawal of rights

80. The CMA has considered whether members being able to withdraw certain categories of rights has generated a significant competitive constraint on the PRS since the undertakings were given. In considering this, the CMA examined the extent of rights withdrawals in practice, and any remaining barriers to withdrawal of rights.
81. The PRS submitted that relatively few members opted to withdraw rights and self-administer them. With the exception of the withdrawal of repertoires by a number of Welsh-language members, the PRS implemented the withdrawal of rights for only a very small proportion of the membership.
82. Rights withdrawals related mainly to theatrical productions. The PRS submitted that generally it received [X] requests per year in this area. A further area was other live performances where, in 2015, the PRS had received and agreed [X] requests to withdraw live public performance

rights.⁴⁶ The PRS submitted that, on average, it received [X] or [X] requests annually in this area, generally in respect of overseas touring.⁴⁷ The PRS also submitted that technological changes in the online sector had not had a material impact on the withdrawal of rights. However the PRS submitted that it may expect to see an increase in demand for rights withdrawals due to awareness of the relevant provisions in the Directive and Regulations.⁴⁸

83. The PRS clarified that, as required in the MMC's recommendations, the ability to withdraw rights was set out in its Memorandum and Articles of Association and Code of Conduct which were available on its website. The PRS explained that it explained to new members that they could withdraw their repertoire in respect of certain categories of rights as part of the joining process and also had a team dedicated to answering questions about rights withdrawals from members.⁴⁹
84. Written comments from third parties suggested that some members may not be aware that they could opt to withdraw certain categories of rights and that information on the rights of members to withdraw certain rights was limited and may not be easy to find. One third party considered that the PRS did little to publicise and make members aware that they had the option to withdraw rights.
85. The third party evidence also suggested that there were other barriers to withdrawing rights. For example, some third parties submitted that the process of withdrawal was not straightforward.
86. The CMA agrees that the process of withdrawing rights can be complex. The PRS requires members to withdraw each specific right themselves, rather than assigning the right to others, due to the PRS's desire to protect writer members from being forced to assign their rights to publishers.
87. On the basis of the evidence in the possession of the CMA, the CMA considers that the extent of rights withdrawal from the PRS is low, and consequently, the CMA considers that the option of withdrawing categories of rights is not, at present, a significant source of competitive constraint on the activities of the PRS.

⁴⁶ [X] of which were requests from new members joining the PRS and [X] of which were from existing members.

⁴⁷ PRS response to CMA questions.

⁴⁸ The CMA does not consider this to be relevant to its assessment, particularly for the non-online music segment. This is because publishers hold the mechanical right rather than the performing right.

⁴⁹ PRS response to CMA questions.

The impact of online music

88. The PRS submitted that the online market for at least the multi-territorial online exploitation may be considered as a possible distinct market segment from a supply-side perspective. Not all CMOs have the operational capability to deliver these services, and many would require significant investment in processing systems and staff to cope with the complexity of multi-territorial licensing. The PRS submitted that there was pressure on commission rates caused by right holders and licensee expectations of transactional distribution and invoicing statements for each work used.⁵⁰ The PRS identified the American Music Rights Association,⁵¹ and Armonia Online⁵² as examples of competitors in this segment.⁵³
89. The PRS considered that most of the demand-side constraint was from larger 'option three publishers'⁵⁴ and other CMOs.⁵⁵ The PRS submitted that large rights-holders had a higher degree of buyer power and were more likely to shop around, for example, appointing panels of CMOs and inviting CMOs to bid for business.⁵⁶
90. The CMA notes that writers may exert less competitive pressure on the PRS than publishers.⁵⁷ The PRS submitted that writers look to CMOs to provide a fair and transparent approach to splitting the revenues between performing and mechanical rights.
91. The PRS submitted that the geographic scope of competition for online administration was increasingly wider than the UK and, as such, the PRS held only a moderate share in the online segment. The PRS highlighted the estimate from the European Commission's decision in respect of the PRS/STIM/GEMA joint venture⁵⁸ where the PRS's share of supply ranged from [0–10]% to [10–20]%, depending on whether the EEA total online or multi-territorial online licensing market was considered.

⁵⁰ Transactional refers to a line by line invoice/distribution statement for each work used. Source: PRS response to CMA questions.

⁵¹ Details available on [its website](#).

⁵² Details available on [its website](#).

⁵³ Source: PRS response to CMA questions.

⁵⁴ In option three, collecting societies license the repertoire they hold across the whole of Europe for online and mobile, competing with each other for business on administration and commission rates and on the levels of service provided to members. See [details on the PRS website](#).

⁵⁵ Where the PRS acts on behalf of another CMO.

⁵⁶ Source: PRS response to CMA questions.

⁵⁷ Mainly because online revenues have not been sufficiently significant for individual writers (in absolute terms and relative to other revenue sources) and they may not wish to switch from regulated CMOs.

⁵⁸ Case M.6800-PRSfM/ STIM/ GEMA/ JV, Commission Decision of 16 June 2015.

92. There were mixed views from third parties as to whether there is greater competition in the online sector. One third party submitted that the PRS had a monopoly in the UK for mono-territorial digital licensing, however noting that competition was emerging in multi-territorial digital licensing.⁵⁹
93. Other third parties submitted that the PRS should unbundle mono- and multi-territorial rights so that members can withdraw their multi-territorial digital rights and provide them to third parties to administer,⁶⁰ the implication being that this would increase the competitive pressure on the PRS in the online sector. Others considered competition in multi-territorial licensing to be limited as there were few entities capable of providing these services.⁶¹
94. The PRS submitted that publishers were unable to reorganise a writer's performing rights without the writer's consent and noted that it believed that some writers may not wish to switch away from CMOs as they trusted them to deliver a fair split between writer and publisher royalties.⁶²
95. The CMA does not have sufficient evidence to suggest that the possibility of self-supply on the part of major publishers, in relation to mechanical rights, exerts significant competitive pressure on the PRS regarding administering performing rights in relation to UK only mono-territorial online licensing and non-online music performances in the UK.
96. While there appears to be global competition for multi-territorial licensing for online music, which was in its infancy at the time the undertakings were given in 1997, this appears to have had little impact on the PRS's position in relation to mono-territorial licensing or on other off-line segments.

Shares of supply

97. The CMA has assessed the PRS's share of supply of the services of administering performing rights for UK exploitation. In the MMC's report it describes the PRS as, 'sole supplier currently of such services [administering performing rights and film synchronisation rights by licensing bodies on behalf of the composers and authors of musical works or the owners or publishers of or persons being otherwise entitled to the benefit of or interested in the

⁵⁹ This was qualified as follows - despite the increase in multi-territorial licensing, many writers' royalties from off-line exploitation still represent important revenue sources.

⁶⁰ The PRS already unbundles the rights for mono- and multi-territorial digital licensing in its grants to overseas CMOs

⁶¹ The PRS, through its ICE JV, only has one competitor, namely SACEM (the French CMO).

⁶² PRS response to CMA questions.

copyright of such works]⁶³. The table below sets out PRS's estimated share of supply for 2013 to 2015.

Table 1: PRS share of performing right income from UK exploitation

	2013	2014	2015
PRS direct revenues (£m)	[REDACTED]	[REDACTED]	[REDACTED]
Estimated total market size (£m)	[REDACTED]	[REDACTED]	[REDACTED]
Market share estimate (%)	[65–75]	[65–75]	[65–75]

Source: PRS.

Note: shares based on gross distribution to members.

98. It can be seen from the share of supply estimates from the PRS that it retains a substantial share of supply with little change in the last three years.

Potential entry

99. Evidence in the possession of the CMA suggests that entry is not impossible for multi-territorial licensing of online music but that there appear to be barriers to entry for other parts of the market including UK mono-territorial licensing and other offline parts of the music market.
100. The CMA has identified four potential barriers to entry as being relevant in the UK. These are:
- (a) the presence of scale economies and the need to amass a critical volume of the relevant rights;
 - (b) the need for adequate IT and staff operational capacity for the complex data processing for online music licensing;
 - (c) potential concerns on the part of writers about being adequately represented at board level; and
 - (d) the bundling of mono- and multi-territorial rights for online music is also a potential barrier to entry. In relation to scale economies, a market entrant would need to amass a certain volume of relevant rights in order to enter at a reasonable cost.
101. The evidence received by the CMA also suggests that there are currently few entities offering direct licensing of the live performance right on behalf of writers and publishers.⁶⁴

⁶³ MMC report Chapter 2, paragraph 2.11 & 2.12.

⁶⁴ There was also no suggestion that market entry in this segment within the UK was likely within the next few years.

102. In relation to IT infrastructure and staff capacity for multi-territorial licensing of online music, the PRS submitted that not all CMOs have the operational capability to deliver administration services in this area, and new entrants would need to make significant investments in processing systems and staff to undertake this work. The PRS submitted that the online market for multi-territorial online exploitation may be considered as a possible distinct market segment from a supply-side perspective.⁶⁵
103. The PRS also submitted that there was increasing self-supply by major publishers – where some publishers had sought to use their own administration vehicles for online music.⁶⁶ However, it is unclear whether this would have an impact on PRS operations in the UK as the PRS submitted it did not expect that technological changes and the growth of online music to have any significant impact on rights withdrawals.⁶⁷
104. In relation to the concerns of writers not being adequately represented, it may be difficult for new entrants to enter should members have divergent interests over sharing royalties and be reluctant to switch to other administrators that are perceived to represent other interests.⁶⁸
105. The CMA notes that historic differences in the interests of writers and publishers were highlighted by the MMC in its inquiry. The MMC noted that there had always been tension about the way in which royalties from musical performances were divided and that publishers might seek to give too little weight to writers' interests. The CMA received some evidence during this review that these differences persist at least to some degree.

Change of circumstances

106. In its review, the CMA has sought to establish whether there are changes of circumstances relevant to the undertakings. In exploring this, the CMA has examined whether market developments provide additional and ongoing controls in the same areas as those set out by the undertakings, and whether such controls may be sufficient, in the absence of the undertakings to constrain the activities of the PRS in the absence of the undertakings, and prevent the PRS reversing the changes made since it gave the undertakings in 1997.

⁶⁵ 'Transactional' refers to a line by line invoice/distribution statement for each work used. Source: PRS response to CMA questions.

⁶⁶ PRS response to CMA questions.

⁶⁷ PRS response to CMA questions.

⁶⁸ The PRS submitted that songwriters, lyricists and publishers had divergent interests to performers and record labels and therefore would require separate representation to act in their best interests and without potential conflict.

107. The CMA considers that there is now some degree of competitive constraint on the PRS in relation to multi-territorial licensing of digital rights. However, it notes that there is no significant competition for UK only mono-territorial licensing of rights. Overall, the CMA considers that the competition faced by the PRS may be insufficient, of itself, to act as a constraint on its activities in the absence of the undertakings.
108. The CMA has also explored the protections afforded by the Directive and the Regulations in the UK which come into force on 10 April 2016. The CMA has found that these Regulations provide broad principles-based coverage of the areas covered in the undertakings and the MMC's recommendations and have the same broad aims and objectives.
109. In conclusion, the CMA considers that there are changes of circumstances relevant to the undertakings, most notably, the Regulations, as well the changes in the use of IT. The CMA considers that the changes of circumstances are relevant to the undertakings in that these changes will prevent a return to the practices highlighted in the MMC's report.

Provisional decision

110. Given the changes of circumstances identified, the CMA has considered whether the current undertakings remain appropriate, or whether they should be varied, superseded or released. Given the coverage of the Regulations described above, and additionally, the changes in the use of IT highlighted in paragraphs 45 and 46, the CMA finds, provisionally, that the undertakings are no longer appropriate for the purposes of constraining the activities of the PRS. It therefore does not consider that the undertakings should be varied or superseded in this case.
111. Following the change of circumstances identified above, the CMA's provisional decision is to release the PRS from the undertakings.

Consultation

112. We are now consulting on this provisional decision. The consultation closes on **22 April 2016**. Please submit responses to:

Peter Hill
7th Floor North
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

Email: remedies.reviews@cma.gsi.gov.uk

113. Following this consultation, the CMA will consider the responses received and the evidence and views presented and will assess the impact of these responses on its provisional decision before reaching a final decision. A final decision is expected to be published later in 2016.

Annex: MMC's recommendations to the PRS

A. Corporate governance and management practices

1. The PRS's General Council to step back from the day-to-day management of the Society to concentrate on key policy issues and supervision of the development of the PRS's future strategy.
2. Reduce the number of meetings of the full Council.
3. Formal delegation by the General Council of responsibility for the day-to-day management of the Society to a new Executive Committee comprising the Chief Executive, Chairman, both external directors, the second executive director and no more than two other director members of the General Council.
4. Disband the existing Executive Committee.
5. Reduce the number of committees and groups.
6. Clear differentiation between the roles of the Chairman and Chief Executive.
7. General Council to define objectives of the PRS within three months of publication of this report.
8. General Council to agree a five-year strategy for the PRS within three months of publication of this report.
9. Evaluate, using a cost-benefit analysis, all major proposals for change.
10. Increase the amount of formal management representation on the remaining committees and groups.

B. Management and distribution practices

11. Set out, with target dates for completion, all key steps necessary to improve efficiency.
12. High priority to be given to the improvement of data.
13. Link consideration of IT strategy to the consideration of the overall five-year strategy. Ensure the objectives of the two programmes are consistent and the timing is synchronized.
14. IT strategy to take into account the need to streamline processes and integrate all major administrative systems.

15. Adopt international standard work code numbers as soon as practicable.
16. Encourage or even require members to adopt these standard work code numbers too.
17. Improve cost appraisal to determine which costs are direct and which are indirect.
18. Implement systems to provide the necessary information for more equitable cost allocations to be made.
19. Publish details of the new cost allocation system within 12 months of publication of this report.
20. Publish sufficient accounting information within 12 months of publication of this report for members to be able to see where costs lie.
21. Targets to be published within two months of publication of this report for reducing administrative costs.
22. Modify the targets described in 21 above as soon as the new cost allocation system is in place.
23. Impose separate annual membership fees for writers and publishers of around £25 plus VAT a year and £125 plus VAT a year respectively.
25. The PRS to work towards accreditation under an approved quality standard.
29. The PRS to take professional advice about the measurement and sampling of public performances and to distribute this advice to the membership.
30. Initial bench-marks for all major areas of public performance to be drawn up within six months of publication of this report.
31. Regular and statistically valid sampling to take place thereafter.
32. Review the LMDP within nine months of publication of this report in the light of the findings at 30 above and amend where necessary.
33. Establish a special committee, including representatives of a range of minority musical genres, to oversee all sampling work.

34. Put in place a financial model which can assess rapidly the effect of changes in distribution policies.

C. Lack of transparency

24. The PRS formally to set out in the Members' Handbook the responsibilities it has to members and the standards of service it aims to achieve.

26. Amend the rules relating to termination of membership to reflect the flexibility inherent in current practices and set out the changes clearly for members in the published Rules and Members' Handbook.

27. State the limitations of the distribution policy in the Society's literature and bring these to the attention of current and prospective members.

28. Published accounting information to include details relating to members' overseas earnings.

40. The PRS to introduce a formal consultative process to take members' views on proposed changes in policy or strategy.

41. Voting rules to be amended to allow writer members to send representatives who are not themselves members of the PRS to speak and vote for them at all general meetings.

D. Lack of right of appeal in matters of dispute

35. Establish an Appeals Board to resolve the disputes which members may have from time to time with the Society about their personal rights.

36. Members to pay an initial deposit to the Appeals Board, which would be non-returnable for trivial or frivolous cases.

37. Appeals Board to have right of access to relevant papers.

38. Appeals Board to have a specialist accountant if required to deal with disputes concerning self-administration of performing rights.

39. Appeals Board's findings to be binding on all the parties involved.

E. Exclusivity in relation to rights administration

42. Article 7 of the Articles of Association to be amended to allow self-administration of the live performance right.

43. Article 7 of the Articles of Association to be amended to make it clear that members already have the right to self-administer the categories of performing rights specified in the GEMA decisions.⁶⁹

44. The PRS to publicise the changes to Article 7.

⁶⁹ European Commission decisions in *Re GEMA (No 1)* CMLR D35 and *Re GEMA (No 2)* 24 CMLR D115