

Consultation response on Provisional decision on the CMA's review of the Performing Right Society Limited undertakings

Limited transparency and consultations -

"38....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."

I would challenge this assertion on several points:

- 1) Members should not have to, "work out an effective distribution rate for a given service", and its ludicrous to suggest that a reasonable argument for a lack of transparency. Members should be given this information as a matter of course and to maintain transparency, after all its a rate secured on behalf of the Members.
- 2) The distribution statements provided by the PRS are often lacking in relevant and specific details. On international income there is no information shown on the statements about what deductions the Members' income has suffered, and therefore its virtually impossible to undertake a successful reverse calculation of the relevant rate.
- 3) The CMA should require the PRS to provide evidence and examples to support their assertion with regards to this. Ask the PRS to demonstrate how they would calculate the effective distribution rate from information available to Members on their statements for international distributions.

The withdrawal of rights -

"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.

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."

- 1) "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".
 - a) What evidence exists to support this assertion? CMA should require the PRS to provide evidence for assertions they make. Here is the 'Join Us' page from the PRS website:
<http://www.prsformusic.com/joinus/writer/Pages/writer.aspx>
<http://www.prsformusic.com/joinus/publisher/Pages/publisher.aspx>
 - b) The majority of Members have been so for many years, and many prior to the 1997 MMC report. As such, even if the PRS had made those joining aware (which is not the case), when did that notification start? And prior to the PRS apparently actioning this for those joining, how would the existing Members be made aware of Article 7?

- 2) "on an ongoing basis in the PRS Code of Conduct."
- a) What information is on the PRS website or in communications to alert Members that re-assigning rights is possible, and where to find information about it (other than being buried in the Code Of Conduct)?
 - b) Between the Code Of Conduct, Memorandum & Articles and Rules & Regulations, there are 121 pages of documents. Its wholly unreasonable to expect a Member to have to trawl through that many pages to hopefully find information on a mechanism they weren't even aware is there to find.
- 3) "which were highlighted to members at the most recent AGM"
- a) The MMC report was in 1997, that means theres been about 17 AGM's since then, where the PRS has apparently failed to highlight Article 7 to Members. What excuse does the PRS have for those 17 years?
 - b) How many Members actually attended the 2015 AGM, and what percentage of Members was that? And how would Members who didn't attend the AGM find out about Article 7?
 - c) What evidence exists that the Article 7 was highlighted to Members at the 2015 AGM, and in what context? The Agenda and Minutes are not available online, in fact this is all the information the PRS makes available on their site about the 2015 AGM:
<http://www.m-magazine.co.uk/news/prs-agm-2015-details-announced/>
 And here is Robert Ashcroft's speech, which you'll note doesn't mention Article 7:
<https://www.musicbank.co.uk/blog/robert-ashcroft-speech>
- 4) "It also had a team dedicated to answering questions about rights withdrawals from members."
- a) Having withdrawn rights, I did not deal with a dedicated team. To support the PRS's assertion, please can you require the PRS to provide evidence of what this team is called, where it is located, how many members of staff are in the team, who the relevant staff members are, and how to contact them?
 - b) What information appears on the PRS website or in communications as to how to contact this team?
- 5) "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."
- a) Given the above questions, I'm disappointed that the CMA have reached this conclusion, and suggest you need to re-assess your position on this, and require the PRS to provide evidence to support any assertion they make.
 - b) The PRS have completely failed to implement Recommendation 44 from the MMC report to "The PRS to publicize the changes to Article 7."

Other than Paul Crockford, I have not spoken with one PRS Member (either writer or publisher or board member), or manager, lawyer, accountant of a PRS Member, that was aware of Article 7 before I discovered it in late November 2014. Despite the recommendation in the MMC report, the PRS has inhibited, and continues to inhibit its Members from withdrawing their rights by making the information regarding withdrawal as hidden and opaque as possible.

PRS for Music response to issues statement -

"The evidence suggests that the PRS has been successful in finding a balance in its modification of rights withdrawal / self-administration options to date...For example, the low uptake of these options by members (<0.01% in 2015), which indicates membership confidence in and desire to remain in

the collective rights network; and the low level of complaints from members about rights withdrawal/self-administration (none in 2012-2015)."

The evidence does not at all support PRS's assertion. The evidence demonstrates a woeful lack of transparency from the PRS, and failure in their fiduciary responsibilities to their Members. Of course there's going to be a low uptake and level of complaints, if people aren't even aware they can withdrawal their right to self-administer! And as such does not indicate, "membership confidence in and desire to remain in the collective rights network".

Conclusion -

- 1) Its unfortunate that the CMA seems to have accepted various unsupported assertions made by the PRS. Prior to you publishing your final decision, I hope the CMA requires the PRS to provide evidence to support all their assertions, and any assertions where there is a lack of supporting evidence are dismissed.

- 2) While the Collective Management of Copyright (EU Directive) Regulations 2016 does duplicate some of the recommendations and undertakings from the MMC report, and it is of course a better situation to have UK and EU legal regulations which to hold the PRS to, the CMA would be remise in its duties to UK residents and PRS Members if its position was that the Collective Management of Copyright (EU Directive) Regulations 2016 was a sufficient standard to hold the PRS to. The context for the EU Directive must be understood. Collective Management Organisations (CMO's) are generally not well run or transparent, which includes CMO's in the EU. Therefore the EU Directive was not created to establish a 'gold standard', but to regulate CMO's in the EU to the lowest acceptable standard. If implemented and policed properly, the EU Directive should hopefully raise the standard of some CMO's across the EU, which is of course a positive and desired outcome. However, due to its size and location, we should be holding the PRS to higher standards than set out in the EU Directive, standards its currently failing to achieve. As such, the PRS should not be released from undertakings, but should have new more stringent undertakings that supersede the current ones applied. These new undertakings should require a greater transparency in all aspects of the organisation, better governance and a far higher accountability to Members. If the CMA is open to new undertakings superseding the current ones, I'm happy to go in to detail about what these should be.