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Dear Peter,

Provisional decision (the "Provisional Decision") on the CMA's review of the Performing Right Society Limited ("PRS") undertakings (the "PRS Undertakings") – Non-Confidential Response

AMRA and Kobalt Music Group were disappointed to read the Provisional Decision and we wish to formally respond to put on record that we do not agree with the Provisional Decision nor some of the conclusions made along the way.

In particular, we found it surprising that although the CMA received responses from three out of five of PRS' largest members (and also the trade body representing all music publishers in the UK – the Music Publishers Association), all of which ask for the Undertakings to be kept and/or varied in some way and all of which raise certain complaints in respect of PRS' behaviour, that the CMA has provisionally decided to release PRS from the PRS Undertakings. The CMA's Provisional Decision is especially surprising given its acknowledgement that today there is still little, if any, competitive constraint on PRS' activities in the absence of the undertakings (paragraph 107 of the Provisional Decision).

We wanted to focus in this letter on your conclusions in two particular areas: (1) Lack of Transparency (paragraphs 68-69) and (2) The Withdrawal of Rights (paragraphs 54-58 / paragraphs 72-74 / paragraphs 80-87). We wish to challenge the CMA's general conclusion that the CRM Directive (by which we also mean the Regulations transposing the Directive into UK law) somehow resolves any and all issues that have been raised by respondents to the CMA in these areas, as it is our view that the CRM Directive does not address the core issues in these areas at all. We believe that the CMA should retain the PRS Undertakings and vary them (in accordance with current technological developments) to allow PRS members to withdraw and sub-license performing rights for multi-territorial digital licensing.

Lack of Transparency

The CMA's preliminary conclusion on this issue is that *"the constraint in this area from the [CRM Directive] should be sufficient to constrain the activities of PRS in this area"* (paragraph 69).

As we highlighted in our response to the CMA's Issues Statement submitted on 15 January of this year (and we note at least one other respondent also highlighted), one particular area in which there is currently no transparency from PRS is with respect to the basis on which PRS will agree to sub-license digital performing rights to other third party entities (even when requested to do so by a PRS member). **[redacted]**

Whilst the CRM Directive does introduce some very welcome transparency in respect of the activities of CMOs and IMEs (as regards revenue collection / deductions from revenue, rights managed, distribution rules and certain licensing terms), nothing in the CRM Directive specifically addresses the policy PRS should apply when determining when, how and to whom it will sublicense its digital members' rights. Nor does the CRM Directive put any obligation on PRS to be transparent or make available the criteria it applies with respect to such sublicensing **[redacted]**. It is clear the introduction of the CRM Directive has not solved the lack of transparency in this area, which is why the CMA's intervention remains necessary.

The Withdrawal of Rights

The CMA's preliminary conclusion on this issue is that *"existing and new members have information available to them from the PRS on the possibility of withdrawal of category of rights"* (paragraph 58) and that "*[the CRM Directive] addresses the area of withdrawal of rights directly…[which] should be sufficient to constrain the activities of PRS in this area"* (paragraph 74).

However, as we highlighted in our response to the Issues Statement, a PRS member knowing of and having the ability "on paper" to withdraw rights from PRS is very different to having a real right that a member can exercise in practice. This is particularly detrimental in respect of digital rights, which are one of the most important rights types for a PRS member to be able to withdraw in today's digital music market. PRS' monopoly position in copyright administration service in the UK is enduring, even with the rise of multi-territorial digital music services, and the PRS rules continue to bundle together services for "mono"-territorial digital licensing (UK only, where PRS has a monopoly position) and "multi"-territorial digital licensing (where competition is emerging). While PRS is generally the only entity that can handle all of the UK only digital licensing, this is not the case for the licensing of multi-territorial digital services. As such, the current PRS practice of insisting that mono-territorial and multi-territorial licensing and collection services are bundled together unduly ties writers and their publishers to PRS, thereby preventing competition from emerging in relation to multi-territorial digital services.

[redacted]

PRS' monopoly position **[redacted]** are the real reason why, as the CMA notes at paragraph 81 of the Provisional Decision, relatively few PRS members have to date opted to withdraw digital rights from PRS, and why accordingly there is currently no real competitive constraint on the activities of PRS in this area. Nothing in the CRM Directive obliges PRS to "unbundle" multi territorial digital licensing services from the remainder of its UK-only collection services (the market it dominates). Whilst this remains the case **[redacted]** withdrawal of digital rights from PRS is simply not an option that a PRS member can ever exercise in reality. The CMA's intervention is therefore still necessary in this area.

Conclusion

In light of the concerns we have set out above, those expressed by other parties and the CMA's own view that PRS is insufficiently constrained in the absence of the PRS Undertakings, we are concerned that the CMA has provisionally decided to end its effort to address the continuing negative impact on competition caused by PRS' exclusivity over its members' performing rights. Although the PRS Undertakings have not been adequate to address this issue, despite technological developments and the entrance into force of the CRM Directive, AMRA does not believe this justifies their release. Rather, AMRA urges the CMA to reconsider its Provisional Decision and retain the PRS Undertakings while varying them (in according with current technological developments) so as to provide real alternatives for PRS writer members in a situation where they believe PRS may be failing in its representation of their digital rights and they wish to have them administered in some other way.

As set out in greater detail in our previous response to the Issues Statement, we propose two possible options for such a variation. In brief, these options involve:

(i) requiring transparent and objectively justifiable criteria for any PRS refusal to sublicense members' rights to third parties; or

(ii) either allowing writer members to "unbundle" their digital performing rights for multi-territorial digital licensing from their mono-territorial (UK only) rights or, if PRS insists on the withdrawal of the entire "bundle" of rights, obliging PRS to continue providing UK licensing / collection services in respect of the UK-only rights from any third party so entrusted with such rights.

As before, we would be happy to discuss any of the above with you in more detail.

Yours sincerely

Tomas Ericsson

AMRA CEO

James Fitzherbert-Brockholes

Kobalt CFO