

### **Issues arising from the provisional monopoly findings (as put to the PRS)**

In considering the issues arising from the provisional monopoly findings the MMC have paid particular regard to the questions of whether the PRS:

- (a) provides the services referred to in the reference efficiently;
- (b) distributes revenues to its members on a fair basis; and
- (c) is appropriately constituted to represent the interests of all its members.

### **Objectives**

1. There appears to be a lack of clarity about PRS's aims and objectives. Has PRS considered the effect of this on the way the Society is managed and decisions are taken and whether it might adversely affect the ability of members to evaluate whether the decisions the Society is taking are in their interest?

2. Whether a lack of specificity about the relative importance of these aims and objectives results in the PRS favouring or being influenced at certain times by particular sectors of the membership at the expense of others.

3. Whether it is in the public interest for PRS to cross-subsidise certain of its activities, for example, the transfer of monies from one revenue pool to another in order to support classical music, or the Earnings Equalisation Scheme, which supports certain long established members of the Society whose work is no longer being performed to the extent it once was.

4. Whether the Society has an obligation to support individual creative musicians, in particular those at the start of their careers, or should treat all its members on an equivalent basis.

5. Are the present Memorandum and Articles of Association appropriate for the circumstances in which the PRS now operates? Do they enable the Society to act in the interest of all its members? Alternatively are they too general giving over-wide discretion to the General Council?

6. Why does PRS itself provide monies for the general advancement of music and for other benevolent or voluntary purposes when other bodies exist which are capable of carrying out these functions?

### **Corporate Governance/Public Accountability**

7. Whether the Society's strategy is sufficiently clear to enable it to decide on priorities and the relevant emphasis to be given to policies with long as opposed to short-term benefits, eg what weight should be given to the negotiation of reciprocal agreements with a country such as China compared with the negotiation of relatively minor tariff amendments for UK licensees?

8. Whether the combining of the roles of Chairman and Chief Executive for the past 18 months has in any way adversely affected the development of a coherent strategy for the Society.

9. Is the present voting structure and the traditional 50/50 division in the General Council between composers/writers and publishers justified? Does it reflect current commercial reality? Does it lead to inefficiencies and difficulties in the making of decisions? Have alternative voting structures been

evaluated?

10. Whether there is a public interest in maintaining, or in varying, the limitations at present in force on the numbers of user-owned or foreign-owned publisher-directors.

11. Professor Clarke, in his report on Corporate Governance of the PRS made a number of important recommendations including:

(a) the appointment of independent, non-executive Directors;

(b) the appointment of employee Directors; and

(c) a significant reduction in the number of publisher and writer members on the Council from 12 in each category to 6.

What are the merits of these proposals? In particular, referring to point (a) above, is there a case for the appointment to the General Council of one or more 'public interest' members with responsibility for identifying the interests of the Society as a whole rather than effectively representing the interests of particular categories of member?

12. To what extent would it be a way of handling the complaints from users and members concerning unfairness and lack of accountability to make PRS formally accountable to an external regulator or to have internal procedures to enable members to raise questions and challenge decisions that affect them (cf ASCAP's Review Board)?

## **Efficiency**

13. Whether the failure of PROMS, followed by the cessation of the negotiations with MCPS, suggests serious deficiencies in the application of information technology in the conduct of the Society's business.

14. Given the importance of information technology to the Society's business, what are these deficiencies and how can they be remedied?

15. Does the level of administrative costs suggest that the present structure does not embody adequate incentives to reduce them? Would such incentives be supplied if a limit, in the form of a stated commission charge, was placed on the level of expenses permitted with performance awards for the staff concerned if that target was met or bettered?

16. Whether the franchising or contracting out of certain PRS activities, eg licensing, sampling, would improve efficiency and deliver a better service to PRS members. Would music users benefit from such an approach?

17. Whether a disproportionate amount of PRS's resources is deployed on internal as opposed to external transactions. Is sufficient use made of performance indicators and benchmarking to ensure that time is used productively?

18. Whether the allocation of costs within the PRS is sufficiently transparent to enable an adequate assessment of cost-effectiveness in each area of the PRS's activities.

19. Whether the opening of regional licensing offices, as opposed to the exclusive use of regional inspectors working from home is cost effective.

20. Whether PRS has ever taken advice from a third party on ways to improve administrative cost-effectiveness.

21. Whether, in order to enable administrative costs to be allocated more accurately, there should be either:

(a) an administrative charge for the registration of each new work and on transfer of each work from one publisher's catalogue to another; or

(b) an annual membership subscription.

22. Whether the merging of certain functions or entering into joint ventures with MCPS or PPL would improve the efficiency with which PRS carries out its administrative procedures. What would be the effect of such mergers or joint ventures on PRS members and on music users?

## **Membership**

23. Whether the degree of accountability of the management of PRS to the membership is adequate. Who appraises the performance of the management and how is this done?

24. Whether PRS should have duties to its members commensurate with the obligations membership imposes on them? eg to collect accurate distribution information or to use its bargaining power to maximise overseas returns. Is PRS clear about the levels of service it should provide to its members?

25. Are PRS systems and administrative procedures sufficiently transparent to enable all its members to understand what is happening within the Society and how their interests may be affected by particular policies?

26. Whether the accounting procedures and information received by members, especially in relation to overseas income, are such as to enable members to check that they are receiving what is due to them.

27. Whether withdrawal from the Society is sufficiently easy. Is it necessary for the notice period for termination of membership to be at the end of the calendar year? Would a six-monthly cycle, linked to the frequency of broadcasting distributions, be practicable?

28. Whether PRS should have any special obligations to assist new members, eg by guaranteeing them a minimum level of income for a certain period.

## **Licensing**

29. To what extent does PRS' monopoly position enable it to negotiate tariffs with users which are higher than they might otherwise be?

30. Whether any of the decisions of the Copyright Tribunal have diminished the levels at which tariffs are set?

31. Are there any specific ways in which it would be in the public interest to change the jurisdiction or practice of the Copyright Tribunal.

32. Does the threat of recourse to the Tribunal have any effect on PRS practices in view of the known reluctance of users to expend the time, effort and money required to mount a case?

33. Whether steps need to be taken to simplify the tariff structure so as to make it more easily understandable?

## Overseas Societies

34. Whether the delays in payment and deductions made by overseas affiliated societies are such as to demand Governmental action, or in the case of European societies, action by the European Commission. Are the reciprocal contracts among European societies in breach of Article 85 of the Treaty of Rome?

## Distribution

35. Whether the current distribution policy has succeeded in balancing equity of distribution with speed and efficiency. Does it, in practice, favour large, well-established writers, composers and publishers at the expense of smaller or new members? Do new members wait longer than they should to receive royalty payments? Are there occasions when well-established writers also wait longer than is necessary?

36. Can the present distribution system, which PRS senior management has acknowledged to be complex, be simplified with the advantage of greater transparency?

37. Are the difficulties and limitations in the logging of public performances made quite clear to prospective and new members?

## Exclusivity

38. Does the lack of effective competition in the UK market for the collective licensing and administration of performing rights have an adverse effect on the members of PRS or the users of music? What would be the effects on:

(a) PRS members;

(b) music users;

(c) PRS revenues;

(d) the efficiency of PRS of

(i) allowing members to licence performances directly;

(ii) allowing other collecting societies to licence performing rights?

39. What evidence is there that lack of exclusivity would make the administrative processes of licensing, monitoring performances and distribution of royalties more difficult?

40. How would lack of exclusivity hamper PRS' ability to take the necessary action for breach of copyright, and why would this matter if the copyright holder was, himself, in a position to act?

41. Is there any difference for administrative purposes between (a) traditional 'grand rights' and (b) live performances given by major artists or pop groups using their own material? Are not both instances where the Society does not need to enforce those rights which members can effectively enforce for themselves?