

Performing rights

A report on the supply in the UK of the services of administering performing rights and film synchronization rights



MONOPOLIES AND MERGERS COMMISSION

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A report on the supply in the UK of the services of administering performing rights and film synchronization rights

**Presented to Parliament by the Secretary of State for
Trade and Industry by Command of Her Majesty
February 1996**

Members of the Monopolies and Mergers Commission as at 29 November 1995

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Note by the Department of Trade and Industry

In accordance with section 83(3) and (3A) of the Fair Trading Act 1973, the Secretary of State has excluded from the copies of the report, as laid before Parliament and as published, certain matters, publication of which appears to the Secretary of State to be against the public interest, or which he considers would not be in the public interest to disclose and which, in his opinion, would seriously and prejudicially affect certain interests. The omissions are indicated by a note in the text.

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Part I

Summary and Conclusions

1 Summary

1.1. Listening to music, live, recorded or broadcast, is a major leisure activity in the UK. The music industry in the UK is large and internationally important. Copyright is central to this success. It ensures that creative talent is rewarded and that investments made by publishers and record companies are duly remunerated. On almost every occasion on which a piece of copyright music is publicly performed a royalty is payable. It would be far beyond the majority of copyright owners to negotiate and collect their own royalties for performing rights including both public performances and broadcasting. For this reason, they arrange for a collecting society, in the UK the Performing Right Society Limited (PRS), to do the job for them.

1.2. We were asked to investigate whether there is a monopoly situation in relation to the supply of the services of administering performing rights and film synchronisation rights. In making this reference (see Appendix 1.1), the Deputy Director General of Fair Trading (DDGFT) drew attention to concerns that the revenue distribution policies of the PRS were not equitable, misgivings about the Society's requirement that members assign their rights to it exclusively, and claims of managerial inefficiency (see Appendix 1.2).

1.3. During the course of our investigation we took evidence from a wide range of interested parties including publisher and writer members of the PRS, users of music who obtained their licences from the PRS and other collecting societies. We also looked at the way in which performing right societies operate in other countries and at the operation of the Copyright Tribunal in the UK. We took specialist advice on the use of information technology (IT) by the PRS.

1.4. We found that a monopoly situation exists in favour of the PRS. We were also asked to investigate 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 our investigation operate against the public interest. We identified various issues which led us to a number of adverse findings.

1.5. The PRS has been in existence since 1914 and has changed greatly over the years as the use of music in society has grown and evolved. Writers, publishers and users have benefited greatly from its work. Throughout that time, however, there have been tensions between writers and publishers and between those who are involved in different musical genres. These tensions have contributed to the development of a corporate organization and a way of working which are cumbersome by modern standards. We found evidence of inefficiency, arising from deficiencies in the corporate structure and management practices of the PRS. The division of activities between the General Council and the executive is inappropriate; nothing is formally delegated to the executive. This is not conducive to the making of clear policy decisions; nor is the lack of a clearly defined set of objectives and a long-term strategy. Furthermore, we consider that the failure to appoint a Chief Executive for almost two years, finally remedied in November 1995, has had a prejudicial effect on the way in which the Society is managed. Whilst management are clearly aware of the importance of IT

to the business, the need to link business strategy and IT strategy only began to be recognized well into our inquiry and far too little progress has been made in remedying deficiencies in essential databases which were identified several years ago.

1.6. We found that the PRS failed to consult the membership adequately and that its policies and procedures were not sufficiently transparent. It had cross-subsidized a number of areas of its operations. 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 to assess 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, which they felt were unfair.

1.7. Strong arguments were put to us both in favour of and against the PRS's current refusal to allow a member to self-administer his own live performance rights. The PRS acknowledged that its members were entitled to self-administer entire categories of rights listed in the GEMA decision including public performance and broadcasting. But these are not necessarily the categories of rights which members wish to self-administer. Those in favour of change argued that it was not absolutely necessary for the PRS to adopt this stance and that if royalties were collected directly payments would be speedier. Those members who currently receive no payments for live performances could benefit too. The PRS, on the other hand, argued that change would be complex and costly in administrative terms and to the disadvantage of most of its members. They felt there would be practical difficulties in enforcing members' rights.

1.8. We were not persuaded that the PRS's present practice of exclusivity was so essential that no further exceptions could be allowed. Nor were we convinced that any considerable additional costs would necessarily fall on the PRS. If members consider that they can administer live performances themselves at least as effectively as the PRS then they should be free to choose, but should bear any reasonable additional costs caused to the PRS.

1.9. We found that the deficiencies summarized in paragraphs 1.5 and 1.6 and the PRS's refusal to allow a member to self-administer his own live performance rights were acts or omissions of the PRS which were attributable to the monopoly situation and which operate against the public interest. In the light of our adverse findings we made a number of recommendations, which we discussed with the PRS and other interested parties. In making these recommendations we sought to promote efficiency, equity and transparency.

1.10. To improve efficiency, the most important of our proposals relate to the formal delegation of day-to-day management of the Society to a small committee comprising the Chairman, both executive directors, both external (non-PRS member) directors and no more than two other director members of the General Council. We also propose the development of business strategies that place sufficient importance on IT.

1.11. We recommend the adoption of a detailed system of cost allocation and the publication of sufficiently detailed accounting information for members to be able to tell where costs arise and which activities are being subsidized. The cost of routine membership activities should be collected through the introduction of separate annual membership fees for writers and publishers. The PRS should take advice about improving its measurement of public performance and should amend its distribution policies in the light of that advice. It should set up a special committee to oversee the sampling of performances and should put in place a financial model which will enable it to assess the effect on members of changes to its distribution policies. An Appeals Board should be established for members to resolve disputes with the PRS management.

1.12. On exclusivity, we consider that Article 7 of the PRS Articles of Association should be amended, to allow explicitly for self-administration of the rights set out in the GEMA decision, and to enable those members who choose to do so to administer their own live performing rights. We also make a number of recommendations about the way in which some of the practical difficulties of self-administration could be overcome.

1.13. The interests of users of music are primarily protected through the Copyright Tribunal. A number of additional responsibilities are to be imposed on the Tribunal under statutory instruments soon to be made to implement recent EC Directives on intellectual property. We are concerned that, as currently staffed and financed, the Tribunal may find it difficult to respond adequately to the demands that may be made upon it.