

# 10 Views of music users

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10.1. In this chapter we summarize first the views of broadcasters, who contribute about one-third of the PRS's income, and then those of organizations or businesses concerned with other forms of public performance, who contribute another third. The remaining third comes from the overseas earnings of PRS members via affiliated societies, whose views are mentioned in paragraphs 13.14 to 13.17.

## British Broadcasting Corporation

10.2. The British Broadcasting Corporation (BBC) said that while the PRS was a monopolist, it nevertheless fulfilled a valuable and necessary function. Making arrangements with individual publishers and composers would add significantly to administration costs. However, if the organization were not run efficiently, higher than necessary operating and overhead costs would be incurred which ultimately would be funded by licence holders. Serious delays over negotiating a renewal of the BBC's licence had been inconvenient and frustrating. The BBC had complained to the OFT about the lack of effective recourse in such cases. Against a background of rapid changes in broadcasting, it was essential that negotiations with the PRS could take place speedily and that there was a quick and effective procedure for resolving disputes. This might involve strengthening the powers of the Copyright Tribunal, enabling it to grant an interim licence on the licensee's terms, or on such terms as it considered reasonable. Also there might be a case for the establishment on a permanent basis of an independent officer, capable of acting as both ombudsman and regulator, who would act as an independent point of reference on matters relating to the operation of the PRS and its licences.

10.3. One of the key issues that needed careful examination was the price the licensee had to pay. Like all major broadcasters, the BBC was now operating in a much more competitive and fragmented market in which new products and new opportunities were developing all the time. It was essential for the BBC to be treated

fairly compared with its competitors and that it could acquire the licences needed at a price that would reflect a fair return to the rights owners, but at the same time would not prevent the wider distribution of new channels and services to the public. Under the agreement effective from 1 January 1994 to 31 March 1997, the BBC paid £30 million a year to the PRS. Previously, from a PRT decision in 1972, up to 1990, it had paid 2 per cent of its total revenue. The payments made to the PRS had greatly increased, as a result of colour television with an increased licence fee. The BBC had found itself paying considerably more than would have been suggested by the movement of the RPI or calculations of audience size. Current BBC payments to the other collecting societies were about £9 million to PPL and about £3 million to the MCPS.

10.4. The BBC had to negotiate licences with the PRS and the MCPS separately, even though both organizations represented broadly the same product. It was anomalous that the BBC had to report detailed and largely overlapping music usage information to both organizations separately, at a cost of perhaps £1.5 million a year, and through its licence payments had to support the significant administrative overheads of two organizations. It processed 70,000 music items each week for the PRS. In this context of duplicated effort and costs, the BBC had been most disappointed at the apparent breakdown of the recent discussions between the PRS and the MCPS.

10.5. The BBC later told us that it believed the present arrangements did not represent value for money because they took no account of the levels of the audience listening to, or viewing, its output. Music from the PRS repertoire heard by a very small number of people in the night hours did not have the same value as music played in popular programming at peak time. As major new broadcasting developments had taken place, BBC audiences had fallen substantially while its payments to the PRS had increased. This was a matter of fundamental public interest which the Copyright Tribunal might be placed under a specific obligation to take into account. Asked to comment on other observations the MMC were considering in relation to the Tribunal, the BBC said that it believed that in a global market there was a case for the Tribunal being able to take the position of other countries into account. Whether this should be an absolute requirement was open to question. There would be a significant additional burden on the Tribunal and on parties. All relevant differences would have to be taken into account including the overall legislative framework and the way in which collecting societies operated. There was a strong case for extending the provision for statutory licences in the Broadcasting Act to the PRS and other collecting societies. Any provision for interest to be payable when the Tribunal made an order with retrospective effect would mean that there was no incentive for matters to be dealt with expeditiously. Nor should there be any change in the present practice of awarding costs.

## **Independent Television Association**

10.6. The Independent Television Association said that although its negotiations with the PRS had not been without difficulties, including a reference to the Copyright Tribunal in 1981, its companies believed they derived benefits from the existence of the PRS as a collective negotiating, collecting and distributing body. The current agreement covered the period from 1 January 1993 to 31 December 1995, the amount payable in 1995 being £13.85 million. The PRS's effective monopoly gave it a very strong position in negotiations, which might be better balanced if there were competing societies, as in the USA. Nevertheless, on balance the companies believed a system of collective administration and licensing did deliver benefits to both users and rights owners.

10.7. The exclusive nature of the assignment of performing rights to the PRS by its members limited the flexibility of contracts with composers for specially commissioned music and imposed an unusual limitation on contracts with employees who composed music for programmes as part of their job. This rule was not essential for the PRS's operation and in certain circumstances unnecessarily restricted the operation of an open competitive market.

10.8. Highly detailed programme information (transmission logs and cue sheets, with timings to the second) was supplied by each ITV regional company both to the PRS and the MCPS. There must be scope for a single return to a servicing point which could meet their needs and others as well, such as those of PPL, VPL, British Phonographic Industry Ltd (BPI) and the MPA. The companies would welcome progress in this direction and were disappointed by the failure of one recent initiative. The PRS's ability to help in identifying works seemed to have deteriorated in the past three or four years. The MCPS could answer such questions more efficiently.

## **Channel Four Television Corporation**

10.9. Channel Four Television Corporation thought that as new media developed, streamlined systems for the collection and distribution of royalties would be vital to protect the interests of copyright owners. Collecting societies such as the PRS would come under increasing pressure to justify their overhead and administration costs in providing the service offered. Technological developments and the regulatory framework for operation of communication systems would mean that in some instances it was reasonable for payments to underlying copyright owners to be made through a collecting society. An alternative system of dealing directly with individual copyright owners would be administratively wasteful. However, rights owners should be free to join collecting societies of their choice, taking into account market forces. Licensees should be protected from collecting societies abusing their position, both at European and at national levels.

## **BSkyB**

10.10. At a late stage of the inquiry BSKyB made representations as to the PRS's attitude to competition which it stated showed the PRS's exploitative approach to its monopoly power. It had been trying to conclude a definitive licensing agreement with the PRS since 1992, but only recently (in a letter of 4 October 1995) had the PRS's full demands become clear.

10.11. BSKyB said that it was a leading UK broadcasting service distributing its programming by satellite and cable to more than 4.5 million subscribers. It operated nine wholly-owned channels, all of which were available for distribution by cable operators, and distributed others. Its success had not been earned without considerable business development costs and entrepreneurial risk. Music was one element, but generally not the main element, in its programmes. It neither owned nor participated in any of the dedicated music satellite channels. In an agreement concluded in September 1991, BSKyB had agreed to pay the PRS £900,000 for an 18-month period. Since the expiry of that agreement, the PRS had accepted continuing lump sum payments, increased to take account of the larger number of channels offered by BSKyB.

10.12. Not until December 1994 had the PRS produced a 'consultation document' proposing a scheme for licensing all satellite and cable television broadcasters and based on a tariff of 1 per cent of revenue from advertising and subscriptions. BSKyB believed such a basis was unfair, unreasonable and abusive. As already stated, music was incidental, rather than central, to BSKyB's programming. The tariff was unrelated to the amount of music used. It disregarded the high costs, and effect on revenue, of BSKyB's skills in purchasing, production and scheduling. Moreover, the PRS, having first proposed a scheme of general application because individual negotiation was 'no longer practicable', subsequently reverted to individual negotiation, albeit on the same basis.

10.13. The case against linkage between royalties and revenue derived powerful support from historic practice. The PRT in the case of Independent Television Companies Association v PRS (PRT 38/81) had been 'unable to accept that there is any adequate correlation between the use of music from the PRS repertoire by the [independent television] companies and the [net advertising revenue] of those companies'. The PRT had then pointed out that 'the television programme or commercial is the product of a wide variety of artistic and technical skills, of which music is only a part and not we think in general the predominant part'.

10.14. BSKyB had put forward a proposal for a three-year licence agreement based not on revenue but on the number of Sky-receiving homes. This was to be £1.05 million a year, plus an additional £10,000 for each additional tranche of 50,000. Three months later, in October 1995, the PRS had reverted to the approach set out in its consultation document but with a royalty rate set to rise to 3 per cent by 1997, regardless of the amount of music used. This behaviour was extraordinary and explicable only in terms of the PRS's monopoly position. The effect of the proposed rates would be draconian, the impact on profits (and on the ability to service debt) being far greater than the nominal percentage increase in royalty. Competition between broadcasters would be distorted, the interest of consumers harmed, and barriers to entry created. Nor was there any justification for treating satellite broadcasters differently in this respect from terrestrial broadcasters.

10.15. At a hearing, BSKyB said that it had always understood the need for some form of escalator when negotiating royalties for performing rights, but that the principle of a percentage of revenue was totally inappropriate. The inordinate delay and changes of stance on the part of the PRS were attributable to the

monopoly situation. The only recourse might be to go to the Copyright Tribunal which would indeed be appropriate if there had been bona fide attempts to reach a settlement, but in fact no such attempts had been made by the PRS.

10.16. Invited to comment further on the role of the Tribunal, BSKyB said that the importance of mechanisms to counterbalance the monopolistic power of collecting societies was well recognized. The MMC would be aware of the concerns expressed in relation to their operation over the years by the EC Commission and by the ECJ. Important civil rights and commercial interests were at stake when users dealt with the PRS. The rights involved were to be equated with those that arose in major commercial and civil dispute settlement procedures. They were 'pecuniary in nature', thus entitling the users to access to a court meeting all the safeguards, including promptness, required under Article 6(1) of the European Convention on Human Rights. Lord Woolf had recently stated (*Access to Justice*, Chapter 1) the following basic principles for the civil justice system:

- that it should deal with cases with reasonable speed;
- that it should be responsive to the needs of those who use it; and
- that it should be effective, adequately resourced and organized to give effect to these principles.

10.17. BSKyB considered that the Copyright Tribunal provided a check on the PRS, but one which fell far short of these qualities recognized as the goals of a just civil dispute procedure. It was under-resourced and operated slowly and expensively, applying adversarial procedures. It usually took two years from reference to determination and was very expensive in terms of costs of preparation and representation (including expert evidence) and absorption of management time. There was no alternative method of dispute resolution, for example nothing equivalent to ACAS in the employment sector. The new draft statutory instruments did not address these concerns. They made no change in the basic functioning of the Tribunal and did not envisage any speedier means of facilitating negotiations.

10.18. BSKyB emphasized how serious and prejudicial was the prolonged uncertainty caused by the absence of mechanisms for dealing quickly with the PRS monopoly. The object of coming before the MMC had been to highlight how unsatisfactory and inadequate were the current remedies against abuse of power by the PRS. A smaller-scale operator might well have no commercial alternative but to accept whatever the PRS demanded rather than face the uncertainty, high costs and delay which reference to the Tribunal would entail.

10.19. BSKyB requested the MMC to include in their report an affirmation of the importance of mechanisms to counterbalance the monopolistic power of the PRS; a statement that such mechanisms ought to conform to the goals identified for the civil justice system by Lord Woolf and others; an affirmation of the importance of the Copyright Tribunal and of its being adequately resourced; and recommendations that an advisory arbitration service be established to which recourse could be had to help resolve speedily difficulties encountered by users in dealing with the PRS.

## **Association of Independent Radio Companies Limited**

10.20. The Association of Independent Radio Companies Limited (AIRC) supported the views of the Music Users' Council (paragraphs 10.26 to 10.33). Music users were dependent on the PRS not abusing its monopoly position. The PRS was fully aware of its power as a monopoly supplier and it was unrealistic to assume that it could always be relied upon to act fairly. Members of the AIRC, and others, were forced to accept, pending a Copyright Tribunal determination, any tariff imposed by the PRS, however unreasonable. They were also at risk of the PRS refusing to grant a licence, for which there was no redress under the 1988 Act, whereas obligations had been imposed on PPL following the MMC's report on Collective Licensing (see paragraph 3.37).

10.21. The introduction of a statutory licence was necessary to alleviate the public interest detriment which put licensees and potential licensees at a significant disadvantage and risked a situation in which new forms of broadcasting introduced in the future could be prevented or held up until the PRS decided to propose terms (if at all) or until it was willing to propose reasonable terms. A right to a statutory licence would enable music users to introduce new services by invoking a statutory licence and referring the matter to the Copyright Tribunal for final determination. In a recent submission to the Department of National Heritage, the AIRC

had asked that the PRS should be placed under the same obligations as PPL if and when there was a new Broadcasting Act.

10.22. The AIRC recognized that the statutory right should apply only in respect of works administered by collective licensing bodies and should not apply to rights administered individually by producers or authors (if extended to musical works).

10.23. The AIRC had told the European Commission of its view that the potential for monopoly abuse inherent in the present system could be effectively countered only by an arbitration system in which the presentation of arguments would not be adversarial and the cost of the body investigating the allegation of abuse would be met by the Government.

10.24. Commenting subsequently on observations the MMC were considering making on the Copyright Tribunal, the AIRC said that the licence fees UK commercial radio was currently paying to PPL, the PRS and the MCPS amounted to £20 million (10.25 per cent of net broadcasting revenue) and the figure was rising. This was substantially more than any other European commercial radio system was paying in copyright fees. It was entirely reasonable for the Tribunal to take into account royalty rates in other countries. As already stated, the AIRC also agreed that the PRS should be subject to a statutory licence. It also accepted that if the Tribunal ordered a fee higher than that paid by the user prior to the Tribunal's finding, then it might attract interest at the Tribunal's discretion. The AIRC could understand why small users might fear the risk of having to meet a collecting society's Tribunal costs, and would welcome anything that could be done to ameliorate this. The PRS should be expected to pay its own and the user's costs if the Tribunal found in the user's favour.

## **Cable Communications Association**

10.25. The Cable Communications Association said that its negotiations with the PRS had always taken place in a constructive atmosphere and that to date it had not experienced any problems in obtaining the rights which its members required on acceptable terms. Care would have to be taken to ensure that cable network operators were not subjected to unnecessary new rights or to excessive or unjustifiable copyright payments as a result of the transition from analogue to digital transmission technology.

## **Music Users' Council**

10.26. The Music Users' Council (MUC), representing almost all categories of music users, said that once a particular tariff had been the subject of a reference to the Copyright Tribunal, it could not be changed unilaterally. However, most tariffs, including some affecting a large number of users, were not Tribunal tariffs. The effect of this was that increases or other changes unilaterally imposed by the PRS remained in force throughout what might be a lengthy period of negotiations and until the matter was adjudicated by the Tribunal. Even then, the Tribunal's jurisdiction was retrospective only to the start of the reference. The number of separate tariffs was unnecessarily large.

10.27. The MUC proposed that all current tariffs should be treated as Tribunal tariffs, enabling users to continue to pay at the previous rate whilst contemplating a reference to the Tribunal. It took very considerable time and money for users to organize and fund even the start of a Tribunal proceeding. The PRS, with considerable funds at its disposal, could employ senior, and therefore expensive, counsel and advisers which the user had to match in order to have a chance of success. Such users incurred costs of between £300,000 and £500,000 or even more. Unless the amounts involved in a new tariff were substantial, and the user had access to the necessary funds, tariff increases could take effect without challenge.

10.28. International comparisons were of questionable validity. For example, continental discothèques often did not charge for admission but charged high prices for drinks. There was nothing comparable to the British public house or working men's club. Continental societies did individual deals regardless of published tariffs.

10.29. If the PRS unilaterally imposed a change and licensees were unable to bring proceedings before the Tribunal, or were prepared to tolerate the change in exchange for a concession on another part of the tariff,

the PRS could use this as a precedent. They could also decide to treat well-organized and well-funded organizations differently from others who were not in a position to litigate before the Tribunal. The PRS's power to make unilateral increases or to discriminate between licensees was against the public interest. All users, and particularly small users, should be protected against the use of the monopoly power the PRS currently enjoyed. These problems would be solved or at least reduced if all tariffs were treated as Tribunal tariffs. Some form of arbitration should be devised that would be less expensive and time-consuming than references to the Tribunal, which in its current form was a sledgehammer to crack a nut. This would be more accessible to music users and therefore more effective in curbing abuse of the collecting societies' monopoly power.

10.30. The MUC was aware that the PRS had been making an effort to reduce costs but felt it should be obliged to publish its annual accounts in some detail. In particular, legal costs should be specified. The level of royalty should not be affected in any way by the PRS's administration costs, over which users had no control and which did not reflect the use or value of the rights being licensed.

10.31. Section 135 of the 1988 Act, as amended by the Broadcasting Act 1990, applied only to sound recordings. Thus the MUC's members were entitled to a statutory licence from PPL but not from the PRS. This was anomalous and unjustified, and adversely affected the bargaining power of relevant MUC members.

10.32. The MUC saw no gain from breaking the monopoly of the PRS at this stage provided that the problems it had identified were addressed.

10.33. Asked to comment on observations the MMC were considering making in regard to the Copyright Tribunal, the MUC said that it did not think it would be right for the Tribunal to be required to take into account royalty rates in other countries. It was within the Tribunal's discretion to do so in an appropriate case and it had frequently been invited to do so by parties appearing before it. If music users had to gather information from foreign jurisdictions, the expense and time involved would be increased. The MUC was most alarmed by the possibility of its members having to seek evidence from an unspecified number of countries. It was by no means certain that foreign comparables had any relevance, as was shown by the Tribunal's decisions in the cases of *PRS v BEDA* (1989) and *AIRC v PPL* (1993). The absence of a statutory right on the user's terms for broadcasters in relation to the PRS was anomalous. The absence of power on the part of the Tribunal to award interest when making retrospective orders affected both sides, and the MUC saw no reason to disturb the existing balance. If the Tribunal's procedure could be streamlined, the period during which interest would be deemed to run would of course be shorter. If a user wished to put evidence of its financial capability the Tribunal should be required to take this into account in making any order as to costs.

## **British Hospitality Association**

10.34. The British Hospitality Association (BHA), which represented 22,000 catering establishments, was a member of the MUC and made representations to similar effect. The BHA recounted the experience of its predecessor, the British Hotels, Restaurants and Caterers' Association, following the PRS's decision in 1987 to raise tariff HR in respect of live music from 2.5 per cent of the fees paid to performers to 4.5 per cent and then to 6 per cent. Following an extensive and costly programme of research, a reference was filed with the Tribunal in May 1990. Although a settlement was reached (at 4 per cent) in 1991, users had still had to pay the full increases unilaterally demanded by the PRS from 1987 to 1990. PRS tariffs and invoices were not easy to understand, and their basis of assessment (for example, of restaurant capacity) was often controversial.

10.35. Although the PRS had recently adopted a lower profile, it had nevertheless sought to levy new or additional charges in some areas. These had included an attempt to claim royalty payments for music at essentially non-public functions such as weddings held in hired rooms, as well as a move towards collecting extra fees for some sports-based television programmes received via cable and satellite dishes on the grounds that these broadcasts contained substantially more PRS-controlled music than those from a terrestrial source. The combined efforts of those affected had persuaded the PRS to reconsider those issues.

10.36. The Copyright Tribunal had been established to provide speedy and affordable redress for music users involved in a dispute, but this objective had not been effectively realized. References to it involved the same capital outlay as going to the High Court. The PRS, which had no shortage of financial resources for the purpose, would be likely to make use of the best, and most expensive, legal assistance available to present its

case. That gave it a considerable advantage over less affluent adversaries, and there had been numerous occasions when individuals and small organizations had been compelled to accept the enforcement of higher rates because they had no effective means of opposition.

10.37. There was a clear need to remedy the situation. This could to some extent be achieved by government involvement in the setting of tariff rates and in acting as the initial arbiter or mediator when disputes arose. In other European countries government endorsement was often required before tariffs could be increased or extended.

10.38. Invited to comment on observations the MMC were considering making on the Copyright Tribunal, the BHA said that it would be seriously concerned about a proposal to make it an explicit requirement for the Tribunal to take into account royalty rates in other countries. This would be unreasonable because charges were not levied on any common basis. The BHA understood that in some countries they were pitched at an artificially high level to counterbalance an inefficient collection system. The Tribunal already had the freedom to take overseas comparisons into account if it wished. Change was neither desirable nor necessary. The BHA supported a right to statutory licences for broadcasters and agreed that the Tribunal should be able to order the payment of interest where appropriate. As to costs, the best method of alleviating the imbalance that undoubtedly existed would be for all current PRS tariffs to become Tribunal tariffs.

### **British Amusement Catering Trades Association**

10.39. The British Amusement Catering Trades Association (BACTA), the trade association for the coin-operated amusement machine industry, while accepting the entitlement of composers and performers to a reasonable fee for the public use of their works, questioned the way in which the fees were set. Its principal concern related to the arbitrary way in which licence fees could be altered and charged without consultation with users. Recourse to the Copyright Tribunal was prohibitively expensive for individuals or small traders. The number of juke-boxes had declined from 45,000 in 1991 to 36,000 in 1994, as more and more companies struggled to meet increased licence charges.

10.40. BACTA said that the licensing bodies' monopoly position acted against the public interest. It suggested that there should be a statutory requirement for licensing bodies to negotiate reasonable fees, any dispute being referred to independent arbitration; a reform of the Copyright Tribunal to allow inexpensive access to it; statutory requirements for licensing bodies to publish full and detailed accounts, and limiting their expenditure on administration to a percentage of annual turnover; and the registration of all tariffs.

10.41. Invited to comment on observations the MMC were considering making on the Copyright Tribunal, BACTA said that royalty rates in other countries were based on very different commercial cultures and in many instances had been set by collection bodies holding a dominant position and without the constraint of a national tribunal. There should be no explicit requirement for the Tribunal to take into account royalty rates in other countries. It was sufficient and equitable that the Tribunal was required to determine what was reasonable in the circumstances. In any event, the principle of subsidiarity should be supported in such matters. BACTA supported the case for statutory licences. It was not unreasonable for interest to be paid on the sums due under a retrospective order. It must also be the case that it would be fair and equitable to require interest to be repaid, along with any overpayments in licence fees themselves, where a licensing body had increased fees which were later reduced as the result of a subsequent reference to the Tribunal. In awarding costs the Tribunal should presume in favour of the music user because the licensing bodies were well resourced and the bulk of music users were not. The user should be required to pay the costs (or part of the costs) of the licensing body only where their reference was wholly unsuccessful and, in the view of the Tribunal, unnecessary.

### **Producers' Alliance for Cinema and Television**

10.42. The Producers' Alliance for Cinema and Television (PACT) said that in its members' experience the PRS appeared to favour predominantly their songwriter/composer members rather than the music publishers and to be paternalistic and somewhat heavy-handed in their approach to negotiations. The amendment of PRS Rule 2(f) had the effect of denying a commissioning independent producer or ITV programme contractor the opportunity of acquiring the full music publisher's share of PRS income despite

their often heavy investment in the production of which the music formed an integral part. PACT members felt that their interests had not been fully addressed nor given sufficient weight. But for their active exploitation and commissioning of music, many of the PRS's members would not enjoy such diversity and breadth of commissions.

10.43. Another source of conflict had been the administration and implementation of US theatrical (cinema) licences for UK repertoire. There were also day-to-day inefficiencies, and PRS systems appeared to be unsophisticated and did not provide the level of information available from the MCPS. Nevertheless the existence of the PRS as a focal point for the administration of performing rights led to positive advantages, and most PACT members favoured the maintenance of the PRS substantially in its present form.

### **British Retail Consortium**

10.44. The British Retail Consortium said that those of its members who played copyright music on their premises had found the PRS rather inflexible. Fees were based on the total square footage, which was costly and time-consuming to calculate. A far easier alternative, which the PRS had refused to countenance, would be to base the charge on the number of stores where music was played. The Consortium did not necessarily object to the monopoly situation as such, but thought the administrative efficiency of the PRS should be subject to scrutiny.

### **Brewers and Licensed Retailers Association**

10.45. The Brewers and Licensed Retailers Association said that it had been PRS practice in the past to attempt to 'leapfrog' tariffs by negotiating an increase with one group (or increasing a tariff not negotiated with a representative body) and then using this as leverage with other users. They negotiated in a high-handed manner and their approach was often arrogant. The ultimate sanction for the user was to refer an increased tariff to the Copyright Tribunal, but this was so expensive as to be beyond the reach of small businesses or associations.

10.46. Examples of the PRS's attitude were its attempt to collect additional royalties from premises equipped to receive satellite or cable television, withdrawn only after financial provision had been made to take the matter to the Tribunal, and the proposal to charge for music played at family events such as wedding receptions or birthday parties held in function rooms in public houses. Again only after the threat of a reference to the Tribunal had the PRS agreed that functions for which no admission charge was made and which were non-profit-making need not be declared.

10.47. These actions were an arbitrary abuse of monopoly power which had cost legal fees and a very significant amount of staff time. The remedy must include accessible and affordable justice. It could include all tariffs being registered with the Tribunal, any additions or changes being subject to its agreement. In the event of any reasonable challenge, the judge of reasonableness being the Tribunal, the PRS should bear its own costs irrespective of the outcome. The PRS should also bear all the costs of a successful challenge. This would provide a financial deterrent to the abuse of power.

10.48. Invited to comment on observations the MMC were considering making on the Copyright Tribunal, the Association said that it generally supported the views expressed by the MUC. The British public house was unique and the Association would find it well-nigh impossible to gather comparative data from other countries. It strongly recommended that the Tribunal should *not* be explicitly required to take into account royalty rates elsewhere. It agreed that the right to a statutory licence should be extended to cover potential licensees of the PRS as well as PPL. As to the payment of interest, the Association had no relevant experience but unless there was considerable argument to the contrary would deem it preferable to leave matters as they were. It would support a change to the rules regarding costs and suggested that the Tribunal should be empowered to require the loser to pay, at most, that proportion of the winner's costs which was equivalent to the loser's own costs, ie no party should be liable for a sum greater than twice their own costs.

## **Confederation of Passenger Transport**

10.49. The Confederation of Passenger Transport said that it had reached an agreement some ten years ago with the PRS about the level of fees, with recognition that there should be a differential between new and older vehicles and between vehicles of different capacities. It felt that neither with the PRS nor PPL was there any transparency in fee structure.

10.50. Representations were also received from an individual bus operator, who felt the fee scales, especially for new vehicles, were draconian, and from a user who thought the charges were excessive for vehicles used for charitable purposes. Because a minimum charge was imposed, a single-vehicle operator had to pay as much as a five-vehicle commercial operation.

## **National Association of Holiday Centres**

10.51. The National Association of Holiday Centres (NAHC) said that it had negotiated with the PRS for over 50 years. In 1988 negotiations failed because the PRS put forward unfair claims for huge increases. The following year increases had been imposed which meant that most NAHC members would pay some five times more than previously. The Association took the only action possible, that of reference to the Copyright Tribunal. After two years of time-consuming and very expensive legal action, the PRS called for meetings to settle two weeks before the Tribunal hearing was to commence. The outcome was an agreement that gave increased rates from 1989 very much in line with inflation. Had the NAHC not had the resolve and financial backing to fight the case, the PRS would have succeeded in imposing its unjust rates and then possibly used them in turn as justification for other increases.

## **Society of London Theatres and Theatrical Management Association**

10.52. The Society of London Theatres (SLT) and the Theatrical Management Association (TMA) said that while their members viewed with caution the practical implications of a multiplicity of competing collecting societies, they wished to register their serious concerns and doubts regarding the monopolistic activities of the PRS and its impact on the public interest.

10.53. Some years ago the TMA had successfully mounted an appeal to the Copyright Tribunal against PRS tariffs. The time, work and money involved had been immense, and but for the generosity of a Counsel prepared to forgo his normal fee would have been beyond the TMA's resources. A system of justice whereby the pursuit of a fair assessment was financially prohibitive was a contradiction in terms. It could not be in the public interest for the activities of the PRS to be effectively immune from challenge. A system which was impossible to oppose would inevitably become exploitative and exorbitant in its demands. The rates set under tariff T were adjusted on a unilateral basis and were seriously out of line with royalties negotiated directly with composers, exceeding the normal rate by around 2 to 3 per cent.

10.54. SLT and TMA members also had serious reservations about the way in which money collected by the PRS seemed to be dissipated through the bureaucracy of its administration rather than channelled to the relevant rightholders. Their greatest concern was that a cost-effective and easily accessible mechanism be devised by which the activities of the PRS could be made publicly accountable.

## **Cinematograph Exhibitors' Association**

10.55. The Cinematograph Exhibitors' Association (CEA) had two major concerns: the PRS's use of its monopoly position in negotiations with users, and the level of competence of the PRS's administration. A new rate of licence fee recently negotiated was a compromise made necessary by the potential cost of fighting the PRS through the Copyright Tribunal. CEA members' resources were relatively limited in relation to those of the PRS. The CEA provided a detailed narrative of its negotiations with the PRS. Cinema operators did not readily appreciate paying the PRS licence fee because they also paid other fees which included an element of payment to all who contributed to the production of the films, and some of the comments made about the attitude of the PRS's enforcement staff might be slightly coloured as a result. Even so, the number of calls of complaint received about the high-handed way in which cinema owners felt they were being treated by the

local inspection staff did seem to indicate that their attitude was over-aggressive. In a normal year, no complaints were received about PPL.

10.56. In support of its claim about administrative inefficiency, the CEA provided a copy of an erroneous form issued to its members by the PRS.

## **Cinema Advertising Association**

10.57. The Cinema Advertising Association (CAA) explained how it had recently co-operated with the PRS in trying to identify each of the commercials which had been screened at each cinema, in order that monies owed to composers of music used in the advertisements could be credited to them. This had not been very easy but the PRS and members of the CEA had co-operated and had arrived at a process which provided the necessary data. The CAA knew of no other body which acted on behalf of composers in this way, and considered that it would be extremely difficult, if not impossible, for the process to be performed by more than one body.

## **A small cinema**

10.58. The manager of a small theatre and cinema in Oxfordshire (the Corn Exchange, Wallingford) said that having paid a hefty sum to a film distributor for the hire of each film, he then had to pay the PRS a licence fee in respect of the music in each soundtrack. This extra imposition was annoying and illogical. He asked why the PRS could not have a blanket arrangement with the film distributors so that music royalties were recovered at source. Alternatively there could be scope for a one-off annual licensing fee for small operations, as against the cumbersome method of reporting and assessment currently imposed.

## **International Talent Booking**

10.59. International Talent Booking said that as a booking agent it was obliged to advise promoters to withhold for payment to the PRS 3 per cent of the gross ticket sales. This had the effect of reducing potential revenue to both artist and promoter. Artists complained that they rarely saw money from the PRS until much later, sometimes as long as two to three years. It seemed incongruous that with modern technology there was no system by which the artists could, on completing the relevant paperwork, be paid what they were due on the night. This would reduce the burden of 'tour shortfall' whereby when tour costs exceeded income, money had to be borrowed from the record company.

## **World Dance Organisation**

10.60. The World Dance Organisation (WDO) said that it worked in conjunction with promoters in the areas of jungle, garage and hard core rave music, promoting large-scale events at Wembley and elsewhere which attracted audiences of 6,000 to 12,000 people. The events usually lasted all night and provided 8 to 10 hours of music. The DJs who performed on these occasions wrote and composed the music and lyrics, were very keen to obtain this kind of exposure, and were unconnected to the established music industry. 90 per cent of them were not members of the PRS and the remainder were willing to waive any licensing rights vested in the PRS. The WDO felt that the PRS was abusing its position in the following ways:

- (a) Little of the money collected in licence fees for events of this nature was or could be distributed to the performers since they were not members.
- (b) The few who were members felt that such performances enhanced their careers and provided them with the creative bedrock on which their compositions were based.
- (c) The rave tariff maximized the return from licensed events to compensate for the loss of revenue from unlicensed events. This made organizers who were prudent and licensed responsible for those who were not.

- (d) There was a huge discrepancy between the fees for such events and those for mobile discothèque or club events.
- (e) The PRS insisted on the full rave tariff being paid even though a licence was required only for the accidental or inadvertent inclusion of PRS members' music in DJ's repertoires.
- (f) The PRS was using its monopoly position to force venue owners to make payments under existing licence arrangements. It was not in the venue's interests to deny the PRS this income because it required a licence for its concerts. Promoters and performers had no real means of redress.

The monopoly position of the PRS had a negative impact, adversely affecting the commercial viability of small promoters, failing to support those composers most in need of revenue, and leading to disenchantment, antipathy and alienation.

### **Other submissions**

10.61. The *Incorporated Society of British Advertisers* said that it had received no complaints regarding access to music controlled by the PRS or other evidence of abuse. The *Scottish Licensed Trade Association* supported the views of the Brewers and Licensed Retailers Association. The *Hospitality Association, Northern Ireland*, agreed with the views of the BHA, adding that the problems associated with a reference to the Copyright Tribunal were exacerbated in the case of a small association such as that in Northern Ireland. The *Grampian Regional Council* said that the Association of Music Advisers in Scotland, which had been invited to comment, had been disbanded. Music teachers in schools would welcome some relaxation in the way copyright restrictions were interpreted; performance of music could mean the levy of quite high charges to schools in certain circumstances.