

11 Views of writers

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11.1. The practice of the PRS, which we follow, is to use the term `writer' for those who contribute creatively to a musical work, whether as composers of music or authors of words set to music. We also summarize in this chapter the views of arrangers of music originally composed by others. First, we record the views expressed by representative bodies, and then those of individuals.

The Association of Professional Composers

11.2. The Association of Professional Composers (APC) offered full support for the PRS in more or less its present form. The 248 members of the APC were all members of the PRS and about 100 of them were full members each entitled to an additional ten votes (ie 20 votes in all). In the APC's view, it was highly desirable that the PRS should remain a rights-owning monopoly. Competing societies might result in a more commercial operation, but commercial considerations were not the only ones that had to be taken into account. Nevertheless some detailed criticisms and suggestions were offered.

11.3. All members of the PRS stood to benefit from its *de facto* monopoly, particularly its comprehensive repertoire; but it was almost impossible to know by how much. This clearly placed the Society under an obligation to be fair to its low earners, but nobody knew exactly what that should entail. Sampling and blanket licensing meant that some degree of cross-subsidization between different types of

works was both inevitable and desirable, though if it were allowed to go too far it might pay some disadvantaged members to leave the Society altogether and set up alternative licensing schemes. Currently there were, in fact, persistent reports and rumours that certain major publishers were considering doing just that. All these imponderables led inevitably to a lot of guesswork; and that meant great power in the hands of the directors.

11.4. Revenue from almost all live performances except major ones was distributed according to sampled data. A balance had to be struck between the need to take an adequate sample and the cost of doing so. It was in everyone's interest to accept a distribution that was rough and ready to some degree; but members' interests differed widely over where the cut-off point should be set, and how far to compensate those whose performances might fall through the sampling net.

11.5. Differences existed between publishers and writers; between high and low earners; between those whose music was mainly performed live and media music; between classical music successful only in the long term and the relatively intense but brief success typical of much pop music (and often also of its writers); between established writers and beginners. The Society would be pointless if the commercial interests of all these groups were not in many ways the same. But there were quite significant areas in which they could differ. For example, sampling tended to favour pop music over classical, and successful established members over beginners. The rich and successful few would often profit from quite crude and therefore cheap sampling systems, where many of the poorer members of the Society would only be properly looked after by more sophisticated systems, and therefore higher administration costs. Or again, the areas of conflict between writers and publishers had sometimes increased because developing technology had gradually modified what many of those who called themselves 'publishers' in fact did. Various publisher directors of the PRS now worked for firms that were actually affiliated to users. One or two, it could be argued, no longer actually published at all. There was considerable scope for the Society to be run too much in the interests of particular groups, and what was ideal for one group could penalize another.

11.6. In theory the democratic constitution of the General Council should safeguard the interests of all areas of the membership. In practice a small number of powerful interest groups tended to be favoured, sometimes improperly. For the reasons already given, decisions had to be taken about how the blanket licence revenue should be distributed, which, although often crucial, were partly arbitrary. Every member of the Board that took these decisions had a vested interest. The sums were often very large. While the APC believed many members of the Board served with great integrity and care, and that vested interests were not routinely an overriding factor, they nevertheless played too large a part and constituted a serious flaw in how the Society was run.

11.7. In oral evidence at a hearing the APC emphasized the importance it attached to preventing any particular clique from becoming dominant. Moreover the intellectual quality of elected members of the Council was not necessarily high. Slogans sometimes became policy without being properly examined.

11.8. The upshot was that various far-reaching decisions had been made, sometimes in an ill-considered and wayward fashion, and almost immediately modified or even reversed when it emerged that they would disadvantage those council members who had originally pressed for them. For instance, not long ago the dominant group on the Board, the pop writers and publishers, wanted to try to get all sorts of music treated the same as far as was practical. As part of this they successfully voted to remove the division of television music into featured and background, without being fully aware of what the result would be. When they later saw the effect on their royalties they immediately (and, in the APC's view, unfairly) restored this often anomalous and unjust distinction. Another self-interested and inappropriate decision was that to abolish the UPA, followed by a shamefaced U-turn which restored it under another name. The effect of this would have been to divert the earnings of some of the many poorer members of the Society to the rich and powerful sections represented on the Board. Other decisions with a similar effect were those to set up the new significant venue policy, and to pay major pop concerts twice the revenue collected for them (this latter being yet another large-scale decision that was almost immediately reversed). Again there was the Board's refusal either to pay arrangers of copyright music royalties earned by their performances, or to reassign these performing rights back to them. The Board had also refused to set up a registration fee as a way of dealing with the cost of administering inactive works. An important stated reason had been that it would cost publishers too much to buy large sections of each others' catalogues (as opposed to complete catalogues that might be transferred by a simple computer operation). An annual subscription had been

proposed (but not yet imposed) instead. Once more, that would in effect mean the poor subsidizing the rich.

11.9. An example of how user interests had distorted the working of the PRS was the matter of television publishers. Rule 1(o) of the PRS enabled companies to receive a publishers' royalty share for doing nothing at all. Television publishers were often a case in point. Composers normally signed with them only because they had to. Rule 2(f), which tried to limit the coercion of film and television composers, had proved largely ineffectual. User interests, particularly those of major film and television companies or their associates, were powerfully represented on the PRS Board.

11.10. The APC considered that while it was not hard to find writer and publisher directors who could effectively represent various constituencies of the membership, experience suggested that both categories tended to lack other necessary qualities. Writers tended to lack managerial experience. Many publishers tended to be too imbued with a narrow commercial philosophy to run a monopoly properly. They also lacked experience in important areas: curiously enough, some writer directors called vociferously for outside consultants to be called in over the PROMS débâcle many months before any publishers, or the Board as a whole, decided to do so. A great deal of money would have been saved if they had been listened to.

11.11. The Board of the PRS needed to be more informed, more efficient, and much more dispassionate. It needed a mechanism for preventing any interest group from becoming dominant. Among the possibilities that might be considered were a large enough complement of independent directors to hold the balance of power, or a smaller but carefully balanced group of voting directors with more non-voting consultants representing diverse viewpoints. One or two independent directors with a veto might be appointed specifically to see fair play.

11.12. Another pressing problem was that the pool of directors who were free to serve as Chairman or Deputy Chairmen was very small, particularly on the writers' side. Yet they were responsible for a great deal of the day-to-day running of the PRS. The APC believed the PRS ought to have expert, independent, professional Chairmen. Precisely those things that made it important for the Board to be reformed were likely to prevent more than token reforms taking place under its direction.

11.13. The MMC could not properly consider the position of the PRS and the administration of performing right without also considering the mechanical right and the MCPS. It would be in the public interest if the MCPS were owned by the PRS rather than the MPA, giving rise to a combined performance and mechanical membership society such as existed in most countries. The state of affairs now obtaining, whereby the MCPS (another *de facto* monopoly) was governed, in effect, by and for one side of the industry only, was unsatisfactory. A compromise might be for the PRS to revive its dormant firm British Copyright Protection Association Ltd to own mechanical rights, while employing the MCPS as its agent to administer them.

11.14. The APC also thought the MMC should review the role of the Copyright Tribunal; references to it were very expensive and there were therefore imbalances when one party was much richer than the other. A matter of particular current concern was satellite broadcasting, both because Europe-wide competition was involved, which made the Tribunal's role questionable in principle, and because the actual fees charged by the PRS were inhibited by its view, in the light of experience, of the stance the Tribunal would take in the event of a reference. The effect of the Tribunal's jurisdiction was to distort market forces.

11.15. APC representatives welcomed the idea, when put to them at a hearing, that there might be a regulatory body which could keep PRS-and, preferably, MCPS-activities under review and to which appeals could be made by members. They thought it might be particularly advantageous in dealing with such matters as the coercion of television composers to sign 'publishing' deals with people who were not really publishers at all, as described in paragraph 11.9.

11.16. Invited to comment on possible remedies the MMC were considering, the APC said that the proposals on corporate structure might well improve the running of the PRS considerably. In putting them into effect it would be necessary to take careful steps to prevent any particular interest group from becoming dominant. Committees might in future include ordinary members, or outsiders with special

skills, thus reducing the workload of Council members and making it possible for a greater variety of working writers and publishers to consider standing for election. The only way to ensure that the post was held by someone of suitable calibre would be to have an independent Chairman, and the APC recommended that most strongly.

11.17. Any erosion of the PRS's monopoly in performing rights (other than grand rights, which were fairly clearly demarcated) would be the thin end of a very undesirable wedge. Once special cases were admitted, the door would be open to pressure from film and television companies, and some publishers, to take this right in quite different circumstances. In time such pressure might well become irresistible. The APC asked whether the MMC were talking simply of the *collection* of royalties for, say, very large concerts by pop singer-songwriters, or of the *negotiation* of royalty scales. The use of the word 'derogation' suggested the latter, in which case there was an immediate and obvious problem with supporting acts. If supporting bands wished to play their own songs they would be likely to have to give their royalties away. They might even have to pay to be allowed to perform them: they already often had to pay to play in such concerts. If they were to perform songs by still other writers the whole business would get out of hand. The writers might often not know that their material had been used, and not be paid anything, or else the PRS might have to be partly involved. In any case, if the venue already had a blanket licence from the PRS, would it apply for a rebate? If so, the PRS would incur administration costs. It all seemed a complicated way of giving a privilege to a small number of successful members, somewhat at the expense of everybody else. It was a bad principle, and certainly not one that should be forced on the Society.

11.18. It could be shown by arithmetical example that it was not necessarily fair to distribute blanket licence revenue pro rata on the basis of performance returns. The same applied to cost allocation. A great deal of broadcasting was easy to monitor. It was mainly successful members whose work was broadcast. But the licence fees were negotiated on the basis of the PRS's repertoire monopoly. Therefore, a proportion of the revenue should probably go to those whose work was not actually being broadcast, but was available for broadcasting under the licence. This situation required careful analysis. What was in fact a fair distribution of blanket licence revenue might wrongly appear to involve a subsidy paid by successful members to unsuccessful ones.

11.19. Annual membership subscriptions and registration fees needed to be further considered, but both had serious drawbacks. Subscriptions might amount to an unfair burden on the poorer members whose mere presence boosted the income of the rich out of proportion to what the poor themselves earned individually. Registration fees might discourage the registration of works, a difficulty which might be dealt with in the following way. Members could assign their complete performing right to the PRS as at present, so the Society's blanket licences would still cover the entire repertoire. But they could leave works unregistered if they wished on the understanding that if the PRS became aware that they were active, this would merely be noted on the distribution statements without any payment. The member would have to register them or also forgo future income.

11.20. The APC was broadly in agreement with the other possible remedies. Some direct input should be obtained from one or two of the important European societies. There was a marked philosophical divide between the Anglo-Saxon societies and the others; the arguments were not conclusive in either direction. It should not be necessary to charge a deposit before recourse could be had to the proposed Appeals Board, which could consider all complaints and simply dismiss any trivial ones without spending time on them. The Board itself ought to be manifestly independent and if possible slightly detached from the music industry. Otherwise there would be an undesirable whiff of self-regulation in a body set up precisely because self-regulation had not worked. Performance-related pay was a two-edged sword which could encourage people to go for short-term results at the expense of more important considerations. It would be preferable to have a first class management team using their skill and judgment than to have artificial goals and inducements thrust upon them.

British Academy of Songwriters, Composers and Authors

11.21. BASCA said that its members were mainly pop and media composers. They received approximately 70 per cent of the writers' income distributed annually by the PRS. BASCA supported maintenance of the PRS's monopoly position in the interests of easy user access to music and administrative convenience, providing income was managed efficiently. However, it also had a number of criticisms.

11.22. PRS inefficiencies compounded losses sustained by writers as a result of publishing trade practices: publishers retained income and accounted only after six months plus 90 days, with no participation by writers in the interest earned. On top of these practices, the ownership of major publishers by record companies, hardware manufacturers, and corporations with significant shareholdings in broadcasters made writers even more vulnerable to the erosion of the value of their copyrights and weakened their bargaining power. The permitted level of foreign- or user-owned publishers on the PRS Council was too high, particularly as foreign-earned income attributable to UK copyrights was not always repatriated by these companies. The PRS was the only income body where writers were represented at policy-making level, and this power should not be diluted. The appointment of an independent regulator, separate from the Copyright Tribunal, to monitor all collecting societies was recommended.

11.23. Certain Articles of Association and Rules needed to be amended:

Rule 2(g): Members should not be able to direct the PRS to make multiple payments to different parties. Members should be encouraged to take responsibility for their own financial affairs.

Rule 6: There should be an appeals procedure for determining complaints against the Society.

Rule 7(f): Members should, in accordance with European law, be permitted to split certain rights by usage to permit self-administration of the personal live performance right.

Article 56: Foreign and user-owned publishers should be fewer in number (with a limit of, say, 20 per cent instead of 50 per cent) and the definition of such publishers should be amended to reflect contemporary ownership.

Article 30: Writer members should be entitled, like publisher members, to send authorized representatives to AGMs or EGMs.

Article 84: The indemnity afforded to directors and company officers was too wide and should not extend to 'improper' actions.

11.24. The long-standing lack of an experienced Chief Executive and a high-calibre independent Chairman had seriously handicapped the PRS's ability to address licensing inadequacies and relations with foreign societies.

11.25. In 1994 69 per cent of writers received 2.6 per cent of income. It was too expensive to distribute this income on a title-by-title basis. Flat-fee distributions to low-earning members should be instituted with a threshold for entitlement to title-by-title distributions. Actual costs of distribution were not available. The identification of real costs of operations in all cost centres should be a priority. BASCA members would not object to a certain amount of cross-subsidy so long as it was transparently done and the organization was efficiently managed.

11.26. Loans to officers and staff of members' money, on occasions on an interest-free basis, was unacceptable. The EES should be re-examined, as incompatible with the PRS's purely administrative function. Higher-earning members should not be required to subsidize music that was no longer exploited.

11.27. Negotiations with the MCPS were halted without consultation with the membership, who supported a joint venture. They should be resumed with the assistance of an independent arbitrator.

11.28. The PRS had failed adequately to address unlawful and unsatisfactory practices by foreign societies that materially prejudiced writers' income and the net inflow of funds to Great Britain. Unlawful

and anti-competitive cultural deductions had been capable of challenge since 1972 but remained in place. Delays in remittance from foreign societies and, contrary to agreement, non-payment of interest to UK writers was unacceptable. The PRS's failure to audit foreign societies was unacceptable and contrary to good commercial practice. The PRS and the continental European societies were operating in such a manner as to distort or restrict competition and had caused substantial loss to UK writers since Great Britain's accession to the Treaty of Rome. In support of its argument BASCA cited a number of European cases and a European Commission staff working paper issued in January 1995.

11.29. Maintenance of the live classical subsidy at the present level was acceptable to many BASCA members. However, BASCA questioned whether high-earning members should be required to support non-professional writers with low earnings and whether cultural subvention was in line with the PRS's administrative function. There should be no distinction between amateur classical and amateur so-called pop composers.

11.30. Satellite licences issued by the PRS were wholly unacceptable in value, reflecting the inadequacies of the PRS's negotiating skills and materially prejudicing writers' income. The licences were also out of step with satellite penetration of the domestic market, technological developments and new delivery methods. Licence fees for live performances should not be permitted to be retained by venues beyond seven days from the date of the concert. Writers should not be required to cushion the cash flow of premises with their royalties. Infringement proceedings should be instituted swiftly in cases of non-payment.

11.31. Of the 12 PRS writer directors as at August 1995, three had substantial publishing interests other than in respect of their own compositions. This presented those writer directors with a conflict of interest and should be addressed, perhaps by the imposition of a limit such as that imposed on user- and foreign-owned publishers.

11.32. PRS membership services had greatly improved. Junior members of BASCA had been very critical of the quality of service they had received in relation to distribution and registration enquiries. However, the demands upon the Society of members who earned little (in 1994 16,700 writer members of the PRS earned less than £100) were costly, time-consuming and subsidized by the higher earners. This was unjustifiable.

11.33. An internationally accepted digital identity code encrypted into a sound recording, the ISRC number, was already in use under licence from the record industry. A universally accepted identity code would be a major step forward in all sectors of the music industry in terms of the policing of rights and usage, and the costs of such activities. The PRS should endorse the incorporation of the ISRC coding into sound recordings and if the joint venture IT programme with the MCPS were reinstated, as recommended, it should utilize this coding. The CISAC ISWC would not be in place until 1997.

11.34. Live performance was extremely expensive to administer in real terms (60 per cent), reporting was open to abuse, and allocation was labour-intensive. For personal live performances at major venues, where large sums were at stake, the delays and deductions incurred especially in foreign territories resulted in serious losses. BASCA provided detailed schedules to illustrate this. The alternative was self-administration of the personal live performance right in Europe, which would be in accordance with European decisions and judgments; BASCA provided particulars of relevant cases.

11.35. Invited to comment on possible remedies the MMC had in mind to explore, BASCA said that it supported the idea that the General Council's role should predominantly be that of policy-making. External directors should be appointed promptly. There should be either an independent Chairman or a properly empowered President of international stature.

11.36. BASCA set out a proposal for the self-administration of the personal live performing right, making it clear that this was not designed to deal with live performance of another composer's work. A great many writer/performers catered for niche audiences and rarely if ever appeared in the national charts or received mainstream airplay which would entitle them to payment under present PRS policy. The personal live performance right was a uniquely personal right, easy to define and to verify when exercised. The Concert Promoters' Association (CPA) included every major UK promoter, with one exception, and operated according to strict guidelines. The tour promoter's membership of the CPA should be a precondi-

tion of a writer/performer's self-administration, which would operate by means of Article 7(f) of the PRS Articles of Association, on the application of either the publisher or the writer. The application would specify the works, venues, and dates concerned. Promoters' contracts would include appropriate warranties and other documentation, including the agreed division between headline and support acts. When works were included that were not written by the artiste, an appropriate percentage of the tariff value would be paid either to the PRS or the third party publisher (if a direct member of the PRS). A modest administration charge, say 5 per cent, should be deducted from the tariff value and split between the promoter and the PRS. Such a charge would be less than present administration levels, particularly if the system was instituted in Europe. The institution of self-administration should in fact be the motivation and method for the establishment of a new and fairer system of reciprocal representation in Europe.

11.37. BASCA acknowledged that the proposal might appear to weaken the exclusivity of the writer's assignment to the PRS. However, self-administration would be specific to named works, performances and dates; within the UK, all that would be needed was a simple change in PRS distribution policy. Operating within the alternative system would improve the income of writer/performers in the early stages of their careers, or working within folk or jazz, who regularly played live outside the significant venue system. Middle-ranking writer/performers' tariff values did not qualify them for title-by-title accounting and they were at present receiving varying values of royalties, which were distributed from a pool allocated according to all programme returns submitted. The value of the works performed dropped as the number of programmes returned increased. The advantage of the alternative system to major writers was self-evident. By-products might include more thorough and accurate monitoring of live performances.

11.38. The PRS's reciprocal contracts with the societies in Belgium and the Netherlands permitted it to license directly in these countries, so it was possible that any change in PRS distribution policy in the UK could extend to them with no dilution of the exclusive nature of the PRS assignment. New reciprocal contracts should provide such opportunities elsewhere in Europe. The MMC might raise, in the context of Article 85 of the Treaty of Rome, the extent to which the continental societies operated as a cartel and imposed dissimilar trading conditions on similar transactions. BASCA supported the maintenance of the PRS's monopoly status and was well aware of the dangers of diluting exclusivity; but it lacked confidence in the PRS's ability to bring about the changes that were so badly needed.

11.39. In respect of the split between the headline act and the support act, different practices applied in different European countries. Some (Sweden, Switzerland) allocated 90 per cent of the tariff value to the headline act. Others simply went by the duration of the works performed. In either case, where works that were not being self-administered were included, the *Windsurfer* model should be followed, ie the proportion of the tariff value paid into the existing system should bear the same relation to the whole tariff value as the number/duration of non-self-administered works bore to the total.

11.40. In respect of specially commissioned music for audio-visual material, it was critically important that this element of the film synchronisation right remained within the PRS's control. Film and television composer members of BASCA were suffering very badly from coercive practices by film and television production companies and broadcasters, who required an assignment of copyright, and participation in public performance income, while fulfilling none of the functions of a true music publisher. Income received by virtue of the assignment enabled broadcasters to claw back PRS licence fees and recoup costs of production. Actors and performers were not penalized in this way. Composers who attempted to challenge these practices risked being blacklisted.

11.41. The influence of user- and foreign-owned publishers on the PRS Council should be a matter of concern. A UK-based independent publisher would expend time and funds to develop a writer and such publishers shared the writer's interest in maintaining the value of the copyrights concerned. Income was repatriated to the UK. This was not the case if the publisher was foreign-owned or part of a group of companies with substantial broadcasting or hardware interests. The value of the performing right in UK copyrights was important to the economy and justified limits being placed on the influence over this right of users and foreign-owned publishers.

11.42. BASCA would support recommendations for more detail about cost allocation, for explicit authorization of cross-subsidies, and for a fee for the registration of works. It did not endorse an annual membership fee.

11.43. Greater transparency and consultation with members was to be welcomed. However, consultation must be done in such a way as to enable the PRS to get a true picture of the wishes of the entire spectrum of membership. Writers should have the same proxy rights as publishers. Composer influence in the PRS should be strengthened to balance publishers' control over income streams.

11.44. Redoubled efforts should be made to eliminate discriminatory deductions by overseas societies and to renegotiate reciprocal agreements. BASCA had circulated a paper on this subject to British MEPs and had been delighted by the response. DGXV of the European Commission had requested further details from BASCA in this respect.

11.45. BASCA supported a census of live performance usage and the use of statistically valid sampling procedures. Broadcasters should be required to report usage to the PRS by digital means. It also endorsed the establishment of an Appeals Board, and supported the proposals in respect of efficiency and IT. The ServiceCo proposals should be revisited if this could be done without diluting composer influence. The introduction of performance-related pay in a non-profit-making organization should be examined with caution.

Ms A Harcourt

11.46. Ms Amanda Harcourt, the General Secretary of BASCA, also gave evidence on her own account. She said that the problems U2 had faced were not an isolated case. In fairness to the PRS, it had to be said that some of the promoters with whom they had to deal were sharp and this too could create problems. While the situation for high-earning members of the PRS was improving, it was still true that the delay in getting answers to questions was staggering. There was a great deal of ignorance within the PRS itself about what was happening to its writers' money outside the UK. Technically a UK writer was not supposed to communicate directly with foreign societies, some of which acted in their own interests in a way bearing very little relationship to the interests of the writer, or, indeed, the publisher.

Composers' Guild of Great Britain

11.47. The Composers' Guild of Great Britain (CGGB) has a membership of some 500, most of whom write classical concert music. The CGGB recommended a review of the PRS's open door policy to all composers so that there were fewer 'passenger' members and lower administration costs. Non-active works held on file appeared to render administration cumbersome. The Member Relations Department had made vast improvements, but there was still a lack of expertise in certain areas of the repertoire. By comparison the MCPS employed staff with knowledge of specific areas. Junior staff at the PRS appeared to be less well briefed than was desirable for efficient administration and senior managers differed in their interpretation of issues.

11.48. The differing interests of writers and publishers could lead to anomalies in the ways in which the General Council took decisions, as evidenced, for example, at the AGM in 1994. Factionalism could be mitigated to some extent by outside contacts, for example between the Alliance of Composer Organisations and the MPA. It was to be deplored that the Society remained (at the time of writing) without a Chief Executive. Reconciling the requirements of a commercial organization with those of a membership society threw up difficulties, many of which might be resolved by the presence of an independent Chairman.

11.49. Serious music 'weighting' had been introduced early in the Society's history to recognize the additional effort required in producing a classical score and the less numerous opportunities for performance. At one stage the subsidy stood at 7:1 but was currently just over 2:1. The PRS had been desultory in negotiating more appropriate tariffs with universities and local authority/grant-maintained educational establishments. In an environment which promoted revenue growth to its maximum potential, the classical subsidy could be further reduced and PRS distribution policies would be seen to be equitable to the overall membership. However, the differences between classical and pop music, for example in relation to the likelihood of an early recording, had to be borne in mind.

11.50. The abolition of the UPA was greeted with much concern by the composers' guilds (the APC, BASCA and the CGGB) since, with the introduction of the live music policy, members saw their PRS

income being eroded. A replacement for the UPA, the PCA, had been agreed in principle. There were many controversial aspects of the live music policy, which had operated adversely for composers in other genres (ethnic music, jazz, wind and brass bands) as well as classical. The choice of significant venues was a poor representation of overall performance of the contemporary classical music repertoire in the UK. Arguably, the fault lay in a lack of specialist knowledge among PRS staff. Over 67 per cent of composers of classical music were worse off after the distribution in July 1994, as compared with the same period in the previous year. Even with the introduction of the Unsolicited Programmes Scheme, only 8,000 programmes had been analysed in respect of 1994 events compared with 11,000 before the introduction of the live music policy. There was a danger that this policy might precipitate significant long-term damage to the cultural infrastructure.

11.51. The CGGB advocated a census, not a sample, of live performances. Composers and publishers of the classical repertoire were a well-organized group able to provide full programme information. The PRS should provide recognition and optimum treatment for broader genres of music than at present. Documentation should be more allied to licensing so that collection and distribution were facilitated. Enhanced expertise could assist in distribution in a realistic, cost-effective, manner.

11.52. The administrative systems used for logging information regarding overseas activity fell below acceptable standards. Much of the required information was held on an outdated fiche system. Programmes submitted by members were frequently mislaid by the PRS.

11.53. PRS negotiations with cable operators and satellite broadcasters had appeared desultory. The proposed tariff was not regarded as being in the best interests of members. These companies were in a position to supply detailed cue sheets, and there should therefore be a census, not a sample.

11.54. The failure of PROMS meant that the Society had no secure IT system for the future. The CGGB supported the proposed joint arrangement with the MCPS. While recognizing that it would be difficult to administer all schemes, such as the live music policy, in this way, the CGGB was in favour of a jointly administered IT system such as the ISWC.

11.55. The CGGB noted with regret the inability of the PRS within the Music Copyright Reform Group to adopt a common position on issues relating to digital distribution. The potential ramifications of the new technologies had not been discussed for over a year. There were important issues concerning not only cable and satellite broadcasting but also whether the 1988 Act in its current form would protect new forms of distribution of copyright musical works. The administration of digitally distributed works remained a controversial issue.

11.56. Notwithstanding these criticisms, the CGGB wholly supported the PRS and opposed any fragmentation in the control and licensing of the performing right.

11.57. Asked to comment on possible remedies the MMC were minded to consider, the CGGB said that, since the PRS was a membership organization, it was central to its ethos and outlook that the policies and procedures were directed by the membership via their representatives. There was a fine balance between diverse interests in terms of earning capacity, artistic priorities and cultural contribution. The CGGB welcomed the changes agreed at the EGM in May 1995, including the introduction of two external directors.

11.58. While there might be aspects of the proposal on assignment of rights that appeared attractive, the parameters for any such derogation would have to be very carefully set. Promoters of classical or mixed programmes at venues who already paid a licence fee might be unwilling to make further payments to individuals for specific repertoire. Such a system might cause confusion and greater dissatisfaction than already existed. It would also be disadvantageous not to have the weight of the PRS behind a writer or publisher when collecting payments. It would be important to ensure that the PRS would not lose influence internationally.

11.59. In respect of live classical, any proposal to eliminate cross-subsidies could have disastrous consequences. The status quo in respect of classical works enjoyed wide support (including that of BASCA) and should be maintained. It would be better to find ways of reducing administrative costs rather than introduce membership or registration fees as additional means of funding them.

11.60. It should be made clear to provisional members that they could receive the annual Yearbook and accounts only on application. Writers as well as publishers should be entitled to nominate anyone to represent them at General Meetings.

11.61. The PRS was hindered by the lack of accountability and transparency on the part of overseas societies. Incentives to bring policies regarding the treatment of foreign income under a European model would be helpful. Pressure should be brought to bear on broadcasters for the satisfactory completion of cue sheets. Deductions from gross income by overseas societies for pension funds and cultural uses whose sole beneficiaries were their own members required urgent review.

11.62. A bench-mark census of live performances would be welcomed. Recommendations on how it should be conducted would be helpful. The system of significant venues was poorly conceived and inadequate in relation to the repertoire it purported to represent: expertly directed sampling could greatly improve matters.

11.63. The General Council was elected by, and represented the interests of, the membership as a whole. Members with complaints had access at the highest level. However, some might welcome an Appeals Board.

11.64. Efficiency and IT demanded action not only in terms of overall structures but also in specific areas of PRS operations. A more careful employment procedure should be followed, resulting in more appointments of people with knowledge and experience of the repertoire. IT should be improved so that the database which was at the core of PRS activity could be used to fullest effect.

Association of British Jazz Musicians

11.65. The Association of British Jazz Musicians said that of the 96 venues at which its members had played in 1992/93, only 13 appeared on the significant venues list, and of 22 festivals only 3 were on the list. Since the PRS adopted the significant venues list, the Association had been concerned that jazz musicians who were PRS members would inevitably lose out to more popular forms of music. It questioned the criteria applied and asked why the PRS should be allowed to determine which venues should be monitored and to distribute money according to the whims of those members with voting rights.

English Folk Dance and Song Society

11.66. The English Folk Dance and Song Society (EFDSS), a registered charity with about 5,000 members, had complained to the OFT about the LMDP which it considered was against the interests of those PRS members who performed minority music. The new policy had been introduced without consultation or warning. Previously the EFDSS had been one of the responsible bodies which helped to run the scheme for minority genres. The selection procedure for designated venues itself discriminated against the places where folk events normally took place. The PRS continued to collect licence fees from all the smaller venues, yet those appearing at them received nothing.

11.67. In its representations to the MMC, the EFDSS reaffirmed what it had said to the OFT, adding that it was not only unfair but immoral to collect money which was then not distributed to the people who had generated it. £8 million was collected from small venues. Given computer technology (which could be used a lot more effectively than it was by the PRS) it should be possible to do a great deal better, especially if a numerical code could be introduced identifying each tune. A survey conducted when the LMDP was introduced in 1992 showed that out of 1,200 events reported only three took place in significant venues. Cecil Sharp House, the EFDSS's headquarters, which was listing most of the folk performances, had been taken off the list without even the courtesy of a letter.

11.68. The EFDSS later told us that its distribution in July 1995 totalled £98.64. This compared with over £1,000 in the same month in each of the two previous years and demonstrated how the current live music policy discriminated against folk music. These might be small sums to the PRS but they were significant to folk artists. The EFDSS also forwarded a letter from the Northwich (Cheshire) folk club

which had been running for 18 years but whose survival was now threatened as a result of PRS policy. The club met at the Harlequin Theatre which provided a room free of charge, covering the cost of heating and lighting by the profit made from a small bar. Faced with a bill of £312.40 from the PRS the theatre had refused to pay it and told the club they must pay it or move out. The club pointed out that the majority of songs performed on singers' nights were traditional and not in copyright, and moreover that the tariff was based on an attendance of 100 people whereas their average attendance was about 25.

11.69. Invited to comment on possible remedies the MMC were minded to consider, the EFDSS said that it was in overall agreement, particularly in regard to improvements in accountability to the members. One area not considered was the effect of the PRS licence fee on small venues (see previous paragraph). PPL was more flexible. If the money paid by venues was not distributed to the people entitled to it, should they not be exempted from payment?

Incorporated Society of Musicians

11.70. The Incorporated Society of Musicians (ISM) had 4,500 members, including composers. Most were also members of the PRS. It believed a single collecting society should be the most efficient way for composers to license the use of their copyright material, provided the Society was open and accountable to its members. Monopolies in administering performing rights were common throughout Europe: the USA was exceptional in having three societies. The ISM had objected to the way in which the live music policy had been introduced without adequate consultation and to the fact that it took no account of performances at 'non-significant' venues. Subsequent changes had, however, improved matters.

11.71. The ISM was aware of criticism of the PRS over the live music policy, the failure of PROMS, the failure to appoint a Chief Executive and its unsuccessful handling of the proposed collaboration with the MCPS. The constitution required, the ISM believed, a minimum of 10 per cent of the membership to call an emergency general meeting, and since there were over 26,000 members it was practically impossible to do so. This had been a matter of considerable frustration when news of the PROMS disaster had emerged. PRS administration costs were considered by many composers to be too high. Those of PPL and the MCPS were lower.

Musicians' Union

11.72. The Musicians' Union (MU) said that with over 33,000 members it was the largest musicians' union in Europe and the second largest in the world. Many of its members were performers, but some were also composers, songwriters and arrangers whose interests were pursued through a separate section of the union, the British Music Writers' Council. It considered the current monopoly position of the PRS to be in the best interests of both users and copyright holders. It would be impracticable and inequitable to allow composers or publishers to negotiate for the exploitation of their rights individually. The advent of new delivery systems for music made the need for one central organization to exercise control on behalf of rightholders increasingly important. Concerns which had been expressed about high costs and possible administrative inefficiency were best dealt with by the organization itself. The MU recognized the need for a cost-effective relationship between the amount of information obtained from users and the amounts distributed to the rightholders. This applied particularly to the live music policy, an area where the PRS was aware of the concerns and prepared to make the necessary improvements. The MU was concerned that the PRS was unwilling to make distributions to arrangers, whose rights should be recognized and rewarded.

Music Industry Human Rights Association

11.73. The Music Industry Human Rights Association (MIHRA) said that the rewards for producing classical, orchestral, jazz and indeed most music were now not only minimal but degrading. Most PRS members were not properly represented in the sense of having adequate voting rights. The potential of the PRS remained unrealized. Under the present system over 60 per cent of PRS members each earned less than £250 a year, while some 500 amassed a total revenue close to £111 million a year. It was time to install an authoritative body independent of the PRS General Council which would represent the provisional membership and their extensive, but ignored, special needs. Provisional members of over two years'

standing should be given full electoral rights. The ending of the UPA was a further blow to the earning capacity of the industrially vulnerable and disenfranchised.

11.74. MIHRA was opposed to any suggestion of creating a number of other collection societies, but thought there were a number of other points that should be addressed, including the ability of the PRS to change tariffs and demand the new fees while negotiations were going on, up to the point of an actual reference to the Copyright Tribunal; the need for some control of the huge amount of royalties being spent on references to the Tribunal; the need for all current tariffs to be registered; and whether PRS Council members and management should be responsible for the members' royalties collected and liable to personal repayment levies if found to be at fault, as in the case of local councillors.

11.75. MIHRA's concerns extend well beyond the issues arising in the present inquiry. It made its views known to the MMC on a broad range of music industry topics and supplied a number of relevant documents.

Mr L Bart

11.76. Mr Lionel Bart said that he had known the PRS for many years and thought it only fair to speak on its behalf. It had been the one reliable source of income for him during his hectic career as a composer dating back to 1955, and he had no reason to doubt its integrity. Mr Bart enclosed a cutting from the *Daily Telegraph*, 9 December 1994, in which he was quoted as having described how he had relied on the PRS's administration of his performing rights, having been obliged to dispose of other rights in his works.

Mr C Blyton

11.77. Mr Carey Blyton said that the introduction of new music classifications by the PRS in 1986 had wiped out large areas of income for composers like himself, whose works were performed in school concerts (there was no corresponding reduction in the licence fees charged to local education authorities). Serious composers once again suffered serious financial loss as a result of the introduction of the significant venues list. It would seem that the PRS-whose income had increased during the period of Mr Blyton's membership from £4 million to over £150 million-was in danger of driving some composers of serious music out of the Society.

Mr D Bulmer

11.78. Mr D Bulmer said that if a live broadcast was made of an arrangement of a work in the public domain (ie non-copyright) the arranger would receive under the PRS system only a $\frac{1}{12}$ share of the fee normally payable in respect of the performance right. He could not understand on what basis the PRS could justify retaining the other $\frac{11}{12}$. In contrast to this policy, the MCPS paid the full fee.

Mr M Dawson

11.79. Mr M Dawson said that he had managed a small band which had enjoyed a lot of local radio plays of one of their works. They had not joined the PRS because local radio was monitored at a level of only 2 per cent. It was odd that although the royalties belonged to the songwriters, they had to pay the PRS to collect them, and the PRS then made no attempt to collect the full amount owing. The negative attitude of the PRS was a major factor in the band's decision to split up.

Miss L Denny

11.80. Miss Louise Denny said that most PRS members, like herself, were composers concerned with live music. Only a very small proportion broke through into media writing. Under the LMDP only a very small percentage of music actually performed was monitored. At present £8 million collected from live

music venues was distributed according to radio logs. As a result of this policy, and the ending of the UPA, it was possible for members to be ejected from the PRS on the basis of their having had no returns over a three-year period, though they were still musically active. (The PCA was introduced subsequently.)

11.81. Among Miss Denny's other criticisms were the lack of consultation over the live music policy, the secretiveness over the reasons for the failure of PROMS, and inaccurate recording of the duration of works performed. She emphasized that there had been earlier cuts, before the advent of the significant venues list; so far as the composer was concerned, live music that earned royalties was a mere shadow of its former self.

11.82. Miss Denny believed that Mr Tomlinson's proposals (paragraph 11.119) had not been properly considered by the General Council and would in fact be acceptable to the vast majority of members. The Unsolicited Programmes Scheme had been made very difficult to operate. It should be possible to send in the printed programme on its own, perhaps signed by the conductor or someone else who could vouch for the fact that the performance had taken place. If the PRS behaved responsibly, there was no reason why the exclusive assignment of rights should not continue. But writers assigned their titles in good faith and the PRS owed them a duty of care. Many people at the PRS were helpful, but there was a hierarchy that had a stranglehold on distribution. The MCPS was more efficient.

11.83. Among points subsequently made by Miss Denny was that she had been commissioned to write a D-Day anniversary march which she knew to have been taken up by 37 bands, but had received royalties for only one performance. Theatre managers were often ignorant of their logging responsibilities and often gave the forms to amateur concert organizers who also failed to fill them in. It would be far better to leave the logging to bands and orchestras. Miss Denny also said that the PRS used to have a person specially assigned to the 'unidentified performance' file, but no longer did so. She had recently inspected the file and found that a large number of these performances could in fact be very easily matched with composers.

11.84. Invited to comment on possible remedies the MMC were minded to consider, Miss Denny said that the collection of revenue was pretty effective; it was the distribution that required attention. If as a result of a change in the assignment of rights venues were asked to pay the composer as well as the PRS, they might well be reluctant to do so. They would resort more to out-of-copyright music and the change might backfire against composers. She agreed with the need for greater transparency but was against an annual membership subscription, which would be like paying twice. She was not against one-off payments of registration fees. The great need was for a change in distribution policy. Some 40,000 live performances a year by the armed services alone were currently ignored by the PRS, although programmes were returned. Even in significant venues, logging was failing because venue managers left it to performers, who had been told that it was not their responsibility.

Mr B Engel

11.85. Mr Brian Engel, Chairman of the Copyright Office (the trading name of the Copyright Organisation Ltd), a writer member of the PRS and previously for 4½ years a member of the PRS's staff, said that he was aware that past OFT investigations into the PRS had found insufficient evidence to warrant action. He believed this to be because the PRS claimed to be only a *de facto* monopoly, with nothing preventing others from starting a competitive service. This was a misapprehension. The PRS exclusive deed of assignment effectively prevented members from assigning their repertoire to another UK society, were one to exist, until they had resigned, which in itself had been an exhaustive and complex procedure. Members found the process prohibitive and the threat of lost revenue was a powerful argument against resignation.

11.86. Mr Engel understood that, in the past, moneys collected by the PRS in respect of the performance of Indian music were distributed with the non-licence revenue. He also made representations concerning the way various issues had been handled in the PRS, including PROMS, Professor Clarke's report on corporate governance, and the removal from the General Council of Mr Trevor Lyttleton.

Mr A Fawkes

11.87. Mr Alan Fawkes said that he had been a member of the PRS for 20 years and had nothing but praise for the Society. He had always been punctually and politely treated, and his royalty distributions had always been accompanied by adequate notes of explanation. He was impressed by the PRS's annual reports, which, with its interim topical reports, kept the membership fully apprised of the Society's activities. He was sure that the PRS had nothing to fear from the MMC's investigation.

Mr J Fishman

11.88. Mr Jack Fishman said that he had been a PRS member since 1949. In general the organization undertook its affairs commendably, but had been guilty of abusing its monopoly by accusing Mr Fishman personally, his family music company Jambo Music and an associated music company Cannon Music of making fraudulent registrations. As a result substantial sums, running into many thousands of pounds, were arbitrarily deducted from royalties due. More than 200 feature film scores were involved in the dispute. PRS staff, solely experienced in clerical work, hired from video stores copies of feature films and timed music with a stop-watch, using these timings to amend officially registered cue sheets supplied by the film production companies. Cue sheets were completed by a film's editor or music editor and were very precise, measuring film footage which was then accurately transposed into timings. Video machines were inconsistent and subject to speed variations. Moreover the editor who was involved in sound mixing the film knew when music continued under sound effects and dialogue, which was not always obvious to an untrained ear. The PRS's attention had been drawn to the fact that television and video companies frequently made unauthorized cuts for various reasons but had refused to take this into account. ASCAP and BMI rejected the PRS view and continued to respect the cue sheets.

11.89. The PRS had circulated its allegations to other societies and affected overseas royalties. The PRS had refused to hear independent witnesses of the highest repute and had acted as investigator, prosecutor, judge and jury, yet there was no 'trial'. Mr Fishman had been denied a hearing by the General Council or Executive Committee. He later further emphasized the latter aspect of his complaint, as one on which the MMC should be able to reach a view even if they could not do so on the substantive merits of the points at issue.

Ms J Fowler

11.90. Ms Jennifer Fowler said that she had previously been a member of the Australasian Performing Rights Association but had been living in Britain permanently since 1969. She had decided to join the PRS in 1984. PRS staff had exerted great pressure on her to use her married name instead of her maiden name (which was also her professional name) and although they did ultimately register her as Fowler she found it an extraordinary and unprofessional way of dealing with a new member. Subsequently her experience had been that PRS staff rarely sent correct forms or gave accurate answers to questions. They had failed to register works because they had lost the registration forms and had lost copies of printed programmes sent in.

11.91. Ms Fowler supplied a copy of a letter she had sent to the editor of *Classical Music* drawing attention to the fact that the reduction of the list of significant venues in 1994 involved the removal of a number of university concert halls which were exactly the places where contemporary classical works were performed. Some of these venues had still not been notified (in March 1995) that they had been taken off the list. They were still sending in programmes, and had not questioned their removal from the list because they had not been told of the change.

Mr I Gillis

11.92. Mr Ian Gillis, an associate successor member of the PRS, told the AGM in September 1995 that it was obvious that Mr Lyttleton (see paragraph 13.26) was not pursuing personal gain. He was working in

members' interests. Mr Gillis later told the MMC that the decision to dismiss Mr Lyttleton, and the procedure adopted in this connection at the AGM, were indicative of much that was wrong with the PRS Board. The PRS was no ordinary membership society: it was a monopoly collector of dues. Recent events underlined the need for an independent Chairman, strong independent outside directors, a members' defence committee, protection of minority interests and a voice on the Board for the music user.

Mr R Goodwin

11.93. Mr Ron Goodwin said that he was a professional composer who had been a member of the PRS since 1956. He had found the Society's collection and distribution of his royalties to be satisfactory and it had also been helpful in giving information and advice. Although it was notoriously slow in answering copyright queries, these had usually been satisfactorily dealt with in time. The PRS could not be described as a monopoly since members were free to join a European or other foreign society if they wished. To form rival organizations in the UK would unnecessarily complicate collection and distribution and leave the way open for music users to make deals with one organization to the detriment of members of others. Exclusive assignment of rights seemed essential if the Society was to have the freedom to act on its members' behalf. The advent of multimedia had made copyright control much more difficult. Writers' interests could best be served by unity in one well-established society, and they should seek to strengthen the PRS rather than create a host of new problems. Mr Goodwin later added that the overwhelming tendency today was for the major music users to become the owners of the music publishing companies which controlled the copyrights. It was essential that the PRS should be kept intact and independent if the writers' interests were to be protected under these circumstances.

Mr C Gunning

11.94. Mr Christopher Gunning wrote as a director of the PRS and a founder member of the APC, whose submission (paragraphs 11.2 to 11.14) he supported. He had become aware that views were being expressed to the effect that the PRS, by failing to agree to terms demanded by the MCPS during negotiations to set up a joint service company, had behaved in an intransigent, unreasonable or even irresponsible manner. The PRS decided not to proceed on the MCPS's terms because a majority of directors thought they were far in excess of 'Option C', the agreed basis of negotiations, and that it would not be in the interests of the PRS to continue. The issue was debated fully and the decision not to proceed taken reluctantly. Mr Gunning supplied correspondence in confirmation of his view.

Mr K Jones

11.95. Mr Kenneth Jones, a composer member, thought that while combining the functions of licensing and distribution of royalties had served the PRS well, there might now be grounds for separating the two functions, thereby avoiding a conflict of interests. The lack of independent directors on the General Council of the PRS, appointed from a wider business environment, might explain policy weaknesses. The policy of selected venues was prejudicial, particularly to younger members and to classical composers. The method of sampling satellite transmissions left too much to chance.

Dr D Mitchell

11.96. Dr Donald Mitchell was for many years a publisher member of the PRS and has been Chairman of the General Council. His views are recorded in this chapter because they were provided in his capacity as Chairman of the Britten Estate Ltd, half of whose income is derived through the PRS. In his view the necessity for a society such as the PRS to hold a position of monopoly in its field had not changed. However, any monopolistic body was open to legitimate criticism if it was seen to be acting in a spirit other than befitted a quasi-public body. In the case of the PRS, its moral basis depended on its being perceived as

fairly representing the interests of every sector of its membership and serving impartially the creators and their publishers across the whole musical spectrum.

11.97. The long-established tradition of fairness and balance which had characterized the PRS for most of its history was now, in some respects, being strained. The root cause for the resulting concerns lay in the view that appeared to be emerging within the PRS that commercial success was the principal criterion to be taken into account in determining policy. At its highest levels, musical creativity could never be measured purely in commercial terms alone, as was recognized all over the world by the societies which administered composers' rights on a collective basis. The PRS's administration costs, which were sometimes unfairly criticized as too high, could be dramatically reduced if the membership of the relatively unsuccessful majority were to be terminated and the Society run exclusively for the benefit of the successful minority. The PRS had always hitherto recognized that it had a positive public duty to provide its services not only to the commercially successful but also to those whose works might be only infrequently performed. It would be of the greatest concern to the Britten Estate if the PRS were to move away from this essentially public service philosophy.

11.98. If the proposed reduction in the size of the General Council were implemented, the possibility for minority interests to be fairly represented would be severely diminished. The broad classification of musical genres between popular and classical no longer sufficed. There were a number of different categories, each with special needs and problems: jazz, folk, classical, rock, pop, light, background, film and television, brass and military bands, etc. All should have a reasonable prospect of a voice on the PRS's policy-making body. There was a strong case for saying that an independent person of high calibre should be appointed to the Council.

11.99. It was a matter of serious concern that for the past 16 months (at the time of Dr Mitchell's submission) the Society had operated without a properly qualified Chief Executive. The traditional non-executive character of the Chairmanship should be restored as a matter of urgency. There was a fundamental distinction to be drawn between the election of a Chairman from within the Council and the appointment of a professional Chief Executive by selection procedures appropriate to the managerial responsibilities involved.

11.100. While those members who wished to administer their own live performance rights might in some cases have legitimate complaints about delays in receiving payments from some countries, the PRS was making progress in improving the situation and it would not be in the interests of members generally if the rules were changed to permit 'cherry-picking'. It could lead to the total unravelling of the Society if members had the right to use it only when it suited them.

11.101. Asked to comment on the situation in the USA, Dr Mitchell said that he knew ASCAP and BMI and both worked extremely well. However, the fact that they did not have the exclusive assignment that the PRS had sometimes weakened their position, for example when they wanted to bring a case against a user. The apparent advantages of competition in this area might be more illusory than real. Having competing societies might be part of a US culture rather than a well-thought-out philosophy with regard to the functioning of such societies. Both the US societies avowedly, and inevitably, had a 'follow-the-dollar' policy. It was also relevant that the value of the repertory to users, such as the BBC or ITV, depended on its comprehensiveness.

11.102. There was a serious question whether the sums collected on behalf of the serious or classical repertory represented in any realistic way the social or cultural value put on such music by society at large.

11.103. PRS distribution procedures had become too complicated and tariffs too numerous. Efforts were being made in both areas towards simplification. The LMDP combined with the abolition of the UPA meant that a valuable section of the membership had been in some sense disenfranchised. It was a duty of the PRS to try to find an equitable way of seeing that such people had some share in the income of the Society.

11.104. Invited to comment on possible remedies the MMC were minded to consider, Dr Mitchell welcomed those relating to corporate governance and an Appeals Board, but remained convinced that any derogation from the exclusivity of the assignment of rights to the PRS by its members would be contrary to the interest of the membership as a whole. Its effect would in many cases be to place individual creators at

the mercy of powerful commercial interests. It would in almost all cases not be the individual composers or songwriters themselves who would negotiate and grant the necessary licences, but their business managers and/or publishers, whose interests could often be in conflict with those of the writer performers, when, for example, as was often the case, the managers were themselves promoters or co-promoters of the concerts or other events concerned. There were numerous instances of the rights of composers, lyricists and performers being abused by their managers, record companies and/or publishers, some of which had been documented in a book by Simon Garfield.¹ The exclusivity of the assignment to a non-commercial entity dedicated to their interests, namely the PRS, had until now been the only effective means of preventing such abuses extending to the area of public performance rights.

11.105. Even in the absence of abuse, there could be no guarantee that self-licensing would necessarily result in individual writers receiving royalties due to them sooner than if they were collected and distributed by the PRS. It was almost always the case that composers and songwriters assigned to their publishers the copyright in their works, excluding only such parts of the copyright as had been assigned to the PRS. It would be the publisher who would be entitled to license any part of the performing right (eg the live performance right) which had been withheld from, or returned to the copyright owner by, the PRS. The speed of payment to the writer would depend on his or her contract with the publisher, which might be less favourable than PRS royalty distributions.

11.106. It was not clear whether royalties due to third parties whose works were also performed at the relevant event would be collected and paid by the PRS or by the members who were licensing the performers of their own works. The latter would certainly be objectionable in principle to the other rightholders and could have no proper legal basis. There would also be practical difficulties. The self-licensing members would have no means of knowing the identities of those entitled to share in the public performance royalties, who might well include foreign writers or publishers, or on what basis it had been agreed between them to share such receipts. It would be incumbent on the PRS to pick up the pieces. On whom would the cost of this fall? If on other PRS members it would be unfair and if on those who were self-licensing the justification for their doing so would be largely nullified.

11.107. A much better solution to the problems which had been experienced by some members would be for the PRS further to speed up its distribution procedures. Dr Mitchell suggested that for all major concerts or other events (say those for which the gross royalty collected exceeded £10,000) in the UK, the royalty should reach the interested parties no later than three months from the end of the month in which the event occurred. Foreign societies should be required to account to the PRS within the same time-scale. Progress had already been made in this regard by the PRS and at least some of its affiliated societies.

11.108. As previously indicated, Dr Mitchell would be strongly opposed to the elimination of the long-established and financially modest system of subsidizing live performances of classical music. To do so would have a major adverse effect on the cultural and musical life of the UK. Provided the General Council was properly representative of the membership as a whole, it should continue to have the discretion to authorize any subsidies. To require the authorization of individual members would neither be right in principle nor possible in practice.

11.109. Given the enormous number of establishments and events at which live performances took place, even a 'one-off' census would be impossible to achieve satisfactorily or accurately. The considerable cost of attempting it would not be justified. The pattern of performance and the repertoire in use was constantly changing so that even if such a census could be achieved it would be of little value. There should, however, be means of ensuring that performances were sampled in a statistically valid way and on as wide a basis as was practicable at reasonable cost.

Mr E Tomlinson

11.110. Mr Ernest Tomlinson said that he owed the fact that he had been a full-time composer since 1955 entirely to the existence of the PRS. During his 30 years on the PRS Board he had felt privileged to have been a member of a team which was doing such a good service to PRS members and music generally.

¹*Expensive Habits (the Dark Side of the Music Business)*, Faber, 1986.

The PRS was the greatest stabilizing factor in enabling composition to become a settled profession. Any break of the monopoly situation would only make existing problems harder to solve and introduce intractable new ones.

11.111. Commenting on the statements made by the OFT when announcing the reference to the MMC, Mr Tomlinson said that he could recall no instance in recent years of a reasonable request to leave the PRS not being granted. The complaint that composers 'lacked sufficient representation to be able to pursue their interests effectively' was without foundation. There had never been a time when matters of importance to members had been overlooked by the Council for lack of representation. The danger had been rather the other way, of concern for minor matters diverting attention from major matters of concern to all members. One measure after another had been introduced to encourage members to take a more active interest. Much outside criticism was based on misconception, inaccuracy and impracticability.

11.112. Mr Tomlinson had, however, long been critical of the PRS's LMDP. In its original conception the policy had been full of good intentions, but it was based on false premises and wishful thinking. As the untenable features (all predictable) of the new policy had revealed themselves, one after another of them were dropped or drastically modified. The result was a situation worse than it was before the policy was introduced: less comprehensive, less fair, even more favouring the major publishers and writers. Not only had the policy aggravated grievances that were there before, it had introduced new ones.

11.113. Two-thirds of live revenue was still distributed according to what was broadcast on radio. But at least £0.5 million of blanket licence revenue was generated by music which was served poorly, if at all, on radio. It included music by up-and-coming pop/rock composers, and those who specialized in minority styles, including educational, wind, brass and small choir music and music specifically written for dancing. The erstwhile UPA at its most profligate did not by any means cover all deserving composers in these areas. The new, hastily cobbled together, PCA scheme did not begin to tackle the current injustices. In addition, the new policy, purely for administrative convenience, had cut out at a stroke the thousands of classical events held under blanket licence tariffs, performances which in the 20-odd years prior to 1993 would have qualified for significant pay-outs.

11.114. The only programmes now served for distribution purposes were those from events licensed under tariffs LP or LC, plus a few others. The legacy of the failed significant venue concept meant that both LP and LC events were subject to a quite unnecessary and divisive two-tier standard of service, overindulgent at significant venue events and substandard for the rest. With LP events the old £200 rule, whereby the PRS collected money from, but did not distribute on, events which generated less than £200 to the PRS (an unjustifiable policy in the first place) had become the £500 rule. The difference now was that this rule applied only to LP events at non-significant venues, an example of built-in differentials serving no positive purpose whatsoever. Popular concerts in non-significant venues had to reach box office receipts as high as nearly £17,000 (£500 being 3 per cent of box office) before the PRS took any interest in what generated the income. On the classical side, the effect of the tardily-arrived and fobbing-off Unsolicited Programmes Scheme would be that most LC events at non-significant venues would be missed for pay-out purposes.

11.115. By definition, tariffs LP and LC were applied where significant revenue per event was forthcoming. Unlike the situation with events covered by blanket licences, members could point to revenue earned specifically by their music. The obligation for the PRS at least to analyse and pay out on all events under these two tariffs was manifest. The assertion by management that by targeting the licensees at a limited number of venues they could guarantee a near-100 per cent success rate in collecting and processing programme information had been a crucial error.

11.116. The PRS refused to face up to the fact that the licensee was almost never the person best equipped to give it the information required. The efficient scenario was for the PRS to liaise directly with the performer/promoter/conductor/librarian or whoever was so equipped, and for the licensee, whenever he felt unable to fulfil his obligation, to pass the task on to the person best able to do so. Numerous examples could be quoted to show that this worked. Under any scenario, there was no case for the PRS other than welcoming co-operation wherever it could find it, including non-significant venues.

11.117. PRS policies took no account of the change that had taken place in the pop/rock scene. Nowadays writer performers usually performed exclusively their own music, and if there was a support

group they too performed their own exclusive repertoire. The same programme was taken to different venues. For the PRS to demand that every item be listed in unnecessary detail in order to determine the individual pay-outs and to check whether a stray item from a different copyright owner might slip in without being logged was unreasonable.

11.118. In tariff LC events, printed programmes were the norm, individual works were long, there were few (often only one) copyright items per event, publishers had direct involvement, press and other reporting was common, highly responsible promoting bodies were in charge, the PRS was in direct contact with performing bodies to which it gave donations, and licensees had to quote the actual works scheduled for performance. If the PRS could not fashion a cost-effective 100 per cent job out of that, they should farm the work out to someone who could.

11.119. In most areas of performance, including the minority styles, a responsibly collected set of programmes would provide an effective basis for a scientific sample to be taken. Past experience showed conclusively that a viable percentage of such programme information was readily forthcoming and could be cost-effectively serviced. Safeguards would be needed to avoid unfair boosting of untypical logs. But there was no doubt that such a system was as fair a means of distributing revenue as could be envisaged and would be welcomed by PRS members. It would allow some money to be allocated on the basis of real evidence of live performance rather than depending solely on radio.

11.120. It was important to see these criticisms in perspective. Distributions had increased from year to year and were made on time. Established professional composers' main source of income was not from live performance but from broadcasting. Rightly, the PRS continued to give priority to areas where high revenue was involved. Nevertheless, it was all too easy for established composers, particularly those who had come into the profession by way of lucrative broadcasting or films, not to appreciate just how many won their way to professional standing by way of live performances in countless venues up and down the country. It was the PRS's clear duty to address the flaws of the 'live' scenario so that such composers were not ignored.

11.121. The General Council had made real efforts to increase efficiency, particularly in the PRS's internal administration. There were three basic reasons for allegedly high administration costs:

- (a) The cost of licensing, which was inevitably high because of the large number of small premises. Establishing regional offices had increased the revenue:cost ratio considerably.
- (b) The inefficient way programme information was serviced, the failure to exploit computer technology being just one factor. High costs were inevitable under present procedures, because of the high incidence of inaccuracies and omissions in programme returns, and because having promised a 100 per cent policy for national broadcasting and the significant venues, the PRS attracted to itself the full responsibility for correcting those inadequacies. Only 20 per cent of titles went through 'clean', ie were matched first time round with the corresponding titles in the PRS database. The rest called for manual back-up and research which could go on for months and years, with costly schemes to deal with members' queries. The chief culprits were the PRS's own members, who constantly offloaded on to the PRS problems that could more efficiently be sorted out before the PRS became involved. No breakthrough was possible until procedures were put in train enabling members to monitor at the time what was being reported, so that omission and errors could be rectified at source, without delay. The situation was not helped by the abysmal record of the PRS, both internally and in association with the music industry generally, in exploiting computer technology. In these days of bar-codes and modems, the PRS's persistence with time-honoured methods was unreasonable.
- (c) The virtually 'open door' policy on membership, whereby many thousands of members cost the Society a great deal more than the revenue their music actually generated. This stemmed from the time when the PRS's monopoly in performing right came into being. Previously, aspiring and ephemeral writers could receive performing fees by joining the MCPS or, for example, direct from the BBC, awaiting the time (which to many never came) when they could graduate to eligibility for PRS membership. Thereafter, the PRS believed it had to be seen to represent every writer who was getting performances in licensed outlets. However, there would always be writers who were not yet

PRS members, and there would be no grounds for concern if procedures were in place to ensure that the new composer was picked up when he began to earn the requisite royalties.

Mr Tomlinson believed that a degree of internal devolution, so that the different channels of reporting could be more adequately monitored and costed, would lead to greater efficiency.

11.122. Mr Tomlinson also provided, on request, his comments on the position of arrangers of music. They often had a key role in ensuring the success of a composer's work and not unreasonably felt entitled to a share of the royalties. In his view it was important to make a distinction between primary arrangements, where the arranger might receive an agreed share of royalties as a co-author, and secondary arrangements, made after a work had been issued. There was no case for changing present practice in regard to the latter category, except when a secondary arrangement was intrinsic to a work's new-found success, eg a complete revamp for a special occasion. The PRS had always insisted that agreements for an arranger share to be payable had to be made between the interested parties, though in exceptional cases it allowed for an arranger's share where a new arrangement created a separate copyright. On the whole Mr Tomlinson thought arrangers were better off as they were: the more normal it became for them to share royalties, the more normal it would become for the initial payment for the arrangement itself to be cut or omitted altogether.

11.123. Invited to comment on possible remedies the MMC were minded to consider, Mr Tomlinson said that the essentials were getting good people on the General Council, getting the appropriate ones on to smaller committees which could take decisions rather than make recommendations, and getting a good Chairman, the demands on whom had increased greatly in recent years. The PRS had been particularly fortunate that Mr Bickerton took on this role during the time that the PRS was without a Chief Executive. Mr Tomlinson agreed with the spirit of the proposals on assignment of rights. A fee for registering works might be necessary while the process still involved bits of paper listing everything that might just be performed, but when registration became electronic particulars of works could be stored virtually without cost, the system becoming operational only when triggered by an actual performance log. A comprehensive survey of the whole area of live performance was long overdue and would not be difficult. Mr Tomlinson had long been an advocate of a body such as an Appeals Board whose objectivity would have the confidence of members. With regard to efficiency and IT, he now felt that the only way, having got the eventual scenario clearly defined, was to proceed by way of separate initiatives, each self-contained and small enough for the results to be foreseen with confidence and quickly brought about.

Mr D Wadsworth

11.124. Mr Derek Wadsworth provided correspondence relating to the television series *Space 1999*-Series 2, made in 1976 and shown world-wide, for which he had written the music. Since the late 1970s he had been aware of overseas sales but had not received appropriate royalties. Payments due to him from the USA for Series 2 had been erroneously paid to another composer (for Series 1), an error which had never been rectified and had cost him thousands of pounds. A PRS official had told him that when there was uncertainty over sums of money, a generous portion was allocated to the guaranteed big earners and the remainder to those who shouted loudest. The PRS would not rectify errors that took place more than three years ago even though foreign money often took longer than that to come through. After extensive efforts Mr Wadsworth had been able to give a date from one country (Portugal) when the PRS had actually been paid for the series. The relevant sum had not appeared in his statement. In total he had been paid sums of money (themselves incorrect, in his opinion) for only 16 countries, when to his certain knowledge the series had been sold to approaching 100 countries, often to multiple buyers in the same country. He had given details of known showings of a television commercial in Spain, but no revenue had resulted.

U2

11.125. U2 said that for live events in some countries the amount received was only 50 per cent of what it should be and it took up to three years to come through. U2's management and those acting for it had made protracted and unsuccessful attempts to elicit auditable information from the PRS. Eventually it had commenced proceedings in the High Court. U2 when performing its own compositions at live concerts was prevented from administering its rights therein directly (which would be both most efficient and

financially to its benefit) and was instead obliged to have such rights administered through the PRS. Inefficiencies, delay and excessive expenditure on administration had been incurred by the PRS. There was no good reason for the PRS's refusal to allow U2 to administer its live performance rights: it was an instance of anti-competitive and restrictive behaviour. The MMC should find that it was not necessary for the PRS to prevent performers who so wished from administering their own live performance rights, and further that the imbalance in the provisions for termination of membership were a reflection of the PRS monopoly and should be amended (as they had been, to some extent, since the U2 proceedings were launched).

11.126. The MMC's attention was drawn in this connection to the significance of Decision No 326 of the Irish Competition Authority. Copies were supplied of European judgments and decisions in cases bearing on the MMC's jurisdiction to deal with certain reciprocal agreements, and on the competition law treatment of collecting societies. They demonstrated, it was submitted, that the MMC was an appropriate forum to deal with all of the complaints discussed.

11.127. U2's further submissions were made jointly with PolyGram and are summarized in Chapter 12.