

2 Conclusions

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Introduction

2.1. On 30 November 1994 the DDGFT referred the supply in the UK of the services of administering performing rights and film synchronisation rights to the MMC for investigation under the monopoly provisions of the Fair Trading Act 1973. The terms of the reference (see Appendix 1.1) were subsequently varied on 4 May 1995 to make it clear that the inquiry was limited to considering the supply of such services by licensing bodies on behalf of the composers and authors of musical works, or the owners or publishers of or persons being otherwise entitled to the benefit of or interested in the copyright of such works.

2.2. In announcing the reference (see Appendix 1.2), the Office of Fair Trading (OFT) explained that it had received a number of complaints about the PRS, an organization currently comprising some 28,000 writers, publishers and arrangers of musical works, and the sole supplier in the UK of the services of administering performing and film synchronisation rights. The OFT had initially received complaints from a number of writers of 'less popular' forms of music that:

- (a) they were receiving inadequate royalty payments from the PRS;

- (b) under the Society's rules, they lacked sufficient representation to be able to pursue their interests effectively; and
- (c) the revenue distribution policies adopted by the Society unduly favoured the writers and publishers of 'more popular' forms of music.

2.3. Subsequently, the OFT became aware of criticisms by some of the highest-earning members of the Society about the exclusive nature of their assignment of performing rights to the Society and the restrictions which were applied to members who wished to leave. Concerns were also expressed, both by members of the Society and by its licensees, about the proportion of expenditure which was devoted by the Society to administration and whether the Society was managed efficiently.

Background

2.4. The music industry in the UK is both large and internationally important. Music has always had a conspicuous place in cultural life in the UK. Over the last 30 years, however, it has assumed an increasing prominence in our society, partly owing to the upsurge in popular music from the 1960s onwards and also more recently to the fast-developing technology for the diffusion of musical works in new ways to consumers. Music is broadcast on a wide variety of national and local television and radio networks, is performed live in venues which vary in size from Wembley Stadium to a parish hall, is heard in numerous public places such as shops, restaurants, hotels, hairdressers and dentists' waiting rooms and accompanies many of our leisure activities.

2.5. The significance of music as an important leisure activity is indicated in recent survey findings. A survey by the Henley Centre¹ found that on average people spent about four hours per week listening to music recorded on compact discs, cassette tapes or records. An average of a further ten hours are spent listening to radio, and it may reasonably be assumed that a significant proportion of this time is spent listening to music. An analysis² of BBC network radio output found that music programmes accounted for just over half of all programmes, and the proportions of output for many commercial radio stations are very much higher. At the same time it is relevant to note that music is frequently used in a background role in many other types of radio and television programme, and is widely used in television advertising commercials.

2.6. When a writer creates a musical work, he is entitled in law, under the terms of the Copyright, Designs and Patents Act 1988 (the 1988 Act), to copyright in that work. The owner of copyright in a work is entitled to require payment where he gives permission for the work to be performed in public or broadcast. The value of musical composition primarily derives from the value placed on the resulting musical performance. As discussed in Chapter 5, the market for musical performance is, however, imperfect in ensuring that writers receive a suitable payment for the effort and talent invested in a particular work. The copyright system seeks to address this, providing a legal basis for writers, as well as others involved in producing a musical performance, to be treated fairly and provided with adequate financial incentives. It is common for the writer to assign a proportion of his rights to his publisher who thus also becomes entitled to copyright in the work. It would be far beyond the ability of the great majority of such owners to grant the necessary permissions to each category of user, to negotiate the best rate for their rights and to collect all the royalties due. It is for this reason that they arrange for a collecting

¹*Social Trends 1995*, HMSO.

²*Social Trends 1993*, HMSO.

society¹ to do the job for them by assigning all their rights in works to the PRS. The PRS operates by issuing licences for the use of its entire repertoire to the many different categories of users of music in the UK, by entering into agreements with similar collecting societies overseas to exchange monies collected on each other's behalf and by distributing the royalties received to the assignors. The PRS has considerable power and influence because its musical repertoire is virtually comprehensive. Users in the UK, therefore, very rarely need to seek permission from any other person before performing music of their choice which is subject to copyright, although it should be noted that the playing of recorded music requires a separate licence from Phonographic Performance Ltd (PPL).

The importance of music in UK society

2.7. The PRS's total revenue in 1994 was £167 million, of which some £53 million arose from overseas earnings by its members (excluding the Republic of Ireland). The PRS paid out some £28 million to overseas performing right societies for performances of works in the UK by their members. The contribution of performing rights' royalties to the invisible trade balance was thus some £25 million. The music industry as a whole is also a substantial contributor of foreign exchange for the UK economy with net earnings of £571 million in 1993.

2.8. In considering the evidence put to us during the course of the inquiry we noted and understood the importance which writers and publishers attached to the prompt receipt of royalties for the performance of their works. Writers wish to be sure that their creative ability is recognized and receives the appropriate financial reward through the operation of the copyright system. For the well-being of the industry as a whole, publishers need to be sure that the money and enterprise they invest will be duly remunerated. We were thus particularly concerned by evidence which was put to us which suggested that the PRS was not operating as efficiently as it should and that the basis for distribution of royalties amongst its members might be inequitable.

Current technological developments

2.9. The commercial and technological framework within which the PRS, like other collecting societies, has to operate is itself undergoing rapid change. This presents to collecting societies both opportunity and threat. The opportunity is to utilize the new technology in such a way as to improve monitoring and the enforcement of the rights they exist to protect: the threat is that the new methods available for distributing music (including digital broadcasting and other forms of digital diffusion, the increase in satellite and cable transmission, and the growth of the Internet) will require changes in monitoring and enforcement practices.

2.10. The European Commission has referred to this situation in its 1995 Green Paper,² stating that:

The establishment of the information society will necessarily bring about a review of the place of collecting societies whose role, organization and operation may need to be adapted. The role and function of the collecting societies will probably have to be adapted in order to better deal with the new possibilities and ways to exploit rights offered by the information society.

¹Collecting society is the term commonly used in the industry and which we use in this report. However, the terms of reference refer to and define 'licensing bodies'. The PRS is a licensing body for the purposes of the terms of reference.

²*Copyright and Related Rights in the Information Society*, COM (95) 382, dated 19.7.95.

The monopoly situation

2.11. Under our terms of reference we were first required to investigate and report on whether a monopoly situation exists in relation to the supply in the UK of the services of administering performing rights and film synchronisation rights by licensing bodies on behalf of the composers and authors of musical works or the owners or publishers of or persons being otherwise entitled to the benefit of or interested in the copyright of such works; and if so, by virtue of which provisions of the Fair Trading Act 1973 and in whose favour it exists. The PRS is the only licensing body which provides in the UK the service of administering performing rights and film synchronisation rights. Under the terms of section 7(1)(a) of the Fair Trading Act 1973: '... a monopoly situation shall be taken to exist in relation to the supply of services of any description ...' if 'the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by one and the same person, or supply for one and the same person, ...'.

2.12. Since the PRS, as sole supplier currently of such services, clearly meets these criteria we find that a monopoly situation exists by virtue of the provisions of section 7(1)(a). We further find that this monopoly situation exists in favour of the Performing Right Society Limited.

2.13. The PRS accepts these findings in respect of the administration of performing rights. The PRS accepts that it enjoys a monopoly situation in relation to the supply in the UK of the services of administering the film synchronisation right by licensing bodies on behalf of the composers and authors of musical works in respect of works written for the purpose of being recorded on to the soundtrack of a film in contemplation when the work was commissioned. The PRS administers film synchronisation works only for its writer members and only when they are commissioned to write music for a new film. Some films use music which is already in existence. The film synchronisation right may be administered by a wide range of parties, most commonly the publisher of the work in question. In our view the terms of reference refer to the supply of a single service, that of administering performing rights and film synchronisation rights, and a monopoly situation exists in relation to that service in favour of the PRS. But since no other licensing body operates in the UK to administer film synchronisation rights a monopoly situation exists in favour of the PRS in the service of administering film synchronisation rights by licensing bodies on behalf of those entitled to the benefit of copyright in musical works.

The issues

2.14. Having established the existence of a monopoly situation in favour of the PRS, we are then required by our terms of reference to consider whether the PRS is taking any steps (by way of uncompetitive practices or otherwise) to exploit or maintain the monopoly situation, whether any action or omission on the part of the PRS is attributable to the existence of the monopoly situation, and whether any facts found by us in pursuance of our investigation operate or may be expected to operate against the public interest.

2.15. We took evidence both in writing and orally from a wide range of interested parties during the course of our inquiry. The majority were members of the PRS, both writers and publishers, who were concerned about the internal operations of the PRS and its efficiency. We also heard from a number of major users and bodies representing users who were concerned about the way in which the PRS set its tariffs and the procedures open to them for challenging the level of those tariffs. This material is summarized in Chapters 10 to 14. After we had considered this evidence and had carried out various studies and research of our own, we put to the PRS a list of issues which appeared to us to be of potential concern and invited their comments. The list of issues is reproduced at Appendix 2.1.

2.16. These issues are examined in the following paragraphs and fall into a number of broad categories. We start by looking at the corporate organization of the PRS (paragraph 2.17), which we felt was an issue of fundamental importance relevant to many of the complaints which we received. We then go on to examine the way in which the PRS deals with its members and its accountability to them (paragraph 2.30), the requirement that members should grant to the PRS exclusivity over their performing rights (paragraph 2.39), its use of IT (paragraph 2.50), the way in which the PRS handles financial matters including the distribution of revenue, the allocation of costs and its relationship with overseas collecting societies (paragraph 2.58), licensing (paragraph 2.88), dispute resolution (paragraph 2.97) and the administering of film synchronisation rights (paragraph 2.99).

Corporate organization

2.17. The PRS has been in existence since 1914, and has some of the features of a co-operative society, since its members have sought to use their collective bargaining power to secure the best return from users of their music. Since that time the Society has seen many changes, some of which are noted in Chapters 3 and 5. Initially, it operated in a world where music was disseminated in printed sheets. Then came the advent of records followed by radio, television, cassettes and compact discs. As technology developed, the PRS has had to adapt in order to continue to protect its members' interests. However, even from its earliest days, there have been differences in the interests of the various types of member, most markedly between writers and publishers where there has always been tension about the way in which royalties from musical performances were divided and concern that publishers might seek, in exploiting the creative talents of their writers, to give too little weight to writers' interests. There have also been tensions between those who are involved with different types of music because of the great variations in the cost of collecting royalties from music performed in different media and at different venues. Naturally, those who are the larger earners are concerned that administrative expenses primarily incurred on behalf of the many smaller earners are kept to a minimum. The corporate organization of the PRS and its sometimes cumbersome procedures need to be viewed against this background.

2.18. The PRS operates through its General Council and a variety of committees and working groups. The members of the General Council are the directors of PRS, which is a company limited by guarantee and registered under the Companies Act. However, the composition of the General Council and the way in which it operates is somewhat unusual. The Council is composed exclusively of elected members of the Society, 12 of whom are writers and 12 publishers. Members are elected for three-year terms and are eligible for re-election until they reach the compulsory retirement age. The committees and groups, which are described in more detail in Chapter 7, are composed of members of the General Council, though other persons may be in attendance. In 1994 the PRS, recognizing that improvements needed to be made to its corporate organization, commissioned a study by Professor Thomas Clarke, the DBM Professor of Corporate Governance at Leeds Metropolitan University. This study looked, *inter alia*, at the procedures, composition and viability of the General Council and its relationship with the executive management. Professor Clarke submitted his report in July 1994¹ and it was subsequently endorsed in principle by the General Council in August 1994. Professor Clarke recommended that there should be a reduction in the size of the General Council to facilitate decision-making, that the General Council should delegate more work to its committees and

¹See Appendix 7.2.

groups and that external and executive directors should be appointed. He also said that the roles of the Chairman and Chief Executive should be clearly defined and separated in line with the recommendations of the Cadbury report¹ on corporate governance and that the Chief Executive should devote the bulk of his time to developing the strategic priorities of the PRS.

2.19. It was agreed at the Extraordinary General Meeting (EGM) of the PRS held on 18 May 1995 that there should be changes to the structure of the General Council; there should be an overall reduction in the number of members of the Council whilst retaining equal numbers of writers and publishers. Provision should be made for the appointment of up to two external directors and up to two executive directors drawn from the senior management of the Society. A reduction in the number of writer members from 12 to 9, and a concomitant decrease in the number of publisher members, was agreed at the PRS's Annual General Meeting (AGM) on 14 September. These changes will take effect fully from the 1997 AGM.

2.20. We have studied the minutes of General Council meetings going back to the beginning of 1992 and have been surprised by the number of matters of detail and issues of day-to-day management which are recorded as having to be dealt with before the main business of the meeting was taken. With the exception of its consideration of the PROMS (Performing Right On-line Membership Services) project, which was intended greatly to enhance the Society's IT capabilities, and the now aborted proposal to merge certain functions with the Mechanical Copyright Protection Society (MCPS), the amount of time devoted to discussion of the policy of the Society and its future strategy was very small; it was far less than we would expect from the Board of a company with such a substantial income and important responsibilities to its members. A three-year outline strategy entitled 'Towards 2000' was prepared by top management in 1992 and adopted by the General Council. The PRS told us that subsequent discussion of and revisions to that programme were postponed until 1995 as a result both of changes in the top management of the Society and the time needed to recover from the failed PROMS project. We also find this of concern. In a rapidly growing and evolving musical environment and with developments in the use of multimedia occurring apace we would have thought it essential for the members of the Council to be regularly briefed on such matters so as to be able to consider in some detail the potential implications for the commercial strategy and overall policy of the Society.

2.21. There appear to us to be several reasons why the General Council of the Society has acted in this way. The first is a structural reason. With a General Council composed of elected members of the Society, each of whom has a direct personal or corporate financial interest in the affairs of the Society and with a constituency of interests to represent, there is a tendency for detail to come to the fore and for the settlement of immediate financial issues to assume greater importance than longer-term strategic thinking. There is also the long-standing tension between writer and publisher interests, already referred to, and a deeply ingrained mutual suspicion of the motives of each group. This problem is enhanced by the Society's voting rules which require that under certain circumstances publisher and writer interests be separately represented, leading to the formal separation of the two groups at AGMs and EGMs in order that votes may be accurately counted.

2.22. The second is the lack of a Chief Executive for the past two years since the resignation of Michael Freegard in 1993 and the subsequent resignation of his successor a few months later. Wayne Bickerton, the Society's Chairman, who will be succeeded as Chairman by Andrew Potter in January 1996, stepped in as a temporary expedient and has in practice, and with the approval of the General Council, been carrying out the duties of both posts ever since whilst a search has been carried out for a new Chief Executive. His efforts on behalf of the Society have

¹*The Financial Aspects of Corporate Governance: report (Committee on the Financial Aspects of Corporate Governance; Cadbury, A (Chairman), London, Gee & Co Ltd, Dec 1992, ISBN 0 85258 915 8.*

been considerable. The roles of Chairman and Chief Executive are, however, inherently different. Whilst the two post-holders should work towards the same goals, there are natural tensions between the roles and differences in emphasis which are essential to the correct functioning of the management of the Society. With the best will in the world it is difficult for one person to fulfil both roles indefinitely, although Mr Bickerton has achieved as much as anyone could have done in these difficult circumstances. The Society needed to appoint at the earliest possible opportunity a Chief Executive with considerable experience in managing a service company relying heavily on IT. At a late stage in our inquiry, we were pleased to note the appointment of a Chief Executive, John Hutchinson, from outside the music business and with experience of IT, which took effect on 6 November 1995.

2.23. The third reason is the lack of both external influences and strong internally-generated advice from management on the decision-making of the General Council and its committees. We found little evidence of contributions made at committee meetings by management, whose role at such meetings was unduly limited. The recent decisions by the membership to enable the appointment of external and executive directors will see the General Council move towards the structure adopted by most major companies, whose Boards comprise both executive and non-executive directors. This structure has been found to bring benefits in the majority of cases where it has been adopted and we see no reason why the PRS should not benefit also.

2.24. The fourth reason relates to the size of the General Council, which is far too large to take decisions quickly and to operate effectively, and to the proliferation of committees. As noted in paragraph 2.19, steps are already being taken to reduce the size of the Council, which will comprise 22 members by 1997.

2.25. These committees, we were told, helped to reduce the load on General Council members through their preparatory work on material to go to the Council rather than by taking on some of the decision-making. While members' desire to be involved with every aspect of the Society's operation is understandable, this arrangement is unlikely to be conducive to effective and efficient decision-taking. Normal business practice is that such committees comprise the executive management concerned under the chairmanship of a relevant executive director or top manager. They have clearly delegated responsibilities, with the remit to produce detailed papers for Board consideration on major issues and expenditures, or when important decisions are required on matters not covered by those delegations.

2.26. The fifth reason is the lack of clearly defined and internally consistent objectives and procedures for evaluating proposals. Essential to any decision-making process is a clear statement of objectives and strategy and well-defined procedures for evaluating the costs and benefits of proposals which are under consideration. The PRS's objectives are variously stated in literature available to the membership and in a range of internal documents as examined in detail in Chapter 7. The Memorandum and Articles of Association refer to the exercise and enforcement of members' copyright and to the distribution of royalties received in the course of exercising those rights; the current PRS Yearbook states that: 'The essential function of the Society is to do collectively what creators cannot effectively do for themselves-that is, to administer for their benefit the non-dramatic performing and broadcasting rights in their copyright musical works'; whilst the latest version of the Members' Handbook sets out the mission statement formulated by management to give focus to the Total Continuous Improvement plan namely, that the PRS aims to be:

Pre-eminent amongst international Music Rights organizations
Regarded by members as an efficient and indispensable service and
Seen as fair, prompt and accurate by music users and affiliated societies'.

2.27. Good mission statements generally encompass the concepts of purpose, strategy, values, standards and behaviour and should be capable of translation into measurable objectives. They are not easy to draft, particular for a company like the PRS, where not all the members have similar interests. But it seems to us that the current statement of the PRS mission is singularly lacking both in expressing purpose and in giving any guidance to the staff of the Society about the direction and overall strategy of the business. It is, rather, a statement of non-specific quality targets, not unreasonable in themselves for a service organization, coupled with an expression of desire to be pre-eminent amongst international music rights' organizations, a wish which seems to us to be largely irrelevant to the bulk of the membership. Furthermore, the current statement fails totally to capture the objects of the Society as defined in the Memorandum of Association. It may be that the various factions within the membership, and within the General Council in particular, are unable to agree on a more specific statement. Whatever the reason, the Society seems to us to lack a sufficiently clear statement of direction or purpose. We have the impression of a sailing ship tacking first in one direction and then the other but in this case without a firmly stated destination.

2.28. Many of the PRS's successive decisions are inconsistent, particularly those which relate to the distribution of revenue. In 1992, for example, a live music subsidy was introduced for pop concerts as a reaction to a decision of the Copyright Tribunal which PRS management felt 'had gone against them'. The subsidy almost doubled the revenue paid out on pop concerts. But it was discontinued a few months later. We could find no evidence that the PRS had properly evaluated the likely consequences of this subsidy. It does not have a financial model which can quickly estimate the impact of changes to the distribution rules. Given the nature of the rules and the complexity of the shares allocated to various parties we do not underestimate the difficulty of constructing such a model. Nevertheless, we find its absence surprising for a Society where the equitable distribution of revenues is of prime concern to its members.

2.29. We were surprised that the Council had not debated in detail the various operational failings identified in the Business Process Review of 1993-a review of the operation of the PRS (see paragraph 7.37). Nor was it clear that members of the General Council had been fully informed of the existence of the Review or its findings. The PRS also appears to lack any clear internal policy about the way in which strategic decisions affecting the future of the business should be made. The PRS told us at a hearing in June 1995 that it was considering reorganizing its business into three separate areas, namely broadcasting, public performance and international. Each of the new businesses would be largely autonomous with its own Managing Director. This recommendation arose directly from the deliberations of a new working group of the Executive Committee which was established late in 1994 with the specific purpose of examining the strategy of the Society. The PRS told us that the detailed proposals would be put to a meeting of the General Council on 28 June 1995 and that it fully expected them to be adopted. We found it inexplicable that the PRS did not appear to have produced a full cost-benefit analysis of the proposed reorganization, a point which according to the minutes was also noted by some members of the General Council. We were also surprised that the PRS, in contemplating such a fundamental change to its organization, could show us no evidence that it had either studied or costed possible alternatives.

Membership issues

2.30. The membership of the PRS is very large and includes several thousand who earn nothing from their membership in any given year as well as some who earn extremely large sums annually (see Chapter 5 for details). We received a number of complaints during the course of our inquiry about the ways in which the PRS deals with the membership. These complaints included delays in dealing with queries, errors on distribution statements, a lack of information

about the benefits one might receive from membership of the Society, a lack of consultation about changes to the Society's rules and policies and a lack of accountability to members.

2.31. Some publishers urged that their voting power should be increased commensurately with their financial standing and some provisional members that they should have a right to vote at general meetings. We saw no reason, however, to disturb the existing voting structure (see paragraph 7.24 and Table 7.1) which we believe represents a fair balance between the interests of the different groups of members.

2.32. It was clear from our investigations that historically the PRS has been slow in dealing with queries from members and in correcting errors with the payment of royalties. It was also clear, however, from discussions with the Society that it had been making strenuous efforts to speed up the process (over a two-year period, the average response time for members' queries had been reduced from 235 to 24 days), to reduce the rate of errors and to provide a better overall service. A number of the PRS's members who provided us with evidence commented that matters had improved.

2.33. What we also found, however, is that members had no clear idea of the level of service that they could legitimately expect. We could find no evidence to show that the PRS's responsibilities to its membership are clearly spelt out in any of the documents issued to members on joining the Society nor in any of the documents regularly distributed to members. We note that a recent amendment to the PRS's rules makes it clear that provisional members will not automatically receive the Yearbook and annual accounts; they can, however, get them on request. In the great majority of clubs or associations members know clearly what services they will receive and the facilities they will be able to use when they join. The PRS argued that the Members' Handbook contained all the relevant information. We found this document difficult to read and far too detailed for the writer who had just joined the Society and had little knowledge about the way in which a collecting society should work.

2.34. In particular, we were concerned that the Members' Handbook did not fully and clearly explain the limitations of the Society's distribution policies and the fact that popular music performed live at a venue other than one designated as significant or where royalties in excess of £500 were payable would not be logged, so that it would not count for distribution purposes (see paragraph 6.127). The PRS did tell us, however, that these limitations were explained to those who telephoned to enquire about membership of the Society and that it was not unusual for potential members to pull out at that stage.

2.35. On the broader issue, of overall quality standards, the PRS said that the widely accepted quality standards required for Total Quality Management, as spelt out in BS 5750 and ISO 9000, were too bureaucratic. However, it is generally recognized by industry and commerce that their main benefit lies in the disciplines that need to be imposed for compliance.

2.36. Moreover, the PRS's written communications to its membership tended to give out information rather than to seek it. There is a limit to the number of members which the Society can see at its regular country-wide surgeries even though the numbers held had been increased. The AGMs and EGMs might be deemed a suitable occasion for general discussion and indeed the EGM held on 18 May 1995 and the AGM held on 14 September 1995 did provoke considerable debate. The difficulty with AGMs and EGMs, however, is a procedural one; if changes to the Articles of Association are to be made, these must be circulated to members in advance so changes cannot be proposed and made on the day, whatever the wishes of the meeting. Writer members also expressed concern that, unless they were themselves corporate members, the rules of the PRS did not allow them to send representatives who were not themselves members of the PRS to speak or vote at meetings on their behalf. Despite the size and composition of the General Council, members of the Society clearly feel that they still do not have sufficient opportunity or

knowledge, in particular of the way in which costs are allocated (see paragraphs 2.60 to 2.68 and 2.81 to 2.87), to contribute to the decision-making processes. Nor indeed did the PRS on a systematic basis seek information from its members on matters which might assist it in carrying out its basic functions, such as the venues where their works are performed and the musical genres in which they are involved.

2.37. At the beginning of our inquiry we were told by the OFT that it had received complaints about the restrictions which the PRS applied to those members who wished to leave the Society. We subsequently received written and oral evidence from representatives of the Irish pop group U2 on this matter. U2 had been initially concerned about a perceived imbalance in the PRS's Articles of Association which allowed the PRS to terminate a member's membership on 14 days' notice at any time, whereas a member was required to give three months' notice and could then only terminate at the end of a three-year period of membership.

2.38. The PRS told us that it was usually flexible about termination of membership. Moreover, the rule allowing termination only after a three-year period of membership had been amended. The PRS now allowed termination after a period of membership of at least one year and with a three-month period of notice. It preferred to terminate memberships in December because no distribution period spanned the end of the calendar year. This helped it ensure that all the sums payable in that year, including those from overseas sources, could be accurately calculated. In practice, though, requests for termination would be dealt with as they arose and not delayed to the year end, even though royalties would be calculated to the end of the calendar year.

The exclusive assignment of performing rights to the PRS

2.39. As a condition of membership, Article 7 of the PRS's Articles of Association requires that writers and publishers assign to the PRS all their performing rights for the whole world, for the PRS to administer. Thus, the PRS becomes the owner of the rights. The PRS claims that this is essential in order that it can effectively enforce the rights of the individual members in the event of any infringement of those rights.

2.40. It is important to note that the PRS could allow a degree of 'non-exclusivity' to its members within the framework of Article 7, if it was willing in practice to allow it. The PRS told us that it is always willing to reassign rights to its members if those fall into the categories spelt out in the GEMA decision (see paragraph 4.18). Indeed the PRS has stated that under EC law it is legally bound to recognize the GEMA decision. However, members are not aware of the PRS's policy on this. Moreover, the categories of performing right spelt out in the GEMA case are defined so broadly that they go far beyond the types of rights which members would actually wish to self-administer. The PRS declines to use Article 7 to allow to members on request the reassignment of narrower categories of rights, eg live performances, than those spelt out in the GEMA decision, and it is this practice which we refer to as 'exclusivity'.

2.41. A number of parties, most notably U2, PolyGram International Music Publishing Ltd (PolyGram), [*] and the British Academy of Songwriters, Composers and Authors (BASCA), expressed views to us about self-administration of the live performance right which the PRS's practice of exclusivity prevents. U2 argued that the PRS's refusal to allow members to self-administer if they so chose was anti-competitive and restrictive. PolyGram argued that it was not 'absolutely necessary' for all rights to be so assigned. In so doing, PolyGram quoted from the decision of the European Court of Justice in *BRT v SABAM and*

*Details omitted. See note on page iv.

*FONIOR*¹ which held that a collecting society holding a dominant position within the meaning of Article 86 could abuse its position if it imposed upon its members obligations which were not absolutely necessary for the attainment of its objectives. [*] considered that after a period of time for the PRS to put its house in order, exclusivity should be abandoned totally. BASCA voiced the concern of many writers about losses and delays in the payment of royalties for live works performed both in the UK and overseas; it said that the situation would be improved if writers could collect monies due directly from overseas promoters or venues. Writers of all kinds could benefit because they might be able to receive additional payments directly from the promoters. This would greatly help those performing their own compositions in non-significant venues and would help classical writers and those, such as folk artists, working in minority genres.

2.42. The PRS, however, argued strongly in favour of its present practice of exclusivity. If exclusivity were removed there would be practical difficulties in enforcement of copyright by the Society. Live and non-live performances were simply two facets of the public performance right. It was impracticable to subdivide the right because of the difficulties in relation to monitoring of performances and collection of royalties which this would create. There would be uncertainty amongst the organizers of live performances, problems in dealing with material performed which was not the main performing artist's copyright and in dealing with material performed by support bands. There could also be adverse consequences to the PRS's revenue stream, partly because administrative costs would not be reduced proportionately, and partly because the owners of venues would seek lower overall PRS tariffs to reflect the fact that certain works were not covered by their licence.

2.43. We have considered carefully all of these arguments. Exclusivity as practised by the PRS is, in effect, a bundling arrangement, where one service can be obtained only if one or more other services are also taken. Bundling is established here because the member is required to confer on the PRS the right to administer *all* types of rights, for *all* of his works in *all* countries. The bundling of services is a matter which always needs to be questioned carefully to ensure that it is not simply a means of tying the consumer more tightly to the supplier. In this case, rights can at present only be separately administered when they fall into the GEMA categories and when the PRS agrees. The PRS stated that EC law required it to agree in such cases, although it believed there were some difficulties in interpreting the precise meaning of the GEMA decision. In practice, though, self-administration occurs only for compilation shows. None of the many members from whom we took evidence showed awareness that self-administration was indeed possible for the categories of performing rights identified in the GEMA decision. The PRS had not made its policy in this area clear. Yet the PRS itself states that one of its prime functions is to do for its members what they cannot effectively do for themselves. We asked ourselves to what extent exclusivity was necessary to ensure that writers' or publishers' rights were adequately protected and enforceable, and why live performance by an artist or group should be treated differently from 'grand rights', where there is a direct agreement between their copyright holder (who does not vest them in a collecting society) and the arranger of the performance.

2.44. We do not believe enforcement would be hampered if there is a clear statement of the rights which are being reassigned to members. Neither the American Society of Composers, Authors and Publishers (ASCAP), one of the US performing right societies, nor the MCPS, the UK Mechanical Copyright Protection Society, both of which operate without exclusivity, appeared to have experienced difficulties in this area. Moreover, enforcement of the rights of those members who had not exercised the right of self-administration will remain with the PRS. The principle of complete exclusivity is already subject to the exceptions in the GEMA decision as well as the PRS's current practice in relation to compilation shows.

¹[1974] ECR 51 and 313:2 CMLR 238.

*Details omitted. See note on page iv.

2.45. As noted in paragraph 2.43, the PRS states that its main objective is to do for its members what they cannot effectively do for themselves. Here we have a situation where a number of writers and publishers wish to administer some of their own rights and believe they can do so more effectively than the PRS. The circumstances in which they wish to administer rights can be tightly and clearly defined, namely for specified live performances; it will, therefore, be possible for direct negotiations to occur with the concert promoter or owner of the venue and there is no obvious reason why the involvement of the PRS is absolutely necessary in this process. Nor is there any reason to suppose that those writers or publishers cannot achieve a better deal for themselves. This might involve earlier payment of royalties, more royalties or, in some cases, the payment of royalties where there would formerly have been none. If experience, however, shows the expectations of such writers and publishers to be unfounded, they may leave the administration of such rights with the PRS.

2.46. Live performances such as major pop tours are in many ways similar to performances of operas and ballets which are classed as grand rights. The sequence of songs is largely set in advance. Nevertheless, the PRS argued that there were certain practical problems with a move to self-administration. There may be an element of spontaneity introducing songs, or extracts from songs which were not expected. The songs performed may well not be limited to those written by the artist; the list of copyright credits may be long and complex. There is also the difficulty of support acts, who may not, themselves, have either the wish or the means to administer their own rights.

2.47. We were also concerned to determine whether the granting of the right to administer live performances to certain writers or publishers would be to the detriment of others who wished to leave all their rights with the PRS. The PRS argued that its administration costs would increase. We are not persuaded of this. We think it likely that self-administration of live performance rights will occur chiefly at major venues for important tours or where groups of artists playing music of a particular genre, who would not be likely under current arrangements to receive any royalties at all for those performances, because they are held in non-significant venues and the total royalties payable to the PRS do not exceed £500, come together to administer their rights. In the first case, the driving force for the decision to self-administer is to increase the size of the royalty fees payable and to speed the payment. Only major artists, or publishers, who either had sufficient knowledge themselves or, more probably, employed professional advisers who could negotiate royalties for them, are likely to be involved. Any reasonable additional administration costs to the PRS arising from the need to monitor and pay out on performances of works written or published by members who were not amongst those opting out could be offset, by charging them to the members opting out for that live performance. In the second case, royalties are not currently payable to members of the PRS and programmes are not analysed except in the case of certain classical concerts. So the PRS has no direct costs at present and would have no additional costs if groups of musicians playing speciality music at venues not on the significant venue list chose to self-administer their performing rights. Given that groups of artists playing specialist music are likely to foster relationships with a small number of specialist venues and that only a small number of major artists perform at significant UK venues each year, the number of occasions when self-administration of the live performing right might occur is likely to be quite limited. Nonetheless for specialist writers this could make a considerable difference. They might then be in a position to collect royalties which are at present not available to them at all unless their works are recognized for distribution, for example through information received from sales charts or broadcast logs.

2.48. If the practice became widespread it is possible that the owners of the venues affected by it might react by seeking lower tariffs from the PRS. But we do not think this is likely to have such a significant effect as to damage the interests of the PRS's members generally. The knowledge by the PRS that its members had an opportunity for self-administration for live

performances in the circumstances set out above is likely to provide an incentive to the PRS to seek to improve the quality of service that it provided and to maintain as high a standard of logging of live performances as was economically feasible.

2.49. The above factors, coupled with our consideration of evidence from a range of parties with a variety of views on the PRS's rules concerning exclusivity, convinced us that there were means by which the practical difficulties caused by changing the current rules could be overcome. We felt that the arguments in favour of some relaxation to the PRS's rules on exclusivity to allow self-administration of live performances were stronger than those against. We do not think the PRS's policy on exclusivity is indispensable to its operations on behalf of its members. To date no one has asked to withdraw rights from the PRS falling within any other of the GEMA categories. We did note, however, that technical developments in the identification of works to be disseminated digitally may well make it easier for copyright holders to collect directly the fees which are due to them, and they may, in future, choose to exercise their rights under the terms of the GEMA decision to self-administer broadcasting rights.

The use of IT

2.50. The rapid and accurate processing of information is at the core of the PRS's business. With almost 28,000 members, about 260,000 licensed premises and well over 2 million musical works in its repertoire, its databases are large, as is the number of transactions that need to be completed to pay out royalties at each quarterly distribution. Large though these numbers are, they are considerably smaller than the number of transactions that many other businesses are required to process every day.

2.51. Best practice in the use of IT is, therefore, the key to the efficient operation of the PRS. In view of this fact, we commissioned the consultants French Thornton to assess for us the current and future use of information systems (IS) and technology by the PRS. An edited version of their report is at Appendix 8.1 and is discussed in Chapter 8.

2.52. We were dismayed to learn how poor the PRS's data files were and to discover that the administrative application systems had been built up piecemeal over a period of 20 years. They could be made to work together only with a substantial degree of manual intervention, which was prone to error.

2.53. The management of the PRS did recognize these weaknesses and had proposed to modernize and integrate the systems through the ill-fated PROMS project, described in Chapter 8, which was initiated in 1987/88 and finally abandoned in 1992. Since then, the management have adopted a low-risk approach, making incremental changes where necessary, but have begun to investigate the data problems (now recognized as a top priority) which contributed substantially to the PROMS failure.

2.54. Clearly though, as technology, such as digital broadcasting and the Internet, develops, and as the number of its members and royalties continues to increase, the PRS must modernize its IT systems. IT strategy needs to be closely linked to overall business strategy; indeed it should form an overall part of the business development plan. In this respect, we welcome the recent establishment by the PRS of a Strategy Committee and the fact that those responsible for IT within the PRS have been charged with developing a strategy for IT which fits in with the overall strategic development of the business.

2.55. We looked in some detail at the history of the negotiations with the MCPS and the proposal to set up a joint venture service company to perform certain core administrative functions. We felt there were several reasons why these negotiations foundered:

- (a) there was a difference of approach; the PRS wanted to proceed cautiously, the MCPS wanted total commitment from the start;
- (b) writers were suspicious of publishers' intentions and feared a 'take-over' of the PRS by the MCPS;
- (c) the two societies have very different styles and cultures; and
- (d) there was confusion over exactly what administrative functions would be transferred to the service company.

2.56. Our consultants advised us that there was no conclusive argument for establishing a single information strategy function for both the MCPS and the PRS and, given the clear differences in approach, philosophy and membership of the two organizations, that there was little to be gained from resuming these negotiations on the single service company in the immediate future.

2.57. Nevertheless, given the significant degree of overlap between the MCPS and the PRS of data registering works there may be opportunities to work together in updating relevant databases and in adopting international standard work code numbers. There may be opportunities with other collecting societies such as PPL, which, like the PRS, has a large licensing organization. This may offer scope for combining some licensing activities, sharing databases of licensed premises or sharing inspectors in sparsely populated areas.

Financial matters

2.58. We examined the PRS's finances in some detail and our work and factual findings are described in Chapter 6. We wished to see how the PRS allocated its costs, whether we could track royalties through the PRS systems from the point of payment by the licensee to the point at which they were paid out to an individual writer or publisher and to establish whether any groups of PRS members were subsidizing any others.

2.59. We found a considerable lack of transparency and could not understand why members had complained to us of the difficulties in understanding exactly how the PRS distributed its revenues and deducted administration costs.

Cost allocation

2.60. The PRS's present management systems do not allow the costs of its main functions to be easily assessed. The cost-benefit analysis carried out as a part of the Business Process Review went some way to address the issue, but the work has not been continued. The PRS told us that it recognizes the deficiencies in its systems, and is taking steps to improve matters. We have seen little evidence of real progress. To improve efficiency the PRS needs to redesign its management information systems so that it can readily identify the costs of different activities and, more importantly, can set targets for cost reductions. It is important too that costs of collecting particular revenue streams can be clearly seen so that the PRS can assess its own effectiveness.

2.61. The most obvious direct costs, such as licensing, have been identified by the PRS and allocated to specific revenue streams on various bases which appear reasonable. However, those costs where an allocation basis is not so obvious, and where additional management information would need to be produced to enable allocation, are accepted as indirect costs. This somewhat

passive approach to identifying which costs are direct as opposed to indirect means that the PRS allocates less than half of its administration costs as direct costs.

2.62. The largest indirect cost relates to IT; of the total IT cost only £1,227,000 is treated as a direct cost with £3,448,000 included in indirect costs. Our consultants reported that no detailed actual expenditure figures have been provided by the PRS. The size of the figure for indirect costs merits further consideration as to whether part or all of it can be allocated as a direct cost.

2.63. The costs of some of the smaller departments could be directly allocated to revenue streams if appropriate systems, such as time management systems, were implemented. Such departments might include the Music Services Department and the Legal Management Department.

2.64. Direct costs relating to overseas income are allocated to this income. However, the majority of the indirect costs are borne by the domestic revenue as the PRS takes the view that the Society exists to collect income within the UK for its members and so all costs should be borne by that income.

2.65. Although some direct and indirect costs are allocated against overseas income, no costs are actually recovered against income remitted from the USA or the EC. Income remitted to the PRS from countries outside these territories bears its proportion of the costs allocated to overseas income. The shortfall which arises due to the non-recovery from the USA and EC income is met from the non-licence revenue. The PRS initially informed us that this policy was introduced to match that adopted by the affiliated societies in those countries. However, it appears that the PRS has not kept this policy under review and that it may now be out of line compared with other collecting societies. Both SACEM and ASCAP recover such costs. The PRS subsequently told us that the policy was applied to discourage the PRS's members from splitting their membership between the PRS and other societies, which was clearly allowed as a result of the GEMA decision (see paragraphs 4.18 to 4.21).

2.66. The costs attributed by the PRS to members' queries and other activities of the Membership Division do not comprise all costs relating to membership matters but do account for a large proportion of such costs.

2.67. The PRS staff spend a considerable amount of time registering the new works which appear each month. Many of these works are never performed so that much of this information simply increases the time taken to use the databases for transactions involving active works. The PRS told us that of all the new works registered in any one year, approximately 25 per cent were the works of the PRS's writer members. The remaining 75 per cent were the works of overseas writers and were registered by UK sub-publisher members of the PRS. The costs of registration are included in indirect costs and are allocated across all streams of income in proportion to revenue.

2.68. From July 1995, the information sent to members in support of their distribution statements has included the cost recovery rates which have been applied to each revenue section. However, members receive no information to explain how these rates are calculated, nor do they receive any information which breaks down each cost recovery rate to show how much relates to the recovery of direct costs and how much relates to the recovery of indirect costs.

Distribution of royalties

2.69. We received more complaints about the PRS's distribution policies than any other subject. In broad terms those whose earnings from the Society were relatively limited felt that the basis for logging performances (particularly public performances) was unfair in that on grounds

of administrative cost the great majority of public performances were not monitored or taken into account in calculating royalties payable to members. On the other hand, some writers and publishers earning substantial royalties complained that the expense ratios of the PRS were too high and were necessarily borne by them to a far greater extent than the low earners. Other complaints ranged from concerns about calculations of the amounts received and failure to pay royalty on known performances to allegations about lack of transparency, inequitable rules and delays in obtaining payment of royalties from overseas.

2.70. Our analysis of the distribution by the PRS of earnings from performing rights (set out in Table 5.2) showed that a high percentage of the earnings went to a small percentage of the members. Of the domestic distributions made in 1994, the highest-earning 1.3 per cent of the PRS's writer members received almost 41 per cent of the royalties payable to writers, and the highest-earning 19.5 per cent received some 92 per cent of the royalties payable. A similar picture was obtained for publishers. In any one year around 8,000 members, amounting to almost 30 per cent of the entire membership, earn nothing.

2.71. As described in Chapter 6, the PRS receives royalties from three main sources: broadcasting, public performances and overseas societies. UK broadcasting and public performance royalties are collected regularly. However, the PRS accepts that there are delays between the performance of a work overseas and the receipt by the PRS of the income relating to that performance. The PRS has attempted to remedy the situation for revenue earned from major tours, with some little success. The Society has also drawn up a new form of contract with overseas societies which specifically addresses delays in payment but is not in such a position that it can impose this contract unilaterally on all the affiliated societies. Indeed, it may be some time before the large European societies agree to the adoption of this new contract. Delays are of considerable concern to members, but may be outwith the PRS's control to a substantial extent.

2.72. The royalties are allocated to various revenue sections for distribution. Pending distribution, royalties are invested. We noted that since 1993 there had been no investment in equities. The PRS told us that the decision to move investments out of equities was taken by the Finance Committee and was contrary to the advice of management. No advice was sought from external advisers (see paragraph 6.30). The aim is that each section will include revenue arising from the performance of a similar repertoire. To illustrate, the PRS considers that the works performed in a designated discothèque venue will bear a direct relationship to the single sales charts (40 per cent), the album sales charts (10 per cent), the *Music Week* dance charts (10 per cent) and selected radio logs (40 per cent). The revenue from these designated discothèques is allocated to Section 12 UK Recorded (Discothèques) and is distributed on this basis. However, the PRS considers that different works will be performed in a discothèque in a holiday caravan park. Consequently, this revenue is allocated to a different section (Section 17 UK Recorded Music Breakdown (Featured Music Events)) for distribution purposes. This section is split amongst album sales charts (25 per cent), singles sales charts (25 per cent) and selected radio logs (50 per cent). For music performed on BBC1, BBC2, BBC radio, ITV and Channel 4 where a full census is undertaken, distribution reflects exactly what is played and is based on formulae relating to the length of time a piece was played and whether it was featured or background music. However, for most other broadcasting media and for general public performances, it is accepted that the PRS cannot undertake a distribution based on works actually performed, as the administration costs of conducting the necessary censuses would be prohibitive. By dividing the pools into sections on the basis of similarity of repertoire, the PRS is attempting to base the distributions on a 'best estimate'.

2.73. The decisions as to how the pools are subdivided into sections and the repertoire to be applied to those sections are approved by the General Council, as advised by senior management. The assessment of the appropriate repertoire to mirror the performances in a section appears to be based on precedent. There do not appear to be any set down procedures to determine, on an

ongoing basis, whether the repertoire applied continues to be appropriate. Although there was considerable knowledge in the organization about up-and-coming genres of music, there was no systematic way of ensuring that this information was fed through into the distribution process. The PRS considers that the experience of the individual General Council members and of management generally negates the need for such a process. The sums available for distribution in particular 'pools' are fixed; if some members lose out because their performances are not logged, others must gain. We noted, therefore, that it was to the benefit of some members to have an inappropriate or inaccurate system of sampling or logging performances.

2.74. To substantiate the fact that it does look at the appropriateness of the 'works chosen for payment', the PRS cites the instance of its licensing inspectors undertaking a sample of the records played on juke-boxes. This sample was used by the PRS to determine rules for selecting a suitable repertoire in a given year to be applied against revenue generated by juke-boxes. However, this seems to be an exception rather than the rule. The emphasis placed on increasing revenue means that inspectors have little time for activities other than licensing. We find it unacceptable that the PRS has not sought independent, professional advice about sampling. This is required to be done regularly in the USA under the terms of the Consent Decrees under which ASCAP and Broadcast Music Inc (BMI) operate, and helps to demonstrate in a positive and transparent fashion that the appropriate repertoire is applied to those distribution sections where actual performance data are not available.

2.75. The announcement of the increase in the Unlogged Performance Allocation (UPA) (see paragraph 6.114) in 1993 before the General Council had considered the impact this would have on the level of funding required indicates a lack of sound business procedure on the part of the General Council. The PRS told us that it had not completed the development of a financial model to forecast changes in distribution policy due to its difficulties with modelling logic and other technical problems. Other tasks were also assigned a higher priority. However, it is equally unacceptable that an organization the size of the PRS does not have some means by which it can measure the effect of changes in distribution policy prior to announcing and implementing such changes.

2.76. The Performance Compensation Allocation (PCA), like its predecessor the UPA, attempts to address the problem posed by sampling procedures in that some works will be performed but not logged (see Chapter 6). The level of payments made seems to be based on what the General Council considers the Society can afford and the effect on the higher contributors to the PRS's income, rather than on an analytical assessment of the profile of members likely to be affected by current methods of logging and the amount of remuneration forgone.

2.77. From broad estimates it appears that the total amount to be paid out under the PCA will be considerably less than that paid out under the UPA. We estimate that over 10,000 writer members who were eligible for payments under the UPA will no longer be eligible for payments under the PCA. Of these, around 6,000 are those who earn less than £25 a year from the PRS. Consequently, the effect of this change in policy is that the less well-established members will in future have even less chance of receiving any income from the PRS.

2.78. Over the years, the PRS has adopted various methods to distribute income from live music performances, which are discussed in paragraphs 6.122 to 6.129. In 1992 the PRS introduced a new method, the live music distribution policy (LMDP) (see paragraphs 6.122 to 6.137), which caused considerable controversy. The PRS stated that the new policy uses more information about what is actually performed than the previous policy, and that it has access to more programme information which means that the number of members entitled to receive live music royalties has increased for major events. From the information supplied by the PRS, it would seem that the programme information for tariff LP events (pop events) has increased, but

the amount of information that the PRS uses in respect of classical concerts has fallen, even with the recent introduction of the Unsolicited Programmes Scheme.

2.79. The specialist types of music, such as brass band, folk or jazz, which would only rarely be performed at significant venues, are excluded from distributions based on programme information. They will therefore only receive a distribution for live performances if they feature on a radio log or if total royalties for a single event or a tour including at least one of their works exceed £500. Under the LMDP, in 1993, over £7 million of blanket licence revenue from live music was distributed using radio logs. According to Mr Ernest Tomlinson (see paragraph 11.113), for many years a writer director of the PRS, some £0.5 million of this revenue is generated by music which is poorly served on radio, if at all. He cites those disadvantaged as being many up-and-coming writers, those who specialized in minority styles (educational, wind band, brass band, small choir music and music written for dancing) and classical writers. Prior to the adoption of the LMDP, the specialist genres, such as the brass and wind bands, would submit details of works performed. The PRS recognizes that the specialist forms of music are adversely affected by the new policy but considers that this is justified on cost/benefit terms. The PRS seems unwilling to countenance any further amendments to the new policy to incorporate programme information from these minority groups.

2.80. There are inherent difficulties with the distribution of royalties and particularly those that are attributable to public performance, for reasons already stated. No distribution system can be perfectly fair and the costs of more comprehensive sampling always have to be weighed against the benefits likely to be attained. But it is clear to us, in particular from the operation of the current LMDP, that the PRS has done far too little to acquire as much relevant knowledge as possible. The PRS could and should do more.

Cross-subsidies

2.81. Our study of the way in which the PRS allocates its costs and distributes royalties provided essential factual material to enable us to evaluate whether for some of the PRS's activities certain groups of members were being cross-subsidized by others. We found that these cross-subsidies fall into two categories: deliberate policy decisions with the tacit agreement of the membership such as the classical music subsidy and the Earnings Equalisation Scheme (EES); and cross-subsidies resulting from the fact that the costs of particular activities were either not known or disregarded, eg the funding of routine membership activities, or where adequate sampling had not been carried out, eg the LMDP.

2.82. The classical music subsidy, funded from general live and recorded public performance revenues and comprising £1.4 million in 1994, has been in place for many years and appears from the evidence provided to us to have the broad approval of both writer and publisher members.

2.83. We received very few comments about the EES, the purpose of which is to provide extra income for long-established writer members who have experienced a drop in their earnings from the PRS. Since 1994, this scheme has been funded by the PRS's writer members' share of non-licence revenue. The cost in 1994 was approximately £750,000. We noted that the membership had not generally questioned either the nature or scope of this subsidy.

2.84. In the case of the LMDP, this results in a failure to pay royalties to lesser-known artists playing their own works in non-significant venues, or performing at events or on tours attracting royalties for the PRS totalling less than £500 and who have not yet had works broadcast. We have also been concerned to note that the PRS, unlike ASCAP, does not link the rate paid for the performance of a broadcast work with the time of day that the work is broadcast, and, therefore,

the potential size of the audience. The sums which the PRS receives from broadcasting are based on the value of the total listening audience but are not distributed in line with the size of the audience listening to a particular piece of music. If writers and publishers are to receive equitable remuneration, we would expect that if a larger number of people hear a work, and hence benefit from the broadcasting, the system of remuneration should reflect this.

2.85. Non-licence revenue was also used to pay the £1.5 million of administration costs incurred on US and EC income and was the funding source for various charitable donations and award schemes which the PRS supports. In 1993, of £3.9 million earned from this source, only £0.5 million was actually distributed directly to PRS members.

2.86. We have already referred to the weaknesses inherent in the PRS's cost allocation system. As an example of this, we discovered that the costs of routine membership activities are borne only by those members who earn revenue. Costs of works registration are similarly met, even though many revenue-earning members may register no new works in a given distribution period.

2.87. Extending this principle, if the PRS's cost allocation system used activity-based costing, wherever appropriate, the proportion of costs currently allocated directly would be increased significantly from the current low level of 42 per cent, and this would remove a number of other inherent cross-subsidies.

Licensing

2.88. The PRS issues licences to a wide range of users of music in the UK. Some licences are blanket licences, covering all of the PRS's repertoire for a whole year. Others are event licences, covering the whole repertoire but for just one occasion. The PRS has a wide range of tariffs, with 41 tariff categories and over 500 different rates in all, reflecting the great variety of ways in which music is used.

2.89. If a licensee cannot reach agreement with the PRS on the level of tariff to be applied in his particular circumstances then he may appeal to the Copyright Tribunal. This Tribunal was constituted under the provisions of the 1988 Act. It was intended to provide a quick, cheap and easy way of resolving disputes. We heard from a number of users who felt there were imperfections in the licensing system. They see an imbalance in the strength of the negotiating position between the PRS and themselves. The PRS, they felt, was better able to fight cases which were protracted and expensive. The PRS argued that the Tribunal should make greater use of international comparisons in reaching its decisions. It, too, found it necessary to weigh carefully the costs involved against the prospects of a successful conclusion from its point of view.

2.90. But it became clear to us during the course of this inquiry that the Tribunal had a difficult role. The value of a particular use of a musical work is not easy to determine. There are no universally applicable criteria which can be applied, although some guidance may be obtained from precedents both within the UK and abroad.

2.91. Given the great complexity inherent in setting tariffs, we do not feel that it is appropriate to offer any comment on the Tribunal's work in this area other than to note the potential importance of international comparisons. Such comparisons must be used with care because of the considerable cultural and economic differences between countries. However, their importance may well increase as technology develops and we see growth in the use of those media, such as satellite broadcasting and the Internet, which cross international boundaries.

2.92. We were most concerned, however, to hear that those who use the Tribunal felt that it provided neither a quick, cheap nor easy means of settling disputes. In the light of this, we took oral evidence from Mr Michael Bowers, the Chairman of the Tribunal, given to us in a personal capacity. He explained to us a number of the procedures which the Tribunal has adopted in order to simplify and speed up hearings. He said that a practice direction had been introduced in 1991 which outlined a timetable for hearings and attempted significantly to reduce the amount of time spent on opening speeches. He also encouraged the parties to settle disputes privately because it was 'extraordinarily difficult' for the Tribunal to make decisions about royalty rates. Whilst we could understand his reasons for this, it did mean that there was a lack of recent case law and that this factor might itself protract disputes. However, in most of the cases which appeared before the Tribunal the sums involved were large and the parties wished to ensure that their respective cases were fully and professionally presented. We felt that this would inevitably work against inexpensive, quick and speedy settlements.

2.93. Mr Bowers also explained to us that one of the issues which had come up in a recent survey of Tribunal users was the fact that the Tribunal did not have any power to award interest on payments ordered to be made retrospectively. He thought this was unfair. We agree.

2.94. Users were also concerned that the Tribunal's present practice of awarding costs so as to reflect the outcome of the case acts as a deterrent, particularly to small users, to recourse to the Tribunal. We subsequently took evidence from a representative of the Intellectual Property Policy Directorate (IPPD) of the Patent Office, who explained that the Tribunal's procedures did give it considerable discretion in the way in which costs were awarded. We felt this would enable the Tribunal to recognize the different negotiating strengths of the parties involved.

2.95. Both Mr Bowers and the Patent Office representative explained to us that the Tribunal often took some time to deal with cases because its Deputy Chairmen tended to have long-running professional commitments. The staff resources available to the Tribunal were severely limited.

2.96. We also heard views that the amendment to the 1988 Act introduced by the Broadcasting Act 1990 and providing immediate protection in the form of a statutory right to a licence on users' terms for those seeking licences from PPL should be extended to the PRS. The PRS pointed out, however, that it had never refused a licence to a potential user, even when a dispute as to the correct level of payment was in existence. We understand that it was PPL's practice of employing needletime constraints, thereby restricting the amount of recorded music that could be played, that had led to the need for compulsory licensing on users' terms. The PRS had applied no similar restriction in its licence terms.

Dispute resolution

2.97. A number of the PRS's members who gave evidence to us commented adversely on errors and problems that had occurred with their distribution statements and the way in which PRS management had attempted to sort things out. Inevitably members will have problems with the complex distribution arrangements in place and we did find, both from statistics supplied to us by the PRS (paragraph 2.32) and from other evidence that we had received, that the PRS had significantly improved its response rate for dealing with members' queries over recent months. However, we were concerned that a number of disputes seemed to drag on for many months without apparent resolution. Given that the PRS is a monopoly, and members have in practice no alternative society to turn to if they are unhappy with the calculation of the royalties that they receive, we were also concerned that there was no appeal mechanism open to them.

2.98. In the USA, ASCAP has a Board of Review. This comprises a number of members of the society who neither serve on the Main Board nor any advisory committee and who are elected by the membership for a two-year term. Members who are in dispute with the management can bring their case before the Board of Review. We felt that such a Board could play an invaluable role also for the PRS.

Film synchronisation rights

2.99. Although the PRS is assigned film synchronisation rights by its members for their works, it enforces those rights only in respect of writer members for specially commissioned music and only in the USA. In practice, the PRS licenses performances in the USA via film producers and the writer himself, authorized by the PRS, licenses the synchronisation right. We received no substantive complaints about the way in which the PRS exercises these rights in the USA. Given that no performing rights are collected in the USA by US performing right societies for the cinema exhibition of films it is difficult to envisage by what other means UK writers could easily obtain what is their due unless they chose to administer the right directly. Those who were familiar with the relative bargaining power of producers and writers (see views expressed by BASCA in paragraph 11.40 and the PRS in paragraph 14.11) felt writers were likely to suffer if they attempted to act alone.

Findings

2.100. Having carefully examined all the matters set out in paragraphs 2.14 to 2.99, we therefore consider as follows:

- (a) In matters of corporate governance, the PRS has failed to organize itself in such a way so as to ensure that it operates efficiently in that:
 - (i) It has failed to divide activities appropriately between the General Council and the executive management of the Society so that nothing is formally delegated to the executive. This is not good business practice, nor is it conducive to the making of clear, strategic decisions (paragraphs 2.18 and 2.20).
 - (ii) It has failed to take adequate account of the views of the executive because it has too many (12) committees and groups composed entirely of Council members and where the role of the executive is accordingly limited (paragraphs 2.23 and 2.25).
 - (iii) Its failure to appoint a Chief Executive for almost two years has had a prejudicial effect on the way in which the Society has been managed (paragraph 2.22).
 - (iv) It is insufficiently clear about its objectives and has failed to take the necessary steps to evaluate and develop a coherent long-term strategy (paragraphs 2.26 to 2.28).
- (b) The PRS has failed to adopt efficient management practices and systems for distribution of royalties in that:
 - (i) It has failed to link the development of overall business strategy with improvements in administrative procedures and the introduction of integrated information systems, and to ensure that these three areas change rapidly and in parallel (see paragraphs 2.53 and 2.54).

- (ii) It has failed to do sufficient work to remedy the deficiencies in the PRS database which were revealed by the PROMS project (paragraphs 2.52 and 2.53).
 - (iii) It has failed to adopt a proper costing system which would enable it to identify costly or inefficient areas of operation and to allocate the great majority of its costs to the appropriate revenue sources, which results in disguised cross-subsidies. For example, it has failed to allocate equitably amongst members the costs of routine membership activities (paragraphs 2.60 to 2.67).
 - (iv) It has failed to put in place an adequate system for assessing the financial consequences to members of changes to its distribution policies (paragraphs 2.28 and 2.75).
 - (v) It has failed to sample or monitor public performances on a continuing basis as adequately or effectively as it should, and has not sought independent, professional advice in this area. In particular, this has resulted in the case of the LM DP in some members being cross-subsidized at the expense of others (paragraphs 2.69 to 2.82).
 - (vi) In the distribution of broadcasting revenues, totalling some £50 million a year, it has failed to take into account the size of the audience actually listening at different times of day to each musical work performed (paragraph 2.82).
- (c) The PRS has failed to provide adequate information to its members and to operate with sufficient transparency in that:
- (i) It has failed to set out sufficiently clearly and transparently its responsibilities to members, its policies and procedures and the limitations of the service which it offers (paragraphs 2.33 and 2.34).
 - (ii) It has failed to make clear to its members how it allocates costs (paragraph 2.68).
 - (iii) It has failed to consult the membership adequately in order to allow them to contribute to policy-making; and to choose whether they wish cross-subsidies from one group of members to another to occur or not (paragraph 2.34).
 - (iv) It has failed to make clear to its members that they may self-administer those categories of performing rights set out in the GEMA decision (paragraphs 2.39 to 2.49).
- (d) The PRS has failed to ensure that its members have a right of appeal in matters of dispute and thus to provide a suitable procedure for dealing with their grievances (paragraphs 2.97 and 2.98).
- (e) The PRS has refused to allow members to administer their own rights in respect of live performances (paragraphs 2.39 to 2.49).

2.101. We conclude that the findings set out at (a) to (d) in paragraph 2.100 are omissions on the part of the PRS, all of which are attributable to the existence of the monopoly situation. Against the background that in most cases its members cannot effectively administer their rights themselves, there is no other licensing body from which members can obtain similar services. This means that the PRS has been and will continue to be under no commercial pressure to provide an efficient, transparent and equitable service to its members. There has been no urgency for it to remedy those shortcomings which damage its efficiency or for it to improve the quality of the service which it provides to its members. For analogous reasons, we conclude that (e) is

an action of the PRS which is attributable to the monopoly situation in that, if the PRS were subject to effective competition, it would be required to act more flexibly in order to retain its members.

2.102. We consider that the findings *(a)* to *(e)* are facts which we have found during the pursuance of our investigations which operate against the public interest in the ways and for the reasons set out below.

2.103. Finding *(a)* has the particular adverse effects that, as a result of the inefficient operations of the PRS, members receive less income from the collection and distribution of royalties by the PRS than they might reasonably expect.

2.104. Finding *(b)* has the same adverse effects as finding *(a)*. It also affects the way in which distributions are made so that some members are treated less favourably than they should be. Since the size of the revenue pool is fixed, some members benefit at the expense of others. Those who write or publish minority genres of music are particularly badly affected by the LMDP and will receive no royalties at all if their work is neither performed at a significant venue, nor at a concert or on a tour attracting royalties in excess of £500, nor included in a broadcast log.

2.105. Finding *(c)* has the adverse effects that the PRS's members cannot assess whether they are being treated equitably and are receiving appropriate income. This leads to an inability to propose and achieve changes which would result in an appropriate distribution of royalties being made.

2.106. Finding *(d)* has the adverse effect that there is no appropriate procedure for resolving the disputes that members may have from time to time with the Society about their personal rights. It also means that such disputes become protracted and members may come to believe thereby that they have suffered an injustice.

2.107. Finding *(e)*, the PRS's refusal to allow members to administer their own rights in respect of live performances, has the adverse effects that members who would benefit from administering such rights are prevented from doing so and lack of competitive pressure on the PRS is preserved, resulting in inefficiency and loss to the membership as a whole.

2.108. There are three other matters which we have investigated during the course of our inquiry on which we wish to comment formally. These are:

(f) The PRS has been unable to achieve adequate improvements in the speed of overseas payments which have been long sought by the membership (paragraph 2.71).

(g) The current tariff system is complex (paragraph 2.88).

(h) There are no major problems with the PRS acting as monopoly supplier of the service of administering film synchronisation rights in the USA (paragraph 2.99).

On *(f)*, we consider that the PRS's failure to achieve adequate improvements in the speed of overseas payments is not due to lack of effort on the part of the PRS. On *(g)*, although the current tariff system is complex, we felt simplification was not easy given the difficulties in valuing the particular uses of music. Tariffs should reflect these differing uses and should not be distorted by the differing negotiating powers of the PRS and user groups. The Copyright Tribunal is in the best position to resolve these issues, though we believe its resources need to be strengthened (see paragraph 2.132). Regarding film synchronisation rights, *(h)*, we consider that the current arrangements help to ensure that a balance is struck between the power of the producers and the writers.

Recommendations

2.109. We are required by section 54(3) of the Fair Trading Act 1973 to consider what action (if any) should be taken for the purpose of remedying or preventing the adverse effects we have identified in paragraphs 2.103 to 2.107. We may, if we see fit, make recommendations to the Secretary of State as to such action.

2.110. We wrote to the PRS towards the end of our inquiry seeking its views on a number of remedies which we had it in mind to explore. We also wrote to a number of third parties who had contributed to our inquiry and who represented a range of writer and publisher interests and different musical genres. We made clear at the time that the remedies which we were then considering, and which are reproduced at Appendix 2.2, were entirely hypothetical and that we had, at that stage of our inquiry, reached no conclusions on possible public interest issues. We took further evidence from the PRS and from a number of third parties.

2.111. We considered first whether the most appropriate remedy to deal with the adverse effects we had identified would be the introduction at this stage of another society into the UK market for the collective administration of performing and film synchronisation rights. We were struck, first, by the fact that none of the parties from whom we took evidence had seriously argued in favour of the creation of a second collecting society duplicating all the PRS's functions. Although there is no legal reason why such a competing society could not be formed if thought necessary by sufficient publishers and writers, users, in particular, did not want to deal with more than one society (see paragraphs 10.2, 10.9 and 10.52). Second, we felt that a break-up of the PRS or the introduction of direct competition from other collecting societies might reduce scale economies in the operation of the business in a market of the size of the UK. We noted in this context that Canada had recently reverted from two competing organizations to one monopoly performing right society, and we became aware of only two jurisdictions, Brazil and the USA, where there were competing societies. Finally, we thought that, although it could be done, the creation of competing collecting societies in the UK was unlikely to bring benefits to the members. What some categories of member are likely to benefit from, however, is a single society which has less rigid rules and policies, particularly concerning exclusivity, than those the PRS currently applies.

2.112. We therefore believe that a preferable recommendation is for the PRS to allow its members greater freedom to choose which rights to self-administer. Indeed, some publishers argued for the separation of different types of performing right and more freedom to choose which to administer themselves both for the financial benefits this might provide to them and because of the incentive to the PRS to improve the quality of its service. The PRS told us that it would permit members to self-administer the categories of rights set out in the GEMA decision. But no one had asked to self-administer a GEMA category. The GEMA categories are not necessarily the ones that some members consider that they can administer at least as effectively as the PRS. If the rules concerning exclusivity were weakened, this should allow for a gradual introduction of competition into certain aspects of the PRS's operations, which could be extended at a later date if it proved successful. Because the PRS is a *de facto* and not a statutory monopoly, market forces would shape the way in which such competition came about. Technological developments should also make self-administration easier in the future.

2.113. We expect that this approach, involving a further relaxation of the rules concerning exclusivity as elaborated in paragraphs 2.124 to 2.127, will mean that the PRS remains a *de facto* monopoly for the administration of performing rights. In the light of this we decided that it was also important to propose further remedies which would deal with what we saw to be the key failings of the PRS, namely its internal management structure and management practices and the

lack of transparency in its operations. All our recommendations are summarized in a list, which follows paragraph 2.134.

2.114. In choosing recommendations to put forward we have borne in mind three key principles which we think should apply to the PRS. These are efficiency, equity and transparency.

2.115. In order to improve efficiency in matters of corporate governance and hence the flows of income to the PRS's members, that is, to remedy the adverse effects of finding (a), we consider it is essential that the General Council step back from the day-to-day management of the Society to concentrate on key policy issues and supervision of the development of the PRS's future strategy. This, we believe, could be achieved by reducing meetings of the full Council and by the formal delegation by the General Council of responsibility for the operation and day-to-day management of the Society's affairs to a new executive committee comprising the newly-appointed Chief Executive, the second executive director, the Chairman, *both* external directors and no more than two other director members of the General Council. It is vital that the external directors should be able to give sufficient time to the Society's affairs to make a full contribution. This new committee, which would replace the existing Executive Committee, would need to meet regularly and to report back to the full Council on any strategic or policy issues which arose. The General Council should formally delegate some work to other committees, but to improve efficiency we should also like to see a reduction in their size and number and to see greater formal management representation on them. The Chief Executive's role needs to be clearly differentiated from that of the Chairman.

2.116. The General Council should agree on and specify clearly the objectives of the PRS and its broad strategy for the next five years. Both of these tasks need to be finalized urgently, not later than three months from publication of this report. All major proposals for change should be evaluated against alternatives with the costs and benefits clearly stated and examined by the General Council before any decision is taken. It is particularly important that this task should not be delayed, in order that the new executive committee may operate with a reasonable degree of autonomy.

2.117. To remedy the adverse effects of finding (b), lower royalties for members than can be reasonably expected, the PRS should clearly set out all the key steps, particularly those relating to changes in the use of IT, which it plans to take to improve efficiency. Target dates for the achievement of each step should be specified. The improvement of data should be given a high priority. The PRS General Council should consider IT strategy alongside its consideration of the Society's overall five-year strategy. It should ensure that the objectives of the five-year strategy coincides with IT developments and improvements to administrative processes. The timing of the main stages should be synchronized. The IT strategy should take into account the need to streamline processes and integrate all the major administrative systems.

2.118. Major improvements in IT are needed and a full-scale programme of change is necessary. This needs careful planning and, we suggest, should be integrated with a move towards the wholesale use of international standard work code numbers, which is being promoted by CISAC. This should help remedy the deficiencies in the PRS's database. Given the immense problems that the PRS has had in the past with the identification of works, it should adopt the use of these numbers at the earliest opportunity and should encourage or even require its members to do likewise. In addition, the PRS should work towards accreditation under a recognized and objective quality standard.

2.119. Finding (b) also has the adverse effect of distributing royalties inequitably. To remedy this the PRS should, as a matter of urgency, take professional advice about the measurement of public performances. This advice should be distributed to the membership. To establish a new

system with initial bench-marks detailing the repertoires in general use, the amount spent in the first year may well need to exceed that spent in later years. Bench-marks should be made for all the major areas of public performance, with regular, statistically-valid sampling thereafter. The initial work should be completed within six months of publication of this report. The PRS should review the current LMDP within nine months in the light of the findings of the outside advisers and amend it where necessary. A special committee including representatives of a range of minority musical genres should be set up to oversee all the sampling work. The PRS should also put in place a financial model which will enable it to assess rapidly the effect of changes to its distribution policies.

2.120. The PRS also needs to put more effort into appraising its costs to determine which are direct and which are indirect. Once this has been done, the PRS should then implement systems to provide the necessary information for more equitable cost allocations to be made. The PRS should begin within two months of publication of this report to set published targets for reducing administration costs in particular areas, and these targets should be modified as soon as new cost allocation systems are in place. The current costs of routine membership activities (excluding queries) should be borne by those to whom they relate with the introduction of separate annual membership fees for writers of around £25 plus VAT a year and publishers of around £125 plus VAT a year (see paragraph 6.159). We also considered whether works' registration fees would help prevent the registration of hundreds of works which absorb space in the database but the majority of which are unlikely ever to feature in distributions. However, we rejected this idea because it is clearly important that works which are played, and which may suddenly become popular, are registered as early as possible. Retrospective registration causes considerable administrative problems.

2.121. In order to remedy the adverse effects deriving from finding (c) (the lack of transparency in its operations), the PRS should formally set out in the Rules and Members' Handbook the responsibilities which it has and the standards of service which it aims to achieve. The rules relating to termination of membership should be further amended to reflect the flexibility of existing practices and should be clearly set out for members in the published Rules and the Members' Handbook. The current limitations of the Society's distribution policy and its arrangements for the monitoring of live performances should be clearly stated both in literature made available to current members and in writing to prospective members of the Society. More detailed accounting information should be published, including details of the cost allocation system, so that members can see where costs lie, and material relating to PRS members' overseas earnings. This should be completed within 12 months of publication of this report.

2.122. Furthermore, we consider that the PRS should openly canvass views on proposed changes in policy or strategy through a formal consultative process. The Articles of Association should be amended to allow writer members to send representatives who are not themselves members of the PRS to speak and vote for them at all general meetings.

2.123. In order to remedy the adverse effect of finding (d), the PRS should establish an Appeals Board, comprising one writer member, one publisher member and an independent Chairman of standing and with appropriate legal qualifications. In order to avoid trivial or frivolous complaints, members would need to show that they had indeed tried to resolve the matter with the PRS management and, where appropriate, the General Council, and to pay an initial deposit, which would be non-returnable if the Appeals Board felt that the complaint had not been genuine and substantive. The Appeals Board would need a right of access to relevant papers in order to ensure fairness and transparency and would need to include an accountancy specialist if called in to deal with disputes concerning self-administration of live performing rights. The Appeals Board's findings should be binding on all the parties involved.

2.124. In order to remedy the adverse effects arising from the PRS's insistence on exclusivity (finding (e)), and so as to contribute to remedying the adverse effects deriving from our other findings, we consider that Article 7 of the PRS's Articles of Association should be amended to enable those members who choose to do so to administer their own live performing rights. In addition, Article 7 should be amended to make it clear that self-administration of those categories of performing rights specified in the GEMA decision is permitted.

2.125. Self-administration of live performances will have some administrative implications and we have considered, therefore, how it can be brought about in a way which does not in any way damage or diminish the rights of those PRS members who choose not to self-administer. UK live performances represent less than 10 per cent of the PRS's royalty income (£13 million out of £167 million) and self-administration would, initially, affect only a small proportion of these sums. Whilst in principle we do not seek to limit the right of PRS members to self-administer live performances outside the UK, we accept that there may well be practical difficulties in extending this right to performances in certain countries.

2.126. In a live performance where all the musical works performed are the copyright of writers and publishers who have chosen to self-administer on that occasion, there can be direct negotiation between such writers and publishers or their agent and the concert promoter or owner of the venue. Here there is no need for immediate PRS involvement other than for a note to be made that no royalties will be due from the licensee, who will most probably be the owner of the venue.

2.127. In a live performance where the original copyright in some of the works performed belongs to PRS members who have chosen not to self-administer or to members of other performing right societies the situation becomes more complicated. The PRS will have a duty to collect royalties for those parties. It will, therefore, need to know exactly what material has been performed and for how long, and to receive an equitable share of the total royalty for the whole performance. The PRS will incur costs, which may, particularly if it is necessary to make a video of the performance to check details of the works, exceed those which it would have incurred if self-administration had not been permitted. We think that those who choose to self-administer should be responsible for meeting the reasonable additional costs. However, in order to ensure that the PRS does not seek to inflate those costs beyond the levels which it should reasonably incur, there should be an appeals procedure for resolving any disputes. This could be an additional function for the Appeals Board, whose establishment and composition we discuss in paragraph 2.123.

Other matters

2.128. During the course of our inquiry we received a number of comments from the PRS and a range of music users about the operations and practice of the Copyright Tribunal. The Tribunal's jurisdiction encompasses collecting societies other than the PRS and it is outwith our terms of reference to make recommendations for changes to the Tribunal's procedures. However, given the fact that decisions of the Tribunal may have a material influence on the level of the PRS's tariffs and thus affect both the users of music and the PRS's members, we would draw the following points to the attention of the Secretary of State.

2.129. First, the Tribunal is currently required, when considering the terms of licences, to determine what is reasonable in the circumstances, having regard to the availability of licences and the terms granted to other persons in similar circumstances, and ensuring that there is no unreasonable discrimination between licensees or prospective licensees. The way in which music is transmitted is becoming increasingly universal. We are seeing the market become wider and more integrated with greater and greater use of satellite transmissions and the Internet, and a

continuing erosion of national boundaries within the EC. International comparisons may thus be of greater relevance to ensure that neither the user of music in the UK nor its writer or publisher is disadvantaged by inappropriate tariff levels. It is clear that the European Court of Justice regards national comparisons as relevant in at least some cases, as indicated in *Ministère Public v Tournier* (see paragraph 4.24).

2.130. Second, when the Tribunal reaches a decision, this is frequently by means of a retrospective order dating back to the date on which the reference to the Tribunal was first made. There is no provision in the Tribunal's Rules for payment of interest on sums to be paid under the terms of the final order. This seems to us to be unreasonable and it could have the effect of unnecessarily prolonging proceedings. We, therefore, believe the Tribunal's Rules should be amended in order to allow for such payment of interest.

2.131. We also considered whether the amendment to the 1988 Act by the Broadcasting Act 1990 to provide immediate protection, in the form of a statutory right to a licence on users' terms for broadcasters, who sought licences from PPL but were offered what they believed to be unfavourable terms, should be extended to provide similar protection to those who seek licences from the PRS. The PRS told us that it has never refused to issue a licence. Indeed, given that to do so would jeopardize its members' revenues, there is no reason why it should act this way. A number of users have indicated that they may be obliged to take licences on terms which they believe are unfavourable. However, given the commercial imperative for the PRS to reach an agreement with them, and the special reasons, relating to needletime constraints, why protection was extended to PPL's potential licensees in 1990, we do not see an overriding case for extending the provisions further.

2.132. Finally, we believe the staff resources and financial resources with which the Copyright Tribunal is currently required to operate may be inadequate. We are concerned by the number of important issues which may shortly be added to its jurisdiction, once the relevant statutory instruments have been made to implement the existing three EC Directives on Rental, Cable and Satellite and Duration of Copyright (see paragraph 4.6). There is also the future implementation of the Database Directive, still in draft form. We were told that additional funds might be made available should the workload require it. It is also important in appointing Deputy Chairmen that their availability should be taken into account. It seems unsatisfactory that the hearing of cases should risk being substantially delayed because of the professional or other commitments of the members. This was a particular concern expressed to us by the Chairman of the Tribunal.

2.133. On the question of delays in the payment of royalties from overseas societies (finding (f)), we consider that the PRS has made considerable efforts to speed up payments. But there is little more that the PRS can do. The Secretary of State will wish to consider whether intervention at Government level or through the relevant international bodies of which the UK is a member would help to resolve these difficulties. We think it will be hard, in particular, for the PRS to be able to reduce the level of cultural deductions made by many EC states and which apply to all works performed in those states, not just those where copyright is owned by their members or their performing right societies. These currently work to the disadvantage of the UK, which is a net exporter of musical works to the rest of the EC.

2.134. In conclusion, we are well aware of the very considerable role which the PRS has played in the musical life of this country since its formation. Writers and publishers as well as users have benefited greatly from its operations and from the skilled service of employees and directors over the years. There is always a risk, however, that a monopoly institution may give priority to policies which primarily protect the status quo rather than looking to the interests of its members in a rapidly changing environment. We have sought in our recommendations to take

account of transparency and efficiency and to strike a fair balance between the needs of the various groups of the membership.

Summary of recommendations

1. The PRS's General Council to step back from the day-to-day management of the Society to concentrate on key policy issues and supervision of the development of the PRS's future strategy.
2. Reduce the number of meetings of the full Council.
3. Formal delegation by the General Council of responsibility for the day-to-day management of the Society to a new Executive Committee comprising the Chief Executive, Chairman, both external directors, the second executive director and no more than two other director members of the General Council.
4. Disband the existing Executive Committee.
5. Reduce the number of committees and groups.
6. Clear differentiation between the roles of the Chairman and Chief Executive.
7. General Council to define objectives of the PRS within three months of publication of this report.
8. General Council to agree a five-year strategy for the PRS within three months of publication of this report.
9. Evaluate, using a cost-benefit analysis, all major proposals for change.
10. Increase the amount of formal management representation on the remaining committees and groups.
11. Set out, with target dates for completion, all key steps necessary to improve efficiency.
12. High priority to be given to the improvement of data.
13. Link consideration of IT strategy to the consideration of the overall five-year strategy. Ensure the objectives of the two programmes are consistent and the timing is synchronized.
14. IT strategy to take into account the need to streamline processes and integrate all major administrative systems.
15. Adopt international standard work code numbers as soon as practicable.
16. Encourage or even require members to adopt these standard work code numbers too.
17. Improve cost appraisal to determine which costs are direct and which are indirect.

18. Implement systems to provide the necessary information for more equitable cost allocations to be made.
19. Publish details of the new cost allocation system within 12 months of publication of this report.
20. Publish sufficient accounting information within 12 months of publication of this report for members to be able to see where costs lie.
21. Targets to be published within two months of publication of this report for reducing administrative costs.
22. Modify the targets described in 21 above as soon as the new cost allocation system is in place.
23. Impose separate annual membership fees for writers and publishers of around £25 plus VAT a year and £125 plus VAT a year respectively.
24. The PRS formally to set out in the Members' Handbook the responsibilities it has to members and the standards of service it aims to achieve.
25. The PRS to work towards accreditation under an approved quality standard.
26. Amend the rules relating to termination of membership to reflect the flexibility inherent in current practices and set out the changes clearly for members in the published Rules and Members' Handbook.
27. State the limitations of the distribution policy in the Society's literature and bring these to the attention of current and prospective members.
28. Published accounting information to include details relating to members' overseas earnings.
29. The PRS to take professional advice about the measurement and sampling of public performances and to distribute this advice to the membership.
30. Initial bench-marks for all major areas of public performance to be drawn up within six months of publication of this report.
31. Regular and statistically valid sampling to take place thereafter.
32. Review the LMDP within nine months of publication of this report in the light of the findings at 30 above and amend where necessary.
33. Establish a special committee, including representatives of a range of minority musical genres, to oversee all sampling work.
34. Put in place a financial model which can assess rapidly the effect of changes in distribution policies.
35. Establish an Appeals Board to resolve the disputes which members may have from time to time with the Society about their personal rights.

36. Members to pay an initial deposit to the Appeals Board, which would be non-returnable for trivial or frivolous cases.
37. Appeals Board to have right of access to relevant papers.
38. Appeals Board to have a specialist accountant if required to deal with disputes concerning self-administration of performing rights.
39. Appeals Board's findings to be binding on all the parties involved.
40. The PRS to introduce a formal consultative process to take members' views on proposed changes in policy or strategy.
41. Voting rules to be amended to allow writer members to send representatives who are not themselves members of the PRS to speak and vote for them at all general meetings.
42. Article 7 of the Articles of Association to be amended to allow self-administration of the live performance right.
43. Article 7 of the Articles of Association to be amended to make it clear that members already have the right to self-administer the categories of performing rights specified in the GEMA decision.
44. The PRS to publicize the changes to Article 7.