

Part II

Background and evidence

3 The collecting societies

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3.1. In this chapter we describe the functions of the 'collecting societies', against the background of the music business, more fully in the case of the PRS, on which the present inquiry centres, and briefly in the case of the MCPS, PPL and Video Performance Ltd (VPL). We also recall relevant points that have arisen in previous MMC inquiries.

The music business

3.2. The music business is of both cultural and economic importance. The technical means by which music is made available to the public have advanced rapidly in recent years¹ and seem likely to continue to do so at an accelerating pace, with digital transmission on the immediate horizon. Its contributions to the economy and to employment are substantial, as also to the balance of payments; the overseas earnings of the music industry are set out in Appendix 3.1. In a recent investigation by the MMC of Recorded Music² it was found that that sector alone accounted for retail sales in excess of £1 billion and the employment of 48,000 people.

3.3. Music publishers, unlike book publishers, require composers to assign the copyright in their works (except the performing right, which is normally assigned to the PRS) to the publisher for a specified period of time in return for an agreed share of the revenue obtained from exploitation of the work. Licence fees can be required from users for recording and for public performance, broadcast and cable diffusion by virtue of the 1988 Act, these being acts restricted by copyright. Music publishers vary greatly in the range of services they offer, some providing extensive support (including cash advances and demonstration recording facilities) and others having only a nominal role. Relationships between composers and publishers can also vary greatly, and sometimes, though by no means always, involve tensions and disputes. The courts have held that the publisher has a fiduciary duty to exploit the work in the best interests of the composer and have, on occasion, held that the terms agreed were unconscionable and unenforceable against the composer. Some music publishers are affiliates of record companies, of which

¹A history of recording and its effects on music will be found in *Repeated Takes* by Michael Chanan (Verso, London and New York, 1995).

²*The supply of recorded music: a report on the supply in the UK of pre-recorded compact discs, vinyl discs and tapes containing music*, HMSO, Cm 2599, June 1994.

the 'big five' (EMI, PolyGram, Warner, Sony and BMG) have a joint market share in excess of 70 per cent.

3.4. Relative bargaining strengths, from the unknown to the megastar, are also enormously variable, and can determine the division of fees and royalties, the size of advances, the period for which copyrights assigned are to be administered by the publisher and the period for which future compositions are to be assigned. Most pop songwriters employ business agents or managers to conduct such negotiations on their behalf. Whereas some years ago a 50:50 division of all income between writer and publisher was usual, this is no longer the case. The publisher's net share now averages nearer a quarter than a half and contract lengths, once involving lifetime assignment of copyright, have become much shorter. The PRS's 'plan of division' requires two-thirds to be paid to the writer and one-third to the publisher unless it is notified otherwise. The PRS will always pay a minimum of one-half to the writer.

3.5. The sources of income for a composer or songwriter (other than fees for works commissioned and any fees he or she may receive as a performer) and the different rights involved are described in the following paragraph reproduced from the MMC report on the Warner/Chappell merger¹ (paragraph 3.10):

It may be helpful to consider the following example to understand the often complex nature of these rights. A composer's work is played at a pop concert which is also broadcast by radio or television and of which a recording is made. These events give rise to a multiplicity of potential fees. The live performance attracts a performing right royalty but, additionally, performing right royalties are due from the radio station that broadcasts to the public, and from those who provide a further public performance (eg a dentist who plays the radio to the public in his waiting room). The broadcasting organisation also pays a royalty for the mechanical right to record the broadcast (eg for a repeat transmission). If a record company wishes to manufacture a record of the concert for retail sale it has to pay for the mechanical right. If an advertising company then wishes to use this recording as part of a television advertisement, it needs to negotiate a mechanical synchronisation right. Repeating the broadcast or playing the record publicly would generate further performing right royalties. All these royalties are in respect of copyright in the musical composition (including any lyrics). A separate copyright in the recording of this rendition lies with the producer of the record, and the performer(s) also have an interest in the various uses to which the performance is put, and which are separate from the fee the performer earns for participating in the live concert.

3.6. Because of the difficulty and complexity of establishing a vast network of relationships between individual copyright owners and individual music users, and the disproportionately large transaction costs that this would entail, collective licensing bodies have been established and have been accorded legal recognition (section 116 of the 1988 Act). Different bodies have been established in the UK:

- (a) the PRS, to deal with the performing right licensed for the benefit of writers and publishers;
- (b) the MCPS, to deal with the 'mechanical' right (the right to make recorded copies, licensed chiefly on behalf of publishers, or on behalf of writers in respect of unpublished work); and
- (c) PPL and VPL, to deal with the phonographic performing right (the right to play records or videos in public, licensed for the benefit of the record companies).

Overseas, the pattern varies. In a number of countries the performing and mechanical rights are exercised by the same, or closely related, bodies (see Chapter 9). There are different degrees of Government involvement or statutory regulation in some of the continental European societies, for example in France. Only in the USA and Brazil, of the countries whose copyright regimes we studied, are there competing societies administering performing rights; there were two such societies in Canada until 1990, when they merged.

3.7. Section 116 of the 1988 Act defines a 'licensing scheme' as a scheme setting out the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant

¹ *Warner Communications Inc and enterprises belonging to Chappell & Co Inc*, HMSO, Cm 301, January 1988.

copyright licences, and the terms on which such licences would be granted. It further defines a 'licensing body' as a society or other organization which has as its main object, or one of its main objects, the negotiating or granting of copyright licences and whose objects include the granting of licences covering works of more than one author.

Performing Right Society

3.8. The PRS, which is the main focus of the present inquiry, has as its principal function to obtain income for composers, authors and publishers from the public performance and broadcasting and cable diffusion rights in their copyright musical works. Like the other collecting societies, and to an even greater extent, its function is to do for members what they cannot effectively do for themselves, namely to collect royalties from broadcasters and from an immensely wide variety of other licensees, covering some 258,000 premises in all, and distribute the money so collected to members. It also both collects royalties from and pays royalties to overseas societies under a network of reciprocal representation contracts. Its three main sources of revenue—broadcasting, public performance and overseas—contribute in roughly equal proportions to its annual revenue of £167 million (1994). It requires as a condition of membership the exclusive assignment of the performing right in all a member's works. As explained above, the other rights will in most cases be assigned to a publisher.

3.9. The PRS does not administer 'grand rights' which relate to opera, ballet, and other dramatic-musical works; these are regarded as self-contained in the sense that they relate to stage performances of specific content, at specific venues on specific dates. They can be, and are, administered directly by the copyright owner (usually the publisher). In addition to the performing right and mechanical right, there is also the synchronisation right, which arises when music is recorded on the soundtrack of a film, television programme, advertisement, or other audio-visual work. Writer members of the PRS assign the film synchronisation right in specially commissioned music to the Society. This is a mechanical rather than a performing right which is rarely exercised and only in relation to films exhibited in cinemas in the USA, where there is no provision for the collection of a performance royalty in these circumstances. What happens in practice is that the PRS licenses performances via film producers and undertakes to authorize the writer to sub-license the synchronisation of the music to the producer. The writer then licenses the producer to synchronize the work.

Origin and development

3.10. The PRS was founded in 1914, later than a few societies in other major European countries, the first having been the Société des Auteurs, Compositeurs et Editeurs de Musique (SACEM) in France in 1851.¹ Exploitation of performing right in the UK had been facilitated by the terms of the Copyright Act 1911. While the members were united in wishing to secure a return from users of their music, their interests were not identical when it came to such issues as the proportion in which revenue should be divided between the composer and the publisher, or whether one kind of music was in some sense more deserving than another. What the Society's historian² has referred to as the 'conflicting and unappeasable expectations' of members was a continuing problem, as was the related task, soon recognized to be one of immense difficulty, of securing the accurate, prompt and economic collection of information on performances throughout the country.

3.11. In its first quarter of a century the Society had to adapt to the consequences of the First World War, and to such significant and interrelated changes in the market as the decline in sales of sheet music, the rise and fall of silent films, the advent of sound films, increasing use of the gramophone, the development of radio and the beginnings of television. By 1940 membership stood at 1,861 and gross income at £619,000.

¹The first society dealing with the collective administration of authors' rights, the *Société des Auteurs et Compositeurs Dramatiques*, had its origins in an initiative of Beaumarchais in 1777. See *Collective Administration of Copyright and Neighbouring Rights* (World Intellectual Property Organization, Geneva, 1990).

²Cyril Ehrlich, on whose *Harmonious Alliance* (Oxford University Press, 1989) the following three paragraphs are based.

3.12. In the next quarter of a century membership doubled and income increased tenfold: and it was only after that, from the mid-1960s to the mid-1980s, that the real explosion in growth took place. By 1985 membership was over 20,000 and income £74 million, since when the latter figure has again doubled. Even after allowing for inflation, this is a noteworthy record, attributable above all to the emergence of a youth culture accompanied by the rapid extension of television, the pop music industry and technical developments in recording and sound reproduction. Tables 3.1 and 3.2 show the PRS's gross and net income, at actual prices and at 1994 prices.

TABLE 3.1 PRS gross and net income, 1915 to 1994, at actual prices

Year	Domestic general		Broad-casting		Overseas agencies		Affiliated societies		Interest etc		Total gross income £'000	Total net income* £'000
	£'000	%	£'000	%	£'000	%	£'000	%	£'000	%		
1915†	-	-	-	-	-	-	-	-	-	-	4	2
1920†	-	-	-	-	-	-	-	-	-	-	23	14
1925†	-	-	-	-	-	-	-	-	-	-	43	31
1930†	-	-	-	-	-	-	-	-	-	-	173	144
1935	153	44	135	39	19	5	32	9	7	2	346	300
1940	175	28	337	54	55	9	34	5	18	3	619	568
1945	316	37	420	49	61	7	40	5	21	2	858	794
1950	482	32	636	43	78	5	270	18	29	2	1,495	1,332
1955	584	24	903	37	152	6	747	31	58	2	2,444	2,189
1960	880	27	1,453	44	211	6	661	20	91	3	3,296	2,864
1965	1,527	27	1,961	35	218	4	1,743	31	163	3	5,612	4,878
1970	2,386	26	2,605	29	284	3	3,601	39	251	3	9,127	7,927
1975	3,773	22	5,948	35	447	3	6,379	37	634	4	17,181	14,597
1980	10,520	27	16,374	42	402	1	9,441	24	2,605	7	39,342	32,523
1985	18,031	24	27,862	37	409	1	24,220	33	3,965	5	74,487	59,788
1986	21,115	25	33,099	39	629	1	26,450	31	3,990	5	85,283	69,440
1987	24,511	26	35,947	38	585	1	29,752	31	4,499	5	95,294	77,815
1988	30,851	30	40,293	39	541	1	28,834	28	3,891	4	104,410	84,251
1989	34,652	30	43,493	37	745	1	32,420	28	5,706	5	117,016	95,252
1990	38,929	30	46,376	35	619	0	37,372	29	7,742	6	131,038	106,058
1991	42,469	31	48,100	35	644	0	39,044	29	6,629	5	136,887	109,962
1992	45,695	32	50,393	35	904	1	43,081	30	4,949	3	145,021	113,360
1993	50,777	32	53,230	34	804	1	48,009	31	3,864	2	156,689	128,496
1994	52,198	31	57,645	35	1,039	1	52,406	31	3,701	2	166,989	138,469

Source: MMC using data from *Harmonious Alliance* and from PRS annual report and accounts.

*Total net income is the surplus for the year of total gross income over licensing and administration expenses and tax, after transfers from or to distributable reserves, and deduction of other amounts appropriated.

†No breakdown available.

Note: Irish results reported separately for the first time in 1989. In arriving at the figure after costs of Dublin office, assumed 90 per cent attributable to public performance and 10 per cent to broadcasting.

3.13. While flourishing to an unprecedented degree as a result of this transformation, the PRS continued to have its problems. In his generally appreciative, but not uncritical, study, Cyril Ehrlich (op cit, page 124) said that in the 1950s

... procedures continued to be essentially informal and paternalistic. Day by day, and over the long term, the effectiveness of policy and administration depended upon the willingness and ability of the Chairman to devote unlimited time, and share loosely defined authority with an inner circle of directors and senior staff. It also depended upon the existence of an acquiescent Board and a docile membership, most of whom never attended meetings.

The need for reform, particularly as the membership grew, began to be understood in the 1960s, but it was not until the next decade that substantial changes were made. Ehrlich concluded that by the time he was writing (for publication on the 75th anniversary in 1989) the PRS was resilient, prosperous and maintained a reasonable balance between writers and publishers and between serious and popular music.

TABLE 3.2 PRS gross and net income, 1915 to 1994, at 1994 prices

Year	Domestic general		Broad-casting		Overseas agencies		Affiliated societies		Interest etc		Total gross income	Total net income*
	£'000	%	£'000	%	£'000	%	£'000	%	£'000	%	£'000	£'000
1915†	-	-	-	-	-	-	-	-	-	-	130	65
1920†	-	-	-	-	-	-	-	-	-	-	369	225
1925†	-	-	-	-	-	-	-	-	-	-	977	705
1930†	-	-	-	-	-	-	-	-	-	-	4,374	3,641
1935	4,281	44	3,778	39	532	5	895	9	196	2	9,682	8,395
1940	4,268	28	8,220	54	1,342	9	829	5	439	3	15,098	13,854
1945	6,204	37	8,246	49	1,198	7	785	5	412	2	16,845	15,589
1950	8,306	32	10,959	43	1,344	5	4,653	18	500	2	25,762	22,953
1955	7,697	24	11,902	37	2,003	6	9,846	31	764	2	32,213	28,852
1960	10,184	27	16,815	44	2,442	6	7,649	20	1,053	3	38,142	33,143
1965	14,850	27	19,070	35	2,120	4	16,950	31	1,585	3	54,575	47,437
1970	18,556	26	20,259	29	2,209	3	28,005	39	1,952	3	70,981	61,648
1975	15,909	22	25,080	35	1,885	3	26,897	37	2,673	4	72,444	61,549
1980	22,680	27	35,301	42	867	1	20,354	24	5,616	7	84,818	70,117
1985	27,469	24	42,446	37	623	1	36,898	33	6,040	5	113,477	91,084
1986	31,103	25	48,756	39	927	1	38,962	31	5,877	5	125,625	102,288
1987	34,662	26	50,834	38	827	1	42,073	31	6,362	5	134,758	110,041
1988	41,587	30	54,315	39	729	1	38,868	28	5,245	4	140,744	113,569
1989	43,345	30	54,404	37	932	1	40,553	28	7,137	5	146,372	119,148
1990	44,486	30	52,996	35	707	0	42,707	29	8,847	6	149,743	121,197
1991	45,841	31	51,919	35	695	0	42,144	29	7,155	5	147,756	118,693
1992	47,543	32	52,431	35	941	1	44,823	30	5,149	3	150,885	117,944
1993	52,004	32	54,516	34	823	1	49,169	31	3,957	2	160,475	131,601
1994	52,198	31	57,645	35	1,039	1	52,406	31	3,701	2	166,969	138,469

Source: MMC using data from *Harmonious Alliance* and from PRS annual reports and accounts.

*Total net income is the surplus for the year of total gross income over licensing and administration expenses and tax, after transfers from or to distributable reserves, and deduction of other amounts appropriated.

†No breakdown available.

Note: Irish results reported separately for the first time in 1989. In arriving at the figure after costs of Dublin office, assumed 90 per cent attributable to public performance and 10 per cent to broadcasting.

Legal status

3.14. The PRS is a company limited by guarantee. In the event of its being wound up the liability of the members is limited to the amount they have undertaken to contribute in such an event (in the case of the PRS, a sum not exceeding £1 each). Most of the provisions of the Companies Acts, except those applicable to winding up, apply equally to companies limited by guarantee and to companies limited by shares; for example, the PRS has a legal personality separate from that of individual members.

Qualifications for membership

3.15. For admission to provisional membership of the PRS, a composer or lyricist must be able to produce evidence of three works which have been commercially recorded, or broadcast within the previous two years, or have been commercially published and performed in public on at least 12 occasions within the previous two years. Alternative qualifications are one work in the top 50, the theme or opening/closing music for a film or television or radio series, or (in the case of classical composers) a network broadcast of one performance of not less than five minutes or two concert performances each of not less than five minutes. In the case of publishers, the requirement is a catalogue of 15 works of which at least ten have been commercially published or recorded. Admission fees are payable: £50 for writers or £250 for publishers. Promotion to associate or full membership depends on earnings. Provisional membership is terminable if no royalties are credited over a three-year period and associate membership if no royalties are credited for five years.

3.16. The total number of members as at 8 November 1995 was 28,421. Further particulars of membership and the qualifications for entitlement to different numbers of votes will be found in Chapter 7.

Memorandum and Articles of Association

3.17. The Memorandum and Articles of Association are summarized in Chapter 7 and reproduced in full in Appendix 7.1. Some of the main features are mentioned here. The rights to be assigned to the PRS as a condition of membership extend to the whole world and to all works, present and future, of which the member is the writer, publisher or proprietor (Article 7(a) and (c)). The Society may decline to exercise the whole or any part of the performing right in any work (7(f)). This provision is normally used only to facilitate the direct licensing by members of works not originally written for theatrical performance but which are then used in 'compilation' shows, for example those constructed around the career of a particular composer or performer.

3.18. The membership of a provisional member may be terminated at any time without notice and without giving reasons (9(d)). Provisional members are not entitled to receive notice of, or attend or vote at, General Meetings (6(b)). The membership of full or associate members may be terminated on 14 days' notice by the General Council subject, if requested by the member, to approval by an EGM (9(e)). Any member may by giving three months' notice terminate membership with effect from 31 December in any year (9(f)). This provision was changed in 1994; previously membership could be terminated only by giving three months' notice to expire on the third anniversary of membership, or at three-yearly intervals thereafter.

3.19. There may not be more than three directors nominated by user-owned publishers, 'user-owned' meaning that more than 50 per cent of the shareholding is owned or controlled by persons whose main business requires a licence from the Society. There was formerly a limit (six) on the number of directors nominated by foreign-owned publishers, but it was agreed at an EGM in May 1995 to remove this restriction. Amending the Articles stipulating the composition and powers of the General Council requires a majority of three-quarters of the votes cast by writer members, and three-quarters of the votes cast by publisher members.

Rules and regulations

3.20. Distribution of revenue is made 'in such manner and in such proportions as the General Council may from time to time determine' (Rule 2(c)). What the PRS describes as the 'normal basis of division' between writer and publisher is two-thirds to the former and one-third to the latter. This is subject to modification by contract between them, but the share of the publisher may not exceed one-half of the net fee (2(f)). No legal proceedings may be undertaken by any member without the sanction of the General Council in respect of the performing right in any works for the time being controlled by the Society (10). Loans of up to £10,000 may be granted to writer members (under regulations appended to the Rules). At the end of 1994 loans totalling £161,000 were outstanding to 140 members. There is also a Members' Fund which is separate and a registered charity. Of its income of £419,000 in 1994, half came from bequests or legacies.

3.21. There is an 'Earnings Equalisation Scheme' for writer members, under which those who qualify have an automatic entitlement. The purpose of the scheme is to provide a form of financial 'cushioning' for long-established writer members of the Society, whose works, because of changes in musical fashion or for other reasons, cease to be publicly performed or broadcast to the same extent as formerly. To qualify, members must be at least 50 years old and have completed 25 years' membership. They are entitled to up to half the difference between the average of their earnings in their best 25 years (adjusted according to the retail price index (RPI)) and their current earnings, the precise amount depending on the funds allocated to the scheme, which at present costs about £800,000 a year, funded from investment income due to writer members.

Licensing

3.22. The PRS issues blanket licences to music users, the terms being governed by one or more of some 40 public performance tariffs, depending on the circumstances of the establishment concerned and the extent of its use of music. These licences give the licensee access to the PRS's entire repertoire which is virtually co-extensive with the world-wide repertoire of copyright music. There are also live popular (LP) and live classical (LC) tariffs which provide for a charge (a percentage of box office receipts) per event. Of the 41 tariffs in effect at the end of 1994, the PRS had agreed, or partially agreed, 17 with national trade associations; 18 were set by the PRS, where for example there is no national trade body; and six are subject to orders of the Copyright Tribunal or its predecessor the PRT. Most tariffs are subject to adjustment for inflation. Licences to broadcasters are negotiated individually or with representative bodies such as the Independent Television Association, the Cable Communications Association, or the Association of Independent Radio Companies.

Distribution

3.23. Distribution of the revenue collected from the three main sources is a complex matter, as described in detail in Chapter 6 and Appendices 6.5 to 6.7, and set out in summary form in Appendix 3.2. Different considerations apply to each of the main revenue streams. Salient features are the marked differences in the ease with which information about performances can be obtained. This is relatively straightforward in the case of major broadcasters who are obliged to supply details of all music used, difficult in the case of many other users, and most difficult of all in the case of live performances in small venues, an area which has given rise to many of the complaints we received. In the latter areas there is heavy reliance on sampling and on the assumption that what is played on the radio gives a fair representation of what is played at clubs and other venues. The introduction of the concept of 'significant venues' in 1992 has been particularly criticized by members involved in certain styles of music, the number of live venues from which returns were processed having been reduced from tens of thousands under the pre-1981 policy to 575 in 1993 and to 426 in 1994. The criteria for inclusion in this short-list of 'significant' venues are two: audience capacity and the minimum number of concerts per year for which an admission charge is made.

<i>Capacity</i>	<i>Minimum number of concerts</i>
1,000 or more	5
500 to 999	10
200 to 499	20
Fewer than 200	50

A list of 56 significant festivals has been compiled on a similar basis: there must be at least ten concerts in the festival, of which at least five must take place in a venue holding 500 people or more.

3.24. Since 1 January 1994 the PRS has been willing to accept as evidence of performance complete printed programmes of classical concerts licensed under tariff LC at venues not on its 'significant' list on condition that they require only minimal extra processing work and that there is no extra cost to non-classical distribution pools. The PRS stated that no staff time will be spent soliciting programmes from non-significant venues. It has thus in effect returned to its members the onus of monitoring such performances.

3.25. It has long been recognized that members, performances of whose works are not detected as a result of the practical limitations on monitoring live performances, or as a result of relatively crude methods of sampling, deserve some form of compensation. 'Minimum allocations' (of ten shillings) date back to 1928. Many different and often short-lived solutions have been adopted since. The UPA, which was in force from 1986 to 1993, is described in paragraphs 6.111 to 6.117, and its successor, the PCA, in paragraphs 6.118 to 6.120.

Notification of works

3.26. By agreement between the PRS and the MCPS, notifications of new works by members are made to the MCPS which then passes the data to the PRS. This applies to all PRS members, including those who are not members of the MCPS. These notifications should, but do not always, include the composers' CAE number (a nine-digit code that uniquely identifies an individual writer and which is the basis for international royalty accounting). Considerable administrative complications are caused by the need to take account of the terms of publishers' agreements, especially where works are co-published or there are split copyrights.

Mechanical Copyright Protection Society

3.27. The MCPS, which has been owned since 1976 by the Music Publishers' Association, the trade association for the UK music publishing business, is a collective licensing body representing as agent (ie the rights are not assigned to it) those who own, control or administer the rights in the UK to copy or to reproduce musical works and their associated lyrics which are in copyright. It collects a 'mechanical royalty' on recordings of every type. The relationship between the MCPS and its members is governed by an agreement under which the MCPS is mandated by a composer and/or music publisher in return for a commission to exercise certain rights on behalf of the member. The MCPS has composer as well as publisher members and in appropriate cases will pay royalties to the composer, but such payments account for only 1.6 per cent of the total.

3.28. The current rate of royalty (8.5 per cent of the published dealer price) due to MCPS members for reproduction of their works in the form of records and distribution of those records was decided in 1991 by the Copyright Tribunal.

3.29. The MCPS collected £120.4 million in 1994, an increase of 18.7 per cent on the previous year. The top rate of commission charged was reduced from 15 to 12.5 per cent with effect from January 1995. The average rate of commission in 1994 was 7.1 per cent. The MCPS specifies not only the commission rates applicable to its different sources of revenue (the lowest being 4.75 per cent), but also the periods within which payments will be made, varying from a minimum of seven working days after the receipt of cleared funds to a maximum of eight months after the end of the contract year. Further information about the MCPS will be found in Chapters 8 and 13.

Phonographic Performance Ltd and Video Performance Ltd

3.30. The copyright in a sound recording which has been commercially released is normally owned by the record company, which is entitled to receive a fee every time it is broadcast or played in public. These fees are collected by PPL (to whom ownership or control of the broadcast and public performance rights are passed) on behalf of the record companies. PPL licenses on behalf of the record companies all public performance users and broadcasters. Its revenues are distributed in the proportions 67.5 per cent to the record companies, 20 per cent to named performers and 12.5 per cent to the Musicians' Union. VPL has similar functions to PPL in respect of music videos owned or controlled by its record company members.

3.31. PPL was established in 1934 and has about 1,400 members, including all the main multi-nationals and larger independent record companies, and many hundreds of smaller independents producing more specialized repertoires. It takes assignments of broadcasting and public performance rights and licenses the broadcasting organizations and 115,000 public performance locations such as discothèques, juke-box operators, hotels, shops and many others. It has more than 70 different broadcasting and public performance tariffs. PPL's licensees thus often overlap with those of the PRS (see paragraph 13.11).

3.32. PPL's effective running costs are about 12 per cent of gross revenue, the latter amounting in 1993/94 to £36.5 million.

3.33. To sum up the role of collecting societies, the MCPS acts on behalf of composers and publishers in respect of recording right, and the PRS acts on their behalf in respect of the performing (including broadcasting) right. PPL and VPL act on behalf of record companies in respect of the broadcast and public

performance rights. The PRS and PPL have licensees in common. The PRS and the MCPS have publisher, and some writer, members in common, though they have not arrived at a joint view on the precise extent of the degree of overlap between their operations (see Chapter 8).

Previous MMC inquiries

3.34. In a 1987 merger inquiry (Warner Communications Inc and Chappell & Co Inc) the MMC noted (paragraph 4.2) that one feature of the PRS fee distribution, in common with collecting societies world-wide, was that preferential treatment was given to the production of serious works of music, on the ground that the production of such works involved a far greater investment of time and labour than most popular music, and that performances of serious music were comparatively few and far between. The Group also referred (in paragraphs 6.6 and 6.7) to widespread feelings of dissatisfaction, unease and apprehension concerning the weak bargaining power of composers, especially composers of serious music, and fears that the power of music user interests would continue to increase and would result in their even larger representation on the governing bodies of collecting societies including the PRS, and other industry bodies, with unfair consequences for the interests of composers and independent music publishers. Some degree of potential or actual imbalance as between the interests of composers, publishers and users in the composition of these governing bodies was acknowledged by the Group (paragraph 6.24) but this was thought to be irrespective of the merger under consideration, which was not expected to operate against the public interest.

3.35. When the MMC inquired in 1988 into aspects of collective licensing¹ they were strongly urged by some witnesses to report on the practices of the PRS and VPL. They did not do so at that time because the terms of reference required the Group to report on practices relating to the collective licensing of sound recordings for broadcasting and public performance. The inquiry was conducted while the Copyright, Designs and Patents Bill was still before Parliament.

3.36. The Group said (at Appendix 3.1, paragraph 3) that collective licensing was adopted everywhere in the world where copyright was enforced, but that collective licensing bodies 'are by their nature monopolistic-indeed, their potential for effectiveness depends in large measure on the extent of their monopoly-and it is widely accepted that appropriate controls are needed to ensure that they do not abuse their market power'.

3.37. The Group's main conclusion was that collective licensing bodies are the best available mechanism for licensing sound recordings provided they can be restrained from using their monopoly unfairly. It recommended that:

- (a) PPL should be obliged to permit the use of its repertoire in return for equitable remuneration;
- (b) users should be entitled to a statutory licence, initially on the basis of self-assessed royalties, pending a Copyright Tribunal order on equitable remuneration; PPL's injunctive right should be limited;
- (c) the Copyright Tribunal should be strengthened and changes made to its procedures in order to expedite its decisions;
- (d) there should be no changes in PPL's current royalty rates;
- (e) performers should be given equitable remuneration from the royalty income received by PPL, in substitution for the existing unsatisfactory arrangements;
- (f) PPL should no longer require larger discothèques to employ musicians as a condition of licensing;
- (g) the BBC and independent local radio (ILR) stations should be subject to a common tariff, related to audience size; and

¹ *Collective licensing: a report on certain practices in the collective licensing of public performance and broadcasting rights in sound recordings*, HMSO, Cm 530, December 1988.

(h) PPL's needletime constraints should be abandoned.

Amendments to the 1988 Act were made by virtue of the Broadcasting Act 1990, following the MMC report.

3.38. A full account of the record industry was given in the report of the 1993/94 inquiry into the supply of recorded music.