

# 5 The economic context

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## Introduction

5.1. This chapter sets out the economic context of the PRS, whose legal background has been described in Chapter 4. At the core of the PRS's operations is the method by which certain intellectual property rights are administered and remunerated. With respect to the performing right, this function sits within a broader framework of the supply and demand for musical performance. The chapter consequently starts by examining in economic terms the market for musical performance and continues by discussing briefly the economics of intellectual property rights. The resultant role of collecting societies is then focused upon. Finally, three aspects of the PRS's economic relationships and activities are discussed: namely, the distribution of payments to its members, cross-subsidization between members, and licensing and charging of music users via the PRS's tariff structure.

## The market for musical performance

5.2. Although the coverage of the term 'music' is itself on occasion open to personal interpretation, most musical performances have certain elements in common. Most notably, for the purposes of this inquiry, they typically require as an input in their production the creative efforts and talents of a writer (who may or may not also be the performer). By and large, the value to be placed on the writer's efforts and talents derives from the value ascribed to the resultant musical performances.

5.3. As a 'product' in the economic sense, musical performance has certain defining characteristics which strongly influence the effectiveness of market forces in assigning it a value. These characteristics have changed over the years as technological advances have affected the market for musical performance.

5.4. When, in the past, it was only available in a 'live format' a central characteristic of musical performance was its ephemerality; once it had been listened to, it was fully consumed, needing to be produced anew if it were to be consumed again. Adam Smith regarded musical performance in this way, grouping music together with the work of 'some of the greatest and most important, and some of the most frivolous professions ...' as '... an activity which does not fix or realise itself in any permanent subject or vendible commodity after its labour is past'.<sup>1</sup> This characterization of music appears to have been largely valid up to the early part of this century,<sup>2</sup> by which time, although demand for music had been experiencing substantial

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<sup>1</sup>Adam Smith, 1776, *An Enquiry into the Nature and Causes of the Wealth of Nations*, Penguin, Book II Chapter III.

<sup>2</sup>A description of this period is provided in an unpublished study commissioned by the PRS and undertaken by A Peacock and R B Weir in 1972 entitled 'The Economic Value of Music Composition'.

growth, the nature of musical performance in general remained unchanged. The Victorian era, for instance, saw great popularity of public concerts, private recitals, the music hall, musical comedy, incidental theatre music and competitive music festivals.

5.5. Advances in the technology by which musical performance reaches its listeners have, however, made it necessary for this view to be developed. These technological advances may be separated into two main strands. First, whereas music was at one time (with a few minor exceptions such as the pianola) only available as live performance, during the last century it has also become available in a 'stored value' form, enabling repeated experience of the identical performance. The first significant development along these lines was the gramophone, which, although invented in 1877, did not become widely popular until the time of the First World War. Numerous innovations of a comparable nature have followed. These include: reel-to-reel tapes, audio cassette tapes, video cassette tapes and compact discs.

5.6. The second main strand in technological progress has been the development of the mass media. The inter-war years witnessed the emergence of both cinema and radio broadcasting. For the cinema, it was not, of course, until the advent of the 'talkies' that musical performance was fully linked to the new medium.<sup>1</sup> At its outset broadcasting, however, transformed the nature of musical performance and from the early days of broadcasting it accounted for the largest proportion of broadcasting time. The historian, Asa Briggs,<sup>2</sup> describing the origins of British Broadcasting writes: 'Music accounted for by far the single biggest slice of broadcasting time. In November 1923, for example, London was broadcasting on an average each day 3 hours and 25 minutes of music to 2 hours 5 minutes of everything else. In 1926 the figures were 4 hours and 40 minutes of music to 2 hours and 20 minutes of everything else.' Other forms of mass media followed, the most significant to date being television.

5.7. Nowadays, the performance of a work may reach the listener by one of a number of routes, which will depend normally both upon the activities of writers, performers and also, depending on the circumstances, a combination of the following: a publisher, a record company, a broadcasting company, a concert hall, a club, a shop, a video games arcade, to name but a few possibilities. An effect of musical performance being the result of joint activities is that, in many instances, the writer, being only one of a number of people involved in the supply of the piece, will have minimal influence over the finished musical performance. For some involved in the creation of a musical performance there is, in addition, considerable uncertainty and risk involved. This is particularly true for the writer, whose efforts must typically be committed prior to the work being performed and hence its success being known.

5.8. 'Consumption' of musical works is similarly wide-ranging. Not only is this true for different genres of music and for different compositional works, but it can also be true for the same compositional work, which may, for example, be heard in private performance, in public performance as the central focus of attention at a concert, as a piece of background music in a restaurant or bar, or at a discothèque or dance hall. The medium by which the work reaches the consumer may itself have a significant effect on the value which he places upon it.

5.9. The changing nature of the market for musical performance has had a pronounced impact on the effectiveness of conventional market mechanisms in mediating the interests of consumers and producers of performances. Certain features, common in some degree to both live and recorded music, set musical performance as a 'product' aside from more typical traded goods, and ensure that market imperfections will exist. Essentially, musical performance does not have a discrete physical presence. This creates a number of problems for the proper functioning of the market. One difficulty is that it is often hard to stop an individual who has not paid for a musical performance from consuming it, in which case one may ask why consumers pay for a product which they could also consume without paying. Another difficulty is that consumption of a musical performance by one person does not necessarily preclude another individual's consumption of the same product. In such an instance, a market system will not put consumers in a position to bid against one another for consumption of a musical performance. This means that prices may not fully react to changes in market conditions, such as changes in the supply or demand of the product.

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<sup>1</sup>'Special arrangements', however, had been developed earlier for the live accompaniment of short films. See, for example, A Peacock and R B Weir op cit.

<sup>2</sup>A Briggs, *The History of Broadcasting in the United Kingdom*, Vol I, Oxford University Press, 1961, p275.

5.10. By contrast with conventional products, therefore, there are key market imperfections associated with musical performance which affect the rewards of those involved in bringing a musical performance to listeners. To summarize these, the creators of music can rarely be certain of the likely success of a work at the time when they are committing their effort, and for a writer this uncertainty may be compounded by his limited influence over the resultant performance. Furthermore, the fact that music does not have a circumscribed physical presence makes it more difficult to establish and enforce property rights. Lastly, the incentives to pay for musical performance are not always clear and the manner by which price will adjust following changes in market conditions is imperfect.

5.11. To an extent, the market imperfections associated with musical performance are mitigated by the fact that musical performance is closely linked to more conventional products such as compact discs, concert tickets or published sheet music. Thus relating payments for musical performance to sales of such products allows market forces a role in mediating the interests of producers and consumers. Nonetheless some market imperfections will remain in so far as sales of these products do not in themselves fully reflect the nature and extent of demand for the musical performance. This may result for a number of reasons and to a greater or lesser degree, depending on the nature of the product carrying the musical performance. Both the possibility of the public playing of recordings and the risk of unauthorized or 'pirate' recordings being made mean that sales of compact discs, audio tapes or records, for example, may not accurately reflect demand for the musical performance contained in them.

5.12. At the time of the PRS's foundation in 1914, for instance, live performance of a public or private nature accounted, with a few minor exceptions, for almost all musical performance. At that time, the publication of sheet music was a central means by which musical work was disseminated. Concern over imperfections in the market for sheet music was indeed a main driving force behind the PRS's inception, as widespread illegal 'pirating' of sheet music, in particular, was having a harmful effect on the business of publishers.<sup>1</sup> Nonetheless, it is arguable that the close reliance on sheet music by live performers ensured, at the time, that market forces were at least partially able to mediate the interests of producers and consumers.

5.13. The advent of mass media, together with the various formats of recorded music, have had, however, the effect of exacerbating imperfections in the market for musical performance. While the potential audience for a given musical performance has grown dramatically, it has also become difficult to monitor who is listening to a particular performance at a given time. Moreover, characteristics of mass media and the potential for unauthorized duplication of recordings (for example, by home recordings) have made it harder to exclude non-payers from the musical performance. The impact on those, such as writers, who are involved in the supply of musical performance has been to increase the need to protect their interests. This has involved the establishment in law of intellectual property rights and a corresponding framework to monitor and collect payments for the use by others of the creative efforts of all involved, including writers.

5.14. Developments in digital technology which will enable music to be transmitted, copied and exploited with greater ease and without loss of quality are expected to affect the market significantly in the future. The transmission of music via on-line networks is likely to some extent to replace the sale of physical recordings and some traditional uses of music. In addition technical solutions may be provided by digital technology for improved systems for monitoring and collection.

## **Intellectual property rights**

5.15. It is generally held that creative effort and talent, which results in a work of value to those who ultimately experience it, should be remunerated. For a number of reasons, discussed above, conventional market mechanisms may be imperfect in ensuring that artistic effort is financially rewarded.

5.16. The copyright system addresses this by assigning property rights to the results of intellectual effort and, by doing so, entitling individuals such as writers to a share of the revenues which result, in part at least, from their artistic talent and effort.

5.17. The UK system, as that of the other English-speaking countries, has as its basic element the concept of protecting the skill, labour and investment of those responsible for the creation of works, in order to

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<sup>1</sup>See Cyril Ehrlich, 1989, *Harmonious Alliance*, Oxford University Press, pp 8-12.

safeguard them from reproduction and other unauthorized uses of their material. The *droit d'auteur* under the civil law systems which exist in non-English-speaking countries, on the other hand, results from considerations of natural justice and regards the work as an expression of the artist's personality, as a result of which he has a fundamental human right to control the economic exploitation of his work and to protect its integrity.

5.18. The contrasting legal systems draw attention to the differences between two basic sets of considerations: the UK system relates to concerns about the financial incentives required for the efficient functioning of a market for musical performance; and *droit d'auteur* relates to the creative person and his assumed rights in relation to the fairness of the distribution of the income between the various parties involved in bringing a musical performance to the ultimate user.

5.19. The UK system places emphasis on the need for financial incentives and in this sense the writer's copyright may be compared with the patenting of a technological innovation. Just as the ability to patent an innovation is a key factor underlying the business incentive to undertake research and development, in the absence of an expected financial return for the effort a writer invests in creating a musical composition, he may be dissuaded from focusing his efforts in this direction.<sup>1</sup> Consumers who are willing to pay to enjoy performances of new musical compositions would in such an event be frustrated, as too few new compositions would emerge. To avoid such an outcome the writer is guaranteed rights to a share of the financial rewards which are to be gained from the resultant musical performance.

5.20. In practice it is difficult to divorce market efficiency considerations from those of fairness. This appears most clearly in determining the price which is to be placed on the use of copyright. Whereas market efficiency considerations such as those above would lead one to expect the price of copyright to be such that it financially compensates the writer for the effort undertaken, in practice such a calculation is difficult to execute and its necessity may be questioned. First, the incentive to compose may not in all instances be a financial one, but arise from a distinct desire for artistic expression. In such an instance, on the basis of market efficiency alone, the need for any pecuniary compensation may be questioned. Furthermore, it may reasonably be claimed that effort is not the only input into the creative process and that additional factors are essential to the success of the work. These factors together may loosely be referred to as 'talent', although they may stretch well beyond musical talent, notably to an ability to read tastes and fashions in music, and to secure a means by which the work may reach a wide audience. Placing a satisfactory price on 'talent' is not straightforward, as by its nature it is in relatively scarce supply and will consequently be able to command a price well above the 'opportunity cost' of the effort expended. In addition, by and large, the effort and talent involved in composing is entirely committed before the success of the work is known. A price for each musical performance which remunerates adequately for this effort and talent would, however, be dependent on the number of performances (for example, for a popular work, a low price would be sufficient to compensate for the effort and talent involved in composition) and will largely be unknown before the popularity of the work is discovered. A final consideration in this regard is that a composition although itself unsuccessful may yet influence the work of other writers who are successful.

5.21. Practical difficulties associated with determining appropriate prices were highlighted by the Chairman of the Copyright Tribunal who, in evidence to us in his individual capacity, drew attention to the difficulty of establishing objective criteria other than previous agreements or practices in other countries (which he said were themselves not 'firm stepping-stones') in reaching decisions. Among the Tribunal cases to which we were referred in the course of the inquiry, we noted an appeal to the High Court by the PRS against a decision in respect of the British Entertainment and Dancing Association Ltd. Mr Justice Hoffman said in the course of his judgment (5 March 1991) that there was no market in the performing right in musical works. The PRS represented all the holders of those rights and all rates were fixed by schemes negotiated by the PRS. The Tribunal, with very little guidance other than its own expertise and general impressions of the evidence, engaged in an exercise in which 'it is notoriously easier to be right than to explain why'. We noted also that in its decision in the case of the Working Men's Club and Institute Union Ltd and the PRS (15 March 1991) the Tribunal recalled that its predecessor, the PRT, had adopted as a test the rate which would be paid by a willing buyer to a willing seller for the right to use in public performance the copyright work. Both

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<sup>1</sup>There are, however, notable differences between the copyright system and the patent system. For example, by contrast to copyrights, the lifespan of a patent is variable and can be renewed. Under the Patent Act 1977, the maximum protection period for a patent is considerably shorter than that of copyright even before the introduction of the extended copyright term contained in the Duration Directive (see paragraph 4.10).

parties agreed that that was a reasonable basis on which to proceed and the Tribunal accepted that it might be a useful approach, though not a fixed and exclusive criterion.

## **The role of collecting societies**

5.22. Copyright provides both the legal and commercial foundations for the music industry. This is true not only for writers and publishers but also for performers and record companies.

5.23. A writer or publisher potentially has a number of sources from which he may receive income for a particular copyrighted work. Figure 5.1 schematically illustrates these, although the exact combination of routes will vary from case to case. At one extreme, a popular music group who, in live performance, perform exclusively their own compositions would largely be aware of where their compositions are being performed and may be in a position to collect the resultant revenues. More generally, however, a single work may reach its audience through commercial recording, live performance, broadcast or a combination of these. Monitoring where one's own works are being performed and collecting payment will, as a consequence, usually be an exercise which is too costly and difficult for an individual writer or publisher to undertake.

5.24. In view of the potentially complex process by which intellectual property rights need to be monitored and payments for their use collected, not only for writers and publishers but for all participants in the music industry, various collective licensing bodies act on behalf of all those with an interest in the intellectual property right. In effect these structures exist to exploit the economies of scale and scope associated with the monitoring and collection of income. Collecting societies, unlike individuals looking after their own works, are more likely to be in a position to:

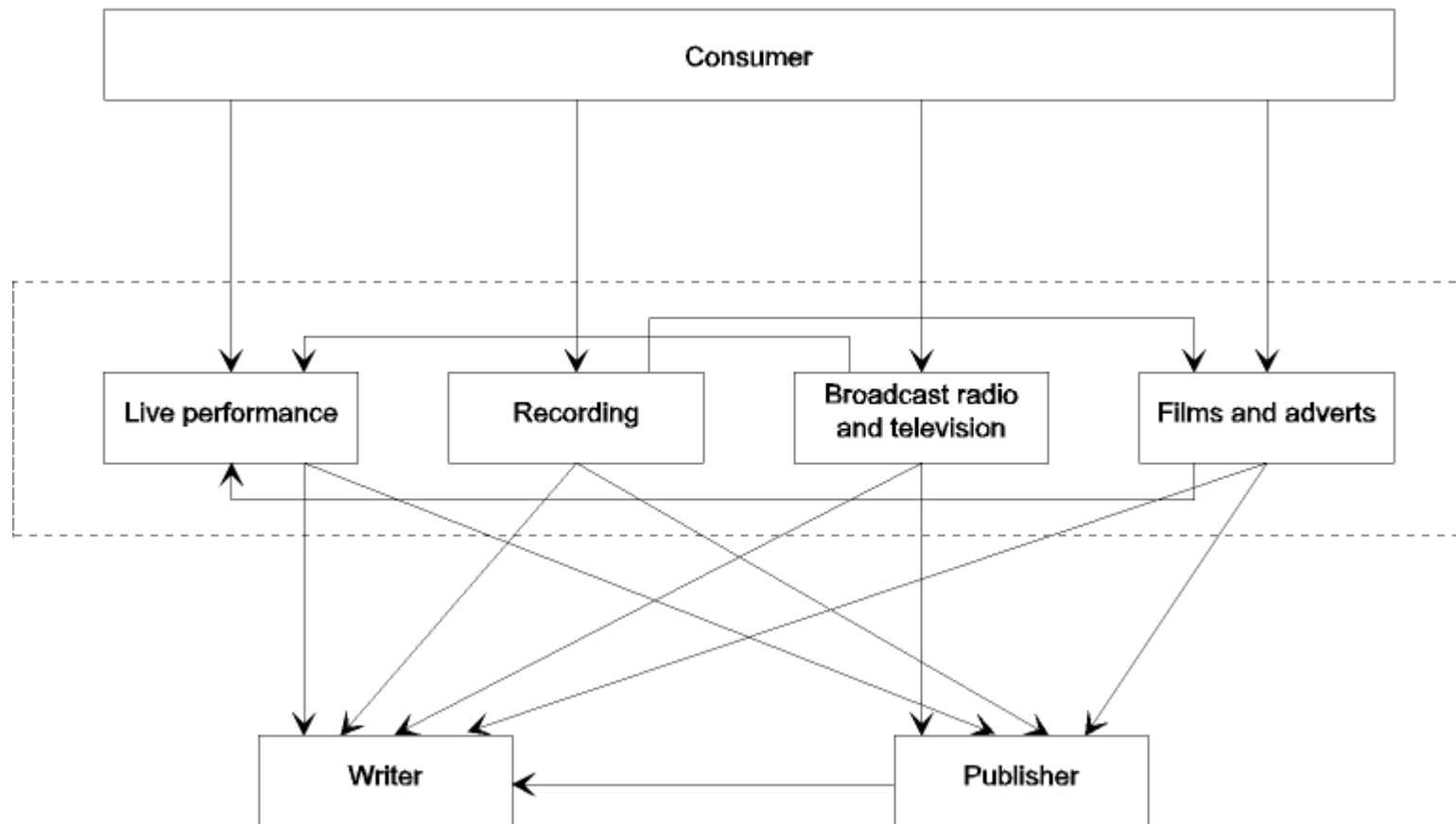
- (a) monitor the use of music on a continuous basis;
- (b) spread the fixed infrastructure costs of monitoring and collection over a large number of interested parties;
- (c) raise a credible legal threat in the event of copyright being infringed;
- (d) identify interested parties in every work at the date of use through maintenance of a register of works and agreements; and
- (e) agree reciprocal rights with overseas societies for the use of music in other countries.

However, as described further in Chapters 11 and 12, it has been put to us that there may nevertheless be occasions on which individuals are better placed than a collecting society to monitor and collect their own income. The PRS argued strongly that exclusive assignment should be maintained (see para-graph 14.100).

5.25. Such organizations may also provide benefits to parties other than the copyright holders. Users such as large broadcasters can negotiate tariffs which license a wide range of copyrights, as opposed to the arduous process of tracking down a multitude of individual copyright holders in advance and negotiating suitable payments for each, in order to remain within the law.

FIGURE 5.1

**Revenue sources for writers and publishers**



Source: MMC.

5.26. As described in paragraph 3.8, the PRS's principal function in practice is to license and collect revenue from the public performance and broadcasting and cable diffusion rights in the copyright musical works of the writers and publishers who constitute its membership. It coexists with other collective licensing organizations, the MCPS, PPL and VPL (all of which are referred to in Chapter 3), and it is through these that the majority of rights in musical works and sound recordings are licensed in the UK. Figure 5.2 illustrates schematically by means of revenue flows the interactions between the outlets for music, the collecting societies and those involved with rights in the music. (The lines on the chart indicate revenue streams and are not proportionate to the size of the sums paid.) The incomes of the three societies are given in Table 5.1.

TABLE 5.1 **Income of collecting societies, 1994**

	<i>£m</i>
PRS	167.0
MCPS	130.6
PPL*	36.5
VPL*	6.3

*Sources:* Report and Accounts of the PRS, the MCPS, PPL and VPL.

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\*Accounts for year end 31 May 1994.

5.27. The MCPS and the PRS are the two collecting agencies acting on behalf of writers and publishers in the UK. Co-operative arrangements between the two societies and indeed past discussions concerning a joint service company are discussed in paragraph 8.9.

5.28. The PRS gains its revenue through granting licences which permit the use of its works. Licences are provided to and paid for by the venue proprietor or the broadcaster and not, in most cases, to the ultimate consumer of the performance, who may of course pay for it in some way such as by buying tickets to an event, paying for a television licence or through subscription fees. The licences grant rights to the entire PRS repertoire and hence the tariffs charged are not related to individual works, rather to the value of the repertoire as a whole to the user. In this sense the PRS does not discriminate between different works within its repertoire, although it does charge different types of users differently. To its licensees, the PRS operates as a monopoly provider of licences to use certain intellectual property rights.

5.29. The remaining sections of this chapter focus on particular aspects of the PRS's operations, namely the distribution of PRS members' earnings, including the issue of cross-subsidization between members, and tariffs and licensing.

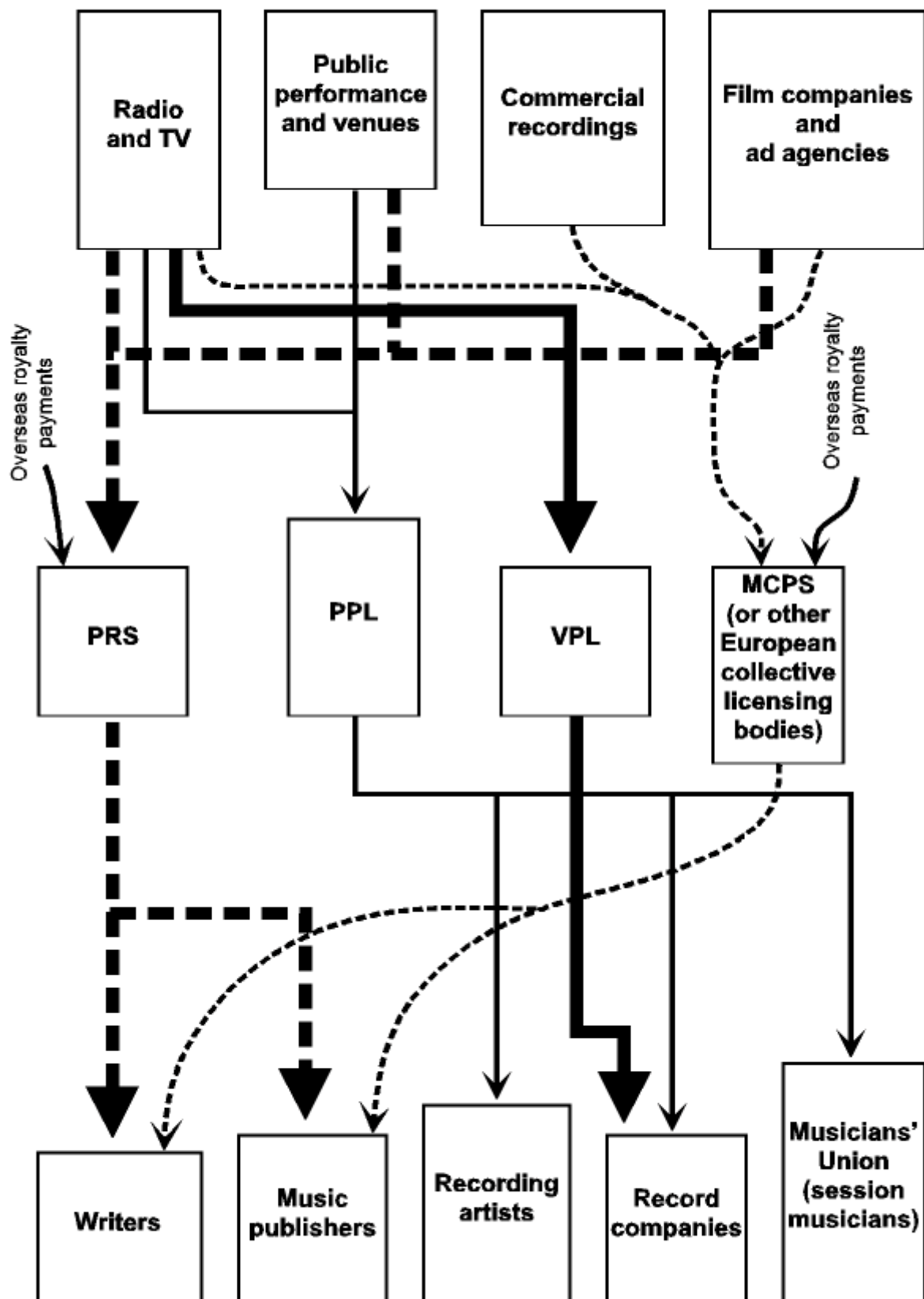
## **Distribution of payments to members**

5.30. The PRS's distribution policy, which is discussed in Chapter 6, determines the distribution of payments to members. In the present context the spread of the resultant payments between members is of interest. Paragraphs 5.31 to 5.35 provide an analysis of the distribution by the PRS of earnings to its members. A central feature is the large difference in the size of payments to members, the majority of members accounting for only a small proportion of payment, with a few high-earning members accounting for a large share of all payments. At one end of the scale are members with one or two works accounted for in a distribution, and at the other, members with full-time and very successful careers in composition.

5.31. As implied by the PRS's voting structure described in paragraph 7.24, the distribution of earnings from the performing right is highly skewed. A small number of writers and publishers receive substantial sums from the PRS, while large numbers at any one time are unable to qualify for moving up from provisional membership status because their earnings from the PRS fail to meet the criteria required. An analysis of annual distributions including income from overseas given in the PRS's leaflet *What is PRS?* published in March 1993 showed that two-thirds of the PRS's members received less than £250 from the PRS over a 12-month period, and only 4 per cent received more than £10,000 from the PRS in the same period, with the other 30 per cent of members ranged between these levels.

FIGURE 5.2

Revenue flows to and from UK collective licencing bodies



Source: MMC and BPI.

5.32. We asked the PRS for distributional analyses for earnings arising from performances of various types in the UK in 1993, showing how these were allocated to writer and publisher members in the course of subsequent distributions. The PRS provided us with a series of analyses relating to the four relevant distributions which covered UK broadcasts, live performances, other logged items, and other non-overseas revenue distributed on assumptions about repertoire used, eg juke-box revenue. Excluded from the analysis were the earnings equalisation allowance, the unlogged performance allocation which was allocated separately from currently attributed UK earnings, and revenue received in respect of performances of films. A separate analysis was carried out of distributions made to overseas affiliated societies in respect of works of their members which were performed in the UK during 1993, since the PRS has the responsibility in the UK for accounting for the performing right in respect of a world-wide repertoire, by virtue of its reciprocal representation contracts.

5.33. Tables 5.2, 5.3 and 5.4 set out these analyses of distributions in respect of UK performances. The first two tables show distributions to 15,500 PRS writer members (£20 million) and 2,124 publisher members (£31 million) respectively, while Table 5.4 shows a similar analysis in respect of payments to overseas affiliated societies (£24 million) on account of UK performance of their repertoires. The highly skewed nature of distributions can be seen from Table 5.2: the highest-earning 1.3 per cent of PRS writer members received nearly 41 per cent of comparable distributions, and the highest-earning 19.5 per cent accounted for some 92 per cent. A similar picture is shown in respect of PRS publisher members in Table 5.3. Publisher members of the PRS include some very large publishing companies which form part of major multinational groups with publishing, recording and film interests world-wide. The skewness of the distribution would appear even greater if set in the context of the entire PRS membership as there are a further 7,900 PRS writer members who had no works performed in the UK that gave rise to distributions during the period analysed. The same point applies to payments to affiliated societies on behalf of their members.

TABLE 5.2 Distributions in 1994 arising from UK performances in 1993: PRS writer members

<i>Bands of net domestic distributed revenue*</i>	<i>Number of</i>		<i>Cumulated</i>		<i>Cumulated</i>		
	<i>£</i>	<i>writers</i>	<i>%</i>	<i>% from top</i>	<i>£m</i>	<i>%</i>	
Up to 24		4,812	31.0	100.0	0.04	0.19	100.0
25 - 49		1,624	10.5	69.0	0.06	0.29	99.8
50 - 74		1,001	6.5	58.5	0.06	0.30	99.5
75 - 99		800	5.2	52.0	0.07	0.34	99.2
100 - 149		920	5.9	46.9	0.11	0.56	98.9
150 - 199		632	4.1	40.9	0.11	0.54	98.3
200 - 249		460	3.0	36.8	0.10	0.50	97.8
250 - 499		1,481	9.6	33.9	0.53	2.6	97.3
500 - 749		750	4.8	24.3	0.46	2.2	94.7
750 - 999		452	2.9	19.5	0.39	1.9	92.4
1,000 - 2,499		1,130	7.3	16.6	1.79	8.8	90.5
2,500 - 4,999		590	3.8	9.3	2.11	10.4	81.7
5,000 - 9,999		389	2.5	5.5	2.75	13.5	71.4
10,000 - 19,999		255	1.6	3.0	3.50	17.2	57.9
20,000 - 49,999		164	1.1	1.3	4.98	24.5	40.7
50,000 - 99,999		30	0.19	0.26	2.04	10.0	16.2
100,000 and over		10	0.06	0.06	1.26	6.2	6.2
Total		15,500	100.00	100.00	20.35	100.00	100.0

Source: MMC from PRS data.

\*Excluding earnings equalisation allowances, unlogged performance allocations, and revenue from performance of films.

TABLE 5.3 Distributions in 1994 arising from UK performances in 1993: PRS publisher members

<i>Bands of net domestic distributed revenue*</i> £	<i>Number of publisher members</i>	<i>Distributions £'000</i>
Up to 500	1,215	137
500 - 999	200	146
1,000 - 1,999	178	258
2,000 - 4,999	181	581
5,000 - 9,999	117	827
10,000 - 24,999	89	1,390
25,000 - 49,999	54	1,889
50,000 - 99,999	42	3,090
100,000 - 249,999	27	3,940
250,000 - 499,999	10	3,705
500,000 - 999,999	4	2,987
1,000,000 and over	7	12,194
Total	2,124	31,145

Source: MMC from PRS data.

\*Excluding revenue from performance of films.

TABLE 5.4 Distributions in 1994 arising from UK performances in 1993: sums attributed to members of overseas affiliated societies\*

<i>Bands of net domestic distributed revenue*</i> £	<i>Number of affiliated members</i>	<i>Distributions £'000</i>
Up to 500	35,167†	2,157
500 - 999	1,846	1,305
1,000 - 1,999	1,402	1,967
2,000 - 4,999	1,109	3,475
5,000 - 9,999	429	3,013
10,000 - 24,999	342	5,207
25,000 - 49,999	103	3,392
50,000 - 99,999	28	1,874
100,000 - 249,999	5	642
250,000 and over	3	929
Total	40,434	23,961

Source: MMC from PRS data.

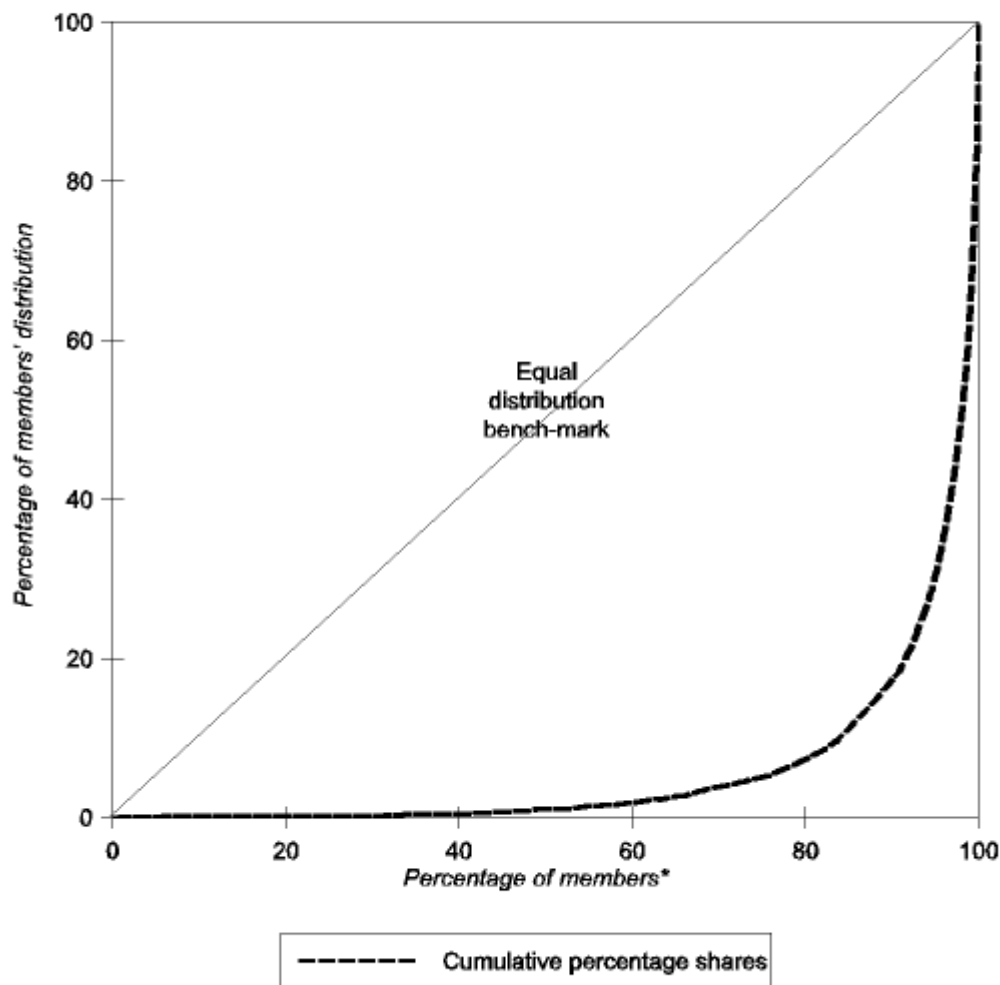
\*See note to Table 5.3.

†Excluding affiliated members with nil UK PRS pay-outs during period analysed.

5.34. One means by which income distributions may be illustrated and thereby compared is known as a Lorenz curve. As applied to this data the Lorenz curve in effect orders the members from the lowest income earners to the highest (as in Tables 5.2 and 5.3) and at each point relates the cumulative share of total income to the proportion of income earners. The Lorenz curve for the PRS's domestic distribution payments is plotted in Figure 5.3. As a bench-mark, if all members had received the same distribution payments, then the line would have been a straight diagonal line as each member would have accounted for the same proportion of total distribution payments. A second bench-mark is the extreme case of a single member accounting for all distribution payments, with the remaining members receiving nothing. The Lorenz curve would then follow two sides of the rectangle, tracking the horizontal axis and then the vertical axis. The degree of inequality in a distribution is thus reflected in the extent to which the plotted distribution lies below the diagonal line. The Lorenz curve that describes the distribution of PRS payments lies well below the diagonal line reflecting the very wide differences in payments between the lower PRS income earners and the higher ones.

FIGURE 5.3

**PRS domestic distributions made during 1994 to PRS writer members for performances in 1993—Lorenz curve (cumulated percentage shares)**



Source: MMC from PRS data.

\*Excluding PRS writer members with no domestic distribution payments during 1994.

5.35. Table 5.5 brings together from the previous three tables the separate totals for domestic revenue attributed to writers, publishers and affiliates. It also includes for completeness' sake revenue in suspense accounts, where attribution could not be made in time for distributions in the period. Also included in Table 5.5 is a further breakdown of writers' income in respect of UK performances in 1993 on the basis of length of membership of the PRS. According to this analysis revenue was spread with not all that much variation between the groups of members. £3.9 million was paid to 4,700 PRS writer members who had joined the Society since January 1989, with amounts of between £2.9 million and £4.2 million going to longer established members in the next three five-year bandings. The 2,700 writer members in the PRS's longest-established group of members—that is, those who had been members since before January 1974—received about £5.6 million.

TABLE 5.5 Distributions in 1994 arising from performances in 1993: summary and breakdown by length of membership

	<i>Number of members '000</i>	<i>Total £m</i>
PRS writers	15.5	20.3
PRS publishers	2.1	31.1
Suspense accounts*	0.0	0.7
Affiliated society members	<u>40.4</u>	<u>24.0</u>
Grand total	58.1	76.1
PRS writers elected since Jan 1989	4.7	3.9
PRS writers elected Jan 1984-Dec 1988	3.1	2.9
PRS writers elected Jan 1979-Dec 1983	2.8	4.2
PRS writers elected Jan 1974-Dec 1978	2.1	3.5
PRS writers elected before Jan 1974	2.7	5.6

*Source:* MMC from PRS data.

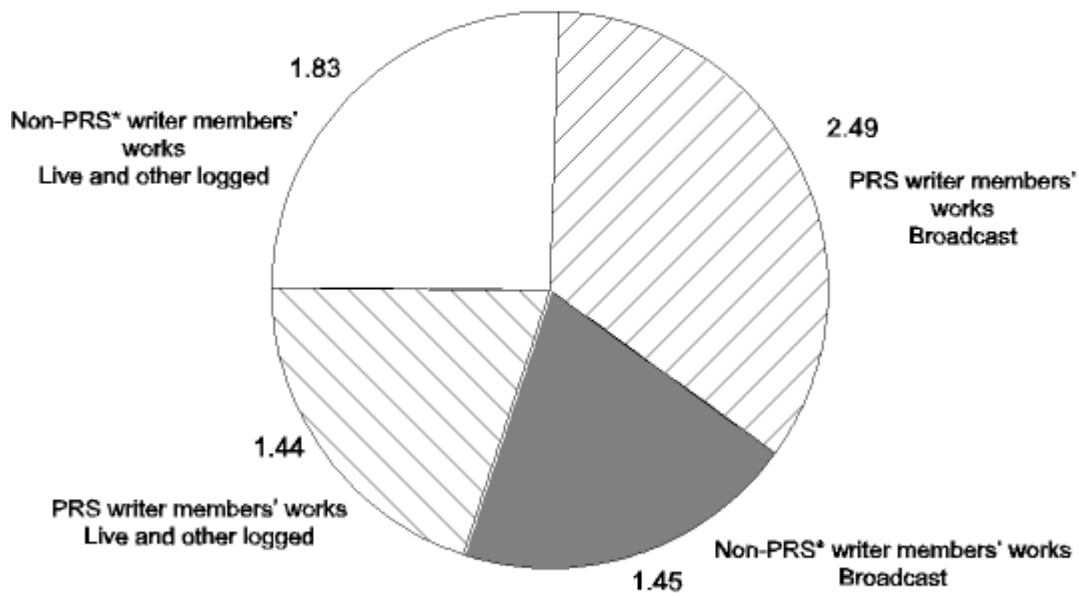
\*The suspense accounts total includes such items as sums temporarily undistributable whilst awaiting full documentation, items for interested parties who are switching between the PRS and affiliated overseas societies, and items relating to disputed shares.

5.36. PRS distributions of royalty income are based on actual or attributed performances of works, reflecting in the former case the availability of information about each performance, and in the latter assumptions about repertoire use. The PRS provided the MMC with information on estimated numbers of performances for works featuring in distributions. Typically rights in individual works will be shared by one or two writers with a publisher, although some writers undertake their own publishing; however, in some cases there are many interested parties that have a share in the rights. The workload of the PRS based on performances is in two parts: first the logging of performances of works in copyright (and therefore eligible for distribution); and secondly calculating payments due to writers with interests in works. For some parts of the calculations, information on true numbers of performances is not available, eg performances of named recordings in juke-boxes, and for such items estimates are made using proxy information. Figure 5.4 shows estimates of performances of works attributable to UK members and to affiliated members based on PRS analyses, while Figure 5.5 gives a corresponding picture of performance shares, that is, interests in a work, that are accounted for as separate items. Figure 5.4 shows a breakdown of the 7.2 million performances which the PRS accounted for in 1993, of which 3.9 million were broadcast performances and 3.3 million were live or other logged performances. As can be seen from Figure 5.4, works of members of overseas affiliated societies feature significantly in both categories of performance. These estimates indicate that PRS members' works in the PRS repertoire accounted for about 63 per cent of broadcast performances in the UK in 1993, and those of members of affiliated overseas societies for the remaining 37 per cent. It should be noted that the figures do not cover works out of copyright, as these are not included in PRS or overseas repertoires, or non-copyright shares that exist in some works. Arrangements of works out of copyright may have a copyright element, though not necessarily a full copyright grading.

5.37. Tables 5.6 and 5.7 provide further information on the relationships between writers, works and attributed revenue. The tables provide breakdowns of attributions to writer members in respect of performances of works which were the basis of distributions of domestic royalties for PRS writers in 1993. For different revenue bands the tables show the average number of works in the repertoire performed one or more times, the average number of interests in works per member, and the average aggregate number of times works were performed. Table 5.6, which relates to broadcast performances, shows that the average number of works earning royalties was about nine, with these works being broadcast on average 34 times in that year. A similar picture is given in Table 5.7 which covers the category of general logged performances, ie other than broadcast; the average number of works earning fees per writer member was six, with each work performed on average about 33 times. In both Tables 5.6 and 5.7 it can be seen that those in the higher ranges have on average a larger repertoire contributing to earnings, with a greater likelihood of higher earnings per performance. Within any band there will, of course, be variations in numbers of works attributable to individual writers, and in numbers of performances achieved by individual works.

FIGURE 5.4

**PRS and non-PRS\* writer members' broadcast and live/logged performances  
(estimated 1993 performances of works distributed—million)**

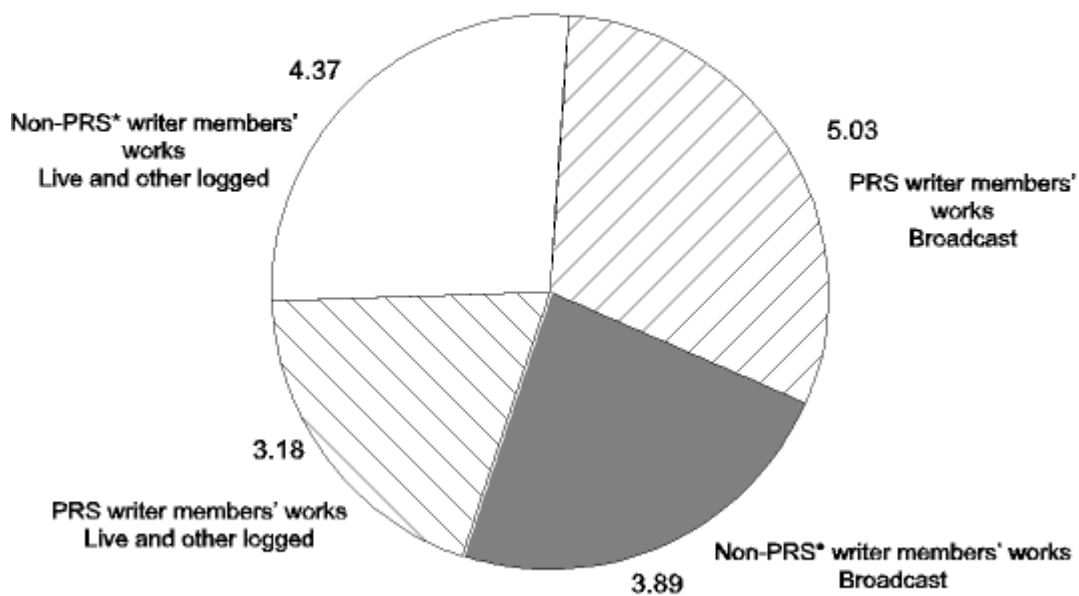


Source: MMC from PRS data.

\*Non-PRS refers to members of affiliated overseas societies.

FIGURE 5.5

**PRS and non-PRS\* writer members' broadcast and live/logged performances  
(estimated number of interests in 1993 distributed performances—million)**



Source: MMC from PRS data.

\*Non-PRS refers to members of affiliated overseas societies.

TABLE 5.6 PRS writers, works and attributions relating to 1993 UK broadcast performances

<i>Bands of net domestic distributed revenue*</i>	<i>Writers</i>	<i>Repertoire works†</i>	<i>Estimated attributions</i>	<i>Per cent share of attributions</i>	<i>Average number of attributions per writer (d/b)</i>	<i>Average number of works per writer (c/b)</i>	<i>Average number of attributions per work (d/c)</i>
<i>£</i>							
<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>	<i>g</i>	<i>h</i>
Up to 24	4,812	6,165	28,203	0.56	6	1.3	4.6
25 - 49	1,624	4,003	25,585	0.51	16	2.5	6.4
50 - 74	1,001	3,151	21,428	0.43	21	3.1	6.8
75 - 99	800	3,184	21,628	0.43	27	4.0	6.8
100 - 149	920	4,344	35,493	0.71	39	4.7	8.2
150 - 199	632	3,401	29,578	0.59	47	5.4	8.7
200 - 249	460	3,092	27,818	0.55	60	6.7	9.0
250 - 499	1,481	14,055	162,195	3.23	110	9.5	11.5
500 - 749	750	9,864	157,530	3.13	210	13.2	16.0
750 - 999	452	6,624	112,998	2.25	250	14.7	17.1
1,000 - 2,499	1,130	21,824	504,228	10.03	446	19.3	23.1
2,500 - 4,999	590	16,227	567,488	11.29	962	27.5	35.0
5,000 - 9,999	389	16,037	812,690	16.17	2,089	41.2	50.7
10,000 - 19,999	255	14,807	818,898	16.29	3,211	58.1	55.3
20,000 - 49,999	164	14,181	1,027,060	20.43	6,263	86.5	72.4
50,000 - 99,999	30	3,962	363,998	7.24	12,133	132.1	91.9
100,000 and over	10	1,977	310,403	6.17	31,040	197.7	157.0
Total	15,500	146,898	5,027,235	100.00	324	9.5	34.2

Source: MMC from PRS data.

\*See note to Table 5.2.

†Works broadcast at least once during 1993.

TABLE 5.7 PRS writers, works and attributions relating to 1993 UK performances in the general logged category

<i>Bands of net domestic distributed revenue*</i>	<i>Writers</i>	<i>Repertoire works†</i>	<i>Estimated attributions</i>	<i>Per cent share of attributions</i>	<i>Average number of attributions per writer (d/b)</i>	<i>Average number of works per writer (c/b)</i>	<i>Average number of attributions per work (d/c)</i>
<i>£</i>							
<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>	<i>g</i>	<i>h</i>
Up to 24	4,812	5,136	20,648	0.65	4	1.1	4.0
25 - 49	1,624	3,637	16,700	0.53	10	2.2	4.6
50 - 74	1,001	2,895	17,800	0.56	18	2.9	6.1
75 - 99	800	2,691	17,933	0.56	22	3.4	6.7
100 - 149	920	3,322	31,878	1.00	35	3.6	9.6
150 - 199	632	2,790	26,560	0.84	42	4.4	9.5
200 - 249	460	2,374	24,405	0.77	53	5.2	10.3
250 - 499	1,481	10,698	127,510	4.01	86	7.2	11.9
500 - 749	750	6,528	92,413	2.91	123	8.7	14.2
750 - 999	452	4,348	84,418	2.66	187	9.6	19.4
1,000 - 2,499	1,130	13,752	329,103	10.36	291	12.2	23.9
2,500 - 4,999	590	10,267	430,563	13.55	730	17.4	41.9
5,000 - 9,999	389	8,368	392,453	12.35	1,009	21.5	46.9
10,000 - 19,999	255	8,557	538,475	16.95	2,112	33.6	62.9
20,000 - 49,999	164	7,434	659,268	20.75	4,020	45.3	88.7
50,000 - 99,999	30	2,954	240,495	7.57	8,017	98.5	81.4
100,000 and over	10	1,080	126,975	4.00	12,698	108.0	117.6
Total	15,500	96,831	3,177,593	100.00	205	6.2	32.8

Source: MMC from PRS data.

\*See note to Table 5.2.

†Works performed least once during 1993.

## **Cross-subsidy**

5.38. The PRS, although not a statutory monopoly, is the monopoly provider of its specified services and in the absence of a credible threat of potential entry there will, as a consequence, be limited competitive pressure acting upon it. Since members are not in a position to choose a competing provider of the PRS's services, there is less pressure on it to keep costs down and to set the administration costs charged to individual members close to the actual costs incurred in servicing them. Thus there will be limited competitive restraint on the PRS cross-subsidizing certain members at the expense of others. Two ways in which this may happen are the inaccurate allocation of costs and the distribution policy.

5.39. The extent of cross-subsidy in the PRS is discussed in Chapter 6. Two explicit cross-subsidies are operated, namely the classical music subsidy (worth about £1.4 million in 1994) which, as its title suggests, falls to the writers of classical music, and the EES (worth £0.75 million in 1994), a payment to which writers may be entitled in the later stages of their career. In addition to the explicit cross-subsidies, others may result if the distribution policy does not accurately reflect the value of individual copyrights or as a result of the inaccurate allocation of costs, such that works which are particularly costly to monitor and collect for are subsidized at the expense of those for which such activity is less costly. In practice some degree of cross-subsidization is inevitable for any system that is less than comprehensive in its monitoring of works, or, even in a system where all performances are monitored, where certain costs are common to different aspects of its operation and as a result cannot accurately be allocated to individual activities.

5.40. The themes of efficient operation and fairness of the allocation have major implications for the nature and degree of cross-subsidy. The efficient operation of the PRS as a collecting society may point towards a reduction in cross-subsidy where it arises from the process of cost allocation, but considerations of fairness may provide support for cross-subsidies of certain kinds.

## **Tariffs and licensing**

5.41. The PRS issues blanket licences to music users which grant rights to the PRS repertoire. For broadcasters, licences are negotiated individually, but for other users a tariff structure is applied. The remaining paragraphs describe the tariff structure for general (public performance) licensing.

### ***General (public performance) licensing***

5.42. The PRS tariff structure is complex. For the purpose of licensing, users are divided into 41 separate schemes, 40 of which relate to public performances of music, the remaining one (Music on Hold) being classified as a cable programme service (as defined by section 7 of the 1988 Act). These tariffs are published in 41 separate tariff booklets and a complete list of tariff categories is given below. These categories group together similar types of users, similar types of premises or similar types of performances.<sup>1</sup> Within each tariff category there are typically a variety of rates relating to a more precise description of the performance within that category. Again, these may relate to further sub-groupings of users,<sup>2</sup> premises,<sup>3</sup> types of performance<sup>4</sup> or a combination of these.

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<sup>1</sup>One of these categories entitled 'General purpose' is for performances not covered by the other specific public performance tariffs.

<sup>2</sup>The tariff for Service and other bands, for example, distinguishes the bands of Regular Forces from those of the Territorial Army and junior bands.

<sup>3</sup>Certain tariffs are, for example, based on the capacity of the licensee's premises. These include tariffs for hotels, restaurants, cafes and public houses.

<sup>4</sup>For example, a range of rates exists within different tariff categories for juke-boxes, video and cinema performances and background music.

*PRS tariff categories*

1.	AC	Aircraft
2.	APS	Amusement parks, saloons, arcades and travelling showmen
3.	AS	County and agricultural shows
4.	B	Service and other bands
5.	BO	Bingo clubs and halls
6.	C	Cinematographic performances
7.	D	Commercial discotheques and dance halls
8.	DJ	Mobile disc jockeys
9.	DP	Dance-parties and similar
10.	DS	Dance tuition schools
11.	GF	Garage forecourts
12.	GP	General purposes
13.	HC	Holiday centres
14.	HCP	Holiday caravan parks
15.	HR	Hotels, restaurants and cafes
16.	I	Industrial premises, offices and canteens
17.	IR	Ice rinks
18.	J	Clubs (proprietary)
19.	JMC	Clubs (members')
20.	K	Circuses
21.	LC	Classical music
22.	LP	Popular music
23.	MC	Motor coaches, mini buses and other vehicles
24.	MH	Music on hold
25.	MT	Methodist church circuits
26.	N	Educational establishments
27.	O	Open-air/parks/pools/places
28.	P	Public houses
29.	PPS	Public and private (independent) schools
30.	R	Roller skating rinks
31.	RS	Shops and stores
32.	RYS	Railway stations
33.	SGS	Sports grounds/Stadia
34.	SP	Small premises
35.	SS	Ships/vessels
36.	T	Theatrical presentations
37.	UC	University colleges
38.	V	Variety shows
39.	VCC	Village halls, etc
40.	X	Exhibitions
41.	YC	Youth clubs

5.43. In addition to the PRS's published tariff rates which cater for the majority of licensing situations, there are some users which are found not to be adequately covered by the published tariffs, and these are covered by so-called 'special arrangements'. Eleven special arrangements exist in the form of memoranda internal to the PRS. Examples of categories covered in this way include bowling concourses and roller disco performances. Special arrangements can also exist for certain organizations to provide their membership with a blanket agreement or rate. Organizations covered by these arrangements include:

- British Federation of Music Festivals;
- Federation of Recorded Music Societies;
- Handbell Ringers of Great Britain;
- Mechanical Organ Society;
- National Federation of Music Societies; and
- YMCA/YWCA hostels.

5.44. Furthermore, the PRS internally circulates 'instructions' for the guidance of licensing staff in applying tariffs. Examples of these include children's ballet and/or tap dancing classes, where the instructions specify certain exemptions if the music used is included in the syllabus of certain dancing organizations, and 'family events', where similar instructions clarify the circumstances where the PRS chooses not to make a charge.

5.45. The PRS told us that it recognizes the desirability of simplifying the tariff structure and has been making a modest amount of progress in that direction. During 1995 the PRS has phased out the internally circulated book which recorded around 50 pre-existing special arrangements and instructions, and has incorporated the majority of charges into the standard tariffs.

5.46. The basis of the tariffs varies across tariff categories. In a number of cases the tariff is specified as a set percentage of a suitable measure of revenue, the most significant cases of this being the popular live performance tariff (tariff LP), which is specified as 3 per cent of gross receipts, and the classical live performance tariff (tariff LC), which is set at a fixed (or in some qualifying cases, a variable) percentage of net admission receipts. The majority of tariffs, however, are specified as scaled or fixed sums to be paid annually, and are unrelated to revenue, although often they measure the audience using other factors. The PRS told us that the different bases of charging under the separate tariffs were intended to reflect the value of music to the licensee and his business.

5.47. The PRS submitted to us that, in setting tariffs, it took into account the need to achieve fairness among music users and the need to maximize the revenue for distribution among PRS members and members of affiliated societies. The PRS told us that, wherever possible, tariffs were negotiated with the appropriate national trade associations prior to introduction or revision. Of the 41 current published tariffs, the PRS informed us that 17 were agreed, or partly agreed, with national trade associations, 18 were set by the PRS and 6 remain subject to the orders of the Copyright Tribunal.

5.48. It could be argued, on the one hand, that the complex structure of the PRS's tariffs is indicative of what is often termed 'price-discriminating' monopoly behaviour: ie the PRS being able to capitalize on its bargaining position by charging users differentially on the basis of their own negotiating strength. It may, on the other hand, also be argued that the complex tariff structure is necessary to reflect the wide range of forms and places of musical performance.

5.49. An assessment of whether the tariffs of the PRS are excessively high requires the derivation of a bench-mark. One method might be to compare tariffs in the UK with those abroad. Different tariff structures in different countries, however, make comparison difficult, since directly comparable tariffs are typically not available. Moreover, the use of such comparisons must take into account a variety of international differences: music may be valued differently in different countries as a result of the various roles which particular types of music assume in the society; some countries on the European Continent (as mentioned in paragraph 5.17) have legislation based on somewhat different principles from that in the UK; lastly, foreign tariffs are also generally set by monopoly providers and are subject to the behaviour of different national regulators of copyright tariffs. The PRS told us that, while direct comparison of tariffs was not impossible, it was a complex task to take into account all the different factors, revenue bases and methods of charging applied by different societies. The PRS told us that it was, however, accepted that PRS tariffs were mostly lower than those of other European societies.

5.50. Comparisons on the basis of licensing revenues are provided in Appendices 9.3 to 9.6 which graphically show PRS licence revenue against that in countries in Europe and elsewhere (including the USA and Japan). In general, once related to gross domestic product (GDP) or on a per capita basis, the UK is seen to have lower licence income than the majority of other European countries, but higher than other countries, including the USA, Japan and Australia. This may of course be due to differences in the extent of coverage by the collecting agencies as well as to different levels of tariffs.

5.51. The statutory body which exists to regulate the prices charged by the PRS is the Copyright Tribunal (which is described in Chapter 4). Certain groups of users have suggested to us that past decisions by the Tribunal had always involved some tariff adjustment favourable to users (and hence against the PRS) and that this indicated that the PRS's tariffs were generally too high. (The views of users are summarized in Chapter 10.) The PRS told us that the strength of its negotiating position stemmed from its ability to offer virtually the whole world-wide repertoire of copyright music and that its monopoly position was tempered by

the ability of the user to refer the PRS to the Copyright Tribunal. If licensees had to negotiate with individual composers, users might not, on balance, gain since the increased costs they would face might outweigh the savings they would gain. The PRS also told us that the very few references of PRS tariffs that there had been to the Copyright Tribunal demonstrated that in the majority of cases the PRS had managed to reach an agreement on a 'market price'.

5.52. The Tribunal in reaching its decisions is also required to ensure that undue price discrimination between users of copyright material does not occur. Section 129 of the 1988 Act provides the Tribunal with '... powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees ...' However, in his evidence to us the Tribunal Chairman said that he did not recall a case in which this point had been at issue.