**UN Cultural Rights Group: the Impact of Intellectual Property Regimes on the Enjoyment of Right to Science and Culture**

1. **About BASCA**

BASCA, the British Academy of Songwriters, Composers and Authors, is the professional association for music writers of all genres in the UK. With approximately 1,700 members, it is the single voice for British music creators.

BASCA works to foster a sense of community amongst songwriters, lyricists and composers, and to campaign on their behalf in the domestic, European and international political arenas. As the only association in the country made up entirely of music writers, the organisation has an unparalleled insight into the issues affecting music creators in the UK today. We work closely with our members, keeping them informed in a constantly changing environment via our publications, websites, seminars and professional networking events. BASCA also presents the Ivor Novello Awards, British Composer Awards and Gold Badge Awards annually.

Membership of BASCA is open to working songwriters who are members of a royalty collection society, such as PRS for Music, BMI or ASCAP.

BASCA Fellows: John Adams, David Arnold, Sir Malcolm Arnold, John Barry, Don Black, Pierre Boulez, Sir John Dankworth, David Ferguson, George Fenton, Sir Elton John, Barry Gibb, Maurice Gibb, Robin Gibb, Sir Andrew Lloyd Webber, Sir Paul McCartney, Sir Peter Maxwell Davies and Sir Tim Rice.

For more information about us, please refer to the following website: [www.basca.org.uk](http://www.basca.org.uk).

1. **Definitions**
	1. **The right to culture**

The Human Rights aspects of the right to culture of particular interest to our members encompass all elements of the protection of scientific, literary and artistic pursuits of society, including:

* the right to enjoy the arts;
* the right to education;
* the right to cultural participation;
* freedom for creative activity;
* freedom of thought, conscience or religion;
* freedom of opinion and expression;
* the protection of non-discrimination;
* the protection of persons belonging to ethnic, religious or linguistic minorities;
* the right of the individual to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author; and
* the protection of cultural heritage and conservation, development and diffusion of culture.
	1. **Legal basis**

Article 22 of the Charter of Fundamental Rights of the European Union (2000) notes that ‘the Union shall respect cultural, religious and linguistic diversity’. The UK incorporated the European Charter of Fundamental Rights into its legislation through the Human Rights Act 1998.

1. **Artistic freedom: the financials of accessing and contributing to the arts**
2. **Accessing a career in music: the right to (musical) education**

It is typical that it cost many tens of thousands of pounds in education to train to be a classical composer. Songwriters might face lesser expenses though obtaining a university degree (with its concurrent fees) is becoming by far the most popular route into the music industry.

Indeed according to recent research, two thirds of musicians (65%) undertake four years or more of formal education and training, 40% of which hold a degree in music.

Moreover, research about equality and diversity in the UK music industry paints a bleak picture of the landscape for both gender and ethnic diversity. For example in 2012 only 14% of PRS for Music members were female.

1. **Sustaining a career in music: right to participation in cultural life**

Whilst the music industry’s economic contribution is growing by 9% year-on-year and its GVA amounts to £3.8bn, songwriters and composers still face low income levels and are in constant struggle to secure fair remuneration.

Indeed, more than half of the musicians surveyed by MU in 2012 (56%) earned less than £20k: a minority of musicians were full-time salaried employees (10%), half of musicians had no regular employment whatsoever and 60% reported working for free on occasion. Therefore in order to sustain a career in music, one third of musicians (34%) carried out employment outside of the industry.

Finally, the industry suffers from poor pension provision. Since a sizeable majority of musicians work freelance (94%) for all or part of their income, only 35% of all musicians pay into a pension scheme.

1. **Creator revenue in the digital market: fair remuneration**

The total digital market revenue now accounts for 50% (£365.1m) of the UK record industry trade revenues. The increased contribution of online licensing and ad-supported or free streaming services (plus 31% on last year, contributing £19m) and cloud services (Google, Apple and Amazon’s locker services) contributing more than £3m illustrate the value in regulating the internet to ensure that revenue is not dissipated. Indeed, its navigation should not be free of rights and poor enforcement policies and the lack of reliable mechanisms to combat piracy pose a direct threat to musicians’ financial wellbeing.

Royalties represent a considerable source of income for songwriters and composers. Indeed royalties constitute 27% of their total earnings which is their biggest share of income (19% from PRS, 5% from record companies; 3% from royalties and rights payments from PPL).

Through the lack of adequate policing of the internet and the proliferation of non-licensed/illegal music services, songwriters and composers are deprived of this income stream.

Moreover, although we welcome new and innovative business models, their emergence can sometimes create value for intermediaries which impacts negatively on the share of revenue allocated to creators. This additional deduction from their remuneration further threatens their ability to sustain their careers and their ability to allocate time to creating artistic material since the financial incentive to do so is no longer sufficient.

1. **Protection of moral and material interests resulting from any artistic production**
	1. **Protection of moral interests resulting from artistic production**

In the UK, Chapter IV Copyright, Design and Patents Acts 1988 regulates the Moral Rights of copyright owners. Section 77 regulates the paternity right (‘right to be identified as author or director’ which should be read in conjunction with Section 84 ‘False attribution of work’).

One of the dangers of digital content is that it is susceptible to being stripped of the accompanying information and later misallocated to the detriment of the rightholder.

Another important and emotive element for songwriters and composers is their moral right to integrity, a right to object to derogatory treatment of their work under Section 80 of the Copyright, Designs and Patents Act 1988. We believe composers who consider the treatment of their work to be derogatory should have the right to initiate a takedown procedure against the host website, although we encourage the promotion of simplified methods of moral rights enforcement.

* 1. **Protection of material interests resulting from artistic production**
1. **Protection against piracy**

Research conducted for Ofcom has shown that 44% of UK consumers aged 12 and above lack confidence in identifying legal content online. One in six (16%) of that same group estimated to have consumed at least one item of online content illegally over the three-month period surveyed and in turn, a third of these (5%) exclusively consumed illegal content.

Generally speaking, across all types, music content has the highest volume of illegal content consumed online over the three-month period with the total estimated volume of content consumed digitally estimated at 1226 million tracks and physically at 275 million tracks.

Yet a majority of consumers claim that platforms which make music available illegally and without paying the musicians should be shut down (56% of respondents to a 2012 survey by AudienceNet). A further 42% of filesharers conceded that if a platform were blocked it would stop them from acquiring infringing content.

1. **Enforcement difficulties**

Enforcement by notice and take down has not proved to be the most efficient mechanism to defend copyright works. For example to protect a single musical work over a period of four months, PRS for Music sent out a total of 849 notices to one single service provider. In 2013, they removed access to a total of 2.3 million infringing copies of works available online.

The rate of proliferation of illegal host websites is also quite discouraging. A striking example is given by Rt Hon Mike Weatherly MP where, in January 2014, having launched a new album digitally (Apple and other download services), a band witnessed the burgeoning availability of said album on illegal torrent sites, at a rate of 20 illegal downloads to one legal download.

The increased monitoring necessary to counter such violations entails additional administrative costs for the organisations, and in turn a smaller share to individual songwriters and composers. But that cost is unavoidable since it would be unrealistic to place the burden of monitoring websites on songwriters and composers themselves.

Court proceedings to defend a copyright case have been estimated by The American Intellectual Property Association to average $1million per case (circa £62m or €77m). The BPI have produced encouraging data reporting a 70% reduction in traffic to 25 sites blocked by a court order and the reduction in use of platforms such as BitTorrent (-11% use) in European countries where such injunctions have been granted. Contrary to this, in European countries without blocking orders, use of illegal platforms was seen to increase by 15%.

The limited effects of these remedial procedures and their cost discourage songwriters and composers from enforcing the rights they draw from their artistic productions. We believe efforts should now concentrate on government led initiatives both for increased monitoring of digital activities and educational campaigns to prompt wiser consumer choices.

1. **Promoting licences**

Although licensing ease and availability has been criticised by big tech companies, we believe it is becoming increasingly easy to buy licenses to use music. The Licences for Europe initiative is just one way in which licensing is being addressed across the EU and it seems that there is no problem in practice. This has also been the conclusion of the recent study on the application of the Information Society Directive by De Wolf and Partners. Indeed, this study states that there is no evidence that the current legal framework had the often claimed “chilling effect”.

The music industry being unable to compete with the lobbying power of big tech companies, the rights of songwriters and composers (including their culture right, and the right to culture of people who may be deprived of their creations) might be endangered, namely by the EU Copyright reform agenda. Indeed, the creative industries, the music industry included, are in no position to compete with Google’s estimated €1.25m lobbying spend on the European Commission, a number which could be as high as €1.5m.

1. **Sources**

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‘Online Copyright Infringement Tracker: Overview and Key Findings’, prepared by Ofcom, by Kantar Media

‘Search Engines and Piracy: A Discussion Paper by Mike Weatherly MP’, Rt Hon Mike Weatherly MP (2014)

‘Study on the Application of Directive 2001/29/EC on Copyright and Related Rights in the Information Society’, by De Wolf and Partners (2013)

‘The Working Musician’, DHA Communications, commissioned by the Musicians’ Union (2012)

BPI Yearbook 2014

PRS for Music website

‘Sound and Music Commissioning Report 2014’