

Written evidence from RadioCentre to the Business, Innovation and Skills Committee Inquiry into the Government's response to the Hargreaves Review of Intellectual Property

Introduction

1. RadioCentre is the industry body for commercial radio. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), its members consist of the overwhelming majority of UK commercial radio stations, who fund the organisation. RadioCentre welcomes this opportunity to submit further evidence on the proposed changes to the intellectual property framework set out by the Government in response to the recommendations made in the Hargreaves review.
2. The commercial radio industry depends heavily on an effective copyright framework, as this underpins the licensing of music that is essential to radio broadcasts. However, commercial radio's relationship with the music industry is not the standard rights-owner/ rights-user relationship. In addition to paying royalties, RadioCentre's members add value to music by broadcasting, discussing and promoting it. This engenders a symbiotic partnership between commercial radio and the music industry, with shared interests in developing and promoting music and artists.

Executive Summary

3. RadioCentre welcomes Government's commitment to implementing a range of changes to the existing copyright regime to enable it to be fit for the digital age and support economic growth.
4. The concept of a Digital Copyright Exchange appears to have the potential to have a genuinely positive impact for the benefit of consumers, copyright-users and producers in the creative industries. As such it should be subject to further investigation and planned with input from a wide range of industry stakeholders.
5. We welcome Government's commitment to creating new copyright exceptions as the appropriate legal response to the practice of private format shifting. We are calling on the Secretary of State for Business, Innovation and Skills to apply similar principles to private copying that takes place within the commercial radio industry.
6. RadioCentre supports the development of regulatory standards for collecting societies, rather than relying solely on codes of practice devised by the societies themselves. In order to ensure that such standards are robust and address the concerns of copyright-users, we would support a wider level of consultation and engagement across the industry.
7. The current copyright framework is not always conducive to the development of legal and viable IP-dependent business models. Therefore we welcome Government's support for cross-border licensing framework that will meet the needs of rightsholders and users. While we understand that these matters need to be addressed at a European level, the nature of the creative and digital industry means that it is a fast moving business environment. Therefore any changes must take place in a reasonable timeframe.

8. We continue to oppose 'double-charging' which the Copyright, Designs and Patents Act 1988 allows rightsholders to pursue in collecting royalties for workplace radio listening.

Commercial radio in the UK

9. Radio is a much-loved part of daily life in Britain, listened to by over 90% of the adult population for an average of 20 hours a week. The reach of commercial radio is vast with over 34 million people listening to commercial radio in the UK each week¹. Radio's coverage is universal and mobile; radio listening is free; sets are inexpensive, and consumption requires no literacy skills. These fundamental traits mean radio can remain strong, delivering information and entertainment in a convenient and complementary way, as part of our rich media ecology.
10. Commercial radio is a crucial part of the creative economy in the UK, with over 300 licensed stations broadcasting a diverse range of output alongside national and local BBC services and community radio. Its wealth of choice and diversity of output means that commercial radio appeals to those sections of society that other media find hard to reach. A recent study by Ofcom found that 66% of respondents considered radio to be a trusted source of news, compared with 58% trust for online, 54% for TV and 34% for newspapers². As well as these tangible benefits, research has also indicated that radio can play a positive role in people's lives, making them feel happier and more energetic³.
11. Commercial radio plays a significant economic and cultural role in the UK which impacts across a number of areas:
 - Creating public value** - It performs a valuable function by providing local content and contributing to the plurality that is fundamental to our democracy. This is demonstrated by the fact that stations broadcast an average of around 8½ hours of public service content each week⁴.
 - Supporting local economies** – It also plays an important economic role as a local employer, with around 8,000 people working in the industry and hundreds more involved in a voluntary capacity. Radio is a key part of the local media landscape as an affordable source of advertising for local businesses.
 - Providing a platform for new talent** – It performs a crucial role in discovering and nurturing new talent in both broadcasting and journalism. As well as being a valuable and widely distributed employer in the creative industries, commercial stations provide a fantastic environment in which broadcasting talent can be trained and developed.
 - Building and promoting music** – It is a key driver of economic growth of other creative industries, particularly the music industry. It is estimated that the UK music industry is worth around £3.8bn⁵ and despite the availability of new services to purchase and access content, radio remains the most powerful promotional tool for music. It is essential to each stage of a musician's career, from building an initial following, to establishing mass market interest, promoting successful artists and playing back catalogue.

¹ RAJAR Data Q2 2011

² Ofcom, UK Adults Media Literacy Study, May 2011

³ RAB, Radio: The Emotional Multiplier, 2011

⁴ RadioCentre, Action Stations: The output and impact of Commercial Radio, March 2011

⁵ PRS for Music, 'Adding up the Music Industry 2010', August 2011

12. There is a symbiotic relationship between the music and radio. Despite being a relatively small industry, commercial radio injects a significant amount of its revenue into the music industry which is highly aware of radio's influence on consumer behaviour. This impact was demonstrated in a recent RadioCentre survey⁶, which found:
 - 64% of people say that radio is the most important source for to find out about new music (twice as important as any other source).
 - 36% of consumers report radio as the most important influence on their recorded music purchases (compared to 16% for TV and 12% for internet).
 - On average radio listeners spend 36% more on music than non-radio listeners.
13. In addressing the impact of technological change on their respective businesses, the ongoing partnership between commercial radio and the music industry is likely to be crucial. The key challenge which commercial radio and the music industry face together is devising a licensing framework, which is economically sustainable for both parties and allows commercial radio to build upon its longstanding role as the key shop window for music.

Copyright licensing: evidence for change

14. On behalf of our members RadioCentre submitted evidence to the Hargreaves Review in March 2011. In this, we provided examples of how the current legislative framework inadequately reflects the business practices and technology changes in the radio and music industries. We proposed a number of changes to the copyright framework to foster business growth and innovation.
15. This document only expands on the previous Hargreaves submission where relevant, in order to provide supplementary detail to the Committee and respond to relevant matters outlined in the Government's response. However, should the Committee wish to examine recommendations made by RadioCentre full details can be found in our submission⁷.

The creation of a Digital Copyright Exchange

16. If implemented and planned with input from a wide range of industry stakeholders, the Digital Copyright Exchange (DCE) appears to have the potential to have a genuinely positive impact for the benefit of consumers, copyright-users and producers in the creative industries. Although only a theoretical concept at this stage, it seems possible that a DCE could potentially serve as a one-stop-shop, enabling consumers to choose a variety of different rights from different copyright holders. This could be ideally placed to serve the small and medium sized users of copyright content and remove administrative barriers to accessing creative content.
17. However, there are several areas that need to be addressed. On a practical level a significant amount of interaction is required from current UK licensing bodies and industry stakeholders. RadioCentre is concerned that Government has not indicated what the relationship with current licensing bodies and if the DCE impacts on how collective licences are administered in the future.

⁶ RadioCentre/ Communications Chambers consumer research, May 2011

⁷ <http://www.ipso.gov.uk/ipreview-c4e-sub-radiocentre.pdf>

18. The Government has not made any comment on the funding arrangements, although Hargreaves expressed a preference for it to be independent, with the Government 'bringing together all relevant interests'⁸ and funding the costs of setting up the Exchange. RadioCentre welcomes further clarification and believes that a new and independent body would be best placed to undertake the operational management of the Exchange.
19. To encourage the maximum usage and buy-in from all stakeholders, the DCE model must also ensure that a full breadth and selection of copyrighted content is available. However, it is not clear whether Government has addressed these operational issues or the incentives for copyright holders to submit content to the database and how this could be encouraged without contravening the Berne Convention on copyright. We would welcome clarification on how this will work in practice for both consumers, users of content and rightsholders.

Format Shifting: Implications for the commercial radio sector and licensing bodies

20. We agree with the Hargreaves report that *'Government should firmly resist over-regulation of activities which do not prejudice the central objective of copyright, namely the provision of incentives to creators. Government should deliver copyright exceptions at national level to realise all the opportunities within the EU framework, including format shifting, parody, non-commercial research, and library archiving'*⁹. In addition, we were pleased that Government appeared to accept this recommendation in stating that *'Copying should be lawful where it is for private purposes, or does not damage the underlying aims of copyright'*¹⁰.
21. We welcome Government's commitment to creating new copyright exceptions as the appropriate legal response to this practice of private format shifting. The common practice of consumers transferring music from CD's to digital storage is an accepted and promoted practice, based on market developments and innovations, which have changed the way we purchase, listen and store audio content. We believe that similar principles apply to private copying which takes place within the commercial radio industry, and that this exception should be extended specifically to enable the storage and retention of sound recordings by commercial radio stations for broadcast use.
22. Commercial radio stations obtain the music used in their broadcasts directly from record labels, who benefit from the cost savings and convenience created by new technology by generally sending digital, rather than physical, copies of tracks to radio stations. These copies are provided on a free basis by record labels in recognition of the promotional benefit of radio airplay for both new and established songs and artists. The labels themselves invest significant sums in encouraging commercial radio stations to play their tracks through 'plugging' and other activities. This represents no loss of revenue to the rights holders, indeed most record companies now deliver music digitally so it can be incorporated directly into playout systems. These copies are provided on a free basis by record labels in recognition of the promotional benefit of radio airplay for both new and established songs and artists.

⁸ Hargreaves Review, 4.30

⁹ Hargreaves Review, p.51

¹⁰ Government's Response to Hargreaves, p.7

23. Despite this the collecting society PPL (on behalf of record labels) has sought to claim a payment from commercial radio stations for retaining electronic copies of these tracks in databases ready for seamless playout in their broadcasts. In addition, MCPS (Mechanical Copyright Protection Society), part of PRS for Music, collects an annual fee on behalf of music publishers for transferring a piece of music from one format to another for broadcast.
24. We believe that this represents an attempt by rightsholders to overlook technological and practical realities in order to extract unjustifiable new revenues from users. The key right involved in commercial radio's use of music is the right to broadcast, as reflected in the payments which commercial radio stations make to secure this right. Digital databases are crucial to transmission in this digital age, but storage has no independent economic significance for commercial radio stations because the storage itself generates no additional revenue.
25. We have written to the Rt Hon Dr Vincent Cable MP, Secretary of State for Business, Industry and Skills to propose that Government extends the ephemeral right to enable digital storage for broadcast usage of sound recordings acquired via download or CD copying and storage. Digital storage of music by radio stations is an ephemeral right, but is not formally defined as such by Section 68 the Copyright Act if content is retained for more than 28 days.
26. RadioCentre believes that this change would be consistent with the proposed exception for format shifting. It would also address the outstanding ambiguity and enable digital storage of this nature to be excepted from copyright due to the fact that the copy is temporary in nature; has no intrinsic economic value (other than improving efficiency of distribution and play out that also benefits the rights holders); and is now a standard part of preparing content for broadcast use.

Collecting Societies standards and regulation

27. At present copyright users have limited recourse to challenge the charging structure and enforcement behaviour of the societies collecting income on behalf of rights holders. The Copyright Tribunal exists as the only real legal process able to regulate the behaviour of licensing bodies, which are effectively monopoly providers of access to copyright work. Yet for the majority of small and medium sized business, the cost reverting to the Copyright Tribunal is ultimately prohibitive.
28. Therefore RadioCentre welcomes Government's commitment to *'draw up proposals for a backstop power that allows a statutory code to be put in place for a collecting society that evidence shows has failed to introduce or adhere to a voluntary code incorporating the minimum standards'*¹¹.
29. The development of these regulatory standards for collecting societies, rather than relying solely on codes of practice devised by the societies themselves, is a positive development. However, RadioCentre believes the best way forward in developing these standards will be to conduct a wider level of engagement and consultation across the industry than is currently being proposed, with both rights holders and copyright users being involved in the creation of regulatory standards rather than consulting with collection societies alone.

¹¹ Government's Response to Hargreaves, p. 15

30. Any initiative that aims to increase industry transparency, standards of governance and investigate accusations of unfair practice could only benefit from this broader range of perspectives, including that of copyright-users.

Cross border licensing

31. We were pleased that Government stated that it *'welcomes the European Commission's initiative in proposing a cross-border licensing framework and will work with UK interests and the Commission to develop proposals that are compatible with current effective licensing models in the diverse industries affected'*¹².
32. While we understand that these matters need to be addressed at a European level, the nature of the creative and digital industry means that it is a fast moving business environment. Therefore any changes must take place in a reasonable timeframe.
33. UK commercial radio is currently focused on national markets. However, the costs and time involved in securing cross-border rights reduce what incentive there might be in the future for international internet simulcasting of radio programming. Cross-border licensing could also introduce competition between collecting societies in areas such as overheads, efficiency and service delivery. Competition among collecting societies is one of the most effective levers to improve operational efficiency through market forces, and would be to the benefit of all parties – owners, users and to the consumers that access the music. To function effectively, this revised competitive framework would need to provide users and rightsholders with a choice of genuine 'one-stop-shops' which can guarantee all respective rights, regardless of label or affiliation.

Workplace listening

34. We remain opposed to the 'double-charging' which currently allows rights holders to charge fees for radio listening in private workplaces. The music licensing bodies PPL and PRS for Music already impose charge significant amounts to both BBC and commercial radio stations for the rights to broadcast musical works.
35. However, an additional charge is also made directly to businesses, so their staff can listen to the radio (or other music) at work. These fees are charged whether or not these workplaces are open to the public or the business in question derives a commercial benefit from having the radio on. The evidence suggests that the effect of these charges has meant that a disproportionate number of businesses are turning off their radios. This is particularly damaging to commercial radio as workplaces make an important contribution to overall commercial radio listening (around 15% of total listening hours).
36. Audience figures suggest that radio listening in the workplace has fallen by more 8% over a 4 year period. This is against an overall increase radio listening which has demonstrated 3.4% increase¹³. RadioCentre believes the inefficiencies inherent in 'double charging' should be addressed by

¹² Government's Response to Hargreaves, p.6

¹³ RAJAR Data, 2007-2011

introducing an explicit legal exemption from a public performance fees for radio listening in the workplace.

Conclusion

37. RadioCentre welcomes this inquiry and the helpful scrutiny that the Committee will be able to bring to this matter. We hope that it will be able to provide a set of balanced recommendations that keep in mind the helpful proposals outlined by the Hargreaves review, which have the potential to secure a more appropriate balance between rights-holder and copyright users. We would be happy to provide further evidence or clarification to the inquiry if that was required.

RadioCentre, September 2011

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