



**14th November 2014**

**PRS for Music "Territorial Licensing and Cross Border Use of Copyright Works"  
– Response to IPO Questionnaire**

The following paper is provided in response to the letter from the IPO requesting information on cross border licensing of copyright works. The purpose of the information request was to "help and support the Government as it seeks to develop its perspective on the European copyright landscape ahead of the forthcoming discussions on copyright reform in Europe."

This response covers the collective licensing of online rights in musical works by PRS for Music, which provides licensing services for both PRS and MCPS. PRS for Music is an operational company and a subsidiary of PRS. PRS and MCPS are separate collective management organisations with their own governance and mandates. PRS licenses and administers the rights of communication to the public and public performance in musical works and MCPS the reproduction rights in musical works and the communication to the public and reproduction rights in library sound recordings. Their members are composers, songwriters and music publishers. There is significant overlap in the membership of the two societies.

Our response covers three areas:

- (1) principles for policy affecting cross border services in the digital single market;
- (2) explanation of PRS for Music models for licensing;
- (3) answers to the IPO questions and an Annex of selected case studies.

We have sought to provide as comprehensive a response as possible within the time available, but would welcome a meeting with IPO to discuss the issues in more detail.

**1. Principles:**

- There is no evidence of a lack of cross-border music services in Europe or of the failure to develop cross-border licensing of musical works. PRS for Music, on behalf of composers, songwriters and music publishers it represents, has delivered licensing solutions on a cross-border basis for over 10 years. Licensing solutions are by their very nature inherently flexible and constantly evolve to meet changing market demands.

There are many non-copyright related issues that determine whether a business chooses to launch its service in one territory or across every country in Europe. Their individual business model and financing restraints will of course be a key consideration, as will the need to customise sites and services for local language and culture, the need to set up credit card and payment systems and tax issues. All these factors will influence where a service is made available by service providers.

- In the PRS for Music submission to the IPO consultation on Copyright in Europe in 2012 we set out how the existing European copyright framework has provided a predictable and stable environment for rightsholders, which has in turn

supported the emergence of multiple new broadcasting, online and consumer services, while importantly enabling the creative industries to invest in the development of cross border licensing solutions and rights management tools to support the digital single market. In short, the copyright framework is a facilitator of, not a barrier to, the digital single market.

- The Directive on Collective Management of Rights 2014/26/EU sets European standards for transparency, accountability and pan-European licensing by collective management organisations (“CMOs”) and will help CMOs, their members and users adjust to the future challenges of digital access to creative works and globalisation. Title III of that Directive specifically concerns the collective licensing of online rights in musical works and the standards for licensing and provisions to encourage aggregation of repertoire in hubs will further reinforce the efficiency of multi-territory music licensing.
- In 2013, PRS for Music reported on the success of cross border licensing in the UK Music Report “A Year of Innovation”<sup>1</sup>. Progress last year included building shared back office facilities, working on a multi-territorial copyright works database and the establishment of Hubs for aggregated licensing of online rights.
- In 2014, PRS for Music has built on these developments. Subject to competition clearance, which is filed with DG Competition, PRS for Music will operate a joint venture with the German CMO, GEMA, and Swedish CMO, STIM. The joint venture will provide an integrated front office and back office for multi-territory online licensing. The JV will provide accurate invoicing, processing, matching and distribution of monies to rightsholders using consolidated resources, and investment in a shared copyright database with multi-territory ownership information.
- Finally, PRS for Music took an active role in the Commission’s Licences for Europe stakeholder discussions in 2013; the scale and scope of online licensing of musical works and portability of content were discussed extensively in Working Group 1. The findings of these discussions showed that both the Commission and online services were satisfied with the access to cross-border licences for musical works.

## **2. Outline of licensing of online rights in musical works:**

National, territorially limited, licensing is the standard practice for public performance sales (PPS) and for some broadcasting and online services. Such licences tend to be for the entire global repertoire (all repertoires held under mandate by PRS of over 13 million works), sometimes known as “blanket licences”.

Multi-territory licensing is offered to online music and audio-visual services, where such services request it. In the case of multi-territory licensing rightsholders can choose the CMO they want to manage their online rights. As a result online multi-territory licences therefore tend to be repertoire-specific. Where PRS for Music offers national online licences these may also be blanket licences, including international repertoire and rights re-aggregated by publishers.

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<sup>1</sup> <http://www.ukmusic.org/assets/general/YEAROFINNOVATION-WEB.PDF>

Breakdown of the various PRS for Music Online Licences:

- Licensing music services and audio-visual services (recorded media, specially commissioned music for TV and film, performances of live events) under specified licensing schemes – Online Music Licence (OML), General Entertainment licence (GEOL) and negotiated licences.
- These licences are either national or multi-territorial, depending on the repertoire and rights controlled. They may include:
  - Direct licensing of PRS repertoire to businesses distributing or broadcasting music to consumers nationally or on a multi-territory basis;
  - Providing licensing services to MCPS to issue licences of its members' mechanical rights to services in the UK;
  - Licensing of international repertoire. Under bi-lateral agreements, PRS is mandated by CMOs around the world to license their rights in the UK. Likewise, PRS mandates CMOs in Europe to license PRS repertoire in their territory.
  - Providing pan-European licensing services via PRS for Music;
  - PRS mandates other European CMOs to license PRS rights under contract alongside the Anglo-American mechanical rights of music publishers, so that performing rights are licensed alongside mechanical rights.

3. Answer to specific IPO questions

**1. To what extent is territorial licensing currently used in your sector?  
Please provide examples.**

PRS for Music licenses 30 major pan-European music services on a multi-territory basis. The market is dynamic with new business models emerging each year and the licenses we offer adapt to enable their expansion across Europe e.g. Spotify, Deezer, itunes, Amazon, etc. Even so, some companies that have launched in more than one territory, such as NetFlix, may still seek a UK specific licence from PRS for Music where this suits their individual business requirements.

**2. Why is territorial licensing used in your sector, and what are its impacts?  
(For example, impacts could include: impacts on prices, the range of content available, the number of member states in which content is available, how and when content is made available in different member states, ability to develop and make available new content).**

As explained above PRS for Music offers a wide range of licensing solutions, including in some instance territorial licensing for certain music services.

**3. To what extent do prices for the same content vary between different member states in your sector? (Including for consumers and business-to-business transactions)**

We are aware of consumer pricing variations (£10 per month/€10 per month Spotify) but such decisions are made by the service providers. PRS for Music has no influence on end user pricing.

**4. What are the reasons for introducing price differentials for the same content between member states? Can you give specific examples of where price differentiation is used?**

As stated above, PRS for Music has no direct influence or control over the business model or the end prices set by the service. Our licensing schemes and negotiated licences take account of business models, such as whether the service offers a bundled rate, a unit price per download, a subscription fee or are free at point of consumption.

**5. If freedom to vary prices between member states were removed or limited, would this impact your pricing structure? If so, how? What would be the likely impact of this on consumers and businesses in the UK?**

If services were prevented from varying prices then this could indirectly affect the royalties payable to composers, songwriters and publishers. We are particularly conscious that audio-visual services may apply variable pricing to maximise take up of services in territories with very different levels of consumer demand or ability to pay.

**6. Are methods such as geo-blocking tools or specific licence/contract terms used to limit the Member States from which content can be bought (e.g. preventing a consumer based in the UK from buying or subscribing to content available in France)? If so, how are these methods used and what are the reasons for their usage? What proportion of content uses such controls?**

PRS for Music licences do not apply terms that restrict an online music service in that way; services have the freedom to operate in the manner which best suits their business model. One key reason is that, where the basis of charging is calculated per download, stream or customer, the portability and end user access terms does not change the terms or the value of the music licence to composers, songwriters and music publishers.

We note that audio-visual services can use territorial controls to maximise the value of their services. Composers, songwriters and publishers, whose works are licensed to these services, would therefore be affected if copyright rules were altered to prevent those services from using the territorial release strategies to optimise the value of their licence.

**7. In your sector, to what extent can a consumer of content lawfully purchased or subscribed-to in one Member State continue to use it when that consumer travels to another Member State? (For example, can someone lawfully subscribing to a video service in the UK continue to use that service when on holiday in Spain?) If this is not possible, how are these barriers applied and what are the reasons for their usage? What proportion of content uses such barriers?**

The portability of music services is a policy set by the online music service, and not influenced by PRS for Music. Many of the services we license offer end-users the freedom to access services when they are travelling.

**8. What would be the impact on your sector of removing the ability to use geo-blocking, contracts, or other tools to control the use of content within the EU?**

Freedom to choose how to license is an important principle and any constraint on that freedom, territorial or otherwise, could impact the value of the licence. Any such loss in

value would impact creators and their businesses, diminishing their ability to invest in new works.

As is seen from the case studies, music rights licensors do not impose restrictions, such as geo-blocking, through their licence terms.

### Annex – selected case studies

<b>Spotify:</b>	
Service type	Music streaming service
Business model	“Freemium” – ad-funded/free-to-user and paid-for subscriptions
Price point	£9.99/€9.99 per subscriber month in developed European markets; lower price points in European markets with challenging market economics
Service live in EU territories	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, UK,
Territories covered by PRS/MCPS’s pan-European licence agreement	Albania, Austria, Belgium, Bosnia, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Montenegro, The Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Slovakia, Spain, Sweden, UK
Type of PRS/MCPS licence	Pan European Licence; repertoire-specific
Licensed by PRS/MCPS since	1 Oct 2008; on a pan-European, repertoire-specific basis
Service growth	Healthy revenue growth driven by subscription revenues
Portability	Spotify subscribers can continue to use the service for up to 14 days outside of their ‘home’ territory e.g. whilst travelling [note these are consumer end user terms set by Spotify; they are not licence terms set by PRS for Music].

Comment:

Spotify is a commercial service that chooses its own customer terms. Likewise, Apple itunes and others are licensed by PRS for Music to make music available across the territory and we apply no territorial restrictions.

### BBC iPlayer (BBC Public Service)

Service type	Free to consumer 'catch up' (30 days post broadcast) streaming of BBC radio and TV shows
Business model	Free to consumer
Price point	n/a
Service live in EU territories	N/a; UK only
Territories covered by PRS/MCPS's licence agreement	UK only
Type of PRS/MCPS licence	Blanket licence of global repertoire; no exclusions
Licensed by PRS/MCPS since	Launch in 2004 (?)
Service growth	Significant growth <a href="http://www.bbc.co.uk/mediacentre/latestnews/2014/oplayer-performance-pack-aug14">http://www.bbc.co.uk/mediacentre/latestnews/2014/oplayer-performance-pack-aug14</a>
Portability	The service is geo-blocked and not accessible outside the UK. UK residents can download and cache programmes for 30 days for viewing from their PC.

#### Comment:

BBC is publicly funded by UK licence payers.

### NETFLIX

Service type	Film/TV Subscription Streaming		
Business model	Paid for subscriptions		
Price point		Number of devices Subscribers can operate simultaneously	<b>Subscription Price</b>
	Old price plan	Two devices	£5.99
	New price plan 1	One device	£5.99
	New price plan 2	Two devices	£6.99
	New price plan 3	Four screens	£8.99
Service live in European territories	UK and Ireland, Denmark, Finland, Norway, and Sweden in 2012, Netherlands in 2013, Germany, France, Austria, Switzerland, Belgium, and Luxembourg in 2014		
Territories covered by PRS/MCPS's licence agreement	UK and Bahamas only		
Type of PRS/MCPS licence	Blanket licence of global repertoire; no exclusions		
Licensed by PRS/MCPS since	11 January 2012 (launch date)		
Service growth	Significant growth		

Portability

Netflix state that UK users will have access to the local service when they travel; they will have access to local and that content will vary from territory to territory.

Comment:

A US service, launching country by country, Netflix is licensed for music rights with a blanket licence (global repertoire) for single territories.