

PRS for Music

Popular Music Concerts Tariff 'LP'

Consultation



PRS
for MUSIC

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1. Introduction

1.1. *PRS for Music*

PRS for Music is running a consultation on the terms of Tariff LP (LP stands for 'Light and Popular') which is used to license the use of copyright music, controlled by *PRS for Music*, at live popular music events such as concerts and festivals. Tariff LP currently charges 3% of gross receipts per event.

PRS for Music is a collective management organisation, owned by and accountable to our songwriter, composer and publisher members. We license organisations to play, perform or make available copyright music, distributing the royalties from these licences to our members fairly and efficiently.

We represent the rights of over 100,000 members in the UK, promoting and protecting their copyright. We also manage the rights of millions of songwriters, composers and music publishers who are members of affiliated collecting societies overseas.

We are a not for profit organisation. After deducting the costs of running our organisation, all the income we receive from licence fees is distributed back to our members.

For businesses and organisations, *PRS for Music* plays a valuable role. Our members have entrusted us to make their copyrighted songs available to be used in exchange for appropriate compensation and we provide the required licences for this in a simple and cost effective way. By doing this we give organisations, businesses and individuals the right legally to use millions of copyrighted songs and musical compositions registered around the world, without the need to negotiate individual licensing terms for these works with the songwriters or publishers.

The *PRS for Music* Code of Conduct¹ outlines our commitments to existing and prospective licensees, including to be transparent in our dealings with licensees. Where we are considering or proposing to make significant changes to a tariff or to introduce a new tariff, this includes undertaking fair, reasonable and proportionate consultations and negotiations.

We aim to set reasonable terms and to apply and administer our schemes fairly and consistently. The Copyright Tribunal has jurisdiction over all existing and proposed schemes operated by *PRS for Music*.

1.2. The consultation

PRS for Music is running a consultation on the terms of Tariff LP. Around 30,000 events with several hundred thousand copyrighted songs performed are licensed under Tariff LP each year, from stadium tours to concerts in small venues and from huge rock festivals to village folk festivals. The full tariff is included at Appendix 2.

Tariff LP is a Tribunal tariff that was set in 1988 by order of the Performing Right Tribunal, which later became the Copyright Tribunal. Following a careful investigation into and review of Tariff LP and of the changes in the live music sector since 1988, the purpose of this consultation is to outline and seek views on *PRS for Music's* provisional findings to ensure that *PRS for Music* operates an appropriate tariff which is fit for the purpose of licensing live popular music events now and in the future.

The consultation will apply to all music usage licensed under *PRS for Music's* Tariff LP. Concerts and festivals are both in the scope of the consultation.

A separate tariff, Classical Music Concerts & Recitals Tariff 'LC', that applies to live classical music concerts, is not in the scope of this consultation.

¹Available at <http://www.prsformusic.com/codeofconduct/Pages/default.aspx>

1.3. 2010 Tariff LP and DP consultation

In 2010 *PRS for Music* ran a consultation on the terms of Tariffs LP and DP (the *PRS for Music* tariff applicable to dance parties). That consultation proved useful in gathering feedback from a wide section of the industry (with responses received predominantly from music users rather than music creators) on the various issues affecting the live music market. There was also wide consensus among the respondents that the live industry had changed significantly since 1988.

The decision was taken following the consultation not to change Tariff LP in 2011, but instead to use the consultation as the starting point for an ongoing review of the live music industry, including gathering further evidence to inform a future review of the Tariff.

PRS for Music has now undertaken a significant amount of research and analysis in order better to understand the developments in the live music industry since Tariff LP was last set and the current state of the market.

1.4. The consultation process

PRS for Music is seeking responses to the consultation by **8 June 2015***. All responses received on or before this date will be reviewed. Details of how to respond are included in paragraph 4.1 of this document.

We will be writing to all current Tariff LP licensees and our members who receive royalties from Tariff LP licensing, as well as relevant representative bodies and other stakeholders, with details of the consultation and how to be involved. Information about the consultation will also be posted on our website and we invite responses from all interested parties.

We will be seeking to set up formal discussions with respondents following the receipt and review of the consultation responses. Where appropriate, these discussions may be carried out with a representative body or bodies.

Once the responses to the consultation have been reviewed and appropriate meetings held, we will publish a summary of these responses along with our proposals as to the terms of a new Tariff LP.

* As of 1 June, the deadline for responding has been extended to 30 September 2015



2. The need for a review

2.1. Objectives

A Fair Tariff – a core objective of *PRS for Music* is that its members and those of its affiliated societies receive proper compensation for their work. As outlined in our Code of Conduct, *PRS for Music* also seeks to ensure that its tariffs are simple, modernised, easy to apply and reasonable from the users' perspective.

Changes in the live popular music market since Tariff LP was last set have led us to conclude that the current Tariff LP no longer meets this objective. Furthermore, our research and analysis has led us to conclude that one of the key premises on which the 1988 Tribunal decision was based was, or at any rate now is, unsound.

A Fit for Purpose Tariff – *PRS for Music's* tariffs need to reflect the market in which they operate. We consider that, in the following respects, the current Tariff LP does not satisfy this criterion:

1. The Tariff fails adequately to reflect the changes in the revenue structure of live events since 1988, including the wide and varied revenue streams from which many live events now benefit;
2. The Tariff fails adequately to value the contribution that the musical composition makes towards the success of live concerts and festivals;
3. The licensee declarations made under the Tariff fail properly to account for the actual final price (including e.g. booking fees) that consumers pay for access to many live concerts, thereby leading to ongoing underpayment under the Tariff;
4. The Tariff fails to account for free or discounted tickets and, in this regard, the revenue base as defined in the Tariff currently does not reflect the value of this type of admission.

In the subsequent sections of this consultation document, *PRS for Music* sets out its provisional findings as to why the current Tariff LP fails adequately to reflect points 1 to 4 above. We invite respondents to offer their views on these points, together with relevant evidence.

2.2. Tariff LP background and the 1988 Copyright Tribunal decision

There were, and still are, two essential elements to Tariff LP, namely (i) the revenue base, and (ii) the tariff percentage rate.

The 1988 Tribunal decision did not focus on the revenue base, doubtless because at that time the only material revenue stream was the ticket price. This was uncontroversial and therefore not considered by the Tribunal in 1988. The position is however very different today.

As to the appropriate tariff percentage rate, the 1988 Tribunal regarded the musical composition's contribution to a live concert as relatively minimal, with the production and artist performance being "*significantly more important*" than the underlying *PRS for Music* repertoire:

"In a pop concert, while the music is important, the artists and their performance are the main attraction (...) [With] live concerts and variety there is a sense of occasion and the performance is the dominant feature"

"[T]he main attraction in all such shows is the stars who perform and the production, rather than the actual music used"

The Tribunal's central conclusion that the production and performance elements of a live event were "*significantly more important*" than the actual music being performed appears to have been based upon the subjective opinions of individual witnesses, rather than upon any objective independent evidence.

In order to assess objectively the contribution of musical compositions to live events today, we have undertaken thorough research and analysis which has not featured previously in any Tribunal reference, consultation or other review in respect of Tariff LP. In contrast to the "opinion" material considered by the Tribunal in 1988, this new analysis is based upon empirical data drawn from a statistically robust sample of actual concert and festival goers, and shows that the central conclusion of the 1988 Tribunal is untenable, at any rate today.

Further, we have investigated other aspects of the live music industry and concluded that there have been other developments in the market that were not considered (or relevant) at the time of the 1988 decision. These are discussed below.

2.3. Changes in the UK live market since the previous tariff review

The economics of the live industry, including its revenue stream structure, have changed significantly since 1988. Part of the change in the live industry's revenue structure has been driven by the internet, having shaped for example the way event tickets are sold and bought.

In addition, the overall higher sophistication and consolidation of the live industry has led to industry participants seeking to employ strategies to generate revenue across the live value chain, instead of focusing narrowly on the primary box office. Increasingly the live industry has been able to adopt unbundled business models with multiple (ancillary) revenue streams supplementing the primary box office revenue which, as stated above, was the only material revenue stream in 1988. Despite contributing to the value of these additional streams through their songs, songwriters are not compensated for them and have seen their share of overall live event revenues decrease.

In particular, ancillary revenue streams that have arisen or whose relative importance has increased since 1988 include:

1. Secondary ticketing
2. Booking fees charged to consumers
3. Sponsorship and advertising
4. Other ancillary revenues (such as merchandising sales and catering at live events, parking concessions and camping/accommodation)

Secondary Ticketing - The increasingly organised and valuable online secondary ticket market of today exists across a number of live entertainment types, including sports and music. This market is estimated to be worth £1bn² in the UK, of which live popular music events represent a significant share. Professional "powersellers" have been shown to account for a significant part of the secondary market activity³. Furthermore, live music event organisers seem to derive considerable value from the secondary market through "direct allocations"⁴ whereby tickets, often with premium features, bypass the general sale and are allocated to secondary ticketing agents who often sell them at high mark-ups, in exchange for a share of the proceeds to the event organisers.⁵ We consider that the full price paid by consumers on these allocated tickets falls within the scope of the current Tariff LP.

²APPG on Ticket Abuse: *Secondary Market Investigation – Putting Fans First (2014)*

³Channel 4: *Dispatches – The Great Ticket Scandal (2012)*

⁴APPG on Ticket Abuse: *Secondary Market Investigation – Putting Fans First (2014)*

⁵Channel 4: *Dispatches – The Great Ticket Scandal (2012)*

Booking Fees - From the consumer's perspective, a further important development has been the increased significance of fees associated with ticket buying. In the past such fees may have been set to offset the actual costs incurred by the promoter or ticket agent in completing the transaction, but today this principle does not seem to drive the setting of such fees. Fees often amount to double-digit percentages of the ticket value and are very difficult to avoid by consumers, having become a part of the ticket price in practice.⁶ Moreover, some live event organisers appear to require part of the booking fee to be paid over to them.⁷ We consider that such fees are also covered by the definition of the revenue base in the current Tariff LP.

Sponsorship and Advertising - More sophisticated sponsorship and advertising models that would have been unviable in 1988 (not least due to the absence then of marketing and sponsorship intelligence such as "fan data") have grown substantially and are generating significant revenue to the industry.

Other - The research that we have undertaken to review the live industry changes confirms also the importance of other ancillary revenue streams generated at or off the back of live music concerts and festivals. Examples of these include live event catering revenue, parking concessions and merchandise sales.

Before confirming how all these factors should be considered in Tariff LP going forward, we welcome individual insights from our customers and members on their positions as part of this consultation. These should be provided in the first instance using the consultation questionnaire as detailed on the website.

2.4. Size and event-specific considerations

We are aware that differences may exist between the operating models of various Tariff LP events, for example depending on the scale of the event and the prominence of music in the offering. Such factors were also raised in the 2010 consultation. It is our aim now to capture these and other relevant considerations affecting our customers, in order to inform us of how best to move forward with Tariff LP and ensure that it reflects the realities of today's live market.

2.5. Failures of accounting

We are concerned that, despite what we have stated above about the obligations on licensees to account in respect of secondary income and booking fees, licensees under Tariff LP appear not to have been accounting to us on the basis of their full revenues. We reserve our position as to the retroactive recovery of the associated royalties owed by any licensees from these items.⁸

⁶*Not Quite the Ticket, survey by Which? (2011)*

⁷See for example Ticket Agents in the UK (OFT762) and Office of Fair Trading (2005)

⁸Where appropriate, we will also audit our licensees



3. Value of *PRS* for Music repertoire

3.1. Choice modelling

The following two sections (3.1.1 to 3.1.2) outline our approach to assessing objectively the relative contribution of songwriters to live events, using choice modelling. Choice modelling is an econometric survey method that simulates consumers' purchasing decisions and allows us to estimate the value that consumers place on the different attributes of a product or service. The choice modelling has been carried out by FTI Consulting, an independent advisory firm, to produce a fact-based and objective analysis.

3.1.1. Overview

As mentioned above, in 1988 the Performing Right Tribunal stated that the musical works performed at live popular music events were significantly less important than the performances themselves.

There is no robust market data about the prices of concerts with and without these two elements and so we have used choice modelling to infer their relative values.

Choice modelling has been widely used for aiding decision making in the design of optimal pricing policies, the valuation of intellectual property rights, estimating demand for new services and defining relevant markets.

The results of the choice modelling carried out (see below) have allowed us to establish consumers' preferences when attending popular music concerts and festivals and, in particular, to assess the relative contribution of the compositions and their performances to the value of a concert and a festival. The commissioned survey has also allowed us to estimate their relative contribution as compared to other, non-music entertainment available at festivals.

In August 2014, we commissioned an online survey of consumers who had attended popular music concerts and/or popular music festivals in the UK in the previous year. 811 surveys were completed by a nationally representative cross-section of the UK population. 780 respondents had attended at least one concert in the previous 12 months and 402 respondents had attended at least one festival in the same period. The survey consisted of two elements:

1. An initial questionnaire on the respondents' socio-demographic characteristics and their recent experience when attending concerts and festivals; and
2. A series of choice experiments where respondents had to choose their most preferred concert or festival from a choice of events with varying characteristics.

The survey included three choice exercises incorporating multiple choices to be made by the respondents. We explain the content of each exercise in Appendix 1 to this consultation document.

In each choice exercise, respondents were presented with various concert or festival alternatives, each one defined by a different combination of attributes (e.g. a festival with the music they like, ticket price and other entertainment activities, such as comedy, theatre, cabaret, and poetry). The respondents were then asked to choose their preferred event alternative. Their responses enabled us to understand consumers' willingness to pay ("WTP") in respect of those specific attributes. Choice modelling techniques also allowed an estimation to be made of the consumer demand for a festival with the music they like and other entertainment types.

The responses to the choice modelling exercise enable a calculation to be made of the WTP for the different attributes that characterise the product. The incremental WTP for an attribute is the difference between the WTP for the product with and without that particular attribute.

By analysing the responses to the choice exercises, FTI have calculated the relative value of the composition (measured through the incremental value of the songs) and the performance (measured through the incremental value of the artists' performances) in concerts and festivals. FTI have also calculated the incremental value of music relative to the incremental value of other entertainment types in festivals.

3.1.2. Findings

The analysis of the survey responses shows that:

(a) The value of a musical composition is broadly commensurate to the value of the performance at live events

The analysis demonstrates that the musical works being performed at concerts and festivals are of similar importance to attendees as the performances of those musical works themselves⁹.

1. In the case of a concert, the incremental value of the composition is, on average, 126% of the incremental value of the performance; and
2. In the case of a festival, the incremental value of the composition is, on average, 92% of the incremental value of the performance.

The implication of this result is highly significant: In 1988 the Performing Right Tribunal decision was based upon the premise that the artist performance was "significantly more important" than the underlying songs. This premise, that underpins the current Tariff LP, certainly does not hold good today, and this calls for the Tariff to be revisited.

(b) The value of music to a festival is highly significant and far outweighs other factors in influencing whether an individual should attend

The survey and analysis considered the incremental value of music (including both the value of compositions and the performance) at festivals as compared to the incremental value of other entertainment. This demonstrated that the incremental value of music to festival attendees far outweighs other elements of the festivals attended by them. Respondents were also asked to rank the factors which they considered important when deciding whether to attend a UK festival. The top three responses were:

1. The music (51% indicated this as the most important factor);
2. Competitive pricing of tickets (15% indicated this as the most important factor); and
3. The presence of like-minded people and friends at the festival (10% indicated this as the most important factor).

The survey also asked about the most important factors in respondents' decisions to attend the last festival they attended. The top three responses were:

1. The music (54% indicated this as the most important factor);
2. "Social & Relaxation" reasons (e.g. spend time with friends, escape from normal life, to reminisce) (23% indicated this as the most important factor); and
3. To experience something new (8% indicated this as the most important factor).

⁹The conclusions from choice modelling are also supported by our internal analysis of songs featured in set-lists at concerts licensed by *PRS for Music*. Our analysis shows that, as expected, on average artists typically perform the more popular songs from their catalogues, suggesting that the importance of songs is indeed recognised also by the artists. This behaviour prevails among artists at events of all sizes.

(c) Other festival entertainment activities are deemed insignificant when compared to the importance of music

Only 4% of respondents said that the most important factor in their decision was the availability of other entertainment activities within the festival, such as comedy, theatre, cabaret, etc.

4. Next steps

4.1. How to respond

Respondents should complete the questionnaire response form (the “Response Form”) as detailed on the consultation website, providing answers and any evidence in support of these answers.

We will consider all responses that we receive but would ask that you follow the prescribed format in the Response Form, to assist us in reviewing comments efficiently and accurately.

If you are licensed under Tariff LP in multiple capacities (e.g. as a concert promoter but also as a venue owner or festival promoter), please submit separate Response Forms to reflect your position in each of these capacities. If you are a *PRS for Music* member, please answer only those questions in the Response Form that are relevant to you.

To submit your comments to the consultation, please complete the Response Form (including any supporting evidence) either via the consultation website, or email answers to us at: LP.consultation@prsformusic.com, by **8 June 2015***.

The Response Form and the consultation details outlined in this document are available for download at www.prsformusic.com/customerconsultation.

If you wish us to keep any or all of your response confidential, or if you wish to provide confidential data in support of your response, please indicate this clearly in the Response Form. We will assume that any information not marked as confidential can be made available to third parties or referred to in documents made available to the public by us. Please also indicate whether you object to us naming you in any published material which summarises or includes quotes from responses.

If you have any questions in relation to the consultation itself, responding to the consultation or any other relevant matter, please contact us at LP.consultation@prsformusic.com.

Following the deadline for submission of consultation responses, we will carry out a review of all responses received and publish a summary of these on our website.

4.2. Steps following the submission of responses

PRS for Music will be seeking meetings with respondents following receipt of the consultation responses. To ensure that these discussions are carried out as efficiently as possible, licensees should try to work with their representative bodies wherever possible. Please indicate in your Response Form whether you are represented by such an organisation.

* As of 1 June, the deadline for responding has been extended to 30 September 2015

5. Appendix

Appendix 1: Choice modelling technical details

Appendix 2: Tariff LP





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