

NEWSTATESMAN

COPYRIGHT REFORM IN THE DIGITAL AGE



A round table discussion on music industry rights

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This round table debate was organised by the Smith Institute. Following on from the debate, a pan-music industry group is developing a strategy to promote closer partnerships between the music industry and digital technology industries in order fully to realise and promote the value of music in digital businesses and with a view to providing more music in different ways to benefit consumers. As part of these efforts, the following points have been defined and are under discussion:

- 1** The creative industries contribute nearly 10 per cent of the UK's national GDP and are growing at double the rate of the rest of the economy. The UK music industry alone is worth £6bn and employs around 100,000 people.
- 2** Digital technology has irreversibly altered how the music industry operates and will continue to do so.
- 3** Consumers are willing to pay for music and have increasingly migrated to legal services to enjoy their music. In so doing, they have acknowledged the economic and moral rights of creators to be remunerated for their work.
- 4** As technology develops further, consumers will continue to demonstrate their desire to access and interact with music in new ways.
- 5** The music industry needs and wishes to facilitate this and recognises it has much to gain by working more closely with digital intermediaries to provide a greater wealth and variety of legitimately licensed music services, and a vastly superior supply to consumers than that provided by the illegitimate services.
- 6** Digital intermediaries also have a great deal to gain by channelling and promoting licensed music as an attractive alternative to the unlicensed networks, which eat bandwidth and expose subscribers to viruses and spyware.
- 7** A closer partnership between the music industry and digital technology sectors will ultimately benefit all players in the value chain, right through to the end consumer.
- 8** Partnership must be founded on a better understanding between the music industry and digital intermediaries of each other's business needs and interests.
- 9** As bandwidth increases, other creative industries beyond music will have to adjust to the challenges that technology has posed the music industry. A closer partnership between music and technology could therefore be a blueprint for other creative industries.

Bridging a gap between music and technology

Wilf Stevenson (chair) Good morning, everyone, and welcome to this round table discussion on copyright in the digital age. You all have received the Association of Independent Music (AIM) paper that opens up this debate and I am looking forward to the discussion. This is a terrific group, representative of almost all interests in the music industry and I am sure what you are going to say will have a great impact on the government's thinking on copyright.

Alison Wenham We started on this journey by posing ourselves a really simple question: "Is copyright fit for purpose in the digital age?" We had no particular agenda or objectives. We just felt that the debate needed to be had among ourselves. Along the way, we have found a willing reception from many other industry constituencies and I am particularly grateful to the Musicians Union and to British Music Rights (BMR), which have joined with us to make the necessary arrangements for today's round table.

During the past few months, we have kept an extremely open mind as we have been consulting and debating this question. We now want to hear your views about whether copyright works for us as composers, business people, writers, publishers and others in the industry.

In our paper, we suggest that the digital age has distanced the music industry from control over the distribution of copyrights to consumers. We are not entirely sure that this is a bad thing but, to explain more about it, I am going to hand over to Emma Pike, who is going to give a little more background about the suggestion for a value recognition right (VRR).

Emma Pike I would like to thank AIM for kicking off this incredibly important debate. I think it is vital that we do discuss openly the question of whether copyright is fit for purpose in the digital age. It is also

very timely because the Gower Review is due to report in the autumn. We have an opportunity to make copyright better and we need to think about how we might do that.

First, why do we think we need to have this debate at all? The AIM discussion paper starts with the premise that having digital media really does change everything. It distances the music industry from control over distribution and it passes that control to other players that are internet service providers (ISPs), mobile companies and, possibly, also the makers of digital storage devices.

The digital world makes it very difficult for us to enforce our rights. The ability to prove copyright infringement is only going to get harder in the digital world because peer-to-peer (p2p) services are increasingly becoming private and encrypted. It is very difficult to see what people are actually doing. Added to that are the complications of wireless fidelity (Wi-Fi) broadband access, where it is very difficult to determine who is actually using a Wi-Fi connection.

I think we need to try, at least for today, to flip our thinking over, so rather than thinking: "These are our rights, let's try to find ways of enforcing them," why do we not try thinking: "This is how consumers want to get and share music. How can we adapt the copyright framework so that we can license that behaviour, thereby alleviating the aggravation that consumers are increasingly feeling towards copyright and, at the same time, making sure that we actually get paid when our music is shared?"

In the discussions that we have had so far on this subject, the key idea that has emerged is the VRR. This is a very new idea. It was born only about two weeks ago at a meeting that several of you attended. At that meeting, we brought together lawyers, business people and technology experts, and the idea of the VRR emerged. It is a new idea, more of a vision of where we want to be, rather than a fully worked-

through proposal. We need to develop it further and we need your input. I will try to encapsulate for you what we think the VRR is.

The VRR would enable the music industry to create a new commercial relationship with any company that derives value from either the sharing or the storage of music. While we are currently thinking purely in terms of music, there is no reason why the VRR could not be used by other copyright-based industries as well. By obtaining such a right, the music industry would have the means that it currently lacks to enter into licensing negotiations with intermediaries, such as internet service providers and mobile phone companies, with a view to receiving royalty income to reflect the traffic of music files over networks.

Just to make that distinction very clear, we are not talking about ringtones and downloads here. What we are talking about, for example, is how we can license the sharing of music over Bluetooth. By the same token, the VRR would also enable rights holders to enter into licensing negotiations with companies selling digital music devices that are capable of storing thousands of tracks. Of these, currently only a tiny fraction have been legitimately purchased. I think it is very important at this stage to stress that the VRR is not a digital levy system.

It does not involve the introduction of exceptions to our existing exclusive rights. The VRR would be the foundation of a new licensing system, designed to usher in a new commercial partnership between the music industry and the companies that have the means to help us to license the distribution and storage of music. It is also important to note that the VRR would be additional to, and not substitutional of, the music industry's existing rights.

Finally, although we are calling this a right, we suspect that, in practice, the VRR is really going to be a bundle of changes to existing legislation and that it

will include things that have already begun to be discussed in various forums, such as the widening of provisions on secondary liability for copyright infringement.

Adam Singer What we are clearly being told is that the value of recording in any form is heading for zero. This is a really difficult concept to get your mind around because the whole of our industry is based on making recordings, with these recordings having a specific value.

Copyright cannot preserve, essentially, a blown business model. What we are about is how to buy ourselves time to come up with alternative business models so that we can maintain the creative constituency. We need the time to do this while the old business models start to fade.

Essentially, the economics of recording are based on a lack of interoperability. The digital world is about total operability. Therefore, there is ubiquity and there is no scarcity.

Part of our problem is that, unless we can create new areas of scarcity, we have no business model and there is no scarcity in recording. Digital rights management (DRM) is clearly not going to work because, in this current age, any kind of DRM can be circumvented by someone publishing the knowledge of how to circumvent it and the internet is most certainly a device that instantly publishes such knowledge.

The basic principle of copyright is that there should always be some form of recognition. The nature of the current technology is, essentially, driving us to a position where recordings have zero value.

The conversation has to follow two lines. The first question is: "How do we use copyright now to buy ourselves some time?" The second is: "How do we use copyright in a world where recordings no longer have any value?"

Round table participants



David Arnold
Composer and
board member,
British Music Rights



Nigel Beaham-Powell
Writer and deputy
chairman,
PRS



Catherine Bell
Director of rights,
Chrysalis



David Ferguson
Chairman,
British Academy Of
Composers and
Songwriters



Andy Heath
Managing director,
4AD Music, and
board member,
British Music Rights



Peter Leatham
Director, legal and
business affairs,
and rights
negotiations,
PPL

John Smith For a long time we have agonised over where performers sit on this issue and how they can be remunerated. As Alison said, the whole thing about this issue is how to monetise it. What has happened with performers, it seems, is that they are treating their recordings as if they now have little value and they are using them to promote their live performances.

We all know about the resurgence in live music. So we must find ways of getting some of the money back into the industry.

As Adam rightly said, we need a breathing space to decide what to do next.

That is why this new VRR is quite exciting. We have supported the concept of levies on behalf of performers and sometimes we have been a lone voice in that. We have talked to our colleagues in Europe about it but I think the concept of a new right, which is not a levy, is exciting. As a result, we have to develop the right and enthuse our lords and masters, the politicians, as well as Europe, to bring new legislation in. However, it is difficult.

Martin Mills To me the fundamental issue is that copyright is not actually a right to copy but it is a right to prevent others from copying. I think that is where the whole pack of cards is falling down.

I think the beauty of what we are talking about here is enabling the private movement of music — copying and sharing — so that we can commercially license those who profit from that rather than trying to sue individual users, which is something I have never supported.

One thing that is important to me, to pick up on something that Emma said, is that I do not think that any of this should legalise p2p.

I think that this should create remuneration streams for private copying and sharing. To me, that is the next step.

Horace Trubridge I think it is important that we try to understand why some sectors of our industry still believe that DRM is the way forward, despite the fact that DRM does not seem to be at all effective.

Andy Heath DRM is an essential component of this marketplace, otherwise the revenues are just not going to flow.

There are two issues. One is that the VRR is a very, very interesting proposal. However, I have been critical of the current legislation for shooting from the hip and presenting something before it has been thought through.

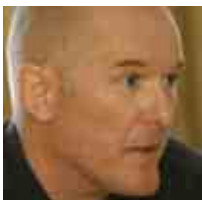
I would urge all of us, notwithstanding how attractive and beguiling this whole idea is — and it is attractive and beguiling — to take our time and think it through. Let us think how it might operate and how revenues might be distributed before we present this as a solution.

We must not allow others to take cheap shots at it and shoot it down before it has a chance to breathe. We need to present this as a potential solution and think it through properly.

I think we should concentrate on the fact that, by and large, in the music marketplace, there is a willing provider, called a creator, and there is a willing consumer: the audience.

Generally speaking they recognise each other's position. Generally speaking, the audience is not particularly unhappy about the concept of remunerating the creator. It is the intermediaries within that marketplace who, offline, have respected each other's position, the integrity of each other's position and the integrity of each other's role in the process.

I think that the huge gap we have in the picture at the moment is that there are major players, inextricably involved in this value chain, who simply will not play the game for all sorts of reasons. They do



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Managing director,
MusicAlly



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Chairman,
BMG Music
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Doug D'Arcy
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Songlines, and
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Independent Music



Steve McCauley
President,
eMusic Europe



Robin Millar
Music Producers
Guild, Arts Media
plc



Martin Mills
Chairman,
Beggars Group

not play the game because, at the moment, they do not have to play the game, so they elect not to.

I was in a group last year that drew up an incredibly simple, frankly very anodyne, declaration of the respect for everybody else's position in the value chain. This included mobile networks, ISPs and the interests of pretty much everyone who is sitting around this table.

We said: "Fine, we can all sign up to this." At the next meeting, after everyone had gone back to headquarters and discussed it with their colleagues, they came back and said: "Well, actually, we just cannot sign up to this." Until real respect of everybody's critical and essential position in this value chain is achieved, we are going to have trouble. At the end of the day, I think we will have to shame them into it.

If the VRR helps to do that, then it will have performed a really important function, but it is important that we think it through properly before we present it.

Fred Bolza If you deconstruct this concept of a VRR, the bit that is articulated very clearly is the 'right'. The value recognition part is a lot less clear. Where is the value recognition for an ISP?

I think a way to push the debate forward is for us to think in a broader sense what 'value recognition' means and what the value is to the people who are using and exploiting the music. As we say, either end of the value chain is clear. It is what is in the middle that is murky.

The value chain has been exploded. There is content that flows through a number of pipes and over a number of platforms to a number of different people.

I am not sure that a legal framework is the only

solution to this. Shaming people into doing things may be part of the answer but I think it is also, maybe, convincing them that this is a compelling and worthwhile part of their productive process and, therefore, for their revenue generation stream.

Dave Rowntree The protection offered by the digital watermark is really paper-thin. The reason you cannot simply download some software to do it at the moment is because watermarking does not currently restrict anyone's right to do anything with files. So there is really no need for teenage hackers in their bedrooms to write this kind of software.

However, the technology exists and the question of how to crack the technology is well understood.

Ellis Rich I worry that we are falling into the trap of viewing music as simply a supply.

I take on board Andy Heath's concerns about getting the detail right. I think there is a real need for something like the VRR, even if it just changes the thinking of government, which does not really understand the finer points of copyright issues, and the huge multinationals, which do not want to.

The point is that if we allow music to become a 'supply', then we are doomed to the total devaluation of music.

Paul Sanders We are driven by technology. We progress through technology. Technology can provide more people with access to more music than they have ever had before.

The fantastic archive of music built up over the past 50 years can, at last, be available to everyone. Why, at this point, are we wondering how we can stop a particular individual accessing a recording at a particular time?

Round table participants continued



Emma Pike
Chief executive,
British Music Rights



Peter Quicke
Label manager,
Ninja Tune and
board member,
Association Of
Independent Music



Ellis Rich
Chairman,
PRS and CEO,
Independent Music
Group



Adam Singer
Group chief
executive,
MCPS-PRS
Alliance



John Smith
General secretary,
Musicians Union



David Stopps
Managing director,
FML Music

Other participants were: **Fred Bolza** Broadcast online development director, MCPS-PRS Alliance; **Dennis Collopy** Managing director, Menace; **Toby Lewis** Editorial director, MusicAlly; **Nigel McCune** Head of media, Musicians Union; **Wilf Stevenson (chair)** Director, Smith Institute; **Ho**

Can we not work together to create a fantastic new cultural experience and enhance the technology to drive us forward?

Nigel Beaham-Powell Artistes have not been particularly enamoured by the old commercial models. I think we must have discussions about new forms of commercial control. One of the issues that I see is a democratisation of use out there. MySpace is a very simple example of that but there are many more. It is about individuals doing things that may not be financially related to another consumer.

There may be money in it, yes, but if there is going to be money perhaps they could receive it directly. If there is going to be a VRR, there will also be all this local democratic activity at the bottom, with people who may not be participating because they are not members of a collecting society or an organisation by which they can collect this particular chain of money. It may bring them into the pot but it may also push them out of it.

David Ferguson I think it is worth talking about how history got us to this point. The success of the music industry during the past 50 years has had two effects on consumers' view of music. One is that certain consumers just see the music industry as being bloated and rich, so they do not care about it and say: "Why shouldn't we share this file because these people earn a fortune anyway?" I think the other factor is that the people who have a passionate interest in music have been really badly let down by the major record companies.

Record companies continuously try to turn music into a commodity that is sold next to Kodak films, Durex and sewing kits at the end of supermarket racks. They have also driven the specialist shops out

of business, which was where the serious fans went. So these fans find themselves driven towards the extremes and the edges. You end up with both the disinterested consumer and the interested consumer not being particularly engaged in the conventional forms of distribution.

Jazz Summers I think this is a really good right from the point of the former and featured artistes whom we represent. As John Smith has pointed out, a lot of our artistes promote the idea of giving music away on MySpace and places like that, in the first instance, to gain recognition. From an artiste's point of view, DRMs are not in favour. Further, taking action against people who use p2p, have p2p systems or just take down music illegally, as we put it, is not on the artistes' agenda. They don't want to start shouting about it. I think that artistes would welcome the VRR because it would enable them to earn money without going out and shouting about it.

On the other side of the coin, I think we have to look at the relationship that we, as an industry, should form, if we can, with the ISPs. I think going out there and saying: "Hey, these guys are earning a fortune and using our music," is totally right but, at the same time, I think we have to make them responsible and part of what we do.

Steve McCauley I think that part of this is making sure that we understand where people are coming from. Already one significant ISP has gone out of business, so they are under great pressure. They are all trying to work out what to do. Actually, the solution is to add value.

Sara John EMI has many deals in place with different partners. We have a variety of different business



Dave Rowntree
Musician,
Blur and The
Ailerons



Paul Sanders
Managing director,
PlayLouder



Feargal Sharkey
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Jazz Summers
Chairman,
MMF, and co-
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Management



James Ware
Lawyer,
James Ware LLP



Alison Wenham
CEO and chair,
Association Of
Independent Music

Music Management ; **Tom Frederikse (observer)** Solicitor, digital media, Clinton's Solicitors; **Sara John** Vice president, government affairs, EMI; **Orance Trubridge** Assistant general secretary, Musicians Union

models and they are generating varying degrees of revenue. The market is in its infancy so, really, it is difficult to say which model will triumph over the others or which will generate any revenue. However, we already have artistes who are generating, say, 18 per cent of revenues from digital exploitation in various different forms and that is not insignificant, so let's not panic.

The challenge that we have had in monetising all of this is that many of our new business partners do not behave like traditional music retailers. When you are negotiating with a traditional music retailer, you have, basically, the same goal. You want to maximise the value of music but many of the new operators are doing different things.

For example, they want to sell iPods or they want to maximise their brand value and use music as a way of doing that. So their interests are not identical. As a result, there has been a learning process on both sides. I completely agree with Jazz that we have to treat them as business partners and understand that they are coming at this from an entirely different point of view. You cannot blame them for that because they are in a different business.

There are some interesting ideas in the AIM paper. We have some concerns about whether the VRR is commercially feasible and how it would work. All of the deals that we have are conditional upon our partners' giving us detailed returns about usage so that we can account back to our artistes properly.

We would be concerned about whether the proposed system would do that. We are concerned with how revenues would be collected and whether it would operate as a quasi-levy or whether it would be a right that you could account back on. Will it preserve freedom of choice? Will it cut across some of the business models that we have?

The key is feasibility, freedom of choice and whether or not this system would be consumer-

friendly. The point is that music is the ultimate consumer product.

Everybody sitting around this table probably feels that they have to buy music but many people in the outside world do not have to buy music. They do have other choices. However, we have to make the purchase of music easy and consumer-friendly or none of these services will work.

There are challenges out there, and I think that the paper addresses those. We are very happy to talk further about this, but these are our initial concerns at this stage.

Paul Curran I would like to go back to the word 'control', which was mentioned earlier. Publishers are used to being licensors. Publishers have not needed to exert control to the same degree as record companies. In fact, you could also argue that collective licensing and blanket licensing have served us very well. The collective approach has provided a pan-industry negotiating position.

My first thought is that perhaps the VRR should be thought of as a collective licensing system, rather than a right in itself.

Second, prohibition has never worked for anything, so why should we think it would start working now? Further, it seems to me that there has been a rush to simplify licensing, whereas complexity has served us quite well as a music publishing industry over the years. Speaking to Andy's point of view, we should not be rushing to put something in place until we have thought this matter through very carefully.

I also think that vocabulary can be confusing. The word 'piracy' gets bandied around readily. However, people in the street do not consider what they do to be pirating. They recognise that piracy goes on but I do not think that they think they are pirating when they rip their CDs onto their iPods.

I think we need to be more sophisticated about how we use the word 'piracy', be it with a capital 'P' in relation to organised crime at a Saturday morning farmers' market, or a small 'p' with p2p. They are different.

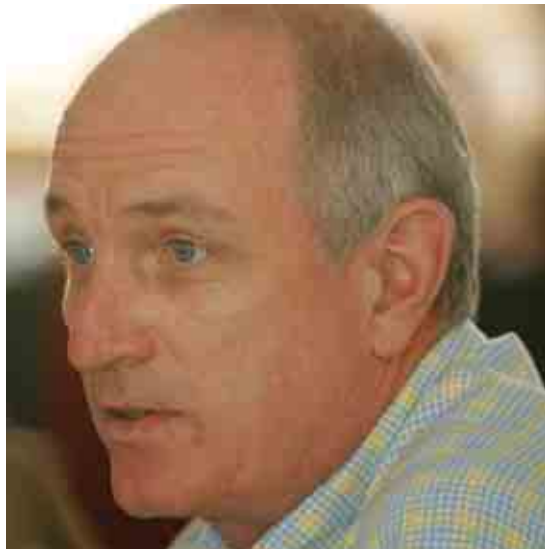
I have come to think that collective licensing serves us well. Major record companies do not like to be collectively licensed. They see an advantage in doing individual deals. Maybe the owners of sound recordings need to review their position to consider whether or not there are benefits from collective licensing in this area to simplify and add leverage to any negotiations that we could all have together concerning music publishing rights and sound recording rights.

David Stopps It seems to me that technology is racing along at the speed of light and legislation moves at a snail's pace. That is one of the problems we have. The World Intellectual Property Organisation

The key is feasibility, freedom of choice and whether this system would be consumer friendly
Sara John



Prohibition has never worked for anything, so why should we think it would start working now?
Paul Curran



(WIPO) Internet Treaties of 1996 and the WIPO Copyright Treaty became British law in 2003, starting with the Copyright Information Society Directive. By that time, they were pretty much out of date. It was all based on DRM.

As we have heard today, certainly copy protection DRM is pretty much dead. Apart from anything else, consumers absolutely hate DRM and so do the featured artistes because, as featured artistes, we generally have no say in what DRM is applied to our recordings by the record companies. Record companies decide all that. Certainly DRM is very useful in terms of tracking information for market research and for identification purposes. It has its place in that way, but not for copy protection. So we have to address that issue.

As far as copying levies are concerned, we are totally in favour of them. I think we have seen it working well in Europe. Last year, €500m was collected by our European partners in copyright levies and distributed among copyright holders, performers and creators. That is an income stream we have not had in this country. I think we are missing it and it would be very useful to us.

Picking up on Adam's point about recordings heading for zero value, I totally agree with that. Somehow, we have to reverse that situation so that recordings take on a real value. As managers, we are finding that the only real money we are making is from publishing and live work. Jazz was telling me that he has an artiste who sold two million albums and has not recouped with major record companies. I repeat: two million albums.

However, he has made money on the publishing and they are doing very well on the live side of things. Somehow we have to put that back so that you can make money out of recordings, so that recordings do have a value. I think that is really important.

I think it is important to set up a proper copyright

office that could legislate reasonably quickly, by which I mean within a couple of years or something like that.

At WIPO I have been involved in the negotiation of a broadcasting treaty for seven years. We still do not have the final draft at WIPO. We are just introducing webcasting now. Heaven knows when that will become national legislation. When that does come through, it will be another seven years before it becomes British law, so we are talking about it being ten years away. Goodness knows what will have happened with digital broadcasting in that time. I think we need a proper copyright office with proper regulation and more speedy regulation that matches the speed of technology.

Robin Millar I think it is important for us to accept that we are where we are. We could waste a lot of time, not just this morning, but as we have done during the past few years and as we could do in the future, in bickering and trying to establish the rights, wrongs, merits and demerits.

In 1991, the Music Producers' Guild hosted a well-attended public meeting at which we said that over-the-counter physical sales of music had a very limited shelf life. That is because of the advent of digital technology. We also said then that it would not be possible to find foolproof ways of preventing widespread dissemination. We recommended changes to the way that performers were paid, as was our focus at the time, and we particularly highlighted the example of performance income, which has proved relatively robust and successful.

The relationships between the suppliers of the music, the intermediaries, the licence collectors, the performers and the public, have encountered different models. For example, models such as the BBC-type models, with commercial radio relying on its advertising revenue, and so on, have not really caused anyone major problems.

I am saying we need to accept that we are where we are because I think there are people sitting around this table who have had experience outside of the music industry. To be blunt, we grew up in a music industry that meant vinyl records. Then cassettes came along, which did not confuse us too much. This was followed by the CD, which excited us. Now, suddenly, this new digital technology has come along. I think you will find that many people in the major music companies are ill-equipped to cope with that terrifying prospect.

This is common to all businesses. It is common to all supply chains. Supply chains are having to become more efficient. Profit margins are having to go down. Simple business models are having to become complex.

I do not think there is any point in using the time that we have this morning to discuss who is right and

who is wrong, the merits and demerits of different approaches. You cannot copy protect. You cannot watermark. It is not going to happen.

What I came along to listen to this morning was the beginning of a conversation about how new rights would actually operate. The rights that the Performing Right Society (PRS) operates and the rights that Phonographic Performance Limited (PPL) operates have largely, despite all of these technological changes, managed to remain reasonably robust.

I am not interested in conversations about what it will be like on the moon unless someone can tell me that there is a way of getting this rocket out of the earth's atmosphere.

Certainly it is not going to be done in any of the ways that have been thought about so far, by watermarking and copy protecting.

Alison Wenham I completely concur. The question we asked was: "Is copyright fit for purpose?" We must also factor in our universal dislike of consumers being the only target that this industry can focus on in its attempt to turn back this technological tide.

The point about the VRR is the ability to move the goalposts so that those who profit from the use of our music in their businesses — I take your point, Fred, about what is in it for them — have to accept that there is a product cost.

Somehow, if we can roll back the tide and look at the beginning of the digital age, I would propose to this round table a rather mouth watering vision of what it would have been like today had we had VRR at the beginning of this digital journey.

We need to discuss how we make this compelling to ISPs, mobile phone operators and Bluetooth manufacturers, rather than use it as a weapon to beat them with.

The discussion as to why this is good for everyone's business needs to go to the government as well.

We need to discuss how we make this compelling to ISPs, mobile phone operators and Bluetooth manufacturers, rather than use it as a weapon to beat them with
Alison Wenham



Martin Mills We are not reinventing the industry here. The point is that much of the industry works pretty well. The CD market is holding up better than many people thought it would. The online market is developing very nicely. We released a big record in America last week and 39 per cent of its first week's sales was digital. There is real growth in that area.

What we are talking about here is filling a gap. There is a huge amount of unlicensed activity. Paul touched on it: your suggestion was that more than 50 per cent of music moving around was files attached to e-mails. As a result of that kind of development, people are experiencing music, sharing it, copying it and using it without our making a cent.

We are talking about filling that big gap, which relates to half of our industry, out of which we make nothing.

Catherine Bell I am thinking as a consumer. The music industry no longer controls whether I can get my music or not. Accessing music is the same to the consumer as turning on the radio. In relation to the publicly funded BBC, consumers have never paid for music when they turn on the radio. That is why at the PRS you get all of these people saying: "It is a breach of my human rights that I should be being asked to pay for this."

Music to the consumer is like air. The consumer thinks it should be free. That is why the VRR makes sense. Unless we get the government on our side to support this right, it is just a non-starter.

Paul Sanders I do not agree that the value of recording is approaching zero. Part of the reason we are all here is because we feel that there is a great value in the recordings we already have and in those recordings that are being made.

The challenge is how to capture and channel it. It is very difficult to measure that. I certainly get the feeling that music has more value generally to the nation and to people than it did five or ten years ago. People are far more excited about getting more music and using more music. They want more music. As a whole, music seems to be more valued rather than more valuable.

What I see, coming from the music industry and the ISP industry, is a great displacement about the value of music that is being captured by technology companies and ISPs. The challenge is that it is not being captured very efficiently.

There is an awful lot of money being left on the table because of the stand-off between the two sides. I would not say that the value of recording was approaching zero. I would say, if anything, the value of the whole amount of recording in the world is increasing. I do not think the value of recording will ever reach zero. The challenge for us is to deal with that great displacement.

Every time you increase bandwidth, you see another recording-based industry blown away
Adam Singer



Andy Heath I just want to take the conversation down a few thousand feet and start close to the ground. If we are saying that we need this new right, then the answer to the question: “Is copyright fit for purpose?” is: “No.” It might be nearly fit for purpose but it is not actually fit for purpose. The minute we say “No,” the lid is off. We need to consider whether we really want to take the lid off because it serves us fairly well at the moment.

I do want to get this right but our job is to ask what are the gaps that Martin mentioned. E-mail is one of them. Clearly, the revenues that we believe arrive at ISPs as a result of the public usage of our property are another gap. We need to be systematic about this and identify exactly what these streams are. We must put a case forward for what is a proper return to the owners of those rights that are being used and who are not being rewarded. Perhaps we should get on with it that way. However, we need to be very exact about this.

We need to put some resources into this development and we need to have some good draftsmen working on this. [VRR] We are all sitting here agreeing. I am very attracted by this idea now and, frankly, I was not originally. The more I think about it, the better I think it is. It is neat and it works in terms of explaining it to the media, it is comfortable, it is bite-sized and it is terrific. So let’s do it, but let’s do it carefully and in a slick way.

Wilf Stevenson (chair) So you are not worried about opening Pandora’s box?

Andy Heath Yes, I am concerned about opening Pandora’s box, which is why I would like to take great care when doing so.

James Ware The reality is whether the ISPs would go out of business if they were not allowed to put music

through their gateways, and they would not. Music is a minority part of the ISPs. How on earth can we rationally argue that we tax technology because of a byproduct? I think it is a non-argument. I do not think you will get political support for it.

Dennis Collopy My own view is that copyright seems to have real problems. Until we recognise that copyright value has to represent everybody in the chain, not just the big companies, I think we will have a real problem politically. I also think, in terms of convincing people educationally about the merits of copyright, we have to recognise that the system must be simplified.

Copyright is seen as an enormously complex business where it is an obstacle to technology and everything else. Until we recognise that, I do not think we will fare very well.

Adam Singer Every time you increase bandwidth, you see another recording-based industry blown away. At 56KB the knitting pattern industry, which was a recording industry, was blown away. At 126KB to about 1MB, music has been blown away. Once you get up to 8MB or 9MB, you will get increasing compression algorithms and movies will face exactly the same issue. It is all to do with ever-increasing bandwidths.

The next question is how you know that something is heading to zero value. You always know that something is heading to zero when it gets bundled. You hardly ever buy a calculator. They are just bundled with your telephone. If you buy a cable service from a cable provider, it provides a piece of equipment called a quadruple play because each individual bit is a commodity.

The issue is at the recording level — there is an important differentiation between the value of music and the value of recordings — because it is straightforward supply and demand. You have a vast rise in supply and the increase in supply is not making up for the demise of the previous economic model. So you have this huge increase in supply and increased bundling and, as soon as things are bundled, you know that they are heading for zero.

The reason why this ‘right’ is really, really interesting and you have to look at how things have evolved. They are never perfect when they start. So the next question is: “Is there something here that is capable of evolution? Is it capable of being scaled up into something else?” Probably there is.

A concept is beginning to emerge in the gaming world (which is as much part of this world as anything else is) of digital assets. In the US, the Inland Revenue Service is beginning to see that if you own the Sword of Zarg on your mammoth bandwidth game, that has a value and is something that can be taxed. I use that as an over-simplified

example. The point is that, as soon as you start to move in this direction, you can have virtual assets, virtual assets can be taxed and tax is a variation on a levy theme. So this right starts to provide you with a step in that particular direction.

That, to me, is why it is so important, because, although it is only embryonic at this stage, with the kind of thinking that Andy is talking about, we can actually start to evolve the development.

If you ask what we need to live in the physical world, the answer is air, water, food and shelter. What you need to live in the digital world, where people are spending more and more time is, clearly, visual information, written information and audio information.

All of those things are capable of being taxed. Because music, essentially, becomes an absolute pure commodity at this level, it starts to replicate other commodity issues in the physical world and needs to be taxed or levied on that particular basis. You will then find your premiums in non-commodity sectors, such as live performance or various other forms of scarcity and that is, to me, why this right is so important, because it is capable of that evolution.

Feargal Sharkey Andy is right that it is imperative that we tear this thing apart, that we build it, that we make sure that we are strong and confident with it and that we do it in private.

James was touching upon the point that the music industry has been slow to react and that, by not embracing enthusiastically and proactively the new developments in technology, this, in itself, is potentially impeding the further progress and development of this form of technology. Such an approach will impede the aspiration that the government has of making the UK a world leader in this technology.

So the government, potentially, suddenly finds

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itself in quite an interesting position. We know that the government is trying to secure the future of the creative industries, but it must not allow that to be at the cost of the technology industries, which are equally as enthusiastic about developing new ways forward.

As far as protection is concerned, one view is that, if we go for statutory licensing, the record companies will simply have to adapt to the concept that they will license voluntarily or it will be foisted upon them. So while we do need to strip this and examine it, I think there is an awful lot of time pressure on this and it is something we need to get moving on. I think we need to seize, manage and control that agenda, otherwise I am fairly convinced that someone in government will do it for us and we will probably not like the result.

Finally, I ask this fairly hypothetical question: “What is wrong with a creator’s right to recognition or a creative VRR?”

Doug D’Arcy I have been thinking about what Feargal said. I think he is absolutely right that the music industry has been ambushed by this digital development. I think that this meeting represents an opportunity for us to ask: “What is the escape from the encirclement in which we have been placed?” There is no doubt that we have been put on the defensive. Suggestions have been made that we are being Luddites. It is strange to me that we should be accused of being Luddites but, at the same time, it is being suggested that our future is as live musicians. Are we going to go back to the days when we went from castle to castle knocking out a few tunes asking for a room for the night and a few coins?

Personally, I do not think that this is an adequate way for Mick Jagger and Keith Richards to spend their later years. I think there is a better future for all of us.

I think that this meeting represents an opportunity for us to move out of the ambush position that we find ourselves in and to find a way forward, both progressively and consensually.

We have the basis here of something that we can carry forward, but we have to carry it forward quite quickly and seriously because, from the way things are moving around us again, we could be in another ambush. The Gower Review and the thinking about making Britain a technology centre could ambush us again. We have here the opportunity of moving forward but we need to seize it.

John Smith Paul spoke about the effectiveness of collective licensing. We know it works. Parts of copyright are working and work in our favour. If we take the lid off Pandora’s box, will the collective licensing models we have now be under threat? Feargal mentioned statutory licensing.

We face all sorts of dangers. To apply that collective licensing model to this new right is something we

Copyright is not just music. It is all of it: no one makes the distinction that it is music except the music industry
Fred Bolza



would support. I think to look at it as a licence is very good. Even though there are arguments about commercial radio, the licensing system works. Commercial radio is paid for. The consumer is not bothered with that but we get our reward for our use of music. It is transferring that. We are having a discussion about how we can do that.

Like others have said, I would not rule out the levy system. We know that the levies work in Europe. I cannot see any consumer resistance in France to the levies that they have and I know that it brings in quite a lot of income. We heard the figure from David of €500m. In France a massive amount goes to performers.

So these models exist and they work and we need to engage with them. I think we have to be careful and move forward as best we can.

David Ferguson One of the things that is missing is that, in this country in particular, there has never been a decent adoption of the whole idea of moral rights and the artistes' rights to be specifically identified in the work, be they the author of the work or the performer. I think this situation does add to the overall problem.

It is interesting that, in the United States, they are going in absolutely the other direction.

Paul Brindley I am sure that the idea of a levy is just not going to work. Right now, the European Commission is consulting on rolling back these levies across Europe. In a way, this is absolutely the worst time to be talking about this subject.

However, what I am surprised about is that there seems to be a reluctance to paint those as legalising file sharing but, to me, that seems to be the best way of solving this idea. Perhaps that is the way that you can get the likes of the ISPs and the other players in the chain — it may not be so easy with the major

labels, of course — to think: "This at least provides an answer to that problem. We can stop criminalising individual file sharing." For the government to take this idea seriously, we have to be seen to be giving it something.

Peter Leatham I think Andy identified more than an hour ago that it would be quite good to look at how that right would work in practice, both legally and commercially, and what progress we can make towards that.

Looking for legislative change is time-consuming but the new suggestion needs to happen quickly and, at the same time, be an interim solution. Those things are slightly incompatible. Certainly from all of the discussions I have heard so far, it does sound like a levy that everyone agrees is not achievable, so I am still unclear on this suggestion, both legally and commercially.

Peter Quicke Referring back to what both Peter and Feargal said, it seems to me that there is a practical imperative here in that the Gower Review is happening now. We have to be able to compose something that the government will find compelling, otherwise we will have what the government wants foisted upon us.

We need to have some research done by people who are conversant with Whitehall and come up with something as quickly as possible. We must open Pandora's box and come up with compelling solutions to put to the government.

Fred Bolza I do not think this issue is just about music. I think it is about the creative industries and the way they interact with the technological industries, which are the delivery mechanism of the creative industries. There is no reason why this new right cannot be applied to other copyright-based industries as well.

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Sara John I do not think it is right to say that there is total consensus of those sitting around the table. I do not know what this right is. I do not know what I would be being asked to agree to. I really do not like levies.

Second, I have heard enough from those sitting at this table to know that there is a lot of antagonism towards record companies. We are still major investors in music in this country, thank you very much. So let's be more grown-up about it. If we want to have consensus, let us be respectful of one another.

The third thing is that I still have issues about whether this is achievable and whether it is the right way to go ahead. I really fear that if we start being too

antagonistic to ISPs, bearing in mind that they have such a strong lobby in political circles, they will come in with all the things that they do not like about the law as it is. So we have to be very clear that this new approach is going to be very beneficial before it is anything that we can support. The law for us is working OK. We are managing to monetise some of it. We have never been able to monetise everything. But let us not say that the whole thing is broken and let us not say that recordings are valued at zero because they are not. We cannot say that we support it because we do not actually know what it is.

James Ware I would like to make a legal point. I think we have the rights we need. We have the copyright, the distribution rights and the communication rights. So we have the rights. The real issue is finding the scheme around which there is a reasonable consensus. I think that comes back to what Andy says. If we are going to get somewhere, we have got to work it through in a lot of detail. We will have to decide who we are targeting, how it is going to be presented and how it is going to be made to look fair and proper. I think this matter needs a lot of detail and we need to look at the nuts and bolts. There may be issues in relation to enforcement but I think it is actually down to finding a scheme that you can present to everybody as being reasonable.

Paul Curran I think that the major record company owners of sound recordings have to play a big part in this. We have a framework from which we can carve out a licence. It strikes me that we should be calling it a licence rather than a right. We have to work out how best to frame the vocabulary.

Let me put a question to those in the room representing sound recordings. It seems to me that you have certain rights as well. All of us have to put these rights into a basket and agree a licensing

procedure that can then be channelled to the ISPs, which have been incapable of doing this. This debate has been interesting. At the end of the day, the owners of sound recordings have to play a big part in this. If they do not, it isn't going to work. It is a matter of vocabulary again. I think the existing rights structure works. This is more of a licensing issue and we must dream up a clever way of presenting and selling it.

Dave Rowntree We may be about to launch this onto the public without a workable scheme for monetising the rights. The scheme that I have seen simply will not work. Digital watermarking is not secure enough. In the paper there is a lot of talk about the copyright extension. I think that this is a whole other issue and it does not really deserve a place in the paper before us. I think that copyright extension is a hornets' nest. It will turn round and bite us in the same way that DRM has done.

In terms of the extension of future copyright, fair enough, I think that could certainly do with being looked at. As far as extending existing copyright is concerned, you are, effectively, suggesting that you steal something from the public that they already own and then try to sell it back to them. It will hurt us just like DRM did and in the same way that suing file-sharers did.

Emma Pike Having listened to what everyone has said, which I think has been incredibly interesting and very, very useful, I think we have reached a stage where we can answer Alison's initial question. Copyright is absolutely not broken. I think Andy put his finger on it when he said that it is nearly fit for purpose but I think that, at the moment, copyright does not give the full set of tools that we need for the digital environment; almost but not quite. The VRR, conceptually, is the bit that is missing.

It is all about how we fill the gap of what we cannot currently licence. How we fill that gap is to do with our bridging the current gap between the technology companies and us. There are any number of ways in which you can go about doing that. You can cajole them; you can try to understand their position better, as has been said; you can try to shame them into taking more responsibility; you can aggressively license all kinds of innovative business models that are coming through. However, there may also be a need for legislative change in order to make them come to the table. Part of that is, possibly, limiting the safe harbours that currently allow ISPs and suchlike to benefit enormously from p2p traffic.

For me, the VRR is not necessarily a new right but it is about all of those things that we can do collectively to try to bridge the current gap between us and the technology industries. Clearly, an awful lot of work has to go in to developing this idea further and working out exactly what we are going to do.

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It is about all of those things that we can do collectively to try to bridge the current gap between us and the technology industries
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Adam Singer The issue that we face is how we actually create the beginnings of a new model that moves us away from where we are. I think we should be supporting this paper and working on the VRR. I think there is something here. It will not be perfect. It will take quite some time to develop it.

Martin Mills I think this meeting has been hugely productive. I think we are talking about creating something that could be of huge value to us. As with everything like that, there is a price and I think it is the acknowledgement of a loss of control. I think I am hearing from most people that this is not a price to worry about. However, I think it will be a bitter pill for the major record companies. I would happily pay but I think it is an issue and debate for the future.

Robin Millar I, too, am warm towards the idea of thinking about it as a licence. Look at the past and think about how musicians were concerned, in the 1940s and 1950s, about the loss of live music in palm courts to recordings. Look at how that was dealt with and how that eventually came to be an accepted licence; if you wished to broadcast music you had to pay and then that money filtered back to the people who had paid for the music. I believe that is workable.

It is interesting that, when discussions come up, even at European level now, about the nuances of performance income, there is never a discussion right down to the root of whether this income is appropriate. It is deemed appropriate. It is also not true to say that the consumer does not pay. It is simply looking at the whole business in a wider context. Of course the consumer pays because the commercial radio subsidises the money that it does pay to PPL and PRS by advertising.

Advertising comes from the revenues of manufacturers, distributors and retailers and that money is passed on to the consumer, which is

reflected in the price that the consumer pays for various goods across the board. So it is not focused, nasty and targeted but ultimately the consumer is paying a price for the music.

The one other thing I would like to say from this morning is that I would encourage everybody to stop being so aggressive and defensive. I am talking in the big business sense of those words. We must realise that what we have heard this morning is the fact that there is a lot of value in music but it may not now be restricted to its value as an over-the-counter CD. It is considered by artistes to be valuable. If music companies, which pay for the music to be recorded in the first place, and the artistes, promoters and managers sit down and think of a way in which they can all share the value, we would not end up with this slanging match.

Actually, I think the record companies have remained restrained and polite during the past two or three years, after an unmitigated assault. When you consider how musicians earn their money, if you look at the statistics, there is a strong argument for saying that it is largely at the expense of the record companies.

I would urge people to do two things. They should look at this VRR very positively but not in the context of copyright. We should start working together a lot more to protect one another and get value from each other's activities.

Alison Wenham That was a fascinating but somewhat edgy debate, I thought. There were some preconceived positions that I am disappointed by. I thought that we could come to this table as a whole industry with a problem, with a desire to continue to work in the music industry and to continue to earn revenue streams for all the people who make up the industry and not just some.

I do not know whether we are talking about a licence or a change in copyright law. To me these ideas do not have to sit in a mutually exclusive position: levies/not levies; new revenue streams/no new revenue streams. Please, for once, let us come together to see whether we can create new revenue streams that will be to the benefit of society and to the communities that we are lucky enough to represent at this table.

I think we have reached the point where we are reasonably confident that we have sufficient consensus to move this issue forward and to articulate it to government. Whether or not it expresses the need for a new right or a new understanding of the creative industries' need to establish business relationships with the intermediaries who have changed the control methodology is one of the questions facing us.

Wilf Stevenson (chair) Thank you all very much.

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