PO-CH/NL/0216

PART A

Part A.

CONFIDENTIAL

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Begins: 6/1/88.
Ends: 28/11/88.

PO -CH /NL/0216
PART A

Chancellor's (Lawson) Papers:

RADIO STATION BROADCASTING OF RECORDS - TERMS NEEDLETIME AND FEES

Disposal Directions: 25 Years

12/9/95

PO -CH /NL/0216 PART A

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

PS/ *Secretary of State for Trade and Industry*

RESTRICTED

6 January 1988

Jonathan Taylor Esq
Private Secretary to the Chancellor of the Exchequer
HM Treasury
Parliament Street
London SW1P 3AG

Dear Jonathan

BROADCASTING OF RECORDS: NEEDLETIME AND FEES

Lord Young thought that the Chancellor of the Exchequer and other members of E(CP) might be interested to see the attached table of fees paid by independent local radio stations to PPL. (He recognises that similar fees are also paid to PRS). The figures range from £17.40 for Capital to 7p for Northants, but few exceed £2. The average is £1.26 and this drops to 86p if Capital is excluded.

In the light of these figures, Lord Young wonders whether the case for breaking up PPL is as strong as E(CP) considered. In any event, he does not feel that PPL ought to be broken up without a formal review and he is considering whether the Monopolies and Mergers Commission would be the appropriate body to undertake such a review. It appears that legislation would be needed to bring copyright licencing within the scope of the Fair Trading Act and the Competition Act and he has asked officials to examine urgently whether this legislation could be enacted by way of an amendment to the Copyright, Designs and Patents Bill and what wider implications such an amendment might have. He expects that this work will be valuable when he and the Home Secretary return to E(CP) on this issue.

I am copying this letter to private secretaries to other E(CP) members and to Colin Miller (Home Office).

Yours

Jeremy Godfrey

JEREMY GODFREY
Private Secretary

JG3BSZ

TABLE

I L R STATIONS - NAR AND PPL PAYMENTS FOR THE YEAR 1.10.86 - 30.9.87

(1) STATION	(2) Actual or Estimated NAR for year	(3) Actual or Estimated PPL Payment for Year	(4) PPL Payment as % of NAR	(5) Rate per Hour	(6) Rate per Minute	(7) Cost to Broadcast a 3-Minute Single
Beacon	1,494,753.00	66,950.00	4.479%	20.38	0.339 (34p)	£ 1.02
Birmingham	2,393,506.00	129,884.00	5.426%	39.54	0.658 (66p)	£ 1.98
Bradford	836,550.00	33,462.24	4%	10.19	0.169 (17p)	£ 0.51
Capital	16,875,309.00	1,143,471.40	6.776%	340.09	5.80 (£5.80)	£17.40
Cardiff	964,925.00	38,597.55	4%	11.75	0.196 (19½p)	£ 0.59
Chiltern	1,262,015.00	50,733.29	4.02%	15.44	0.257 (25½p)	£ 0.77
Downtown (Community)	2,101,529.00	109,489.00	5.21%	33.32	0.555 (55½p)	£ 1.66

(1)	(2)	(3)	(4)	(5)	(6)	(7)
STATION	Actual or Estimated NAR for year	Actual or Estimated PPL Payment for Year	PPL Payment as % of NAR	Rate per Hour	Rate per Minute	Cost to Broadcast a 3-Minute Single
Devonair	626,000.00	25,040.00	4%	7.622	0.127 (12½p)	£0.38
Essex	1,405,995.00	60,739.74	4.32%	18.49	0.30 (30p)	£0.92
Piccadilly	4,163,443.00	253,779.00	6.09%	77.25	1.28 (£1.28)	£3.86
Hereward	712,786.00 Reduced % due to 90% of allocated n/t only being used	25,868.00	4% But only on 90% of NAR	5.04	0.08 (8p)	£0.25
L B C	7,297,861.00	88,670.00 (approx)		26.99	0.45	£ 1.35 est
Midland	990,300.00	39,612.10	4%	12.06	0.20 (20p)	£ 0.60
Moray Firth	484,915.00	19,396.60	4% But only on 90% of NAR	5.90	0.093 (10p)	£ 0.295

(1)	(2)	(3)	(4)	(5)	(6)	(7)
STATION	Actual or Estimated NAR for year	Actual or Estimated PPL Payment for Year	PPL Payment as % of NAR	Rate per Hour	Rate per Minute	Cost to Broadcast a 3-Minute Single
Metro (North East B/Casting)	2,721,317.00	152,938.14	5.62%	46.55	0.775 (77½p)	£ 2.33
North Sound	717,126.00	28,685.00	4%	8.732	0.145 (14½p)	£ 0.44
Plymouth	715,575.00	28,623.84	4%	8.713	0.145 (14½p)	£ 0.43
Radio Aire	1,072,075.00	42,882.82	4%	13.05	0.22 (22p)	£ 0.65
Radio City	2,297,518.00	123,147.09	5.36%	37.49	0.62 (62p)	£ 1.87
Radio Clyde	2,328,343.00	125,322.00	5.38%	38.15	0.63 (63p)	£ 1.90
Radio Forth	1,575,965.00	72,651.50	4.61%	22.11	0.368 (37p)	£ 1.10
Radio Hallam	1,140,343.00	39,911.46	3.5%	12.15	0.20 (20p)	£ 0.60
Radio Orwell (inc. Saxon)	830,225.00	33,209.60	4%	10.11	0.168 (17p)	£ 0.505

(1)	(2)	(3)	(4)	(5)	(6)	(7)
STATION	Actual or Estimated NAR for year	Actual or Estimated PPL Payment for Year	PPL Payment as % of NAR	Rate per Hour	Rate per Minute	Cost to Broadcast a 3-Minute Single
Radio Trent	1,587,619.00	73,348.81	4.62%	22.33	0.37 (37p)	£ 1.16
Radio Wyvern	492,300.00	19,692.58	4%	5.99	0.099 (10p)	£ 0.30
Severn Sound	568,775.00	22,750.72	4%	6.92	0.115 (11½p)	£ 0.346
Sound Broadcasting	828,325.00	33,133.12	4%	10.086	0.168 (17p)	£ 0.504
Swansea Sound	894,700.00	35,788.90	4%	10.89	0.18 (18p)	£ 0.54
Tay Sound	627,925.00	25,117.65	4%	7.65	0.127 (13p)	£ 0.38
Thames Valley	1,315,022.00	54,339.68	4.13%	16.55	0.275 (27½p)	£ 0.827
West Sound	565,325.00	22,613.60	4%	6.88	0.11 (11p)	£ 0.34
Two Counties Radio	1,050,425.00	42,016.85	4%	12.79	0.21 (21p)	£ 0.64

(1)	(2)	(3)	(4)	(5)	(6)	(7)
STATION	Actual or Estimated NAR for year	Actual or Estimated PPL Payment for Year	PPL Payment as % of NAR	Rate per Hour	Rate per Minute	Cost to Broadcast a 3-Minute Single
Red Rose Preston	1,763,683.00	85,715.01	4.86%	26.09	0.43 (43p)	£ 1.30
Signal Radio Stoke	633,174.00	25,326.00	4%	7.70	0.128 (13p)	£ 0.385
County Sound	1,244,899.00	49,795.00	4%	15.16	0.25 (25p)	£ 0.75
Southern Sound	1,135,615.00	45,424.00	4%	13.82	0.23 (23p)	£ 0.69
Marcher Sound	551,216.00	22,050.46	4%	6.71	0.11 (11p)	£ 0.33
Radio Broadland	742,687.00	29,707.51	4%	9.04	0.15 (15p)	£ 0.45
Radio Mercury	1,273,839.00	38,215.19	3%	11.63	0.19 (19p)	£ 0.58
Invicta Sound	1,241,925.00	49,677.76	4%	15.12	0.25 (25p)	£ 0.756
Northants B/Casting	219,800.00		2%	1.55	0.025 (2p)	£ 0.077 (7p)
Radio Trent (Derbys) Started 1.3.87	596,862.00	17,906.00	3%	5.45	0.09 (9p)	£ 0.27 (27p)
Leicester	393,941.00	15,757.64	4%	4.79	0.08 (8p)	£ 0.24

ILR STATIONS - SOME FACTS ABOUT THEIR PPL PAYMENTS

1. The current Performing Right Tribunal Order says that ILR stations should pay the following percentages of net advertising revenue (NAR) for the right to broadcast PPL members' records for 9 hours per day:

   4% of the first £1.25 million approximately (RPI adjusted)

   7% thereafter

2. The figures set out on the attached table are a mixture of actual and estimated amounts for the ILR financial year from 1.10.86 to 30.9.87. Some stations have not yet paid us, or disclosed NAR, for the last part of this year and estimates have bee made. The estimates will not be far off the actual totals, based on previous years' experience.

3. Some observations on the figures in the total :

   (a) NOBODY in ILR pays £30.00 per record, as was alleged in the Home Office Green Paper on Radio. Capital Radio, by far the highest, pays £17.00. The average payment per station for the right to broadcast a three-minute record, excluding Capital, was only 86p; including Capital, it was only £1.26p.

   (b) The average percentage payment for all ILR stations is about 4.26%. This provides nearly 40% of programme output by actual record playing time - probably nearer 60% if linking material, DJ "chat" and other elements (which could not exist as programme material in their own right were it not for the records) are counted.

   (c) 4.26% of NAR therefore buys about 60% of programme material, which in turn produces the bulk of an ILR station's NAR. It is impossible to say exactly how much of the NAR is directly attributable to records, but it will be more than 60% - possibly considerably more. Extensive monitoring of ILR has conclusively shown that PPL records are used most intensively during ILR "Prime Time" - ie. when the audiences are biggest, and advertising rates are highest.

   (d) The average ILR station earned an NAR of £1,558,000. Most of it would be attributable to PPL members' records. For the right to broadcast those records, which give the station some 60% of total programme output, it would pay PPL 4.26% of NAR - about £66,000, or £20.00 per hour.

contd .....

4. PPL's sister company, VPL (Video Performance Limited) licenses broadcasters for the use of music videos. Under the current Copyright Act, music videos are not subject to the jurisdiction of the Performing Right Tribunal. The negotiations have therefore taken place as normal, arm's-length, commercial negotiations, undertaken by VPL and by broadcasters who intend to rely on music videos for most of their programme output, and who treat music videos (and pay for them) as a commercial commodity of substantial value to them. In negotiations with satellite broadcasters such as Music Box, Sky and MTV, these arm's length negotiations have been amicably concluded at rates which consistently build up from 10% and 15% of NAR to 20% of NAR. Satellite broadcasters such as those mentioned use music videos in much the same way as ILR stations use PPL members' sound recordings - as the sustaining element which provides the vast bulk of their total programme output. The rights in music videograms licensed by VPL are, like those in sound recordings licensed by PPL, a full copyright and not a right of equitable remuneration. They are also exercised collectively. The VPL negotiations perhaps give the clearest indication of what would happen in a commercial "free market" situation where there is a willing buyer and a willing seller, and where the absence of an opportunity for the buyer to enter into Tribunal litigation has resulted in a straightforward acceptance by the buyer of the commercial value to him of what he is buying.

JBL (2061C/7.12.87)

2504/11/

263/1

FROM: C W BOLT

DATE: 22 January 1988

1. MR BURR TJB 22/1.

2. CHANCELLOR

cc Chief Secretary
Financial Secretary
Sir P Middleton
Mr Anson
Mr Kemp
Mr Gilmore
Mr Burr
Mr Cave
Mrs Pugh
Mr Tyrie
Mr Flanagan

Ch/ content with draft? And content for it to come from you rather than FST?

OK as (fm me).

BROADCASTING OF RECORDS: NEEDLETIME AND FEES mpw 25/1

Lord Young's Private Secretary wrote to your Private Secretary on 6 January attaching details of fees paid by independent local radio stations to Phonographic Performance Ltd. DTI argue that the figures are lower than was thought to be the case when this issue was discussed E(CP) on 19 November last year, and that the case for breaking up PPL as E(CP) decided in principle, may not be as strong as it considered. This submission recommends that you write to Lord Young expressing concern at his proposal for a formal review of PPL and urging early completion of the paper for E(CP) on removing the copyright owners' cartel.

Background

2. In the UK, public performance of a recording in any form requires permission from the owners of copyright in the recording, to provide protection for performers and makers of sound recordings. For the most part, this permission has been vested by composers in the Performing Right Society (PRS) and by record companies in Phonographic Performance Ltd (PPL). PPL licences the BBC and independent local radio (ILR) to use records in the PPL repertoire up to a certain number of hours ("needletime") at a specified scale of payment ("fees"). In recognition of the possibility that a collecting society such as PPL, with a monopoly of the most popular repertoire, might be able to exploit its position to the disadvantage of potential users, the Performing Right Tribunal (PRT) was set up (under the 1956 Copyright Act), with powers to determine charges, terms and conditions in the event of a dispute.

3. The current agreement on needletime limits ILR stations to a maximum of 9 hours PPL material in one day, or 50 per cent of the broadcast day, whichever is the less. (The agreement between PPL and BBC is somewhat different, in that the BBC negotiates a single contract covering all its channels). Fees payable to PPL are generally calculated as a specified percentage of net advertising revenue (NAR): current rates are 4 per cent for the first £1.25 million NAR, and 7 per cent thereafter, with concessions for new companies, giving an average rate of 4.26 per cent. The Green Paper on Radio, published in February 1987 (Cm92), drew attention to the concern of ILR about the level of fees payable to PPL. In commenting on the Green Paper, you wrote to Mr Hurd on 23 February 1987 expressing concern that the current arrangements for needletime and fees constituted an exploitation of a monopoly position by PPL, and that they might discourage prospective broadcasters. You proposed that the question should be considered in E(CP).

4. Lord Young's paper for E(CP), taken on 19 November, considered a number of options ranging from leaving the current position unchanged through to the break up of the current copyright owners' cartel. Although the DTI preference was to leave the present law unchanged, beyond the improvements already contained in the Copyright, Design and Patents Bill, they were prepared to accept a removal of the 9 hours limit on needletime. However it was agreed in E(CP) that it was right in principle to remove the right of copyright owners in the record industry to negotiate broadcasting royalties collectively, and the Secretary of State for Trade Industry and the Home Secretary were invited to submit a further paper on achieving this, "in early 1988" (I understand that Lord Young takes this to mean "by March"). The current letter from DTI indicates that, in preparation for this, officials are considering the possibility of bringing copyright licensing within the scope of the Fair Trading Act and the Competition Act by means of amendment of the Copyright, Designs and Patents Bill. However, it is also suggested that, in the light of the figures now available, the case for breaking up PPL may not be as strong as E(CP) considered, and that Lord Young believes that there should be a formal review of PPL - perhaps undertaken by the Monopolies and Mergers Commission - before it is broken up.

Analysis

5. The Radio Green Paper suggested that some stations pay royalties to PPL of over £30 for each record played. The new figures (which have been supplied by PPL) suggest that the highest rate for broadcasting a 3 minute single is £17.40 (for Capital Radio), with an average of £1.26. What is at issue here, however, is not so much the level of fees themselves but the principle of establishing a free market between copyright owners and broadcasters; to establish a competitive system in place of the current administered one. There is more to this than simply reducing the level of royalties. The E(CP) decision in principle to end the right of copyright owners in the record industry to negotiate broadcasting royalties collectively has the potential to allow new services and innovative approaches to broadcasting to emerge (in line with the other proposals for reforming radio broadcasting), and allow enterprise to flourish in a way which the current system does not. The DTI letter, which clearly emanates from the copyright side of the department, contains no new arguments in support of the existing monopoly, so a formal review of these arrangements will not advance these aims and would risk a loss of momentum. I understand that the Home Secretary has been advised to write in similar terms.

Recommendation

6. I recommend therefore that you write to the Secretary of State for Trade and Industry to express concern at his proposal for a formal review of PPL, and to urge him and the Home Secretary to produce at an early date the paper which was commissioned at E(CP). I attach a draft letter making these points. Given that you chair E(CP), there is a possible argument for the letter coming from the Financial Secretary. However, as the letter is designed to follow up the decision taken at the November meeting of E(CP), and does not contain any new arguments, it would seem more appropriate for you to send it. IAE2 agree with this advice.

C W BOLT

2504/11/12

pr type for Ch sign

DRAFT LETTER FROM THE CHANCELLOR OF THE EXCHEQUER TO SECRETARY OF STATE FOR TRADE AND INDUSTRY

Copies as indicated

BROADCASTING OF RECORDS: NEEDLETIME AND FEES

I have seen your Private Secretary's letter of 6 January attaching details of fees paid by independent local radio stations to Phonographic Performance Ltd (PPL).

after full consideration of the matter,

2. Whatever figures have been produced by present arrangements, they do not alter the case, accepted by E(CP), for removing the copyright owners' monopoly on the supply of recorded music, and leaving fees to be determined between radio stations and record companies in the market place. The issue is not just a matter of changing the level of royalties, but of substituting a competitive system for an administered one, with all the advantage which that can bring. I was therefore concerned to see that you feel that there should be a formal review of PPL before the decision taken in principle at E(CP) is implemented. E(CP) invited you and Douglas Hurd to submit a further paper on the mechanics of breaking up the PPL, and on any other necessary measures that might be required to secure the operation of market forces in this area while safeguarding rights of copyright. I had ~~anticipated~~ expected that this further work would be ready in the very near future. A formal review, involving perhaps the Monopolies and Mergers Commission, would inevitably take time, and I have to say that ~~it really does not seem to me necessary.~~ I do not think we should delay considering specific proposals to implement our decision at E(CP)

reaching a clear decision as to

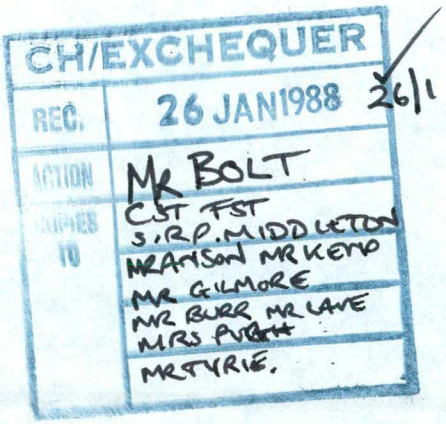
3. I am copying this letter to other members E(CP) and to Douglas Hurd.

time which, given the decision of E(CP), would be unacceptable.

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

22 January 1988



Dear Jeremy,

Thank you for copying to me your letter of 6 January to Jonathan Taylor, with which you enclosed some briefing material from PPL.

The Home Secretary has noted the table of fees paid to PPL. As PPL recognise, these payments represent only part of radio stations' copyright obligations. And the payments cover only nine hours use of recorded music a day; PPL have made clear their intention to charge additional payments for any additional use they are prepared to license.

What was of concern to E(CP) was not only the level of fees but also the mechanics by which they are determined. By way of illustration, if an ILR cartel determined advertising rates, it would not in the Home Secretary's view be an adequate defence for the ILR stations to suggest that payments to radio stations consumed only a small proportion of advertisers' revenue while contributing substantially to it. The fact is that PPL has for all practical purposes a monopoly of the supply of records for air play, both as regards price and quantity. The Home Secretary regards the continuation of this monopoly as inconsistent with the general thrust of the Government's policy on competition, and as potentially inimical to the planned opening up of radio services as outlined in the Green Paper on Radio.

The Home Secretary would have no objection in principle to a reference to the Monopolies and Mergers Commission, but notes with concern that legislation would be needed before any such reference could be made. This would delay matters considerably. E(CP) noted that it was important for the Government's policy on needletime and fees to be resolved before legislation on radio was introduced next Session, and preferably before the White Paper on broadcasting planned for the Spring. This timetable could not be met if the decision was taken to legislate with a view to an MMC reference. The Home Secretary therefore believes that if colleagues felt that the decision of E(CP) to break up PPL needed to be buttressed by an MMC or similar review, it would be necessary in the meantime to provide in legislation for one or more of the other options discussed in E(CP). This could most conveniently be done, in accordance with the planned timetable, in the current Copyright, Designs and Patents Bill.

I am copying this letter to the Private Secretaries to other E(CP) members.

Yours ever,

Colin

C R MILLER

Jeremy Godfrey, Esq.,

mjd 2/92Jn

cc Chief Secretary
Financial Secretary
Sir P Middleton
Mr Anson
Mr Kemp
Mr Gilmore
Mr Burr
Mr Case
Mrs Pugh
Mr Tyrie

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

29 January 1988

Secretary of State for
Trade and Industry
1 Victoria Street
London SW1H 0ET

BROADCASTING OF RECORDS: NEEDLETIME AND FEES

I have seen your Private Secretary's letter of 6 January attaching details of fees paid by independent local radio stations to Phonographic Performance Ltd (PPL). I have also seen Douglas Hurd's Private Secretary's letter of 22 January.

I have to say I share the reservations Douglas expresses. Whatever figures have been produced by present arrangements, they do not alter the case, accepted by E(CP), for removing the copyright owners' monopoly on the supply of recorded music, and leaving fees to be determined between radio stations and record companies in the market place. The issue is not just a matter of changing the level of royalties, but of substituting a competitive system for an administered one, with all the advantage which that can bring. I was therefore concerned to see that you feel that there should be a formal review of PPL before the decision taken in principle at E(CP) is implemented. E(CP) reached a clean decision after full consideration of the matter, and invited you and Douglas Hurd to submit a further paper on the mechanics of breaking up the PPL, and on any other necessary measures that might be required to secure the operation of market forces in this area while safeguarding rights of copyright. I had expected that this further work would be ready in the very near future. A formal review, involving perhaps the Monopolies and Mergers Commission, would inevitably take time which, given the decision of E(CP), is neither necessary nor acceptable.

I am copying this letter to other members E(CP) and to Douglas Hurd.

NIGEL LAWSON

dti

the department for Enterprise

Mr Bolt
I think this is OK

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

Department of Trade and Industry
1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

CHANCELLOR OF THE EXCHEQUER
REC. 15 FEB 1988 15/2
MR BOLT
CST FST
SIR P. MIDDLETON
MR ANSON MR KEMP
MR GILMORE
MR BURR MR CLOKE
MRS PUGH
MR TYRIE.
1st

Direct line
Our ref 215 5422
Your ref PS6ADI
Date 15 February 1988

Dear Nigel,

BROADCASTING OF RECORDS : NEEDLETIME AND FEES

Thank you for your letter of 29 January. This reply deals both with the points raised in that letter and in the letter from Douglas Hurd's private secretary to mine of 22 January.

I quite accept that E(CP)'s decision to end the collective negotiation of broadcasting royalties was based on the view that it was best to leave fees to be determined by the market. Nevertheless, any monopoly has to be considered, not in itself, but in relation to its effects on the public interest. This is the basis on which monopolies are always dealt with under competition law.

I think it would be very difficult to break up PPL without the balance of the public interest being considered by the Monopolies and Mergers Commission. Our critics would not be limited to the large record companies. Some broadcasters fear a hugely increased administrative burden if they have to deal with each record company individually. And small record companies fear they could not enforce their rights effectively.

the Enterprise initiative

Although PPL could not be looked at under the normal competition powers, my latest legal advice is that I could make a reference under Section 78 of the Fair Trading Act, which enables the MMC to examine the effect on the public interest of specified practices. This reference could be made very shortly and the MMC believe they could complete their enquiry in 9 months; this time could be shortened if the enquiry was more narrowly focussed. If the MMC concluded that PPL operated against the public interest, legislation to implement the findings could be introduced next session, possibly in the Broadcasting Bill. The changes could thus be made before new radio licences were issued.

I hope you and Douglas will now be prepared to consider this approach. If so, I propose that my officials agree draft terms of reference with the Home Office, which I will then circulate.

I am copying this to Douglas Hurd, to the other members of E(CP) and to Sir Robin Butler.

Yours,

Michael

Mr Monck
Official advice pls. r.

From: Nigel Forman.
17th February 1988.

To: Chancellor.

Effects of the Copyright Bill upon the recording industry.

1. I was lobbied by Tony Hutt of GJW Government Relations yesterday who brought Mr John Brooks, Chairman and Chief Executive of P.P.L., to see me at the House yesterday. They raised some complicated, but important sounding points about the possible effects of the Copyright Bill unless it is amended to meet their interests.

2. They argued strongly against the abolition of collecting societies (such as PPL or the Performing Rights Society) and said they could not see why this particular type of copyright should be singled out as the only one subject to a compulsory licensing system. It appears that if such a change in the status quo is made, the broadcasters (mainly independent radio in this case) will be able to use records and tapes without any prior control by the recording industry which would lose its present right to say no to some forms of broadcasting because of infringement of copyright or some other good reason. This would throw the recording industry back into the Courts as their only legal remedy against abuse and then only after the event which they said would be expensive and time-consuming. They further claimed that the present safeguards under the Performing Rights Tribunal were perfectly adequate as protection for the broadcasters who had only had to exercise their rights of redress in that forum 3 times in 30 years.

3. They pointed out that a firm like PPL is owned jointly by about 750 recording companies and is therefore able to protect the interests of many small companies in the sector. They argued that without it there would have been much greater difficulty for firms like Virgin and Chrysallis to get going and become successful.

NF

CL/

Sorry to have held this up — first to take account of Home Secretary's letter (behind, at A), and also to pursue answer on PPL & Copyright Bill (Mr Forman's minute). Written advice on Copyright Bill point will follow, but gist is that Copyright Bill route has not been taken, and obviously can't be if you agree with officials that we must now — reluctantly — give in to DTI on MMC reference. Home Secretary has indicated he's minded to agree to MMC reference.

Content to write as drafted?

OK — mpw 1/3

2511/4/18

FROM: C W BOLT
DATE: 19 February 1988

1. MR BURR
2. CHANCELLOR

cc Chief Secretary
Financial Secretary
Sir P Middleton
Mr Anson
Mr Kemp
Mr Gilmore
Mr Burr
Mr Cave
Mrs Pugh
Mr Flanagan
Mr Kerley
Mr Tyrie

BROADCASTING OF RECORDS: NEEDLETIME AND FEES

Lord Young has written to you, in response to your letter of 29 January, pressing again the case for referring the decision by E(CP) to end the collective negotiation of broadcasting royalties to the Monopolies and Merger Commission (MCC), under Section 78 of the Fair Trading Act 1973. He believes that it would be very difficult, and the source of considerable criticism, to break up the monopoly without the balance of public interest being first considered by the MMC. This submission recommends that you should agree to a reference to the MMC, but stress the need for this to be completed quickly, and certainly in a shorter period and the nine months suggested by Lord Young.

Background

2. In the UK, public performance of a recording in any form requires permission from the owners of the copyright; in the case of record companies, this permission has been vested in Phonographic Performance Limited (PPL). The full background to these arrangements was set out in my submission of 22 January 1988. It was agreed at E(CP) on 19 November that it was right in principle to remove the right of the copyright owners in the record industry to negotiate broadcasting royalties collectively, and that the Secretary of State for Trade and Industry and the Home Secretary should submit a further paper on means of achieving this "in early 1988". Lord Young's private secretary wrote to your private secretary on 6 January arguing, on the basis of details of fees paid by independent local radio (ILR) stations to PPL, that the case for breaking up the PPL might not be as strong as it appeared when the matter was considered by E(CP), and that the MMC should be asked to carry out a review of PPL. Your reply of 29 January pointed out that the decision to break up the monopoly was not based principally on the level of

fees that resulted, but on the principle that in this area it was right to substitute a competitive system for the present administered one, with all the advantages which might be expected to result for the development of broadcasting. You also expressed concern about the length of time that a formal review by the MMC would take.

3. Lord Young's letter of 15 February argues that, although the decision by E(CP) to end the collective negotiation of broadcasting royalties was based on the view that it was best to leave fees to be determined by the market, it is the basis of competition law that any monopoly has to be considered, not in itself, but in relation to its effects on the public interest, although this is usually defined in terms of effect on competition. He reports fears that there will be an increased administrative burden for broadcasters if they have to deal with each record company individually, and that small record companies might not be able to enforce their rights effectively. On this basis, he believes that there would be considerable criticism if PPL is broken up without the balance of the public interest being considered by the MMC.

4. Lord Young's letter implies that the decision by E(CP) to end the copyright owners cartel needs to be confirmed by the MMC, and should only be endorsed if the MMC finds that it operates against the public interest. But the decision to break up PPL was taken on its merits, because of the advantages seen for the development of a market in broadcast material. The only issues outstanding were the practicalities of removing the monopoly and the possible need for supporting measures to ensure that the parties were properly protected in a competitive environment.

Discussion

5. Given that Lord Young has pressed again for the use of the MCC, IAE believe that the Treasury will have difficulty resisting. I also understand that the Home Secretary may be withdrawing his earlier objections to this course of action, provided that the timescale for a review, which Lord Young puts at possibly nine months, is shortened. However, our view is that the MMC role should be restricted to examining the practicalities of ending the monopoly, and the measures needed to ensure that the public interest operates in the new arrangements (Section 78(2)* of the Act), not to consideration of the merits of break-up (as allowed under Section 78(1)*). It will, therefore, be necessary to ensure that the terms of the reference are properly defined, and cover only this narrow issue. An MMC report in these terms would have some presentational value in introducing the measures. (We have taken advice

* attached

from Treasury Solicitors who confirm that it would be possible, in their view, to make a reference under Section 78(2) without previously having made a reference under Section 78(1)).

6. A narrow focus for the review, would in addition, help to shorten the timescale for the review. Although the MCC have undertaken to complete mergers references within three months, there is no similar commitment on section 78 references (which allow the MMC to examine the effects on the public interest of specified practices). However, a nine months timescale does look excessive. Moreoever, if the MMC concluded that PPL operated against the public interest, the intention would be to implement the findings in the next session, possibly in the Broadcasting Bill. Since it is intended to introduce the Broadcasting Bill fairly early in the session, and it would be important that the review was completed within six months if its results were to be embodied in this Bill.

7. I attach a draft reply which reluctantly agrees to the proposed MCC reference but stresses the need for restriced terms of reference and for urgency. IAE agree.

C W Bolt.

C W BOLT

PART V

(*b*) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;

(*c*) persons carrying on business in partnership and the husband or wife and relatives of any of them;

(*d*) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets.

(5) The reference in subsection (1) of this section to bodies corporate which associated persons control shall be construed as follows, that is to say—

(*a*) in its application for the purpose mentioned in paragraph (*a*) of that subsection, "control" in that reference means having a controlling interest within the meaning of section 57(4) of this Act, and

(*b*) in its application for any other purpose mentioned in subsection (1) of this section, "control" in that reference shall be construed in accordance with section 65(3) and (4) of this Act.

(6) In this section "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being taken into account as a relative or to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband.

PART VI

REFERENCES TO COMMISSION OTHER THAN MONOPOLY AND MERGER REFERENCES

General references.

78.—(1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time require the Commission to submit to him or them a report on the general effect on the public interest—

(*a*) of practices of a specified class which, in his or their opinion, are commonly adopted as a result of, or for the purpose of preserving, monopoly situations, or

(*b*) of any specified practices which appear to him or them to be uncompetitive practices.

(2) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may also at any time require the Commission to submit to him or them a report on the desirability of action of any specified description for the purpose of remedying or preventing effects, adverse to the public interest, which result or might result from monopoly situations or from any such practices as are mentioned in the preceding subsection.

2511/4/18

PM type final for cy

DRAFT LETTER FROM CHANCELLOR TO SECRETARY OF STATE FOR TRADE AND INDUSTRY

cc Home Secretary, other members of E(CP), Sir Robin Butler

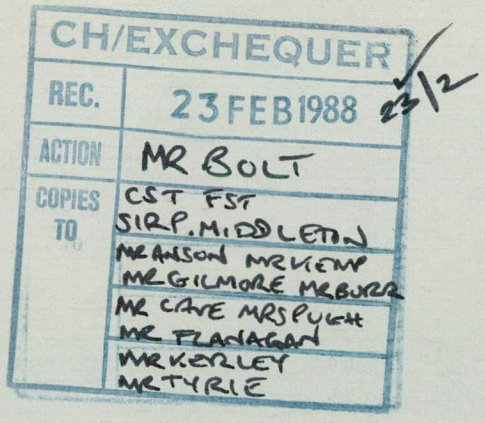
BROADCASTING OF RECORDS: NEEDLETIME AND FEES

I have also seen Douglas Hurd's letter of 23 February

Thank you for your letter of 15 February. I have to say that it does not seem to me that it adds to the information available when E(CP) considered the issue in November. There seems to me, therefore, like Douglas, I see no reason to reopen the decision to end the copyright owners' monopoly on the supply of recorded music. However, as I indicated in my letter of 29 January, the decision in E(CP) to break up PPL I do recognised that some additional measures might be required to protect the interest of the parties if a competitive system was introduced, and this was to be part of a further paper that you and Douglas Hurd were invited to prepare. I recognise that there may be some presentational advantage in inviting the Monopolies and Mergers Commission (MMC) to investigate this particular aspect of the question under Section 78(2) of the Fair Trading Act 1973.

2. It would clearly be important to focus such a review carefully, and I am sure you will want to consult colleagues about the terms of reference. A nine months timescale for such a review, on the other hand, is quite unacceptable. It is unfortunate that we have already lost three months since the matter was considered in E(CP), and it is important that further time is not lost. I must ask that any review is completed within six months, to allow for implementation of the E(CP) decision in the next session.

3. If this timetable is to be secured, it is also clearly important that a reference ~~is~~ be made at an early date, and I will await your proposals for precise terms of reference.



QUEEN ANNE'S GATE LONDON SW1H 9AT

23 February 1988

Dear Nigel.

BROADCASTING OF RECORDS: NEEDLETIME AND FEES

I am grateful to David Young for sending me a copy of his letter of 15 February.

I am sure that decisive action should be taken to end the monopoly position of PPL. We have just seen further fresh evidence of the way in which that monopoly is being used to frustrate broadcasting developments which we all agree are sensible. I announced on 12 January my decision to allow all ILR (and BBC local radio) stations to broadcast different services on their medium frequency and VHF channels: for the last two years this frequency splitting has been on a limited experimental basis only. This decision was warmly welcomed by ILR, but the stations have not been able to make a start on bringing in new services. This is because PPL has taken the view that this would amount to the use of extra needletime which would be made available only at the same rates as those already applying. This is in marked contrast to the response of PRS, which represents the interests of music composers and publishers, which has been willing to allow stations to proceed without any additional payment.

I would also want to question the suggestion in David Young's letter that some broadcasters fear a hugely increased administrative burden if they had to deal with each record company on an individual basis. The ILR companies have made it clear to my officials that they have no such fears. They already deal on an individual basis with hundreds of advertisers, and would see no difficulty in dealing with record suppliers in the same way.

However, in the light of the other points made by David Young I would be content to support his proposal that the position of PPL should be looked at by the MMC as a preliminary to legislation. If the results of the reference are to be reflected in the 1988/89 Broadcasting Bill, it would clearly be better if the MMC could complete its inquiry within six rather than nine months. I would therefore support a narrowly focussed inquiry of a kind that David Young's letter suggests. In order to fit in with the likely legislative timetable I would therefore like my officials to discuss with those in the Treasury and the DTI as a matter of urgency the terms of reference of an inquiry under section 78 of the Fair Trading Act.

The Rt Hon Nigel Lawson, MP.

/over.....

In going down the route of an MMC reference we are, of course, foregoing any possibility of dealing with PPL in the copyright legislation now going through Parliament. There is clearly a risk that in leaving this over until the Broadcasting Bill we thereby widen its scope in such a way as to permit extended and controversial debate on the copyright issues. We shall obviously want to guard against this risk so far as we can. There continues to be much interest in needletime and broadcasting royalties in the context of my announcement on the future direction of radio policy. My announcement on 19 January has prompted a number of comments to the effect that without some movement on needletime and royalty payments our policy is unlikely to bear much fruit. I am therefore concerned both to keep up the momentum in this area and to be in a position to explain soon what action the Government is proposing to take. It is a key piece in the jigsaw.

I am copying this letter to David Young, the other members of E(CP) and Sir Robin Butler.

Yours,

Douglas.

UNCLASSIFIED

FROM: MISS M P WALLACE
DATE: 24 FEBRUARY 1988

MR MONCK

cc PS/Financial Secretary
Mr Burgner
Mr Gilmore
Mr Burr
Mr MacAuslan
Mr Waller
Mr Bolt
Mr Stevens
Mr Wynn Owen

EFFECTS OF THE COPYRIGHT BILL ON THE RECORDING INDUSTRY

... I attach a minute the Chancellor has received from Nigel Forman, recording lobbying on behalf of PPL about the possible effects of the Copyright Bill on the recording industry. The Chancellor has asked for a note on this. I would be grateful if you could arrange for this to be provided.

MOIRA WALLACE

mjd 2/154Jn

cc: Chief Secretary
Financial Secretary
Sir P Middleton
Mr Anson
Mr Kemp
Mr Gilmore
Mr Burr
Mr Case
Mrs Pugh
Mr Tyrie

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

2 March 1988

The Rt Hon Lord Young of Graffam
Secretary of State for Trade and Industry
1 Victoria Street
London SW1H 0ET

BROADCASTING OF RECORDS: NEEDLETIME AND FEES

Thank you for your letter of 15 February. I have also seen Douglas Hurd's letter of 23 February.

I have to say that, like Douglas, I see no reason to reopen the decision to end the copyright owners' monopoly on the supply of recorded music. However, as I indicated in my letter of 29 January, I do recognise that some additional measures might be required to protect the interest of the parties if a competitive system was introduced, and this was to be part of a further paper that you and Douglas Hurd were invited to prepare. I recognise that there may be some presentational advantage in inviting the Monopolies and Mergers Commission (MMC) to investigate this particular aspect of the question under Section 78(2) of the Fair Trading Act 1973.

It would clearly be important to focus such a review carefully, and I am sure you will want to consult colleagues about the terms of reference. A nine months timescale for such a review, on the other hand, is quite unacceptable. I must ask that any review is completed within six months, to allow for implementation of the E(CP) decision in the next session.

If this timetable is to be secured, it is also clearly important that a reference be made at an early date, and I will await your proposals for precise terms of reference.

NIGEL LAWSON

dti

the department for Enterprise

1. Jonathan
2. BF 9/3
11/3
14/3
15/3

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

·The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

CH/EXCHEQUER

REC.	08 MAR 1988 8/3
ACTION	MR BOLT
COPIES TO	CST TRT SIR P. MIDDLETON MRANSON MR PHILLIPS MRS CASE MR BURR MR CAVE MRS PUGH MR KERLEY METYRIE

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

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01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5422
Our ref PS1ALD
Your ref
Date 8 March 1988

Dear Nigel,

TERMS FOR BROADCASTING RECORDS

Thank you for your letter of 2 March. This reply also deals with the points raised in Douglas Hurd's letter of 23 February.

E(CP)'s decision, as recorded in the minutes, was "that it would be right in principle to remove the right of copyright owners in the record industry to negotiate broadcasting royalties collectively through Phonographic Performance Limited (PPL)". As you say, Douglas Hurd and I were asked to look into how that might be achieved.

Let me say first that implementing E(CP)'s decision as it stands, would as things turn out, achieve nothing. E(CP)'s decision was based on the assumption that PPL negotiates collectively on the terms for licensing rights which are owned by the record companies. In fact it transpires that the relevant rights are assigned by the companies to PPL which becomes their sole owner. Implementing E(CP)'s objectives is not only therefore a matter of banning collective negotiation but of breaking up a private sector company engaged in the business of exploiting its own property. This difference is much more than a technicality and raises issues which were not considerd by E(CP). Nor, on my reading, did the decision we took last November extend to the measures that would be required.

If we are to pursue the option of breaking up PPL and preventing collective licensing in the future then I believe that an investigation by the MMC is essential. But the inquiry must be allowed to assess the effects on the public interest of the option itself since it is precisely the absence of any such impartial assessment which would be so publicly indefensible. I see little point in confining a reference merely to the ancillary measures which might be needed on the assumption that a break up is enforced.

It would run completely counter to the normal competition policy procedures to single out PPL for dismemberment, alone among monopolists, without the underpinning of an adverse public interest finding by the MMC. Generally under competition law no powers arise to force a monopolist to divest himself of his assets except on the basis of such a finding. There have been many instances over the years of monopolists behaving in a way which the Government of the day has found objectionable, but this has never been allowed to override the normal competition legislation nor to justify dispensing with a formal assessment of the public interest by an impartial body. To do so in this solitary case would rightly be seen as arbitrary and dictatorial and would gravely undermine the reputation for fairness and consistency we need to maintain in regulating the activities of the business community. It might indeed be in breach of the European Convention on Human Rights and the Law Officers may care to comment on this point.

The difficulty is compounded by the fact that PPL is a regulated monopoly whose charges for the broadcasting of records by independent radio have, since 1980, been set not by itself but by the Performing Rights Tribunal; PPL will legitimately claim that all it has done is to comply meticulously with the Tribunal's decisions - effectively those of a court of law.

If, on the other hand, the MMC does conclude that PPL operates against the public interest, this will be particularly useful in view of the fact that legislation to break up PPL will be very controversial.

I agree that any MMC investigation ought to be completed in six months. Such an investigation will also satisfy my other concerns about our decision. First among these is how to reconcile breaking up PPL with the thrust of the Copyright Bill, which encourages the extension of collective licensing of copyright into new fields and expands the machinery for

regulating it by means of the renamed Copyright Tribunal. The basis for this policy - approved by H Committee last year - is that in cases such as this the ordinary advantages of competition are outweighed by the advantages of "blanket" or open licensing covering the complete product range, provided that the resulting monopoly is properly regulated. To announce the banning of collective licensing in one area runds deeply counter to a basic premise underlying the Bill and the conflict with previous Cabinet decisions in this field is an aspect which has not been considered at all by E(CP).

Further aspects which the MMC should look at are:-

(i) the allegations of small record companies that without PPL they will have no way of enforcing their rights against broadcasters except at exhorbitant cost (the letters from PPL's smaller members I am receiving on this subject are causing me considerable concern);

(ii) the possibility that in arguing for a break-up of PPL the AIRC is trying to obstruct, rather than encourage community radio. The larger ILR companies maintain they will be able to cope with the administrative costs of clearing rights with 750 individual record companies but it is far from clear that small community radio stations will be able to do so;

(iii) the opposition of the ITV companies to removal of the possibility of obtaining access to PPL's repertoire through blanket licensing;

(iv) whether there is any practicable way of preventing new versions of PPL emerging in the future. Unless there is, there is little point in action to break -up PPL. But to do so implies placing some constraint on how and to whom copyright owners may assign their rights in the future, and limiting the transferability of rights would alter the nature of the rights themselves.

(v) ILR's allegations, referred to in Douglas Hurd's letter, that PPL is demanding extra payment for split frequencies. I am not clear why this should necessarily be unreasonable but my information is that PPL is not in fact demanding any increase in the percentage of total net advertising revenue receivable from such services.

I very hope that against this background we can agree to an ... MMC inquiry on the basis I propose, and I attach draft terms of reference for comment. If this course is not acceptable then I must ask that we discuss the matter further in E(CP) and explore more fully the implications I have outlined in this letter.

I am copying this letter to members of E(CP) and to Patrick Mayhew.

RESTRICTED

NEEDLETIME - DRAFT TERMS OF REFERENCE

1 The Secretary of State for Trade and Industry and the Home Secretary, in exercise of their powers under section 78(1) of the Fair Trading Act 1973 ("the Act"), hereby require the Monopolies and Mergers Commission ("the Commission") to submit to them a report on the general effect on the public interest of the practices specified in paragraph 2 below, which appear to them to be practices within section 78(1)(b) of the Act.

2 The practices referred to in paragraph 1 above are -

(a) the practice of owners of copyright in sound recordings of assigning their public performance and broadcasting rights in such recordings to a collective licensing body; and

(b) the practice of any such collective licensing body of making it a condition of granting copyright licences in respect of sound recordings that the licensee pay royalties at the current rates (being the rates payable at the date of this reference in respect of the number of hours each day during which he may publicly perform or broadcast the sound recordings).

3 In this reference -

"collective licensing body" means a society or other organisation which, either as owner or prospective owner of copyright or as agent for him, negotiates or grants copyright licences relating to the public performance and broadcasting rights in the sound recordings of several makers of sound recordings;

"copyright licences" means licences to do, or authorise the doing of, any of the acts restricted by copyright;

"sound recording" means -

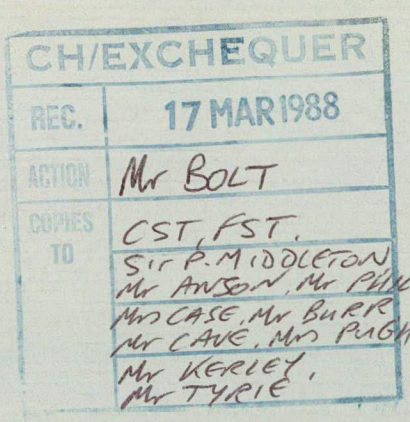
(a) a recording of sounds, from which the sounds may be reproduced, or

(b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

1988

An Assistant Secretary,
Department of Trade and Industry.



17/3

QUEEN ANNE'S GATE LONDON SWIH 9AT

16 March 1988

Dear Nigel.

BROADCASTING OF RECORDS: NEEDLETIME AND FEES

I have now seen copies of your letter to David Young of 2 March and his reply of 8 March.

I do not necessarily accept all the points made in David's latest letter. For example, I think it is wrong to suggest that in arguing for a break-up of PPL, ILR companies are motivated by a wish to obstruct community radio stations. I am also not persuaded that the fundamental issue is at all affected by the fact that the record companies assign their rights to PPL. The fact is that PPL is a non-profit making copyright collecting society which acts solely on behalf of its members, the record companies. PPL is simply their vehicle. We were clear in E(CP) that we wanted to introduce competitive forces into copyright licensing, and I do not accept that our view of the matter depended on whether rights were retained by record companies or vested in a body acting for them.

I doubt whether the ITV companies are opposed to the decollectivisation of licensing. In fact they would see advantages to offset the inconvenience of individual dealing, and their position could best be described as neutral. In any event, the whole issue is far less important to them than to ILR.

I am nevertheless prepared to agree to an MMC inquiry on the basis which David proposes, subject to clarification of the draft terms of reference which I have asked my officials to pursue with his. In the interests of focussing the inquiry and so enabling it to be completed quickly I would prefer it to be confined to broadcasting (in contrast to public performance) and to the position of the record companies (in contrast to music composers and publishers whose position we agreed in E(CP) should not be disturbed).

I am, however, concerned that in inviting the MMC to take an unfettered look at the position of PPL we do not lose sight of the need to secure some early practical improvement in the present situation. In discussion at E(CP) David accepted the case for removing the right of PPL to impose needletime limits and for substituting a right to receive equitable remuneration for needletime actually used. Without prejudice to the larger question of the monopoly position of PPL I am sure that in any event we need to legislate to prevent the rationing of copyright material by quantity as

The Rt Hon Nigel Lawson, MP.

/over.....

well as by price. The equitable remuneration formula is widely used abroad, and it would be sensible to take the opportunity of the current copyright legislation to incorporate it in our law. There will be widespread disappointment within the radio world that we envisage no more than an MMC inquiry, and this additional measure would help to make a more acceptable package. It need not in any way cut across what we want the MMC to do.

I would welcome David Young's agreement to the preparation of the necessary amendment to the Copyright Bill.

I am copying this letter to the other members of E(CP) and Sir Robin Butler.

Yours,

Douglas.

2513/10/14

FROM: C W BOLT
DATE: 16 March 1988

1. MR BURR
2. CHANCELLOR

cc Chief Secretary
Financial Secretary
Sir P Middleton
Mr Anson
Mr Monck
Mr Phillips
Mr Burgner
Mrs Case
Mr Waller
Mr Cave
Mrs Pugh
Mr Wynn Owen
Mr Kerley
Mr Tyrie

CL/ content to write as drafted?

TERMS FOR BROADCASTING RECORDS

Lord Young's letter of 8 March, in reply to yours of 2 March, seeks to reinforce the case for the reference to the Monopolies and Mergers Commission (MMC) in respect of the collective negotiation of broadcasting royalties. The letter advances a number of arguments, which have not been put forward before, why a reference is required. The case for such a reference does now appear overwhelming; you are therefore recommended to agree to the reference being made, but to express concern that the arguments were not advanced at the time of the E(CP) discussion in November. There are a number of detailed points on the terms of reference which need to be pursued; this might best be dealt with at official level.

Lord Young's letter

2. Lord Young's letter falls into two main sections: the first advances some further arguments supporting a reference to the MMC; the second discusses some possible issues that the MMC might consider in its review.

3. The letter contains one important new piece of information, namely that Phonographic Performance Limited (PPL) does not merely negotiate collectively on the terms for licensing rights which are owned by the record companies, but that these rights are assigned by the companies to PPL, which becomes their sole owner. This point was not made clear to E(CP); what it means is that the only way of implementing the E(CP) decision quickly would be to dismember PPL, and force it to divest itself of its assets. Under competition law, there are generally no powers to force a monopoly to do this except on

the basis of an adverse public interest finding by the MMC. There would be no precedent for taking such action without an MMC reference, and Lord Young suggests that to do so might even be in breach of the European Convention of Human Rights.

4. On the terms of reference and procedure, Lord Young agrees that any MMC investigation ought to be completed in 6 months. He suggests that one factor to be considered in the investigation should be the reasons for seeking to ban collective licensing in this area, when the extension of collective licensing and copyright into new fields is one of the thrusts of the Copyright Bill currently going through Parliament. He also suggests that there are a number of detailed questions about the relationship between record companies and broadcasters which should be looked at by the MMC. Draft terms of reference are attached to the letter.

Case for an MMC reference

5. No indication was given in the discussion of this issue at E(CP) in November, or, for that matter, in the letter from Lord Young's Private Secretary of 6 January and that from Lord Young of 15 February, that there were legal difficulties in proceeding without an MMC reference, rather than it simply being a departure from normal practice. Given, however, the new information provided by Lord Young, it is difficult to dispute his conclusion that an MMC reference is required. While it might be possible to ban collective negotiation in the future, the fact that PPL actually owns copyright in the existing repertoire means that a fully competitive market could only be introduced now by forcing it to divest itself of its assets. To do this without going through an MMC reference could require hybrid legislation, which is clearly undesirable.

6. In agreeing, albeit reluctantly, to such a reference, it will be important to be clear about the broadcasting objectives which underpinned the original decision. This was not intended to be a frontal assault on the principle that originators of a recording should hold the copyright governing its use, or on the proposition that there were situations where the ordinary advantages of competition in negotiating copyright fees are outweighed by the advantages of "blanket" or open licensing covering the complete product range, provided that the resulting monopoly is properly regulated. Rather the decision was simply that collective negotiation should be prevented in this particular market, given that it appeared to have produced a number of undesirable results,

and went against the thrust of other policy decisions to introduce competition into the broadcasting market. The main issues for an MMC reference would, therefore, be to assess the extent to which the general arguments in favour of collective negotiation apply, or do not apply, in this particular situation. If they do not apply, that would justify terminating PPL's present role. But the MMC might still see a case for a central body to undertake a "policing" and monitoring role, to protect the interests of smaller record companies, and the reference ought to allow for that possibility also.

Proposed Terms of Reference

7. The terms of reference as proposed by Lord Young are expressed in very general terms, and do not include the proposed timescale. It appears that this format is, in fact, required by the legislation. However, DTI quite frequently discuss the conduct of a review with the MMC in advance, to give a broad indication of the main focus, and agree a timescale which is included in the announcement of the review, even though it cannot legally be enforced. It appears that they envisage a similar procedure being adopted in this instance, and it is important that the proposed scope of the reference is discussed between interested departments in advance of that. It would also be open to a Government Department to submit formal evidence, and this might also need to be considered in this case.

8. We understand that the Home Secretary also has reservations about the scope of the reference, but will suggest that these are dealt with at official level. It would clearly be desirable for Treasury officials to be involved in any such discussions. Particular points we would propose raising would include the reason why the reference has been extended to include public performances, since this is not an issue in the current discussions, and whether some of the detailed aspects which Lord Young believes should be looked at by the MMC, which are also rather wide-ranging, are ones where an MMC input is warranted.

Recommendation

9. You are therefore recommended to agree to an MMC reference on the lines proposed by Lord Young, although you will wish to express regret that the strength of the arguments in favour of such a course of action have only just been properly exposed. Detailed discussions on the scope of the reference might

He has now written, and I have amended draft (in consultation with HE who say no other amendment necessary) m.

best be left to officials; we would, of course, report back to you if an acceptable agreement could not be reached.

10. IAE agree.

C W BOLT

2513/10/14

DRAFT LETTER FROM CHANCELLOR TO SECRETARY OF STATE FOR TRADE AND INDUSTRY

cc Douglas Hurd
Patrick Mayhew
Other members of E(CP)

p1 type final

TERMS FOR BROADCASTING RECORDS

Thank you for your letter of 8 March, responding to mine of 2 March. I have also seen Douglas Hurd's letter of 16 March.

2. Your latest letter does, I ~~think,~~ agree, make a fairly persuasive case for inviting the Monopolies and Mergers Commission (MMC) to assess the effects on the public interest of the arrangements under which Phonographic Performance Ltd (PPL) negotiates broadcasting royalties on behalf of the owners of copyright. As you say, the fact that PPL actually owns the copyright, and is not simply negotiating on behalf of individual copyright owners, would make it difficult to implement the decision at E(CP) to end such collective negotiating without going through the normal MMC channels.

3. It is, ~~to say the least, unfortunate~~ a pity that the role of PPL was not fully explained to E(CP). ~~Even your letter of 15 February did not make it clear;~~ or exposed in our recent correspondence. ~~and the discussion at E(CP) on 19 November merely considered an MMC reference as one of a number of "possibilities". There was no indication~~ Had we known at E(CP) that any decision to end copyright owners' rights of collective negotiation through the PPL could only be contingent on the outcome of an MMC reference. ~~I do not believe that the necessity of making such a reference would have changed the sub-committee's decision on the merits of the case, but~~ This, we would have avoided a delay of 4 months.

4. I welcome your agreement that the review should be completed within 6 months. In order to achieve this, it is obviously important that the review is focussed on the main issues necessary to reach valid conclusions. It is not a question of examining the general principle of copyright, and our policy in that area, although the paper for E(CP) on this subject did note that certain countries, such as the USA allowed free broadcasting of records. It is quite possible to agree fully with the policy and still be concerned about the way in which PPL operates. What is at issue here is whether the general principle of encouraging "blanket" licensing arrangements is being applied in this particular market in a way which takes proper account of other relevant considerations, including those which underlie our policy measures to encourage greater competition in radio services.

5. Should the MMC find that the current arrangements operate against the public interest, we would need to consider whether to break up PPL, or whether it should only be allowed to retain any policing or monitoring role to protect the interests of the parties. Should the decision be in favour of leaving the arrangements unchanged, we would then need to consider which of the other options considered by E(CP), such as ending needletime restrictions and setting maximum fees, should be adopted. These are all points on which MMC advice could be useful

6. I am not sure that the terms of reference as currently drafted is sufficiently focussed on these key questions. I am also concerned that some of the issues suggested on the third page of your letter ~~as ones which the MMC should look at could divert its efforts.~~ It should be helpful, therefore, if officials ~~of our two departments~~ could discuss the scope of the reference and the detailed terms of reference. I imagine Douglas Hurd would wish his officials to be involved also.

7. I am copying this letter to Douglas Hurd, other members of E(CP) and to Patrick Mayhew.

2513/10

FROM: C W BOLT

DATE: 18 March 1988

1. MR BURR FJB 18/3.
2. PS/CHANCELLOR

Ch/

we held up the reply you sighted, as HE have had 2nd thoughts. Do you want to amend your letter by adding highlighted section?

cc PS/Chief Secretary
PS/Financial Secretary
Sir P Middleton
Mr Anson
Mr Monck
Mr Phillips
Mr Burgner
Mrs Case
Mr Waller
Mr Cave
Mrs Pugh
Mr Wynn Owen
Mr Kerley
Mr Tyrie

MPW 18/3

TERMS FOR BROADCASTING RECORDS

The Home Secretary has written to the Chancellor in response to Lord Young's letter of 8 March, which was the subject of my submission dated 16 March. While accepting the case for an MMC reference in respect of broadcasting royalties, Mr Hurd suggests that measures to prevent restrictions on needletime, and to institute instead an "equitable remuneration" formula, should be included in the Copyright Bill currently going through Parliament.

2. While there would be some advantage in proceeding as Mr Hurd proposes, in terms of achieving some early results in this area, Lord Young is likely to oppose the inclusion of such measures in the Copyright Bill on the grounds that they would tend to prejudge the outcome of the MMC reference. It will be possible to implement any adverse findings of the MMC reference in the Broadcasting Bill accepted for the next session, and agreeing to limited early action might make it more difficult to achieve implementation of more radical changes should they be recommended. There do not therefore seem to be any strong arguments for pressing Lord Young to accept amendments to the Copyright Bill if he is unwilling; and to do so might risk further delay to the MMC reference itself.

3. I attach an amended draft letter, recognising the conflicting arguments, and suggesting that this question should be considered by officials when they discuss the scope of the reference. Unless Lord Young was eager to make the amendments proposed by Douglas Hurd, we would not propose pressing DTI officials on this point.

CWBolt.

C W BOLT

2513/10/14

DRAFT LETTER FROM CHANCELLOR TO SECRETARY OF STATE FOR TRADE AND INDUSTRY

cc Copies as indicated

TERMS FOR BROADCASTING RECORDS

Thank you for your letter of 8 March, responding to mine of 2 March. You will also have seen Douglas Hurd's letter to me of 16 March responding to yours.

2. Your latest letter does, I think, make a fairly persuasive case for inviting the Monopolies and Mergers Commission (MMC) to assess the effects on the public interest of the arrangements under which Phonographic Performance Ltd (PPL) negotiates broadcasting royalties on behalf of the owners of copyright. As you say, the fact that PPL actually owns the copyright, and is not simply negotiating on behalf of individual copyright owners, would make it difficult to implement the decision at E(CP) to end such collective negotiating without going through the normal MMC channels.

3. It is, to say the least, unfortunate that the role of PPL was not fully explained to E(CP). Even your letter of 15 February did not make it clear; and the discussion at E(CP) on 19 November merely considered an MMC reference as one of a number of "possibilities". There was no indication that any decision to end copyright owners' rights of collective negotiation through the PPL could only be contingent on the outcome of an MMC reference. I do not believe that the necessity of making such a reference would have changed the sub-committee's decision on the merits of the case, but we would have avoided a delay of 4 months.

4. I welcome your agreement that the review should be completed within 6 months. In order to achieve this, it is obviously important that the review is focussed on the main issues necessary to reach valid conclusions. It is not a question of examining the general principle of copyright, and our policy in that area, although the paper for E(CP) on this subject did note that certain countries, such as the USA allowed free broadcasting of records. It is quite possible to agree fully with the policy and still be concerned about the way in which PPL operates. What is at issue here is whether the general principle of encouraging "blanket" licensing arrangements is being applied in this particular market in a way which takes proper account of other relevant considerations, including those which underlie our policy measures to encourage greater competition in radio services.

5. I am not sure that the terms of reference as currently drafted is sufficiently focussed on these key questions. I am also concerned that some of the issues suggested on the third page of your letter as ones which the MMC should look at could divert its efforts. It should be helpful, therefore, if my officials could also be involved in discussions about the scope of the reference and the detailed terms of reference.

6. Should the MMC find that the current arrangements operate against the public interest, we would need to consider whether to break up PPL, or whether it should only be allowed to retain any policing or monitoring role to protect the interests of the parties. Should the decision be in favour of leaving the arrangements unchanged, we would then need to consider which of the other options considered by E(CP), such as ending needletime restrictions and setting maximum fees, should be adopted. Douglas Hurd proposes immediate action to prevent restrictions on needletime, and to introduce an equitable remuneration formula, by means of an amendment to the Copyright Bill. I can

see some case for proceeding as Douglas suggests, in order to achieve some early results. On the other hand there may be some risk of appearing to prejudge the outcome of the MMC reference; and we need to avoid giving the impression that action on needletime is all that is required. I suggest that, in the discussions about the terms of reference, officials might also discuss the considerations bearing on the timing of moves on needletime.

7. I am copying this letter to Douglas Hurd, other members of E(CP) and to Patrick Mayhew.

PS/CST

PS/Financial Secretary
Sir P Middleton
Mr Anson
Mr Monck
Mr Phillips
Mr Burgner
Mrs Case
Mr Burr
Mr Waller
Mr Cave
Mrs Pugh
Mr Bolt
Mr Wynn Owen
Mr Kerley
Mr Tyrie

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

21 March 1988

The Rt Hon Lord Young of Graffham
Secretary of State for Trade and Industry
1 Victoria Street
London SW1

TERMS FOR BROADCASTING RECORDS

Thank you for your letter of 8 March, responding to mine of 2 March. I have also seen Douglas Hurd's letter of 16 March.

Your latest letter does, I agree, makes a fairly persuasive case for inviting the Monopolies and Mergers Commission (MMC) to assess the effects on the public interest of the arrangements under which Phonographic Performance Ltd (PPL) negotiates broadcasting royalties on behalf of the owners of copyright. As you say, the fact that PPL actually owns the copyright, and is not simply negotiating on behalf of individual copyright owners, would make it difficult to implement the decision at E(CP) to end such collective negotiating without going through the normal MMC channels.

It is a pity that the role of PPL was not fully explained to E(CP) or exposed in our recent correspondence. Had we known at E(CP) that any decision to end copyright owners' rights of collective negotiation through the PPL could only be contingent on the outcome of an MMC reference, we could have avoided a delay of 4 months.

I welcome your agreement that the review should be completed within 6 months. In order to achieve this, it is obviously important that the review is focussed on the main issues necessary to reach valid conclusions. It is not a question of examining the general principle of copyright, and our policy in that area, although the paper for E(CP) on this subject did note that certain countries, such as the USA allowed free broadcasting of records. It is quite possible to agree fully with the policy and still be concerned about the way in which PPL operates. What is at issue here is whether the general principle of encouraging 'blanket' licensing arrangements is being applied in this particular market in a way which takes proper account of other relevant considerations, including those which underlie our policy measures to encourage greater competition in radio services.

Should the MMC find that the current arrangements operate against the public interest, we would need to consider whether to break up PPL, or whether it should only be allowed to retain any policing or monitoring role to protect the interests of the parties. Should the decision be in favour of leaving the arrangements unchanged, we would then need to consider which of the other options considered by E(CP), such as ending needletime restrictions and setting maximum fees, should be adopted. These are all points on which MMC advice could be useful.

I am not sure that the terms of reference as currently drafted are sufficiently focussed on these key questions. I am also concerned that the MMC's efforts could be diverted if it were to cast its net as wide as some of the issues suggested on the third page of your letter. It should be helpful, therefore, if our officials could discuss the scope of the reference and the detailed terms of reference. I imagine Douglas Hurd would wish his officials to be involved also.

I am copying this letter to Douglas Hurd, other member of E(CP) and to Patrick Mayhew.

NIGEL LAWSON

dti

the department for Enterprise

pt copy found

Department of Trade and Industry

10-18 Victoria Street
London SW1H 0NN

Switchboard
01-215 7877

Telex 8811074 DTHQ G
Fax 01-222 9280

Miss E S Wilmshurst
Law Officers' Department
Law Courts
Strand
London WC2

CH/EXCHEQUER

REC.	24 MAR 1988
ACTION	MR BOLT
COPIES TO	CST FST SIR P. MIDDLETON MR ANSON MR MONCK MR PHILLIPS MR BURGNER MRS CASE MR LITTLER MR BURR MR CAVE MRS PUGH MR LYNN-ALLEN MR KERLEY MR TYRIE

24/3

Direct line 215 3460
Our ref
Your ref
Date 23 March 1988

Dear Elizabeth

TERMS FOR BROADCASTING RECORDS

I refer further to your letter of 9 March to my Secretary of State's private office.

2 It is apparent from the letter of 21 March from the Chancellor of the Exchequer to my Secretary of State that no steps will be taken to deal with the existence or activities of Phonographic Performance Limited until after a report from the Monopolies and Mergers Commission. Accordingly, there appears to be no longer any need for the advice of the Law Officers requested in the letter of 8 March from my Secretary of State to the Chancellor of the Exchequer, and I shall not be preparing the submissions referred to in your letter of 9 March.

3 I am copying this to the private offices of my Secretary of State and the Chancellor of the Exchequer.

Yours sincerely

Tony Susman

A M SUSMAN

the enterprise initiative

888-256

1. Farthing 2 MP

CONFIDENTIAL

FROM: R M PERFECT
DATE: 3 NOVEMBER 1988

1. MR FARTHING
2. FINANCIAL SECRETARY

cc: Chancellor
Chief Secretary
Sir P Middleton
Mr Anson
Mr Monck
Mr Phillips
Mr Burgner
Mrs Case
Mr Burr
Mr Call

[pretty disappointing]

BROADCASTING RECORDS: NEEDLETIME AND FEES

1. You may recall that the Monopolies and Mergers Commission (MMC) were asked on 30 March to report on the collective exercise of copyrights in sound recordings. We have now seen the Report, on a confidential basis. This minute summarises the conclusions and advises on handling.

Summary of recommendations

2. The MMC conclude that collective licensing bodies are the best available mechanism for licensing sound recordings provided they can be restrained from using their monopoly unfairly. They recommend that:

(i) Phonographic Performance Ltd (PPL) should abandon constraints on needletime;

(ii) PPL should no longer require large discotheques to employ musicians as a condition of licensing;

(iii) PPL should be obliged to permit use of its repertoire in return for fair payments;

(iv) users should be entitled to a statutory licence, initially on the basis of self-assessed royalties, pending a Copyright Tribunal order on a fair level of remuneration;

(v) performers should be given a fair share of the royalty income received by PPL. This will require PPL to assess the use of individual records made by ILR and in public performances. And greater efforts will need to be made to keep track of performers;

(vi) there should be no change in PPL's current royalty rates. But BBC and ILR stations should be subject to a common tariff, related to audience sizes.

3. The MMC's endorsement of collective licensing bodies is disappointing. But the recommendations should all help ensure the PPL does not abuse its monopoly. The question that now needs to be considered is whether they go far enough - we have some doubts.

Background: merits of collective licensing bodies

4. E(CP) decided on 19 November 1987 that there was a strong case for removing the monopoly on the supply of recorded music which copyright bodies have, leaving fees to be determined between radio stations and record companies, provided that a suitable mechanism could be devised to safeguard rights of copyright. The matter was eventually referred to the MMC.

5. The MMC looked at experience in other countries and found that collective licensing arrangements are used wherever the copyright of sound recordings is protected. Moreover the MMC believe that while large record companies and large broadcasters could manage bilateral negotiations without too much difficulty, many of the smaller record companies would find it impossible to do so, and individual copyright owners would have great difficulty in recovering royalties in the public performance market. The MMC conclude that collective licensing is the best available arrangement but assert that it should:

(i) guarantee users immediate access to the licensor's repertoire;

(ii) keep to a minimum the administrative costs incurred by users and owners;

(iii) provide for the use of copyright of recordings that have yet to be made (and hence of unknown value); and

(iv) meet the need of owners and users whatever the scale of the business.

6. The recommendations aim to ensure these conditions are met.

Distribution of income from royalties on sound recordings

7. The copyright in around 90 per cent of all commercial sound recordings made or published in the UK are assigned to PPL, a body owned and managed by the principal record companies in the UK. A summary of PPL's income and revenue is at Annex A. The MMC found that there is at present no more than a chance relationship between a performers receipts and the extent to which his recordings are played and recommend that these arrangements should be improved (recommendation 2(v) above refers).

Role of the Musicians Union

8. PPL pay around £1.3 million a year to the Musicians Union in respect of unidentified session performers. This money is not distributed to musicians, but is used to cover losses on loans, to promote musical events and for administration. So PPL currently supplements the resources available to the Musicians Union. For unidentified performers who are not trades' union members there are no specific payments from the PPL, nor any benefits from the payment to MU. This could be improved if performers receive directly from PPL a fair share of the royalty received by PPL. The MMC recommends best efforts be made, but this may need to be toughened up.

9. In return the MMC Report notes that the Musicians Union (MU) requires members making commercial recordings to use a contract that requires the record company or radio stations concerned to assign the broadcasting and public performance rights to the PPL. The MMC say they believe this arrangement could be abandoned as a consequence of their recommendations on equitable remuneration. But the point is not picked up in the main conclusions of the report and it is not clear how the MMC's view can be acted on. We need to ensure the scope for action is fully explored.

Copyright protection

10. Broadcasters asked the MCC to consider in this Report the merits of limiting copyright protection to recordings produced in the United Kingdom instead of, as at present, those published here. Both methods are permissable under the relevant international convention. But the MMC thought the effects of change on the record industry so fundamental that a major study

would be needed to establish and assess them. The effect of change would be to increase the amount of sound recordings that broadcasters could use without paying royalties. The Home Office are disappointed by this response and want a further study commissioned. Limiting copyright protection given to recordings produced overseas could helpfully reduce the payments made by UK broadcasters, so Treasury could support this approach. DTI (and the recording industry) will resist on the grounds that the UK should set a good example by protecting all interests in sound recordings in the hope that other countries will respect the rights of UK record producers. This is rather a naive approach to international negotiations.

Handling

11. Department of Trade and Industry officials will now prepare a paper for E(CP) on the Government's response to the report, in consultation with Home Office and Treasury. DTI are aiming to have the paper ready for E(CP)'s next meeting on 24 November.

12. The MMC Report is likely to be published a day earlier, on 23 November. DTI will not have to respond to the conclusions immediately and can simply say they are being studied.

MMC report on restrictive labour practices

13. The MMC's separate report on restrictive practices within the film and television industries is expected to be ready at the end of the year.

Mark Perfect

R M PERFECT

he.dc/perfect/sub1

Annex A

PHONOGRAPHIC PERFORMANCE LTD: INCOME

(year ending May 31)

£ million

	1985	1986	1987
BBC Radio and TV	5.0	5.7	6.7
Independent Local Radio	3.1	3.1	3.5 *
ITV	0.3	0.3	0.3
Public performance	2.1	2.6	3.3
Telephone services etc	0.4	0.3	0.4
Bank interest	0.6	0.7	0.9
	11.5	12.7	15.1

*includes £1.1m which is a matter of dispute with Capital Radio

PPL'S EXPENDITURE

£ million

	1985	1986	1987
Administration	1.4	1.4	1.5
Payment to music publishers	0.7	0.8	0.9
Anti-piracy contribution	0.3	0.4	0.4
Capital Radio provision			1.1
Distribution to:			
record companies	6.3	7.0	7.9
musicians union	1.1	1.2	1.3
named performers	1.7	1.9	2.0
	11.5	12.7	15.1

BF M 18/11

BF 11/11
15/11 18/11

dti
the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

.The Rt Hon Douglas Hurd CBE MP
Secretary of State for Home Affairs
Home Office
50 Queen Anne's Gate
LONDON SW1

Department of Trade and Industry
1-19 Victoria Street
London SW1H 0ET
Switchboard 01-215 7877
Telex 8811074/5 DTHQ G
Fax 01-222 2629

CH/EXCHEQUER
REC. 10 NOV 1988
ACTION MR PERFECT
COPIES TO CST, FST
SIR P MIDDLETON, MR ANSON
MR MONCK, MR PHILLIPS
MR BURGNER, MRS CAVE,
MR SPACKMAN, MR WALLER,
MR BURR, MR FAREWING,
MR NICHOL, MS YOUNG
MRS CHAPLIN, MR TYRIE, MR CALL

✓ 10/11

Direct line 215 5422
Our ref DW2AVA
Your ref
Date 9 November 1988

Dear Douglas

COLLECTIVE LICENSING OF PUBLIC PERFORMANCE AND BROADCASTING RIGHTS IN SOUND RECORDINGS

The MMC has now submitted its report on collective licensing of public performance and broadcasting rights in sound recordings. As the reference was a joint one by us, we now need to decide how to respond to the report and when to publish it.

The report was submitted in mid October. Normal practice is to publish the report and make a government announcement on the findings simultaneously, about six weeks after receipt. This suggests aiming for a publication date of, say, Wednesday 30 November. In making an announcement on the report, we can confine ourselves to broad principles leaving the details of implementation to be worked out later.

The main conclusion of the report is that collective licensing bodies are the best available mechanism for licensing sound recordings as long as they can be restrained from abusing their monopoly position. The MMC reached this conclusion on the grounds that the smaller record companies and individual copyright owners would be at a serious disadvantage, in a free market, in negotiating and, subsequently, enforcing their rights. This has always been the DTI's view and I therefore favour accepting the report's recommendation but with the clear proviso that we also intend to enforce the MMC's other recommendations to prevent an unfair use of the monopoly. Two of those recommendatons (right to equitable remuneration and termination of needletime restrictions) were favoured by E(CP) last November.

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In my view, ensuring PPL does not abuse its monopoly means unequivocal acceptance of the following recommendations:-

a) Users should be entitled to a statutory licence in return for equitable remuneration terms and PPL's (and any other similar bodies') injunctive rights should be limited

Because we have no order making powers under the Fair Trading Act 1973 under this general reference, my view is that statutory back up will be needed as a last resort to ensure that users can always obtain a licence to broadcast as much of PPL's repertoire as they wish. I would envisage the statutory back up in the broadcasting legislation. Negotiated undertakings would catch only PPL; we want to ensure any bodies collectively licensing the broadcasting and public performance of sound recordings also abide by this principle. The MMC has not recommended, and I do not favour, a statutory ceiling on equitable remuneration (an option canvassed in E(CP) in November 1987) as I consider this would be wholly arbitrary and would impose unnecessary rigidity into commercial negotiations. Some of the individual proposals put forward by the MMC do not seem to me entirely appropriate but this does not prevent us accepting the recommendation in principle and working out the details following the government's preliminary announcement on the report.

b) Abandonment of PPL's needletime constraints

This is an integral part of a right to equitable remuneration. I agree entirely with the recommendation which, I think, was at the heart of the independent radio stations' criticisms of PPL.

c) The Copyright Tribunal should be strengthened and changes made to its procedures to expedite decisions

We have always intended to use any order making powers under the Copyright Bill to this end and have already begun consultation. I would be content to announce that I accept the MMC's recommendations and would propose to give them effect in drawing up the Tribunal's rules.

d) PPL should no longer require larger discotheques to employ musicians as a condition of licensing

This is clearly a restricitive labour practice which should be ended.

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This leaves two other MMC recommendations for consideration:-

a) Performers should be given equitable remuneration from the royalty income received by PPL, in substitution for the existing arrangements

I have a lot of sympathy with the principle behind this. Implementation would however require a complicated administrative system involving more detailed information about recording use and tracking the whereabouts of individual performers. There must be compliance cost issues here. I suggest we undertake to discuss this issue with all the parties involved with a view to introducing a more equitable but not necessarily comprehensive system.

b) The BBC and ILR stations should be subject to a common tariff related to audience size

The MMC suggest that the BBC, ILR and PPL should endeavour to reach agreement on a common tariff and I think we should encourage the parties to do this. Audience size may, however, raise some practical difficulties.

Finally, there was one issue which the MMC decided was too far-reaching in its effects on the record industry for it to cover-the question of "first fixation" or according copyright protection only to recordings made in a limited number of countries (including the UK but excluding the US). I have considered this issue carefully.

My view is that we should not undertake a review of "first fixation" for the following reasons:-

a) "first fixation" was initially suggested as an option at E(CP) as a negotiating lever against PPL. The "restraining" recommendations in the MMC report should now provide that leverage while not damaging the UK record industry;

b) "first fixation" could well lead to US records being played at the expense of UK ones. This would be unnecessarily harmful to the UK record industry, one third of whose total net income derives from broadcasting and public performances;

c) it would be contrary to our wider copyright policy to encourage the commercial use of intellectual property - whatever its origins - without payment;

d) there would be practical problems in deciding where a record has been made.

If you are in agreement with my conclusions on the MMC report, I suggest our officials should draw up a joint announcement to be made on 30 November alongside publication of the report.

I am copying this leter to members of E(CP) and to Sir Robin Butler.

he2.gh/Div/PerfectCLPP

CONFIDENTIAL

X and one recent pps p2

FROM: R M PERFECT
DATE: 18 NOVEMBER 1988

1. MR FARTHING
2. FINANCIAL SECRETARY

cc Chancellor
Chief Secretary
Sir P Middleton
Mr Anson
Mr Monck
Mr Burgner
Mrs Case
Mr Burr
Mr Call

COLLECTIVE LICENSING OF PUBLIC PERFORMANCE AND BROADCASTING RIGHTS IN SOUND RECORDINGS

The Secretary of State for Trade and Industry's letter of 9 November suggests broad acceptance of the Monopolies and Mergers Committee's report on this subject. His letter replaces the E(CP) paper that DTI officials were working on - my minute of 3 November refers.

2. We recommend you ask DTI and D/Employment to consider further how the links between Phonographic Performance Ltd (PPL) and the Musicians' Union (MU) can be broken. We also suggest you press for a study of the merits of limiting copyright protection to recordings made in the UK (referred to in the correspondence as "first fixation"). A draft letter is attached. If the letter is sent on Monday, Lord Young will be able to consider his reaction before E(CP) on Thursday 24 November.

Main conclusions of MMC report

3. The main conclusion of the MMC report is that collective licensing bodies are the best available mechanism for licensing sound recordings provided they can be restrained from using their monopoly unfairly. Lord Young suggests this condition can be met by unequivocal acceptance of four of the MMC recommendations, namely:

(i) users of sound recordings should be entitled to a statutory licence to use recordings in return for fair payments;

(ii) needletime limits should be abandoned;

(iii) the Copyright Tribunal should be strengthened. Lord Young says he intended that this be done anyway.

(iv) Phonographic Performance Ltd (PPL) should drop the requirement that larger discotechques employ musicians as a condition of licensing.

4. We recommend you agree these recommendations should be accepted. But we doubt whether they go far enough.

PPL and the Musicians' Union

5. The MMC report shows PPL enjoys a mutually supportive relationship with the Musicians' Union (MU). PPL pays around £1.3 million a year to the MU. And the MU requires record companies and broadcasters to assign broadcasting and public performance rights to PPL. Since virtually all professional musicians in the UK belong to the MU, record companies and broadcasters have little choice but to assign their music copyrights to PPL. The recommendations in the MMC report appear insufficient to disturb this relationship. To achieve that, either PPL must be stopped from paying money to the MU (so the MU becomes a less attractive union to belong to); or the MU should stop requiring their members insisting that record companies and broadcasters assign their copyrights to the PPL (so record companies can manage their own copyright if they wish).

6. The MMC report does recommend that performers should be given equitable remuneration from the royalty income received by PPL, in substitution for the existing arrangements. If this recommendation is pursued vigorously it could reduce the scope for PPL paying money to the MU. Unfortunately Lord Young highlights the difficulties and suggests further consultations with a view to

introducing a more equitable but not necessarily comprehensive system. We recommend you make it clear that payments to the MU should not feature in future arrangements. It may not be easy to stop PPL paying money to the MU, but no easier way of breaking the PPL/MU link has yet been identified.

First fixation

7. Home Office and the broadcasters have suggested that the UK should limit copyright protection to records first produced in this country ("first fixation"), rather than all records published here. This approach would reduce UK broadcasters' copyright payments.

8. Lord Young and the record industry favour preserving existing arrangements. Their strongest argument is that "first fixation" could lead to US records being played instead of UK records, harming the record companies who derive one-third of their income from broadcasting and public performance. The MMC report failed to consider the matter on the grounds that "the effects on the record industry of so fundamental a change could be such that a major study would be needed to establish and assess them". We recommend you press for such a study to be commissioned. The Home Secretary is likely to agree.

Conclusions

9. The MMC report is due to be published around 30 November and Lord Young will want broadly to accept the conclusions. You need not dissent from this. But we recommend you ask DTI and D/Employment to consider how the link between PPL and MU can be broken. We also recommend you press for a study of first fixation. Lord Young may accept these points in correspondence. Otherwise he is likely to raise the matter at E(CP) on Thursday 24 November, when you could speak on the lines of your letter. A draft is attached.

Mark Perfect

R M PERFECT

he2.gh/Div/PerfectDrf

CONFIDENTIAL

DRAFT LETTER TO:

The Rt Hon. Lord Young of Graffham
Secretary of State for Trade and Industry
Department of Trade and Industry
1 Victoria Street
LONDON SW1H OET

NOVEMBER 1988

COLLECTIVE LICENSING OF PUBLIC PERFORMANCE AND BROADCASTING RIGHTS IN SOUND RECORDINGS

Thank you for copying your letter of 9 November to me.

2. I have some doubts whether the Monopolies and Mergers Commission report on this subject goes far enough. The report shows that there is a close relationship between the Phonographic Performance Ltd (PPL) and the Musicians' Union. In particular the PPL pays around £1.3 million a year to the Musicians' Union for the Union's own use. In return, the Musicians' Union requires record companies to assign their rights to the PPL. As long as this relationship continues the overwhelming majority of professional musicians seem likely to remain members of the Musicians' Union. And the large proportion of copyright will continue to be assigned by record companies to PPL. The recommendations in the report appear unlikely to substantially alter this relationship. I suggest your officials, in consultation with D/Employment, consider what steps need to be taken to break this link.

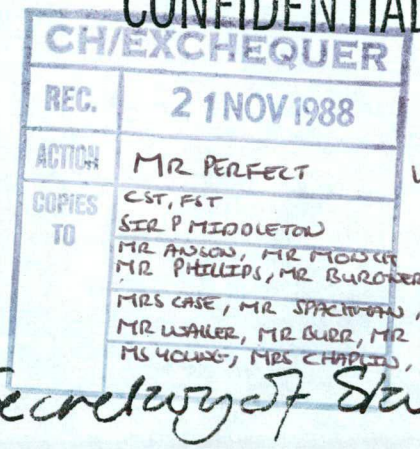
3. In the meantime, despite the difficulties noted in your letter, we should pursue vigorously the suggestion that PPL give performers equitable remuneration from the royalty income it receives, rather than paying substantial amounts to the Musicians' Union.

4. The MMC report also fails to consider the arguments for and against 'first fixation' but suggests a study would be needed to establish and assess them. The report mentions the difficulty of establishing the effects on the record industry of change, but broadcasters would greatly benefit. I would consequently like to see such a study commissioned so we can take an informed view on the subject.

5. I am copying this letter to other members of E(CP) and to Sir Robin Butler.

NORMAN LAMONT

CONFIDENTIAL



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V 21/11

QUEEN ANNE'S GATE LONDON SWIH 9AT

2. MP

21 November 1988

Dear Secretary of State

COLLECTIVE LICENSING OF PUBLIC PERFORMANCE AND BROADCASTING RIGHTS IN SOUND RECORDING

Thank you for your letter of 9 November.

I agree with you that the MMC report should be published on or around 30 November and I do not see any difficulty about an announcement to accompany publication, which accepts the MMC's findings and which gives an indication of the measures we propose to take. Your letter identified the MMC's specific recommendations for retaining the monopoly position of collective licensing bodies and PPL in particular, and I am happy that they should be handled as you propose.

I have only one reservation: I think that there remains a good case for a study of the "first fixation" issue, and I am sorry that the MMC found it impossible to address this in the time available. The difficulties of moving to "first fixation" are not so clear cut as to rule this out without further study, especially in view of the fact that a number of our European counterparts have chosen this route. I would therefore like to pursue this at the meeting of E(CP) scheduled for 24 November.

X 1

A copy of this letter goes to members of E(CP) and to Sir Robin Butler.

Yours sincerely
Catherine Bannister
(Approved by the Home Secretary and signed in his absence)

The Rt Hon Lord Young of Graffham
Department of Trade and Industry

CONFIDENTIAL

RS145FST42 18.11.88

CONFIDENTIAL

cc: PPS, CST, Sir P. Middleton, Mr Anson, Mr Monck, Mr Burgner, Mrs Case, Mr R.M. Perfect, Mr Farthing, Mr Burr, Mr Call.

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Lord Young of Graffham
Secretary of State for Trade and Industry
Department of Trade and Industry
1 Victoria Street
LONDON SW1H 0ET

22 November 1988

Dear David

COLLECTIVE LICENSING OF PUBLIC PERFORMANCE AND BROADCASTING RIGHTS IN SOUND RECORDINGS

Thank you for copying your letter of 9 November to me.

I have some doubts whether the Monopolies and Mergers Commission report on this subject goes far enough. The report shows that there is a close relationship between Phonographic Performance Ltd (PPL) and the Musicians' Union. In particular the PPL pays around £1.3 million a year to the Musicians' Union for the Union's own use. In return, the Musicians' Union requires record companies to assign their rights to the PPL. As long as this relationship continues the overwhelming majority of professional musicians seem likely to remain members of the Musicians' Union. And the large proportion of copyright will continue to be assigned by record companies to PPL. The recommendations in the report appear unlikely to substantially alter this relationship. I suggest your officials, in consultation with D/Employment, consider what steps need to be taken to break this link.

In the meantime, despite the difficulties noted in your letter, we should pursue vigorously the suggestion that PPL give performers equitable remuneration from the royalty income it receives, rather than paying substantial amounts to the Musicians' Union.

The MMC report also fails to consider the arguments for and against "first fixation" but suggests a study would be needed to establish and assess them. The report mentions the difficulty of establishing the effects on the record industry of change, but broadcasters would greatly benefit. I would consequently like to see such a study commissioned so we can take an informed view on the subject.

I am copying this letter to other members of E(CP) and to Sir Robin Butler.

NORMAN LAMONT

dti

the department for Enterprise

BF 30/11

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The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

MP

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the
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CH/EXCHEQUER

REC.	28 NOV 1988
ACTION	MR PERFECT
COPIES TO	CST, FST, SIR P MIDDLETON, MR ANSON, MR MONCK, MR PHILLIPS, MR BURGNER, MRS CASE, MR SPACKMAN, MR WALLER, MR BURR, MR FARTHING, MR NICHOL, MS YOUNG, MRS CHAPLIN, MR THRIFT, MR CALL.

✓ 28/11

Direct line 215 5422
Our ref JW5AAK
Your ref
Date 28 November 1988

Dear Douglas,

COLLECTIVE LICENSING OF PUBLIC PERFORMANCE AND BOARDCASTING RIGHTS IN SOUND RECORDINGS

Thank you for your letter of 21 November. This reply also deals with the points made by Norman Lamont in his letter to me of 22 November.

I am glad you agree with my conclusion about the main body of the MMC's recommendations in this report and how we should deal with them in announcing publication. As I believe you know we are now aiming for publication on 7 December rather than 30 November. I am asking my officials to agree an announcement with yours. Unless colleagues request it I do not propose to circulate this in advance of publication.

Both you and Norman urge that since the MMC did not address the issue we should undertake a study to assess the effects of moving to "first fixation" as the criterion for the protection of foreign sound recordings in respect of broadcasting and public performance. I am not wholly convinced of this, since this has been a very long-running dispute and a study will postpone still further the day on which the parties will know the basis on which their relationships will have to be conducted in the long term. Nor do I see anything in the MMC's report to justify a move towards a criterion which would, in my view, seriously threaten the well-being of the UK record industry.

This said, however, I realise that it is difficult to debate and come to a final view on the issue without better information and I can therefore agree that we should undertake a study. I suggest that officials of our three Departments should jointly consider which is the most appropriate body to carry out this task.

As to performing artists and the link between PPL and the Musician's Union the report does, I think, point strongly in the direction argued by Norman Lamont even if it stops short of a formal recommendation. Paragraph 7.38 says that all performers should receive equitable remuneration paid directly by PPL and this is surely intended to include a per caput distribution of the sums currently paid into MU funds. Paragraph 7.40 makes clear enough the MMC's belief that the MU should abandon its standard contract requiring record companies using its members' services to assign their broadcasting and public performance rights to PPL. (I suspect the main reason why this is not firmed up into a recommendation is simply that the MMC considered the matter to be strictly speaking outside their terms of reference). I agree that we must pursue these issues further. We can make clear on announcing publication of the report that this whole area needs further detailed consideration with a view to arriving at the most appropriate measures.

Finally, I would draw colleagues attention to a significant development in this field. I understand that on 17 November PPL concluded a one year interim deal with AIRC under which ILR stations will be allowed unlimited needletime for no extra payment beyond the existing Tribunal rates. Although there is no commitment that in the long term PPL will not seek higher royalties from stations which substantially increase their use of its repertoire this deal is obviously a significant step forward. I do not think it need affect our proposed legislative response to the MMC report but we should acknowledge the progress made.

I am copying this to members of E(CP) and to Sir Robin Butler.