

FEATURED ARTISTS COALITION

2009 ISPA 'Internet Hero' award winner



Response to the Department for Business Innovation & Skills Consultation on Legislation to Address Illicit Peer-to-Peer (P2P) File-Sharing from the Featured Artists Coalition (FAC), British Academy of Songwriters, Composers and Authors (BASCA) and the Music Producers Guild (MPG)

The above organisations, who between them represent the people who write, perform and produce music believe that the protection offered by copyright to recording artists, composers and songwriters is vital if the UK is to continue to be at the forefront of the global music industry. Copyright serves to nurture the writer and artist and those who invest in their creativity.

However we have serious reservations about the content and scope of the proposed legislation outlined in the consultation on P2P file-sharing. Processes of monitoring, notification and sanction are not conducive to achieving a vibrant, functional, fair and competitive market for music. As a result we believe that the specific questions asked by the consultation are not only unanswerable but indicate a mindset so far removed from that of the general public and music consumer that it seems an extraordinarily negative document.

The very fuzzy estimates for the annual benefits of such legislation (£200 million per year) make clear that such estimates are based firmly upon the premise that a P2P downloaded track equals a lost sale. This "substitutional" argument is, in reality, no more than "lobbyists' speak": it has little support from logic and no economist would seek to weave such a number into a metric aimed at quantifying a 'value gap' for the industries challenged by P2P.

In contrast to the lack of any credible evidence for the size of the substitutional effect, there is evidence that repeat file-sharers of music are also repeat purchasers of music, movies, documentaries etc. Recent research by MusicAlly has demonstrated the continued popularity of the CD as the purchased product of choice by many music fans. This combined with the continued significance of the CD in the revenue balance of record labels, suggests a much more complex equation in which file-sharing may erode sales, but where it may also promote other revenue streams. For this reason it is dangerous to view the downloading of music as the direct online equivalent of CD sales.

Of equal concern are those elements of the consultation that estimate the cost of implementing the proposals. The estimate of between £65 and £85 million for the first year contained in the consultation is likely to be a gross underestimate of how much such a system will actually cost owing to the complicated nature of the system proposed. This figure (if just compared with recorded music) represents somewhere between 10-15% of the market value after accounting for fixed costs such as CD manufacturing and staffing and, in the light of our comments above, is clearly disproportionate to any possible benefit. Even if the music industry is expected to fund only 50% of this cost, it is still disproportionate to any possible new revenues based on the system proposed.

Much online activity surrounding the sharing of music often coincides with a great deal of fan support for the artist concerned. The centrality of the artist in the new music ecology is such that the lobbying by labels to continue to try to sue or sanction music fans must be placed in a broader

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context of those fans' behaviour. It must also be seen in the context not of the loss to a particular business constituency but whether it represents a real loss to the economy as a whole.

A file-sharing fans' economic contribution to an artist's career may focus around the purchase of merchandise and tickets to live concerts – the irreplaceable experiences which contribute to artists' success, even though this will not compensate the creators of the music and lyrics directly unless they are also performers. The loss of appetite for the purchase of CDs is not mono-causal and cannot be blamed on file-sharing alone. The increasing competition for the recorded music fan's pound that comes from the purchase of other products such as video games, and DVDs all contribute to a shift in spending on recorded music. This shift in focus does not necessarily mean that overall the creators' revenue is reduced, nor that the UK economy is negatively impacted.

What the consultation's proposals singularly fail to do is differentiate between the downloading and sharing of music by music fans, on a non-commercial basis, and those who seek financial gain or commercial advantage from such activity. This second group of "commercial" P2P users and facilitators should be pursued with the full force of the law as is the case with illegal CD plants in the offline world. Ordinary music fans and consumers should not be criminalised because of the failings of a legacy sector of business to adapt sufficiently fast to new technological challenges.

Looking backward for insight into how we adapt mass-production product models to the digital age of access and services has been a major obstacle to progress over the past decade. We must begin to look forward to business models that we cannot even imagine yet.

As creators' representatives we are willing to be partners with government in exploring and navigating the opportunities and challenges brought by digital technologies. What we will not be a party to is any system that alienates our members' existing audience and potential new audiences.

We see forward looking developments such as the Digital Britain Test Beds being sponsored by The Technology Strategy Board as key opportunities to remove the blinkers of the music industry incumbents and welcome the innovators to ensure some progress in this sector of the market.

In the light of the above we vehemently oppose the proposals being made and suggest that the stick is now in danger of being way out of proportion to the carrot. The failure of 30,000 US lawsuits against consumers and the cessation of the pursuit of that policy should be demonstration enough that this is not a policy that any future-minded UK government should pursue.

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Notes:

Featured Artists Coalition

The Featured Artists Coalition (FAC) is a not-for-profit organisation setup and run by recording artists. It exists to make sure that artists always have a powerful, collective voice. The FAC has over 1,000 supporters and its board of directors includes: Kate Nash, Billy Bragg, Master Shortie, Mark Kelly (Marillion), Hal Ritson (The Young Punx), Nick Mason (Pink Floyd), Dave Rowntree (Blur), Annie Lennox, Sandie Shaw, Ross Millard (The Futureheads), Howard Jones, Lucy Pullin (The Fire Escapes), Ed O'Brien (Radiohead) & Fran Healy (Travis).

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British Academy of Songwriters, Composers and Authors

The British Academy of Composers, Songwriters and Authors (BASCA) BASCA exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing. With over 2,000 members BASCA is the largest such organisation in Europe.

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Music Producers Guild

The Music Producers Guild (UK) represents the interests of UK record producers, music recording engineers, mixers and anyone else directly involved in the production of recorded music.

It is the dynamic, professional and creative member organisation that has a serious voice to government and industry alike. As a vibrant group, it is mainly concerned with record-making and recording techniques for all genres of music and media related activities in the UK. Collectively, the membership's combined output and footprint of commercial recorded works is huge.

Additionally, the MPG has very strong links to education and cutting-edge manufacturers of new technologies who all help shape tomorrow's standards and trends in today's sophisticated UK recording environment.

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