

3rd February 2005

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Re: Response to OFCOM Strategic Telecommunications Review (phase two) Report

British Music Rights¹ welcomes the opportunity to respond to OFCOM's strategic telecommunications review (phase two) report.

We have limited our contribution to two key areas directly applicable to our knowledge and experience:

- We urge OFCOM to uphold the value of copyright as the bedrock of investment in creativity as well as a key driver of legitimate content services which create new business opportunities for all stakeholders in the digital value chain;
- We welcome and endorse OFCOM's suggestion to adopt light touch regulation based on competition law and the promotion of interoperability.

1. Uphold the value of copyright as the bedrock of investment in creativity as well as a key driver of legitimate content services which create new business opportunities for all stakeholders in the digital value chain

The dissemination of content is the common goal of all stakeholders in the value chain from rights holders through to service providers, network platforms and consumers. Whilst the value chain is becoming longer and more complex, our primary objective is for all stakeholders to uphold the intrinsic value of creative content in order to ensure that fair and appropriate returns are paid to rights holders, thus allowing them to continue to invest in further creative works and preserve a sustainable digital ecology.

¹ British Music Rights is the consensus voice of Britain's composers and songwriters, music publishers and their collecting societies. The members of British Music Rights are the **British Academy of Composers and Songwriters**, the **Music Publishers Association**, the **Mechanical-Copyright Protection Society (MCPS)** and the **Performing Right Society (PRS)**, which together represent some 35,000 composers and songwriters and over 2,500 music publishers.

British Music Rights is co-chair of the **Music Business Forum (MBF)** - a collaborative cross-industry informal grouping which represents the wide interests of the music industry

With the UK increasingly becoming a knowledge economy and driving forward the ambitions of the Lisbon Agenda, all stakeholders should recognise the contribution which intellectual property makes to both our culture and economy. Accordingly, as we make the transition towards a digital market it is important to ensure that the value of content is preserved.

British Music Rights continues to be extremely concerned about the misconception with respect to music and other content services being free of charge. Despite the enormous growth of legitimate online music services over the last 12 months, the Internet remains a predominantly a pirate space.

We recommend that OFCOM's work in telecommunications arena is informed by the Government's cross departmental Intellectual Property Forum, and in particular, by the work of the sub groups examining both business opportunities and education and awareness, whilst examining the progress of the group considering online infringement. Representation on these three forums from various industry sectors throughout the value chain is proving to be an extremely constructive way of enabling dialogue between sectoral partners in the value chain who have the common goal of promoting online content distribution. Consequently, we believe that the work and recommendations of this forum should be closely monitored by OFCOM.

We believe that there are aspects of corporate social responsibility and good business practice which should transpose themselves fully into the digital arena. None of the stakeholders in the digital value chain can compete with free pirate content. So it is in the interests of all to support legitimate services by raising copyright awareness, labelling and signposting legitimate services, issuing consumer warnings regarding illegitimate offerings as well as advertising responsibly. We congratulate OFCOM for including copyright awareness in within the scope of its media literacy review and welcome working with OFCOM in this area as members of the Media Literacy Forum.

2. Adopt Light Touch Regulation Based On Competition Law and Promote Interoperability

In terms of OFCOM's principles for regulation, we agree with the approach advanced in the telecommunications review in terms of appropriately promoting interoperability - this factor is absolutely crucial to the development of the digital download market

We concur with OFCOM's approach in promoting interoperability and in adopting only light touch regulation (as set out in Policy Annex J:10) broadly speaking by the application of existing competition law. The digital content market (online and mobile) is growing rapidly but is still very much in its infancy. As a result there are a large number of different business models being explored offering consumers the opportunity to access music in a variety of different forms and from a range of different devices². At one end of the commercial scale, the MCPS-PRS Music Alliance licensed Hutchison 3G for the first ever live web cast of a mainstream concert to mobile handsets whilst at the other end of the scale, niche services and products have been able to capture a small but certain market³. Furthermore, the convergence between broadcasting and telecommunication as outlined in the review will result in increased choice for the consumer and more opportunities for commercial prospects.

² The latest Digital Music Report (2005) suggest that some estimate that the 50 per cent of the revenue generated by content on mobile phones will be from music www.ifpi.org

³ For example, Trad Tunes <http://www.tradtunes.com> is a small Scottish based download shop and Internet radio service. In this instance, two enterprising musicians have been able to use the Internet to promote traditional Celtic and roots music.

Given the need for a market in transition to experiment with different solutions and business models, competition law applied where there are persistent bottlenecks would seem to be the most appropriate means of monitoring the progress of the market at this stage. We therefore endorse policy annex J.10 and would question the need at this stage for the unverified considerations outlined in policy annex J.11 with respect to the application of *ex ante* regulation where “*access to, and the use of key content rights which confer market power on the owner and / or distributor, particularly where rights are tied up for very long periods or there is evidence that competition for rights is ineffective*”.

We also believe that it may well be a premature step by OFCOM to recommend using *ex ante* regulation before fully understanding the wider policy considerations inherent with such measures. We therefore recommend that OFCOM awaits the conclusions of its forthcoming work programmes on Second Generation Broadband and the project on the Evolution of Digital and Multi-Media Platforms in order to gain a more comprehensive overview of the value chain and the full implications of such recommendations.

The seminal nature of the telecoms content market and the lack of empirical based evidence to suggest otherwise leaves us to conclude OFCOM should retain its regulatory principles of competition law.

As explained in our submission to the Phase One review, our members are at the forefront of developments in terms of enabling the variety of new trading, distribution and communications models over the last few years. Our members license various services and operators in the telecommunications and digital arena and have extensive expertise on the business application of licensing and rights management in a sector at the vanguard of the digital revolution. To inform OFCOM’s work, we would be pleased to arrange a short presentation to OFCOM’s review team to demonstrate the breadth to which various services are currently being licensed in practice.

British Music Rights and our member organisations would be pleased to offer further considerations on these matters, if required.

We look forward to engaging with OFCOM as the review continues.

Yours sincerely,

Emma Pike

Director General
British Music Rights