THE MANAGEMENT OF CHANGE

& COPYRIGHT

by

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Thesis submitted to the University of Nottingham for the degree of Doctor of Philosophy, May 1985

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ABSTRACT

The main focus of this thesis is the three copyright collecting societies operating in the music field - PRS, which looks after the public performance and broadcasting rights in music, MCPS which is responsible for the mechanical (recording) right in music and PPL which looks after the public performance and broadcasting rights in sound recordings. Between them, these three societies had gross revenue (before costs) of over £83 million in 1983, of which PRS was responsible for 72%, MCPS for 17% and PPL for 11%. The thesis attempts to investigate their operations and performance. In many ways they are similar but there are also important differences especially between PRS and PPL on the one hand and MCPS on the other. They all depend for their operations on the concept of collective licensing - that copyright owners can more effectively exploit their copyrights by banding together in societies such as PRS, MCPS and PPL. In many cases, collective licensing represents the only possibility for the copyright owner to receive income from his copyright. All three societies also use blanket licences in their operations to various extents - this means that licensees can use the entire repertoire of the society on payment of royalties and provided they supply the society with returns of their music use (on which the society bases distributions to members). Since PRS and PPL are effective monopolies, representing virtually all copyright owners in

their respective fields, such licensing can be effective. MCPS is an effective monopoly only in the broadcasting field and it is only in this field that it employs blanket licensing. The other fundamental differences between MCPS and the other two societies are its agency relationship with its members and its charging of a commission to cover costs. All of this is looked at in detail.

GENERAL INTRODUCTION

This thesis is an attempt to investigate a subject which I feel has not really received sufficient attention in view of its importance to individuals and the country as a whole, that of copyright. The main focus of attention, in Part III, will be the three copyright collecting societies operating in the music field in the UK, which have not really been subject to detailed analysis, especially the two smaller ones, PPL and MCPS. There is more information available on the largest one, PRS, but even it has not been covered adequately in my view. The first two parts of this thesis will provide a background to Part III, containing as they do a theory chapter and two chapters on the problems caused by technology for copyright, one on reprography, the other on problems in the audio-visual field. These two subjects represent the most publicised causes of concern in the field of copyright today and both are likely to be the subject of collective licensing in the future, although there seems more doubt of this in the audio-visual field. There has been a large amount of literature on the subject matter of Parts I and II and the chapters represent an attempt to summarise this.

The main question I wanted to answer was why are collecting societies set up and how do they operate?. Do they succeed in their aims?. To an extent the problems of technology are related to collective licensing since the latter is often the solution to the former. The main method used to gather

information was interview - with Elizabeth Thomas at ALCS, Clare Cheney at PLS, Patrick Isherwood at the BPI, Michael Freegard and Marshall Lees at PRS, Keith Lowde and Caroline Robertson at MCPS and Peter Rogers at PPL and I would like to express my appreciation and thanks for their help and co-operation. I would also like to thank Lesley Bray at PRS and Mike Hill at MCPS.

For the technology chapters, it might have been possible to carry out an empirical study but it was felt that the problems of obtaining data were too acute to make this practicable. In studying the collecting societies, the questions I was attempting to answer and the fact that there were only three societies involved anyway dictated against such an approach. The result of my study hopefully casts a lot more light on an important subject.

THE MANAGEMENT OF CHANGE

& COPYRIGHT

PART I - COPYRIGHT PROTECTION

CHAPTER 1

THE THEORY AND PHILOSOPHY OF COPYRIGHT

What is Copyright?

The Concise Oxford Dictionary defines copyright as the "exclusive right given by law for term of years to author, designer etc. or his assignee to make copies or give performances of his original work" and Chambers Twentieth Century Dictionary as "the sole right to reproduce a literary, dramatic, musical or artistic work - also to perform, translate, film or record such a work". The current U.K. statute, the 1956 Copyright Act, supplies a legal definition in Section 1(1) - "In this Act "copyright" in relation to a work (except where the context otherwise requires) means the exclusive right, by virtue and subject to the provisions of this Act, to do, and to authorise other persons to do, certain acts in relation to that work in the United Kingdom or in any other country to which the relevant provision of this Act extends". The subsection goes on to say that the "certain acts" are those "designated as the acts restricted by the copyright in a work of that description". The restricted acts for literary, dramatic and musical works are defined in Section 2(5) - reproducing the work in any material form, publishing the work, performing the work in

public, broadcasting the work, causing the work to be transmitted to subscribers to a diffusion service (this refers to the likes of cable television systems, where signals are carried by cable or wire as opposed to signals transmitted through the air), making an adaptation of the work and doing any of the above five acts (reproducing, publishing, performing, broadcasting, transmitting to subscribers to a diffusion service) to an adaptation of the work. For an artistic work, the restricted acts are different and are laid down in Section 3(5) - reproducing the work in any material form, publishing the work, including the work in a television broadcast, causing a television programme which includes the work to be transmitted to subscribers to a diffusion service. It should be pointed out here that the 1956 Act divides copyright matter into two parts - the "original works" of Part I, those referred to above (literary, dramatic, musical and artistic works) which are regarded as giving a true "author's right" and as being the most important, by virtue of their creativity, and the "subject-matter" of Part II (sound recordings, cinematograph films, television and sound broadcasts and published editions), which produces <u>"neighbouring" or "ancillary"</u> rights ("droits voisins" in France) which are regarded, it seems, almost as second-class rights (for example, Phonographic Performance Ltd (PPL), the U.K. collecting society for broadcasting and public performance royalties in sound recordings and the British Phonographic Industry (BPI),

the trade association for the record industry, are not members of the British Copyright Council (BCC), made up of a group of organisations representing the interests of creators and disseminators of 'original works' in many fields, even though, I would have thought, they have more in common than in conflict, and any change in one set of rights will affect the other set[1], although these bodies represent record companies which are music users as well. The general argument against such subject matter being regarded as "true" copyright material is that the manufacturer of a record, for example, is not an "author" in the copyright sense since the works involved are not original creative intellectual works but mere mechanical objects. Such works are merely derivative of literary, dramatic, musical and artistic creations and, as Whale[2] says, serve as a medium of communication of authors' works. So, Part I works are primary materials whereas Part II subject matter is secondary because it derives from Part I works[3] (in some countries, especially on the Continent, and in the main international copyright conventions cinematographic works are classed as primary works because they contain a creative element). Similarly to Part I works, there is a list of restricted acts for each of the subject matter of Part II. The distinction between original works and subject matter is followed more on the Continent than in the U.K. and U.S., however, because of the different approaches followed in the countries. The 1956 Act declares that the rights in Part II are additional to and

independent of, the rights in Part I but nothing in Part II affects the operation of Part I. The practical relevance of this is that in any Part II subject matter there is more than one copyright - in a record, there is a copyright in the actual record (Part II) and also in the musical composition on which the record is based (Part I); in a broadcast, there is a copyright in the actual broadcast (Part II) and in the material included in the broadcast. Although performers do not have copyrights in their performances, they are protected under the Performers Protection Acts 1958 - 1972. This dual nature is often difficult for users to come to grips with but it is vital if copyright is not to be infringed. It is also important to remember that copyright is not just the right to copy. At one stage this was the case but those days are long gone and its scope is now greatly extended to cover the restricted acts mentioned. Two other points should be made in any definition of copyright. First, copyright is intended to protect the product of a person's labour and/or skill provided it is fixed in a material form. Any work (Part I or Part II material) which shows a sufficient degree of skill and/or labour, from a football coupon to a great work of art, may be protected. However, it is only the way in which the work is fixed (in writing, on record, on film etc.) in a material form which is protected not the idea contained within the form. There is no copyright in ideas (otherwise progress would be impossible because most new works are based on previous works). A Part I work also has to be

sufficiently "original" but this does not mean it has to necessarily be creative. The intrinsic value of the work is not important and nor does the work have to be novel. Even minimally creative works are protected provided they are original, fixed in a material form and show sufficient expenditure of labour and skill. In addition, to breach copyright, a substantial part has to be taken and this is a qualitative as well as a quantitative matter. Second, the lack of formalities is an important part of the philosophy of copyright in the UK and on the Continent. Copyright comes into existence from the moment the work is fixed in a material form in the U.K. and from the date of creation on the Continent and in countries which are signatories of the Berne Convention, one of the two major international copyright conventions (there are now 71 members)[4]. This latter Berne Convention (or the International Convention for the Protection of Literary and Artistic Works), 1886, as revised at Paris (1896), Berlin (1908), Rome (1928), Brussels (1948), Stockholm (1967) and Paris (1971) is the basis for an international system of copyright protection, in which signatories agree to grant reciprocal protection to the works of each others' nationals. The system means that no formalities have to be complied with as a pre-requisite for the operation of copyright. As Dietz[5] points out, this is achieved in most member countries by just not laying down any such conditions in the country's copyright statute, although the Berne Convention does explicitly state this principle in

the revised Brussels version, Article 4, Paragraph 2 - "The enjoyment and the exercise of these rights shall not be subject to any formality .....". This is only half the story, however, because many countries including the U.S., do require formalities and these tend to be signatories of the other great copyright convention, Unesco's Universal Copyright Convention (UCC), 1952, (last revised in Paris, 1971). As well as a copyright notice, consisting of the symbol © the name of the copyright owner and the year of first publication, the U.S. also requires deposit of copies of the work within three months of the date of publication and registration of a claim to copyright with the Copyright Office. These formalities under the relatively new U.S. Copyright Act, 1976, are less arduous than they were - copyright protection now arises on fixation as in the U.K. which theoretically means there are no formalities as a condition of copyright,[6] but non-deposit makes the copyright owner liable to a fine and registration is a condition of taking out an infringement suit and may affect remedies. The difference is accounted for by the difference in approaches to copyright by each country - the E.E.C adopts an "authors" right approach whereas the U.S. attempts to balance the copyright owner's interests with those of the user.[7] The U.K. approach is something of a hybrid.

The Purpose of Copyright

Copyright is part of the general group of legal rights called "intellectual property rights" which also takes in the sub-group "industrial property rights" which includes patents, trademarks and industrial designs but copyright differs in a number of significant ways from its partners in the group. First, copyright is not subject to formalities and requires no special effort on the part of the creator of the work to bring it into operation (at least not in the U.K., Europe and Berne Convention countries). Patents, trademarks and industrial designs, on the other hand, have to be registered (although industrial designs can gain copyright protection in some cases). As Dietz says,[8] no legal or commercial action nor any commercial motive is required to gain copyright protection whereas industrial property right protection is dependent on specific, positive action. The other main difference is in the scope of protection. Industrial property law gives the owner of the rights a true monopoly so that no-one else can market, use or make the same or a substantially similar product even if it is not copied from the original and was made independently of it whereas copyright just gives a right to prevent copying of the work (and various other acts in relation to the work) and to stop others exploiting the product of someone else's skill and labour without his consent. If a person can prove that he produced an identical result independently, he will not breach copyright and can enjoy a copyright in his own work

provided it shows a sufficient degree of skill, labour and expertise. Copyright gives only a limited monopoly in the form of expression (not in the ideas embodied in that expression) while a patent, for example, protects ideas as well provided they are novel and inventive. Independent creation of the same invention would not be allowed. It is much harder to patent a work, first because of the need for novelty and inventiveness which is often a difficult criterion to fulfil and second because before a patent is filed, it is necessary to carry out a patent search to ensure that it has not been filed before which is expensive of time, effort and resources. In addition, of course, there are differences of detail - for example, protection under industrial property law is much shorter than under copyright law. (16 years for a patent, up to 15 years for a registered design, as against the creator's life plus 50 years for a copyright).

The Whitford Committee Report of 1977 [9] states that "Copyright protection finds its justification in fair play" - if a person produces a work using his own skill, expertise and labour, it should be his to do as he likes with and he should be able to benefit from it: others should not be able to "steal" it from him (through use or exploitation without payment) by reproducing it and profiting from his hard work. This is summed up in the maxim used in the Whitford Report, that 'What is worth copying is prima facie worth protecting'.

Another way of looking at it is as a "legal mechanism for the ordering of social and cultural life". It is "one method for linking the world of ideas to the world of commerce"[10]. The recent Green Paper on copyright [11] reinforces both of these ideas by saying that copyright is designed to protect the products of intellectual endeavour and ensures that the author is rewarded for the fruits of his labour, while establishing the legal framework within which copyright material is exploited commercially, on which the livelihood of the many organisations which disseminate copyright material to the general public with the copyright owners' consent depends. So, copyright is important to both authors and those who exploit copyright material commercially such as music and book publishers, the record industry, the broadcasting organisations, and film companies. But there is another interest at stake - that of the general public and users of copyright material in the non-commercial field (researchers, students, libraries, for example), who want access to these works as freely and as cheaply as possible. Thus, copyright can be looked at as a way of reconciling the interests of the three main sections of society concerned - the author in the widest sense of that term (creators of works), the commercial organisations who are reliant on those creators (the disseminators) and the general public, users and society at large which use copyright material. Still another way of looking at the subject is as "a means of organising and controlling the flow of information in society" [12] which, if abused, could have sinister

repercussions. The importance of this is shown by the fact that Third-world and developing countries are constantly calling for a "new information order" in Unesco. Ploman and Hamilton cite four main reasons for the development and popularity of copyright[13] -: (a) a tradition of creation, culture and art in which artists have, as one of their goals, recognition and fame, (b) a market-oriented attitude related to the industrial revolution and the advent of mass production, (c) the fact that copyright is a very flexible concept which can be moulded into many different types of economic, social, political and cultural environments and systems reflecting different priorities and philosophies, (d) the fact that copyright provides the most practical method for dealing with the problems inherent in remunerating creators of works and reconciling the conflicting interests in both the national and international spheres.

Copyright may be analysed in three main ways - (a) as a form of encouragement to the creation and dissemination of works of all kinds and a means of protecting the investments of the various people involved in the process of creation and dissemination of those works. Thus, it is necessary for the development of culture and national prestige, (b) as an author's right, emphasising the concept of a natural right and the inalienable link between author and work and locating the right in the author, (c) as a system of property rights located in the work. A mixture of approaches is contained in

the view that it is morally right that the person who creates a work should be able to decide what happens to the work, when and how, and that he should be able to benefit financially from it. As Ploman and Hamilton state[14], royalties represent the creator's salary.

(a) Encouragement to creation and dissemination

This approach to copyright can be seen in a number of different statutes. For example, in the U.K. the 1709 Statute of Anne had the title "An Act for the Encouragement of Learning by vesting the 'Copies' of printed Books in the Authors or Purchasers of such Copies during the Times herein mentioned" [15]. The 1814 Act was "to afford encouragement to literature" [16] and the 1842 Act says "Whereas it is expedient to amend the law relating to Copyright and to afford greater Encouragement to the Production of Literary Works of lasting Benefit to the World...." [17]. Similarly, the U.S. Constitution, Article 1, Section 8, says that copyright is intended "to promote the Progress of Science and useful Arts by securing for limited Times to Authors.... the exclusive Right to their ....Writings [18]. In U.S. v Paramount Pictures Inc., the Supreme Court took this to mean that the author's benefit was secondary and "the economic philosophy behind the clause empowering Congress to grant patents and copyrights is

the conviction that encouragement of individual effort by personal gain is the best way to advance the public welfare" [19]. In this respect, copyright law is similar to patent law - both are intended to encourage, patents to encourage invention, copyright to encourage creation and dissemination of works of literature, drama, music, art and so forth. The author is encouraged to produce works by being able to obtain remuneration for creation and use of his works and to control what happens to them while those who exploit the works - publishers, record producers and so on - are encouraged to disseminate the works through protection of their investment by virtue of the suspension of competition for a particular work and the grant by the author of a licence, exclusive or non-exclusive. As Thomas [20] says, it is questionable whether the grant of copyright encourages the author but entrepreneurs who disseminate works and bear most of the risk would, no doubt, be sorely affected if there was no copyright system. They depend on some sort of monopoly period, it is argued, to cover their costs and eventually make a profit (of course, the length of that monopoly period is open to debate). Macaulay described copyright as "a tax on readers for the purpose of giving a bounty to writers" and in general this is accepted as necessary. The author is paid by those who enjoy his work (through their use and exploitation of it), so that

he receives equitable remuneration for what he contributes to society. This means that society has access to what authors produce and they are paid for this through royalties. Like patents, the creation would not take place if it was not for the encouragement provided in the first place, although, of course, some authors would still produce without copyright in the same way as some inventors would still invent without patent protection. The author can provide the publisher or whoever with an exclusive licence, meaning the latter does not have to worry about competition for the particular work so he is more willing to invest his skill and expertise in exploiting the work and disseminating its contents to the rest of society. Without the exclusive nature of copyright, works might not be disseminated to society because profit would be whittled away by competition. By its very nature, copyright material has to be made available publicly and this makes it very susceptible to piracy and plagiarism. The pirate or plagiarist does not have the same costs of production as the original exploiter, so he can copy the work, sell it more cheaply and make a profit at the original exploiter's expense. As a result, the original exploiter cannot recoup enough of his initial costs or make a sufficient profit to turn exploitation of the work into a financially viable proposition. Thus, the exploiter does not invest in the work and society is

deprived of it. It is therefore in the interests of the exploiter, society and, to a lesser extent, the author, (since his main aim is to communicate his work to the public while presumably making some money) that the exploiter has an exclusive licence and that competition for that particular book is suspended.

(b) The author's right and the idea of a "natural" right.

The concept of the author's right or the natural right gives an added dimension to the idea of copyright by acknowledging a special relationship between the author and his work, a relationship which does not cease when the work is assigned or transferred to someone else. Whale [21] bemoans the fact that the author's right has become submerged in the term 'copyright' so that the true nature of the right and the proper beneficiary of it have become hidden and downgraded. This is because the term 'copyright' is impersonal unlike the terms used on the Continent, for example, where the concept of the author's right is the prevailing one - droit d'auteur in France, derecho de autor in Spain, dirito d'autore in Italy and Urheberrecht in Germany. If the author assigns his copyright to someone else, the latter becomes the copyright owner, but he is not the author and cannot take his place in the author-work relationship. There may be a natural affinity towards a

creator but not towards his assignees but the distinction does not arise with the term 'copyright' and the rights have become "dissociated from the author". The second aspect of the impersonal nature of copyright, Whale says, is the fact that it also applies to neighbouring rights which reinforces the blurred distinction and dissociation from the author, so that "some controversial aspects of the rights attaching to this other subject matter have unjustly been fastened on to those of the author". In any case, he says, the term "copyright" is no longer appropriate since it is not the right to copy any more. The concept of the author's right puts the author centre-stage. The term "copyright" is generally accepted as the right to do certain restricted acts to the work but the concept of the author's right gives him extra rights, springing from natural justice, purely by virtue of the fact that he is an author. These rights cannot be assigned away and are indissoluble. Copyright places the rights in the work whereas the author's right places them in the author. The recognition of the author's right springs morally from the act of creation.

Under this approach, the author's rights consist of two parts - his economic rights, by which he is able to earn a living and is remunerated for use of his work, consisting of the right to do, and authorise others to

do, the restricted acts for which he receives royalties and his personal or moral rights (droit moral on the Continent) which protects the author-work relationship. Copyright law in the U.K. protects the economic rights but not the moral rights, whereas on the Continent both sets of rights are protected. The Whitford Committee did, however, recommend that the droit moral be protected under future U.K. copyright legislation. At present in the U.K., moral rights are protected not under copyright law but under the laws of passing off, defamation and common and contract law. Not everyone agrees that this provides adequate protection, however.[22]. Under the Berne Convention, Article 6 bis, paragraph 1, revised Brussels edition, the author has the rights, independently of his copyright and even after the transfer of the copyright, and during his lifetime, to claim authorship of the work (the paternity right) and to object to any distortion, mutilation or alteration of it or any other action in relation to the work which would be prejudicial to his honour or reputation (the right of integrity). Under the copyright system a work has an existence independent of its physical embodiment so physical possession does not confer copyright. The concept of the author's right is based on the premise that when copyright passes by assignment a relationship still exists between the work and the author by virtue of the fact that the author

created the work in the first place. This special relationship does not and cannot pass with physical possession or with assignment. If the special relationship is accepted, the author has an interest in how the work is communicated to the public, when and by whom it is communicated and how it is changed in the process. He also has an interest in claiming authorship. Droit moral "is to ensure that the author's status and integrity as an author is protected" [23]. Most of the EEC countries recognise the dual nature of the copyright/author's right system, but when it comes to moral rights, there are also two distinct theoretical approaches, noted for example by Whale [24] and Dietz [25] the MONISTIC or UNITARY THEORY and the DUALISTIC THEORY. The former concept emphasises the interdependence of economic and moral rights, financial and intellectual interests. Economic rights protect moral rights and vice versa. Thus, for practical reasons, one cannot rigidly set out the boundaries of the two sets of rights. The dualistic approach, however, takes economic rights and moral rights as independent of and separate from each other. The dualists reject the monistic view because economic rights can be transferred from one person to another and are subject to limitation as to duration while moral rights are inalienable and not limited in time. How can one square these conflicting views, they say? The main difference between the

monistic and dualistic approaches, however, is that for the former, the moral rights end when the economic rights do, whereas in the latter case, the moral rights are eternal and do not end at the same time as the economic rights. Dietz [26] mentions that protection of moral rights after the author's death is generally not covered by copyright law in monist countries but is left to the area of protection of ancient memorials through assignment to cultural and official institutions. The practical effect of this is that while under both concepts the moral rights are not assignable and cannot be severed from the author, a monistic approach means that because both the economic and moral rights are part of a single right and the moral right element cannot be assigned, then nor can the economic rights be assigned, although they can be licensed exclusively or non-exclusively and the whole right (moral and economic) can be passed by will. Under the dualistic approach, however, the moral and economic rights are independent, so it is possible to assign the economic rights. German law follows a monistic approach, French law a dualistic approach [27]. Dietz, in his study of copyright law in the EEC[28] , recognises two other moral rights which are recognised in only a few EEC countries - the right of publication, which is the right of the author to decide whether publication will take place and if so under what conditions and the right of recall because of a change

of opinion, which is the right of the author to call back a work already exploited if he considers such exploitation no longer suitable - and this suitability ranges from German law which allows recall if the author's opinions no longer correspond to those of the work so that exploitation of the work can no longer be reasonably expected of him, to Italian law which only allows recall for serious moral reasons, to French law which allows recall and does not ask for a motive. This right clashes with the idea that a contract, once entered into, must be fulfilled, so all countries allowing the right provide for compensation by the author. Dietz notes that the importance of these two rights is likely to grow with the advance of technology and centralised computer and documentation centres. The two most important moral rights, recognised in virtually all EEC countries, are the right to claim authorship and the right to integrity of the work. The paternity right has two aspects [29], - a positive aspect, on the part of the author, to claim authorship either in his own name or anonymously or pseudonymously and a negative aspect to dispute that the work is someone else's. The basis of this right is the acceptance of the notion of an author's right, which protects the relationship between the author and his work rather than the work itself. The right to integrity of the work is similarly based and refers to the right of an author to object to any

modification, mutilation or distortion of his work if this would adversely affect his honour or reputation. Dietz [30] notes two approaches: those that protect the author against such actions only if it can be proved objectively that the author's honour or reputation has been adversely affected and those that provide absolute protection. However, if he has consented to changes and if the changes are bona fide and if they are necessary for the practical exploitation of the work, the author is unlikely to be able to withhold his consent. But if the nature of the work is changed, he will have a right of prohibition [31]. The U.K. and Eire do not directly protect moral rights but the same effect may be produced indirectly through the economic right to publish, fair dealing and the need to state sources, false attribution of authorship, the ability to produce a work anonymously or pseudonymously and other methods already mentioned. Most commentators seem agreed that the U.K. should recognise the droit moral. Whale [32], for example, suggests that if a legal system does not recognise the moral rights of an author, it will only inadequately defend authors' interests, interests already somewhat diminished by the many limitations on copyright. Similarly, in the U.S., moral rights are not protected explicitly but under other legal doctrines[33].

(c) The Property Rights Approach

Another way of looking at copyright is as a right of property, even though the property is "intellectual" or "incorporeal" and differs somewhat from what is traditionally thought of as property. Whale[34] mentions some of the problems created by treating copyright as a property right: unlike a person who sells goods and services, a composer or an author cannot ensure that he obtains remuneration by withholding his work until he is paid. Thus, he is very susceptible to mis-appropriation through plagiarism and piracy by virtue of the fact that it is in the very nature of his works that they be put before the public in large quantities. Technological advance in copying devices makes copying relatively cheap, reliable and of high quality and has made piracy, plagiarism and counterfeiting lucrative businesses and easier to do and the increasingly large amounts of copyright material available have made the problem worse. Property is generally meant for private and personal use whereas authors' works are by their nature for public consumption. In addition, copyright material is subject to many limitations as to time, use and so forth whereas property usually is not. One similarity with property is that the copyright can be bought, sold, hired (by licence) as can normal property (one must remember here the distinction between the work itself and the rights in the work - the copyright does not pass with the work). Another complication Whale notes is

that the work (and the copyright) can be owned by someone other than the author, such as an employer. These do not, to me, seem particularly difficult problems to overcome, however. Becker [35] defines property rights as "the rights of ownership" and then goes on to describe the concept of "full" or "liberal" ownership. The attainment of all of the rights he mentions represents full ownership but people may still own something even if only in a restricted sense if they do not have all the rights. A copyright owner does not have all the rights of full ownership but he has many of them. His ownership may be restricted, but he still has property rights. The fact that it is more difficult to control the use to which the material is put does not take away from the fact that he has rights in it. In many cases rights can be enforced anyway. Property is something you own and copyright holders own their copyrights. The fact that copyright material is for public use just differentiates it from other forms of property - it does not mean that it is not property per se. And the difficulty of enforcement just complicates the analysis, it does not mean that copyright material cannot be property. Similarly, who owns the copyright first surely does not rule out copyright as being a form of property and the fact that the copyright is owned by other than the creator is not a general rule anyway but only applies in certain cases. In addition, material

property does have limits imposed on it in many cases - full liberal ownership is the exception rather than the rule. For example, use rights may be curtailed by zoning, building permits and planning organisations. Becker also differentiates between a general justification of property rights - why there should be any property rights at all, - specific justification - why there should be a certain sort of property right - and particular justification - why a certain person should have a particular property right in a particular thing. In conclusion, he says that there are only four arguments for a general justification of property rights per se - two from labour theory, one from utility, one from liberty. The problem is, however, that they may conflict with one another in applications to specific justifications of property rights. Each of the four are equally valid so that if they do conflict at the specific level, they impose limitations on one another which have to be reflected in specific ownership rights. Some of the limitations imposed at the specific level on copyright may be accounted for by such conflicts between general justifications. One hears a lot in copyright circles about a person who expends time and effort in the creation of a work being entitled to receive something for it and to do what he likes with it. The two arguments for labour recognised by Becker provide a general justification for this and for limitations

imposed on copyright. The first concerns entitlement to the products of a labourer's work while the second is based on desert and the value labour produces. The rationale behind the labour theory of property acquisition is that if a person produces something through his own efforts, labour and expertise, he should be able to keep it as property. The problem is in deciding why, just because a person works on something, he should be entitled to own the thing produced rather than just be entitled to the value added or to thanks or hero-worship. In fact, it is not so much that the worker deserves the products of his labour but that no-one else does. The arguments on this theory basically come down to the form "I didn't ask you to work so why should I pay you in the form of property rights?" and "As long as you do not lose anything, why should you worry about me being paid through property rights?". Becker also points out that the claim to property rights in the products of labour falls down on a number of points, such as in cases where people work on things owned by others and also where the claim is at someone else's expense. Becker suggests that people do deserve something for their work but not always property rights - in different cases, different rewards are appropriate: property rights, monetary reward or recognition. The basis of the desert is that a person has added value through inventing, discovering or improving something which helps others. The argument

can be further strengthened by adding that the act should be allowable morally and be beyond what is morally expected. Further aspects of the argument are that if a person is to derive benefit for adding value, he must be penalised for subtracting value, that a person whose actions are morally impermissible is not covered, that the benefit or penalty should be proportional to the value added or subtracted (if there is no labour the argument does not apply and if value is unaltered, there is no desert) and that desert must fit the penalty/reward to the labour/labourer. The fittingness of the reward will also be related to the goal of the activity. So, if the aim of the labour is to keep the work produced (have property rights in it) and the labour deserves the benefit and as long as giving property rights does not breach the need for proportionality, then property rights will be fitting. In other cases, money recognition or whatever may be a more fitting reward. This is much more open than the first argument from labour and provides a general justification for the granting of property rights in the works of authors and composers (copyrights) in many cases. However, it may be difficult to square this with the fact that many works enjoying copyright protection are of minimal use and creativity, such as football pools coupons, examination papers, written tables and so forth. Is it fitting that such works receive property rights?. And what of those who write just to

disseminate their works or become known in a set circle - surely they want recognition rather than property rights?. In many cases, copyright has been reduced to a mere claim to compensation for practical reasons; would this be more "fitting" than granting property rights?. Becker shows that the argument can be used to justify many of the limitations on copyright on the basis of the "no-loss" or penalty/reward desert aspect. For inventions in small, closed-environment markets, property rights would significantly reduce the opportunities available to others, so one could argue for limitation of such rights since it is a loss to someone else. However, in general, if a person invents something or writes a book or a symphony, this by itself does not limit the opportunities available and in fact may enhance them since new works are usually based on old ones. So, this does not justify limitation. It depends on the circumstances. Also, the argument does not work if there is no benefit or loss to anyone else - it just affects the creator. Thus, this argument from labour would seem to justify copyright in many cases but might also reduce considerably the number of works covered and justify the payment of compensation/fees and the use of honours and rewards of status and prestige more than at present. Limitations on time and use can also be justified - on the basis that it is in the interests of society that works be in the public domain as soon as possible, and the arguments will get stronger

the longer the copyright period lasts.

Specific countries' approaches to copyright could similarly be split into three or four groups - (a) the author-orientated approach adopted on the Continent; (b) the market-orientated approach of the US AND UK; (c) the society-orientated approach of socialist countries like the U.S.S.R. To this might be added the approach of the developing countries [36]. The first approach generally corresponds with the author's right mentioned earlier while the second is a commercial-economic approach and is analogous to the property rights concept. The market-orientated approach is very much a result of the historical development of copyright - in the U.K., for example, copyright initially was a publishers'/printers' right (and in many respects still is). As one would expect, socialist countries put the public interest and socialist society first so that author's rights are only allowed insofar as they enhance socialism. Rights are not private property, nor for economic gain, but are intended to encourage education and dissemination of works. Hence, limitations in favour of the public interest are more numerous than under other systems. Nor are the author's property rights exclusive [although both property rights and personal rights (corresponding to moral rights) are recognised] since there is effectively no exploitation of works outside state ownership. Dissemination of

works is the job of the state, so all means of dissemination (publishing companies, theatres and the like) are state owned and controlled. The author can only exploit his works on the conditions laid down by the State and what he earns is regulated by the State[37]. The main factors influencing copyright legislation in the developing countries are that they import many more creative copyright works than they export and that they have certain special social and economic needs. It must be remembered that many of the developing countries are former colonies of the European countries, so their copyright philosophies will be influenced by this. One of the most important aspects of the international scene has been the attempt by the developing countries to have greater access to the works of the developed countries at costs they can afford. This, and the lack of protection of the works of the developed countries in the developing countries has led to many acrimonious disputes at international conferences in the past. However, the developing countries do have to provide protection to encourage the production of indigenous creative works and to attract foreign works, particularly those of the developed countries, in order to promote their own cultural progress. New communications technology should help them and the formulation of the Model Law on Copyright for Developing Countries at Tunis in 1976 considerably eased the problem [38].

Traditionally, copyright has been an exclusive right of the author to control the various exploitations of his work. It is also a means for the author to earn a living from his creative works. The fact that the majority of authors and composers do not earn a great deal from this source causes some concern and tends to undermine this view - copyright does not seem to fulfil its stated objective. As we have seen, one of the functions of copyright is to encourage the production of creative works and we must never lose sight of the fact that without the author (in the widest sense) the work would not exist in the first place. The publisher is also important in the process. He is the intermediary between the author and the public at large. Copyright helps him since it enables him to take the risk of investment in publishing the work. There are many failures, so the profit-makers subsidise the loss-makers. Without the publisher, the general public would not have access to the large numbers of works available or at least not in very large numbers and the author would have great trouble exploiting the work and communicating his ideas. The more commercial, market-orientated property rights approach of the U.K. and U.S. tends to tilt the emphasis more towards the publisher and away from the author. It is often said that the publisher and the author have a common interest in selling the work and this is at least partly true. However, in general, the author will tend to be in the weaker bargaining position by virtue of the mere size of the parties relative to one another, especially if he is a little-known author, despite the

fact that he owns the copyright, and this finds vent in complaints from authors that they have been "ripped off" by publishers. This complaint, however, is heard a lot less now than previously and the balance has been tipped back towards authors somewhat by their organisation into trades unions, the growth of collecting societies and laws on copyright contracts in various countries. In any case, the Performing Right Society, the largest collecting society in the U.K., which administers performing and broadcasting rights in musical compositions, is "An Association of Composers, Authors and Publishers of Music"[39] with composers/authors and publishers having equal numbers of seats on the General Council, the policy-making body. This also shows the difference in approach between market orientated and author orientated countries like those on the Continent, where collecting societies are like trades unions of authors[40]. What the publisher achieves also benefits the author, but the relationship can sometimes come under strain. The publisher's role has changed enormously over the years because of the decline in sheet music sales, and Ploman and Hamilton[41] point to the increasing concentration in the communications/ entertainments field, which may further weaken the author's position. In addition, some see the publishers as holding back dissemination of creative works, which causes them to be viewed with hostility in many camps, as evidenced by Roth[42]. Roth sums up the problem very

well when talking about classical music publication - "Composer and publisher are, in fact, bound by common interests with only one subtle difference: the composer wants his work performed; so too does the publisher - but not at any price". As he says earlier [43], the publisher "stands at the crossroads of art and commerce" - and this is where the conflict may arise. The author may be more interested in seeing his work communicated to the public whereas the publisher has to make sure it is a commercial proposition, that the work is exploited on a business-like basis so as to bring in the greatest amount of revenue for all concerned (obviously this conflict does not arise in all, maybe not even in the majority of cases). New authors especially depend on publishers for their promotional skills. In fact, there does seem to be some element of ambivalence towards the commercial side of things in the music industry by composers.

The third element of the process is the user of the works, the consumer, and society in general, who want easy and cheap access to copyright works. Obviously, it is in the interests of culture, education and progress that people are able to use such works, although the general public does already have access to a great many out-of-copyright-works, works which are said to be in the PUBLIC DOMAIN.

The massive increase in the amount of information produced and required and the rapid fall in the costs and time involved in communication of such information (all of which is likely to improve even more in the future) has caused considerable problems for copyright policy, which has to try to balance these conflicting interests - the creative interests of the author, the commercial interests of the publisher, the exploitive needs of the users (which may be divided into those that use copyright material in a commercial business such as broadcasters, film companies and video and record companies and other users, such as those in the education sector, libraries and schools) and the general needs of society; the need for encouragement of production of creative works and the need for the widest possible dissemination of such works given the need for encouragement. The delicate nature of this balance is well illustrated by the Universal Declaration of Human Rights, drawn up by the United Nations, Article 27 of which is quoted in both Whale[44] and Ploman and Hamilton [45]:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".

Technology has always been the bugbear of the copyright system and the rapid increase in the rate of technological advance over the years has severely upset the balancing of these interests. A new balance is required. The problem of technology is not a new one for the copyright system but more and more technological advances have occurred with nothing being done to redefine the borders. The traditional method for ensuring sufficient dissemination of works has been to prune back the author's exclusive rights by limiting the duration of copyright protection and making some uses of copyright works subject only to compensation and others free of any royalty subject to certain conditions. In most cases, the author's consent to use is required. New technology has increased the need for such limitations, especially those involving compensation but not permission from the author, if only for the practical reason that the exclusive right is unenforceable in many cases. Some, such as Dietz[46], express concern that copyright should not just become a right to compensation but remain an exclusive right of control and consider that the growth of the compensation

principle makes the recognition of moral rights even more important and are particularly concerned about the growth of this phenomenon on young, unknown authors. This increase in the use of compensation claims, Dietz notes, has also partly resulted from the growth of collecting societies, which are there to collect royalties rather than to exclude use and they are generally not allowed under the law to refuse a licence provided the requisite royalties are paid. For example, in the U.K. the tariffs and licensing of the Performing Right Society (PRS) and Phonographic Performance Ltd. (PPL) (which controls public performance and broadcasting of records) are under the jurisdiction of the Performing Right Tribunal (PRT), which was set up to guard against abuse of monopoly power, such as refusal of licences. Another example of a compensation claim is that of the statutory recording licence under Section 8 of the 1956 U.K. Copyright Act. The U.S. Copyright Act, 1976, introduced the similar concept of a compulsory licence (use subject only to a compensation claim) into a number of new areas, such as juke boxes, cable television and public broadcasting. There are notable names on both sides of the argument as to the balance to be struck between the various groups. Kaplan[47] argues for more freedom of access to copyright works especially since the means of dissemination are more and more concentrated in fewer hands and freedom of expression is

often under attack. Whale and Freegard[48] (Chief Executive of PRS) want to tip the balance back towards the author, since most authors earn very little from royalties and the public already has the large number of public domain works to choose from. The balance is a matter for each country to decide, although the move towards EEC harmonization of copyright law represents an important projective force towards the idea of the author's right as does the recommended introduction of the droit moral into the U.K.

General Principles of Copyright Law

A number of similarities and principles are discernible in the copyright laws of various countries. I have already noted the difference between EEC/Berne countries and US/UCC countries as regards formalities. The nearest any EEC country comes to formalities is the necessity in U.K. law for works to be reduced to a material form but, as Dietz mentions[49], this is more a question of proof of existence than anything. The fact that copyright comes automatically into existence in some countries, however, may cause problems, in the case of unpublished works when it comes to proof. Whale[50] suggests, however, that the way round this is to deposit a signed, dated copy with a professional person like a bank manager or solicitor, and ask for a receipt. Alternatively, a copy may be deposited with the Stationers

Company in London for a small fee or a registered parcel containing the work may be self addressed and posted to oneself. Despite such problems however, formalities are not a condition of copyright coming into existence for a lot of countries. Also, remember that ideas are not protected, only how they are expressed. The U.S. explicitly states this in its legislation in S102 (b) of the 1976 Act. The first problem you have when drawing up a copyright law is to find a term which can be used to map out the boundaries of those works which can be protected by copyright from those that cannot[51]. There is something to be said for having as broad an expression as possible, especially at a time of rapid technological advance when it may be difficult to fit new forms of expression into a few categories. Some of the problems in the copyright field at the moment are caused by this latter problem. In any case, it is impossible to be exhaustive. The US, in its latest revision, tries to come to terms with the problem in Section 102(a) when it says "Copyright protection subsists .....in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device". This is then followed by seven broad categories. Copyright protection also extends to minimally creative, "small change" works as Dietz calls them [52], (although the U.S. excludes some of these), which sometimes attracts criticism. Dietz fears that for such

works commercial interests predominate, distracting attention away from the author's right. In any case, such limitless expansion of copyright is not necessarily a good thing. Also, assuming reduction of protection for such works, one must then ask is there to be no protection, or a shorter term of protection as a neighbouring right, or protection under laws other than copyright?

The Author as Creator Concept

Copyright is intended to provide creators of works, authors, with protection for their works. The concept of the author's right means that an author can only be a person, not a company, and the first owner of a copyright can only ever be the creator[53]. A person is the only one who can create a work, a company cannot, so a company cannot be a first owner of the copyright in a work, it can only ever be a successor to the rights given to the author as the creator and first owner. Most EEC countries adopt this approach except the Netherlands, Eire, Luxembourg and the U.K. Nor does the U.S. follow the principle. The U.K. breaches the principle in the case of works created by the employee and commissioned works, where the original creator is not the copyright owner and in the case of Part II neighbouring rights, where companies can be the first owner (although these do not traditionally come within the ambit of the author's right anyway). Changes in

technology and in how and where the author works complicate the issue of who is the author. For example, what happens in the case of joint-authorship or works produced by many authors?. Compilations and collective works?. What about adaptations?. Another problem is in deciding who is the author in the case of cinematographic films because there are a large number of people involved in making films. Dietz divides the approaches adopted into two groups - those that give the copyright to the film producer, the film maker, such as the U.K., Eire and Luxembourg, which will breach the natural persons criterion if the producer is a film company, and those that only give the copyright to human beings involved in making the film, those who have participated creatively, although the situation is made beneficial to the film producer through presumptions of assignments of certain rights to him and similar arrangements. Examples are West Germany, France and Italy. Who can claim authorship and the number of those who can do so differs between countries in this group, however. Details vary widely. There is also the problem of anonymous and pseudonymous works. The principle is similarly broken in some countries, such as the Netherlands, Eire and the U.K. in the case of employed authors (and commissioned works in the U.K.) where there is the problem, as with films, of allowing the employer to exploit works created under his orders if you follow the creator as author principle. Those countries that follow the principle get round the problem by assuming that the employee assigns his rights to the employer by contract. Countries

breaking the principle allow the employer to be the first owner of the copyright but generally allow it to be overridden by contractual arrangement to the contrary. The question is not just an academic one since the majority of "authors" (creators of copyright material) nowadays are employed in some way.[54] The varying forms of employment situation in which authors find themselves today and the fact that many are employed in "teams" is likely to produce more problems in the future. For socialist countries, the copyright, apart from moral rights, would rest with the employer in such cases.

Individual Rights

Copyright gives the author the right to carry out certain restricted acts with regard to his works and to authorise others to do the same so that the author can exploit the work commercially himself or get others to do so (even though in some cases the right to an economic return is not laid down explicitly in legislation). Another method of organising the system is to make uses of the work after publication only subject to the payment of compensation, as Dietz says either directly to the author or to a collecting society (which acts on authors' behalves), such compensation to be laid down by law or under blanket agreements through the tariff rates of collecting societies[55]. Some uses are free while others

require compensation but the author's ability to control uses of his work directly through giving or withholding his consent is largely lost. Such a system is becoming increasingly necessary and being almost forced on authors because of technological developments making possible mass use of copyright works. The future is likely to see an increase in the number of collecting societies, again caused by the difficulties posed by technology. Another development highlighted by Dietz, especially evident in the European countries rather than in the U.K., is the use of compensation from exploitation in social security schemes for authors where part of such compensation is used for the benefit of authors in general rather than authors individually. Compensation claims are increasingly looked at in association with traditional exclusive rights rather than with limitations on copyright. It is generally accepted, then, that the author should be able to share in the economic exploitation of his works and in every use of his work, subject to certain exceptions. Individual rights granted vary between countries. For example, Dietz [56] analyses the legislation of the EEC countries in terms of two broad rights, based on West German law:-

1. The exclusive right to exploit the work in a material form, made up of:

(a) The right of reproduction.

(b) The right of distribution

(c) The right of exhibition.

2. The exclusive right of public communication in non-material form, made up of:

(a) The right of recitation, performance, representation and presentation.

(b) The right of broadcasting.

(c) The right to communicate the work through sound or visual records.

(d) The right to communicate broadcasts.

1(a) The Reproduction Right

All EEC countries have a reproduction right although its scope differs between countries and it is not always clear that adaptations of the work also have a reproduction right[57]. The right is to reproduce the

work in various forms, to make copies of it. All countries also limit the right (for example, the U.K. has 'fair dealing' provisions for research and private study and criticism and review). The revised Berne Convention, while laying down the right [Article 9(1)] also allows for limitations provided "such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author" [Article 9(2)]. One important limitation in the U.K. is the statutory music licence. In the U.K., the concept was first introduced in the 1911 Act as a way of preventing the record industry becoming monopolised by individual record companies, especially in the popular and light music markets. The U.K. and Eire are the only countries in the EEC really to use the concept - the others either have no such measure at all or only use it in very minor ways. Other countries in the World which use it, however, include the U.S., New Zealand, Australia and other British ex-colonies[58]. There is a difference between a statutory licence and a compulsory licence. West Germany has a compulsory licence which may only be used in limited circumstances and means that the copyright owner only has to give record manufacturers a use right under suitable conditions while the U.K./Eire measure means that a record manufacturer can use it provided he

complies with certain conditions. The West German measure thus means that the record manufacturer may not use the compulsory licence if suitable conditions are not negotiated, while the U.K./Eire record manufacturer already knows what the conditions are[59]. The system of collecting societies effectively means that there is a compulsory licence in all areas where they operate since they have to grant licences under suitable conditions[60] and there are bodies such as the Performing Right Tribunal in the U.K. to ensure that licences are not unreasonably withheld.

1(b) The Distribution Right

Some countries give the author a special distribution right in addition to and independent of the reproduction right, allowing the author to control distribution of his work and copies of it - whether to offer it to the public and circulate it or not and under what conditions[61]. In Europe, only Denmark, West Germany, Italy and the Netherlands have such a right. There may be a conflict here with the Treaty of Rome as regards free movement of goods. The right allows the copyright owner or his successors to control distribution even

where manufacture of copies is not illegal or unlawful - Dietz notes that a copyright owner may want to control distribution where a work not protected at all by copyright in one country is then imported into another, where the copyright protection period has run out in one country but not in another or where the publishing right is divided so that there is one publisher in a country and different ones elsewhere and the work is imported from one country to another so that one publisher may spoil the market for another. Wherever the copyright is limited in some way as to time, purpose, market or whatever in a single market, the copyright owner will want to have the right to control the distribution. In all these cases, the copies are produced legitimately, so the reproduction right cannot be used against them, but it is obviously in the copyright owner's interest to be able to control such situations to prevent his copyright being undermined. The distribution right cannot be used permanently, however - there is a theory of the "EXHAUSTION OF THE DISTRIBUTION RIGHT", achieved differently in each country: in Denmark, when publication of a literary, musical or artistic work occurs, further distribution of published copies is possible; in West Germany, further distribution is possible if the work or copies of it have been sold (but not hired) with the consent of the person who has the right to distribute in Germany; while in Italy and the

Netherlands, there is a distribution right only if the work has not yet been printed. Belgium and France have no official right of distribution but effectively provide one (without an exhaustion principle, so it is more powerful) by allowing the reproduction right to be subject to restrictions and conditions which may be used against others if they are visible on the copies. Dietz quotes Gotzen as calling this "the right of determination (droit de destination) since it applies to any use of the work, not just further distribution. The distribution right in general ceases when copies of the work are put on public sale so that the copyright owner loses control of what happens to the work, this generally being called the FIRST SALE DOCTRINE[62]. This only applies to authorised copies, however, and the right to prevent distribution of unauthorised copies is quite widely recognised. Many countries do not have a distribution right but the U.K./Eire approach, Dietz notes, may amount to the right since it grants both a reproduction right and a publication right. Also related to the question of the distribution right is that of PUBLIC LENDING RIGHT - should legitimately produced copies of works which are hired out and loaned result in compensation for copyright owners or not?. This particularly applies to the loan of books but presumably may also be extended to record libraries, for example. The growth of public libraries has made this

an important issue since by making books available to people free of charge, the market for sale of those books bought by the libraries is reduced, and a source of income for publishers and authors is lost. This is a mass use of copyright material for which copyright owners ought at least to be compensated, the argument goes. Against this is the need for widespread dissemination of works and the needs of cultural policy. Also one must decide whether to include the lending right within or outside copyright law. Of the few countries that have a public lending right - Denmark, West Germany, the Scandinavian countries and the U.K. - only West Germany has a solution within copyright law and pays foreign authors. The Authors Lending and Copyright Society (ALCS), a collecting society for authors in the U.K., collects royalties from West Germany for the lending of books written by British nationals in Germany and reports that this has amounted to over £150,000 since 1980 (the money comes from WORT, the West German collecting society, and can only be paid through an authorised collecting society. This latter stipulation is so that part of the proceeds can be paid into a social fund for writers). In the U.K. , the Public Lending Right Act was passed in 1979, and £2 million has been made available by the government for payment to authors according to lending of their works in a sample of British libraries.

1(c) The Exhibition Right

This is only of minor importance.

2. The Right of Public Communication

Whereas the above rights involve exploitation of the work in physical form, the second part of Dietz's schema involves exploitation of the work in non-physical form, the right of public communication. The French, he notes, distinguish between communication to the public (droit de representation) and exploitation in a physical form, (droit de reproduction), too. The basic concept behind payments for uses of copyright works is that if a person uses a copyright work to achieve his financial or non-financial objectives the author should receive remuneration for helping the user in this way since the user has profited from the author's work. The author is basically a supplier and the user has to pay him in the same way he has to pay other parties whose services and goods he uses to achieve his objectives[63]. Denmark is the only other country in the EEC to have a comprehensive generic term - public performance which is part of the right to give the general public access to the work, which in turn is part of the right of disposal over the work[64]. Dietz says this includes all non-physical communications of the work to the public

through performers or mechanical means and covers the broadcasting right. In the French and German laws, the generic terms are followed by lists of what they cover. All the EEC countries grant the right of public communication in its widest sense but the three above mentioned countries are the only ones to use a generic term. The right of broadcast is included in the term 'right of public communication'. As regards cable television, Dietz suggests[65] that "the adoption or feed-in of protected programmes in shared aerial systems and cable television systems is copyright protected" but "the further distribution (with or without cable) must be directed to the public and the organisation responsible for further distribution must be different from the original broadcasting organisation". Simple domestic aerials and low range community aerials are not covered, he thinks, but he also notes that the legal position is subject to some uncertainty.

Exceptions to the Exclusive Copyright

One must establish a balance between the legitimate rights of the author to control uses of his work and the equally legitimate needs of society for access to information. One must also be careful not to interfere in the private life of the individual when enforcing copyright. The balance is achieved by limiting the scope and extent of copyright in various ways. The most

important limitation is that on the length of time during which the copyright will last, but there are also other limitations where the use is free and does not require the copyright owner's consent or requires the copyright owner's consent and has to be paid for. Dietz[66] describes the middle ground, which is growing, of use requiring compensation but not permission. Such an intermediate course is adopted, he suggests, when the legislator is trying to save the user time and effort in getting in touch with the copyright owner but still wants to give the latter an income for use of his work, especially where such use may have an adverse effect on exploitation of the work. Thus, the economic aspect of copyright takes precedence over the control aspect. If an exclusive right seems inoperative for technical reasons or because it would be very difficult to control and check uses, the compensation claim will often come into play. The compensation and no compensation provisions are closely related and even a small change in the circumstances of the situation may change one to the other. The fair dealing provisions are an important part of the limitations on copyright, particularly when it comes to problems such as photocopying. Limitations are found, for example, for copying for personal use, quotation, press and radio reporting, printing of public speeches and reprinting of newspaper articles, ephemeral recordings by broadcasters (copying of works onto audio

and video tape for later broadcast with the recordings being destroyed in a short time period after broadcast), judicial administration, religious services and popular festivals, educational and school uses. Details obviously differ between countries. The scope of limitations differs between countries - some set narrow limits, others are very generous - as does the extent of the granting of compensation claims for the author. Whether a limitation should be allowed or not depends on whether the use would encroach on the normal exploitation of the work. If it does not, a limitation is usually permissible, while if encroachment is happening, either there is no limitation or very narrow limits are set or a compensation claim is established. Allied to the question is the need to maintain freedom of reporting and information and to encourage public debate and cultural development. If this latter aim conflicts with the encroachment criterion, a compensation claim may be allowed. For example, Dietz[67] does not favour an exception for educational and school uses because they are a substantial encroachment and the situation does not involve uncontrollable mass use of the work. He uses an argument which arises a lot in copyright circles, following on from his view of the copyright owner as a supplier - that schools and educational institutions do not expect suppliers of books, pens, paper and so forth to supply their goods

and services free, so why should the copyright owner supply his work (the content of his books) free?. He favours at least a compensation claim. There is also the argument mentioned earlier about why a person should have to pay more once he has bought a good - that the copyright owner should be able to derive an income from use of his works if it has helped the user achieve his objectives. Practical necessities also have to play a part in such limitations as in the case of ephemeral recordings where the broadcasting industry would have great problems otherwise since programmes usually have to be recorded since they cannot be broadcast live and live broadcasts are rare. Private copying is allowed under certain circumstances as long as the copies are not then commercially exploited so as to interfere with the original work. The author is never given an absolute right - the public always has some right to use the author's work. But if the public is allowed to use the work so much that it substantially eats into the work's market, it may become difficult to get it published in the first place and the basis of the access - the works themselves - may disappear or become greatly reduced in number. In this case, the public would not have access to the works because they would not exist. The more vulnerable the work is to free use - the easier it is to appropriate it - the less will be the reward

the author/publisher can earn and the less works we would expect to be published.

Duration

The main limitation on copyright is as to time. In the EEC countries, in general, the protection period is the life of the author plus 50 years (50 years post mortem auctoris). The 50 year period runs from the 1st January of the year following the author's death for practical reasons so that the copyright period never runs out in the middle of the year but only on 31st December of any given year. The exceptions to this general rule are West Germany, where the protection period is 70 years from the author's death and Belgium, Italy and France where the protection period was extended because of the World Wars to about 60, 56 and 65 years respectively[68]. In the U.S., the protection period for works created on or after January 1, 1978 is life plus 50 years too (previously, there were 2 terms - an initial term of 28 years, renewable for a further 28 years) while works copyrighted before January 1, 1978 have a 75 year term made up of an initial term of 28 years and renewal term of 47 years. (It is worth noting that the U.K. used to have such a two-stage protection period with any initial assignment of copyright in a work lapsing and returning the copyright to the author's heirs for the last 25

years of the term of life plus 50 years. This was to break the monopoly of the initial publisher and to allow the author's heirs to make a new deal if, subsequent to the initial assignment, the work proved to be worth more than the author thought in which case he might have received too little in return for the rights - this is related to the concept of the "droit de suite". The "domaine public payante" is another way of increasing the protection period by imposing a levy on uses of public domain works to help authors generally). The very long protection period is so that the author's heirs or successors can still protect his work and derive an income from exploiting its commercial potential. The question of the balance between author and the general public partly explains the limitation on duration of copyright. Dietz mentions a further practical reason for such a limitation on duration (quoting Erich Schoulze) - that works covered by copyright are by their very nature in common use by many people, they are for public consumption whereas physical goods are used by only a few people, so there is a greater problem in ascertaining ownership with copyright works. The problems involved are evidenced by the fact that the collecting societies spend a lot of time investigating ownership claims and in court cases it is invariably the case that title of ownership is disputed. The further away from the author's death you go and the

more times the copyright changes hands by assignment, will, or whatever, the more difficult the problem becomes of proving ownership and backing it up with documentation. For physical objects, the problem is not as great because fewer people are involved and the fact that the object is physical makes it a lot easier to prove ownership. The main aim of the longer protection period is, it seems, to help the author's heirs but this does seem the least acceptable aspect of copyright and there seems no real reason for such a long period. Breyer[69] thinks the same (and in fact views the whole copyright system as somewhat shaky) and considers that there is always an incentive for the protection period to increase but never for it to diminish because present copyright holders have a vested interest in increasing the period and have formed effective lobbying groups to get their own way whereas there is no such group to put the counter argument for greater dissemination of works (because of their large numbers and lack of concentration and coherence, presumably). In fact, the copyright period has never actually been reduced, always increased. In Europe, the fact that Germany has a life plus 70 years protection period, whereas nearly everyone else has life plus 50 years is inevitably going to be seized on in any future harmonisation of European copyright law as a reason for increasing the period to life plus 70 years. As Dietz[70] says, "the simplest

solution would be an "upward" approximation, by taking as the basis the largest protection period of 70 years post mortem.... This would have the advantage of also covering the extensions of the periods in Belgium, France and Italy and of enabling them to be formally revoked without any resistance from the parties affected thereby. A "downward" approximation..... raises many difficulties of a constitutional nature and relating to the law of property and must be expected to encounter insuperable opposition from the countries concerned". If we use the encouragement theory of copyright, Breyer again disputes the advantages of a long protection period - the length of the period is unlikely to affect the decision of the author of whether to write or not. As Thomas[71] says, "Does the ever-lengthening term of copyright protection enter his calculations very much or indeed at all?". Breyer[72] asks "Would prospective authors give up creating if they knew of an author's heir who was poor because of the absence of a copyright system?". Breyer notes that the further in the future the earnings come the more heavily they are discounted so the less they are worth - and most authors are highly unlikely to be selling a lot of copies of their works 50 years after their deaths anyway (although well-known classical composers and authors probably will be). Increasing the copyright term would barely affect the

present value of future earnings and could hardly be expected to affect the decision of whether to create or not. As to publishing, a longer or shorter protection period is not going to affect the decision to publish, Breyer says, since publishers have a short-term viewpoint, requiring payback within a relatively short period of time, certainly nowhere near the length of the copyright period. Breyer also argues that the copyright system produces certain benefits such as encouraging production of works but also certain problems in terms of increased prices and the conferment of a monopoly and that the longer the protection period lasts, the greater the risks and harm become and the less the benefits are - for example, the longer the protection period, the more difficult it is to get hold of the copyright owner to ask for his consent to use the work and this will be particularly important when the book is out of print; also, increasing the protection period may limit competition between works in copyright and works that would normally become public domain works. Breyer uses the example of collecting societies which license the use of music. By increasing the protection period, it makes it more difficult for people to substitute public domain works for copyright works, so the societies can increase revenue at licensees' expense and the latter may pass this onto the public, (although tribunals

normally regulate the tariffs of the collecting societies). Another argument discussed by Breyer is that increasing the protection period will prevent adverse alteration of the work by others, but this is countered by the argument that increased protection may allow the "author-hating" heir to stop publication of his parents' works. Another argument is why give such a long protection period to copyright but not patents even though both patent and copyright are intended to encourage something? (although the nature of the monopoly in each case probably dictates this). The present needs of society for more and more information is surely also another argument for shortening the protection period - and publishers do not need anywhere near such a long time period to cover costs and make a profit (one of the arguments put forward in favour of copyright). Towards the end of the protection period, most works are unlikely to be making much money anyway, so it is highly unlikely to provide much income for heirs and when one considers that most authors receive very little income from copyright anyway, meaning that many have to take secondary jobs other than writing, the argument is put into context. As Breyer mentions there are various ways of getting round the harmful effects of the extended protection period such as that in the U.K. 1911 Act, which provided for any assignment of copyright to return to the author's heirs for the last 25 years of

the copyright and during those last 25 years for a statutory licence to come into operation so that anyone could reproduce the work on payment of a royalty of 10% (of the book price). Such devices are ad hoc and there would be little need for them if the period were shorter in the first place. Dietz[73] notes that the collecting societies rely on a long protection period for their strength and this strength is of help to copyright holders and living authors to the extent that revenue is used to help them collectively through the likes of social security schemes. Such a social view of copyright, however, does not apply to the U.K. to any great extent and still does not provide a particularly good reason for such a long protection period, although strong collecting societies mean that revenues for authors are larger because the societies have a better bargaining position and are able to negotiate larger payments.

There are shorter protection periods for some individual works such as posthumous works and anonymous and pseudonymous works.[74]

CHAPTER I - THE THEORY AND PHILOSOPHY OF COPYRIGHT REFERENCES

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27. Whale & Phillips, op cit, p23.

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THE MANAGEMENT OF CHANGE

& COPYRIGHT

PART II

COPYRIGHT & TECHNOLOGY

INTRODUCTION TO PART II COPYRIGHT PROTECTION AND THE PROBLEMS OF TECHNOLOGICAL ADVANCE

If there is any one factor which accounts for the great state of flux in which the copyright system finds itself today, it is technological advance and the growth of new methods and new mediums for communication of copyright material. New technology has always posed problems for the system of copyright protection but what has caused the greatest problems in the last thirty years or so is the speed of technological change and the sheer range of new uses of copyright material. The invention of printing, the growth of broadcasting, the cinema and the record industry, the development of photocopiers and tape recorders laid the foundations for the problems we have today. The advent of video cassette recorders and enhanced computer technology added a further twist and now cable and satellite television are about to enter the fray. New forms of technology, equally challenging, are no doubt just around the corner. All this has caused considerable dislocation of traditional copyright concepts and forced a widespread rethink on the whole subject. New solutions have to be and are being found. Hand in hand with the growth in the 'copyright' industries has been the massive increase in piracy and counterfeiting of copyright material which, in all fields, has become a major worry and the source of enormous losses in income. The copyright system suffers from the fact that a large proportion of its subject matter is located in the

"communications" industry in the widest sense of that term, in the mass media, requiring the diffusion of large amounts of information and material to the general public and it is in this area that the greatest strides in technology have occurred. Copyright material, by its very nature, has to be placed in a large number of hands in the public sphere which inevitably opens it up to illegal and unlawful uses. In addition, the whole field is fast moving but the law on which it is based is quite the opposite and changes very slowly. Rigidity is probably the main characteristic of the law and the flexibility required to deal with fast moving environments is usually missing. A prime example is the attempt to change UK copyright law - a Committee was set up under Mr. Justice Whitford to look into the whole question of Copyright and Designs Laws. It reported in 1977. There was then a long gap to July 1981 when a much criticised Green Paper was produced. To date, nothing has been done, apart from a few adjustments to deal with video piracy. Just how long it will take before any action is taken is unknown but something has to be done soon to re-establish the exact obligations of the various parties and to deal with the many and varied problems. There is a place here for the courts to interpret the law so as to allow for the requisite flexibility and to an extent they have done this. Ultimately, though, it is a question of legislation. Obviously, given the present economic climate, the government has more to think about than just copyright law reform and one would not like it to rush into things but given that the

law in this area was last revised in 1956, that the copyright industries are of great importance to Britain's economic health and that the problems are getting worse and the copyright system becoming destabilised in many areas, the time would seem ripe for something to be done.

There is little doubt that new technology offers great new opportunities for the creator of copyright material in the form of vastly greater audiences and new outlets as well as the chance to earn more money than was previously possible (even though income is highly skewed towards a small minority who earn a great deal while the majority earn only modest sums and often have to have a second job). Every major technological advance has potentially benefited the creator in this way. Assuming that the creator's main objective is to communicate his works to the widest possible audience, the creator of copyright works has never been in a better position - the mass media now enables him to tap a vast audience. However, much of the discussion of copyright at present centres on the threats rather than the benefits of technology, even at a time when copyright is more valuable commercially than at any time previously, and the music collecting societies are distributing more money than ever before. There is some concern about the future of copyright and to an extent the pessimism is warranted because the system is under attack from a growing number of sources. One may wonder, though, whether the gloom is not a little overdone at times since creators have had to deal with

similar problems in the past (although the nature of technological change has altered somewhat in recent years) and they are better able to deal with them than previously being more organised through unions and collecting societies and thus being in a better bargaining position. The copyright system itself may have to change somewhat - and to an extent is already doing so - but it is unlikely ever to fall apart completely. It is rather a question of re-evaluating the situation and accommodating new concepts, finding new solutions. As we have seen, the copyright system is very accommodating to different philosophies and flexible, too. There is a need for care, however, and complacency is not what is required since there will always be abolitionists, sceptics and the non-committed.

In a number of ways, however, present technology differs in nature from past experience and it is these differences which must be borne in mind when analysing problems and framing solutions. For example, traditional methods of mechanical reproduction allowed the user to be identified and rights to be asserted against him. 'Modern copying devices are available to most people at little cost and are easy to use. Why, Koumantos[1] asks, buy books, periodicals, records and so forth when you can borrow and copy them so that a single copy, purchased and reproduced privately, can satisfy the needs of an unlimited number of readers (viewers and listeners) free of any copyright liability. Part of the author's market disappears. "Enlargement of the audience is

accompanied by a retraction of the base on which the remuneration of authors is calculated"[2]. Ploman and Hamilton[3] note that new technology is characterised by "a vast increase in the capacity to generate, transmit and receive information" and for its "flexibility and opportunity of choice, convergence and complimentarity and the inequality of access". Flexibility results from the fact that for example, "a terrestrial system.... always has to follow a given path on earth" whereas the satellite does not, and television is usually a one-way system whereas cable television may be interactive, allowing consumers to "talk back". Within each technology, there is also now a wider choice of distribution - for example, music recordings can be distributed by record or tape or broadcast while for television there is broadcasting through the ether, by satellite and by cable. The television is no longer just a receiving set - it may also be used to show video recordings, for teletext systems, for video games and the like. This flexibility also allows for combinations of technologies - for example, computers and television produce teletext systems. The main change in the nature of technology seems to be "decentralisation and individualisation in concept of use"[4]. Cable television allows a more regional form of broadcasting, video allows choice of time and content, tape recording is done in the privacy of one's own home. Copyright owners have generally in the past been able to deal with groups or organisations of one size or another. However, the individual is the source of the problem in many

cases today and it is to the individual that the copyright owner must go for recompense. This is virtually impossible without invading privacy. Because the individual does not usually have commercial objectives in his copying, it is much more difficult to get copyright ideas across and accepted. In-equality of access arises from the fact that only certain groups within a country and certain countries in the World have access to the most up-to-date technology, leading to a distinction between 'information rich' and 'information poor' countries[5]. This is where the politics in the copyright system come into play. Within developing countries, only a small minority of households possess the newer forms of technology. Ploman & Hamilton[6] show that traditionally it has been possible to differentiate the various stages in the creation and production of a work and attach rights to objects and stages. It is more difficult to identify each stage now. Production may take place at the same time as performance or distribution and "the function of authorship is combined with other functions"[7]. It is often difficult to determine when publication or performance take place. Traditionally, the publisher was the intermediary between the author and the market but now there are large number of intermediaries. The publishing function is often combined with other functions, such as distribution. Definitional problems abound. Legislation always seem to lag behind technology, dealing with today's or yesterday's problems rather than looking to the future. As De Freitas says[8], the rights laid down by law tend to relate to the main ways works

are commercially exploited today but changes in technology are so swift that it is impossible to know whether these rights will be sufficient for the future when new forms of exploitation arise.

Koumantos[9] notes the reaction of the authorities to new technology. First, the recipient of protection now tends to be the organisations which exploit the author's works rather than the author himself. This leads him to think that it is economic power which determines protection rather than respect for the author's creation. He cites the more recent international conventions as an example. One might also note that the 1956 Act in the UK greatly benefited neighbouring works under Part II. There is probably something in this criticism but it may go too far. It seems to adopt an author's right approach whereas the UK has a property rights approach and economic power has always tended to determine copyright protection in the UK - copyright protection was initially produced on lobbying from publishers and printers. The author-publisher relationship seems to have improved of late and the author is probably in a better bargaining position than he has ever been. Koumantos also bemoans the "capitulation of law to illegal acts", that the law does not try whole-heartedly to solve the problems involved but makes only a token effort and adopts a tone of defeatism. The recent Green Paper and the slowness of the government in doing anything about copyright law reform may add credence to this view and again there is some truth in it but this too

would seem rather overstated since the problems concerned are very complex, there is more than just author's interests at stake and given present economic circumstances, copyright is bound to take something of a backseat. The third point made by Koumantos is that the structure of copyright is changing from an exclusive right of control with remuneration to just a claim to "equitable" remuneration and the argument put forward is that the result is usually exploitation and remuneration anyway so why not just cut corners and go straight to remuneration. Koumantos, though, points out that there is a big difference between being able to negotiate from a position of strength with an exclusive right to accept or refuse different uses voluntarily and having to just accept remuneration no matter what. Reaction to this depends on whether one thinks that copyright should be the right to control, as it has traditionally been, or the right to remuneration. One might think that moral rights represent the control aspect of copyright. Three reasons are put forward for these developments - first, a general tendency to attack exclusive rights and private property and towards collectivisation and increasing concentration in economic units. Koumantos fears for the future of authorship under such collectivisation but one must remember that one aspect of this collectivisation is the growth of the collecting societies, without which authors would be in a much more inferior position. Secondly, the economic power wielded by the mass media and those organisations which exploit authors' works enables them to pressurise governments and influence

their decisions as well as influence public opinion. In comparison, authors have little persuasive power. One might doubt that the influence of these bodies is as great as suggested - to take an example, the record industry has not had a lot of success in influencing the UK government to introduce a levy on blank audio and video tapes and recorders and is unlikely to influence public opinion because of its rather unflattering image to the public. The third reason noted by Koumantos is that there are many more users of copyright material than creators, so that "every limitation imposed on copyright in favour of the consumers....., is often regarded in the light of a victory for democracy and humanitarianism". This particularly takes on a political character when applied to developing countries.

In the two chapters that follow I will deal with the two main sectors in which technology has caused copyright problems - the audio-visual and reprographic fields. These are chosen because they demonstrate quite well the main areas of concern. This means that I have had to leave out problems related to the newer forms of technology - computers, satellites and cable television - but force of space requires this. In the computer field, the main topics of discussion are whether copyright is the best form of protection for computer programs anyway or whether patent, trade secrecy or contract law might have a part to play (although programs are generally thought not to be patent protectable because they

are not sufficiently inventive or novel), whether they may be protected under copyright at all, for example as literary works (what about programs in the form of punched holes or magnetic tape which are not readable by the human brain), whether they fit into an existing category of copyright material or not and what the restricted acts should be. There has also been a lot of discussion of data bases such as whether a licence would be required from the copyright owner at input or output of copyright material. There is also the question of copyright status for works created with the help of the computer. As regards cable television, the main concern is that authors should share in the large-scale expansion of the system. It is not so much simultaneous transmission systems that copyright owners are concerned about but systems that originate their own programmes containing copyright material for which copyright owners would expect to be paid. Payments for cable diffusion of broadcast copyright works are resisted in some quarters on the basis that it is an inequitable double payment - one for the initial broadcast and one for cable diffusion. This is not so, however, because it represents a public performance which is a restricted act under the 1956 Act. For example, an employer who plays music to his employees over loudspeakers has been held to be publicly performing. For satellite broadcasting, there is a definitional problem of whether it is broadcasting at all. Copyright owners also want to control the up-leg of a satellite broadcast (whether point-to-point through a transmitting station or by DBS,

directly into people's homes) since they think that only this will give them sufficient control - what if the copyright law is inadequate in the second country in the case of satellite broadcasts between countries[10]?. There is an additional point that the up-leg may not be broadcasting since the signal is not meant to be directly received by the general public, a view held by the Green Paper. The down-leg would seem to be broadcasting. A further problem for satellite broadcasting is that it is difficult to exactly match the receiving area to the geographical position of a country or group of countries - there may be considerable overspill. Furthermore, both cable and satellite greatly increase the number of broadcasters, which may prove difficult to control.

It would be impossible to deal with the problems of technology for copyright without mentioning commercial piracy, that is unauthorised copying of copyright works for a commercial motive. This also takes in counterfeiting. The copyright industries are particularly vulnerable and all of them are beset with the problem. For broadcasts, whether traditional, cable or satellite, there is the additional problem of "poaching" of programmes by unauthorised people. Piracy is, of course, not a new problem. It is "as old as copyright[11]. Ploman & Hamilton[12] note that "[m]odern piracy is mainly technological in nature". New technology has been a double-edged sword, bringing great benefits but also making piracy big business. The worst cases seem to occur in the developing countries, particularly Singapore, and there may

be a link with their calls for greater access to works of all kinds. The scale of the problem is very large. The record industry is losing about £20 million a year in the UK[13] (4% of retail value) and about £1,000 million[14] Worldwide (12½% of retail value); the publishing industry about £40 - 50 million in the UK and £500 million Worldwide in 1982[15], and the infant video industry lost about £120 million[16] in the UK and £570 million Worldwide in 1983[17]. Video piracy is the most talked about problem, but the situation seems to be getting better now that there are severer penalties, the Federation Against Copyright Theft has been formed and piracy has been attacked from different points all at once.

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3. Ploman Hamilton, op cit,p150.

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CHAPTER 2

REPROGRAPHY

The Present Situation

By reprography, we mean a whole family of techniques for copying graphic material, including photocopying, which is its most familiar form. The term also includes non-light techniques, laser, holographs and microfilm and microfiche[1]. In the narrative below, we will mainly talk about photocopying.

Photocopying was not a major problem until the 1960's since when the problem has got worse as photocopying technology has developed and become an all-pervasive part of the modern world, found in all manner of establishments. The problem has been with us for a long time now and still no solution has been found. It has exercised the minds of many experts both in the national and international arena and the various parties concerned have attempted unsuccessfully for a long time to reach a workable solution. The negotiation has been conducted seemingly in an atmosphere of mutual suspicion with claim and counter claim and a fair amount of political manoeuvring. Just as a compromise seems in the offing, a shift in opinion seems to have occurred. In many cases, the extent of the problem even is disputed, a position made easier by the fact that there have been few surveys of how

widespread the problem is. In general, the user groups dispute that the problem is as great as the publishers say and argue that a large proportion of their copying is either of non-copyright material or is covered by the fair dealing provisions of the 1956 Act covering the likes of research and private study and criticism and review. Only a small proportion, they say, is multiple copying (more than a single copy of any one page) and one Vice Chancellor even staked his reputation on there being no multiple copying in his University and another saying that if a particular scheme went ahead, he would stop all photocopying going on in his University. A common sense point of view would seem to be that with the large number of photocopiers in existence in all types of premises throughout the country, the extent of copying is very substantial, although a large part of it is likely to be of non-copyright material or of internally generated material or material covered by fair dealing. The publishers say that they are making great losses from large scale photocopying, particularly multiple photocopying, but do not very often produce figures to back themselves, a factor which does not help their cause.

The three studies with which I am familiar as to the extent of photocopying in the UK provide varying pictures. In the late 1960's. Barker carried out a study [2] covering periodicals and books but not music, covering a one year period, dividing the 409 usable replies into five categories - academic libraries, public libraries, Government research

establishments, scientific, technical and learned societies, institutions and associations and industrial and commercial organisations.

Barker summarises his findings by saying that "there is a considerable amount of photocopying being done in the UK"[3] and that this is likely to increase in the future. Also, "[t]here appears to be some evidence that multiple subscriptions to periodicals reduces the number of multiple photocopies made, and photocopying generally; but the duplication of book stock appears to have no discernible effect on the photocopying of extracts[4] . A lot of copying is of non-copyright works and the copyright material copied is mainly from periodicals rather than books, but a large part of it is allowed by the 1956 Act and its Regulations and by "Photocopying and the Law," which he suggests should be incorporated into the law. In addition, the distinction between privileged libraries and 'for profit' libraries under the 1956 Act is misunderstood and resented. The main fear of publishers and authors - that there is a great deal of multiple copying taking place - seems to be borne out, and this is not allowed under the law. One must remember that this study took place quite a while ago now, and the problem has got a lot worse since. A number of criticisms can also be levelled at Barker's work, the most important of which is that the study only covered the making of copies by the librarians of the various libraries and did not include photocopying done by students, researchers, individuals

themselves, which is surely the greatest part of photocopying today. Nor does the study give any real indication, quantitatively, of the amount of the copying which is of copyright material. The amount of copying of copyright material covered by fair dealing, insubstantial use and the guidelines in "Photocopying and the Law" would also be useful to know, although problematic to calculate. In addition, the survey excludes copying done in schools, primary and secondary, which we know is very high. Another criticism, which Barker recognises himself, is that the amount of copying must relate in some way to the number of people each library serves, but a survey cannot really give an indication of the size of each library. Obviously, the problem is one of the cost, complexity and time which extension of the study in any of the directions mentioned would necessitate.

In 1973, the Publishers Association and the National Council for Educational Technology carried out a survey of schools, for which various schools were given an amnesty from prosecution, payment and so forth by the Publishers Association, Music Publishers Association and the Society of Authors and asked to declare how much copying they did and what type this was. The schools taking part were not a random sample but a "representative" sample. The schools were geographically spread throughout England and Wales but Northern Ireland and Scotland were excluded. They also included examples of authorities which spent more than

average, average, and less than average amounts of money on text and library books. The period studied was seven weeks (22nd October - 7th December 1973). 17 primary and 49 secondary schools took part. Taken as a whole, the survey seems to show that whilst a lot of copying is undoubtedly taking place, a lot of it is of internally produced (non-copyright, non-publisher copyright owned) school material, especially at secondary schools. A lot more copying took place in secondary schools than in primary schools, however. The survey does not seem to differentiate between single and multiple copies however, although the notes on the survey suggest that very little of the copying is covered by fair dealing. The observations on the survey also admit that the sample is rather small so any conclusions must be tentative but, nevertheless, the authors regarded it as representing a "general situation". One might also argue that the results are not typical of the year as a whole, that the timing of the survey - just before Christmas - introduced distortions, for example as regards copying of musical works. By extrapolation, the authors calculated that during a similar 7 week period over 27 million copies would be made from publications (excluding periodicals and examination papers) in England and Wales. They then take this as one-quarter of the school year and so suggest that in one school year about 108 million copies might be made (although this would make a school year only 28 weeks, which seems a little on the low side). One criticism would be the smallness of the sample and the shortness of the period

covered as well as the fact that it only covers schools, not universities, industry, public libraries and so forth. However, it does complement Barker's study by dealing with schools, which were left out by Barker.

The third survey was a result of negotiations between the various copyright owners and the local authorities which led to the setting up of a pilot scheme in Fife in Scotland to discover the extent of the photocopying problem. This survey did differentiate between single and multiple copying, although it is still a problem to define multiple copying - is it one copy of each of 100 pages or 100 copies of a single page? Generally, it is regarded as the latter and the survey adopts this approach, too, but one could argue that the former is just as harmful as the latter, maybe more so because then the photocopy would seem to be substituting even more so for the purchase of the book. The same criticism of smallness of sample size and shortness of period covered apply here. 97 institutions - Central Institutions, primary schools, Junior High schools, Colleges of Education and Secondary schools - took part in the survey. The survey only covered 6 weeks during a term and the figures were multiplied by six to give figures for the whole school year of 36 weeks. However, it is difficult to know whether the pattern in the six weeks would be continued for the whole school year. Also, the survey only covers Scotland, not the rest of the UK. The survey was carried out at the behest of the

Publishers Association, the Music Publishers Association and The Authors Lending & Copyright Society Ltd (ALCS), a UK collecting society for writers, and was particularly concerned with multiple copying, as defined above. Taking all groups as a whole, there were, in the six weeks of the survey, 1,541 acts of multiple copying, producing a yearly figure (X6) of 9,246. These acts produced 66,428 copies (398,568 copies on a yearly basis). There were 1,318 acts of single copying over the period (7,908 on a yearly basis). Acts of multiple copying were fairly evenly spread throughout the institutions apart from the Junior High Schools which represented a very small percentage of acts and multiple copies. Secondary schools accounted for a large part of total multiple copies made. Presumably, most of the single copying done is legal under the fair dealing provisions. Most copying was from books, although Junior High Schools copied more from examination papers.

The picture from all three surveys does seems to show that photocopying is occurring on a very widespread scale and much of it is multiple copying of copyright material which is clearly illegal. In the schools, copying seems mainly of books while in academic, public, research and commercial libraries, it is mainly of journals. Recent court cases emphasise the problem of copying of music which was shown to be quite large in the last two surveys (about 9% for the last survey). Most of the music publishers disassociated themselves at an early stage from the negotiations for a

licensing scheme for photocopying and came to their own agreement with music users - Fair copying Rules OK?. Their aim was not to licence the photocopying of music but to control it and they were not slow to enforce their copyrights in the courts if copying exceeded their guidelines. In 1980, the Music Publishers Association (MPA) brought an action for infringement in the High Court against Wolverhampton Education Authority and received £1,300 damages and costs of over £2,000[5]. The Code of Practice points out that if infringing copies are made, the copyright owner can sue for damages, which can be very great if it can be shown that the infringement was wilful or for gain, and the person paying damages will often have to pay the costs of the action as well as damages, costs which may run into thousands. The MPA and Novello & Co. also took Oakham public school in Leicestershire to the High Court, where the school admitted to illegal photocopying of 15,000 sheets of music made over several years[6]. The sum paid by the school came to £4,250 for damages and costs[7]. In both cases, the defendants had to pay their own costs as well. The MPA estimates that about 8 million copies of copyright music and written material are made illegally in British schools every year[8]. Illegal copying of sheet music is costing about £6 million a year while the Educational Publishers Council says that about 200 million pages are copied illegally by teachers every year costing educational publishers as much as £20 million a year[9]. Overall, more than 1,000 million illegal copies are

made a year from all sources (according to a P.A. estimate given to me).

The Market for Photocopiers

Worldwide revenues in the plain paper copier market are expected to increase from $22,800 million in 1982 to $49,600 million in 1987 according to Dataquest, a copying and duplicating industry service, based in California[10]. This is about a 300% increase over the past 5 years[11]. In 1970, there were 100,000 copiers worldwide, most of them manufactured by Xerox. By the early 1980's there were more than 1 million such copiers worldwide, either sold or leased, 90% of which were small machines, a market developed by the Japanese and now dominated by them[12]. It is this end of the market which is expected to produce the greatest amount of growth in the years to come. The trend, as in most other things, seems to be towards smaller machines. For the copyright fraternity, introduction of very small machines into individual homes as opposed to libraries, shops and the like, could produce untold harm. Until the basic patent for xerography, expired in the early 1970's, Xerox was making very large profits. As competition increased, prices fell and the market grew rapidly. The small copier market has seen the greatest growth. There are now 38 firms selling small copiers in Britain[13], mainly Japanese.

The Advantages of Photocopying

The main advantages are:-

(a) Selectivity - only those parts of a book or journal of interest to you need be copied.

(b) Mobility and portability - photocopying means that you are not tied down to a library, which may be important where the book or journal is large.

(c) Time and urgency of need - taking a photocopy is quicker than getting another copy of the work, especially if it has to be ordered from a publisher. If time is of the essence, having to order may defeat the object of the exercise. There is also a saving of time and effort in not having to make handwritten notes.

(d) Non-availability of a work and difficulty of contacting the copyright owner. In such cases, being able to photocopy is a boon.

(e) Cost - it will undoubtedly be cheaper to photocopy the relevant parts of a work than buy the whole work, although if the whole work is required, it will be cheaper to buy a copy. Copies of works from publishers will contain a royalty for the author, hence the cost advantage of photocopying.

(f) The general availability of photocopiers may encourage photocopying.

(g) The high quality of photocopies.

The Problem

General

The wide availability and advantages of photocopiers allied to a law which is largely out of date and unable to deal with new forms of technology has created distortions in the balance between authors/publishers and the libraries/general public. Most people do not want to break the law but the law is unenforceable. Before copying, apart from questions of fair use, the copyright owner's consent is required, but there is really no incentive to obtain it. The copyright owner cannot check up on photocopying of his works and if he tried he would have to employ an army of people to police photocopiers (as Barker notes) - which is clearly impractical. Thus, the copyright owner cannot enforce his copyright and large scale copying of copyright works by large numbers of people continues unabated. One cannot blame the machine - it is neutral until someone chooses to breach copyright with it. One cannot smash up all photocopiers in the country nor declare their use illegal. One must live with the technology and find a satisfactory solution to a practical problem as best one can. Besides which, the photocopier provides immeasurable benefits to the population in general and the majority of users probably do not even breach copyright. The problem may be analysed in terms of the purpose of copyright - to encourage authors to create and

allow them to earn a living from their creations, to encourage the publication of works. Widespread copying of copyright materials threatens to shortcircuit the whole system and defeat it purpose.

The Author

It is unlikely that the copyright system alone encourages authors to create but its purpose of allowing authors to earn a living is very important. Authors have never been very well paid and any practice which threatens to undermine the system of royalty payments for use or purchase of copyright material will have severe consequences for them. The distribution of authors' incomes is highly skewed with a few earning very large amounts of money and a sizeable proportion being on or below the national minimum wage. Large scale photocopying of copyright works represents large scale non-payment of copyright fees. The author has more problems than most in receiving a living wage for his work because of their public nature. In most cases, he cannot afford not to be paid on such a large scale. A lot of photocopying is illegal. Many commentators speak of such practices as being theft - the appropriation of someone elses' property without his consent and without paying for it. As Barker says[14], "It would be short-sighted to sacrifice the interests of authors and publishers to those of education (which depends on them) for the sake of such economic savings as might be achieved by copying; it would also be immoral. The fact that it is

cheaper to steal someone else's property rather than buy it does not make it right to steal".

The Publisher

The publisher relies, for his publication decisions, on the copyright owner providing him with an exclusive licence to print his work. This gives the initial publisher the time to recoup his production costs and hopefully make a profit. A large proportion of books do not make a profit, so the publisher uses profitable works to subsidise loss-making ones and overall he hopes to be profitable. Publishers may suffer in two main ways from the large scale availability and use of reprographic equipment. First, a rival publisher could buy a copy of a work published by the initial publisher and produce an identical one much cheaper since he will not have to meet the same costs as the initial publisher - for example, he will not have to pay the author's royalty and certain promotional costs and in general his fixed costs will be much lower. Competition will force prices down, the initial publisher may not be able to cover his costs and some books just would not be published - it would not be an economic proposition since the initial publisher takes all the risks. Breyer[15] denies that this will necessarily be the case. He maintains that the initial publisher will have certain advantages over the copier which may be sufficient to outweigh the cost advantage. These include the fact that the initial publisher's work will reach the market first ("lead

time" advantages) so that before a copier can produce his own copies, the initial publisher has provided retailers with large stocks and only a large price differential is likely to influence buying decisions significantly. If the copier tries to rush production he will have additional costs to cover. This lead time may be enough to produce a profit. In addition, a copier may fear retaliation from the initial publisher - in the past, publishers have produced "fighting editions" sold below copiers' costs. A publisher may temporarily run a loss leader, although this may produce problems with competition law. In addition, the initial publisher will have advantages such as better quality reproduction and better channels of distribution. Would a copier produce a work himself unless the initial publisher was making very large profits anyway?. Breyer thinks it unlikely that a copier would enter a low volume market yet in high volume markets the copier's advantage is likely to be less because the initial publisher will be able to benefit from economies of scale, so fixed costs will be spread over a larger number of copies and price per copy will be lower. A duopoly or oligopoly may allow all the publishers concerned to make enough money anyway. The second main way publishers may suffer from photocopying and the area in which most attention is focussed, is library photocopying by students, research workers and so on, on a day to day basis, not as a way of competing with the publisher, but for the reasons mentioned earlier and as a means of disseminating information and promoting knowledge and progress. A lot of this

discussion centres on questions of fair use. Here, the main area of concern seems to be copying from journals, particularly scientific journals, although similar problems arise for book publication as well. The central issue seems to be whether such users would buy copies of the journal or book if they could not photocopy it. It must be said that the publishers seem unable to prove a direct relationship between reduced sales/subscriptions and increased photocopying. For books, if users do photocopy rather than buy, this may turn a marginally profitable book into a loss maker. If this happens on a large enough scale, the number of books published will fall and the publisher will be willing to risk his money, time and effort only on those books with a "known" market (to the extent that he can know this). Lesser known authors may suffer as may more experimental, minority-audience books. The other effect will be on price - lower sales means lower volume markets which may mean higher prices per book. (As prices rise, more copying takes place, however, which may reduce markets further leading to further price rises. It is a vicious circle). For journals, the situation is similar but somewhat more complicated. The publisher is concerned about loss of sales and subscriptions, loss of sales of back issues and reprints and loss of advertising revenue[16] as a result of copying of articles. Publishers maintain that libraries and individuals now copy articles rather than subscribe to journals. Nasri[17] points further to library resource sharing worsening the problem. The activities of the British Library

Lending Division have proved a great annoyance to publishers. The problem is particularly intense for journals with a small circulation since drops in their subscriptions may threaten their very existence, and for scientific journals published by non-profit societies as a way of disseminating research results and knowledge since they rely almost entirely on subscriptions (and often subsidies) and do not generally receive advertising revenue[18]. Similarly, it is argued that libraries and individuals copy back issues of journal articles rather than buy reprints and back issues, thus depriving publishers of another source of income[19]. However, this assumes that such reprints are available from the publisher - and Nasri says that often they are not because of the logistics and expense of storage, the cost and the unpredictable nature of the demand. Losses of advertising revenue arise from the fact that the price a publisher can charge for advertising in his journal depends on his sales and subscriptions - if circulations fall because of photocopying, advertising revenue will fall too. The more readers a journal has, the more attractive it is to advertisers because more people will see the advertising[20]. There is the additional problem that when a person photocopies an article, he will not also copy the advertisements if he can avoid it. Also, libraries represent a very important source of income for publishers because of the numbers of journals and books they buy. Hence, any reduction in the libraries' subscriptions due to large scale

photocopying will obviously affect publishers' revenues. The problem is proving a causal relationship between large scale photocopying and reductions in libraries' subscriptions to journals and sales of journals in general. Line and Wood[21] dispute the causal relationship basing this on practices at the British Library Lending Division (BLLD). They agree that the BLLD is being used more and more, that a greater proportion of this demand is being met by photocopies, and that a great deal more photocopying is taking place in libraries than ever before. But they see little evidence of a fall in journal sales. They point to the exponential growth in the number of journals available: to keep up, a library would also have to increase its budget exponentially. In this respect, Nasri[22] points to the phenomenon of "twigging", particularly in the scientific field - the increasing specialisation of science and the resulting increase in the number of specialised journals dealing with these areas. The result of all this is that while the market for scientific works as a whole is increasing, the market has become more and more fragmented, the market for these specialised journals being very small. They also note that the average price of journals has risen sharply because of rises in publication costs and because they are getting thicker as the amount of information generated by research grows - journals have to either grow in size or reject more papers[23]. Either way the publisher cannot win, Nasri says: more pages increases costs, putting up prices which leads to loss of subscribers, while not increasing journal size may

lead to complaints of gaps in the literature and not enough publication outlets, which again may lose subscribers[24]. Line and Wood[25] note that libraries could not spend more on journal subscriptions even if they wanted to and regardless of whether they were supplying photocopies or not because they have a finite budget to keep to and could not keep up with the growth in journals. Libraries were cutting subscriptions but because of economic constraints, not because of the availability of photocopying. Less photocopying would not mean more subscriptions. Journals were cancelled as much for extent of use, content and quality as for price. Those journals most likely to be affected, they think are those that can easily be spared on the 'fringe' and those with large circulations where multiple copies are bought by a library. As to individuals, it is unlikely, they continue, that they would buy more journals if libraries could not supply them or if photocopies were not available since they would probably need access on very few occasions. Line and Wood also attribute the growth in demand for BLLD to a good fast service, "the supply has created the demand" - "We are not therefore talking about an alternative to local purchase, but an extra demand". Of the requests filed, they say many are for articles more than 3 years old which are unlikely to be available from publishers and so would not affect sales of current journals, while others are met by loans not by copies. Only 30% are photocopies. A large number of titles are involved and each library is unlikely to have more than a few copies of each of the most

popular journals made a year, the authors conclude. For the rest of the journals, copying was regarded as on a small scale so that "if copying on this scale.....is threatening the continued existence of such journals, their value to the community must be called in question". Of those journals from which a large number of copies were made, many had such large circulations that even a lot of copying would have had little effect, virtually all were in pure science and they were all prestige journals which would be taken by any library with an interest in the field. If a journal were expected to be used a lot, the library would probably buy it anyway, because it costs to borrow from BLLD whereas if little use was required a library would not buy. In addition, BLLD often lends journals to libraries which want to sample it to decide whether to subscribe or not - so in this respect it is helping journal publishing. Even if BLLD did not photocopy articles but just loaned them, the borrowing library might photocopy anyway. Also, articles would often not be available because they would be out on loan. It could not buy that many more copies of the journals since there would not be that much more money available - and the extra copies would most likely be of the prestige, high circulation journals, rather than journals used infrequently. So, the service would deteriorate, the user would have to wait longer for articles and some of the least used journals would not be available, which would greatly harm journal

publishers. Line and Wood further point out that with a royalty of 5p a copy, even those journals which are copied a lot (mainly high circulation ones) would receive very little money (and most might be eaten up by administrative costs). They conclude that concentrating on the question of photocopying deflects attention from the real problems of journal publishing which have little to do with photocopying but are the results of the difficulties mentioned. There was a reply to Line & Wood in the Journal of Documentation by Van Tongeren[26]. He contends that wide-scale photocopying of scientific journals is affecting journal sales adversely, the highly specialised journals with many pages and low circulations being most in danger, leaving no margin for safety. Scientific publishers believe that BLLD is influencing cancellation decisions - for one because it is cheap. BLLD gives academic libraries access to the expensive, small circulation, specialised journals, so this inevitably affects library budgeting in that a cancellation does not mean being cut off from the requisite literature. If people use a work, they should pay for that use, he argues. Back issues should be obtained from publishers, not photocopied. As to the claim that BLLD is helping journal publishers by allowing libraries to obtain journals they would not normally see, he wonders how often this happens, especially since each society or publisher bringing out a new journal provides a large number of free sample copies to potential subscribers. Van Tongeren also criticises the size

of the royalty proposed by Line & Wood - why 5p per article, he says, why not 25p or 75p? He regards their figure as derisory and wonders why payment should not be per page rather than per article. Line & Wood replied to these charges, also in the Journal of Documentation, reiterating many of their earlier points[27]. During the 1960's, they state, journal publishing seemed to have a boom period and only in the 1970's were its problems suggested to be the result of widespread photocopying. If there was a relationship, it should have been evident earlier. It is libraries' lack of money to buy journals which has caused all the problems and this is a worldwide phenomenon even stretching to countries with no equivalent of the BLLD. A radical review is needed of journal publication, they continue, since conventional publishing is a very expensive way of reaching a limited number of people - new forms are required. Trying to squeeze more money out of libraries is not the best way of dealing with the problems and just deflects attention away from them. Libraries help scientific literature through input into it by providing works, and through its dissemination. Reprints are not widely available from publishers. Free samples of new journals may be available but it may be easier to go to BLLD. Line & Wood say that a royalty of 25p would not work because libraries would then borrow instead - and might then copy it. The library first started photocopying because it noticed that many journals were sent back as soon as they were received,

so borrowers were obviously copying. Payment per page is not recommended because it would penalise journals with large pages and high densities of print per page, discouraging production economies.

The above discussion, if nothing else, should show how difficult it is to prove a causal relationship between increases in large scale photocopying and declining sales and subscriptions of journals and books although one must note that the Line & Wood and Van Tongeren works are fairly old. It is only the scale of the problem which is likely to have changed, however, not the nature. A person may photocopy part of a book or an article but would he buy it in the absence of the ability to photocopy, or would he copy by hand, or would he just get by without the work? Therein lies one of the problems - you could ask people if they would buy the work if they could not photocopy it, but it would be a hypothetical question - who knows what people would do if they could not photocopy? Similarly, there are problems of cause and effect - do people cancel subscriptions because photocopying is available or because of other factors? As in most cases, the situation is rather more complex than it is sometimes depicted - photocopying is probably just one of a number of factors that come into play; its ready availability and accessibility may just clinch the argument rather than being the determining factor - it may make the decision easier. In all these areas, there would seem room

for a good econometric study but any such study would face severe difficulties. The main problem would seem to be data. There might be a natural inclination not to supply the data in case the results do not back up your side of the argument or are inconclusive. Such a study would require the co-operation of publishers and subscribers. Nasri[28] thinks that reprography is not the main reason for loss of subscriptions. Cost and time were prohibiting factors in subscribing and availability of the journals to non-subscribers was the main reason for non-subscription - the presence of libraries was a more important factor than photocopying. Other factors affecting subscription were the amount the person had to read and budget cuts. In some cases, librarians had introduced subscribers to the journals and in others photocopying had actually done so. The user is selective in his reading since the growing number of journals means that he cannot read everything in his field and their prices are rising.

Library Photocopying, Fair Use and the Needs of Research and Scholarship

It is generally accepted that the rights of copyright owners should not be absolute and that those working in the non-profit making education sector should be able to make use of copyright works to a certain extent since they are in the vanguard of the dissemination of knowledge and facilitate

progress. What is in doubt, however, is the extent of this freedom of use and the conditions attached to it. Many countries, including the U.K., allow libraries to supply single copies of works in their collections realising that progress depends on the results of research being widely disseminated. Many authors are more interested in their works being widely read than in making money from them. The argument is that research would be adversely affected if researchers and students could not at least make single copies and similarly if there were too many regulations research would be unnecessarily hindered and delayed. In such cases, the public interest must override the interests of the copyright owner, but as in all cases it is a matter of balance. In any case, teachers and research workers may open up new fields of knowledge for authors and publishers, which will obviously benefit them[29]. In the field of teaching, it is argued that it should even be allowable for multiple copies to be made because it makes for more efficient teaching - making sure that students have all the material needed for courses and allowing teachers to assume that students have done all the required reading[30]. It is better than having to rely on the library, where books tend to go missing when needed, or they become vandalised; and libraries cannot cope with large numbers of students after the same books anyway[31]. The ability to make multiple copies gives the teacher control of course work since its content is not then dictated by what is in the text books[32].

A particularly thorny issue in the area is that of 'fair dealing' since the 1956 Act does not define it and there seem to have been few legal cases on the subject. In 1958, the Society of Authors and the Publishers Association issued a joint statement saying that they would regard copying for criticism or review as fair dealing if a single extract up to 400 words or a series of extracts (of which none exceeded 300 words) to a total of 800 words were taken from a prose work in copyright. There were also guidelines for poems and collections for schools[33]. The law also requires "sufficient acknowledgement" of source for such criticism and review. This joint statement was followed in 1965 by a pamphlet, "Photocopying and the Law"[34] published because librarians and publishers found it irritating to have to seek and provide permission to copy, even where only a small proportion was taken, because librarians were regarding copying as not substantial or fair dealing even when it was not because it was such a nuisance to obtain consent and because there was a danger of the law being ignored or being regarded as unfair or unreasonable[35]. Music was not covered by the scheme nor were articles from periodicals. The two organisations said they would regard it as fair dealing if a single copy were made for research or private study from a copyright work (book) of a single extract of not more than 4,000 words, or a series of extracts, of which none was more than 3.000 words, to a total of 8,000 words provided the total amount copied never exceeded 10% of the whole work[36]. The general licence was meant to allow librarians to copy within the limits set

out without having to get in touch with the publishers and authors concerned to obtain their permission to do so, as laid down under S7 and the Copyright (Libraries) Regulations, 1957 - but librarians still have to obtain a written declaration, under the Act, from the person requiring the copy, that he wants the single copy for research or private study and has not previously been supplied with a copy. This requirement is a source of annoyance amongst librarians, as noted by Barker. For multiple copying, the copyright owner's consent is still required. Single copies of illustrations may also be made in the course of instruction in a school or educational establishment subject to acknowledgement.

In recent years, with the photocopying problem seemingly getting worse, publishers have been attempting to set up a blanket licensing scheme. The music publishers, however, were not interested in this and have set up their own code of fair practice, "Fair copying Rules OK!" with a number of music user organisations, starting in 1979. The code is not comprehensive - not all publishers and music copyright owners have signed it, but a great many have. Nor does it cover foreign imported publications. All music users may use it, not just those that participated in drawing it up and permission provided by the code applies equally to organisations, individuals and those acting on behalf of the user. The code sets out two general principles - that copyright owners (composers and publishers) "recognise the

need of musicians and students for reasonable access to copyright material so that their music may be widely performed and studied" and that composers and publishers require compensation to maintain the economic incentive and means for creating and publishing music. Copying to avoid hire or purchase will always be wrong. This is followed by ten cases where copyright owners will allow copies of music to be made without instituting proceedings, subject to a copyright notice on each copy. These include emergencies, performance difficulties and future reference. All cases are hedged with limitations such as that replacements be bought as soon as possible and copies destroyed or copies returned with other hire material and with limitations as to the extent of copying such as that it be less than a performable unit. The procedure for copying of seemingly out of print works and ordered music which has not been supplied is also laid down. Seven prohibitions are then laid down such as copying to make anthologies and selling or hiring copies made under the permissions section. The main problems, it notes, may be over serious music. Both codes (the Music Publishers and Society of Authors/Publishers Association Codes) are not legally enforceable but were welcome because they at least provide some guidelines in a very uncertain environment.

In the US, the concept of fair dealing was a judicially created one and was included in the latest 1976 US Copyright

revision Act. The US also saw a major case on this particular subject in the Williams & Wilkins Company v the United States. As a result, there is rather less uncertainty about the issue there than in the UK, although even now problems are still arising there. The previous US Copyright Act 1909, did not provide for exceptions to the copyright owner's exclusive right to copy[37] nor did it define or provide for fair dealing, which had to be developed by the courts. As Nasri notes[38], this was of deep concern to the education sector. A "Gentlemen's Agreement" between some of the groups involved, including publishers, laid down limited guidelines on the subject in 1935 [39]. Various other groups also laid down guidelines. Meanwhile, the fair use doctrine developed which "allowed the copying of small portions of copyrighted works, for a legitimate purpose, in circumstances where such copying would have no appreciable effect on the copyright owner's market for his work" [40]. The concept of fair use has always created problems, however. A widely quoted statement is that in the case of Dellar V Samuel Goldwyn, Inc. that "the issue of fair use.... is the most troublesome in the whole law of copyright...."[41]. Section 107 of the new US Copyright Act gives statutory recognition to the fair use doctrine and restates it to include copying for criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research. It then lists 4 factors to take into account when deciding whether a use is fair - the purpose and character of the use,

including whether such use is of a commercial nature or for non-profit educational purposes, the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the copyrighted work as a whole and the effect of the use upon the potential market for or value of the copyrighted work. The examples given are not exhaustive, however, but just give guidelines. Presumably, other factors may also be taken into account since the statute just says that the factors to be considered include these four. The four factors are basically the same ones that the courts have used for many years in determining fair use[42]. The nature of the use and its economic effect are usually the decisive factors with the other two only being significant when the former factors are inapplicable or indecisive[43]. Freid[44] notes that under the US Constitution copyright is intended to promote the arts and science by giving authors exclusive rights so as to provide an economic incentive. Thus, if copyright works are used to benefit arts and sciences, the purposes of copyright are being advanced even though the copyright owner's exclusive rights are being infringed, so that the courts will often allow the use so as not to arrest progress in the arts and sciences. The factor concerned with the economic effect of the use is to protect the economic incentive system provided by copyright to encourage creation and dissemination of copyright works - if the economic effect of the use is an adverse one, this will damage the incentive, in which case it may not be fair use. Thus, a delicate balancing act between a beneficial effect

(progress in the arts and sciences) and a detrimental effect (damaging the incentive) is required. The problems arise when the use either affects neither factor or both factors since then the effect is ambiguous. In other cases, it should be fairly easy to tell whether fair use is involved or not. Freid[45] notes that a problem may arise in proving adverse economic harm if this is taken as meaning that the copyright owner has to prove that some use of his work "tends to diminish or prejudice the potential sale of the plaintiff's work" (a comparison between the actual market and the market that would have existed if no use had taken place). Obviously, however, it is virtually impossible to calculate the latter hypothetical market. Therefore, some of the courts have used a probable effects test - the copyright owner has to show that the probable economic effect of the use will be harmful. The 1976 Act also regulates library photocopying but the provisions are complex and I shall not deal with them here[46]. In general, though, libraries are not allowed to systematically reproduce or distribute single or multiple copies, involving deliberate substitution of photocopying for the buying of the copyrighted work[47]. Nor is the related or concerted reproduction of multiple copies or phonorecords of the same material allowed[48].

The case of Williams & Wilkins Co. V The United States was the first major court decision on whether large scale

photocopying of copyrighted works in libraries was an infringement of copyright actionable before the courts. It lasted 8 years, ending in February 1975 in the Supreme Court[49]. Thus, it took place before the passing of the revised Act. It represented a test case and as a result parties on all sides sought and were allowed to file briefs as amicae curiae[50]. Williams & Wilkins is a major publisher of medical journals and books, four journals of which were the subject of the case. All four were copyrighted and revenue was mainly from subscriptions (which were small in number) with a small percentage from advertising[51]. The company brought the suit on the grounds that the Deparment of Health, Education and Welfare, through the National Institute of Health (NIH) and the National Library of Medicine (NLM) infringed its copyright in the four journals by making unauthorised photocopies of articles from them[52]. In 1970, the NIH filed 85,744 requests for photocopies of journal articles, totalling about 930,000 pages. With an average of 10 pages per article, this is about 93,000 photocopies[53]. In 1968, about 120,000 requests were filled by NLM by photocopying single articles[54]. Both NIH and NLM conceded that they made at least one photocopy of each of eight articles from the four journals between 29 September 1967 and 12 January 1968, the request having been made by researchers in connection with and solely for the purposes of their professional work[55]. In all eight cases the article was more than 21-22 months old[56]. Williams and Wilkins sought

"reasonable and entire compensation" for the infringement while stating that photocopying was essential and that it did not want to interfere with it - the company just wanted to be paid for any photocopying from their journals. The main argument concerned fair use. The government argued that the copying was fair use while Williams and Wilkins said that fair use only comes into play when a small amount of copying occurs[57]. The case was first heard by the Commissioner of the Court of Claims who found that NLM and NIH had infringed William and Wilkins copyright and were liable for infringement - the libraries engaged in wholesale copying and met none of the criteria for fair use, he said, since the photocopies are exact duplicates of the original, substitute for the originals and diminish the plaintiff's market by substituting for a subscription[58]. The government appealed to the whole of the Court of Claims and the decision was reversed by a majority of 4 - 3 - it was fair use[59]. The decision rested on 3 main planks, as noted by Nasri[60] - that Williams and Wilkins had not been able to show substantial concrete harm through the NIH and NLM's photocopying practices, (the court did not use a probable effects test as suggested by Freid); that medical science and research would be seriously damaged if library photocopying were not allowed because of an inadequate supply of reprints and back issues and unwillingness or inability of libraries to subscribe to journals which will only be used rarely; that the balance to be struck between the interests of science and those of

publishers/copyright owners was one for legislative not judicial action so the court would not risk harming medicine and science in the interim. The case finally went on appeal to the Supreme Court which upheld the previous Court's decision - that the use was fair - even though, as Treece[61] notes, it split 4-4, meaning that the 16 judicial officers involved in the series of cases were equally divided 8-8. This gives some idea of how evenly balanced the competing claims were.

As regards fair use, one has to show extreme vigilence if the author's position is not to deteriorate and if the balance is not to shift too far away from him. In the UK, there does seem to be quite a lot of freedom to copy, especially if one considers that fair dealing only comes into effect if a substantial part of a work is taken, always remembering, of course, that substantiality refers to the quality of the work taken as well as its quantity so that anyone can take other than a substantial part. There does seem to be a certain amount of uncertainty at the margin as to just how far fair dealing can go which is not helped by the fact that many of the terms in the 1956 Act are not defined. Undoubtedly, the development of copying technology has created more uncertainty and problems. The Whitford Report[62] mentions a number of the criticisms librarians have of the law - for example, there was a general call for simplification. The declarations required under S7 were regarded as annoying and

of little use. The examples were given of a person asking for 25 copies of the same article supported by 25 declarations with 25 different signatures and of a research worker in a commercial organisation asking a library privileged under S7 for a copy of an article after declaring that the article is for research (not necessarily private study). The Whitford Report notes that there are no sanctions for false declarations and users are very impatient with formal procedures if only a few pages are needed. In many cases, librarians find it very difficult to make sure the regulations are kept to - for example, in industrial and commercial libraries and where machines are worked by individual users. The Whitford Report further notes that libraries would like more freedom to copy for wear and tear, out of print works, and where security is important, for example. As to teaching, it states that all educationalists want more freedom, especially because of changes in methods of teaching with the growth of resource-based learning and the use of a wide range of teaching material and sources made possible by technological development. Teachers are likely to want to make multiple copies while individual researchers will only want single copies. It is difficult, even in a general sense, to pin down what exactly fair use is - as Ploman & Hamilton note[63]. Is it infringement of copyright which is allowed or does it not infringe copyright at all ab initio?. Virtually all countries, however, make provision for fair use and it is included in both the major copyright

conventions, although, its scope varies between countries. What is clear is that it is very difficult to strike a balance between the varying interests through fair use. One can see that the concept of fair use could get in the way of a solution to the photocopying problem, especially as regards blanket licensing, where as comprehensive as possible a coverage is required. A solution is required and quickly (although one might conceivably think that the problem has been with us so long with nothing being done and the various parties stumbling from crisis to crisis that time is not of the essence - is the publishing industry in that much of a mess and if it is, is it a result of photocopying? Or bad management? Recession? A number of reasons?).

The Solutions

The Whitford Report[64] notes that efforts to prevent copying through technical methods such as a coat of fluorescent dye on documents have met with no great success, so the solution, it seems, is unlikely to come in this way. Nor did the Whitford Report regard this as a desirable solution. This would seem to be a case of cutting off your nose to spite your face as photocopying does fulfil a vast number of very useful and beneficial functions by no means all of which are illegal. It is an aid to progress, education and research, and the way to deal with the problem would not seem to be to cripple the technology, but to find a practical solution to a

practical problem, given the technology. Weston[65] suggests a technical solution but from the point of view of publishing technology - increasing the cost of photocopies by spreading articles over more pages, making the size of pages of journals or books greater than that that can be handled by a photocopier, using thick paper or different colour combinations to make the photocopy unreadable. The problem with all these ideas is that they would also increase the costs of publishers at a time when they are already experiencing steadily rising costs. The result would probably be that the price of journals would have to rise which would worsen the situation. Similarly, making journals bigger than the size a photocopier can handle would just lead to development of larger photocopiers, so publishers would be back to square one. Such a solution could only be a short term one.

A further solution advocated, for example, by Michael King in the Times Higher Education Supplement (24 September 1982) is a fair use code similar to the one contained in the latest US revision. He seems to regard a blanket licensing scheme as "a licence to print money" by publishers. This seems to be rather an exaggeration since there is no need for this to be so if the scheme is run properly. There are similar schemes in the music field and these do not seem to be just money grabbing exercises, especially since there is a tribunal, the Performing Right Tribunal, to make sure this does not happen.

He also seems to think that such a scheme is likely to greatly restrict the dissemination of knowledge in the education field. Again, there is no reason why this should be so. He suggests that a set of guidelines be drawn up by representatives of authors, publishers and teachers. Surely, though, we have something akin to this already in "Photocopying and the Law" and while such guidelines are undoubtedly useful they do not seem to have solved any of the problems involved - the situation does not seem to be any better now than it was when they came out and it may even be worse. As long as you allow exceptions as with fair dealing, you have the problem of defining the limits of those exceptions which ultimately have the effect of increasing the uncertainty of the situation. King also suggests that educationalists be their own police officers and enforce the guidelines themselves but in the present climate of mistrust on both sides, this is unlikely to be possible and how is this control going to be possible anyway? The American "code" is very complex even for lawyers and may cause more problems than it solves. The problem with such a complex code written into a statute, as de Freitas[66] notes, is that it is "frozen" for a very long time and is very difficult to change. In the field of copyright, flexibility is of the essence because the situation changes so quickly. Surely this is the lesson of previous copyright statutes. "Today's code may be unsuitable for tomorrow's situation"[67]. Even in the simplest cases of fair use you have to decide whether to adopt a narrow or a wide definition - in the case of private

use, for example, does the user have to make the copy himself?[68]. Are you going to take account of the qualitative difference between reprography and hand copying?[69] One might add typewriting too. One might redefine fair dealing and make it more precise, but the problems remain. There will always be pressure to extend the limits outwards especially since there are more users than creators. The Green Paper says that preventing the making of copies for research or private study would probably be ignored when the student controlled the photocopier himself, but goes on to say that the government intends keeping the right of individual students to make copies but tightening up the provisions to prevent abuses. Surely, though, that is the crux of the problem - no matter how you try to define or change the provisions, the student in most cases will have control of the machine so that he can just ignore the law. Would not a new approach be preferable?.

Another solution often proposed is a levy on photocopying equipment, so that the manufacturers not the users will have to pay since it is they who make possible the widespread copying of copyright material and they can pass on the amount necessary to users anyway in the prices they charge for machines and materials[70]. Surprisingly, though, there does not seem to be much call for a levy on photocopier paper, only on the photocopier. The argument generally advanced against such a levy on machines is that such once and for all licensing would allow unlimited amounts of copying, a free

for all, with no way of monitoring or checking the extent of use, in return for a small fee[71]. Obviously, one could not charge a very large fee on each photocopier without frightening people away from buying them (although this would be one way of reducing the level of copying) and no government would bump up the fee by a massive amount anyway (assuming that it would take a government measure to impose such a levy). Expressed from an economic point of view, buying a photocopier is a once and for all activity, so it is a 'sunk cost' and what is needed is a way of ensuring that people pay a fee in proportion to the amount of material they copy, a way of increasing the marginal cost of use. The obvious answer would be to have a fee (royalty) per page copy - and this is actually what is proposed under a different scheme, a blanket licensing scheme with no levy on the machinery. A variant of this is to have a levy on both the machine and the material. Another problem would be to keep administration costs down so that copyright owners do not ultimately only receive a pittance. Also, what about copiers presently in existence? Is the levy just going to be on new machines or old ones as well? If the latter course is adopted, how do you track them all down? If the former course is adopted, you have an area where large scale copying is occurring without recompense for copyright owners - effectively the same situation as at present. The other criticism levelled at such a levy is that it would unfairly prejudice a person who only used such photocopiers rarely to photocopy copyright material or who did not photocopy

copyright material at all and photocopiers that were similarly used seldom. This was the main reason why the Whitford Committee did not recommend a levy on photocopiers whereas it did for private tape recording of records[72]. One must remember that a much larger proportion of the works copied onto tape recorders from the radio or records is copyright than the material copied on photocopying machines. Dietz notes [73] that the reason the West German authorities turned down a levy on reprographic equipment but not on tape and video recorders was because it was thought that private photocopying did not adversely affect sales of printed works like private recording affected sales of records. Dietz[74] mentions that France has adopted such a scheme but outside copyright law in that a levy was introduced under the 1976 Finance Law of 0.2% on sales by book publishers of most types and 3% on sales of reprographic equipment by manufacturers and importers, the money going to the Centre National des Lettres for the advancement of writers in general and the promotion of books. Dietz, notes another criticism - that it might seem to legalise all illegal photocopying. Such a solution would be simple, however[75].

Other solutions put forward are that when journals are sold to libraries, research organisations and other institutions, purchasers would have certain rights of reproduction in return for much higher prices [76] although print runs might be much lower; publishing abstracts or summaries first and then supplying separate prints of the full articles on demand;

publishing more offprints of articles; for books, publishing some textbooks in parts (say chapters) as well as in full work form (although this would increase risks and prices); publishers providing their own photocopying service or providing microfilm copies (which some do now) from which copies and full size photocopies could be made (the extra price covering copying up to a certain level)[77].

The most often talked about solution for the problem is a blanket licensing scheme, run by a collecting society representing authors' and publishers' interests under which, in return for royalty fees, those who wish to reproduce copyright material (journals and books) by reprographic means can do so provided the work is in the repertoire of the society. Individual copyright owners give the society the authority to issue licences so that as long as the users pay the royalties due, they can copy as much as they like (although there may be limits). The society collects the royalties owing and distributes the revenue to its members whose works have been copied in proportion, as far as possible, to the extent that each work has been copied after deduction of its administration costs. To enable the revenue to be properly distributed, information on the extent of copying of each work may be required, so any such scheme might require a certain amount of record-keeping by users, libraries, maybe even individuals, unless some other way is used to distribute revenue. Sampling might be a compromise. The essence of the scheme is that licensing is collective -

individual copyright owners do not collect and negotiate their own royalties, they leave it to the society. The advantage of such schemes will be examined in later chapters. The situation in the music field where PPL and PRS operate blanket schemes subject to certain differences, seems very much akin to the problems faced by copyright owners in books and journals in enforcing their rights. In many cases, the user is unwilling or unable to contact the copyright owner and the copyright owner is unable to see when his work is being copied because of the thousands of reprographic devices in operation and the number of establishments in which they are housed. In many cases, the reproduction right is unenforceable. Such a scheme would certainly answer the criticism of many that there is unnecessary delay and difficulty in contacting copyright owners for permission - once a user had a licence he would not have to get in touch with the copyright owner. All he would have to do would be to pay the royalties and probably keep records. The present system seems rather a slow, cumbersome, time consuming and complicated way of doing things. Administrative work is reduced and simplified.

One difference between the reprographic field and the music field in which PRS and PPL operate is that the performances PRS and PPL deal with are publicised in newspapers, on posters and the like, whereas the copying of books, periodicals and so forth is obviously not - no-one knows it is happening or when except for the copier and those near to

him in the library. This is obviously going to cause more headaches for licensing. In addition, the reprography problem differs from the problem of the home taping of records, despite some similarities, in that home taping takes place in private and one cannot invade the privacy of the home, whereas photocopying is actually done in public and one can see it being done. The problem of reprographic reproduction has been around for quite some time and the difficulties faced by authors seem quite similar to those of composers who long ago set up collecting societies to solve the problems. So why has it taken authors so long to do the same thing? It would seem that the answer is that there are many more authors than composers so it is very difficult to develop a consensus or get them together. In addition, authors are very slow and reluctant to organise anyway, although this would also apply to composers and they eventually managed to form societies. A blanket licensing scheme for reprography was recommended by the Whitford Committee.

A number of potential problems may present themselves in the operation of a blanket licensing scheme. The first problem is to ensure that the scheme does not eat up so much of the revenue received in the form of administration expenses that there is little left for copyright owners. The fixed costs of setting up any such scheme are likely to be quite high and revenues, in the initial stages, are likely to be low. But as the scheme catches on, the society becomes more adept at

its job and at enforcement, the level of coverage increases and economies of scale come into play, distributable revenue should increase so that copyright owners receive quite sizeable sums (although, of course, the distribution of sums between different copyright owners is likely to be very wide and highly skewed). The most likely cause of administration expenses taking up a large proportion of revenue is an attempt to be too accurate in distribution - going too far in attempting to match the extent of copying of each work with the amount of money distributed to each copyright owner according to the extent of copying of each of his works. The collecting societies have tended to find that their greatest expense is personnel, although there would seem to be a lot of scope for computerisation. Obviously, a society must have some way of deciding how much to distribute to each copyright owner and the extent of use is the logical one to employ but, at least at the beginning, the system should be simple to operate and understand and fairly cheap. The users will also want a system which is easy to understand and operate and one which does not involve them in too much record keeping, which is a burden on their time and resources - otherwise the scheme will be much less attractive to them, especially if it is a voluntary as opposed to a compulsory or statutory system. The problem of record keeping, in fact, is one which has caused a fair deal of friction between publishers and libraries and other educational users in the UK and has been one of the sticking points in setting up a scheme. Limited sampling requiring the keeping of records only for a few

weeks or only by large volume users for longer might get round the problem; or no record keeping at all might be required by assuming that "the proportionate volume of reproductions by all users from any one journal is roughly equivalent to the proportionate volume of its subscriptions or sales"[78]. Or the user might only have to note the total number of pages or articles copied by him from all the journals in his collection. To be effective, a scheme would also mean the society employing personnel, similar to the licensing inspectors who work for PRS, to monitor buildings and premises and provide licences and take action where they discover infringements; the society would also have to take infringers to court to set precedents in a similar way to PRS in its early days. This will tend to add disproportionately to costs. It will also be necessary to ignore infringements in small libraries and premises since these may not be economically viable to licence. Breyer[79] also suggests that there may be problems with the size of revenues especially if one considers that a lot of licensees will be schools and libraries. These are unlikely to be able to pay large sums for licences, particularly in view of the present education cuts (although they can always pass the cost onto users). Even if one argued that copyright fees had to be paid in the same way that books have to be paid for, or school desks, royalties would still have to take account of the economic circumstances of licensees and in the reprography field, there are just no organisations that could afford to pay the sort of sums of money PRS gets from the BBC and the

independent television and radio companies except for commercial organisations although these only account for a small part of copying. Those users which copy most are primarily public bodies like libraries and schools. Whereas new outlets and markets are being found all the time for the public performance and broadcasting of music, this is not really the case for the reprographic reproduction of books and journals. Thus, the area such a society would be engaged in would be very specialised and unlikely to produce revenues of the magnitude enjoyed in the music field. The only way round such a limitation would seem to be for the society to widen its interests into other areas. A lot depends on the philosophy behind setting up the society - is it to maximise revenues for its members like the collecting societies in the music field, is it to have a commercial motive and orientation or is it just to control the reprography problem and at least obtain some remuneration for copyright owners, however small?. It is the total amount receivable from all libraries taken together that counts, not just the amount from individual libraries[80]. Breyer[81] notes that the royalty may not be high enough to significantly help authors, especially since most copying is of different articles, but it may be high enough to persuade some not to photocopy. One might regard both as unacceptable.

A further problem is getting enough authors and publishers interested in a blanket licensing scheme to make it worthy of its name, as Freegard[82] notes, so that a person knows that

when he receives his licence he is not going to infringe the copyright of an owner who is not a part of the scheme. The lower the coverage the less attractive the scheme is likely to be to users and the more difficult it will be to get them to join. The problems are likely to be greater in the case of books and journals than of music because there are so many more authors. Freegard[83], for example, notes that in the music field, virtually all the works publicly performed are published, the composer generally assigns his whole copyright to the publisher (who then assigns it to PRS), and at the time of formation of PRS there were relatively few publishers in business and they quickly recognised the benefits of blanket licensing. The situation is somewhat different in the literary world - authors do not usually assign their whole copyright to their publishers, they licence individual rights to them, many authors are reluctant joiners (although so are composers as the history of the performing right shows) and some authors only want widespread dissemination of their works not financial reward (although this also goes for composers). There are also a large number of book publishers in a highly competitive industry. One solution is legislation along the lines that the author can only exercise his rights through a collecting society, a device used in West Germany in the case of audio and video recording. The Whitford Report suggested a solution in this vein[84] - no copying which conflicted with "the copyright owner's normal modes of exploitation", such as distribution of copies to the public, would be allowed. As few societies as possible would be

allowed so that users do not have to obtain a large number of licences. This would also keep costs down. Rates might be reduced in return for statistics on copying of copyright material.

A further criticism often put forward is that it is inherent in the need for a society's repertoire to be as comprehensive as possible that the society would be a monopoly or at least an oligopolistic organisation in its field. This obviously opens up the possibility of criticism on the grounds that publishers will try to "milk" the users by charging excessive rates or refusing licences arbitrarily. This is almost exactly the same sort of charge levelled at PRS and PPL when they were set up. The result was the establishment of the Performing Right Tribunal under the 1956 Act to settle disputes on licences and their terms and conditions. This has done a lot to alleviate the criticisms. In fact, the Whitford report suggested such an arbitration tribunal. It recommended that the PRT carry out the task under a new name, the Copyright Tribunal, not only in the field of reprography but in other areas for which the Committee recommended blanket licensing as well - with widened powers.

The other problem to overcome is whether fair use will continue to apply. If so, there would be no incentive for librarians to obtain licences under a scheme so the system would be undermined. Certainly, even if the fair dealing provisions were maintained for private copying and research and private study, they would have to be considerably tightened up and defined with a great deal of precision to

prevent the uncertain situation which exists at present. This is probably not possible. One must always remember, as Whitford notes, that libraries depend on authors and publishers (and to a greater extent than vice versa, I should think). If a person obtains copies by reprographic means rather than by hand with all the concomitant savings it seems only fair that the author and publisher should receive at least a reasonable royalty for it. To repeat the often quoted argument in copyright fields, no-one expects manufacturers of books, desks, pencils or whatever to provide their goods free, so why should authors simply because their rights are difficult to enforce?. As Whitford says, just because education itself is a good cause, there is no real reason why copyright owners should subsidise it. It has been generally accepted that when music is used for public performance, broadcasting and diffusion, regardless of whether this is by a profit making organisation or not and regardless of its size and purpose, then royalties have to be paid. What is so different about reprographic reproduction? To use Dietz's argument, those who copy copyright works are doing so to achieve their own targets, regardless of whether these are financial or non-financial, they are profiting (albeit in a non-financial way) from the copyright owner's work and the copyright owner is a supplier and as such, like all other suppliers of goods and services, has to be paid. There is also the problem that in many cases, the material copied will not be in copyright or will be internally generated. The Whitford Report suggests that it will be up

to the users to negotiate reductions in the licence fees to take account of this - for example, one of the schemes in West Germany halves the fee payable based on the assumption that half the material copied will be non-copyright. This is also a problem from the point of view of the EEC Commission which objects to collecting societies charging for non-copyright material. The Green Paper seems to be in favour of blanket licensing and a Copyright Tribunal to deal with disputes from such a scheme but says that it would be unfair to deprive students of the use of a photocopier which is just another tool of modern technology. But the government intends tightening up the fair dealing provisions to prevent the making of multiple copies and to make sure that the exceptions are not used "for research for the business ends of commercial organisations". In view of the preceding discussion this seems rather an unacceptable approach. Whitford also suggested upper limits to the licences - one could not allow licences for uses which involved exploitation of the work through publication nor could one allow a publisher to demand a licence to reproduce the works of another, for example.

The scheme would have to be flexible and would not be needed in all areas. The music publishers, for instance, are quite happy with their code of fair practice. Then there are questions of a policy and constitutional nature - is it to be a voluntary or a statutory scheme? Is it to be compulsory licensing with a fee to be set by statute? As CIC Systems

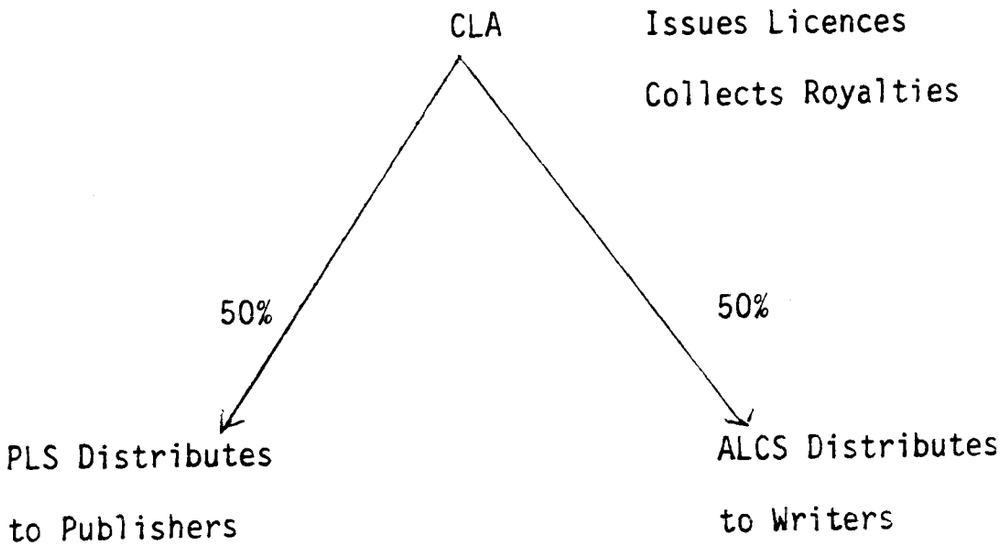
says[85], a voluntary system is more flexible and can be changed more easily by negotiation according to experience and changing circumstances and it is nearer to the philosophy of copyright that the copyright owner should be able to decide what happens to his work and have control over uses of it. A fee set in a statute may be very difficult to change - note the difficulty of altering the figure for the compulsory licence for recording musical works in both the UK and US. And compulsory licences are not very popular amongst copyright owners who, after all, have to implement any scheme. How is the licensing body to be run? Is it to be a Government agency or a statutory corporation with members appointed partly by Government, partly by copyright owners, partly by users or wholly by Government? Or it may be left entirely to copyright owners. Similarly, the activities of the society may be controlled by special legislation, anti-trust legislation, or by special tribunal[86]. Then, there is the question of the distribution system by the society - is distribution to be to individual authors according to use of their works, or is the money to be paid into a central fund for the help and welfare of authors in general. The distribution system for general welfare of authors is generally used where it is thought that problems of record-keeping would be too great to make individual distribution possible[87] (and one must remember that vast amounts of information would be involved - much more than that dealt with by PRS). The most popular authors subsidise the less popular.

A further alternative to a blanket licensing scheme in which users pay royalty fees would be one in which the Government paid a royalty for copying of works in libraries, universities and schools on the basis that photocopying in many cases produces spillover effects which are of great benefit to society in general through enhancing and facilitating research and improving education, dissemination of information and research results[88]. The great problem with Government involvement, however, might be the possibility of censorship. Also, this is unlikely to happen in the UK with its present Conservative administration aiming at Government spending cuts but the principle seems to have been accepted to an extent in the introduction of a public lending right. A system on the above basis exists in Sweden.

Discussions have been continuing for quite a while now on the possibility of setting up a blanket licensing scheme for reprographic reproduction in the UK but questions of detail, political expediency and differing interpretation of fact have constantly been getting in the way delaying the process so that the negotiations have become rather bogged down. As a result, the discussion below may be subject to change[89]. For 10 years or so, publishers and authors have watched the problem of reprographic reproduction of copyright works on a large scale get progressively worse. The Whitford Committee had recommended a blanket licensing scheme in the field in 1977, but it was not until July 1981 that the Government published its reaction to the Whitford Report. In the

meantime, several committees, national and international, had mooted the idea of blanket licensing. The parties concerned had been thinking along these lines, although they hoped that the Government, through the Green Paper, would make it easier to set up a scheme by giving it legal and statutory backing. The Green Paper was almost universally greeted as a great disappointment, not only as regards reprography but most other areas as well - and a lot of hopes had been pinned on it. The Government seemed reluctant to do something that might be regarded as unpopular. The scheme has to be shown to have widespread support first. This was the general view held. The Government has also notified its reluctance to legislate on specific issues - it does not want a piecemeal approach to copyright reform but is more interested in an all-encompassing wide-ranging amendment under one statute to cover all problem areas. So, copyright owners were left with something of a problem - continue to let the problem mount or go about the setting up of a scheme as quickly as possible in the hope of obtaining Government support later on when it can be shown to have widespread support. They chose the latter course. The result was the setting up of the Publishers Licensing Society (PLS) entirely for the purpose of finding a solution to the reprography problem. It initially had just one employee. The Authors' Lending and Copyright Society Limited (ALCS) already existed on the authors' side, having been set up in 1977 by a group of writers who had just won the campaign for Public Lending Right and who noticed that there was no society enabling writers to administer their

rights collectively, (it does not deal with UK PLR, which is administered by a Government-appointed Registrar). These two societies got together to form the Copyright Licensing Agency Ltd (CLA) which will issue licences under a blanket licensing scheme for photocopying. The CLA has 11 directors - 6 from PLS and 5 from ALCS. PLS has 6 directors and is made up of 3 main bodies as its members - the Publishers Association (PA), the Periodical Publishers Association (PPA) and the Association of Learned and Professional Society Publishers (ALPS), each of which have two directors on the Board of PLS. This does not cover all publishers but most of them. The seemingly complicated way of running the scheme results, it seems, from differences of opinion between authors and publishers - although they are theoretically both working in the same direction, there have been clashes. of view. For example, as regards books, PLS will distribute the money collected to publishers while ALCS will distribute its share to writers and the CLA will issue licences and collect the money owing under them. So, we will have a situation of the form:-



Both sides are agreed that this will mean administration costs being higher than they need be. However, they do not seem able to agree on a single distributive organisation - ALCS believes it should be the sole distributive organisation (and the fact that it already distributes some money from foreign societies may give it an edge here) but the publishers will not agree while publishers similarly would like just one body to distribute to publishers and authors and propose the CLA but the authors will not allow this. Hence, there is this rather unacceptable position, which is not to the advantage of copyright owners. It must be remembered that the authors' side is only concerned on the book side of the scheme so this curious distribution system will only apply to the scheme for books, not to journals and periodicals. Apparently, the authors wanted a 50% share of royalties from journals and periodicals as well, but the publishers vetoed this on the basis that contractual arrangements are very different in this field from what they are in the book field - in the journal and periodical field, authors are mainly employees, employed under contract or freelance, and receiving a salary, and the copyright is owned by the publisher. Thus, the distribution system overleaf is unlikely to affect members of the PPA and the ALPS, the royalties in this case all being distributed to the publisher, presumably through the PLS. The publisher will then pass on any money to the authors concerned if their contracts allow for it. ALCS and PLS collect mandates from authors and publishers respectively to allow their works to

be included in the scheme, and do whatever is necessary to implement the scheme. On the publishers side, the Publishers Association covers about 90% by turnover of book titles, the PPA about 75% of periodicals and the ALPS about 75% of non commercial learned journals, so PLS covers a large proportion of all material likely to be included in a licensing scheme. Authors, however, do not have to belong to ALCS to obtain royalties (ALCS has about 1,400 members). The CLA indemnifies licensees against litigation by copyright owners (if a copyright owner is not part of the scheme and his works are copied). This is the problem with not having the backing of the government in setting up a scheme. If such backing did exist, legislation could look after this problem.

The authors seem to regard the publishers as rather intransigent, particularly in insisting on full record keeping, and themselves as being rather more flexible in their approach. The user groups with whom the publishers and authors have been negotiating - the local authorities representing schools and libraries and the Committee of Vice Chancellors and Principals representing tertiary educational institutions, for example, maintain that it is inefficient and unreasonable to expect libraries and other users to make full records, although they seemingly do not object to a sampling scheme similar to that used for PLR (it was decided to start a licensing scheme in the educational field first because it was here that there was the greatest evidence of

widespread illegal photocopying). The users maintain that full record keeping would be too burdensome and costly in terms of staff and time. The idea of a rotating sample with concessions for those users making full records was floated in CLA meetings. Apparently, the rotating sample was acceptable to the user groups involved but the publishers insisted on full records, a situation which seems to have created something of a stalemate. The author's view seems to be that full record keeping is not feasible and they want to keep administration costs down as much as possible so as to get as much money out to the writers as possible at least costs. They also believe that the publishers want to eliminate photocopying altogether rather than obtain compensation for it. The publishers insist on full records because they want to know exactly what has been photocopied. They say that they do not want to eliminate photocopying altogether, only control it. Photocopying is a useful and necessary part of the educational sector but wholesale copying is illegal and they want to prevent it getting any worse because it is affecting their livelihood. They want a limit of how much can be copied. This, they maintain, is done in two ways - by the mere fact that people have to pay more for the copying they do so it makes them think twice about whether the copying is worth it. The keeping of full records would be another form of control. Not all records would be analysed, only some of them, so that an individual user would not know whether his particular records were going to be analysed or not. He would have to keep records just in

case. The aim, apparently, is not to maintain full record keeping in the long term. It would continue for an experimental period to see how it went and then a new scheme might be devised. You would be able to find out the extent of copying and what types of work were most copied. Once this was known, it would be easier to devise a new scheme or improve the old one. Later on, an alternative might be just to have libraries keeping records for a short period of time. Widespread photocopying is doing untold harm, the publishers say, and the problems are growing. Sales of school textbooks, they say have plummeted. They do not maintain that this is just because of large-scale photocopying and acknowledge that education cuts, the books themselves not being interesting, attractive or good enough and piracy play their parts too, but emphasise that photocopying does play a large part. In fact, it is ironic, they say, that at a time when the need for information is increasing all the time, there has been a large drop in purchases of the material in which the information is contained. They are trying to solve the whole copyright problem in one effort, one campaign: problems of piracy, photocopying and similar trends. They further dispute that the taking of records would be greatly demanding of staff and time since it would only involve the taking down of a few details. Nor is the problem just confined to the educational sector, they argue, it is prevalent in industry as well and PLS wants to extend the scheme to industry later. In industry, there is a continual need to keep up to date and at a time of increasing technological change, this need is

even greater. Hence, managers and scientists working in industry photocopy the latest, newest articles to keep up to date rather than buy them - and this is being done on a large scale. This is equivalent to giving away the copyright owners' property. When one considers the benefits users derive from photocopying copyright material, copyright owners really are entitled to some thought and compensation. A copyright is as valuable to a publisher as a patent is to a manufacturer and when it is being undermined it is much less valuable. The aim of the publishers' campaign, they say, is to educate people in the use of copyright material, to make them think differently, if possible, about copying. Librarians would like to have control over the photocopying done in their libraries but with machines dotted about all over the place, this is not possible, so individuals must be educated on the problem. Even if the process was only partially successful and records only, say, 60% accurate, this would still represent a better situation than at present. In industry, companies are nervous about their reputations, they want to preserve a good image and do not want their names in the paper in an adverse reference to their photocopying practices. This could also be used to control the problem. Damage to reputation is as significant as damage to a bank balance in many instances. Schools would equally be worried by damage to their reputations.

There were disagreements between authors and publishers about whether it should be a transactions (per sheet) or capitation (per head of student population) royalty. The users in the educational sector would accept the latter but not the former, although by the time they had agreed to a capitation fee, they said it was too late to include an allowance for such a scheme in that year's budget (1982-1983), so this was another delay. The publishers argue that a capitation fee would produce a free-for-all so that people would photocopy more and more, knowing that the fee paid bore no relationship to how much they copied. This would obviously be contrary to their policy of controlling photocopying. Under such a capitation scheme, there would be no incentive to keep the level of copying down. The argument put against the publishers view is that, even using a rotating sample as a basis for calculation, any great increase in the amount of photocopying done would show up in the figures and the capitation fee could be adjusted accordingly. Presumably, though, any adjustment would have to be subject to negotiation and could not take place for quite a while - so it would be a very slow and cumbersome process and not very flexible, particularly in view of the history of negotiations between the various parties. The publishers are against a capitation fee because it would not control photocopying, it would just bring in an income and this income would not be representative of the value of the copying. The publishers want to control copying rather than derive an income from it, although presumably an income would be a welcome secondary effect.

The publishers maintain that in the book field at least the authors have the whip hand since they own the copyright so that nothing can go ahead without them agreeing to it first. The copyright is not assigned to publishers like it used to be because of the change in the market brought about by the fact that the material can be put to so many new uses nowadays. These days the author, rather than assigning the whole copyright to the publisher licenses the publisher for each individual use.

The first priority is to get the licensing scheme off the ground, in whatever form, with at least some licences, not necessarily a lot. Once it has done this, the various copyright owners groups can go to the Government and show that at least some sort of scheme is operating, even though the amount distributed would not be very large. Then, it could ask the Governement to recognise the scheme through legislation and it can grow from there. Many people would like to be able to do more photocopying than they can at present under fair dealing - a licensing scheme would allow them to do this provided they are willing to pay for the privilege. Also, apparently, any licence would contract out of fair dealing which would still exist. The scheme would only apply in the field of education, not the non-educational sector. The definition of fair dealing would be virtually the same as in "Photocopying and the Law" except that it would be limited to 5% of a book as opposed to 10% at present. There would also be a change in the definition of

"substantial copying". The problem at the moment, it is felt, is that one can argue about the definition of fair dealing since there is no statutory definition of it. Presumably, then, it would be tightened up in the licensing scheme. The publishers say that they have deliberately not taken legal action recently when they could have because they were aware that the scheme was due to start soon and they wanted to give the culprits the chance to take licences up. However, if the situation gets much worse, they say, and nothing is done about it, legal action may be the only alternative.

The scheme has been subject to considerable delay because of the difficulties encountered in negotiation with the starting date being put back several times. Before the idea of a capitation fee was floated (an idea rejected by the publishers), negotiations over the price per page to be charged took place and the fee was gradually brought down from 10 pence to 8 pence (which was called "wildly excessive" and the figure was then reduced to 4 pence per copy of a page from a book and 10 pence per copy of a page from a journal. The outline of the scheme would be as follows:-

Individual copyright owners can exclude their works from the scheme if they want to, although the publishers note the importance of keeping such exemptions to a minimum to make the scheme as attractive as possible to as many people as

possible. The number of copies which may be made and the proportion of any work which may be photocopied will be limited under the terms and conditions of the licence. All licensees will have to keep simple records of the number of copies made and full records of what has been copied will have to be made by some licensees at first, although there will be a 2 year review period during which an assessment will be made as to whether this is really necessary. Any institution where copying takes place will be able to obtain a licence. The royalties per copy mentioned will be reduced for educational institutions because of lower publishing costs of school textbooks. There will be an initial registration fee of £10 for each photocopier covered. Industrial and non-educational licensees will not be able to use the fair dealing provisions and will have to pay for all photocopies made to avoid the problems of differentiating between 'legal' and 'illegal' copying. Fair dealing will, however, apply to educational institutions. Non copyright material will be included in the scheme because of the difficulties of excluding it. (presumably rates will be reduced to take account of it). Each publisher grants a non-exclusive licence to PLS to authorise reprographic reproduction (but not input into a computer or facsimile transmitter, for example) by users in the UK. (ALCS administers various rights, including the reprographic right for its members). This is the scheme at the time of writing - it is quite possible that it will change, especially because of the problem over full record keeping and capitation fees.

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CHAPTER 3

AUDIO & VIDEO RECORDING

The main problem, apart from piracy, in the audio and video field also concerns the reproduction right and much of the same analysis as was used for the problem of reprographic reproduction also applies here. The main problem is that of home recording of records and another, which has recently sprung up, is that of record rental shops and libraries. The campaign in this area against the practice of home taping has been going on for quite a considerable length of time and the subject is frequently in the newspapers. Several campaigns have been fought, all unsuccessfully to date, and a great many resources have been expended. The periods before and after publication of the Green Paper have seen the most concerted attempts to persuade the Government to adopt the record industry's favoured solution of a levy on blank tapes. In fact, the record industry had most to feel aggrieved at in the Green Paper, which virtually said that there was nothing the Government could do at present. One can expect the campaign to continue until something is done. It is quite an example for those who say that Government is unduly influenced by powerful economic pressure groups - the record industry is one of the biggest, yet it has not been notably successful in its campaign. The rapidly expanding but relatively new video industry faces similar problems and proposes a similar solution and, by joining with the record

industry, represents a considerable power block. One wonders how much longer the Government can resist the campaign.

The Present Situation

Unlike in the United States, where it is generally thought that private recording does not breach copyright (although there is some doubt), in the UK it seems that home taping, whether audio or video, is an infringement of the copyright owner's reproduction right, to make or authorise copies of his work. One must remember that in a record there is a copyright in the actual record itself which belongs to the record company and in the actual musical work (the song) embodied in the record which belongs to the composer (or the publisher if the work has been assigned to him). Both the composer of the musical work and the record company have a reproduction right in their works. The fair dealing exceptions under Section 6 and the educational exceptions under Section 41 may cover some reproductions of the musical work but there are no similar exceptions to the reproduction right for sound recordings, so home taping will infringe the record company's copyright (records are defined as including tapes as well as discs). There is also a copyright in sound broadcasts and television broadcasts including the right to make a film of the visual part of a television broadcast or a copy of such a film and to make a record of a sound broadcast

or the sound part of a television broadcast or a record embodying such a recording. In these cases there is an exception for copies for private purposes. The owner of the copyright in a film is protected against making a copy of the film and the fair dealing and educational exceptions do not apply to films, broadcasts, or any of the Part II subject matter. Since most television programmes are pre-recorded, they are apparently covered by the definition of a film (the Green Paper notes this, for example). Subject to certain exceptions, the public performance right may also be infringed, ("public" being interpreted narrowly as only the domestic circle). Performers are protected summarily under the Performers' Protection Acts 1958-72, against the making of a record or film of the performances of a literary, dramatic, musical or artistic work, except when the record or film is for private and domestic use. One might also ask whether video cassettes are records or films. It is generally assumed, though, that a video cassette is a film[1].

The problem of record rental shops is relatively new and seems to be a particular problem in Japan, where the number of such shops has proliferated. Here, the situation is not so straight forward from a legal point of view. We have to ask whether the record company (the copyright owner) can prevent rental of records or demand royalties for such rental once he has sold the records to the dealer or retailer, and whether a retailer can be regarded as liable for copyright infringement, indirect though it is, for authorising or

contributing to home taping (which we know to be illegal)[2]. So, we can see that this is another aspect of the home taping problem. One might say that the problem of record rental shops (and video rental shops) is analogous to that of books lent out from libraries for which authors (not publishers) have just gained PLR except for the fact that libraries do not make money out of such rental. Could one not argue that such rental shops are making profit out of the use of copyright material, reaching their objectives through use of copyright owners' works, and therefore that they ought to pay royalties?

Although there are a number of similarities between the reprography and home taping problems, there are also differences. For example, the record companies, unlike book and journal publishers, have many estimates of how much they are losing, they have concrete figures, and the record companies seem to have a much higher profile for their campaign and one might say a better presented case. Furthermore, the solution advocated for the problem is different in each case. The different solutions proposed for the problems of reprography and home taping spring from the fact that the nature of the problem is different in each case - in both fields, the reproduction right is virtually unenforceable because it is impossible to tell when an infringement is taking place but a licensing scheme is still theoretically possible in the reprographic field because the copying takes place in public and largely in institutions

whereas for home taping the infringement takes place in private and not in institutions and one cannot invade the private sphere. At least in licensing institutions in a reprographic reproduction scheme, the number of licensees could be reduced to manageable proportions and enforcement problems would not be totally insoluble. One might make home taping licences compulsory but one would have to have equipment to show when copying of copyright material was taking place. Such equipment does not exist (equipment is used at the moment to show when televisions are being operated without a licence but the operation of a tape recorder could not be made illegal, one must still be able to play cassettes which are legal. One would have to have equipment to show when tape recorders were taping illegally from records or the radio). Again, one cannot adopt a luddite approach and ban the technology. One must live with it and try to find a practical solution to a practical problem. The interests concerned naturally appreciate this.

The Market for Tape Recorders and Blank Tapes

Cassette sales are the bright lights on the horizon for the record industry - they are on the rise whereas other sales are down. The number of cassette players in domestic ownership increased by about 51% between 1978 and 1981 alone, from 13.8 million units in 1978 to 20.8 million units in 1981[3] and the percentage of the adult population over 15 with access to a tape recorder increased from 30% in 1973 to 56%

in 1979[4]. (The latest BPI estimate is that 77% of households have a tape player and 64% have a tape player that can record. With multiple ownership and car players, the BPI estimate is 25 million players in use or ownership.) Retail sales of blank tapes have similarly increased greatly from 50.1 million units in 1978 to 73.4 million in 1981 (46.5% up)[5] (81.1 million in 1983 according to a BPI estimate) although the Economist Intelligence Unit, quoted in the Green Paper, shows fewer sales of blank cassettes at 33 million in 1978. Virtually all blank tape is imported since EMI, which took 5-6% of the UK market for a while, stopped production in 1980[6]. According to the BPI[7], the average price paid for a blank tape fell from £1 in 1979 to 94 pence in 1981. This represents a price adjusted for inflation of 71 pence in 1981. The average landed cost for imported blank cassettes is 39.5 pence and profit margins are high because blank tape does not cost a lot to produce, the dealer price being about 68 pence and the contribution to overheads and profit 27 pence (40% of the dealer price). This is against a pre-recorded cassette retail price of £4.59 with a dealer price of £2.95 and a contribution to overheads and profits of 45 pence (15% of the dealer price)[8]. We can see that the market for cassette recorders and blank tapes is quite considerable.

The Market for Video Recorders and Cassettes

Great Britain is the fastest growing market for video recorders in the World - about £400 million worth of video recorders were rented or sold in the UK in 1982 as against

£227 million in 1981 (an increase of about 76%)[9]. At the end of 1982, there were 2.2 million video cassette recorders in use in UK households, 10.2% of all households[10] [The British Videogram Association (BVA) estimates that there are now 6 million VCRs in use in the UK (30% of UK households)]. The most significant feature of the market, as the BPI Yearbook 1982 notes, is that rental of recorders and tapes is the main form of acquisition since rental charges are low (the BVA estimates that 41% of VCRs are rented). BBC Research suggests that 85% of the video cassettes used in the home are rented, which represents about 4.5 million transactions a week and a value for the rental cassette market of about £400 million[11]. Sales of blank cassettes are also large. There are more VCRs per head of population in the UK than in any other country in the World. The Japanese again dominate the market with VHS (Video Home System) developed by the Japanese company JVC being market leader (75%) followed by Betamax (23%), developed by Sony, and then Video 2000 (2%), developed by Philips of the Netherlands and Grundig of West Germany[12]. The video cassette market, despite the recession, is going through a boom phase, which shows little sign of halting. Following on from the video cassette, the video disc was highly publicised but it does not seem to have caught on and many think that its future is not in the consumer market at all but in the education and business markets. Fortunately for copyright owners, video disc players cannot record, so questions of home taping do not apply, although 'New Scientist' of 23rd June 1983 suggested that the Japanese company, Matsushita, may be ready to launch

a videodisc system which records and erases. The other product in the video area which has copyright implications is the video juke box which plays videos along with the normal playing of records by audio juke boxes. In view of the startling take-off of video, such juke boxes are likely to generate a large amount of new royalties and PRS and PPL have just started licensing them.

The Advantages of Home Taping

1. Cost Pre-recorded audio tapes and records cost about £5, whereas a good quality blank C-90 costs about £1.50. (Similarly, blank video tapes cost about £5 for 3 hours and pre-recorded tapes about £40, although here it is not a straight buy-or-home tape decision because of the different market structure with rental being the main form of exploitation - and the cheapest. It costs about £18 a month to rent a video cassette player and about £1.50 to rent a video cassette for 1-2 nights). Even taking account of record discount shops, the blank tape-home recording solution will generally be the cheapest in the record field.

2. Two LPs will fit onto a C90 audio blank tape and it can be overtaped many times to take account of changing musical tastes.

3. Recording facilities are widespread and have become more and more sophisticated so that high quality copies can be

made. Systems are now available with two cassette facilities, so that one can record from one to the other whereas before two cassette players plus an adaptor lead were required. The advent of personal stereos may give an added twist to the problem by encouraging people to tape more (although one cannot record with a personal stereo) since they have added mobility, although it should also increase legitimate cassette sales. Hi-fi systems are cheap and available in a wide variety of retail outlets. Video cassette recorders, too, produce high quality copies.

4. The point is often made that people tape records at home because the quality of records and tapes they buy seems to be bad and getting worse and their price is too high. When the cassette was first invented and marketed, the argument goes, the record industry neglected it somewhat and high cost, poor sound quality, and unattractive packaging made people turn to home taping. Poor pressings, low sound quality and high price are similarly levelled as criticisms at records. One might say that the sound quality of records and tapes has not improved to the same extent as the playing and reproduction capabilities of hi-fi systems. The record industry naturally disputes these claims, pointing out that records are cheaper now in real terms than they have ever been and that

quality has been and continues to be improved. With the advent of digital recording and the compact disc, there seems little doubt that this is true. The record industry has also made many attempts to make pre-recorded cassettes more attractive in an attempt to lure people away from home taping.

5. Copying is easy and convenient.

6. Copying from records provides flexibility and portability at a low price. Many people record compilation tapes of their favourite records which may not be available on a compilation record or they may buy an LP and not like all the tracks, so they may tape the songs they like and sell the LP. Some people might like to have several copies of an LP for use in various places (such as one for the house, one for the car) and only be prepared to buy one copy. Copies can be made in a manageable and portable form whereas photocopying, for example, just produces a pile of papers. As the BPI Booklet notes, blank recording tape has little intrinsic value and is only worth what is recorded on it.

7. A lot of video recording is for time-shift purposes, so that you can record programmes while you are out or while you are watching something

else and watch them later. Thus, the viewer has more flexibility in planning his night's viewing.

8. There is a qualitative difference between recording records and recording programmes from the television - records can be heard often and they do not last as long as television programmes generally, so the ability to record them is not nearly as much an advantage[13].

9. Unlike photocopying, if a person copies the whole of a record, it will not cost him as much as the original record. If a person copies the whole of a book, it is likely to cost him more than the actual book.

The Problem

Sales of LPs have been falling consistently in the UK and worldwide. This is the main plank of the record industry's case - that home taping is causing them to lose considerable amounts of money every year because people buy blank tapes and record LPs and singles onto them after borrowing them from friends and record libraries, rather than buying them. One must remember, though, that not all home taping is illegal, some of it is of non-copyright material, though less than for photocopying. Every two years the BPI commissions independent studies to try to estimate the size of the

problem. These show a trend of declining trade deliveries and retail sales of LPs and rising trade deliveries and retail sales of cassettes[14]. Total trade deliveries and trade deliveries of singles also seem on a downward trend while for total retail sales and retail sales of singles there seems no particular trend. Real prices of records have generally fallen over the period 1970-1981 with an LP costing £4.49 in 1981 costing the equivalent of £8.04 in 1970 (actual price £1.99), this being nearly half what it was in 1970, and single prices of £1.10 in 1981 were the equivalent of £1.70 in 1970, 65% cheaper[15]. The days of large profits seem to be over and many companies have fallen into losses[16]. The BPI estimates that about 15 million people record copyright music from radio or television or record regularly and that in 1981 they lost £304.9 million due to home taping. This is apparently arrived at from an estimate of the amount of copying going on derived from surveys, working out a figure for LP equivalents, multiplying by the average price paid for LPs and then assuming that about 25% of this recording prevents the sale of an LP, tape or single. For example, the estimate for LP equivalents copied in 1979 was 280.9 million , multiplied by the average price paid for LPs of £4.03, to give a total values for copies made of £1132 million. 25% of this is £283 million[17]. This is the 1979 figure for the value of lost sales. Using the same method and assuming that an average price for an LP is £4.49, a figure widely quoted in the BPI Yearbook 1982, it would seem that the LP equivalent for 1981 is only 271.6 million, a

slight fall from 1979, but still very high. This figure for the lost value of sales has been going up consistently over the years - £152.8 million in 1977, £283 million in 1979, £304.9 million in 1981. Why there should be such a massive increase in the 1977-1979 period is open to question and is in great contrast to a rise of 7.7% in the 1979-81 period. Was the 1977 period an understatement? In any case, the figure arrived at seems to be somewhat arbitrary as does the figure of 25% for lost sales of recorded material. The record industry does not say that all material taped would be bought if home taping were not possible (a claim that would be easily attacked) and it also seems to recognise that the fall in LP sales is not just due to home taping but also takes in the problem of recession and high unemployment amongst the young (its main customer). The fact that young people have more things on which to spend their money than previously must also play a part. In fact, the view has been expressed by some that the LP is an outmoded means of exploitation of music and that people are losing interest in it. It would seem fair to say that not too much emphasis should be placed on the actual figure estimated for home taping losses because this is, after all, just an estimate. One should also note that the figure supplied by the BPI for losses from home taping in 1981 at £304.9 million is nearly 72% of the total value of retail sales in the UK in 1981 (at £424 million), which would seem to suggest that the record industry should be three quarters of its size again, which seems a bit on the large side. The arbitrary nature of the

figure put forward by the BPI is further shown by the way the Green Paper works out the loss to the record industry. The figures supplied by the BPI assume that it loses the whole of the retail value of the LP when it is taped at home. The Green Paper notes, however, that the loss to rights owners and artists is £1.92 per LP since there is a saving of about 20 pence on distribution costs, manufacturing and sleeve costs of 38 and 18 pence respectively, the dealer margin of 1.40 and V.A.T. of 61 pence, a total saving of £2.77 (assuming a retail price of £4.69). The Green Paper then takes the loss to rights owners and artists as £2 and multiplies by a figure of 25 million which it says MCPS and the BPI put out as a reasonable conservative estimate of sales lost through home taping in 1977 to give losses of £50 million a year. This figure of 25 million seems rather out of step with the figures supplied by the record industry. If one takes the LP equivalent figures they provide in the 1982 Yearbook and work out the losses using the figure of £1.92 (which may be lower or higher for other years) estimated by the Green Paper, we get figures of £99.8 million for 1977, £134.8 million for 1979 and £130.4 million for 1981, assuming that 25% of LP equivalent tapes are lost (the LP equivalent figure for 1981 is the one I worked out myself and mentioned earlier). Thus, one must be careful with the figures.

There seems little doubt that the record industry is losing a lot of money because of home taping and that most of this home taping is illegal. It is not only the record companies

that are losing money - the composers of the works are as well. Many composers earn very little from their composing from copyright royalties and have to take on other jobs. Money earned from coyright royalties is highly skewed towards the most popular composers. One would expect the extent of home copying to be similarly skewed towards the most popular artists and composers. This naturally opens up the view that the most popular artists and composers will not miss the losses, and that home taping does not affect the less popular composers and acts significantly or directly anyway. Nevertheless, home taping is breaking the law - it often being said that it is "theft" of another person's property, music being property even though it is intangible. Rights are largely unenforceable in this sphere. The record industry is of vital importance to the UK, it is argued, and if the home taping problem continues unabated, then the base on which it depends for its continued existence - the records and the record companies which make them - will shrink and maybe disappear. The BPI[18] notes that artists and composers depend on records for a large part of their income with most pop artists achieving their initial breakthrough and ultimate fame through records. The ability of the record industry to take on new acts and record them depends on the popular artists subsidising these new artists. Very few records released are hits and the big hits subsidise the misses. Home taping is mainly of these popular artists leaving less money to subsidise the others. Classical recordings are particularly likely to be hit in this way -

and their availability is already quite low. Only about 10% of record releases makes a profit. If this figure is reduced, fewer little known artists will get a chance. Nor would the economy benefit from a contracting record industry - it employs about 40,000 people, generates sales of £1,500 million annually worldwide and is a major export earner with British recordings and works by British composers making up over 25% of World sales[19]. The World economy will similarly suffer from contraction of the record industry. In 1980, the UK had the fourth highest total of retail sales of records (LPs, singles, cassettes) in the World after the USA, Japan and West Germany and the seventh highest per capita expenditure on records in the World[20]. Contraction of the record industry would mean less investment, fewer records and less jobs. There would also be knock-on effects on other industries and the whole of the music industry, not just the record industry would be affected. The record industry also contributes to the musical and artistic culture of this country and to broadcasting and encourages high quality musicians to live and work here. The BPI says that the ability to copy records easily has moulded the attitudes of a whole generation and this attitude will continue into the future as the present generation gets older - they will keep the habit of copying. Almost 4 out of 5 young people aged 15 to 24 who have a tape recorder will copy records. Young people represent only one-seventh of the whole population but one-third of those who buy blank tape. The record industry maintains that if the present trend continues, the next

generation will not have the choice between copying and buying. The BPI Yearbook 1982 reports a survey of 5,000 answers by BMRB in 1979 in which 41% said that they were likely to have bought a record if they had not taped it, against 40% who would not have done so. 9% of respondents said they taped their own copies of records. Nor is the problem confined to the UK - the record industries in most developed countries are finding home taping to be a problem. The record industry does not want individuals or even groups to get in touch with it to ask for permission to copy, it just wants compensation for such use. When use is made of a copyright work, a royalty is usually paid. When a person buys a record, included in the price is a royalty for the artist, composer and record producer. The levy proposed by the record industry would compensate for the loss of the royalty which is not received when the individual tapes his friend's record and does not buy one. Since the law does provide copyright owners with a reproduction right and home taping breaches this right, despite the fact that the right seems to be unenforceable in private circles, there seems to be justice in the record companies' claim for compensation - either they should be allowed compensation, which is, after all, one of the functions of copyright, or it should be expressly stated in the law that in this private area, there is no right or that the right cannot be enforced. There is no point in having the right unless it is enforceable - and there are ways of making the right enforceable, although none of them are perfect.

In the education sector most institutions have audio or video recorders so they have the ability to record the material they want but they do not want to infringe copyright and face prosecution, but obtaining permission is slow and cumbersome. Either material is copied illegally or is not used at all which may be to the detriment of education[21]. Since there is no single body to represent all sectors of education and no collecting and licensing agencies to negotiate for some categories of rights owners, it is very difficult to reach agreements. There are, however, a number of agreements with the BBC, IBA companies and Open University allowing educational users to record broadcasts on-and off-air subject to licences, and licences are also available from MCPS.

A further problem allied to that of home taping is that of rental of records. This seems to have particularly caught on in Japan where the output of the record industry has been estimated to be almost half what it would have been without home taping[22]. Over 130 million blank tapes were sold in Japan in 1980[23]. The first record rental shop opened in Tokyo in June 1980 and by September 1981, about 749 were in existence[24]. Record sales have fallen overall but especially badly at retailers near rental shops. Because of the cheapness of rental and blank tapes, it is much more financially attractive to rent or record and tape records at home than to buy them. A poll by the Japanese record industry indicated that over 97% of those who rented records did so to record them. When some producers tried to withhold

supplies to distributors who supplied record rental shops, they were investigated by the Japanese Fair Trade Commission as regards infringement of the anti-monopoly law on the basis that they were preventing rental shops from pursuing their business activities. Copyright actions do not seem to have worked either. The question of rental of records and whether the copyright owner can prevent or claim royalties for such rental is related to the distribution right. Only where national laws allow the distribution right to continue past the first sale will the copyright owner be able to control rentals and claim royalties. In the UK, the general view is that rental cannot be controlled because there is no such distribution right. Whether a retailer could be guilty of copyright infringement by authorising or inducing home taping depends on whether home taping is an infringement under the law of the country (this is often not the case under the fair use doctrine) and whether the producer can produce proof that the retailer knew about home taping of rented records and took active steps to encourage it, which may be difficult (for example, does selling blank tapes and cassette recorders and renting records in the same shop constitute "active steps") and may, for example, require that he provides recording facilities for making such copies on the premises. Cases on the subject do not seem to provide a decisive answer. In the UK, record rental does not seem to be a major problem. The renting of video cassettes is the growing and dominant phenomena in the UK, and this has caused problems. The video industry encourages rental as part of the

exploitation of its product because of its nature. Video cassettes cost so much to buy that if people did not rent they would be unlikely to buy them. The industry is, however, concerned about uncontrolled rental forcing prices down to uneconomic levels. It wants to be able to authorise who rents it products and who does not, so that it can control the market.

Home taping is similarly a problem in the video market worldwide but there are added dimensions there. For example, the television broadcasters, especially the commercial television companies, fear the effect video may have on their advertising revenue since this depends on the size of the television audience. There are already signs that television audiences on both BBC and ITV are falling[25]. As Brill notes[26], video recorders have a fast-forward facility so that advertisers will not know if or when they are reaching their target - and what if the advertisement is for a one-day sale? Copyright owners in the video industry want payment if their works are taped at home. Brill notes that fair use might apply - but many people do not agree arguing that fair use should be narrowly defined and that it does not apply to copying done just for entertainment, only to educational or creative purposes. It is further argued that home recording, when done by millions of people, becomes a public commercial practice. Non-copyright arguments are of the form "why should a literal interpretation of the law prevent the enjoyment and exploitation of new technology?". In fact,

Sony, makers of the Betamax video cassette system, were sued in the US by MCA, which owns Universal Pictures and Walt Disney Productions, for infringing the copyrights of the two latter companies, in selling video cassette recorders to home users. The case was first started in 1976 and the video industry has grown enormously since then. Initially, the Federal District Court exempted home video taping from copyright protection since in 1971 Congress exempted home audio taping but the California Federal Appeals Court reversed this decision, noting that Congress was not dealing with home video recording in 1971 since it was only in its infancy then[27]. The Supreme Court has recently held that home video taping does not break the law by 5-4 decision.

The Solutions

Several solutions have been suggested to the problem of home taping, the most popular of which seems to be a levy on blank tapes (or a royalty as the BPI likes to call it, believing that the term 'levy' is misleading suggesting a tax), to compensate for the loss of the royalty when records are taped at home rather than bought, which recognises that the reproduction right is not enforceable in the private sphere. The BPI says that it would be possible to enforce the law against home tapers - and the law is on the side of the copyright owners - but it would be very difficult to obtain the necessary proof and it would not be possible on a large scale. It would also open up the claim of highly selective

enforcement. Nor would the scheme be difficult to administer nor even costly since one of the existing collecting societies could do the job. The money would be collected by the society and distributed by agreement between those suffering loss or by a decision of a special tribunal. The BPI also suggests placing a proportion of the money collected in a Music Development Trust Fund, which might, for example, provide funds for making recordings of music which might not otherwise take place because the commercial risk is too great. The rest of the money would be distributed to the composers, performers and producers who lost money because of home taping. The Government would fix the level of the royalty. The record companies were initially asking for a royalty of at least £1 per tape but they maintain that even £1.50 - £2 on a C90 would have only a negligible impact on blank cassette sales. When one considers how low their cost is at the moment, they would still cost considerably less than pre-recorded records and tapes. In any case, the BPI says, the blank tape manufacturers could absorb at least some of the royalty and need not pass it all onto the user - and their product is not much use without music to record on it. It is also proposed that there should be exemptions from the royalty since the BPI recognises that not everyone uses blank tapes illegally and one would not want to penalise such people - suggested exemptions are Talking Books for the Blind, dictaphone tapes and short tapes of less than 15 minutes a side. The BPI notes that copyright reform is urgently needed and that home taping ought to be dealt with

as part of a wider legislative attempt to solve the problem but the problems are very pressing and could quite easily be dealt with separately (in the same way that video piracy has been dealt with separately, one might say). Other countries have taken steps to combat the problem and many look to the UK for guidance on copyright matters, it says. The BPI suggests the same solution for video - a royalty on blank video tape. In addition to a royalty on blank tape, the video and audio industries also propose a royalty on video recorders and tape recorders, the hardware as well as the software. An arbitration tribunal - for example, an enlarged Performing Right Tribunal - could oversee the collection and distribution processes. There might also be a ceiling on the amount each artist or composer could earn in a year, in a similar way to PLR, although at a higher level because of the size of the record industry. The Whitford Report was in favour of a levy on recording equipment but not on blank tapes[28]. The equipment levy should only apply to non-commercial uses, Whitford thought, and the criticisms of it would not be as great as for a levy on reprographic equipment since reprographic equipment is usually not bought by private individuals and a high proportion of copying is of internally generated or out-of-copyright material whereas audio and video recording equipment is generally bought by individuals and most recording is of copyright material. Thus, the argument that non-infringers would be unfairly penalised does not apply to the same extent. Whitford recommended a levy on all equipment which is suitable for

private recording, whether it is intended to be used for that purpose or not and whether manufactured at home or imported. The manufacturer or importer would be liable for the levy. A statutory tribunal might have jurisdiction over rates, application of the levy and its distribution. For recording in educational institutions, Whitford went further in suggesting a levy on sale of equipment allied with payment of an annual licence fee paid under a blanket licence scheme because of greater use in this sector. Strictly commercial uses of copyright material would be subject to normal licensing procedures. A further problem for an equipment levy would be what happens to machines which are already in circulation. The levy would apply to new machines but what about the old ones? The Whitford Committee suggested that old machines be assumed to have been licensed as well. In addition, as the BPI has previously noted, the price of hardware generally falls over time whereas the cost of making records increases so any levy based on a percentage of sales proceeds of equipment might not produce as much money as might be expected.

There are already a number of schemes in Europe involving levies on blank tapes and recording equipment. West Germany has had a levy on most audio and video recording equipment since 1965 in return for which there is a blanket licence to make single copy recordings for personal use. The right may only be exercised through a collecting society, ZPU in this case [29]. Each copyright owner is entitled to an equitable

share of the manufacturer's (or importer's) revenue from sales of such equipment although no specific percentage has been laid down, but the total claims of all copyright owners may not be more than 5% of revenue. Dietz[30] says that another weakness of the scheme is that it is not easy to obtain figures on sales of audio and video tape recorders but the advantage is that the levy will ultimately be passed onto the user anyway (although this is not necessarily so) so that each user pays a lump sum for his later acts of copying and competition is not distorted since the levy is part of the costs of all competing manufacturers and importers[31]. Educational and commercial use is not covered [32]. Apparently, the levy is not collected on an individual machine basis but the industry makes a single lump sum payment each year[33]. For systems combining cassette recorders with other facilities such as radio and record decks, the levy is only worked out on the cost of the recorder, so that costs are apportioned between the different facilities[34]. Foreign copyright owners may also benefit (through the principle of national treatment)[35]. In 1980, the West German scheme brought in £6.9 million[36]. Apparently, though, this revenue has proved not to be enough and there has been a campaign to have a levy put on blank tape as well, which I understand has now been successfully won (the original figures were: a 50-cent levy on blank cassettes, estimated to raise about $200 million a year)[37]. In Austria, a levy on blank tapes was introduced in 1981 - 7 cents on each cassette, estimated to raise about $700,000 in

the first year to be split 60% to composers, 20% to performers and 20% to record companies in line with record sales[38].

The Government's Green Paper of July 1981 rejected the call for a royalty on blank tape. It said that it might be argued that private home taping should not be regarded as within the ambit of copyright protection and that copyright owners should concentrate instead on the commercial exercise of their rights. Unless a scheme can be thought up to give copyright owners compensation without putting "intolerable burdens on the individual", it says, the record industry may have to content itself with obtaining most of its revenue from broadcasting and public performance of records, such as at discotheques. The record and video industries are naturally displeased with this suggestion. There has never been any suggestion that the 1956 Act intended the reproduction right to exclude copies made in private - the only reason the situation has become so severe is that new technology has overtaken the law and the drafters of the 1956 Act did not foresee it. Why should people not pay for private copying - they have to pay for all other types of entertainment? The suggestion that the industries will have to rely on other forms of income would mean that broadcasters would be penalised for the activities of those who use blank tape to copy music and would also mean an increase in the BBC licence fee, says the BPI. A charge levelled at the idea of a blank tape levy is that it would be inflationary. Surely,

increases in the royalties paid by the broadcasters and in the BBC licence fee would also be inflationary and any attempt to add a new twist to the amount of royalties paid by the broadcasters is sure to be severely resisted and lead to wrangles before the Performing Right Tribunal - which will be very costly, if past experience is anything to go by.

Using its estimate that the record industry loses £50 million a year due to home taping (a figure the BPI would probably dispute as too low anyway), the Green Paper goes on to say that if the burden for compensating the record industry fell entirely on blank tapes and assuming sales of 35 million blank tapes a year and that the same size levy was put on all such cassettes regardless of running time, this would imply a levy of about £1.40 per tape and more than double the cost of a C90. Or, assuming sales of 3 million recorders a year the sum could be raised by a £10 levy on each machine plus 60 pence on each blank tape, or a levy of £17 on each recorder only. It is not only home taping that is losing the record industry sales, it continues - varying rates of VAT and of disposable income as well as the changing popularity of recorded music in different years are also likely to have played a part. Sales lost directly as a result of home taping cannot be precisely calculated. Increases in prices as a result of a levy would fall on many consumers and be against government anti-inflation policies. The British Copyright Council (BCC)[39] maintains that the case for a levy does not stand or fall on whether the revenue derived will compensate

rights owners completely for their losses. Even if a reasonable amount is collected, adoption of the levy is justified. Rights owners seem more interested in establishing a principle at the moment than in having all their losses reimbursed. The BCC continues that the Green Paper suggests that the amount collected under the West German scheme is hardly enough to make the scheme worthwhile yet the Government considers the £2 million it provides for PLR as sufficient. The fact that it may run counter to Government economic policies is also attacked. The overseeing tribunal recommended by Whitford would take account of all relevant factors in setting rates including the economic situation of the country and current government policies. But it does not think that present economic conditions or policies and strategies necessarily have anything to do with copyright law. Economic conditions change widely, rapidly and often as can Government policies; copyright law changes 2-3 times a century and is not an instrument for managing the economy. The general purpose of copyright is to encourage creation and dissemination of works of various kinds subject to certain public interest limits - and transitory economic conditions and Government policies have no relevance to such general considerations. Legal reform is meant to make control of rights possible which is not possible at the moment because of changes in technology. In exercising these rights, authors will be subject to the same limits as everyone else imposed by economic conditions and Government policies but such considerations should be dealt with through

free collective bargaining and not be contained in legislative policy. The Performing Right Society[40] says it finds it astonishing that a Government is prepared to accept copyright owners being seriously harmed economically through infringement of their rights just because "it would cost the infringers something to be authorised to carry out the infringing acts". Manufacturers and importers of recording equipment and blank tapes are making large profits by granting customers free access to what is not theirs to give. Why should copyright owners have to accept this just because it would help control inflation? On that basis any significant exercise of rights by copyright owners could be regarded as inflationary.

Another argument put forward by the Green Paper is that a levy would mean part of the revenue raised going abroad because of the UK's international obligations under various copyright conventions - the Green Paper says the record industry believes 15-20% of any levy would go abroad with little compensating inflow. In addition, many record companies in the UK are foreign owned, so these would also benefit because of their copyright in the recordings and more money would be remitted abroad by these companies with few inflows. (In 1979, the Green Paper says, 65% of LP sales were by foreign-owned companies). The BCC is horrified at this "shop-keeper" attitude. The UK is one of the greatest creators and exporters of copyright works in the World, which are consumed in large and growing volumes everywhere,

especially in developing countries. There are very few countries where use of UK works is not much greater than use in the UK of works from those countries. It is of great importance to the UK to persuade Third World countries to introduce a workable copyright system (involving reciprocal obligations) even though, for these countries, it would result in a net outflow of money, a lot of which will go to the UK, and the BCC (and its members) is deeply involved in this. The Government's attitude could be construed as one of double standards in these sectors and wreck the BCC's attempts at expanding the copyright system, expansion from which the UK can only benefit. The BPI also disputes that a lot of the money would go abroad - estimating it as under 3% of any distributable revenue. Almost all records sold in the UK are owned or controlled (as an exclusive licensee) by UK record companies, except that certain companies may have to pay certain receipts under contract to non-UK licensees and certain companies are owned by non-UK shareholders and thus remit dividends overseas. Dividends from non-British companies are apparently rarely remitted by foreign owned companies to overseas parents. A similar situation applies to musical works most of which will be owned or controlled by UK music publishers or MCPS.

The Green Paper also suggests that payment by manufacturers and importers is the only effective solution because they make mass use of records possible but then notes the practical problems of rough justice, and a rebate scheme, the

fact that any levy could only be an arbitrary percentage and the problem of old machines and new machine buyers subsidising everyone else. A blank tape levy would be a better measure of the extent of private recordings but the consumer might be able to get round it by buying tapes direct by mail order from abroad; a dealer might get round it by selling tapes with trivia recorded on them , so that they were no longer "blank tapes". ("New Scientist"[41], in fact, reports that BASF, the West German blank tape manufacturer, has come up with exactly this answer by devising a system of recording non-copyright material on the bulk rolls of tape leaving the magnetic coating bath so that the finished tape is no longer blank - or taxable). In addition, says the Green Paper, a levy would have to be administered by a statutory body, which would be complex both for collection and distribution. One would have to decide how to share out revenue between different categories of rights owners and between individuals within these categories. Unless the levy were unacceptably high, net distributable revenue might be so low as not to be worth collecting. The Whitford Committee also suggested a similar criticism as regards a blank tape levy - that although it would reflect actual usage more accurately, it would be a much larger operation and because of the smaller value of tapes as opposed to equipment and because tape can be re-used, it might produce less revenue. The BCC finds none of these problems insurmountable, again pointing out that these are problem of practicality rather than principle and the justice of a levy cannot stand or fall

on decisions about them and an existing collecting society could perform the task fairly cheaply anyway. PRS also notes that the levy need not be passed onto users by equipment or blank tape manufacturers since there is severe competition in the market, and the market is still growing, so the levy might be absorbed in profit margins. Exemptions can be worked out through negotiation. Existing societies have to take account of them. The BPI suggests that machines not meant mainly for music copying could be sold with 2-3 exempted tapes. Mr. Isherwood, at BPI, agreed that there are problems with the idea of a levy but that it is probably the least imperfect method of compensating the record industry for its losses, assuming that you accept that there is a problem.

The Green Paper also says that video copying may not be analogous to audio copying because it is not clear that it adversely affects commercial interests - recorders are mainly used for 'time shift' purposes, and rarely to make 'libraries' since people may not want to use expensive video tape to record programmes they will hardly ever watch. Recording is determined by the machines on the market and those which are available at the moment can only record television broadcasts and films broadcast and play them back on the television screen - they do not threaten producers of pre-recorded video cassettes since these cannot be copied except when broadcast. In the future, cheaper tapes may be available and equipment may be less expensive and allow home

copying of commercial pre-recorded video cassettes and video discs (video centres like music centres) but for now the Government does not think there is a problem. The BCC thinks the Government is missing the point - except under fair dealing, recording copyright works is illegal. Nothing can take that away. There are now a very large number of video recorders privately owned or hired and the figure is growing all the time, and it would be very naive to think they were only being used for fair dealing purposes. Private video-recording has added a new dimension to using television sets and by no means all recording is 'time shift'. One might add that it is not that difficult to record from one video cassette to another - all you need is two recorders and a lead - but this may be sufficiently burdensome to prevent it happening on a very large scale.

The Green Paper concludes that the Government is not convinced that a levy on audio and video equipment and tape would be an acceptable solution and suggests that it may have to be accepted that there is no acceptable solution - an attitude severely criticised by the BCC. Finally, the BPI says that the Green Paper does not mention the international copyright conventions protecting the copyright owner's right to authorise home taping. The Government has obligations under such conventions and the Green Paper does contain many references to our international obligations and how the Government intends keeping to them elsewhere.

One of the reasons the Government may be unwilling to introduce a levy is because it feels that it would be unpopular with the general public. There does seem to be a certain amount of antipathy towards the record industry amongst the general public, as evidenced by letters to the music press on the subject of a levy, for example. It seems that the record industry is suffering to an extent from its past extravangance. There seems little doubt that the image of the record industry in the public's eye has quite a lot to do with the resistance amongst people to paying a levy. There seems to be a general feeling that the record industry is inefficient and wasteful. No doubt, there is also an element of the fact that the record industry is made up of a number of multinationals and there is a natural feeling of unease about them. There is also the view commonly expressed, for example, by Maurice Healy of the National Consumer Council, (NCC) that since the consumer has already made payment to the copyright holder (which is obviously not the case if you tape a friend's records) by buying the record, he should be free to re-record for his own purposes (which obviously goes against the whole concept of copyright that if you use someone else's work to achieve your own objectives, you have to pay for the privilege). The NCC[42], also argues that putting a tax on recording equipment and tape is subsidising the past rather than encouraging commercial opportunities of the future. It would hold back development of new, more competitive ways of delivering the product the consumer wants - the music. A similar argument

is put by the Consumers in the European Community Group[43], that a levy would increase tape prices to protect the record industry in the guise of obtaining justice for copyright owners. The record industry is trying to protect itself by attacking a more successful rival at the expense of the consumer rather than by improving its product or competitiveness. Other people attack the idea along the lines of: "The record industry invented cassette players and tapes so who is it to complain and why is the record industry only complaining now when its sales are dropping? It was a problem before, so why did it not complain when it was doing well?". This, however, ignores the fact that home taping is illegal. Mr. Isherwood at the BPI noted that when records were first introduced, they represented high technology and unique qualities, the price reflecting their uniqueness and value. This, however, is no longer the case since it is very easy now to make your own copies of records. All the record industry is trying to do is restore this former value in whatever way it can[44].

The Performing Right Society suggests another solution- amending the law so that copyright owners can enforce their rights against manufacturers and importers of tape and equipment. There would be a presumption in the law that suppliers of such products for sale in the home market who do not have the authority of rights owners to do so are contributory infringers. Licensing would be through a collecting society, not individually, and there would be a

Tribunal to which disputes could be taken.

Until the end of 1980, there was a voluntary licensing scheme, introduced in the 1960s, in which MCPS in conjunction with the BPI issued an amateur recording licence under which, for a fee of £1.50 (plus VAT) per year, a person could legally tape music and records under certain conditions. However, only about 12,000 people took out a licence (as against a BPI estimate that 15 million people regularly copy music from records) and the scheme, at that level of coverage, was expensive to administer, so it gradually became clear that the record industry could no longer continue with it and the licence was dropped. Thus, the present situation has arisen whereby in the absence of a licence, a person either does not record or he breaks the law.

For a while, the record industry was hoping to be able to solve the problem technically, using a spoiler system, but until recently the problem was always that although spoilers are technically and theoretically possible, they do not work in practice[45]. The system has worked under controlled conditions but not otherwise[46]. One idea by Magic Alex Mardas and the Apple record company in 1967-8 involved putting an ultrasonic whistle over the music on the record, which would be too high-pitched to be heard on normal replay but would react with the ultrasonic bias signal in tape recorders giving a lower pitched, audible whistle spoiling the recording. However, no standard frequency for tape

recorder bias exists and success relies on matching spoiler and bias signals - so there would have to be a high pitched whistle for each type of tape recorder[47]. A variation is to have several ultrasonic tones beating with each other on the tape but this is more likely to happen in the record player's amplifier, causing distortion[48]. Apparently, it is very difficult technically to record and reproduce a signal at a frequency high enough not to be heard for normal listening[49]. Another solution was to put a small permanent magnet in the record material, under the label, for example, to produce very low frequency signals in a magnetic pickup or to cut a low frequency wave in the groove, the idea being that such a low frequency cannot be heard during normal listening but will overload the tape and upset any automatic level control circuits in the tape recorder. The problem here is that normal sound reproduction will be distorted and automatic level control does not operate in all recorders[50]. In any case, spoilers are easily filtered out by the home taper, so not long after a spoiler was developed, anti-spoilers would be available to add to existing recorders and as part of new recorders[51]. This is why the Green Paper says that if a successful spoiler is developed, it will consider introducing legislation to make anti-spoiler devices illegal. Fox[52] notes that the advent of digital recording is not the solution to the problem since every piece of digital reproduction equipment has to have a digital-to analogue converter because the human ear can only hear analogue sound and it is after such conversion that illegal copying

occurs[53]. Recently, the CBS Technology Center in the US has developed a spoiler system which, everyone seems to agree, has more chance of success than most, the Financial Times reports[54]. The device is a microchip, which apparently will cost less than £1 in bulk but the problem is that it has to be built into a tape recorder. It works by cutting out a narrow notch of sound from the recorded or broadcast signal and a sensor in the tape recorder detects when there is a notch and switches the tape recorder off[55]. The system may also be applicable in the video industry[56]. Technically, it would seem the spoiler works very well and record company executives are apparently very impressed with it but it[57] would have to be phased in gradually because of the great number of recorders already in circulation. One would have to obtain legislation to force manufacturers to use the device, the chances of which are rather slim[58]. The situation is likely to arise of two sets of systems - one containing the device, the other not containing it - so that the market for old hi-fi's (without the spoiler) will expand and there will be an increase in the value of old hi-fi's. People may keep their old systems for longer, have them repaired rather than replaced if something goes wrong, and not buy new systems. Because of the long-term nature of the solution, the record industry is still talking of a levy in the meantime[59]. The Financial Times article[60] also quotes Charles Levison, Managing Director of WEA Records, as saying that this solution would also be politically less popular because you are stopping people doing what they can and want to do and

that he would prefer people to be able to pay for the right to record rather than be prevented from doing so. A person might be less inclined to own a cassette recorder if he could not tape his own records which would mean the record industry being in even more trouble especially since the cassette market is a growth area. A spoiler system would have had a much better chance of success in the 1970s before cassette recorder sales boomed.

Meanwhile, the record industry has been trying various marketing devices to boost sales of recorded cassettes and attract people away from the blank tape sector. A campaign was started with the slogan "Home Taping is Killing Music. And it's illegal". There was a considerable amount of controversy when Island Records launched its One Plus One tape series involving a high quality recorded cassette on one side and blank tape on the other at a price of only £3.99. The BPI severely censured Island, regarding it as an encouragement to home taping and the scheme was dropped. Island maintained, however, that it was only intended to boost cassette sales and was in line with the current market because more tape recorders were being bought than hi-fi's. It was hoped that it would take sales away from the blank tape market - it had the advantage that the record companies got the money not the blank tape manufacturers. Similar devices to boost cassette sales have included the 2 in 1 series - two albums by the same artist for the price of one on one cassette - and putting extra tracks on the

cassette versions of records which do not appear on the record. It has also been possible to buy packages containing both the album and cassette versions of a record and cassingles containing a few tracks on a cassette costing less than a cassette but more than a single. On a more general note, record companies are now moving into video as well, which seems to have come as something of a godsend, representing as it does a major new market for them. The video is now one of the major form of promotion for artists.

As to record rental, the IFPI suggests that the only realistic solution is national legislation to introduce a distribution right for the producer which is not exhausted on first sale and covers rental afterwards. The IFPI has also looked at commercial contractual solutions to the problem but rejects them. If the producer insisted that the retailer include a ban on rental in his sales contracts with other buyers and that the records contained a notice to the effect "for sale only", the producer could not enforce the contract against the third party (because of privity of contract) and he would have no recourse to the retailer he first sold to if he had fulfilled his contractual obligations. There is always the problem of infringement of anti-trust law. If a producer sells directly to retailers, he can enforce a contractual ban on rental but if there are intermediaries and a chain of contracts the producer cannot enforce such a ban against dealers who have signed subsequent contracts (only against a contract he has actually signed and entered into). Or, the

producer might lease records to retailers for a specific period of time (renewable) granting them a licence to rent records to the public subject to payment of a flat rate fee, after which the retailer could run his business as he liked and keep any profits he made, subject to conditions which might be imposed by the producer, such as rental price. This would allow the producer to share rental income without stopping rentals. The producer would keep all exclusive rights, including the distribution right, in his records so that unauthorised sales or rentals by retailers or buyers would infringe copyright. Alternatively, the producer could sell or lease records to retailers for a fixed percentage of income from each rental transaction, although the IFPI notes that this would be an adminstratively complex system and difficult to control. An alternative would be for the producer to sell records to retailers for a higher price, including an amount instead of rental earnings, but the problem here is that the extra return per record sold might not compensate the producer for the fall in the amounts sold which might result from the higher price. All these approaches, however, could not work without the introduction of a distribution right not exhausted after first sale. The IFPI, however, notes that the last three solutions cannot be adopted without the record industry abandoning its traditional policy of marketing by sales only. Nor would such leasing schemes prevent rental or boost falling sales figures and the IFPI does not regard them as long term solutions. It favours legislation.

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THE MANAGEMENT OF CHANGE

& COPYRIGHT

PART III

COPYRIGHT COLLECTING SOCIETIES

INTRODUCTION TO PART III - COPYRIGHT COLLECTING SOCIETIES

The following three chapters deal with the three established copyright collecting societies which operate in the field of music in the UK - the Performing Right Society, the largest, which generally deals with the public performance, broadcasting and cable diffusion rights in musical compositions, the Mechanical-Copyright Protection Society, which deals with the recording and re-recording of musical compositions and Phonographic Performance Limited, which deals with the public performance and broadcasting of sound recordings. These have been chosen because they have been in existence for quite some time, so they have a great deal of experience and expertise in the field. Their methods of operation are therefore likely to be fairly typical of this kind of organisation, although MCPS does differ quite significantly from the other two societies. Other societies do exist, such as the Publishers' Licensing Society and the Authors Lending and Copyright Society Limited, mentioned earlier, but these are of recent origin.

Dietz[1] notes that "both the Commission of the European Communities and the European Court of Justice have acknowledged the de facto dependence of authors on the collecting societies operating in their areas" since only by joining together in collecting societies can authors effectively exploit their copyrights and receive the reward for the fruit of their labours . With advancing technology

the number of collecting societies is likely to grow. A property right approach may be used to explain the development of the copyright system and collecting societies. Before the introduction of printing into England by Caxton in 1476, piracy of intellectual works was not really a problem because it was a long and costly process and the market was very limited. With the advent of printing, however, copying became easier, demand for literary works in particular rose and a business developed to meet this demand. The property rights school[2] notes that individuals or groups will attempt to exclude others from exploiting an existing good whenever they believe it is to their advantage to do so, when the benefits they expect to derive from excluding others and staking a claim to the good exceed the costs they expect to have to meet to define, negotiate, police and enforce the claim. The exclusion of others from access to a good requires the specification or alteration of property rights in that good - and this is usually done through the legal system. The present system of property rights is thus changed by new rights being created and old ones being altered because certain individuals or groups find it profitable to do this and they are prepared to accept the costs of doing so. Investment of resources in the establishment and protection of property rights will depend on the marginal cost and marginal benefit of doing so. The benefits derived from definition and enforcement activity depend on the value of the good and the extent to which it enables the owner to appropriate the true value of the good.

If there is an increase in the market value of a bundle of property rights, this will encourage individuals and groups to strive for laws to strengthen or create private property rights. Group action to deal with new cost-benefit combinations may occur where there are economies of scale in collective action, although here there is the problem of the free rider, where everybody sits back and waits for someone else to act, and of the costs of forming the group in the first place. Demsetz[3] views the situation in terms of externalities - property rights arise because new or different beneficial and harmful effects develop. Property rights develop to internalise externalities when the gains from this exceed the costs. New property rights develop because of changes to which old property rights are poorly attuned. The nature of some goods may make creation, definition and enforcement of property rights difficult, however. With the development of printing the cost-benefit structure changed because costs were reduced, the market grew and demand increased. The benefits of obtaining new property rights grew and those concerned tried to appropriate the true worth of the goods concerned. It was the stationers, publishers and printers who pressed for new rights, not the authors, since they had more to gain from their introduction. In addition, writing is, by its very nature, a decentralised process and authors rarely had a chance to meet together to exert any pressure, especially before the advent of mass communication - the costs would have far exceeded the benefits. Authors were not organised and had no unifying

cause. The development of mass communications cut down the costs and enabled authors to meet together to press their claims. In any case, authors have always been reluctant to organise themselves. Publishers, on the other hand, had a unifying factor - they were in business, which made it relatively easy for them to put forward their claims. Attitudes have also changed - it has gradually come to be accepted that authors should be paid by those who enjoy their works and that they should be able to bequeath a valuable asset to their heirs. Similarly, declining sheet music sales, advancing technology and related factors changed cost-benefit structures in the music field. One of the noticeable features of the twentieth century in the copyright field has been the creation of specialised pressure groups in greater and greater numbers to protect copyright owners' interests in response to changing technology. The copyright system may also be looked at as an attempt to internalise an externality since without such a system and without collecting societies, authors would be providing a service, providing the community with a benefit, for which the vast majority would not receive payment. The main reason for the development of these externalities is copying technology. When a person buys a book or a record or a music or video cassette, the author receives a royalty - he provides a benefit to the public for which he receives a payment in the form of a royalty. An externality which would exist without the copyright system is internalised. However, modern technology has thrown up new externalities, which have not

yet been internalised, as we saw in Section II. When a person copies something, the copyright owner provides him with a benefit for which he receives no reward in many cases. The same goes for public performances.

A further aspect of the problem is that of transactions costs. Private and social costs and benefits develop because of high transactions costs or because legal restraints have been placed on the use and exchange of resources. If there is to be a market transaction, one must find out who to deal with, tell people that you want to deal and the terms of the deal, negotiate, draw up a contract, police and enforce the contract. This is likely to be costly and may prevent many transactions which would take place if such costs were zero. The collecting societies reduce such transactions costs and perform a function which would be virtually impossible without them. An individual music copyright owner would not be able to collect the royalties due to him for public performance of his works because of the great number of times works are performed even in a day or the large number of establishments in which public performance of musical works occurs. Nor would it be possible for an individual music user to search out and negotiate with each copyright owner each time he wanted to use a copyright work. It would be impossible to collect such royalties for overseas performances, too. An author of a book or play can control his copyright relatively easily and make sure he receives the royalties due to him through his publisher or agent but in

the music field individual transactions would be prohibitively costly and troublesome. Collecting societies represent a central agency through which licences can be negotiated and royalties paid. As Whale[4] notes, such collective licensing may be of two types - blanket, under which one licence from the society enables the holder to use any of the works controlled by the society (which represents a vast repertoire and also includes overseas works through reciprocal representation contracts between national societies), and centralised licensing where the society acts as a central clearing house. PRS and PPL engage in blanket licensing whereas MCPS has a mixture of both. Such collective action reduces costs enormously and enables societies to take advantage of economies of scale. Blanket licensing also greatly cuts down the costs for promoters of public entertainment and owners of clubs, pubs and the like since one licence for each establishment is required by the owner of the premises to cover public performance of musical works and a licence is not required for each individual work. The owners of the premises know what is expected of them, where to get in touch with copyright owners, how much they have to pay, and to whom they have to pay it. To be most effective, however, such licensing requires as many copyright owners as possible (all if possible) to join so that as many works as possible are covered, thus ensuring that when a user wants to use a work, it will be covered by the licence issued. Only partial coverage will be much less attractive to a user. The problem is that such blanket licensing leads to the

development of a 'super monopoly'. Collecting societies also give members as a group more 'clout' and a better bargaining position as well as making for more effective lobbying of Governments. Such societies enable copyright owners to receive income they probably would not get and enforce copyrights which might normally be unenforceable. Collecting societies would thus seem to fit in with Coase's concept of the firm[5] - they are formed to reduce transactions costs, they have developed because they remove or reduce certain negotiation costs and costs of discovering the relevant parties, they replace a market transaction with an administrative one. The number of parties involved is greatly reduced, especially since the trend is towards users forming their own central negotiating bodies (countervailing power). Without collecting societies, it would also be very easy to evade the legal obligation - there would be an enforcement and policing problem. Of course, there are costs of performing even a centralised collecting operation but in comparison with what would otherwise be the case, these costs are very low (although the collecting societies may be subject to criticism even on this score). As we have seen, in some areas such as reprography, rights are unenforceable because of advancing technology but even here the roots of a centralised collecting system have sprung up. The costs of trying to police or enforce such rights individually would be astronomical. Much of the subject matter of copyright has the characteristics of a common property resource, a public good. For an author to derive income from his work he has to

make it public, but once it has been made public it is impossible to exclude people, to prevent them using it, which makes it very susceptible to piracy, copying and plagiarism. In addition, once one person has consumed it, it does not prevent others from consuming it too. Thus, there are problems of over-use and exploitation. If copying of works severely reduces the market, the foundation on which copying takes place - the material - may be severely reduced. If photocopying makes publication of books uneconomic, books will not be published. Public goods do not allow non-purchasers to be excluded because of high costs of policing, enforcement and negotiation. Because a number of the rights given to copyright owners are unenforceable, others may appropriate part of the copyright owner's potential income which may reduce the incentive to invest resources in producing copyright works and distort price signals, although the potential revenue to be earned may be enough to provide some leeway. A person who copies copyright works imposes external costs on others which are not taken into account in deciding whether to copy or not. These costs take the form of increased prices for copyright works. Too much copying may take place because some of the cost of copying is borne by others. One cannot bring the full expected benefits and costs of future benefits to bear on current users. The claims of the present generation are not given enough weight economically speaking. If there were better or more enforcement devices, if fines for illegal piracy were greatly increased, it might allow the author to

appropriate more of the value of his work and we would expect investment to rise.

There has been a lot of discussion of the need for collecting societies to be monopolies to perform effectively - that they have to control virtually all works in a particular field, thereby eliminating competition. Blanket licensing would not work otherwise. Even where there are a large number of collecting societies, as in France, each society operates in a limited area and has a monopoly in that field, so that there is effectively no competition in that area. The other side of the coin is one or a few societies operating in a number of different copyright fields, as in Italy[6]. One must remember, though, that the monopoly is not total since there is competition from public domain works and where a number of collecting societies confront a user, one would expect revenue paid to one society to be affected by revenue paid to the others. In Italy, the monopoly position enjoyed by the collecting society SIAE is even conferred by legislation[7]. Reservations were expressed by the European Commission in the GEMA case about this monopoly position, although Mr. Freegard at PRS suggested that the European Commission was in favour of one massive central European collecting society. Dietz notes, however, that competing collecting societies would only operate to the detriment of all parties, especially authors since users would be able to play each society off against the others. Users could also claim in cases of infringement that they had not used the repertoire of the

society bringing the action which would mean the society having to provide proof which would present difficulties, introduce time delays and put up administration costs. In addition, the organiser of public performances might be reluctant to pay a number of lump sum fees for the repertoires of the different collecting societies if he did not know beforehand that he was going to use works from all the repertoires. The user would have to hold a licence from each society to be on the safe side, which would probably cost him more than at present. The process of enforcing copyright would become much more complex and administration costs would inevitably rise. Authors would receive less money. A number of ways exist of getting round abuses of monopoly power - for example, laying down explicit rules governing collecting societies or setting up special tribunals to oversee their operations. As regards the applicability of Articles 85 (restrictions on competition) and 86 (abuse of a dominant position) of the Treaty of Rome to copyright, particularly the collecting societies, it would seem that mere reliance on copyright is not an infringement, only actions and agreements are - there is a difference between existence and exercise of rights[8]. Dietz[9] maintains that copyright may be exempt on the grounds of 'promotion of cultural progress', an analogy to the exemption under Article 85(3) of 'promoting technical or economic progress'. He also thinks that authors are not entrepreneurs but intellectual workers and thus their associations, when making agreements with associations of exploiters of their works, are

associations of workers not entrepreneurs and do not breach anti-trust law. Such agreements are similar to collective bargaining under labour law, he says. Only at the level of the exploiters of the work can cartel and competition policy be applicable. Dietz views collecting societies as similar (but not identical) to trades unions, a belief given weight by the social dimension of copyright on the Continent, where part of revenue is used to benefit authors generally rather than individually. The UK collecting societies, however, do not seem to regard themselves as trades unions. Moreover, music publishers are as involved in the collecting societies as composers.

In the U.S.[10], there is competition between the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music Incorporated (BMI). ASCAP was set up in 1914 as a voluntary unincorporated non-profit making association and gradually developed to deal with public performance and broadcasting of copyright musical works (there is no performing right in records in the US). However, in 1940, the National Association of Broadcasters decided to boycott ASCAP music and use public domain works and new works specifically composed for the broadcasters which would not enter the ASCAP repertoire. This followed a change from a lump sum royalty for broadcasters to a percentage of revenue formula. BMI was set up but was not expected to succeed because ASCAP had an effective monopoly. BMI prospered, though, because it found composers who did not belong to

ASCAP but who wrote music to which people wanted to listen, although its repertoire is smaller than ASCAP and its revenue only about half of ASCAP's. Both BMI and ASCAP are subject to a consent decree under anti-trust legislation. A composer is not allowed to belong to both societies. A further society in the US is SESAC Incorporated which is a private licensing company owned by one family, representing a number of music publishers who have given it control of their repertoires and it engages in other revenue-producing activities besides collection of royalties. The Harry Fox Office collects mechanical copyright royalties in the US. Thus, we can see that the system of collecting societies in the US differs somewhat from that in the UK.

The following three chapters will attempt to provide a detailed picture of how the collecting society system operates in the UK.

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CHAPTER 4

THE PERFORMING RIGHT SOCIETY

The foreword to the 1983-84 Performing Right Yearbook describes the Performing Right Society (PRS) as "an association of composers, authors and publishers of musical works" and says that its main function is "to do collectively for its members something that they cannot effectively do as individual writers or publishers - that is to administer for their benefit the non-dramatic performing and broadcasting rights in their copyright musical works" since "for the composer of songs and other musical works, which may be used publicly thousands of times daily throughout the World, it would be intolerably troublesome and costly, if not wholly impracticable, if those needing permission to perform his work had to trace and approach him - or even his publisher - on each occasion". An individual composer could not take advantage of, or enforce, his copyright properly without the collective administration organisations such as PRS (PPL and MCPS) provide. PRS' main objective is to collect for its members the maximum possible amount of income from the public exploitation of their works - that is, for the public performance and broadcasting of their works[1]. It also deals with the diffusion right, although this is usually subsumed under the broadcasting right and this area of its operations is likely to grow greatly in the next few years after the Government's announcement that it intends allowing a

large-scale expansion of the cable system in the UK. The second objective, and a natural adjunct to the first, is to distribute the money collected as accurately as possible within the constraints of what is 'economically viable'[2].

It is very difficult to pin down the exact nature of PRS since it regards itself as neither totally a service nor totally a business (and this goes for all the collecting societies); it is, as lawyers say, "sui generis", one on its own. It is in business in that it is attempting to maximise income but it is not like an ordinary business. Nor is it just a service. It is a hybrid. Nor is it really similar to a trade union, this being an opinion put forward by Dietz. (See Introduction to Part III). The collecting societies in the UK do try to maintain and improve the standard of living of their members and have characteristics akin to trades unions but this does not make them trades unions. In fact, PRS' members are almost the equivalent of employers and pay PRS employees through the money PRS takes out of the revenue it collects as administration expenses. Some of the Continental societies are more like trades unions and it was thought that Dietz's views spring from the fact that a number of those, especially the French ones, tend to emphasise their professional functions, such as providing services to members, which are largely supplementary to their main task of collecting as much money as possible for members. The equivalent French society carries out many of the functions performed by composers' guilds and unions in other

countries[3]. Such other functions and services are marginal in the PRS set-up. It is really a matter of emphasis. Thus, although the collecting societies look after and monitor the interests of their members and one might regard negotiation between them and bodies representing user groups as the equivalent of a collective bargaining situation or a situation of bilateral monopoly with two large power groups confronting each other, this is not really enough to suggest that they are composers' trades unions.

History

There is a good deal written about PRS's history, so I shall only mention some of (what I regard as) the more important events[4]. PRS was registered as a company limited by guarantee on March 6, 1914 helped by the British agency of the French collecting society, SACEM, which was the first society in the World to collect performance royalties for musical works, having been set up in Paris in 1851. There were originally 39 members of PRS. The support of publisher members made its establishment possible since they supplied the finance, although they would only allow PRS an agency function at first so it could not sue in its own name. At first, there were many problems and the outbreak of World War I did not help. Initially, PRS controlled only a small proportion of musical works in the UK, although it signed reciprocal agreements with societies in France, Italy, Germany and Austria, which enabled it to take advantage of

economies of scale in its licensing activities. PRS' tariffs were very low at first, almost nominal, because it was desperate to be accepted and it was felt that rates could be increased to more realistic levels when PRS was more popular. The first distribution was in 1917 involving about £11,000 to a membership which had swollen to 297. There was a major set-back in 1919 when a large group of publishers who specialised in new popular dance music left (as well as their authors and composers) because they did not think PRS was of much use to them, thinking that sheet music would always provide sufficient income for them and that by allowing free performance without the need for royalties it advertised their works and thus affected sales of sheet music. Another factor in the decision was opposition from the Musicians' Union which feared that PRS' activities would adversely affect its members' employment opportunities, a fear compounded by the fact that PRS had initially suggested basing its tariffs on the number of musicians employed. Eventually, when sales of records decimated sales of sheet music and broadcasting grew, they were forced to re-join in 1926. Music users were also opposed to PRS with trade organisations joining together in this opposition and lobbying Parliament. In addition, in 1919, the British Music Union tried to undermine PRS by publishing ""free music", music which was either in the public domain or in which the performing right was not enforced, although it was not very successful in its campaign.

Up until about 1970, PRS also had to engage in a greal deal of litigation and court cases because its demands were just ignored in many cases. Technological change with the development of broadcasting and reductions in the price of gramophones and records made the performing right more and more important. PRS' first infringement action was apparently PRS V Thompson in the King's Bench Division on 10 April 1918. PRS has had to fight a number of cases in its history about whether it is a trade union and whether it operates in restraint of trade - fortunately for PRS, the answer has always been negative. In its early days, PRS was also somewhat restricted in the actions it could take because there was some doubt about whether it could sue in its own name unless there was very clear evidence of assignment. It also won a number of cases whereby the occupiers of halls at which copyright was infringed by bands who played there were found to have authorised such infringements. 1923 saw the first licence issued to the BBC and McFarlane notes that this early acceptance of the idea of a performing right in broadcasting made PRS' survival more likely. Meanwhile, PRS increased greatly the number of affiliation contracts it had with sister societies in other countries, so it had a much larger repertoire to offer music users, and it set up agencies abroad where there were no national societies, especially in the Dominions and colonies. The cinema produced another large source of income for composers, broadcasting another. In 1927, a number of music users, the Musicians Union and some gramophone companies set up the

International Council of Music Users Ltd, which tried unsuccessfully to obtain bulk discounts on PRS tariffs and then promoted a Private Members Bill in Parliament in 1929, the Musical Copyright Bill, which attempted to nullify the performing right in musical works by making it compulsory for the copyright owner to print a notice on the title page of all musical works which specifically reserved the performing right - he had to 'opt into' the right - and by laying down a maximum fee of 2d for the performing right in musical works payable on purchase, hence its nickname, 'The Tuppenny Bill'. The Bill was turned down by a Select Committee of the House of Commons which gave its seal of approval to PRS, although it thought that a super monopoly such as that PRS had might be subject to abuse. This latter comment had the effect of moderating PRS' policy towards tariffs and negotiations with music users so that its tariffs became even more out of line with those on the Continent. The 1920s and '30s saw a number of cases which established the meaning of "public" performance. Jennings V Stephens (1936), for example, concerned a performance of a play by a dramatic society organised by the local Womens' Institute in a village. There was an annual subscription and at the performance a number of members of the Institute, but no guests other than the performers, were present. It was held that whether there were guests or not, whether admission was free or not, whether the performers were paid or not, whether a person was resident in the village or not and the size of the audience were not the decisive factors. It was held that there had

been a public performance. The cases of Ernest Turner Electrical Instruments Ltd. V PRS and PRS V Gillette Industries Ltd (1943) defined the criteria further. Here, it was held that relaying the BBC's "Music While You Work" radio programmes by loudspeakers to workers in factories and using such background music in places of entertainment was public performance, noting that such performances greatly damaged the commercial value of the copyright. Similarly, in PRS V Hammonds Bradford Brewery Ltd (1934), 3 songs in PRS' repertoire were performed at a cinema with its permission and the performance broadcast by the BBC. A hotel made this performance available to its visitors by means of a wireless set and loudspeaker system. This was held to be a separate pubic performance. The case of PRS V Camelo (1936) carried this concept further by holding that a wireless which was played so loudly in the living room of the leaseholder of premises that it could be heard in the restaurant which his wife operated in the same premises was a public performance even though the intention was not that it should be heard in the restaurant. It was suggested in PRS V Rangers Supporters Club that a private party at a person's home would not be a public performance because it is not going to financially disadvantage the composers since the guests would not normally pay for the privilege. Finally, in PRS V Harlequin Record Shops (1979) it was held that the playing of records in shops over loudspeakers was a public performance and required payment of royalties. Any performance outside the purely domestic circle will be "in public".

Gradually, PRS increased its acceptance by music users and the general public to such an extent that by 1934 it could insist that members fully assign their performing rights to it. By 1939, acceptance by publishers was virtually unanimous. With its many affiliation contracts abroad and its participation in the Confederation Internationale des Societes d'Auteurs et Compositeurs (CISAC), an international association of performing right organisations, PRS was also consulted more and more by the Government on topics related to its area of expertise. After the War, the advent of nationwide television opened up a lucrative new market, followed by developments such as juke boxes, background music, LP and single records, stereo record-players, tape recorders and communications satellites which produced undreamt of revenue for composers and publishers. Another important aspect of PRS' history was investigation of its activities in respect of the monopoly it had in its field. It was looked into by the Select Committee on the Musical Copyright Bill, 1930, and the British delegation at the conference on the Brussels revision of the Berne Convention in 1948 made their acceptance of Article 11 (which gave authors the exclusive right to authorise public performance of their works) subject to the UK Government being able to pass legislation to prevent or deal with abuses of the monopoly rights given to copyright owners. PRS, though, was apparently reassured that this reservation was not entered because of its activities nor because there was any evidence that it had abused its monopoly position. However, problems

arose when PRS tried to increase its tariffs to take account of its cautious early policy, inflation and the new economic conditions, since the increases would have had to be very large to compensate. The mood of resistance to tariff increases by PRS grew ever stronger. One of the problems was that there was no official arbitration tribunal to which disputes could be submitted. A Copyright Committee was appointed in April 1951 to look into the whole copyright question. On the subject of monopoly abuse, it recommended the setting up of an independent arbitration tribunal, which became the Performing Right Tribunal in the 1956 Act. Since then, PRS has gone from strength to strength, culminating in PRS being awarded the Queen's Award to Industry in 1971.

Revenue

PRS collects substantial amounts of money for the public performance and broadcasting of the musical works of its members each year, to such an extent that it is very difficult to criticise it in this respect. Its performance over the years 1971-82 in both money and real terms (allowing for inflation) is shown in diagram 4.1 while Table 4.1 shows the figures for gross revenue in money and real terms as well as increases and percentage increases for the money values.

YEAR	GROSS REVENUE (£)	REAL[b] REVENUE	INCREASE ↑ FALL↓(MONEY TERMS)	% INCREASE↑ FALL↓(MONEY TERMS)
1971	10,624,742[a]	13,280,927	1,497,347 ↑	16.40% ↑
1972	11,447,727[a]	13,357,907	822,985 ↑	7.75% ↑
1973	12,436,840[a]	13,301,433 ↓	975,237 ↑	8.52% ↑
1974	14,456,681[a]	13,324,129	2,019,841 ↑	16.24% ↑
1975	17,180,733[a]	12,745,350 ↓	2,724,052 ↑	18.84% ↑
1976	21,559,596[a]	13,723,485	4,378,863 ↑	25.49% ↑
1977	24,895,226[a]	13,678,695 ↓	3,335,630 ↑	15.47% ↑
1978	28,678,225[a]	14,550,088	3,782,999 ↑	15.20% ↑
1979	33,065,158[a]	14,794,254	4,386,933 ↑	15.30% ↑
1980	39,341,612[a]	14,919,079	6,276,454 ↑	19.00% ↑
1981	46,866,153[a]	15,886,831	7,524,541 ↑	19.13% ↑
1982	54,442,312[a]	16,991,982	7,576,159 ↑	16.17% ↑

TABLE 4.1 PRS GROSS REVENUE REAL & MONEY TERMS

Source: a - PRS REPORT & ACCOUNTS 1971-75, PRS YEARBOOKS 1977-83/4.

b - The real revenue figures are calculated by applying the RPI, which is as follows: 1971 - 80; 1972 - 85.7: 1973 - 93.5; 1974 (Jan 15 = 100)- 108.5; 1975 - 134.8; 1976 - 157.1; 1977 - 182.0; 1978 - 197.1; 1979 - 223.5; 1980 - 263.7; 1981 - 295; 1982 - 320.4.

Thus, we can see that PRS has increased its gross revenue every year in money terms and virtually every year in real terms, the only really disappointing years being 1973, 1975 and 1977. Between 1967 and 1982, money gross revenue rose nearly 700% while real gross income rose about 55%. One must note that the figures for 1981 and 1982 are somewhat out of line with the figures for other years because PRS changed its accounting policy in 1981 - whereas before British and Irish general licence revenue (that is, revenue from public performance) was mainly accounted for in the year in which it was received, it is now accounted for when it is invoiced. The effect of this was to increase income by £1,258,000 in 1981. Thus, whereas before income was brought into the accounts only when received and amounts due and invoiced but not paid and received at the end of the accounting year were largely ignored, now amounts invoiced but unpaid are included - but only insofar as they relate to the year under consideration. PRS Yearbooks note some of the main factors affecting revenue - the effects of inflation on music users' revenues and expenditure resulting in greater revenue for PRS where its tariffs are based on percentages of music user's receipts and expenditure; tariff re-negotiations; index linking of tariffs based on monetary amounts; the development of new outlets for use of PRS members' works, for example, local radio, the increasing popularity of PRS controlled works abroad and changes in exchange rates, as well as emigration abroad of members for tax reasons; improved effectiveness of PRS' licensing activities,

especially in the public performance field, through the employment of more licensing inspectors so that there are fewer unlicensed performances and enforcement is improved.

Administration Costs

Diagram 4.1 shows how administration costs have changed over the period 1971-82 in real and money terms, while Table 4.2 shows the same in table form.

YEAR	ADMINISTRATION COSTS (MONEY TERMS (£)	ADMINISTRATION COSTS (REAL TERMS)[b] (£)	INCREASE ↑ FALL ↓ MONEY TERMS	INCREASE ↑ FALL ↓ PERCENTAGE
1971	1,286,531[a]	1,608,164		
1972	1,371,594[a]	1,600,460 ↓	85,063↑	6.61% ↑
1973	1,546,592[a]	1,654,109	174,998↑	12.76% ↑
1974	2,034,530[a]	1,875,143	487,938↑	31.55% ↑
1975	2,528,282[a]	1,875,580	493,752↑	24.27% ↑
1976	2,934,743	1,868,073 ↓	406,461↑	16.08% ↑
1977	3,403,427[a]	1,870,015	468,684↑	15.97% ↑
1978	4,158,044[a]	2,109,611	754,617↑	22.17% ↑
1979	4,952,265[a]	2,215,779	794,221↑	19.10% ↑
1980	6,374,733[a]	2,417,419	1,422,468↑	28.72% ↑
1981	8,229,044[a]	2,789,506	1,854,311↑	29.09% ↑
1982	9,527,831[a]	2,973,730	1,298,787↑	15.78% ↑

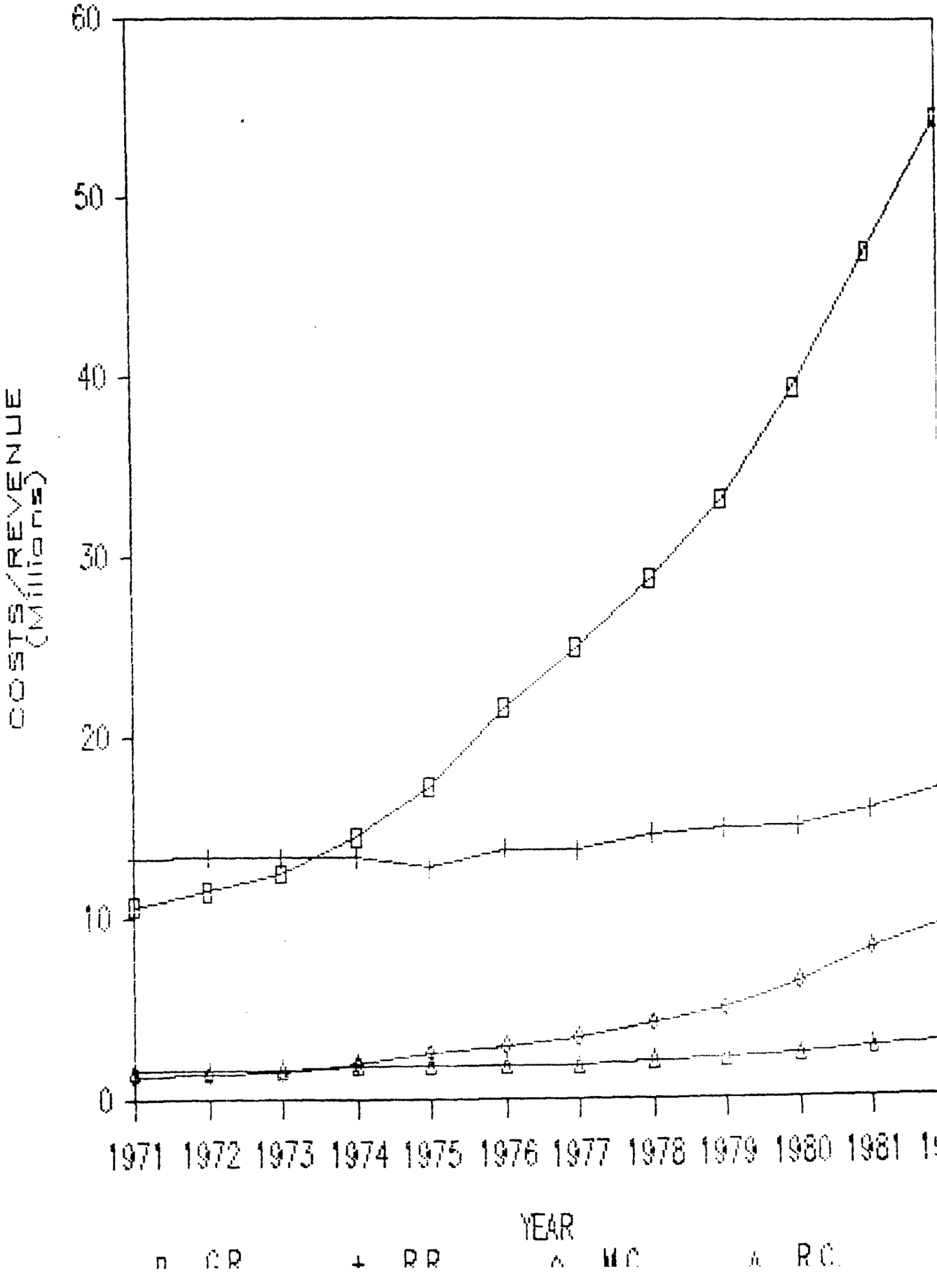
TABLE 4.2 PRS ADMINISTRATION COSTS MONEY & REAL TERMS

Source: a = as Table 4.1. b - calculated as in Table 4.1.

DIAGRAM 4.1 PRS GROSS REVENUE & ADMINISTRATION COSTS, MONEY & REAL TERMS

G.R. = GROSS REVENUE; RR = REAL REVENUE; MC = MONEY COSTS; RC = REAL COSTS

Source: Tables 4.1 and 4.2.



Costs have increased considerably over the period. From 1971 to 1982, costs rose by 640% in money terms, 85% in real terms (as against 41.2% in money terms and 28% in real terms for revenue). Rising costs seem to be a major problem for PRS - they have only fallen twice in real terms over the period, in 1972 and 1976. Cynics might say that PRS' monopoly position is to blame but there are probably a number of other factors as well. Inflation is obviously one factor which affects such costs but the above figures are expressed in real and money terms and costs still rose substantially. As with all the collecting societies, personnel costs represent the largest portion of administration expenses - at present, this percentage is 73% but it has been as high as 76%. PRS says that it has to increase its salaries in line with inflation to compete with other employers. It was noted in interview that PRS hopes to reduce personnel costs through computerisation. The number of staff employed by PRS has generally increased over the years. At present, the figure stands at 698 and one wonders whether PRS might actually be overstaffed or be paying more than it needs to. PRS is presently setting up a fully computerised database and has taken on quite a few temporary staff as a result. A further point to note here is that the cost of the database (£100,000 in 1981 and £212,442 in 1982), does not appear in the figure for administration costs but comes out of PRS' distributable reserves. PRS has had to take on more staff to deal with its increasing workload since it is still expanding. Head Office staff has been increased to "expand and intensify the

Society's efforts to improve its licence coverage...." and as a result of its decision to licence background music systems and juke boxes through site occupiers rather than bulk agreements with suppliers[5]. PRS has also deliberately increased the strength of its licensing field force in recent years in an attempt to improve enforcement and to increase public performance revenue - which seems to have had a certain amount of success. Income has certainly increased considerably over the years but so have costs- in fact, cost increases have outstripped revenue increases. This opens up the possibility of a trade-off between efficiency and effectiveness (do you increase the amount of income collected each year but not worry about the cost - revenue ratio or do you put more emphasis on the cost - revenue ratio and perhaps not collect so much revenue). A further reason for increases in costs arises from the need to process more and more documentation, often of a complex nature, as a result of growing membership and from the fact that a lot of publisher registrations have had to be amended because of recent court cases in the House of Lords and Court of Appeal on reversionary rights - the Redwood Music cases[6] - which has to date led to 10,000 titles or more changing hands[7]. Another factor accounting for the increasing costs experienced by PRS is that the uses of music and new outlets for music that have developed in recent years are more expensive to administer than previous forms of exploitation, based as they are on localised services and "narrowcasting" (as opposed to broadcasting). For example, local radio is churning out a

vast amount of music, hour in, hour out, which has to be processed. These local radio stations are relatively small and they are numerous but the cost of processing one hour's output of music from them is the same as the cost of processing one hour of national radio[8]. The same is likely to be the case with cable television which is soon expected to take off in the UK and which is likely to be very localised with many cable stations. Head Office staff at PRS have also had to be increased to monitor radio and television output to check the veracity of returns sent in by them to PRS, which has effects on costs, too. This has revealed under-reporting, which means more data to analyse in addition to the massive growth of local radio in recent years.

Table 4.3 shows how administration costs have taken up an increasing percentage of gross revenue.

1971	1972	1973	1974	1975	1976
12.11	11.98	12.44	14.07	14.72	13.61
1977	1978	1979	1980	1981	1982
13.67	14.50	14.98	16.20	17.56	17.50

TABLE 4.3 ADMINISTRATION COSTS AS A PERCENTAGE OF GROSS REVENUE

Operational Surplus: Net Distributable Revenue

Operational Surplus is just the surplus of gross revenue over administrative costs. Between 1971 and 1982, operational surplus rose by £35,576,270 in money terms (381%) from £9,338,211 to £44,914,481. This represents an increase in real terms of £2,345,489 or 20.09% from £11,672,763 to £14,018,252. The more important figure, though, is Net Distributable Revenue (NDR) since this is the amount of money which actually goes to the members. NDR is operational surplus minus taxation, donations to musical causes, sponsorship of awards to members and expenses which are not really part of PRS' operational costs. Between 1971-82, NDR rose by about £35,552,268 (387%) in money terms from £9,191,360 to £44,743,628. In real terms, however, the rise was only £2,475,727 (21.5%) from £11,489,200 to £13,964,927. One must be careful, however, in comparing net distributable revenue between years because in the more recent Yearbooks, NDR is operational surplus minus donations, taxation, sponsorship, copyright promotion expenditure, purchase of supplementary pensions and transfers to and from distributable reserves and contributions to the PRS Members' Fund. The earlier Yearbooks exclude the latter two from NDR (and call distributable reserves 'the revenue reserve'). One must also remember that in some years money is taken out of distributable reserves and added to NDR (such as in 1973, 1974, 1978, 1979, 1981 and 1982), while in other years money is taken out of NDR and put into distributable reserves.

Table 4.4. and Diagram 4.2 show how NDR has changed over the period 1971-82.

YEAR	NDR [MONEY TERMS (£)]	NDR [REAL TERMS (£)][b]	INCREASE ↑ FALL ↓ (MONEY TERMS)	INCREASE ↑ FALL ↓ PERCENTAGE
1971	9,191,360[a]	11,489,200		
1972	9,873,009[a]	11,520,430	681,649 ↑	7.42% ↑
1973	10,952,564[a]	11,713,972	1,079,555 ↑	10.93% ↑
1974	12,472,602[a]	11,495,485 ↓	1,520,038 ↑	13.88% ↑
1975	14,573,419[a]	10,811,141 ↓	2,100,817 ↑	16.84% ↑
1976	18,457,990[a]	11,749,197	3,884,571 ↑	26.66% ↑
1977	21,278,417[a]	11,691,437 ↓	2,820,427 ↑	15.28% ↑
1978	24,257,462[a]	12,307,185	2,979,045 ↑	14.00% ↑
1979	27,853,089[a]	12,462,232	3,595,627 ↑	14.82% ↑
1980	32,523,100[a]	12,333,371 ↓	4,670,011 ↑	16.77% ↑
1981	38,502,542[a]	13,051,709	5,979,442 ↑	18.39% ↑
1982	44,743,628[a]	13,964,927	6,241,086 ↑	16.21% ↑

TABLE 4.4 - CHANGES IN NET DISTRIBUTABLE REVENUE, REAL & MONEY TERMS 1971-82

Source: a - PRS REPORTS & ACCOUNTS 1971-75: PRS YEARBOOKS 1977-83/4.

b - Calculated as in Table 4.1.

Thus, we can see that NDR fell in real terms in 1974, 1975 and 1980. Recent years have seen quite large increases in NDR. NDR though, has generally kept pace with inflation and outstripped it in cases. NDR as a percentage of gross revenue has been generally falling over the years from 86.51% in 1971 to 82.19% in 1982, with a peak of 88.07% in 1973. It has fallen in 8 of the last 11 years, although the amount actually paid out has, of course, increased in money terms and generally in real terms.

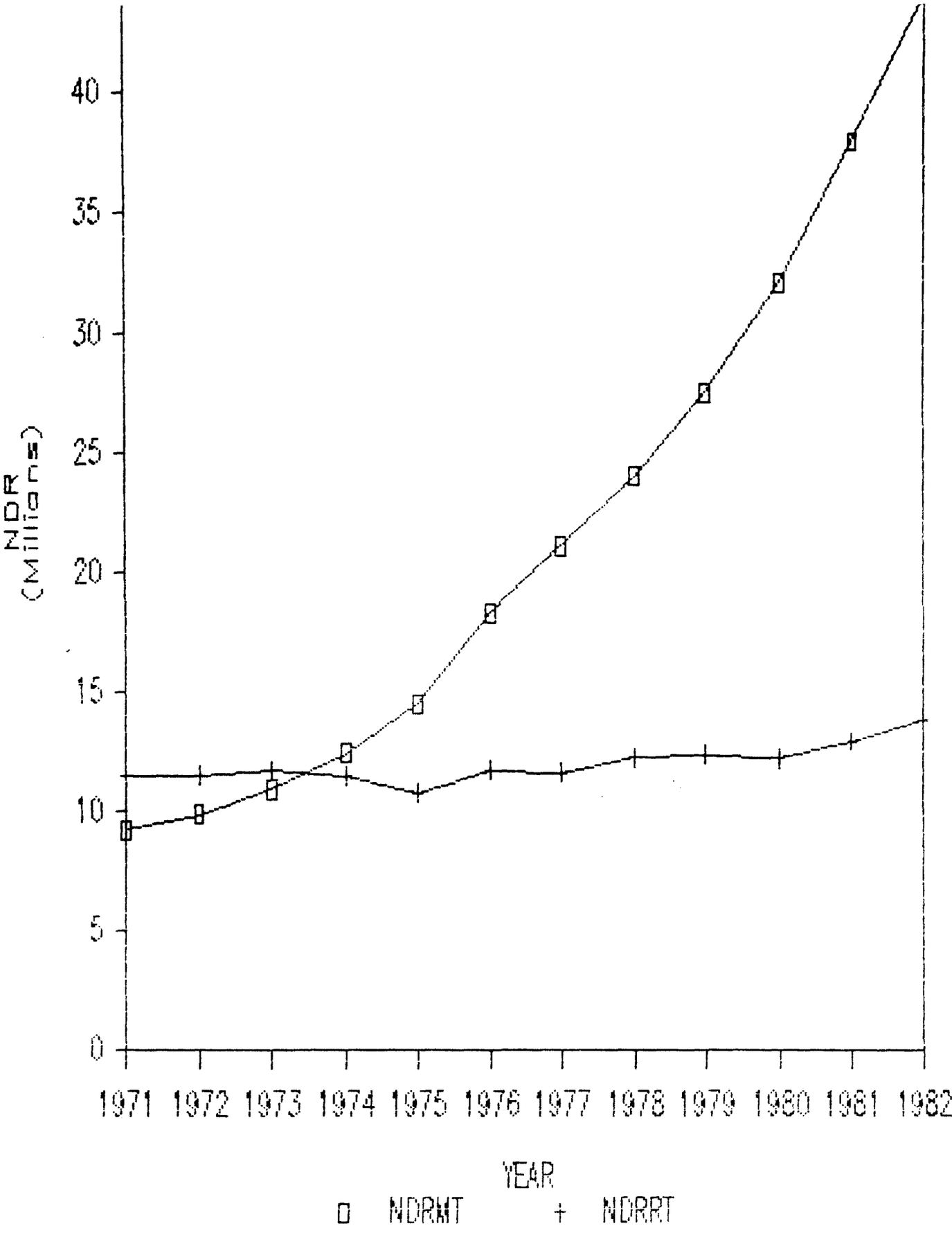


DIAGRAM 4.2 CHANGES IN NDR, MONEY AND REAL TERMS 1971-82

NDRMT = NET DISTRIBUTABLE REVENUE MONEY TERMS

NDRRT = NET DISTRIBUTABLE REVENUE REAL TERMS

Source: Table 4.4.

Sources of Revenue

PRS has five main sources of income - public performance revenue, broadcasting revenue, investment income, income from overseas agencies, mainly Commonwealth, and income from affiliated societies. It was noted in interview[9] that a better measure of performance and efficiency than gross revenue and administration costs as a percentage of gross revenue was domestic revenue (public performance and broadcasting revenue in the UK & Eire) and administration costs as a percentage of domestic revenue on the basis that PRS cannot really control what happens in other countries but it can in its domestic territories. One might also include investment income although I have excluded it because it is not a direct consequence of PRS' main job of work. Figures for public performance and broadcasting revenue are shown in Tables 4.5 and 4.6, and Diagrams 4.3 and 4.4 show public performance, broadcasting and domestic revenue in real and money terms. As we can see, performance in recent years has been very good as regards total domestic revenue, taken in isolation although there was a rather bad period between 1973 and 1975 when this fell each year in real terms. During the period, total domestic revenue rose £30,384,945 (514.31%) in money terms and £3,942,473 (53.39%) in real terms. Tables 4.8 and 4.9 show how public performance and broadcasting costs have changed over the period in real and money terms. Diagrams 4.6. and 4.7 shows how total domestic costs, public performance and broadcasting costs have changed over the

period in graphic form. Total domestic costs have risen by £7,732,881 (727%) in money terms, £1,416,053 (106.52%) in real terms. Thus, the situation has been deteriorating from the point of view of NDR with costs taking up a larger and larger proportion of gross domestic revenue. Similarly, the ratio of domestic costs to domestic revenue shows a deteriorating position whether investment income is included or not. There have been times, such as 1971-2 and 1975-6 when the ratio has been falling but recent years have seen a strong upward trend (since 1977). Table 4.7 shows the ratio over the period. One criticism PRS made of my analysis was that allocations between sectors were judgemental and for the sake of convenience and that they were PRS' own allocations which changed over the years. Where possible I have picked up changes in items included in various areas - for example, the changes in what is included under the heading of "administration expenses" and "NDR" - but this is not possible in all cases. However, since the source of my figures is the Performing Right Yearbook, which is distributed to all members, one would expect the figures to be generally correct. These figures are the only ones available anyway. The problem is apparently most likely to occur in the public performance field, where the figures are more heavily weighted.

YEAR	1971	1972	1973
PUBLIC PERFORMANCE REVENUE (MT)[a]	2,740,777	3,032,721	3,122,900
PUBLIC PERFORMANCE REVENUE (RT)[b]	3,425,971	3,538,764	3,340,000
INCREASE (MT)		291,944	90,179
PERCENTAGE INCREASE		10.65%	2.97%

YEAR	1974	1975	1976
PUBLIC PERFORMANCE REVENUE (MT)[a]	3,250,423	3,773,176	4,675,159
PUBLIC PERFORMANCE REVENUE (RT)[b]	2,995,782	2,799,092	2,975,913
INCREASE (MT)	127,523	522,753	901,983
PERCENTAGE INCREASE	4.08%	16.08%	23.91%

YEAR	1977	1978	1979
PUBLIC PERFORMANCE REVENUE (MT)[a]	5,675,428	7,159,912	8,291,427
PUBLIC PERFORMANCE REVENUE (RT)[b]	3,118,367	3,632,629	3,709,811
INCREASE (MT)	1,000,269	1,484,484	1,131,515
PERCENTAGE INCREASE	21.40%	26.16%	15.80%

YEAR	1980	1981	1982
PUBLIC PERFORMANCE REVENUE (MT)[a]	10,519,986	12,946,815	13,553,904
PUBLIC PERFORMANCE REVENUE (RT)[b]	3,989,377	4,388,751	4,230,307
INCREASE (MT)	2,228,559	2,426,829	607,089
PERCENTAGE INCREASE	26.88%	23.07%	4.69%

TABLE 4.5 CHANGES IN PUBIC PERFORMANCE REVENUE, REAL & MONEY TERMS 1971-82.

Source: a - PRS Reports & Accounts 1971 - 75, PRS Yearbooks 1977-83/4.

b - RT = Real Terms, calculated as in Table 4.1.

YEAR	1971	1972	1973
BROADCASTING REVENUE (MT)[a]	3,167,129	3,548,258	4,011,173
BROADCASTING REVENUE (RT)[b]	3,958,911	4,140,324	4,290,025
INCREASE (MT)		381,129	462,915
PERCENTAGE INCREASE		12.03%	13.05%

YEAR	1974	1975	1976
BROADCASTING REVENUE (MT)[a]	4,722,436	5,947,487	7,301,501
BROADCASTING REVENUE (RT)[b]	4,352,476	4,412,082	4,647,677
INCREASE (MT)	711,263	1,225,051	1,354,014
PERCENTAGE INCREASE	17.73%	25.94%	22.77%

YEAR	1977	1978	1979
BROADCASTING REVENUE (MT)[a]	8,879,265	10,366,092	12,723,935
BROADCASTING REVENUE (RT)[b]	4,878,717	5,259,306	5,693,036
INCREASE (MT)	1,577,764	1,486,827	2,357,843
PERCENTAGE INCREASE	21.61%	16.74%	22.75%

YEAR	1980	1981	1982
BROADCASTING REVENUE (MT)[a]	16,373,579	18,994,875	22,738,947
BROADCASTING REVENUE (RT)[b]	6,209,169	6,438,941	7,097,050
INCREASE (MT)	3,649,644	2,621,296	3,744,072
PERCENTAGE INCREASE	28.68%	16.01%	19.71%

TABLE 4.6 - CHANGES IN BROADCASTING REVENUE, REAL & MONEY TERMS 1971-82

Source: a - PRS Report & Accounts 1971-75, PRS Yearbooks 1977-83/4

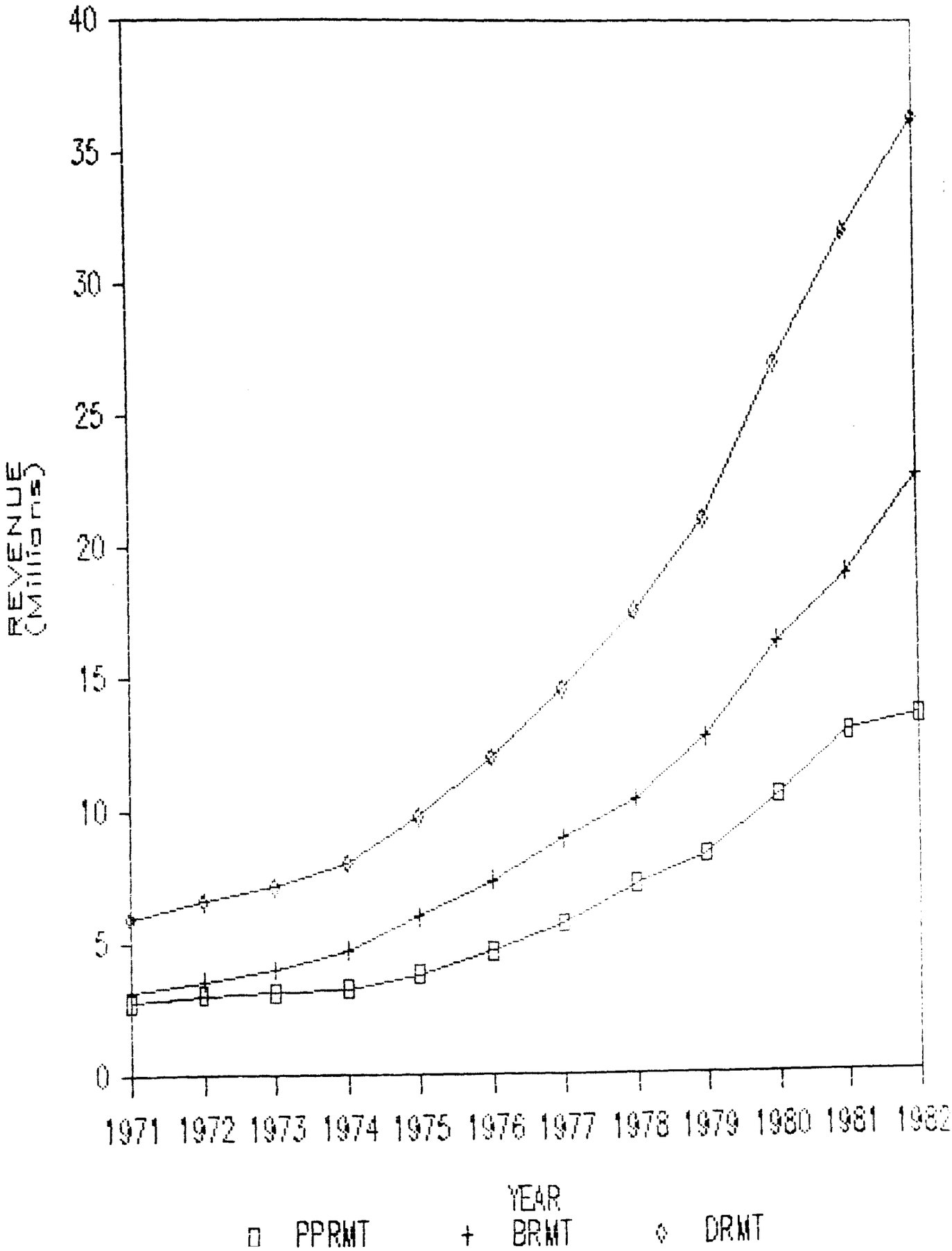
b - RT = Real Terms, calculated as for Table 4.1.

DIAGRAM 4.3 GROSS TOTAL DOMESTIC REVENUE

PUBLIC PERFORMANCE REVENUE, BROADCASTING

REVENUE, MONEY TERMS

PPRMT = PUBLIC PERFORMANCE REVENUE MONEY TERMS; BRMT = BROADCASTING REVENUE MONEY TERMS; DRMT = DOMESTIC REVENUE MONEY TERMS (GROSS TOTAL DOMESTIC REVENUE)
Source: Table 5.5.



1971	18.00
1972	17.17
1973	17.43
1974	20.94
1975	21.25
1976	20.00
1977	19.19
1978	20.14
1979	20.64
1980	21.43
1981	23.96
1982	24.24

TABLE 4.7. TOTAL DOMESTIC COSTS AS A PERCENTAGE OF TOTAL DOMESTIC REVENUE (MONEY TERMS)

YEAR	1971	1972	1973
PUBLIC PERFORMANCE COSTS (MT)[a]	845,271	876,612	952,229
PUBLIC PERFORMANCE COSTS (RT)[b]	1,056,589	1,022,884	1,018,427
INCREASE (MT)		31,341	75,617
PERCENTAGE INCREASE		3.71%	8.63%

YEAR	1974	1975	1976
PUBLIC PERFORMANCE COSTS (MT)[a]	1,291,859	1,589,898	1,801,741
PUBLIC PERFORMANCE COSTS (RT)[b]	1,190,653	1,179,450	1,146,875
INCREASE (MT)	339,630	298,039	211,843
PERCENTAGE INCREASE	35.67%	23.07%	13.32%

YEAR	1977	1978	1979
PUBLIC PERFORMANCE COSTS (MT)[a]	2,047,293	2,645,195	3,222,879
PUBLIC PERFORMANCE COSTS (RT)[b]	1,124,886	1,342,057	1,442,004
INCREASE (MT)	245,552	597,902	577,684
PERCENTAGE INCREASE	13.63%	29.20%	21.84%

YEAR	1980	1981	1982
PUBLIC PERFORMANCE COSTS (MT)[a]	4,189,236	5,485,851	5,950,474
PUBLIC PERFORMANCE COSTS (RT)[b]	1,588,637	1,859,611	1,857,202
INCREASE(MT)	966,357	1,296,615	464,623
PERCENTAGE INCREASE	29.98%	30.95%	8.47%

TABLE 4.8 CHANGES IN PUBLIC PERFORMANCE COSTS, REAL & MONEY TERMS, 1971-82.

Source: a - PRS Reports & Accounts 1971-5, PRS Yearbooks 1977-83-4.

b - Calculated as for Table 4.1.

YEAR	1971	1972	1973
BROADCASTING COSTS (MT)[a]	218,238	253,120	291,323
BROADCASTING COSTS (RT)[b]	272,798	295,356	311,575
INCREASE (MT)		34,882	38,203
PERCENTAGE INCREASE		15.98%	15.09%

YEAR	1974	1975	1976
BROADCASTING COSTS (MT)[a]	377,795	475,799	593,758
BROADCASTING COSTS (RT)[b]	348,198	352,967	377,949
INCREASE (MT)	86,472	98,004	117,959
PERCENTAGE INCREASE	29.68%	25.94%	24.79%

YEAR	1977	1978	1979
BROADCASTING COSTS (MT)[a]	746,036	885,108	1,114,243
BROADCASTING COSTS (RT)[b]	409,910	449,065	498,543
INCREASE (MT)	152,278	139,072	229,135
PERCENTAGE INCREASE	25.65%	18.64%	25.89%

YEAR	1980	1981	1982
BROADCASTING COSTS (MT)[a]	1,573,146	2,166,840	2,845,916
BROADCASTING COSTS (RT)[b]	596,567	734,522	888,238
INCREASE (MT)	458,903	593,694	679,076
PERCENTAGE INCREASE	41.19%	37.74%	31.34%

TABLE 4.9 CHANGES IN BROADCASTING COSTS, REAL AND MONEY TERMS, 1971-82

Source: a - PRS Reports & Accounts 1971-75, PRS Yearbooks 1977-83/4

b - calculated as for Table 4.1

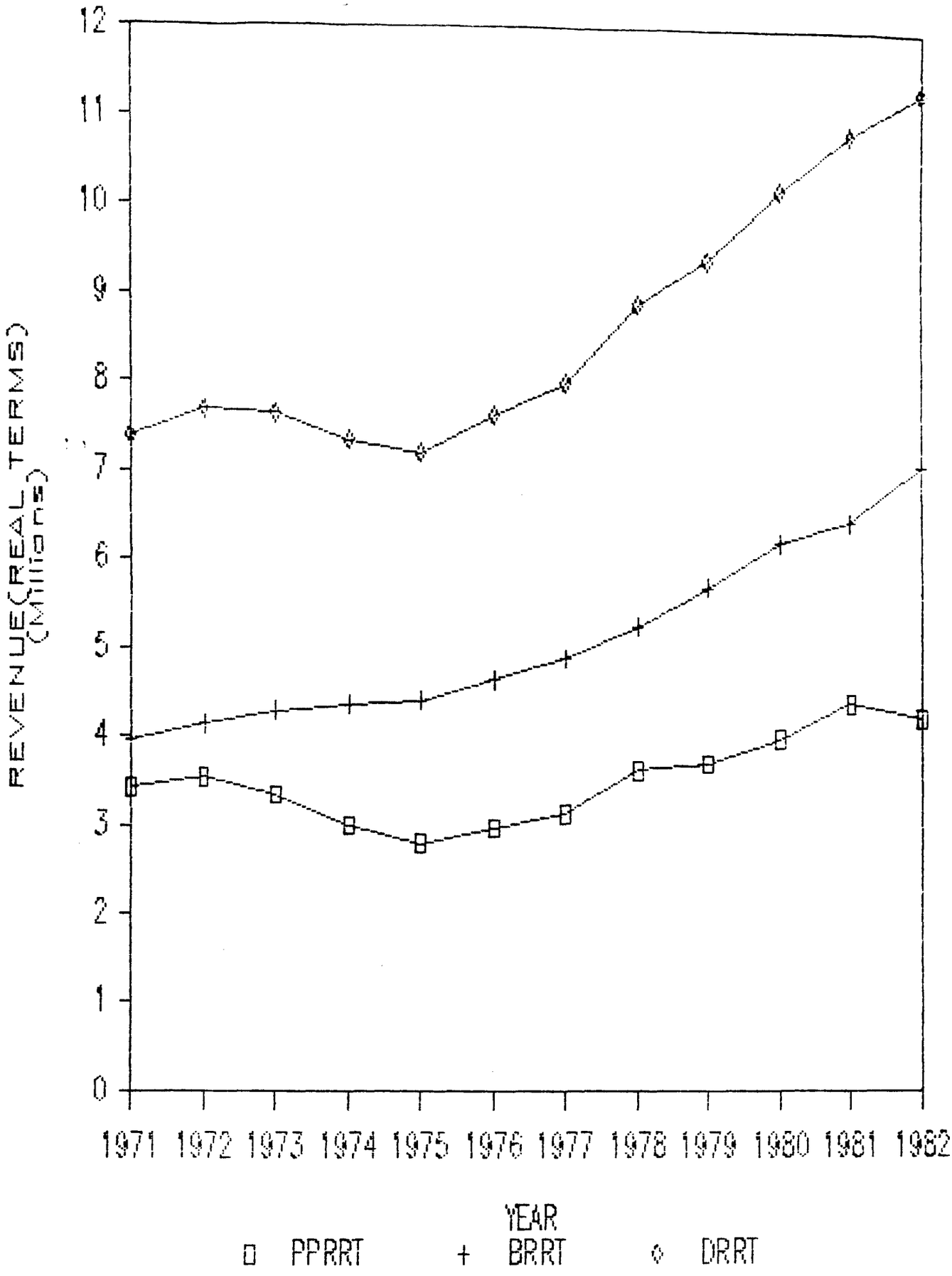


DIAGRAM 4.4. TOTAL DOMESTIC REVENUE, BROADCASTING REVENUE, PUBLIC PERFORMANCE REVENUE, REAL TERMS 1971-82

PPRRT = PUBLIC PERFORMANCE REVENUE REAL TERMS; BRRT = BROADCASTING REVENUE REAL TERMS; DRRT = DOMESTIC REVENUE REAL TERMS (TOTAL DOMESTIC REVENUE REAL TERMS)

Source: Table 4.5

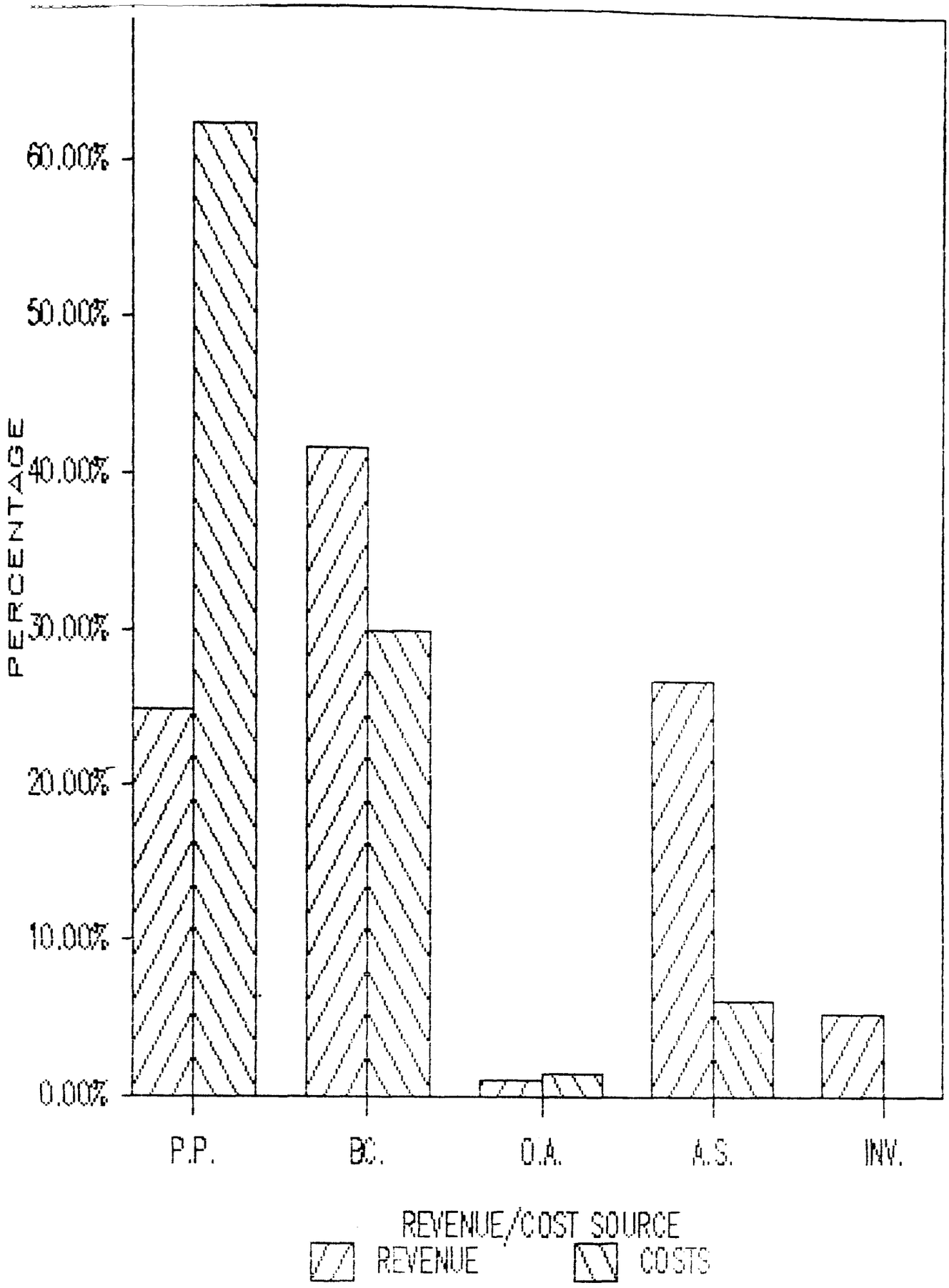


DIAGRAM 4.5 SOURCES OF INCOME: PERCENTAGES OF GROSS REVENUE & GROSS COSTS 1982

PP = PUBLIC PERFORMANCE
BC = BROADCASTING
OA = OVERSEAS AGENCIES
AS = AFFILIATED SOCIETIES
INV = INVESTMENT

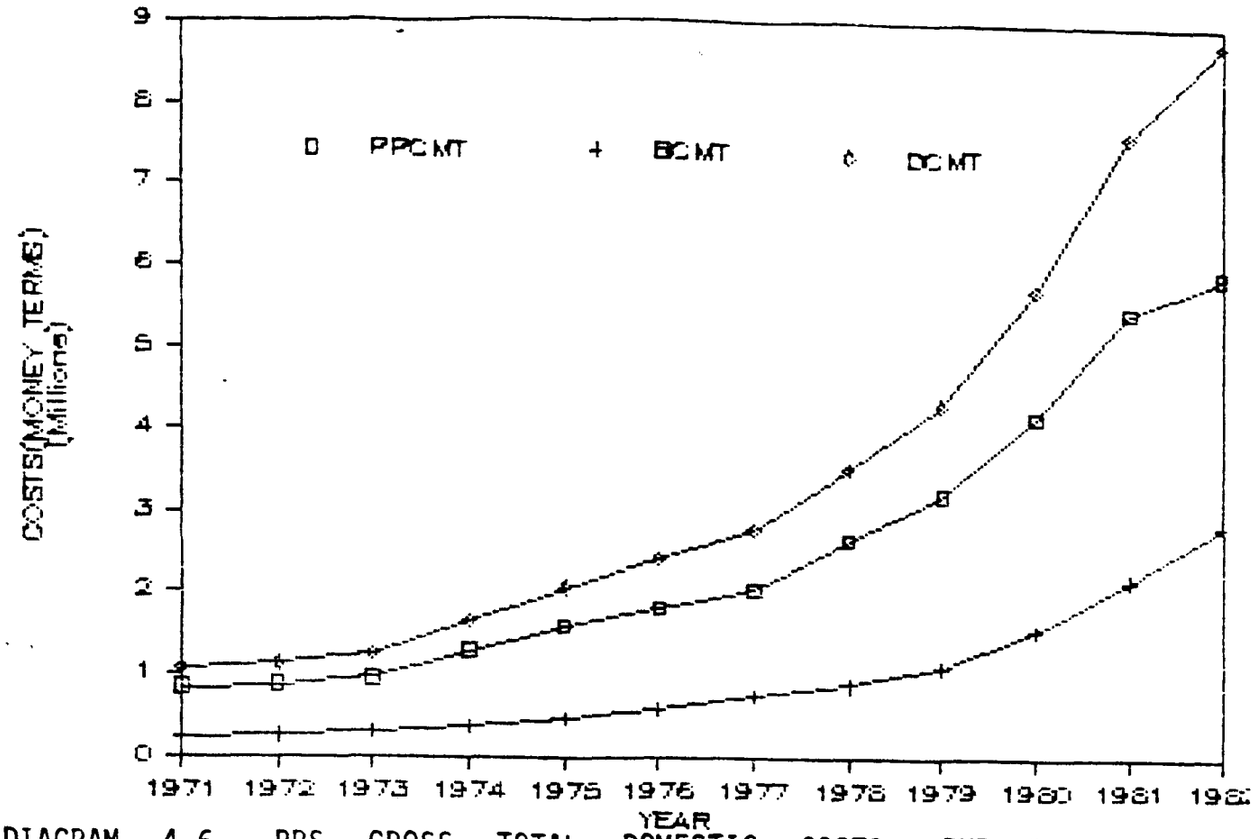


DIAGRAM 4.6. PRS GROSS TOTAL DOMESTIC COSTS, PUBLIC PERFORMANCE COSTS, BROADCASTING COSTS, MONEY TERMS 1971-82
PPCMT = PUBLIC PERFORMANCE COSTS MONEY TERMS; BCMT = BROADCASTING COSTS MONEY TERMS; DCMT = DOMESTIC COSTS MONEY TERMS (GROSS TOTAL DOMESTIC COSTS MONEY TERMS). Source: Table 4.7.

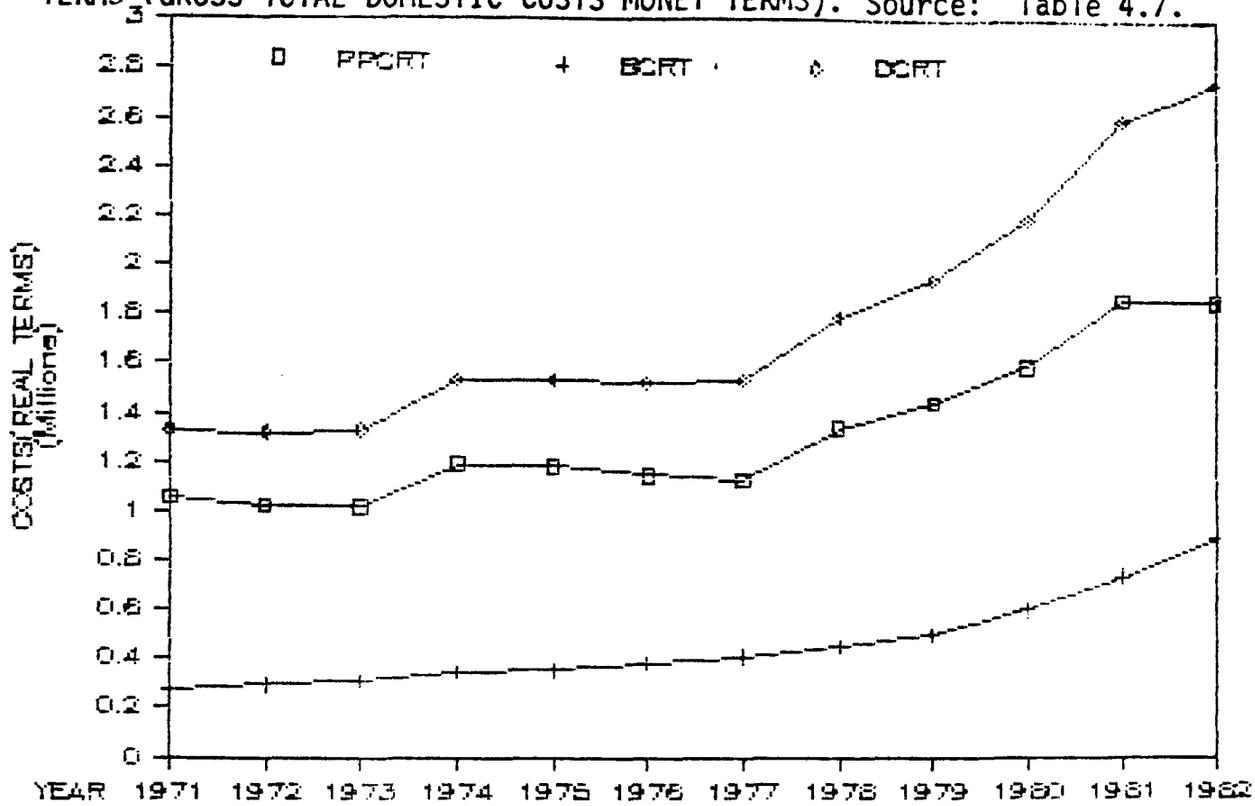


DIAGRAM 4.7 PRS GROSS TOTAL DOMESTIC COSTS, PUBLIC PERFORMANCE COSTS, BROADCASTING COSTS, REAL TERMS 1971-82
PPCRT = PUBLIC PERFORMANCE COSTS REAL TERMS; BCRT = BROADCASTING COSTS REAL TERMS; DCRT = DOMESTIC COSTS REAL TERMS (GROSS TOTAL DOMESTIC COSTS REAL TERMS).
Source: Table 4.7.

Public Performance

Diagram 4.5 illustrates quite well the dilemma PRS faces as regards collection of public performance royalties. Public performance revenue in 1982 represented 24.9% of gross revenue but 62.45% of gross administration costs. Table 4.5 and diagrams 4.3 and 4.4 show a trend of increasing public performance revenue in money terms but a less impressive picture when considered in real terms with drops in 1973, 1974, 1975 and 1982. Over the period, revenue has grown by 394.53% in money terms but only 23.48% in real terms. Costs, on the other hand, have risen 604% in money terms and 75.77% in real terms. In fact, up to 1978, PRS had rather a good record on public performance costs since they fell in real terms every year from 1971 to 1978, except in 1974. The rise in public performance costs was kept to a relatively low 8.47% in 1982. NDR has been up and down over the period reaching a peak of 71.09% in 1972 but falling every year since to reach 56.10% of gross public performance revenue in 1982. The ratio of public performance revenue to gross revenue generally fell over the period 1971-6 (apart from 1972), reaching a low point of 21.68% in 1976. From 1976 until 1981 the ratio increased each year to reach 27.63% in 1981 since public performance revenue increased at a faster rate than gross revenue. In fact, the average growth rate between 1977 and 1981 for public performance revenue was 22.66%. One reason for this was the employment of more licensing inspectors. 1982, however, was a great

disappointment with gross public performance revenue growing only 4.69%, NDR by only 1.9% and the gross revenue/gross public performance ratio falling to 24.90%. Public performance costs as a percentage of public performance revenue reached a peak in 1982 at 43.9%. As a percentage of gross revenue, public performance costs were 10.93% in 1982, having reached 11.71% in 1981. Public performance costs as a percentage of total costs have generally been in the low-mid 60% with the highest ratio being reached at 65.86% in 1981. 1982, however, saw a drop to 62.45%. 1982 seems to have been a bad year for revenue but a pretty good year for keeping costs down.

Public performance royalties are paid when the musical works controlled by PRS are performed in public in all types of establishments under blanket licences. As one would expect, the vast majority of domestic revenue comes from the UK - about 96-97%, with Eire representing about 2-3%. Over the period, Eire revenue increased by £306,171 or 393% in money terms to reach £383,998 in 1982 while UK revenue (excluding the Channel Isles and Isle of Man) rose by 394% to £13,058,001 in 1982, again in money terms. Licences are issued to the owners of the establishments where the performances occur, although until recently most juke boxes and background music installations were licensed to the "operators" who rented them out to the site occupiers. This is one of the main recent developments and means that PRS no longer receives revenue under the title "background music contractors". Previously, PRS had bulk agreements with these

operators so that individual premises and individual juke box renters did not need separate licences from PRS - the contractors negotiated the licences. The reason for this was that at the time the arrangement was made PRS representation through licensing inspectors was thin on the ground and the system was thought to produce administrative savings for PRS. Six or seven years ago, however, PRS decided that it was best to issue licences directly to the site occupiers, as it did with all other music users. This was because PRS was now better organised, having many more licensing inspectors and thus being better able to license directly. In addition, many music makers have more than one method of publicly performing music - for example, a juke box in one bar and a television and/or radio in others. This meant that in many cases there was a duplication of effort for PRS if the premises where the juke box or background music system was installed were already licensed by PRS for these other public performances, resulting in more rather than less administrative work for PRS. PRS had to already license these premises in such cases anyway, so it might just as well take in juke boxes as well. PRS gave notice that it was going to end the bulk licensing system after abortive attempts at negotiating a new agreement with a consortium of the main background music contractors (such as Reditune, Ditchburn and Planned Music). The background music contractors took the case to the PRT, arguing that PRS had to grant it licences. PRS was of the opinion that the PRT had no jurisdiction to hear the case arguing that the background music contractors were not

responsible for the public performances given by their installations - the site occupiers were. Once the equipment is installed, the background music contractors have no control over it and the owner of the premises, not the contractor, performs the music. The contractors did not need licences to perform with their equipment. PRS argued that PRT could only hear cases concerning licences and licensing schemes to perform copyright works not cases concerned with licensing schemes whereby the licensee effectively authorised others to perform works. The contractors argued that copyright involved the right to do any of the restricted acts or authorise others to do so, so that PRT's jurisdiction should cover their authorisation of site occupiers as well. The PRT agreed with the contractors in thinking it had jurisdiction to hear the case but PRS appealed to the High Court which rejected this point of view. PRS thought that to hold otherwise would mean that any middle man, which the contractors were, could go to PRT, demand a licence and make a profit by selling it to individual premises for more than it bought it. (One might also argue that the contractors were not a representative body of music users anyway). The main plank of PRS' argument, though, was that it should be dealing with the person who is legally responsible for obtaining the licence - the site occupier - not the contractor. This new licensing method means that PRS can now integrate it into its other activities, that administration is more efficient and that it now knows exactly which institutions have licences, something which it was not always sure of before because it

had to check details with the contractors. In any case, PRS did not believe that the discounts claimed by the contractors under the bulk licensing scheme could be justified by administrative savings at PRS any more. The change in approach affected 20,000 systems and licensing under the scheme started in March 1979. The 1981 Yearbook notes that in 1978, the last full year in which the contractors were licensed, fees in the UK, Channel Islands and Isle of Man were £483,000 while in 1980 more than £850,000 was collected from site occupiers. Previously, there was a single uniform rate charged per installation whereas now the tariff is charged according to the type of establishment where the background music installation is situated. With effect from July 1981 all juke boxes were similarly directly licensed to site occupiers rather than to juke box operators. One direct consequence of this new policy was that PRS employed more licensing inspectors. The amount of money derived from juke boxes in the UK and Eire has increased from £388,562 in 1975 to £1,746,825 in 1982, an increase of £1,358,263 (350%). In real terms, more is being earned from this source than in 1976 but there were real term falls in 1980 and 1981. Juke boxes brought in about 13% of PRS's public performance revenue in the UK in 1982 (£1,743,857) but only about 1% of Eire public performance revenue, (£2,968 in 1982). It was thus PRS' fourth biggest money earner in the UK in 1982. Video juke boxes are also licensed, the tariff for both types (audio and video) being based on a fee per juke box subject to certain discounts.

Clubs are PRS' biggest money earner at £1,971,299 (15%) in 1982, which has shown a steady increase between 1975-81 lthough there was a fall in 1982. In Eire, this source of revenue was only 0.6% in 1982. The second highest source of revenue in the UK in 1982 was public houses at £1,785,916 (13.6%). This, too, has shown a steady rise over the period 1975-82. This was also the second largest source of revenue in Eire in 1982 at £83,159 (21.6%). Hotels, restaurants and cafes brought in 13.4% of PRS revenue in 1982 (£1,759,826) in the UK, while being the biggest money earner in Eire at 23.5% £90,431). Another important source of income is that from shops and stores at 10.6% in 1982 in the UK (£1,395,288). Previous to January 1976, PRS had waived its right to licence performances of copyright music in retail shops and stores where the performance was intended to demonstrate records, musical instruments, tape recorders and cassettes, radios, television sets and the like, but this was mainly an historical development and was no longer considered to be justified by contemporary circumstances[10]. In December 1975, PRS announced that in future all such performances would have to be licensed when copyright music was publicly performed regardless of the type of good sold and of whether the performance was for the purpose of demonstration to prospective customers. The waiver would continue to apply to performances to individual customers in sound proof booths and over headphones, however. The tariff is based on a fee per square metre of the area in which the music is audible to the public up to a limit of 329 square metres after which a

descending scale applies. This is for performances by mechanical means other than video. The tariff also applies to video and audio - visual performances and there is a fee per year for live performances by staff or customers and a yearly fee per loudspeaker for pavement music. There are also special rates for special shopping weeks. The rates are adjusted every January to take account of changes in the Retail Price Index. The waiver policy was dropped because of fundamental changes in the situation since the policy was adopted - the record industry was in its infancy at that time but now it is large and well established; record and record equipment retailing is organised totally differently today than previously being sold in many different types of shops and along with many other types of goods (for example, note the growth of the multiples like W.H. Smith, Woolworth and Boots) so that it is virtually impossible to distinguish between shops where music is just played for demonstration purposes and those where it has a wider purpose; composers' incomes are subject to severe pressures and it was no longer possible to justify waiving a significant source of income[11]. PRS' decision was met with great resistance at first, but it eventually made a concession in the form of just a nominal fee for live demonstrations of musical instruments[12]. PRS was, however, forced to take the Harlequin chain of record shops to court over the matter - and won. Revenue from this source rose by £1,348,208 (2864%) from 1975 to 1982 to reach £1,395,288. In Eire, too, this source of revenue has grown considerably - by 25,294 (14,131%) from 1976 - 82.

Another phenomenon to note is the spectacular fall off of revenue from commercial dance halls and discotheques between 1981-82 in the UK mainly due to closures apparently. During this period, revenue fell by 77% to £43,884. In Eire, there was a fall of 32% to £58,964. Revenue from dial-a-disc and holiday camps and caravan parks has generally been on a strong upward trend in the UK and that for popular concerts and variety shows has generally risen over the period, too, but bingo club revenue fell 54% between 1981-82 so that by 1982 revenue was less than in 1976 and revenue from cinemas in the UK fell in real terms in 1980, 1981 and 1982.

In the above analysis I have tried to note some of the main trends in the different categories of public performance establishments over the period 1976-82, but I have not dealt with all of them - after all PRS has about 50 different public performance tariffs. As noted earlier, 1982 was not a particularly good year for PRS in this field, mainly because it was operating in a particularly difficult economic climate with many bankruptcies and closures which can be seen in some of the figures for different categories, notably commercial dance halls and discotheques, industrial premises, bingo halls and clubs. One might, however, argue that the previous year the climate was just as bad yet revenue from public performance rose 23%. Most of PRS' tariffs are now index linked to the RPI or other indexes so factors other than inflation must account for such changes. As to Eire, PRS has greatly improved its operations over the years but it is

difficult to look at changes in revenue and come up with any meaningful interpretations because the base on which the change occurs is often low so that it is quite likely that changes of only a few hundred or thousand pounds will register as very large percentage increases. Additionally, revenue very much follows an up and down pattern.

Broadcasting

Revenue from broadcasting (including cable television) also rose considerably from 1971 to 1982 by £19,571,818 (618%), and is rising much faster than public performance revenue. Table 4.6 shows double figure percentage rises every year, the biggest rise being 28.68% between 1979-80. The real term increase has been 79% which is pretty good going. Broadcasting revenue represented 41.77% of total PRS revenue in 1982 (Diagram 4.5) - that is, the most important source of PRS revenue. This percentage has generally gone up over the period 1971-82, (although there were falls in 1976 and 1981) from 29.81% in 1971. Costs over the same period have risen 1204% in money terms to reach £2,845,916 in 1982 (from £218,238 in 1971) and 225.6% in real terms, so NDR has generally fallen over the period. As a percentage of total costs, broadcasting costs were 29.87% in 1982. This ratio has obviously risen considerably over the period from 16.96% in 1971 with falls in 1974 and 1978. The average rise in costs has been 26.5% with rises of 29.68% in 1974, 41.19% in 1980, 37.74% in 1981 and 31.34% in 1982.

Broadcasting costs are still less than half those of public performance, however, and only 5.2% of gross royalties in 1982. Boradcasting costs in 1982 were 12.52% of broadcasting revenue and broadcasting NDR was 87.48% of gross broadcasting revenue.

Over the period 1971-82, BBC broadcasting royalties (which includes television and radio) increased by £12,122,861 (544%) in money terms, 60.81% in real terms. The BBC pays a royalty of 2% of its income from television receiving licences and grant-in-aid from the Government for external services, this basis having been set by the PRT in 1972. In 1982, the BBC royalty was £14,351,123. Independent television and radio income rose £7,007,169 (807.47%) in money terms, 126.58% in real terms over the period to reach £7,874,959 in 1982. 1973 saw the introduction of independent local radio in the UK but at present PRS is having problems over the royalties payable, as is PPL. Revenue in this area rose by £1,697,484 between 1971-79 (the last year for which I have data since commercial radio and television are now included under one heading) to reach £1,700,379 in 1979. The royalty is based on a percentage of advertising revenue. The basis for the royalty was negotiated with the IBA in 1973, the percentage of advertising revenue being determined by the percentage of their total broadcasting hours taken up by the PRS' repertoire, fixed by reference to a hypothetical rate of 12% which would be payable if a station's output were totally and exclusively that of music controlled by PRS. In the

first four years, however, there were ceilings of 4½%, 5%, 6% and 8%. In 1977 (according to the 1978 Yearbook), the unweighted average was 5.7% payable by stations to whom the ceilings no longer apply[13]. The 5-year agreement with the IBA expired in 1978 since when PRS has been in dispute with the Association of Independent Radio Contractors (AIRC). The dispute was referred to the PRT in October 1978 but still trundles on because it was linked to a similar dispute between PPL and the AIRC. The PPL dispute was heard first and, in fact, is still going on, so the PRS hearing is "on ice". Provisional payments by the commercial radio stations are on the basis of the previous agreement while the dispute is heard. Income from commercial television rose £1,745,932 (245.82%) from 1971-79 to reach £2,456,177 in 1979. This tariff is negotiated with the Independent Television Companies Association (ITCA) and up to 31st March 1980 was based on a lump sum of £2 million set in 1977 and adjusted automatically quarterly in line with the RPI with certain special additional payments. This agreement expired on the above date and PRS announced that in future it wanted the royalty based on a fixed percentage of the companies' advertising revenue, which would have meant a substantial rise in the royalty. The dispute went to the PRT and is still being heard. Before the basic case was even heard, however, PRS objected to the reference to the PRT on the basis that the case was outside the PRT's jurisdiction - that the ITV contractors represented by the ITCA and Independent Television News Ltd. (ITN), both of which referred the case

to the PRT, did not "broadcast" within the terms of the 1956 Copyright Act and so could not refer the case. It was the IBA which "broadcast" and which should have referred the case. The two bodies who referred the case did not require licences because they did not broadcast, they just supplied programmes for broadcast by the IBA. Following the High Court decision on the jurisdictional matter in the background music contractors case, PRS argued that the ITCA (and ITN) could not have a licence to authorise the IBA to broadcast PRS works. PRT could only hear cases referred by organisations which represented people who required licences[14]. Both the PRT and the High Court rejected this line of argument - the ITCA (and ITN) did broadcast and needed a licence for it so they did not need a licence to sublicense someone else (the IBA) to broadcast - "they needed a licence as one of two potential joint tortfeasors"[15] (the other being the IBA). The hearing on the actual case has been taking place recently and in the meantime there was an interim agreement with the ITCA. Initial licensing terms were also agreed with TV-AM, Channel 4 and the Welsh Channel 4, Sianel 4 Cymru (S4C). In Eire, royalties from Radio Telefis Eireann rose £384,370 (540.78%) from 1971-82 to reach £455,447 in 1982. Terms were agreed in 1979. One reason for a leap of 46.28% in royalties in 1979 was the introduction of a second television channel in November 1978 and a second radio channel in May 1979. PRS has also been involved in developments in satellite television, discussions on it and licensing of experimental transmissions and of the pilot

scheme, Satellite Television PLC, which transmits its own programmes from the UK to cable services in a number of European countries via the Orbital Test Satellite (this involves the UK up-leg, but PRS is also having discussions with sister societies on the Continent to license the whole operation - up, down and cable diffusion- from the UK). In the field of cable television, PRS has been involved in a court case since the mid 1970s, PRS V Marlin Communal Aerials Ltd, which resulted in the virtual disappearance of revenue from cable television by 1978 when it fell to just £50, although in 1975 it was only £10,654 anyway. By 1982, revenue from this source had risen to £57,418 (although this also contained a "miscellaneous" element). The case only affected revenue in Eire, however, not the UK. This source of revenue is likely to grow in the next decade following the announcement of expansion of the cable service and the granting of a number of initial franchises by the Government. A 2-year experimental scheme has been operating since 1981 and this, too, is to be expanded. The Marlin case concerned a cable system in Ireland which was rediffusing BBC programmes in Ireland. Under the 1956 UK Copyright Act, a cable company can rediffuse BBC and ITV programmes in the UK but it cannot do this with foreign programmes. The Eire copyright statute is similar to the UK one and contains a similar exception to the broadcasting right so that cable operators can diffuse RTE programmes. PRS maintained that the Irish equivalent of a UK cable company rediffusing BBC and ITV programmes was a cable company in Ireland

retransmitting Radio Telefis Eiranne (RTE) programmes - but BBC and ITV programmes were foreign programmes in Ireland and thus not subject to this exception. Royalties had to be paid for such rediffusion of English programmes. Marlin won the first case because it turned out that the Irish Government had not extended protection against cable diffusion to foreign works under its legislation. PRS took the case to the Supreme Court in Eire and lost again. The Irish Government was made aware of the omission and the requisite Order was passed extending protection to foreign works. PRS took the case back to court and won in the High Court and again in the Supreme Court. The whole series of cases took about 10 years but the precedent was set. PRS negotiated with the Cable Television Association of Ireland after the decision as regards implementation of licensing terms backdated. The first payments were made at the beginning of 1983. At present, simultaneous cable diffusion of BBC and ITV programmes in the UK does not breach copyright under S40 of the 1956 Act. With the expansion of the cable television network, one would expect there to be pressure for this exception to be lifted. PRS wants it to be lifted mainly because it is in breach of the UK's obligations under the Berne Convention, Brussels text. An agreement has, however, been concluded by PRS with the Cable Television Association of Great Britain for PRS works used in programmes originated by those cable systems taking part in the Government's 2-year experimental project. PRS has also given the Government its views on the expansion of the cable network.

Overseas Revenue

	REVENUE MONEY TERMS[a] (£)	REVENUE REAL TERMS[b] (£)	INCREASE ↑ FALL ↓ (£)	PERCENTAGE INCREASE/FALL ↑ ↓
1971 OA	318,270	397,838		
AS	4,032,849	5,041,061		
1972 OA	314,096	366,506 ↓	4,174 ↓	1.31% ↓
AS	4,019,006	4,689,622 ↓	13,843 ↓	0.34% ↓
1973 OA	320,557	342,842 ↓	6,461 ↑	2.06% ↑
AS	4,415,115	4,722,048	396,109 ↑	9.86% ↑
1974 OA	334,406	308,208 ↓	13,849 ↑	4.32% ↑
AS	5,554,930	5,119,751	1,139,815 ↑	25.82% ↑
1975 OA	447,284	331,813	112,878 ↑	33.75% ↑
AS	6,379,319	4,732,432 ↓	824,389 ↑	14.84% ↑
1976 OA	544,671	346,703	97,387 ↑	21.77% ↑
AS	8,129,417	5,174,677	1,750,098 ↑	27.43% ↑
1977 OA	615,385	338,124 ↓	70,714 ↑	12.98% ↑
AS	8,688,114	4,773,689 ↓	558,697 ↑	6.87% ↑
1978 OA	653,562	331,589 ↓	38,177 ↑	6.20% ↑
AS	9,375,004	4,756,471 ↓	686,890 ↑	7.91% ↑
1979 OA	335,779	150,237 ↓	317,783 ↓	48.62% ↓
AS	10,019,062	4,482,802 ↓	644,058 ↑	6.87% ↑
1980 OA	402,157	152,505	66,378 ↑	19.77% ↑
AS	9,441,012	3,580,209 ↓	578,050 ↓	5.77% ↓
1981 OA	443,287	150,267 ↓	41,130 ↑	10.23% ↑
AS	11,873,162	4,024,801	2,432,150 ↑	25.76% ↑
1982 OA	606,766	189,378	163,479 ↑	36.88% ↑
AS	14,606,280	4,558,764	2,733,118 ↑	23.02% ↑

TABLE 4.10 OVERSEAS AGENCIES AND AFFILIATED SOCIETIES' INCOME 1971-82 REAL AND MONEY TERMS.

Source: a - PRS Reports & Accounts 1971-75; PRS Yearbooks 1977-83/4.

b - Calculated as for Table 4.1.

Overseas agencies' revenue consists of revenue from countries where there is as yet no native performing right society and PRS has a mandate to administer the international repertoire and where PRS is helping new societies which have just been set up. These consist of Commonwealth countries. Overseas agencies operations are administered by Music Copyright (Overseas) Services Ltd. (MCOS), a non-profit making company limited by guarantee set up by PRS in December 1977 "to oversee and develop..... the work of the overseas agencies" as well as "the establishment and support of new composers' rights societies in these territories wherever this becomes practicable"[16]. PRS and MCPS now collaborate through MCOS in those countries where they both are responsible. Overseas agencies revenue is divided into 4 regions - Africa, Asia (and Pacific), Western Hemisphere and Mediterranean. Performance in this sector has hardly been very good, although the nature of the operation dictates against large revenue earning. Revenue from this source fell in money terms in 1972 and 1979 (where there was a massive drop of nearly 50%), and in real terms (allowing for UK inflation - after all, some of the money is paid to UK copyright owners), in 1972-74, 1977-79 and 1981. 1982 seems to have been a good year, though, with revenue rising 37%. Revenue from Africa has consistently fallen over the period with rallies in 1975 and 1978-80 to reach an all- time low of £10,357 in 1982 having been about £84,508 in 1971. Asian & Pacific revenue has fallen even more dramatically over the period. Having risen to a peak of £404,558 in 1978, it fell to just £22,391

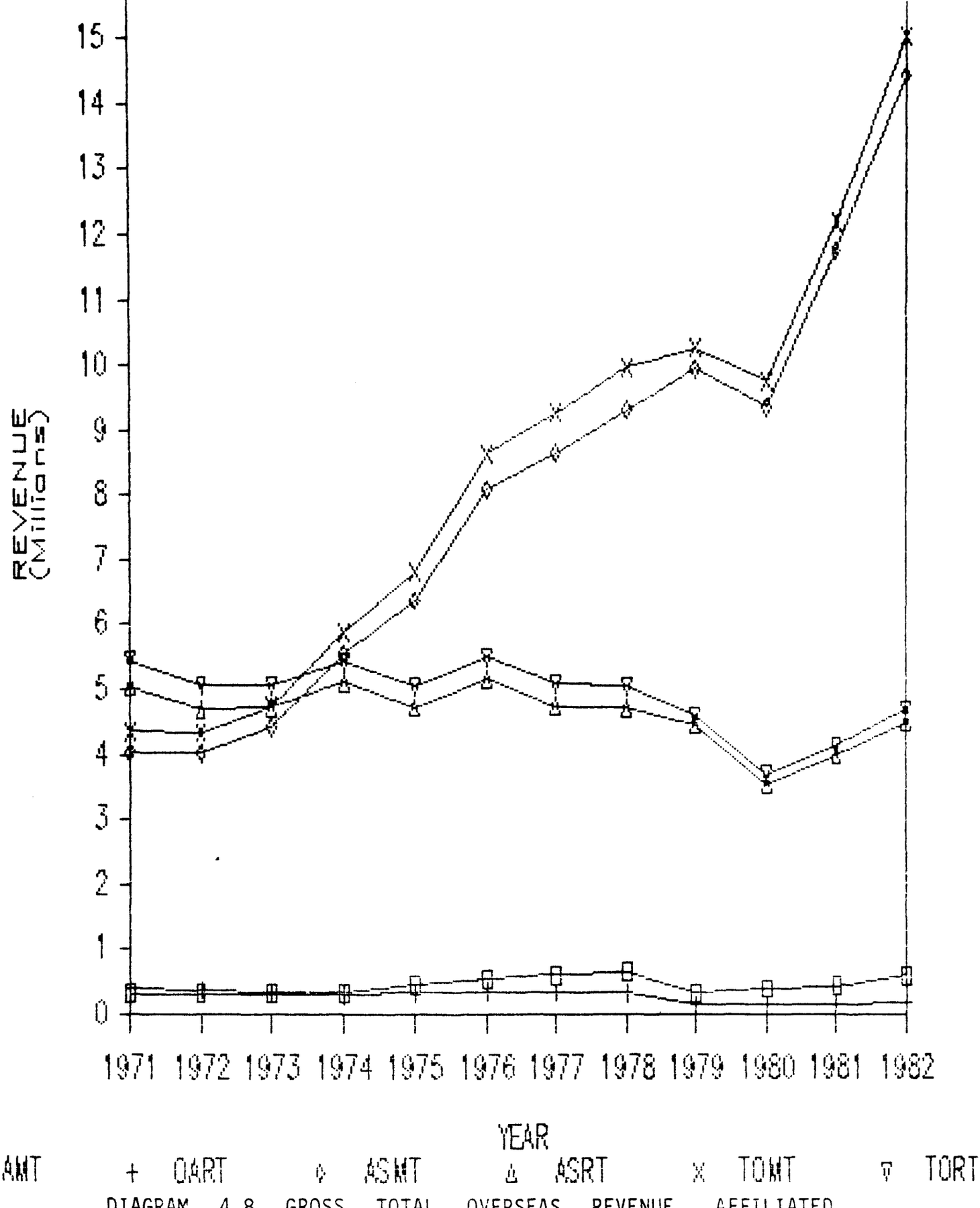


DIAGRAM 4.8 GROSS TOTAL OVERSEAS REVENUE, AFFILIATED SOCIETIES' REVENUE & OVERSEAS AGENCIES' REVENUE 1971-82, REAL & MONEY TERMS.

OAMT = OVERSEAS AGENCIES MONEY TERMS; OART = OVERSEAS AGENCIES REAL TERMS; ASMT = AFFILIATED SOCIETIES MONEY TERMS; ASRT = AFFILIATED SOCIETIES REAL TERMS; TOMT = TOTAL OVERSEAS MONEY TERMS; TORT = TOTAL OVERSEAS REAL TERMS.

Source: Table 4.8

in 1979 although it more than doubled again in 1982. The reason for the very large fall was that after 1978, the Hong Kong Society, which represented about 95% of overseas agencies revenue in the sector, was treated as a foreign affiliated society. This also accounts for the large fall in overseas agencies revenue in 1979. Revenue from the Western Hemisphere (mainly Caribbean countries) and the Mediterranean has risen consistently since 1978, although the period 1975-78 was something of an up and down affair, especially for the Caribbean countries, with a large rise being followed by a smaller (though large) drop. The Caribbean countries are now PRS' largest earner in the overseas agencies sector with the Mediterranean being the second largest. Trinidad is the largest earner in the Caribbean (about 50% of revenue) and Cyprus the largest in the Mediterranean (about 63%). PRS has great problems in the field of overseas agencies with different political systems in different countries and poor or declining economies in a lot of them leading to opposition, lack of understanding or indifference to copyright[17]. A large number of infringement actions have to be taken out, diverting resources away from the main purpose of MCOS with consequent effect on collections. In the smaller countries, it costs more to pay someone to act as an agent for PRS than would be collected so agents sometimes cover a number of territories. There is also, of course, the problem of finding the right people to act as agents. In some cases, enforcement is virtually impossible while in others royalties finally given to PRS are small because of

local penal taxes or exchange control [18]. Decisions of local courts also hamper MCOS' work in some cases. One important impact of MCOS has been a reduction in the Head Office cost of administering the overseas agencies repertoire - costs in this field fell from £150,882 in 1977 to £110,017 in 1978 (a fall of 27%) and 66,132 in 1979 (a 40% fall). By 1982, they still had not reached the 1977 level, although they rose by 22% in 1980, 24% in 1981 and 40.5% in 1982. In 1982 overseas agencies only represented about 1.5% of total PRS costs and 1% of PRS total revenue. The figures above for the various countries are after deduction of local costs but before deduction of PRS Head Office costs. Not all the royalties from this source are distributed to PRS members - some are distributed to affiliated societies and some to local composers.

Revenue from affiliated societies arises from reciprocal representation contracts between PRS and performing right societies throughout the World for the public performance and broadcasting of PRS members' works abroad. Revenue from this source is very important, representing about 27% of total PRS revenue in 1982, and the cost of collection is low, representing only about 6% of total PRS costs in 1982, and only 4% of affiliated societies revenue. Thus, it is a high revenue, low cost market. Again, figures given are after deduction of local expenses and taxes. In money terms, performance in this field looks impressive but in real terms, less money was collected in 1982 than in 1971. Revenue in

this field fell in money terms in 1972 and 1980 and in real terms in 1972, 1975 and 1977-80. The problem with revenue from this source is that it is not really very controllable by PRS and is sensitive to changes in exchange rates and depends on how successful PRS members are abroad and on changes in musical tastes abroad. Within the affiliated societies total, PRS' biggest sources of revenue are Western Europe (£6,332,925 in 1982) and North America (£6,209,547 in 1982). Together, these accounted for about 86% of gross income from affiliated societies in 1982. PRS figures also show money allocated to foreign affiliated societies for public performance and broadcasting of works of foreign society members in the UK. The only major country with which PRS has a large deficit is the USA (where the deficit was £1,051,149 - £6,406,606 against £5,355,457) although there were small deficits with some other countries. Since 1969 (the first year for which I have figures), PRS has never had a deficit overall. In 1982, the overall surplus was the highest ever over the period at £5,854,967. One cannot really place too much emphasis on deficits and surpluses between PRS and individual affiliated societies in individual years because figures do not always relate to the year under consideration but contain arrears of other years. In this area, PRS has had a few measures of success in keeping Head Office costs down, since they fell in money terms in 1972, 1980 and 1981 and in real terms in 1972, 1973, 1977, 1979, 1980 and 1981. They increased by over £114,000 in 1982 to reach £591,062 but were still much lower in real terms in

1982 than in 1971. The revenue figure for the USA contains £24,615 for performances of PRS' members musical works in films in cinemas. This is because the US societies cannot collect such money because of anti-trust policy. Thus, PRS collects direct from producers who pass the cost of this onto US distributors. A licence is issued to the producer with the synchronisation licence but royalties are only paid if the film is exported to the US for exhibition[19].

The final source of income at PRS is from investment which in 1982 amounted to nearly £3 million.

Distributions[20]

Revenue from UK & Eire broadcasting, UK & Eire public performance and overseas is kept separate from each other and the former two are then broken down into "pools" or "sections" to give smaller groups of revenue. Overseas agency revenue is not subdivided into broadcasting and public performance revenue but is distributed according to territory or group of territories - either Africa, Asia, Western Hemisphere or Mediterranean. Affiliated society revenue is distributed in two categories - general and broadcasting, and films, the "general" presumably being equivalent to public performance. Distribution of the revenue from the US societies ASCAP and BMI, however, is based almost solely on broadcasting, although "concert halls" revenue is distributed separately. Distribution to members are, as far as

possible, based on the extent to which works have been broadcast or publicly performed which is determined partly from returns from users, and partly from statistical information. UK and Eire broadcasters usually provide complete returns of all the works they have played, second by second, although local radio stations only provide sample returns where commercial or "stock" records have been used but do supply complete returns for live broadcast music and material specifically recorded in their studios. Returns from overseas agencies for broadcasting stations are often incomplete, the small broadcasting stations being the worst offenders. In the UK and Eire public performance returns - in pubs, clubs and suchlike - are not required in all cases because it would be impractical and 100% analysis of all public performances that occurred in a year would just not be economic, probably costing more than it brought in. For public performance, returns are only required for most live performances (not performances by mechanical means). However, returns for live performances are not required if the licence fee is under £80 (IR £40 in Eire). All licensees who pay royalties for live public performance of "serious" music have to provide returns without exception. Cinemas also have to provide returns of all films exhibited so that composers of sound track music can be paid. Premises where such live public performances take place (including cinemas) therefore have to fill in a PROGRAMME RETURN FORM. The licence allows the holder to publicly perform the works of more than 250,000 composers and publishers worldwide and

covers public performance both live and by mechanical means. PRS tries to distribute the money collected to members on the basis of what is played and how often it is played[21]. Programme Return Forms provide information on the title of the work, a description of it, the number of performances, the composer's name, the publisher and the arranger. The frequency of returns depends on how often and how many such performances are given and performers usually fill them in (although the licence is issued to the owner of the premises). Tour promoters may be granted a Programme Exemption Certificate for a group's tour if details of performances at different venues at which content is largely unaltered have been provided in advance. In such cases, performers do not have to supply the licensee at each venue with a programme return form to send to PRS. One must remember, though, that it is always the owner of the premises where the public performance takes place who obtains the licence, not the performers. It is only where the performance takes place in the fresh air that the performer will receive the licence. An alternative to the Programme Return form is for the printed concert programme for the event to be sent in provided it contains full details of all music performed. PRS waives its right to charge royalties for music at wedding receptions, birthday parties or family get togethers and music at religious services. It does not ask for returns for occasional use of pub pianos by customers. Nor does it ask for returns for performances by mechanical means such as by record players, tape recorders,

radio, television, juke boxes and background music tapes. Here, statistical data rather than information from licensees is used to distribute royalties "reflecting contemporary patterns of music use", such as record sales information, the top 500 albums each week and the Gallup Chart and information from broadcasters on radio and television programmes. It also uses information supplied by the background music contractors. PRS also takes note of the extent and nature of the playing of records on the radio, to supplement information. All pieces of music lasting between 2 and 5 minutes on the radio, ascertained by spot checks, are included for the purposes of this additional information[22]. It was noted, however, that using record sales charts to determine what is publicly performed is not entirely satisfactory because it will not be just the hits of the day which are played, public performance will be more wide-ranging - there may be a lot of "golden oldies", for example. There is no real reason why public performance should follow "the charts"[23]. There is thus a fair amount of approximation involved in the process, resulting from the difficulty of obtaining adequate and accurate information. It is relatively easy to obtain returns from the authorised broadcasting companies, in fact, one might say that the opposite problem arises here, that of too much information. There is a strongly-rooted tradition at PRS that it attempts to be as accurate as possible in all facets of its operations[24]. In some cases, though, there is just not enough information for PRS to be as accurate as it would

like. The problem with trying to improve accuracy is that it puts up costs maybe disproportionately. This was one of the points made by PPL - that while PRS tried to be as accurate as possible leading to higher costs, it adopted the opposite approach - that by and large public performance data resembles broadcasting data so that information received is generally used to weight broadcasting figures and these figures used as a proxy for public performance figures and applied to public performance revenue.

The information received is analysed to identify works in which PRS or affiliated societies have an interest. Some information is only sampled, such as some of the independent local radio returns. This is because it would cost too much to fully analyse them - for example, the independent companies pump out 15,000 hours of PRS controlled music a year as against 2,000 hours by the BBC. Independent television companies' returns are fully analysed. In its distribution procedures [25], PRS apparently tries to take note of constantly changing patterns of music use and of the need for "reasonable economy of operation", particularly where the cost of analysing programmes and distributing royalties is disproportionately high in comparison with revenue. Each work identified as being of interest to PRS is given points under the PRS point award plans according to the number of times it has been performed, how long the work lasts and other factors such as the type of work. If programmes have only been sampled, the figure arrived at is multiplied by a

"sample factor" to take account of the fact that there will be more actual performances. Each distribution pool or section contains revenue derived from a particular, usually fairly important, licensee or group of licensees. For British and Irish public performance revenue, the sections are Discotheques, Films, General (Live), Individual Works, Irish Special (Live), Irish Special (Recorded), Juke Boxes - special, Recorded (Albums), Recorded (Background), Recorded (Singles), Serious Music (Live). For British & Irish broadcasting revenue, the sections are BBC National Radio, BBC Local Radio, BBC TV, BBC TV - Films, ITV - Commercials, ITV - Films, ITV, ILR - Commercials, ILR, RTE Radio, RTE TV, RTE TV - Films, RTE TV - Commercials, RTE Radio - Commercials. In general, PRS' distribution system is based on equality of treatment for all within each section "where there is little possibility of, or justification for, establishing criteria to distinguish one performance or use of a work from another"[26]. In other cases, however, distinctions are made between performances of different works or different performances of the same work and the points system is varied accordingly and weighted. PRS has three point award plans [27] - the combined television and radio broadcasting point award plan, the film point award plan for general performances and the point award plan for 'live' general performances. The plans are somewhat complex in places but the general gist of them is as follows: for the combined television and radio broadcasting plan, all items are treated the same and are awarded points represented by

the sum of the performance duration of the item, multiplied by a multiplier which depends on duration multiplied by a station value, which depends on the potential audience for BBC radio and television and independent television and on actual royalties paid by each local station in the case of independent local radio. The multiplier varies from 1 for durations up to 1 minute to 2.4 for durations of 32 minutes or more. The station values range up to 43.1 for the entire independent television network, 25 for the whole BBC television network and 10 for each of Radios 1,2 3 and 4. The regions count less. This will give a full scale points total. This is subject to special provisions, however, reducing the total. Signature tunes and station identification signals have the full value but interval music, station breaks or programme identification music on television only have one-fifth of the scale value, for example. For the film point award plan for general performances, featured music counts 1 point for every 5 seconds or part thereof and background music 1 point for every 6.2/3 seconds or part thereof[28]. The point award plan for live general performances is somewhat more complex. It is divided into 4 sections - popular music, which varies up to 6 points for 9-12 minutes and then goes up by 2 points for each additional 4 minutes; vocal music which is not popular or serious music, instrumental music which is not popular or serious music, both of which use the same scale varying up to 48 points for 29-32 minutes and thereafter rising by 6 points for each additional 4 minutes; and serious music which is

divided into 3 types depending on how many people take part - for example, works for 1 or 2 players and or solo voice which varies to 144 points for 25-32 minutes and then increases by 48 points for each additional 8 minutes, works for string or chamber orchestra which varies to 168 points for 25-32 minutes and increases by 56 points for each additional 8 minutes and works for full orchestra which varies up to 192 points for 25-32 minutes and goes up by 64 points for each extra 8 minutes. The popular, vocal and instrumental music categories contain a weighting system whereby logged performances are multiplied 2-10 times depending on the size of the annual licence fee paid by the premises at which the performance takes place. Similarly, the serious music category contains a weighting system whereby the points awarded for each performance are multiplied depending on the seating capacity of the venue and the professional or amateur status of the performers.

After these points values have been calculated, in each section the total number of points awarded is added up and divided into the amount of money which is distributable in that section to produce a value for each point. For each work, this value per point is then multiplied by the number of points the work has accrued in total to produce the amount of money owing to that work at that particular distribution. The value for each point will differ between sections and between distributions. Overseas revenue is also divided into sections -overseas agencies revenue into the four sections

mentioned earlier and affiliated society revenue according to country or group of countries in some cases and society in cases where there is more than one society in a country (Canada - CAPAC and PROCAN - and the USA - ASCAP and BMI, for example). In most cases, revenue from each country or group of countries is divided into general and broadcasting revenue and films. Amalgamating revenue from two or more countries has the advantage of saving on the cost of analysis since works are distributed on the basis of returns from just one of the countries, perhaps in rotation, so that the other country's returns do not have to be analysed in detail[29]. The countries involved are only relatively small revenue producers, anyway.

Once the amount owing to each work has been decided on the money is divided amongst the parties interested in it, such as the composer, lyric writer, publisher, on the basis of the contracts between them but PRS has a rule that the publisher share can never exceed 50% for any work. If a composer or lyric writer is not a member, his share is paid to the copyright owner or publisher. Similarly, if the publisher is not a member, the money is divided equally between the composer and lyric writer unless the publisher's rights have been assigned to a member[30]. Foreign societies may have different division rules. In the UK, the usual division for a published vocal work will be 4/12 for each of the composer, lyric writer and publisher while for a published instrumental work it will be 8/12 composer, 4/12 publisher, although the

publisher share can be adjusted up to 6/12. For sub-publication of British works abroad, the division may be more complicated and may be on the basis of a key - for example, the Stockholm Key calls for an equal division of total shares between the parties interested in the original work and in the sub-publication. The total publisher share for a sub-published work may also be subject to a key - a 50-50 publisher - sub-publisher share, for example (so they may each get 3/12 of the total - known as the London Key) or the full publisher share for both publisher and sub-publisher being paid to the sub-publisher (known as the Paris Key)[31]. In general, affiliated societies do not send non-member shares to PRS and vice versa. PRS and a number of other societies do not allocate any share to an arranger of a copyright work while the Continental societies allocate 2/12 to him. Most societies, however, grade arrangements of non-copyright music. The PRS grading system is highly complex and varies from 1/20 tc 12/12 where the arrangement is virtually a new original work. In the latter case, the normal division of fees will apply. Additions or alterations to non-copyright words may also be graded, the maximum here being 6/12. The division of fees is adjusted to take account of the grades and any non-copyright element is returned to the pool to increase the points value of that particular section.

PRS has a much more complex system of analysis and distribution than the other two societies, springing it seems

from its wish to be as accurate as possible. The time and effort involved in analysing just one work would thus seem greater than for the other societies and, of course, PRS has a great many more works to deal with than the other societies. This would seem to account for at least some of the difference in costs and cost-revenue relationships between PRS and PPL. (MCPS is not strictly comparable). There are 4 distributions a year, in April, July, October and December. The April and October distributions include payments on account for royalties from affiliated societies due to be paid in the July and December distributions (when the balance is paid). British and Irish broadcasting royalties and royalties from use of radio and television sets in public are paid in April for the 6 months ending the previous December 31st and in October for the 6 months ending the previous 30th June. The December distribution includes a payment on account for British and Irish general and film royalties and overseas agency royalties for the calendar year, usually made up of half the amount credited to the member for the source for the year before but subject to a minimum of £20 for a writer member and £100 for a publisher member. Where a member derives most of his royalties from overseas agencies or from a single distribution sector, the amount paid on account is usually reduced to take account of the fact that such royalties tend to fluctuate more from year to year. The balance is paid in the following July distribution. In the July distribution, PRS also makes certain "allocations" which are of three types - unlogged

performance allocations, allocations from non-licence revenue and payments under the Earnings Equalisation scheme. Unlogged performance allocations are paid for as a percentage of the gross revenue in distribution sections where information is inadequate, such as the public performance and overseas agencies sections as well as from the Independent Local Radio section, where programmes are usually sampled rather than analysed fully. This particular allocation is paid to all writer and publisher members who have received at least one programme credit in the previous two years even if this was below the minimum. The minimum allocation is £30 for a writer member and £150 for a publisher member, applied to writers who received less than £150 and publishers who received less than £750 in programme fee earnings in the previous year. New members automatically receive the minimum allocation in their second year. This minimum allocation is set off against the cost of registering the member in the first year. Members who earnings are greater than the above figures receive allocations under inverse ratio scales whereby lower - earning members receive, proportionately to their earnings, more than higher - earning members. The maximum allocation is £250 for writers, where earnings are £25,000 or over and £1,250 for publishers, where earnings are £125,000 or more. Allocations are made to affiliated societies in proportion to their share of the royalties in the distribution sections from which the allocations come. This was a new scheme in 1983, replacing a previous membership allocation scheme, under which £706,968 was paid

in 1982. Non-licence revenue allocations derive from PRS' income from interest and dividends received from investment of royalties while they are being processed prior to distribution. The allocation is in proportion to members' individual earnings in the year during which the interest was received. £2,272,126 was paid under this scheme in 1982. PRS recovers costs incurred on behalf of publishers in supplying documentation to affiliated societies where the contract provides for the sub-publisher abroad to receive the whole publisher share by deducting them from non-licence allocations. The deductions reflect the relative importance of the countries concerned. The third type of allocation is under the Earnings Equalisation Scheme, which PRS describes as the equivalent of a pension scheme, providing "financial cushioning" for older members who no longer receive as much money from PRS as previously because of changes in musical tastes or whatever[32]. The scheme is open to living writers who are 50 or more years old and who have been members for 25 years or more. Successor members may also benefit in certain cases. The amount payable is calculated by listing the member's earnings each year since he became a member, applying the RPI to make them "real term" figures and working out an average of the member's best 25 years, to produce a figure for adjusted average earnings. The adjusted average earnings are compared with current earnings and up to 50% of the difference is payable as the allowance, the exact amount payable depending on total revenue available under the scheme. There is a maximum and a lower limit for adjusted

average earnings and an upper limit for current earnings. There is also a maximum payable as an allowance. All figures are subject to adjustment in line with inflation. The money comes from domestic licence revenue and in 1982 450 writers qualified for an average payment of £750. Total payments under the Scheme amounted to £337,623.

There is also a minimum distribution payment of £5 for UK resident members and £10 for non-UK resident members (we are not talking about allocations now) because it would be cost ineffective to distribute sums below this. Such sums are carried forward until the member's credits reach the minimum and then distributed, although below the minimum members still qualify for payment under the unlogged performance allocation scheme provided there is a credit. Payment of some royalties may be suspended if there is not enough information on a certain work or if there is dispute over them. They will be released when the necessary information has been provided or the dispute settled.

Tarification, Licensing Policy and Negotiation[33]

As we have seen, the courts have had to be relied on to provide definitions of the nature and extent of public performance because the 1956 Act does not supply one. The result has been that public performance is any performance outside the domestic family circle and the type of

entertainment, the type of premises and the fact of an admission charge are irrelevant. PRS is an effective monopoly by virtue of the fact that it takes an assignment of rights from its members and its members own the copyright in virtually all British and Irish non-dramatic works broadcast and publicly performed in the UK. Its affiliations with societies abroad and its involvements in overseas agencies give a vast world-wide repertoire and effectively mean that if a person wants to broadcast or publicly perform such copyright works he requires a licence from PRS. PRS will grant a licence to anyone who wants to use copyright music for broadcasting or public performance (except for pirates, of course) provided he signs a licence agreement, pays the requisite royalties and, in most cases, provides information on the works he has performed. Such a licence has to be obtained before use is made of the works. Licensing inspectors are employed to license unlicensed premises throughout the country and to provide information, and licences are also issued from Head Office in London and Dublin when music users apply for them. Where necessary, PRS will take legal action. PRS issues year-to-year contracts in the form of blanket licences so that the user can publicly perform any of the works in PRS' repertoire in return for royalties. When one considers that the repertoire covers the works of 500,000 copyright owners worldwide, the importance of the licence is apparent. The licence fee will vary as the nature and extent of music use at the premises changes. The licence is a contract, enforceable by law. Every conceivable

type of place where public performance of copyright music could possibly take place is covered and both live and mechanical performance. Thus, there are tariffs for bingo clubs and halls, cinemas, restaurants, cafes and hotels, factories, offices and canteens, clubs, pubs, shops and many more. In all, PRS has about 52 tariffs for public performance, covering 175,000 premises in the UK and Eire and many more in its overseas agencies territories. Permits rather than licences are sometimes issued for occasional events, for single performances or short series of performances, where the premises are not normally licensed. They are ad-hoc, temporary licences although they can cover more than one event. Licences are usually granted to the owner or occupier of the establishment, for practical purposes, not to performers, and promoters may sometimes be issued with licences. Performers are sometimes given licences, however, as in the case of mobile DJs , where annual licences are given to cover public performances in places which would not normally be licensed annually and where such performances do not normally take place, such as private homes and farmers' barns[34], although this does not cover premises which should already be licensed. The promoter and performers may, however, be liable for copyright infringement as well as the owner or occupier of the premises. Groups of five or more premises owned by one organisation which require licences, such as a chain of pubs or hotels, may be licensed together under one licence, (circuit licences) through the Head Office of the

organisation and royalties are calculated each year according to the number of premises and the various uses and frequency of use of copyright material for which returns are required. The advantage is that licences do not have to be cancelled when premises close or are sold and new ones issued when new premises open.

Royalties payable are calculated under a series of tariffs which take account of the type of premise where the music use takes place, the type of use and the general circumstances of the use. The premises covered vary from concert halls to dentists waiting rooms. The tariffs represent the rates of charge under which PRS is willing to license performances of the works in its repertoire in premises which fall into the category covered by the tariff[35]. The main principle underlying PRS' tariffs is that where the use of music is an essential part of the conduct of the business - such as for concerts - PRS will usually take a percentage of the proceeds of the business, the idea being that these proceeds are a direct result of the use of music. If this is not practicable, however, for example in the case of commercial cabaret clubs, where it is not possible to identify the musical element of the business because, for example, the business is also involved in catering by supplying food and drink, then PRS takes a percentage of expenditure on musical entertainment. The principle of "a percentage of proceeds" is not feasible or appropriate where music is used incidentally in the business. Nor is it really feasible in

the case of juke boxes because it is virtually impossible to monitor receipts for these. Juke boxes fall somewhere in the middle between featured and incidental entertainment. Here, a sum per jukebox, subject to discount, is payable. The principle similarly may not be applicable where background music is provided by mechanical means. Featured music also attracts a higher royalty rate than background music[36]. Other bases for tariffs are a certain sum per number of people (as in the case of background music for bingo clubs and halls), a sum per number of seats or according to capacity (as for village and urban halls), and a lump sum for different mechanical uses of music (as for background music for clubs). Most of the tariffs are subject to automatic adjustment in line with the Retail Price Index, to take account of inflation. Often, another index is used as well, such as the Index of Average Earnings, so as to take account of changes in the standard of living as well. Or, another measure taking account of the peculiar circumstances of an industry may be used - such as the minimum wage, as in the case of restaurants, cafes and hotels. Or, the average or mid-point of two indexes may be used instead. Such indices mean that tariffs do not have to be revised every year. There is an automatic adjustment for those tariffs expressed in monetary terms in line with the RPI and/or some other index. There are changes in the whole basis on which the tariff is calculated, however, where the pattern of music use has changed in a certain area or because of changes in policy - for example, in the case of the background music contractors.

In general, PRS believes that its public performance tariffs are too low. They are apparently low in Germany, too, where GEMA, the West German society which deals with both mechanical and performing/broadcasting rights gets three-quarters of its revenue from the former right. In France, though, public performance tariffs are pretty high - tariffs there are expressed as a percentage of each venue's receipts and are of the order of 8-10%. PRS, on the other hand, can only take 2% of receipts for pop concerts, for example, under a decision by the PRT. In the US, public performance tariffs are even lower, particularly in the case of musical extravaganzas. It was noted that historical reasons account for these low tariffs, at least in the English speaking countries. When PRS was first set up in 1914, it was strongly opposed by the music industry and vested interests. As a result, the first general managers of PRS decided to adopt a very moderate, cautious approach so as not to antagonise these interests. When its monopoly position came under attack PRS threw its weight behind the idea of an independent tribunal so as to diffuse this criticism. The result of all this was that very low tariffs were set in the early days. Then, when the PRT was established under the 1956 Act, its first Chairman followed the policy that past levels of tariffs were the only guide to the price of the Society's repertoire, so in cases before it, PRT used these past (low) tariff levels to judge future levels. Thus, PRS was left for future levels with these past low precedents. The first Chairman of PRT used the criterion

of "willing buyer , willing seller" to settle disputes. It was not until 1968, when this Chairman left, following a campaign against him by PRS pointing out the shortcomings in the criteria used, that PRS could attempt to increase its tariffs to realistic levels. The new Chairman of PRT had the opposite view - he did not think that future tariffs should be bound by past levels. Often, in cases before PRT, there are attempts to bring in what organisations in other countries are paying but PRS apparently believes that foreign cases are only of limited use because circumstances, conditions and systems differ between countries, so comparison is difficult. Thus, PRS generally does not bring in foreign evidence except for Commonwealth countries where the system is generally similar to that in the UK since PRS helps administer many Commonwealth territories and many of these are former British colonies. The low tariff policy has caught on in these countries, too, PRS has "exported" low tariffs. The English-speaking territories generally have low tariffs. In addition, in the English-speaking countries, the concept of the author's right has not really caught on - if it had tariffs might be higher. A further problem until recently was that PRS' tariffs were not index linked because until the late sixties, early seventies, inflation was not really a major problem in the UK[37]. In th late sixties, PRS started a campaign to index link (and review) tariffs, a concept it already used in its broadcasting agreements. In addition, in 1972, the Government introduced a statutory standstill on prices and incomes, followed by control by the

Price Commission. PRS was told that its tariffs were not subject to this, but the PRS General Council thought that PRS should voluntarily comply so there were no tariff increases between mid-1972 and the end of 1973[38]. Thus, PRS has had a lot of catching up to do and it has to do this gradually over a number of years, it cannot concentrate the increases in only a few years.

As regards broadcasting agreements, the percentage of proceeds principle applies as well - where possible PRS will take a percentage of income. The agreement for commercial television with the ITCA, under which a lump sum is paid, is the subject of a dispute before the PRT referred in May 1981, one point of issue being exactly this principle. The ITCA represents the only broadcasters in the UK whose royalty is not calculated as a percentage of revenue. Another point of contention is apparently that the ITCA believes that its royalty should be based on what they have paid in the past, whereas PRS says it should be based on present and future circumstances and conditions. PRS is looking for a percentage of net advertising revenue - about 1.5% whereas at the moment the companies are paying only the equivalent of 0.6% of advertising revenue. When the fee was originally set, there was some doubt as to the future prosperity of these companies. 15 years ago when the fee was set, it represented 1% of advertising revenue according to a press release of 22 January 1982. The Cable Television Association of Great Britain, with which PRS has been in negotiation for

an agreement for an experimental period initially seems to have agreed in principle that it should pay a percentage of its income, whether this is subscription and/or advertising revenue (although no figure has apparently yet been agreed). De Freitas[39] notes that the main factors to consider in deciding the value of the right to broadcast are the number of hours of copyright music broadcast a year, the size of the broadcaster's audience and the revenue of the broadcaster. The percentage of revenue formula is the most often used to determine the royalty, he says, the rationale being that where music forms an important and integral part of the whole programme output by a broadcaster, it is convenient and logical to look on the value of that music to the broadcaster as a percentage of the value of the whole programme of which it forms part and the value of the whole programme can be measured by revenue generated for commercial broadcasting and revenue required for non-commercial or mixed finance stations. Prior to a PRT decision in 1972, the BBC used to pay a sum per paid receiving licence subject to variation in line with the cost of living[40]. PRS wanted a change in calculation, one reason being the abolition of radio licences in January 1971, although the BBC apparently was prepared to accept recalculation of the initial amount per licence to make sure that PRS did not suffer as a result of the fall in the total number of licences[41]. PRS offered four new formulae - A, a percentage of the BBC's music use revenue; B, a percentage of the BBC's licence revenue and government grant-in-aid; C, a percentage of the BBC's music

use operating expenditure; and D, a per licence formula. The PRT thought all formulae would produce figures that were too high and would mean a very large increase in the royalty over a short period of time. PRS all but admitted this and offered ceilings in the years 1972 and 1973, although this would still have meant a large increase in 1974. PRT thought this unreasonable, but it also thought that the BBC proposal would produce a royalty that was too low. The Tribunal noted that there is no market price for the right to broadcast PRS music because there is no market in the normal sense of that word whereby the right is freely bought and sold. There is only one seller (PRS) but it cannot charge any price it wants because it is subject to the jurisdiction of the PRT. At that time, there were only two potential buyers - the BBC and Independent Television Companies (now we could add the independent local radio stations).

The factors that were taken into account were:-

(a) The continuing rise in the cost of living and in the standard of living.

(b) The increased use of PRS music by the BBC. The BBC admitted that the greater its use of PRS music, the greater the value of it to the BBC.

(c) The increase in the value of the PRS repertoire due to increased membership at home and abroad through

affiliated societies and overseas agencies.

(d) A recent PRS - Independent Television Companies agreement. This was index-linked and determinable on notice by PRS if the companies' use of PRS music increased by more than 5% of 1,000 music hours a year. BBC use of PRS music averaged 1,300 hours a year. It was also noted, however, that these companies were a consortium and commercial concerns who were better able to meet rising costs and could share the burden, whereas the BBC was reliant on a licence fee fixed by the Government. Account was also taken of the fact that the PRS repertoire is used much more on radio than on television, that a lot of television music is background music and that the BBC makes great contributions to the musical profession. On the other hand, music on television is just part of a much more expensive package and television audiences are much larger than radio audiences. PRT thought it fair to treat the radio element in the royalty as about twice the television element.

(e) It was also argued that the imminent introduction of commercial radio justified an increase in the royalty, that the greater the number of buyers, the greater the value of the use to each customer. This was rejected, however, on the basis that commercial radio might take away part of the BBC's audience and so reduce the value

of the PRS repertoire just as easily as enhance it.

(f) The fact that more was paid for broadcast of musical works in other European countries and that dissatisfaction with the BBC royalty was so great that some members had threatened to leave PRS.

The PRT did not regard a per licence formula as acceptable because of the abolition of sound-only licences which would mean fixing the royalty by reference to television receiving licences when the main value of the PRS repertoire to the BBC is through radio, because of the difficulty of estimating the future growth rate of total television licences and the fact that eventually the rate would slow down and then a peak be reached for total licences, so that the royalty would not reflect improvements in the standard of living or increased use of PRS music, and because a large increase in the royalty was justified but this should be spread evenly over the period, for which the licence formula is rather inflexible. Formula A, the music use income concept was regarded as not the correct one because the share taken up by television would be much greater than that for radio since the BBC allocates much more income to television than to radio. If one tried to apply a much lower percentage to television music than to radio music, the BBC might be tempted to spend much less on radio than now and thus avoid paying a large part of the royalty which would be due. Formula C, a percentage of music use expenditure, produces the same

problem. It may also be more difficult to estimate future expenditure than future revenue and the royalty might vary widely due to changes in items of expenditure which have little to do with use of PRS music. Formula B was felt to be best because it is simple and is not dependent on allocations between radio and television. The royalty asked for by PRS was reduced, however, and made subject to ceilings in the first 2 years.

Because PRS has to be, by necessity, a virtual monopoly and as a result is always open to the criticism of abuse of monopoly power, it always tries, wherever possible, to negotiate tariffs with national associations representative of the class of users with which it is dealing, and tries to obtain an agreed basis for calculation of royalties with each of them. For example, it deals with the British Hotels, Restaurants and Caterers Association, the Theatres' National Committee and the Music Trades Association. It does not usually impose its tariffs unilaterally. Sometimes[42], there is no such organisation or there is such an organisation but it will not carry out the functions of a representative organisation as PRS would like. For example, the CBI will talk to its members and give a view but point out that this is only the view of the CBI and cannot bind its members. Other such organisations may say that they cannot bind their members but that there will be strong pressures on members to conform to such agreements. There is also a very useful wider body - the Music Users Council - which is a composite

organisation composed of many music user representative bodies, with which PRS often has discussions. Most of the bodies representing commercial users of music belong to it, except for the broadcasters. PRS has negotiations and discussions with the individual bodies making up the MUC, but it is also important that it keeps on good terms with the MUC itself, representing as it does a central reference point so that the bodies in the MUC can compare notes with each other on various matters. It can informally help to decide discussions with PRS by giving them a nudge in the right direction, although it must be stressed that it is not an arbitration body as such, nor does it act in a formal capacity. If there does not seem to be an organisation which is representative of the type of premises covered by the tariff, PRS will impose the tariff unilaterally and wait for a representative body to appear[43]. If music users consider tariffs to be unreasonable, they can always refer them to the PRT, following the unsuccessful completion of negotiations. The PRT can hear disputes concerning licensing bodies (such as PRS and PPL) and people requiring licences or organisations claiming to be representative of such people on reference of a licence scheme to the Tribunal or on application of a person who wants a licence either under an existing scheme or in a case not covered by a scheme. Having heard the various sides of the argument, PRT makes an Order confirming or varying the scheme[44]. Points of law can be referred to the High Court for final settlement. Sections 23-30 of the 1956 Act lay down the provisions. A number of

PRS public performance tariffs have been referred, such as popular concerts, variety theatres, dance halls and cinemas. Broadcasting agreements have also been referred. PRS does not charge royalties for all uses of music - it does not do so for religious services, or for performances to patients in hospitals and nursing homes provided advertising is not used and will accept applications for reduced or no royalties for use of music in PRS' repertoire at occasional musical events held to raise money for bona fide UK registered charities whose aims are to relieve human suffering, subject to certain conditions. Royalties are payable annually in advance with adjustments at the end of the year since at the beginning of the year the licensee pays a royalty based on the previous year. In the first year, an estimate of use for the coming year is made. In general, public performance tariffs are regarded as comprehensive enough, but as being too low. Broadcasting tariffs, though, are good, and stand up well to international comparison, it is thought.

Negotiation of tariffs is done by the senior management of PRS. The Chief Executive, Michael Freegard, leads the negotiations where large amounts of money are involved, as with the broadcasting agreements. In cases where not so much is at stake, the Head of the licensing department may be chief-negotiator. This is not a general rule, however, and will depend on circumstances. Michael Freegard tries to get involved wherever possible. Licensing policy (and policy in general) is determined by the General Council. The Chief Executive and the negotiating team talk to the Executive

Council of the General Council, which meets every month. The Executive Council is composed of between 12-14 of the 24 members of the General Council (some of them being consultants), the General Council having delegated its negotiating powers to the Executive Council. The General Council does not do the actual negotiating. The situation has changed somewhat over the years since negotiations used to be carried out by a number of committees of the General Council; now, a single body and a single team does all the negotiating. The final decision arising from any negotiation is usually taken by the General Council, especially on major matters, the General Council being the equivalent of a Board of Directors. The Executive Council is appointed by the General Council and meets every month except for August. It has set powers and its main functions are to deal with licence agreements, premises and equipment and staff. It also has a general sweep-up function. It looks at the problem it is set, comes up with a solution and the General Council usually accepts this.

Licensing Inspectors[45]

By the end of 1982, there were 133,395 licences on issue by PRS, although the number of licences has increased quite a lot in recent years because of the movement away from licensing background music contractors and towards licensing individual premises as regards juke boxes[46]. PRS employs 39 licensing inspectors throughout Britain to issue "on the

spot" licences and generally enforce the performing right, each one of which has his own area(s) to deal with. Extensive travel is involved. 90% of them are ex-policemen. Their main sources of information are advertisements and the press. They also have a list of all the premises on their territory which are licensed. In addition, Head Office sends contact lists to them giving them leads and telling them about premises which to its knowledge have changed hands. The inspectors themselves also look out for changes of name, ownership and tenancy in public houses, clubs and the like. Licences are not transferable from one owner to another because it is quite likely that the new owner will have different views on the use of music and use different musical activities. A good deal of local knowledge, local and personal contacts and keeping your ear to the ground is involved. It is very much a learning job since they glean information as they go about their job - a visit to a certain establishment may produce new information or they may notice a change of ownership or unlicensed premises on the way, so the job snowballs. There is nothing really very hard or fast in the job - it develops as you go along. The job also involves a liaison role and a public relations function, explaining PRS' job to the public and maintaining good relations with it, since PRS cannot advertise probably because it would be accused of using members' money for the wrong purposes and unwisely. Apart from licensing unlicensed premises, the inspectors also have to make sure that royalties are paid and to look out for a stepping up of music

use at premises and presumably to check that returns are correct. PRS rarely revokes a licence, apparently, and if it does it is only as a last resort. The job involves tact and diplomacy rather than heavy handed tactics and persuasion is the best weapon because enforcement through the courts is generally long-winded and difficult. If a licensee has what he thinks is a justifiable grievance, the licensing inspector will help to deal with it. He will even help a licensee fill in the forms required. The job is a necessary part of PRS' operations because it is generally not possible to rely on trust - there are always going to be some who will try to defy the law and others who just do not know about or do not understand the law. In many cases, people just deny that they are infringing copyright and it may be difficult to prove otherwise. Although the field force is only a small proportion of total staff, it is an important part of PRS. The licensing inspectors are theoretically managed from Head Office, although contact between the two seems to be minimal. The field force is Head Office's eyes and ears[47]. They work very much on their own, however, using their own cars and telephones, operating from home and hours are very flexible. Supervision is minimal and they regard themselves as something of a group apart. It is a unique job, not really being like a salesman's job since salesmen have targets whereas licensing inspectors cannot because they would be easily disappointed - and there is no promotion. Contact with Head Office is mainly by telephone and there is an annual conference for licensing inspectors, involving

discussions of new tariffs, future PRS policy and developments in the field of licensing. The licensing inspectors are only involved in the public performance field, not the broadcasting field, although they are sometimes asked to monitor the output of radio stations as a check against returns. In any case, they would be only of limited use in the broadcasting field because they are not in any one place long enough.

Efficiency V Effectiveness

PRS is a non-profit making organisation, the money it collects being distributed to its members after deduction of its administration costs. The question arises of the relationship between effectiveness, success in achieving stated goals, and efficiency, the ratio of costs to revenue. As we have seen, PRS does not seem to have had an awful lot of success in keeping costs down and costs are generally taking up a greater percentage of gross revenue each year (and of domestic revenue). The problem is that unless there is control, costs will just increase, probably at an exponential rate, so that eventually some very difficult decisions will have to be taken. What is really needed is an on-going cost-control programme rather than a number of economy measures every few years, which largely tackle the symptoms without getting to grips with the actual problem. Unless the underlying problems are tackled, the same situation will keep recurring every couple of years but in an

enlarged form, making the medicine even more difficult to take. One gets the impression that this is one of PRS' problems - that it adopts a stop-go approach, implementing economies every now and then, rather than using a programmed on-going approach and "managing" costs. It was pointed out by PRS, however, that it was sensitive about costs and was presently upgrading financial management, introducing financial planning and budgetary control[48]. It was also noted that no-one has yet established what is an "acceptable" level of costs for a collecting society.

The problems of efficiency against effectiveness are amply illustrated by the problems of enforcement in the public performance field, where PRS admits that a fair amount of its licensing is uneconomic[49]. A recent survey carried out for PRS by an independent research group suggested that in certain areas of public performance, about 10% of premises seem to be using music from PRS' repertoire without paying for it. These unlicensed premises are mainly small-scale operations. PRS tries to license such establishments but it is very difficult to decide how much effort and how many resources to devote to it, although the line has to be drawn somewhere. For example, PRS licenses residential hotels but does not bother with the very small ones, those with less than 6 bedrooms. Similarly, many village halls are small and it is often difficult to explain that royalties have to be paid for all types of public performance. These are usually charged only a moderate tariff. It is a matter of judgement

as to where to draw the line in such cases. Another example is doctors' and dentists' waiting rooms, which would require a public performance licence if music were played in them. PRS does not send its representatives to all of these, however, because it would just not be worth it. If it hears that music is being played at one of these establishments, however, it will license it. A pragmatic approach is required. The size of the field force has been greatly increased over the years and to see if they are effective and how many resources to devote to this particular aspect of its work, PRS just has to look at the results. The problem is that if you increase the size of the field force, you also have to increase head office staff to deal with the extra workload. By doing this, costs as a percentage of revenue will probably increase but so will the amount of money distributable to members. PRS issues hundreds of writs a year but relatively few are defended. Enforcement is not really a problem in the broadcasting field because the organisations concerned are large and few in number, although problems obviously arise with pirate broadcasting stations. Public performance tariffs may result in unrealistically low returns for PRS where musical use is incidental in the business because the amounts involved are not particularly high - but PRS really has to enforce its copyright in such cases. The different attitudes in different parts of the activities of PRS, therefore, do not reflect different objectives in different fields (one might suggest that enforcement is the main objective in the public performance

field and maximisation of revenue the main objective in the field of broadcasting) but rather are the result of the facts of life in each field. Different approaches are required because of different situations in each field. The nature of the problem in each case conditions the policy. In Eire, pirate broadcasting is apparently a great problem but PRS does not enforce the copyright in such cases because it was informed that if it collected royalties in such cases, it would be tinged with illegality. PRS will go to court over a case if it wants to set a precedent.

It was stated in interview that although PRS is a de facto monopoly, it still wants to be as efficient as possible. Its members would accept no less. However, it was thought that members would not benefit through PRS being too efficient since it might devote too much time and effort and too many resources to distributive and processing efficiency, leaving little money to distribute to members. One must remember, though, that there are more forms of efficiency than distributive and processing efficiency and that one might like to see an increasing level of revenue achieved for a constant level of costs. For example, one might like to see the cost-revenue ratio kept constant or for costs to be held to increases equal to or less than the rate of inflation. This would mean net distributable revenue increasing or at least being held constant as a percentage of gross revenue. Revenue at the moment is increasing but one might say that PRS could do even better. PRS, though, regards itself as

being amongst the most efficient collecting societies in the World and as constantly striving to be more efficient within the constraints imposed by economics. It was accepted, however, that PRS is not as effective in meeting its objectives as it would like because of the low tariffs it is stuck with, but it is trying to break out of this situation. For example, it has tried to introduce some new arrangements into its licensing - a growing phenomenon in theatres has been that of compilation shows based on the career of famous people, for example the Beatles. For such shows, producers in the past often wanted exclusive licences to the works concerned but PRS was unable to provide them since its licences are, by definition, non-exclusive since it will provide anyone with a licence provided they pay the requisite royalties. However, PRS agreed to give the individual rights holders concerned their respective rights back so that they could negotiate their own exclusive licences on the best terms they could. Such negotiations produced tariffs of 8-10% of receipts for the copyright owners concerned. PRS then negotiated with the Theatres' National Committee for non-exclusive licences for use of such music with the result that the tariff ranges on a sliding scale up to 6% of box office receipts where PRS-controlled music takes up 70% or more of the running time of the production for interpolated music. The problem of low tariffs is emphasised when this is compared to the 2% of receipts PRS charges for pop concerts- and here the music used is 100% PRS controlled in most cases. Thus, PRS is trying in different ways to break out of the

low tariff barrier to improve its effectiveness.

PRS has also attempted to improve its efficiency in a number of ways. The main way it has done this is through computerisation of its operations. The heart of the organisation is still a manual card index system, consisting of more than 3 million titles[50], and PRS is attempting to computerise this system. At the moment, it has about half a million titles on computer which form the "Active Works File". To get onto this file, a work has to have been performed somewhere in the UK. PRS is now creating a Repertoire Works File of its titles, which it intends computerising. At the moment, the system is rather inefficient - if a title does not now match a title on the computer, on the Active Works File, it is necessary to send a message to the repertoire department to obtain the requisite information. When the system is fully computerised, however, all the information required wil be stored in one place. It is expected that the development of this computerised database will take about 5 years to complete and cost about £1 million at 1979 money levels[51]. PRS also tries to keep pace with information and office technology by using word processors. It believes that it is essential that it computerises apace. In fact, this is PRS' second attempt at computerisation. It initially used computers in 1966 in the licensing department but did not really make full use of them or take advantage of their benefits since it just continued to use the same system as before but using computers instead

of people. There was no real attempt to improve the system or gear it to the advantages of computers or use them to their best purpose. PRS is also looking for a substantial improvement in the number of people it employs as a result of the introduction of the database which should reduce costs quite considerably in view of the fact that a large part of PRS' costs are taken up by staff costs. In 1965, PRS had about 530 employees; by 1967-8 this had fallen to 440, even though the amount of work done by PRS had grown greatly; in 1982, PRS employed an average of 698 people[52]. At the moment, it is employing quite a lot of temporary staff to deal with the new database. When PRS embarks on a major expenditure campaign, it tries to spread the costs over a number of years because the profile of members receiving payments changes every year and it would not be fair to have just a small number of members subsidising the expenditure, as would happen if the cost just impacted on one or two years. By spreading costs over a large number of years, each member pays a smaller amount of money than might otherwise be the case and a larger number of members pay. In fact, the database is being paid for out of reserves. There has also been an international improvement in efficiency through the international confederation of authors' and composers' societies, CISAC, which allows the various people involved in the technical side of rights societies to meet to talk about various problems, standardise collection and distribution methods, float ideas, exchange information and so forth. PRS noted that it had spent a lot of money on schemes which made

other societies more efficient without any effect necessarily on its own efficiency. In addition, the Swiss Society (SUISA), has possession of the CAE file (Composer, Author, Publisher file) made up of all the composers, authors and publishers represented by all the societies in the World. It is a World Index and has about 800,000 names on it. CISAC is also trying to produce a World Repertoire File, containing all the works represented by all the societies in the World, which is a very ambitious scheme. At the moment, there is an Anglo-American file covering works represented by US and English societies and this will represent a good proportion of works in the World. Such files can be used to give earlier and more accurate information, which is obviously of great use. A lot of the problems involved in administering the copyright system are caused by lack of information, so such schemes are vital. The World Repertoire File is still in its early stages but the CAE list is well tried and has been around for quite a time. The leading societies in the World are in Western Europe, America and the Commonwealth, so the Anglo-American file is already quite extensive as regards the World repertoire. The other countries in the World are a mish-mash, either having no rights equivalent to copyright or being very lax in enforcement or being pirates' paradises.

Members expect that when their works are publicly performed or broadcast they will be paid for it. Sometimes, members' expectations are too great - for example, some of them expect to be paid for every performance in every establishment,

however small. But this is just not feasible because of the economics of the operation. Members do not always appreciate that it is just not economic to collect revenue in some cases. This particularly applies to members at the lower end of the revenue scale who are naturally very anxious to be paid for every use since they receive very little money. Costs are taking up a greater and greater percentage of revenue, but this is a deliberate policy to increase the resources devoted to revenue collection, and to bring in more money every year. Because of the nature of the operation, it is felt necessary to spend more in order to increase collections. There is no doubt that soon some very difficult decisions will have to be made as to how many resources and what sort of resources to devote to revenue collection, enforcement procedures and processing. If PRS sacked half its field force it would have little immediate effect on costs since the field force is only a small proportion of costs but the subsequent effect on costs through cutting Head Office staff might be more substantial. However, loss of the field force would cause revenue collection to fall considerably, it was thought. It was felt that PRS by no means has the worst record on costs in Europe or Worldwide - the French society, for example, has a figure for costs as a percentage of revenue of about 30% but it also collects about half as much revenue again as PRS. It is a much bigger society with higher tariffs and more licensing representatives. PRS would really like to put even more resources into enforcement efforts but it has to be careful.

The Society is subject to two conflicting pressures from members - they want costs contained within reasonable limits but individual members, especially the poorer ones, want PRS to collect every bit of revenue possible (which is uneconomic) and to analyse returns 100% (which is not economically viable or possible). PRS is unlikely to be able to or to want to increase the amount of money and resources devoted to public performance - the limit has probably been reached, it was thought. The amount devoted to broadcasting is likely to increase, however, because of the increase in the number of local radio stations. Within the broadcasting field there are differences in the cost involved in processing returns from the different organisations - the Independent Television Companies apparently cost about 17-18% of revenue collected, the BBC only about 10% and independent local radio about 15%. In Ireland, revenue costs about 50% to collect. Costs in Ireland, in fact, are likely to increase when local commercial radio arrives. The accounts in Eire at the moment are apparently subject to negotiation as to the costs to be attributed to collection and distribution there.

In fact, PRS has been subject to some criticism in the past from members, particularly Mr. Trevor Lyttleton, who was concerned at the size of administration costs and about loans to senior executives which appeared in the accounts. In fact, Mr. Lyttleton waged something of a campaign against PRS starting in 1976 and ending with the abandonment of a libel

court action by Mr. Freegard against Mr. Lyttleton early in 1978[53]. The dispute was highly publicised and even led to MPs demanding a Department of Trade enquiry into PRS, although this was rejected, PRS says, on the grounds that it was not necessary. Others say that there was insufficient evidence for such an inquiry. It apparently arose from Mr. Lyttleton's belief that the PRS executive was rather secretive in what it did with members' money and over the fact that voting rights were limited to only a small proportion of members and that no-one knew who was enfranchised through full membership and who was not, except for the General Council Mr. Lyttleton tried to get hold of the voters' list and criticised the management in 'Music Week' in July 1976, after which he received the libel writ. Following two court cases (PRS winning the appeal and losing the first case) to attempt to get the voters' list revealed, a canvass by Mr. Lyttleton of members and a great deal of acrimonious dispute, PRS finally called an Extraordinary General Meeting in November 1977 to propose extending the franchise from 13% to 54% of the membership, but weighted so that big earners had the majority say and recommended at the next AGM that the list be revealed. The memory of the dispute still lingers somewhat at PRS.

Organisational Structure

In general, the departments at PRS can be divided into five main sectors[54] - licensing, documentation, distribution,

management services and general (such as financial management, personnel, legal). The former three of these are the central operating divisions of PRS. The licensing departments employ about 180 staff, including the licensing inspectors, the general licensing department employing about 60 of these, and offer blanket licences to broadcasters and public performance music users. The departments issue licences and collect royalties. Licensing is highly centralised and is mainly carried out by Head Office with support from the field staff. The documentation section consists of about 165 staff divided into five departments, the largest of which is repertoire registry with 55 staff. Documentation is vital in the work of any collecting society since the whole of its operations is based on it - it has to know on whose behalf it is collecting and distributing. It has to know titles and distribution shares so that it knows who has an interest in the work, for example. The level of detail it has varies greatly between works, in many cases being very sketchy. Nor does it have details on all works of affiliated societies. A high proportion of the works in PRS' index system are never performed, but if a work is likely to be performed a lot, it will generally have full details. The departments involved in documentation attempt to maintain all this information as best they can. PRS' repertoire consists of about 10 million works. The repertoire registry has the job of upkeep and registration of the works controlled by PRS so that, for example, it has to register new works, change details to take account of changed circumstances, such

as changes in or sales of catalogues by publishers. Each collecting society has to know who to send royalties to. The repertoire services department has an informational role to perform, it seems, such as to answer queries and to supply information when the computer file does not provide what is required. It supplies information to the distribution departments so that the correct shares are allocated to members and it also answers enquiries from members, licensees and the general public on PRS' repertoire. There are about 190 people employed in the distribution area spread fairly evenly between sectors. Also, there is a department called broadcasting liaison associated with distribution, consisting of about 6 people which, amongst other things, monitors broadcasts to ensure that returns are accurate. The management services departments employ about 70 people, the bulk of them in the systems and programming and computer operations departments. At the moment, it also employs over 40 temporary staff to help on the database and it is intended that this computerisation will be particularly used in the distribution departments. Under the heading "general", we have the finance department, office services and building and maintenance. Together these employ about 35 staff, about half in finance. It was noted that financial management is currently being upgraded at PRS with the development of financial planning and budgetary control. Personnel employs only 6 people but it is an expanding area, having only started in 1968. PRS also employs 7 solicitors and a legal assistant. One interesting fact about PRS is that the union,

TASS, operates there and there are now 240 staff members. Neither of the other two societies have unions operating within their organisations. There are also a number of miscellaneous departments, probably the most noteworthy of which is that of Publications and Information which employs 7 people. In view of the fact that PRS does not advertise, this is an interesting development. Neither of the other societies have such a department. The department handles communication with the press, such as through press releases, and tries to make the public aware of PRS' activities and raison d'etre. It is Council policy not to advertise. It is felt that since it is difficult to measure the effectiveness of advertising, a different approach should be adopted by PRS - hence it does a lot of below-the-line advertising such as a film which it has just produced, the yearbook, which it produces in greater numbers than necessary for its members and exhibitions. PRS' structure is given in diagram 4.9.

In 1980-1, PRS seems to have been reorganised. Previously, Michael Freegard, who was then called the General Manager, was at the top of the organisation and had the Controller of Administration and Finance, the Repertoire Controller, the Operations Controller and the Secretary reporting to him. Then the General Manager was renamed the Chief Executive and a three man team appeared at the top of the organisation, consisting of the Chief Executive, the Director of Operations and the Director of External Affairs. The Operations Controller became the Director of Operations responsible for

general licensing, royalty distribution and management services and with extra responsibilities, too, while the Chief Executive is responsible to the General Council for PRS' overall management[55]. Robert Abrahams, who had been a special consultant since 1979, was made Director of External Affairs responsible for relations with outside groups such as major music users, broadcasters, affiliated societies and MCOS[56]. This was one reason for the changes apparently, to bring Robert Abrahams into the senior management team. A number of new positions were also created, such as head of documentation, repertoire services and documentation projects. The management changes that took place at that time were not regarded as major reorganisation by PRS but rather were a way of responding to a particular situation, and to the environment in which PRS operated, as a better way of using the human resources PRS already had and bringing in new talent[57]. The changes represented a re-allocation of duties since Michael Freegard had too much to do and was coming under too much pressure. Marshall Lees had too many people reporting to him. The organisation was growing and the changes were a way of responding to this growth. The change of Michael Freegard's title was seen as a way of updating the position since the General Manager is usually further down the organisation than the Chief Executive[58]. The Chief Executive usually runs the business, which was what Michael Freegard was doing anyway. The management also wanted PRS to be treated more seriously. Managers had previously been loathe to delegate authority further down the

line. Until the pop music explosion of the 1960s, it was apparently difficult to get PRS treated as seriously as it should have been and to be accepted by the music business - if you were in the music business, you worked for a publisher not PRS. The organisation was run as a "serious music" organisation. In the 1960s, the money to be earned in the business started to accelerate. PRS had the problem of trying to instil the correct attitude into staff further down the organisation, that it was worth working for PRS. Now, the organisation is dominated by people engaged in the popular music market and there is a more commercial attitude and, in fact, PRS is investigating the possibility that perhaps its subsidisation of serious music goes a little too far. The organisation has changed a lot since the 1960s. The Lyttleton saga put PRS back a little and caused a rethink. It apparently ushered in something of a new era. Michael Freegard is apparently not involved too much in the administration and management of PRS but Marshall Lees is seen rather as the "chief mechanic" and Michael Freegard and Robert Abrahams are the high-level operators. Obviously, though, Marshall Lees does not have a completely free hand and Michael Freegard has to be satisfied of the need for change first.

Since 1981, there have been a few management changes, too, with the three man Board seemingly still in place but with the Director of External Affairs now being Deputy Chief Executive. The three man team works closely together. In

1982, the post of Chief Accountant and that of Controller (Administration and Finance) disappeared, replaced by Head of Finance and Office Services and Finance. In 1983/4, a Financial Controller was recruited, who reports to the three man Board. In addition, Personnel no longer reports to the Head of Finance and Office Services but directly to the three man Board. In the distribution departments a new position, Distribution Services, was created and the Broadcasting Distribution department broken into two, Radio Distribution and Television Distribution, one would suppose because of the growth in work in this area. In the documentation departments, Overseas Collection was replaced by Overseas Documentation. A new department was also created in the Member Relations Group and a new post, too, Solicitor (Membership). Both report to the Repertoire Controller. A Broadcasting Liaison group was also set up and a Legal Assistant to the Director of External Affairs recruited in 1983/4. The position of International Representative and Secretary of MCOS was also split into two and the person who filled the latter post was also made Assistant Head of Licensing. The Registrar was brought into the documentation department. In many ways, PRS has a very fluid management structure since in a number of cases, there do not seem to be defined subordinate-superior relationships, where members of management can report to whoever they like. These appear as dotted lines on diagram 4.9. Who these people report to is determined as much by strength of character as anything, apparently. The thick full lines represent a report

relationship with the three man team at the top of the organisation. Thin full lines represent subordinate-superior relationships. Very few people report directly to Michael Freegard, one exception being Lesley Bray in Publications & Information. In general, though, where necessary, a person can report to any member of the three man team.

PRS is trying to develop a management training scheme[59]. It has brought personnel into the organisation from outside where this has been felt to be necessary but grown them from within the organisation in most cases. Managers are sent on training courses when and where necessary and PRS has an ongoing relationship with the Industrial Society which has arranged several courses for PRS. The money comes from a staff training budget. However, it was noted that it is very difficult to recruit manpower from outside the organisation with the requisite experience because there are no exactly comparable organisations - how many people know how to run a royalty department and the problems involved, for example? All positions which become vacant are advertised internally. There is a certain amount of coming and going between PRS and its publisher members but the problem is that PRS is much larger than most of its publisher members. The largest publisher members only have about 150 employees. PRS does not recruit from any specific occupation more than from any other and if it cannot fill a vacancy internally, it will advertise externally. For example, it did this with the

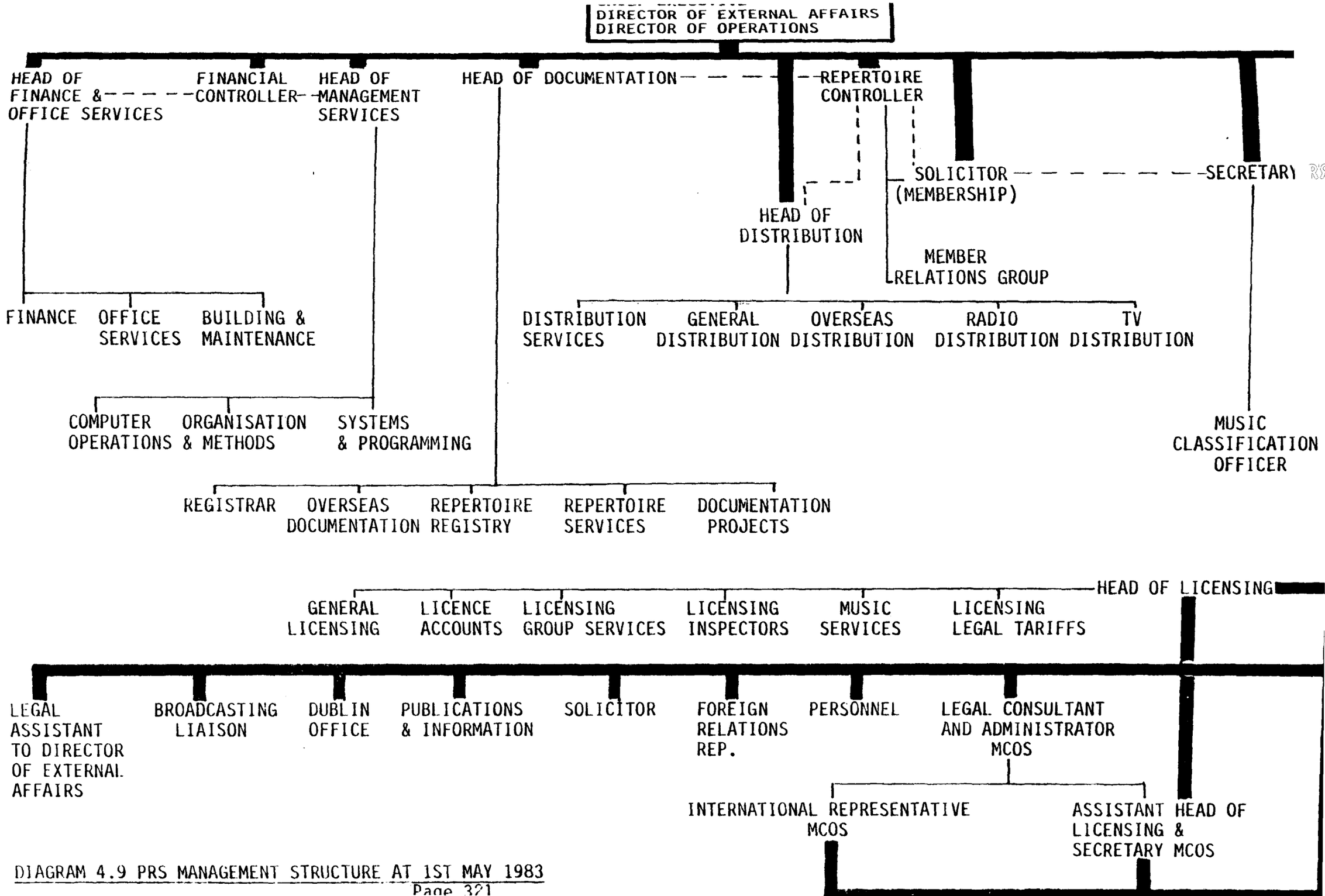


DIAGRAM 4.9 PRS MANAGEMENT STRUCTURE AT 1ST MAY 1983

recent vacancy for a Financial Controller. In the end, it appointed two people, one as Financial Controller who was previously Financial Controller of a book publishing company, the other as Assistant Head of Licensing and Secretary to MCOS, who had experience in the brewing and catering industry.

The General Council is the ruling body at PRS. It is the equivalent of a Board of Directors. Michael Freegard is not a member of the General Council, he is just a paid employee of it under a 5 year contract. The General Council is wholly non-executive and makes policy and ensures that policy is carried out. It also acts as a watchdog. There are 24 members of the General Council, 12 Writer - Directors and 12 Publisher-Directors. There are also 5 Consultant Directors and 8 Honorary Members. The General Council also breaks down into an Executive Council of 12-14 members made up of 7 Writer Directors and 6 Publisher Directors. There is also a Consultant Director. PRS also has a committee system, which is something PPL and MCPS do not have. The main committees are the Executive Staff Committee, which is really a mini Executive Council, the Premises Committee, which deals with leases, refurbishment of buildings and so forth, the Finance Committee, which meets 4 times a year, the Distribution Committee, which meets 2-3 times a year, the Public Relations Committee, the Music Classification Committee, the Donations Committee, the Irish Advisory Committee. Michael Freegard

and members of the senior management team try to make the running in meetings, especially as regards business matters because they are full time executives. There is a lot of liaison between Michael Freegard, heading the management team and the Chairman of the General Council, especially as the present Chairman, Roger Greenaway, take a very full part in the affairs of the Society. The Chairman has two deputies, one a writer, the other a publisher and every 6 weeks or so, these have a discussion on a wide-range of affairs affecting the Society with the three man management team at the top of the organisation and the present Deputy President, Vivian Ellis (now President), who also involves himself widely in the Society's affairs. The President of the General Council is really only a figurehead (or has been to date). There is generally a lot of regular contact between the management team and the General Council. There are also various discussion groups, formal and informal. The General Council also deals with all constitutional matters and in such cases the running is made by it in discussions with management. Similarly, for professional matters, the General Council is theoretically the important determining body. The system requires mutual trust between the General Council and the management team. Each has to believe that the other can do its job well. In some societies in the past, on the Continent, composers have apparently run the business themselves without appointing professional managers and this has led to several disasters. However, the situation would be equally disastrous, PRS believes, if the composers lost

control of their own society and the professional managers usurped the power. We hear a lot in economics about the divorce of ownership and control in commercial organisations. A similar situation could arise in collecting societies. The General Council is designed to prevent this, meaning that the membership, who are also the beneficiaries of the society, retain at least some control over the activities of the professional managers and administrators who control the day-to-day running of PRS. There is obviously still quite a lot of scope for indiscipline over costs and one might argue that this is happening, but control is facilitated by the General Council, especially since the major publishers in the UK have places on it and are unlikely to let the Society be run along uneconomic lines. The General Council appoints the Chief Executive and the senior management team. The Chief Executive employs the staff, although this still gives him a lot of influence and control and the control of the General Council may not be as great as would be supposed. It is through the General Council, however, that the membership controls the activities of the management.

Membership

Throughout its history PRS' membership has grown consistently, especially in the last 10 years or so, so that by 1st July 1982 it was 15,423. If we take a simple measure of income per member as domestic revenue plus investment income minus administration costs divided by number of

members, this too has generally risen over the period, and by 1982 was more than twice what it was in 1971. If we divide the same income measure but expressed in real terms by the number of members, however, income per member has fallen every year over the period except 1978 and 1980, and by 1982 the measure was only about 52% of the 1971 figure. This is strictly not an accurate figure, however, since PRS distributions are highly skewed. For example, in 1981, 68% of PRS writer members who received money received less than £250, 16% received £250-1,000, 11% received £1,000-5,000 and 5% received over £5,000[60]. If nothing else, this should show how important are the various devices PRS uses to supplement members' incomes.

PRS seems to be much more rigorous, one might even say bureaucratic, about the rights it looks after for its members and about voting behaviour at AGMs than the other societies. The rights it deals with are precisely defined in each field (public performance, broadcasting (radio and television) and cable diffusion). It usually excludes dramatico-musical works except in certain cases in each field[61], these cases depending on whether non-dramatic excerpts (or just excerpts for radio broadcasts) are involved, the duration of such excerpts (in the public performance field, for example, PRS deals with non-dramatic excerpts of up to 25 minutes) and whether these excerpts represent a complete act or potted version. A 'yes' to the first criterion, a 'no' to the third and satisfaction of the duration criterion will mean PRS

looking after the rights in the performance or broadcast. A public performance or television broadcast of a dramatico-musical work by means of a cinema film will also be covered by PRS (as well as by means of a television or radio set for public performance). Ballet music and words accompanied by a visual representation of the ballet or part of it are also covered in certain circumstances, as are commercial advertisements. PRS does look after dramatico-musical works in the case of simultaneously diffusing cable systems. PRS also looks after the film synchronisation right for writer members only, where the music is specifically written for a particular film(s) although PRS will at any time assign or licence the right to the film producer or commissioner of the work at the author's request provided PRS receives from the film producer an agreement for payment of fees to PRS for exhibition of any film containing the work in US cinemas.

PRS has three types of copyright owner as members - writers, publishers and other copyright owners and three types of member - full, associate and provisional. Some copyright owners are successors to members who have died. Various criteria have to be fulfilled to qualify for each type of membership and each type of member had different rights[62]. Provisional members have to fulfill a criterion of number of works commercially published or recorded or performed in public. Associate members have to have been provisional members for at least 1 year and to satisfy an aggregate PRS earnings criterion over a certain period of time. A full

member has to fulfill a similar but much higher and stricter earnings criterion. Provisional members can only receive the Report and Accounts, Associate members can also attend General Meetings and have 1 vote on a show of hands or poll or postal ballot and full members are also eligible for the General Council and receive 1 vote on a show of hands and 10 votes on a poll or postal ballot. They may also qualify for 10 extra votes if they fulfill a length of membership and additional aggregate earnings criterion. The earnings criteria are automatically adjusted each year according to revenue distributed in the year to members. Movements up to full and associate member are automatic and if earnings subsequently fall to below current criteria, the new membership status is not lost. The General Council may elect below the criteria if it chooses and successors to dead members cannot normally become full members. About 3% of members qualified for extra votes in 1982. The intention of the differences in voting ability is so that "a preponderant voice in the Society's affairs may be exercised by those of its members who rely upon it for their livelihood to a reasonably significant extent"[63] and those whose activities as publishers and writers are marginal and whose income from PRS is small do not receive a disproportionate amount of influence (in fact they seem to have no influence at all). In 1982, full members received 82% of royalties distributed and 77% of total voting rights. Those members who qualified for the extra 10 votes represented 56% of royalties

distributed and 28% of voting rights in 1982. Also, in 1982, of total membership 43% were provisional members, 45% were associate members and 12% were full members; 86% were writers and 14% were publishers. Thus, we can see that PRS seems to have a much more complicated voting procedure than the other societies, probably a function of its size and it seems to devote more time and effort to constitutional matters.

Apart from collection and distribution of royalties PRS also performs a number of other functions for members, such as providing advice and financial assistance. Apart from the allocations system, it also runs a loan scheme for writer members and a "benevolent fund to assist necessitous Members and ex-Members of the Society and their dependents", called the PRS Members' Fund. (These are separate and independent schemes). This is a trust fund to help cases of genuine hardship. It is a registered charity and assistance may be regular, temporary or in an emergency. PRS also helps financially, through donations, many organisations involved in the music world and those bodies that promote music. It also sponsors the annual Ivor Novello popular music awards. Such help is a small percentage of PRS' total income but is substantial nevertheless. In addition, it helps minority groups, such as folk and jazz music and particularly "serious music". In the case of serious music, the pool of money to be distributed according to public performance and broadcasting is augmented by revenue from other areas of PRS' activities so that the actual amount distributed is 5-6 times more than it would normally be. This extra money does not

represent a very large proportion of the source from which it comes but makes a great difference to composers of serious music. Such aid is provided because it is felt that production of such works involves more investment of time and effort than popular works and performances of them are a lot fewer. The subsidisation is to adequately remunerate performances and to encourage creation of such work and is achieved in 3 separate ways - through adding revenue from other sources, through the combined television and radio broadcasting point award plan (since longer works receive a higher rate per unit of duration - the multiplier is higher, for example) and through donations[64].

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32. ibid. "Earnings equalisiation scheme for PRS writer-members". p 90.

33. This section is based on pp 97-98 of the Performing Right Yearbook, 1983-4 "The Society's methods of licensing public performance" and on interviews with Michael Freegard on August 8, 1983 and August 11, 1983.

34. The Performing Right Society. Press Release. "PRS to Licence Mobile Discotheque Operations". 28 November 1979.

35. The Performing Right Society. "PRS Tariff Revision". Performing Right, June 1976. pp 4-7.

36. In copyright circles, "featured" music generally means music that can be heard by the persons taking part in the action while "background" music can only be heard by the audience, not those involved in the action.

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47. Interview with Marshall Lees at PRS, August 18, 1983.

48. ibid.

49. Much of the discussion below is based on interview with Michael Freegard on August 11, 1983.

50. The Performing Right Yearbook, 1981. op cit. p 11.

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54. The following is based on interview with Marshall Lees on August 18, 1983 and the management structure shown is in the 1983-4 Performing Right Yearbook. The structure has changed since then.

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CHAPTER 5

THE MECHANICAL- COPYRIGHT PROTECTION SOCIETY (MCPS)

Under the 1956 Copyright Act, the copyright owner is given the right to reproduce his copyright work in any material form. Part of this right allows the copyright owner to control mechanical reproduction of his work. It is in this area of copyright protection that MCPS operates, although its interest is confined to the music field. As MCPS' Report and Accounts of 1982 says, its main activity is "the collection and distribution of royalties and licence fees arising from mechanical copyrights". It protects the interests of, and collects royalties for, "its members whenever their works are recorded either in the UK or overseas"[1]. Its main objective is set down in the 5-year Corporate Plan under "Statement of Purpose" and is stated thus: "MCPS exists to maximise the net income of all copyright owners by offering services which can be economically and commercially justified"[2].

There are 4 main sources of income for MCPS - overseas societies collecting mechanical royalties on behalf of MCPS members whose works are recorded abroad; record companies when MCPS members' works are recorded on disc or tape for sale to the public; broadcasters when MCPS members' works are recorded for use in television and radio programmes; production companies when MCPS members' works are recorded

for use in films of all types, videograms, slide/tape presentations, audio-visual productions and so forth[3].

MCPS seems to operate in a much more political environment than PRS and PPL (although the whole field of copyright is very political in nature anyway) and its role is much more broad-based and industry-wide than the other two societies.

The fact that it does not have a 100% mandate in collection and distribution in most of its operations (except for the broadcasting field) but is only an agent for its members makes the task that much more difficult and has important implications for its entire mode of operation, necessitating a continuous attempt to persuade members to increase their mandates to MCPS. Both PPL and PRS take an assignment of rights from members and so can sue in their own names as rights owners. MCPS, however, is only an agent so that its scope for action is severely limited. Copyright owners retain ownership of their copyrights - they do not pass to MCPS. The consequence of all this is that the decision making process is much more complex than it would be in a normal business organisation and it is difficult to take a purely economic decision - political, artistic and expedient elements also have to enter the choice between alternative courses of action. This aspect of the situation is not just confined to MCPS, but is a common dimension in the whole copyright sphere, although MCPS does seem to have to balance more elements than average. This makes study of

the collecting societies somewhat difficult from an economic point of view - one cannot evaluate decisions and results just on economic criteria, one must take an overall multi-faceted view. Of course, it could be argued that no decision, even in business, is ever totally economic and this may indeed be true, but the added dimensions in the copyright field are much more overt and form a higher proportion of the necessary input into the decision-making process. Like all the collecting societies, MCPS was set up to make control and enforcement of copyright more effective, to facilitate collection of royalties, and to give composers "clout".

History

The Berne Convention, signed in 1886, did not protect copyright works against mechanical reproduction, for the simple reason that it was hardly known at the time - musical boxes and barbary organs were the only known forms and this industry was dominated by Switzerland[4]. Gradually, new forms of mechanical reproduction developed such as perforated rolls and the gramophone; composers and publishers brought court actions to decide whether these infringed copyright, only to be told that this was not so and a large industry developed[5]. The 1908 Berlin revision of the Berne Convention introduced a provision giving the exclusive right of mechanical reproduction to authors and composers[6]. In 1909, in England a departmental Committee of the Board of Trade set about discussing how to amend copyright law to meet international needs[7]. The 1911 Act introduced a compulsory licensing system for recording of musical works despite the

fact that the Committee recommended against this[8]. MCPS has its origins at around this time with the formation of the Mechanical Copyright Licences Company Ltd (Mecolico) and the Copyright Protection Society Ltd in 1910, just before introduction of the 1911 Act[9]. In 1924, these two organisations merged to form MCPS[10]. Today[11], MCPS is a non-profit making organisation (although this is not a statutory or contractual obligation, is not written into the Articles of Association, and is not required in the membership contract nor by the MPA. It is simply Board policy, which may or may not change depending on circumstances, although it is not intended that it should change at the moment) but until fairly recently it was a privately-owned profit-making company until in 1977 it was taken over by the Music Publishers Association (MPA), the trade association of the music publishers in the UK. MCPS is now a wholly owned subsidiary of the MPA. Originally, there were 8 main publishers involved in MCPS, while the MPA has always been associated with MCPS. However, when MCPS was first formed, there was no-one to negotiate licences except the MPA, a job which the MPA did not really want to have to do for various reasons. As a result, a series of informal committees were set up, as the need arose, to negotiate various rights and to discuss common issues of importance, often prompted by MCPS. One such committee was the Rights Sub-Committee. There was no formal structure, just ad hoc committees. The publishers would not allow composers seats on such committees. In August, 1954, the Mechanical Rights

Society (MRS) was formed after the Managing Director of MCPS suggested that it would be a good idea to bring together copyright owners to provide submissions on mechanical rights to the Committee investigating copyright law at the time. The Report of this Committee was the basis for the 1956 Copyright Act. This new body was formed because it was felt that MCPS was not the proper vehicle for such submissions and a more representative industry body was required but with a formal structure. The MRS was set up as a company limited by guarantee, membership of which would be open to all publishers willing to guarantee that they would pay a sum of money should the company be wound up. Composers could also join. In fact, it was open to any copyright owner. The company grew rapidly and now has 372 members, all publishers, although this has arisen by accident rather than design. Each company pays a subscription. Membership of the MPA was not and is not a pre-requisite of joining the MRS and MRS has developed as a separate organisation from the MPA. The MRS Council is elected by its members and includes non-MPA members. At present, there is a Council of 18 made up of 14 publishers and 4 composers. The MRS negotiates on behalf of all copyright owners and MRS and MCPS have both developed down different roads, although there are still strong links between the two. The problem was always that the publishers did not want a private company (MCPS) dealing with industry-wide rights, thinking it might adopt too narrow, too limited and individualistic a view of the sitation.

Gradually, MCPS became more and more inefficient; there was

a large amount of unprocessed paperwork around, the management failed in its job and the situation just generally deteriorated. By 1977, the individuals running MCPS as a private company had decided to "cash in" their investments and the industry thought it would be better and more efficient to have such an organisation under the industry's (and MPA's) control. Interest was high in taking control of MCPS. The Performing Right Society (PRS) wanted to take over, for example. This would have been an interesting development because on the Continent it is very common for one collecting society to control both performing/broadcasting and mechanical rights in musical works but in the UK the move met with a great deal of resistance and antagonism. The West German collecting society, GEMA, for example, controls both sets of rights and many argue that it is a much stronger, much more effective and efficient organisation because of this, that having two societies involved is inefficient and makes it easier for users to play off one society against the other and that a single organisation could eke out larger royalties and cut administration costs and would have more "clout" in promoting copyright owners' interests[12]. Whatever the advantages of a single organisation, the MPA finally bought MCPS and there was an element in this of pre-emption of PRS. It would seem that publishers have an ambivalent attitude towards PRS being very happy with the large amounts of money they obtain from it, but also mistrusting it because it is a large

organisation and a monopoly. If MCPS had been owned by the MPA in the first place there would probably have been no need to set up MRS because the MPA would have controlled MCPS, which is what it wanted all along. Then, even if MRS had been set up, the MPA could have controlled it through MCPS. The history of MCPS seems to have been highly charged politically and the political nature of the situation remains even today. MRS nowadays is the negotiating arm of the industry dealing with major industrial policies and agreements. However, the Managing Director of MCPS is the general administrator of MRS and it is virtually impossible to see the join between MRS and MCPS because all MRS administration is carried out by MCPS. MCPS, though, regards itself as working for the industry as well as for individual copyright owners. The MRS - general industry view/MCPS individual copyright owner distinction does not really exist. There is some overlap of power between MRS and MCPS and there is talk of amalgamating them, but there is only partial overlap at Board level. The opposite view of splitting them has also been put. The industry, though, does not generally understand the difference between the two. But there are differences and the limited overlap between the MPA Council, and MRS Council and the MCPS Board means that no body can control the others. The main difference between MCPS and MRS lies at MCPS Board and MRS Council level since there are different people in each of these with different objectives who would like to lead the organisations in different directions, which sometimes causes conflict between the two.

MRS may thus cause MCPS to carry out a function or act in a way which the MCPS Board did not intend.

Functions

MCPS performs a number of services and functions for its members[13]:

1. Collecting and distributing royalties.

2. Negotiating rates of royalties for different kinds of use of copyright.

3. Controlling audits of major copyright users in the record industry.

4. Policing and monitoring the activities of copyright users.

5. Royalty accounting for copyright users.

6. Provision of information on ownership of copyright.

7. Activities in new markets.

8. Promoting copyright owners' interests nationally and internationally and liaising with and lobbying governments.

MCPS' functions and ability to act are restricted by the fact that it is only an agent for its members and can only do what its members allow it to do through their limited mandates to it. Since MCPS is involved in a specialised type of business - the music industry - it cannot really go outside it, it cannot really diversify, so it has to attempt to make a niche for itself as best it can in this limited (though broad) area. It is involved in the business of COPYRIGHT CONTROL and the collection and distribution of royalties relating to the mechanical right - it does not deal with grand rights (stage and dramatic performing rights as Whale[14] calls them), for example. In interview, it was admitted that MCPS has not yet worked out exactly how to achieve its stated objectives, that it was still in something of a state of flux, in a learning phase, about how to reach them. The reason for this is that its destiny is very much in the hands of the major publishers (who control MCPS and represent its most potent members) who have not yet reached a consensus amongst themselves. Meanwhile, MCPS is trying its best to work towards this consensus, to persuade the major publishers to reach agreement amongst themselves and sort out their disagreements and conflicts of interest. Copyright control is control of the various revenue sources for copyright.

It is necessary to regulate the way the industry works too. Thus MCPS also generally, rather than specifically, looks after mechanical rights since it does a lot of work which

benefits the industry as a whole rather than individual copyright owners. Even though the work benefits the whole industry, the industry does not directly pay for it - the money has to come from revenue MCPS earns from other sources, so that MCPS and individual copyright owners are subsidising the expenditure for the industry. During discussions at MCPS, the thought was expressed that it would be interesting to see who picked up the tab if MCPS ever failed, who paid for these general industry services then and even if they continued. Part of this general involvement also covers an information collection and dissemination function - MCPS has to try to ensure that situations are fully comprehended by the parties concerned and that they are fully informed. It is in this area of general rather than specific involvement that grey areas appear and MCPS experiences the most problems. It is not clear how far along the road of general functions MCPS should go rather than concentrating on its specific collection/distribution functions and the situation is rather blurred.

Collection and distribution of royalties is the main function of MCPS and provides the greatest amount of income. Members can, however, limit who MCPS collects from, which territories it collects in and generally give a limited mandate. Another aspect of copyright control is the carrying out of industry negotiations on rights and various aspects of rights through MRS with various user groups. This is, in fact, related to the collection/distribution function since MCPS can improve

this function in its negotiations with users through MRS. If the rights agreements are negotiated well in the first place, it makes collecting and distributing income derived from those rights much easier. This is actually the case for a number of MCPS' functions - there is quite a lot of interaction and interrelationship between them so that they can each be used to imnprove each other. The policing and monitoring function of copyright users performed by MCPS is also very important, especially at the bottom end of the market (the more fly-by-night and very small operators) because if the rot sets in at the bottom, it will soon work its way up. The royalty accounting function for copyright users is important so that everyone knows who owes whom what, a function which is more efficiently performed by one organisation than several. The information service provided by MCPS is equally valuable and in many cases MCPS can act as the record companies' copyright department by clearing copyrights and providing information on ownership. Or, a person may get in touch because he wants to make a record but is unsure of the copyright position. However, MCPS will not provide information if it thinks the information is potentially damaging to another member. The carrying out of market surveys and analyses and the work it carries out in new markets is a relatively new function for MCPS, which is becoming more and more important with the development of new forms of technology which affect the music industry. Initially, educating users on the copyright position is a major problem when it comes to new technologies. When video

was first becoming established, for example, a number of companies were guilty of neglecting copyright aspects as regards the music on the video and looking on the new medium as just a new form of marketing. MCPS had to set the record straight.

Most of MCPS' functions relate to collection and distribution of royalties for its members and most of its revenue comes from this source, although the accounting function brings in an extra £10,000 or so a year. Commission on collection and distribution services, interest on money collected but not distributed and various other fees for services provided (the latter bringing in about £20,000 a year) are used to cover costs. However, MCPS' industry - type services, which no-one else could provide have to be paid for out of collection/distribution revenue. MCPS recognises that this is far from an ideal situation but the complex nature of the environment in which it operates, the politics inherent in the situation and the history of the organisation means that it is very difficult to reach a consensus of opinion as to direction and scope of activities, although MCPS is trying as best it can to develop a consensus and the whole situation is presently under review and is the subject of thoroughgoing analysis. The scene is further complicated by the fact that the publishers themselves find it difficult to reach agreement on a consensus because they each run very different businesses. As it was explained to me by MCPS, there are three main types of music publisher - the serious music

publisher, the popular music ("pop") publisher and the library music publisher. The other side to the industry is represented by the composer, who often complains about bad deals from publishers and being "ripped off" by them, although publishers offer a very valuable promotional function to composers as well as taking the risk. The new composer usually needs the publisher to show him how to exploit his work to the greatest advantage. MCPS represents one place where both sides come together and to the extent that publishers and composers want to increase use of their works to maximise revenue from the copyright, both sides benefit and they can be said to share at least some interests. However, MCPS does not actively seek to "sign up" composers and has to be careful in doing so because then it would to an extent be taking custom away from the publishers - and remember that MCPS is owned by the MPA. The publishers do not really want MCPS to interfere with their relationship with the composers but would prefer the present system to be enhanced, preferring to bring the creator to the user through the publisher. MCPS noted that one must consider whether there could be a satisfactory user-creator relationship, whether new talent could find markets and whether the composer's earning potential would be reduced if there were no publishing. MCPS does, however, duplicate much of the administrative work of the publisher and can do it much better and more efficiently than most because of a higher volume of work allowing it to benefit from economies of scale, for example. MCPS is largely dominated by publishers

and we have the novel situation that the shareholders of MCPS are also its major customers, yet MCPS is also in competition with the shareholders for the available business. MCPS has a very delicate balancing act to perform. The differences between the various types of publisher represented by MCPS further complicates the situation. For the serious music publisher, mechanical royalties are not the main source of income. They are more long-term in their thinking - hiring out orchestral parts and publishing music books being some of their functions. Such publishers tend to look to grand rights, public performances and hire fees for their main source of income. Sheet music publishing and piano and vocal scores are very important to them. The situation in the "pop" music publishing market is almost the complete opposite - their thinking is more short-term and they are more interested in a rapid short term turnover of artists and repertoires, paying advances and signing up artists quickly. A lot of their income comes from mechanical royalties and they are in the entertainment industry rather than the music industry. The exception to this more short-term approach is those publishers who deal with 'standards', old favourites, which represent long-term bank deposits. Serious publishers would seem to have little in common with the pop music publishers - they go about their business differently and they look at their business differently. The library publishers produce music ("Library Music", "Mood Music" or "Production Music") specifically to be used in audio and audio-visual productions which is already recorded "for

convenient synchronisation and/or dubbing into these productions"[15]. It does not cost much and is a "readily available source of recorded music" which can be used by anyone who wants to use it such as broadcasting and video companies, for example, as background music, generally to visual material. The library publishers have a sub-committee which works with MCPS and MCPS does all the auditing for the library publishers. This particular aspect of music publishing is a similar operation to any industrial business in the UK - it is just like selling anything with similar methods being required and used - whereas the other forms of publishing are somewhat more complicated and have their own peculiarities and difficulties. This is thus a further aspect to the political problem confronting MCPS - how do you develop a consensus as to what direction an organisation is to take and what activities it is going to pursue when you have three different types of publishers running three quite different types of marketing operation? The co-operation MCPS gets in developing a consensus and in achieving its objectives varies according to the type of publisher - the "pop" music publishers, for example, apparently tend to guard against MCPS getting too involved at the top end of the market because it is very lucrative and there is a lot of money at stake. They do not want to have to pay MCPS its commission for collection and distribution of such large sums of money since it will obviously amount to a lot and they want to be able to hang onto as much of this as possible. However, as long as MCPS is involved, they do not mind it

dealing with the lower end of the market which is the most bothersome and difficult sector from which to collect. Thus, on the record side, the large publishers tend to collect royalties from the large record companies themselves while leaving MCPS to collect from the small companies, the medium sized companies and the small-change merchants. This obviously represents a great limitation on the revenue MCPS can collect. MCPS is constantly trying to get its mandate increased from its members - for example, when a new membership agreement came into effect in 1978 it allowed MCPS to collect from higher revenue bearing record companies in return for a lower commission rate for publisher members.

Revenue

Revenue can be defined either as total royalties and fees collected in the year or total royalties and fees distributed in the year (defined by MCPS as TURNOVER) or as commission plus interest plus minor sums and other income. Since the latter is used to cover costs (a situation somewhat different from the other two societies which just take costs out of revenue collected in the year and do not charge a commission), I will discuss performance in that field later. Performance in terms of royalties and fees collected and turnover both in money terms and real terms is given in the table and graph below for the period 1978-1983.

YEAR	1978	1979	1980	1981	1982	1983
Turnover (Money Terms)	5,138,547[a]	7,132,455[a]	7,542,176[a]	7,610,055[a]	8,011,163[a]	10,046,305[a]
Turnover (Real Terms)[b]	2,607,076	3,191,255	2,860,135	2,579,680	2,500,363	2,997,108

TABLE 5.1 MCPS TURNOVER 1978-1983 Money and Real Terms

Source: a - MCPS Reports and Accounts 1978-1983

b - calculated as in Chapter 4

YEAR	1978	1979	1980	1981	1982
Royalties collected (Money Terms)	6,756,335[a]	7,989,950[a]	7,780,176[a]	7,707,250[a]	9,200,000[a] (approx)
Royalties collected (Real Terms)[b]	3,427,872	3,574,922	2,950,389	2,612,627	2,871,411 (approx)

TABLE 5:2 MCPS COLLECTIONS 1978-1982 Money and Real Terms[16]

Source: a - MCPS Reports & Accounts 1979-1983

b - calculated as in Chapter 4

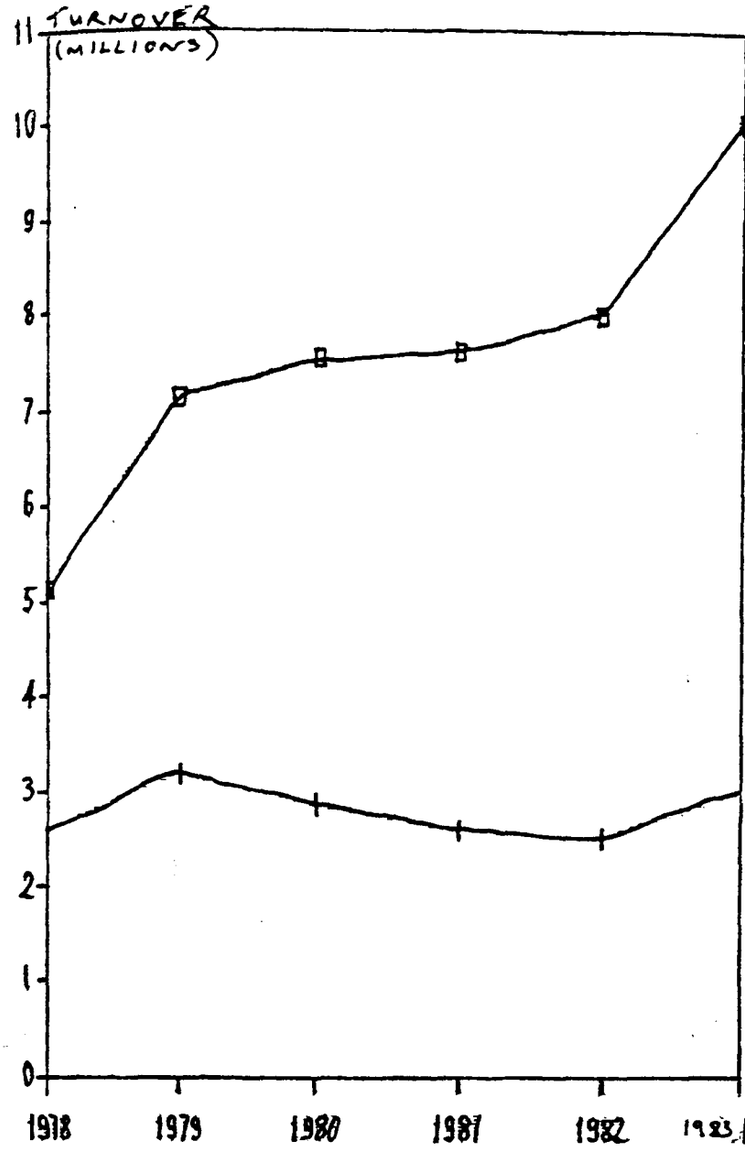


FIGURE 5:1. MCPS Turnover-Money & Real Terms

Source: Table 5:1

MT = Money Terms

RT = Real Terms

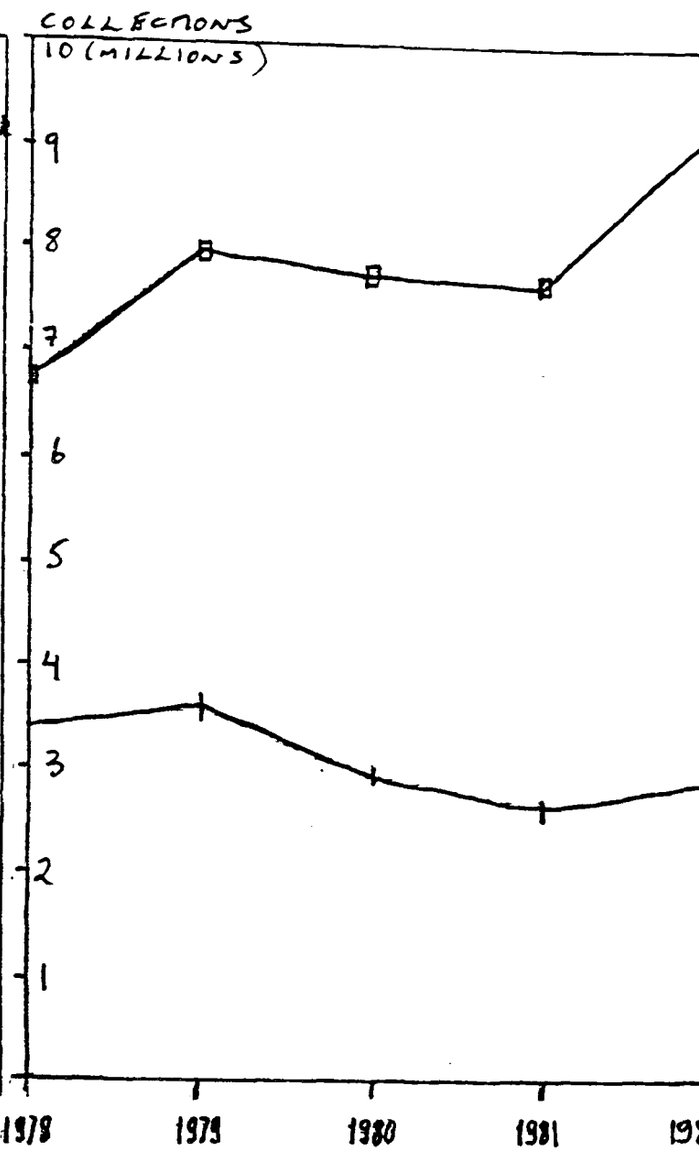


FIGURE 5:2. MCPS Collections Money & Real Terms

Source: Table 5:2

Collects = Collections

Until 1982, MCPS' performance in terms of royalties collected and royalties distributed was hardly inspiring. 1982, however, seems to have represented something of a turning point, the year in which MCPS finally saw the benefit of its reorganisation and many changes. Obviously, only time

will tell but the signs are encouraging. Before 1982, figures for collections were frankly not very good, since they fell even in money terms every year after 1979. 1982 saw a rise in collections in real terms of about 10% but for 1983 figures for collections are not available - there are only figures for royalties invoiced. In 1982, however, the figure for collections in real terms was still lower than the real term figure for 1978. As to turnover, performance was broadly similar to that for collections, with the figure falling in real terms in 1980-82. This corresponds with the period of re-organisation for MCPS. 1983, though, was an exceptional year with turnover rising by over £2 million and 25% in money terms and 20% in real terms. 1978-9, too, was a particularly good period, especially for distributions, which increased by 38.8% in money terms and 22.4% in real terms. Collections rose 18.3% in money terms and 4.3% in real terms. The 1979/80 figures suffered somewhat because of the introduction of the new membership agreement which caused members to review their mandates and some to leave and because MCPS was concentrating on developing a new in-house computer distribution system, with collection of royalties apparently not being the problem. Distribution, though, was very difficult.

In comparing years in real terms, we must make certain allowances. For example, as regards turnover a large part of MCPS' revenue comes from commercial records and for recordings of musical works after the first one, the royalty

is set by statute at 6.1/4% of the normal retail selling price. The price of records rose by 95.2% between 1974 and 1981 while the RPI rose over 190%. Recalculating the figures using a retail price index for LPs, applied to 40% of the revenue figure, (since 40% of MCPS income is from records) and then adding back 60% of the RPI adjusted revenue figures, however, shows the same downward trend from 1979 onwards as Table 5:1, although the fall is not quite as large. Carrying out the same operation for MCPS collections, we get the same picture. This is hardly surprising when one considers that collections fell even in money terms in 1980 and 1981 and distributions rose only by small amounts between 1979-81. In addition to the need to take account of changes in retail prices of LPs, one further allowance which one must make is for the time lag between collection and distribution and for the backlog of royalties collected but not distributed between 1978 and 1982. In any case, over the period 1978-82, the RPI rose 62.6% while turnover rose only 55.9% and collections 36.2%. 1983, however, saw a dramatic improvement in turnover, so that over the period 1979-83, the RPI rose 70.1% while turnover rose 95.5%. One cannot really compare collections after 1982 because MCPS has changed its accounting policy to take account of the 1981 Companies Act so that there is no longer a figure for collections but rather for royalties invoiced. There are signs from the 1983 figures that MCPS has turned the corner.

In 1976, the computer bureau MCPS then used left and the organisation itself decided to computerise and develop its own internal distribution and royalty accounting system. For 12-18 months, no royalties were distributed. This followed the taking over of MCPS by the MPA in 1977 when a new managing director and senior management was appointed, which decided to computerise as a priority. The previous management had left a terrible mess and the new team had to make a number of difficult, expedient management decisions for which MCPS is still paying somewhat, although the price is falling as time goes on.

At the time of the takeover, MCPS was in rather a sorry state and the accounting systems then in use made control of operations very difficult indeed. The 1979 Report and Accounts notes that the "royalties payable accounts had not been fully balanced for many years prior to the takeover of the company". There was a vast amount of unprocessed paperwork and royalties. Control was not established until 1981. Some idea of the problems MCPS had is provided by the fact that in the 1980 accounts the royalty liability at 30th June, derived by adding total collections and taking away total distributions, was calculated as £7.5 million but investigation of supporting documentation and computer analysis revealed only £1.6 million. MCPS has now computerised and is developing a database apace. The new computer distribution system started in October 1978 and "significant distribution" using it began in December.

Distributions are once a month, much quicker than the other two societies which distribute quarterly. The yearly figure for 1978-79 of £7,132,455 was actually distributed in the seven months December 1978 to June 1979 and between July and October 1979 the Report and Accounts notes that about £2.5 million was distributed, so the actual yearly figure was probably over £10 million. Over the period, overseas royalties represented a particular problem since there were a large number of them unprocessed and undistributed.

The future is beginning to look much better for MCPS, however. Targets are set for distributions for the year - in 1982 the target was set at £8 million and in 1983 at £10 million - both were reached. For 1984, the target is £10,955,000. This is likely to be exceeded by a long way. For the first 8 months of the 1983-4 financial year, up to the end of February 1984, turnover reached £8,147,000 and the forecast was £12,000,000 by the end of the financial year. Collections and distributions were expected to rise by about 20%. Factors affecting the amount MCPS collects are complex and numerous and it was suggested that they include inflation, cost control effectiveness, copyright control activities, changes in members' mandates, the volume of activity of recorded music, interest rates and investment in new systems and methods. The way in which MCPS collects record company royalties also affects the amount MCPS can collect. This will be explained later. Record company

royalties represent a large part of MCPS royalties, so anything which causes the record companies to suffer will also affect MCPS. In 1981, these royalties fell by £1 million. The small/medium sized companies suffer more than the large companies in a recession because the latter have more resources to weather the storm. These small/medium companies represent MCPS' market in the record field. There are large fluctuations between the months as regards MCPS income.

Administration Expenses

Large increases in costs over the years is a problem all the collecting societies have had to face and one to which all are very sensitive. Attempts to keep costs down have met with varying degrees of success amongst the three societies and it is one area in which it would be quite easy to attack them. But they all seem alive to the problem and at least are trying to do something about it. In fact, the way MCPS operates would seem to make it much better able to control costs than the other two societies - MCPS collects a commission while the other two just take costs out of the revenue they collect. The latter method would seem to leave a lot of room for indiscipline over costs while with MCPS' method it at least has some idea of the cost of each transaction and can pin down unexpectedly high cost increases. It would also seem to make it easier to analyse

each market sector in terms of cost-revenue relationships and in fact MCPS has carried out such an analysis and identified suspect areas and sectors which could be improved. It has introduced a cost-control system, which is a welcome sign. To use an economic term, MCPS would seem to have more idea of what is its marginal cost of transactions. The difficulty with the other system, used by PRS and PPL, would seem to be that it is easy to lose specific areas and transactions in the general haze of figures making it more difficult to identify problem areas and cost-saving opportunities especially since in PRS' case allocation of costs between sectors is judgmental and can vary over the years. It is interesting to note that in interviews with PRS it was mentioned that cost control was about to be upgraded. Obviously, again, politics play a part in the level of costs in these organisations. For now, I will concentrate on general trends in administrative costs and leave discussion of cost-revenue relationships and cost control to later. Table 5:3 shows how costs have increased both in money and real terms over the period 1978-83. To calculate the real value of costs I have used the RPI rather than any other measure of cost inflation. One could argue that the RPI is not the best measure to use, but it simplifies the analysis and at least gives an idea of the general trends which is all I want to do. Besides which, it is difficult to know which other measure to use.

	1978	1979	1980	1981	1982	1983
Administration Costs (Money Terms)	992,966[a]	1,157,867[a]	1,294,972[a]	1,770,105[a]	2,069,040[a]	2,163,835[17]
Administration Costs (Real Terms)[b]	503,788	518,061	491,078	600,036	645,768	645,535

TABLE 5.3 MCPS ADMINISTRATION COSTS 1978-83 MONEY & REAL TERMS

Source: a - MCPS Reports & Accounts

b - calculated as in Chapter 4

Figure 5.3 depicts the same information graphically

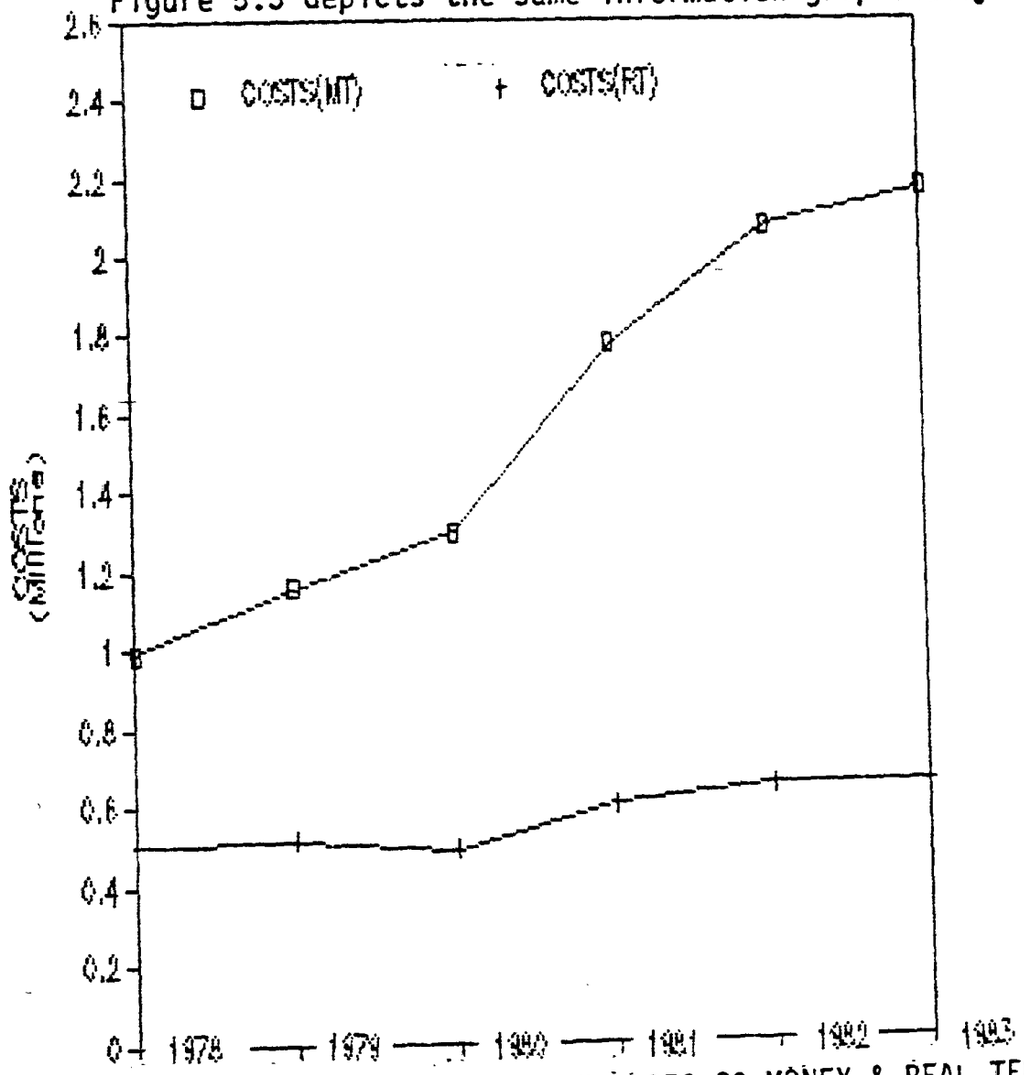


FIGURE 5.3 MCPS ADMINISTRATION COSTS 1978-83 MONEY & REAL TERMS

Source: Table 5.3

As we can see, in money terms MCPS costs were rising steeply until 1983, but in real terms costs have been kept down remarkably well and they are not that much higher now than in 1978 and they fell in 1983. The position would have been even better but for the sharp rise in 1980-81 of 36.7% in money terms (22.2% in real terms), although there were reasons for this. Up until then the picture was very encouraging with costs even falling in real terms in 1979-80 by over 5% and the rise in 1978-79 being less than 3% in real terms. The rise in 1983 was only 4.6% in money terms. There are two main reasons for the large increase in costs in 1980-81. At that time, it seems, MCPS embarked on a general overhaul of its business. Staff costs, which until 1980 were round about 58-60% of total costs, suddenly shot up to 64.5% of total costs. This was accounted for by the fact that MCPS believed it was paying its staff at a "ridiculously low level"[18] before that period. Those at the lower end of the scale in particular were earning very low wages, little more than pin money in some cases. It was agreed by the Board that salaries would have to be raised if the quality of personnel was to improve. As a result, the salary scale was changed and grading systems and comparisons with local industry and the music industry introduced. Previous to this, there were many anomalies in the salary scale between different people doing the same job. Now, generally, people are paid similar salaries for doing similar jobs. At the same time, a number of members of staff were replaced but this only partly funded the new system. Having fallen from

an average of 154 in 1978 to 144 in 1980, the number of employees had risen again to 169 in 1981. This was cut to an average of 162 in 1982, and 160 in 1983. The proportion of total costs accounted for by staff costs fell to its lowest level in 1982, at 56.1% but rose to 58.5% in 1983. The other main move in the general overhaul which pushed up costs was the move from old to new accommodation. Before June 1981 MCPS occupied 4 different buildings and was paying low rent on properties which were near the end of their long lease. This rather unsatisfactory situation led to MCPS acquiring the nickname "The Housewives of Streatham". (MCPS is located in Streatham, South West London). MCPS was faced with an increased rent demand to renew the lease. In 1982, MCPS moved to a single location and started paying a rent, fixed for the next 15 years at "a current market level". The costs of moving were large and the new building was completely refurbished, while many of the benefits were intangible - before, there was a rather grubby, bad civil service atmosphere, it was suggested, but the single location has made the atmosphere more businesslike, professional and workmanlike. Communications and morale have improved considerably. Other factors affecting costs were the backlog of undistributed royalties from previous years which were not distributed on time and heavy investment in computerisation and the development of a database. In the circumstances, the 1983 cost figure represents a very good performance.

Markets

I shall now deal with the composition of the royalties MCPS collects. MCPS has five main markets - Commercial Sound Recordings, which may be sub-divided into black discs, compact discs and audio tapes; Broadcasting made up of independent television, BBC television and radio, Channel 4 independent local radio and Radio Teleafis Eireann; Audio-Visual comprising TV commercials, slide tape presentations and video; International comprising royalties received from overseas mechanical societies for recording of MCPS members' works abroad; and Other such as cable television, background music and dial-a-disc. I shall deal with each of these in turn.

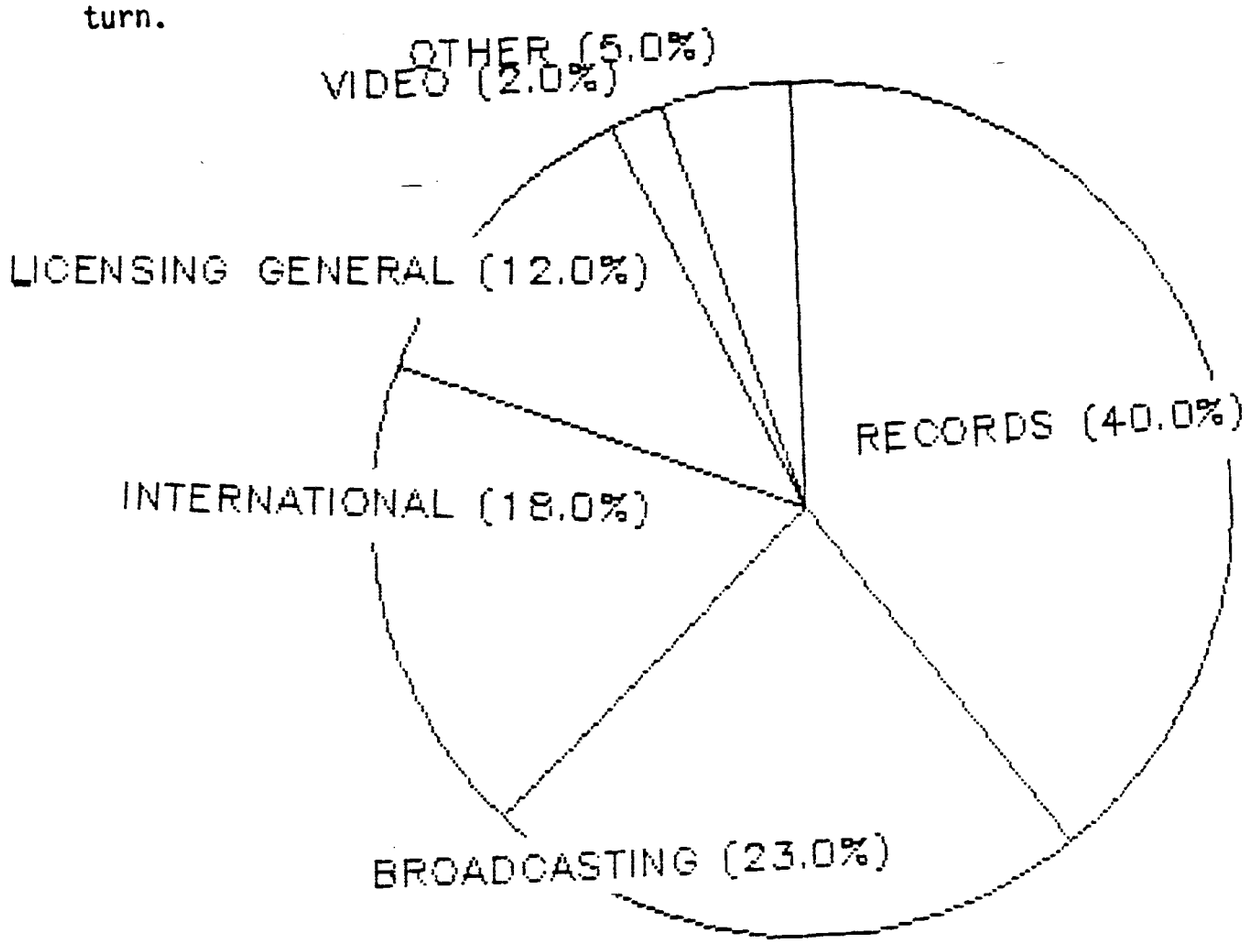


FIGURE 5.4 - MCPS BUSINESS: BREAKDOWN BY SECTOR

Figure 5.4 gives a general breakdown of MCPS' business by sector with approximate figures supplied by MCPS, while Figure 5.5 shows the percentage of business in each sector held by MCPS. This shows clearly that MCPS is not a monopoly. In only one sector - broadcasting - does MCPS control 100% of the market. In all the others, it only controls part of the market. This is one big difference between MCPS and the other two societies, which both have virtual monopolies in the fields in which they operate. Thus, for example, MCPS only has about 20% by value of the commercial sound recording market - MCPS mainly collects from the small and medium sized record companies. The other 80% of money received in royalties for recording musical works in the UK is collected by members themselves. One word of caution about the two figures - they are not strictly comparable. Figure 5.4 is based on information supplied in interview, while Figure 5.5 is derived from an MCPS internal document on MCPS market size in 1982. Obviously, too, the figures are subject to change over the years. Figure 5.5 percentages would produce market shares for Figure 5.4 of 38.6% for Commercial Sound Recordings, 26.3% for broadcasting; 13.2% for overseas; 17.5% for audio-visual and 4.4% for miscellaneous. Both figures, however, give a general picture.

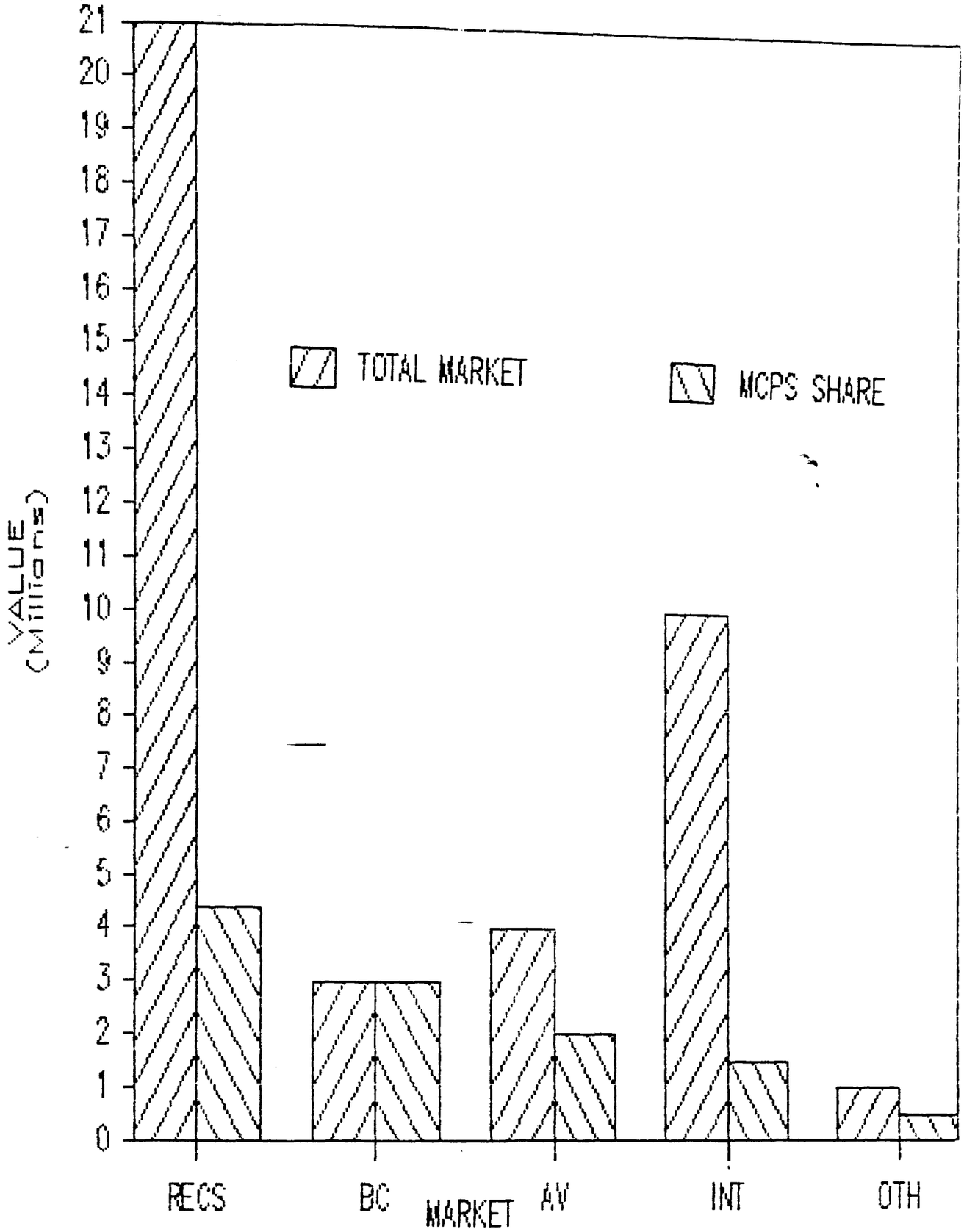


FIGURE 5.5. - MCPS shares of the Market

RECS = Commercial Sound Recordings (MCPS share 21% = £4.4 million); BC = Broadcasting (MCPS share 100% = £3 million); AV = Audio-Visual (MCPS share 50% = £2 million); INT = International (MCPS share 15% = £1.5 million); OTH = Other (MCPS share 50% = £500,000).

Commercial Sound Recordings

Collections from record companies represent the largest part of total MCPS royalties collections. However, at the bottom end of the market MCPS is carrying out a "totally cost ineffective exercise"[19]. The problem with the previous administration in this field was that MCPS was only collecting from the smallish record companies. Members were allowed to collect royalties directly from the record companies rather than going through MCPS (and paying a commission), if they wanted. This meant that the residue of royalties left for MCPS to collect was small and in rather obscure areas. Obviously, it was less than cost effective. In 1978, therefore, MCPS decided that it had to have a greater share of the market. Because of recent computerisation, MCPS decided that it could just as easily pick up £2 million or £12 million - it would not raise any significant new problems or cost much more to handle the higher figure. Naturally, MCPS wanted to grow bigger since the larger collecting societies are the more clout they generally have and the more royalties MCPS collects and distributes, the greater the total amount of commission it gets. It also wanted to increase its share of the market which would make its operations more cost effective. As a result, MCPS introduced a new membership agreement telling its members that they could continue collecting individually

from the large royalty areas, from the large record companies, but it wanted to increase its participation in the market to the medium revenue areas in addition to the areas in which it already operated (the small record companies). In return for this increased participation, it would give members lower tariffs.

For the whole of MCPS' operations, not just the commercial record sector, there are now just two main tariffs - A and B with a residual C tariff covering non-members. In the record sector a publisher member may collect royalties himself from the largest eight record companies and their subsidiaries (without going through MCPS) - from CBS Records Ltd, EMI Records Ltd, Pickwick International (G.B) Ltd, Polygram Record Operations Ltd, P.R.T. Ltd, R.C.A. Records Ltd, Readers Digest Association Ltd, W.E.A. Records Ltd and any other record company within the same corporate ownership as the member. He may also exclude royalties paid on behalf of labels within pressing and distribution and/or licensing agreements. These record companies control about 180 other labels which may be excluded. MCPS will then collect from all other record companies and sources. If the member agrees to this, he will be on tariff A. In tariff A, commissions vary according to who the royalties are collected from. Thus, if MCPS collects royalties from the specified television merchandising and promotional record companies - K-Tel International (UK) Ltd, Ronco Teleproducts (UK) Ltd,

Ellem Publications Ltd (Arcade label) and Warwick Records (label only) - the commission is only 5%, while for royalties collected from other UK and Eire commercial record companies, the commission is 8%. If, however, a member wishes to collect from the largest eight record companies (plus their subsidiaries) and another company(ies), say K-Tel or Virgin, then he is placed on tariff B which lays down a commission of 15% on all collections. If a member wishes to collect from outside the "big 8" he is put on tariff B. Most members are on tariff A. The new membership agreement was a major step towards effective operation for MCPS since it did not want to deal with just the troublesome, obscure, low-total collections and it wanted to increase its market share. Nor was its introduction trouble-free - the members kicked up a tremendous fuss at first, but eventually accepted it. The new agreement enables MCPS to exert more influence and control over those from whom it collects and over its members. A record company is perhaps more likely to take note of a body like MCPS which has a bit of muscle than of an individual or single publishing company. Moreover, MCPS is more likely to hear of obscure, small companies and places where recording takes place than individual members and can devote more resources to finding out more information and taking action than an individual member would be willing or able to do. If MCPS did not exercise control over the lower and smaller end of the market, the number of copyright infringements would grow greatly and gradually spread

upwards. A strengthening of MCPS' position resulted from the move. In fact, most publishers do collect directly from the big eight record companies because they do not mind setting up Copyright and Royalties Departments. Even the small publishers do the same, in fact. MCPS does collect from the large record companies in some cases, however, because composers cannot eliminate them from their mandate and MCPS also collects from them for foreign societies. In fact, most of MCPS' collections in the commercial record sector are from large record companies and this produces over £2 million a year even though it collects only 20% of total major record company royalties. The television merchandisers such as K-Tel and Ronco are the main companies from which MCPS collects and it also does the royalties accounting for them (and many other record companies) for which the companies pay MCPS. This provides an additional form of control for MCPS over the record companies. In all, MCPS holds files on about 4,000 record companies. Obviously, these companies vary greatly in size, some of them being no more than one man, or one work operations. The 5% commission charged for collecting royalties from the television promotional record companies is very low. Although the figures are not strictly comparable, PRS, for example, deducts from the royalties it collects over the year a sum to cover its administrative costs and this usually amounts to 14-15% of total royalties collected in the year and this figure is generally rising each year. At MCPS, the average tariff is about 12%. MCPS

can charge low tariffs because commission is only used to cover part of cost, "interest" supplying most of the rest. MCPS also does a lot of work for the record companies in the form of clearing music and recordings.

A great limitation on MCPS' actions in the field of commercial recordings is the statutory royalty of 6.1/4% under Section 8 of the 1956 Act. This means that MCPS is compelled to charge 6.1/4% of the normal retail selling price of the record provided the musical work has previously been recorded - there can be no variation on this (there are problems in determining the normal retail price of a record, however). This is in comparison with the situation on the Continent where the royalty is set by negotiation between the respective parties under the general agreement between the IFPI representing the record industry and BIEM representing the copyright owners. So, for 1000 copies of a record retailing at £5, the total royalty payable would be 6.1/4% x £5 x 1000 = £312.50 (assuming the £5 is net of VAT). One then has to find a per track royalty. So, 31.25 pence (6.1/4 x £5) is divided by two, representing the two sides of a record, producing 15.625 pence per side. Then, suppose side 1 has four tracks and side 2 six tracks, this gives a per track royalty of 3.9 pence for side 1 and 2.6 pence for side 2. The per track royalty may be required if a separate accounting is needed for all or a number of tracks - for example, if it is a compilation album, different publishers may be involved and royalties will have to be paid to each

according to the number of tracks they have on the album.

Generally, the record department at MCPS is divided into two parts - large record companies and small record companies and the agreements MCPS has with each are rather different. The large record companies account to MCPS on record sales every quarter, whilst the small record companies are invoiced on pressings. One might say that this is somewhat unfair on the small companies, however, since they have to find a fairly large amount of money before they can sell the records whereas the large companies do not (although it is possible to claim back royalties on records not sold in certain circumstances - but it is a bit late then). The basis of the difference seems, however, to be that of competence and trustworthiness. Any company can join the record industry with no particular financial backing or commercial competence or experience and use copyright musical works for recording provided it follows the set procedures and without much control over how it does this. The large long established companies are well respected and the agreements they have made with copyright holders give them certain commercial advantages. "There is no reason why a small record company cannot have the same advantages as a large record company provided it can show that it is adequately financially backed, appropriately managed with competent staff and demonstrate that it understands its business"[20]. In fact, many small companies do operate Sales Agreements with MCPS. These agreements "confer greater responsibility on the record

company"[21] and are not just to the advantage of the record companies since they give copyright holders various rights to investigate record companies' businesses. The Application to operate a Sales Agreement with MCPS attempts to ascertain the nature and financial position of the company. So, typical questions asked are whether royalties liabilities have previously been settled promptly, the type of organisation, and questions to ascertain the company's ability to meet royalty liabilities (interest is payable on late royalties liabilities) - such as the number of releases envisaged, exports, whether a catalogue is printed and information on costs, revenue and profits [22]. An invoice is issued for the small companies based on their pressings whereas the large companies self-account. The record department will receive a pressing notice concerning orders a pressing plant has received. There may be an infringement of copyright if a copyright stamp (representing a royalty) is not bought and fixed to every record which contains copyright material before it is put on retail sale to the public, a stamp which is provided by the copyright owner or his agent on payment of the royalty and which shows how much has been paid. One must also remember that a person can equally be liable for authorising an infringement as for infringement itself (and this applies to all MCPS' markets, not just commercial records). However, MCPS has an arrangement with the pressing plants whereby it will not sue them for authorising an infringement as long as they inform MCPS of what they are pressing and what pressing orders they have received[23]. The

procedure for complying with Section 8 of the 1956 Act is laid down under Regulations from the Board of Trade but these are varied in practice. For example, records do not usually have to have stamps on them but record companies enter into "facsimile agreements with MCPS, of which there are three - the MRS Agreement for large established companies, the MCPS 'B' Agreement for medium sized companies and the MCPS 'C' Agreement for new and small companies[24]. Not all companies or people who record music have agreements with MCPS, of course, and MCPS provides stamps for these, of which hundreds of thousands are issued a year mainly for "special one-off recordings by schools, church choirs, local bands" and the like and for some specialist companies which produce their own records [25]. The Agreements replace the sticking of stamps to records with the inclusion of the MCPS facsimile on the record or tape labels and payment before release with periodical royalty payments[26]. Exports are dealt with under the MCPS 'B' and MRS agreements but not automatically under the 'C' agreement while the latter agreement lays down payment of royalties on pressings and the former provides for concessions for payment of royalties on sales[27]. The agreements also allow MCPS to control distribution of masters and uses of works in which Members own the copyright more closely by means of undertakings in the agreements and include provision for MCPS to audit record companies' books and stock records which represents "additional assistance in maintaining clear and correct files" for the record companies[28]. The MCPS Audit Service will also suggest new

and improved systems such as for computerisation[29]. MCPS also provides record companies with information on copyright status such as who is collecting the royalties (MCPS or the individual) and who owns the copyright in the music. In fact, it is manufacture of records which is restricted by law, not the sale, so one might argue that the large-medium sized companies should pay at manufacture, although one must remember that such companies have made arrangements with copyright holders to pay on sales with commercial benefits for both sides.

The record company will send in a statutory notice to MCPS giving information on the records being pressed such as full details of the titles used on each side of the record, the name of the composer or author or arranger and the publisher and copyright owner plus the retail selling price of the record excluding VAT, the record company's name and address, the number of pressings, the name and address of the pressing plant, the type of record, its label, title and artists involved and its release date. MCPS receives about 20,000 statutory notices a year (the forerunner to a statutory notice may be a statutory enquiry asking whether the making in or importation into the UK of records of the musical works in question has already been authorised by or for the copyright owner since Section 8 of the 1956 Act only applies if this condition is met. If this is not the case, the record company will probably ask for authority to make records in the UK for retail sale in the countries in which

MCPS owns or controls the recording right). The statutory notice may be sent in automatically by the record company concerned or MCPS may have to get in touch with it to remind it of the need to send in such a notice. MCPS chases after and follows up all the statutory notices. If no statutory notice is received following a pressing notice, a warning letter is sent out, then a reminder and then a final letter which also goes to MCPS' licensing representatives on the road, who look into it and take action as required. When MCPS receives the statutory notice, it clears the copyright details, calculates royalties owed and sends out an acknowledgement, stamps (if the record company has not signed one of MCPS' Agreements) and an invoice. Stamps are only valid on settlement of the invoice[30]. The pressing plants are expected to keep MCPS informed as to their activities and MCPS will then approach the record companies as necessary. If, however, nothing comes of MCPS' approach to the record company, it may ask the pressing plant to stop dealing with the company concerned. Apparently, it is not very easy to keep tight control over the small record companies since they may have in-house pressing facilities, for example, but MCPS has about 100% of the minor record companies' market (as against the bottom 20% of the major record companies' market which it controls through audit). MCPS distributes royalties once a month. The large record companies account to MCPS one and a half months after the quarter to which they relate (mid-May for the January-March quarter for example) and account quarterly on sales. MCPS distributes royalties from

these large record companies within 5 months of the quarter to which they relate. The small record companies are invoiced on pressings and royalties from them are distributed within 4 months of receipt. Distribution of royalties from the television promotional record companies is within 3 months of the end of the quarter to which they relate (so, for the January-March quarter, distribution would be in the June distribution). In 1983, distribution of royalties from commercial record companies was £3.8 million.

Importation of Records

Section 8 of the 1956 Act, the statutory recording licence, applies only to the manufacture of records of musical works in the UK where records of such works have previously been made in or imported into the UK with the copyright owner's permission. It does not apply to importation of records of musical works even if the work has previously been imported with the copyright owner's consent - only to manufacture of records of musical works previously manufactured or imported into the UK for retail sale with the copyright owner's consent[31]. Sections 5 and 16 of the 1956 Act makes it a breach of copyright in the musical work and the sound recording respectively to import a record into the UK or any other country to which the 1956 Act extends without the copyright owner's consent, if the importer knew that making the record was an infringement of the copyright or would have been an infringement if the record had been made in the

place into which it is imported. In the field of importation of records, MCPS performs the function that all collecting societies carry out facilitating the licensing of copyright material by simplifying the administrative procedure for copyright owners and for importers. It issues licences for importation and sale of records so that, provided royalty stamps are attached to them, and subject to certain conditions, some of the copyrights are not infringed[32]. The only real requirement is that copyright owners receive the royalties due to them. If imported records do not have such stamps on them, retailers and wholesalers may also infringe copyright themselves under Sections 5 and 16[33].

As in the field of performing rights, many national mechanical rights societies are linked by international agreements and they license exports from their own countries at the royalty rate existing in the country into which the records are imported and make sure that the copyright owners receive the royalties owing to them[34]. There are a number of countries which have not signed a mechanical rights international agreement and do not control licensing of exports or records, however - the Far East, Central and South America, for example, cause difficulties, but North America is the biggest problem, apparently, since U.S. record companies receive licences which only allow sales in the U.S. so U.S. copyright owners receive the U.S. royalty rate while records meant for export may not receive any royalties at all. These imports are therefore unlicensed, sell for a

lower price than those already on the market (since the latter attract a copyright royalty while the former do not) and deprive copyright owners of their royalties. The imported records compete unfairly with locally produced records which have been made by companies which have fulfilled their copyright obligations[35]. MCPS licenses imports and issues "Special Import" stamps[36], covering all records made lawfully in the U.S., Canada, Japan, Australasia, the Philippines, West Indies and USSR containing musical works owned or controlled in the UK by members of MRS and MCPS but not pirate, bootleg or audio-visual records, although MCPS is an agent and is bound by what its members instruct it to do and some of its members will not allow import and sale of certain records, in which case import and sale will constitute infringement[37]. MCPS keeps a register of them. It can only license musical works controlled or owned by its members and other copyrights such as in the sound recording also have to be thought about (and MCPS does not deal with these).

Different royalty rates apply to different records - 5p to 7" singles, 10p to L.P's deleted from the record catalogue of the country where the record is made and 12" singles, 17½p to L.P.s which retail at £2.75 or less ("budget" L.P.s) which have been in the catalogue of the country of manufacture for longer than 6 months[38], 25p to L.P.s and 40p to L.P. picture discs - and each record requires a separate stamp (a double album requires two). Enough stamps to cover the number of

records imported must be bought before importation and fixed to the records or their sleeves or boxes at the earliest of 14 days after import or before sale by the importer[39]. The stamps must be paid for within 14 days of invoicing and the importer must not sell or dispose of the stamps to anyone else. If any of these conditions is broken partly or totally, import or sale of the records may infringe copyright[40]. The system only applies to those importing records and also allows retailers and wholesalers buying from those to sell the records or offer them for sale but does not cover hiring of records[41]. Unused stamps have to be returned to MCPS which will give credit for them and where records are returned to the supplier or destroyed as faulty and unsellable with stamps still fixed to them, MCPS may give the importer a credit note or replacement stamps on production of evidence of their return to the supplier or destruction[42]. MCPS has agreements with a number of major UK importers.

Broadcasting

All authorised broadcasters in the UK have blanket agreements with MCPS under which they have access to the works represented by MCPS in return for an annual lump sum and provided they supply returns of the works they have recorded for use in broadcast programmes so that MCPS knows how much each member is owed. The blanket fee allows the broadcaster to record MCPS members' musical works for use in their broadcast programmes. The main aim is to obtain as much

money as possible from the copyright user (the broadcaster), an aim which is not always possible in MCPS' other spheres of activity. It is only possible to operate such a blanket scheme if a collecting society has an effective monopoly in a specific area of operation - PRS and PPL, for example, have effective monopolies since they control the respective rights in most of the musical works and records in copyright in their areas and so can operate blanket licensing schemes in all areas. MCPS, however, only has such control in the broadcasting field so it is only here that it can have a blanket scheme. Anything much less than 100% control would make it very difficult for MCPS to offer an attractive proposition to broadcasters because then the broadcasters would have to go through all the works it recorded and work out whether they were controlled by MCPS which would obviously be very expensive of resources. Once the broadcaster has negotiated a fee, all he has to do is pay it and he can use almost all musical works without fear of prosecution for copyright infringement (and the only other thing he has to do is provide records to MCPS of works recorded). The obvious task for the collecting society is to persuade all its members to licence recording of their works for broadcast. Too many dissenting members would wreck the scheme. MCPS negotiates broadcasting blanket agreements with the BBC for television and radio, with the IBA for commercial television and with the AIRC (Association of Independent Radio Contractors) for the independent commercial radio companies. (The MRS Council will usually ratify such

agreements or instruct MCPS to do certain things). Figures 5.6 and 5.7 show how the blanket fees for television for a number of years have grown in real and money terms. Figures for radio are much lower because of the ephemeral recording exception under the 1956 Act (about £200,000 a year). In the field of television, the blanket fee grew at an increasing rate in money terms up to 1982 when it only increased by a disappointing 6.9%. The greatest rate of growth was in the blanket fee for the ITCA which grew at a rate of over 15% between 1978-81. In 1982, the growth rate was only 5%, however. The BBC fee has shown a different pattern with fairly slow growth between 1977-79 and rates of 14% in 1980, 12½% in 1981 and 11% in 1982. In real terms, however, taking 1974 as the base year, performance has been patchy with blanket fee income no more than keeping pace with inflation. Overall, income has fallen in real terms in every year apart from 1981, admittedly not by very much but the trend has been downwards, nevertheless. The BBC and ITCA fee have shown opposite trends with the BBC fee falling in real terms between 1977-80 and recovering slightly afterwards and the ITCA fee rising up to 1979 and falling and rising alternately thereafter.

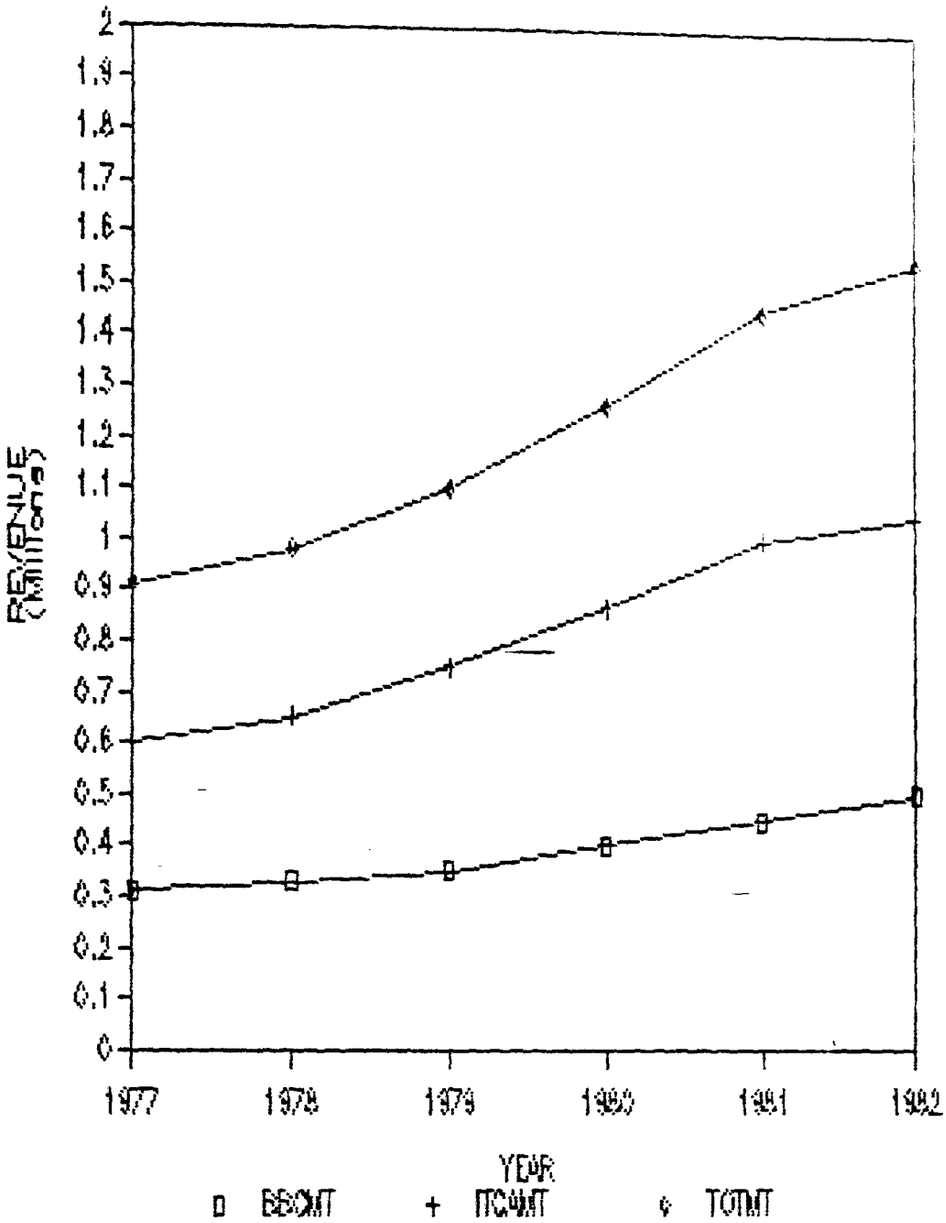


FIGURE 5.6 MCPS BLANKET FEE

INCOME (TELEVISION) - MONEY TERMS

BBCMT = B.B.C REVENUE (MONEY TERMS)

ITCAMT= ITCA REVENUE (MONEY TERMS)

TOTMT = TOTAL REVENUE (MONEY TERMS)

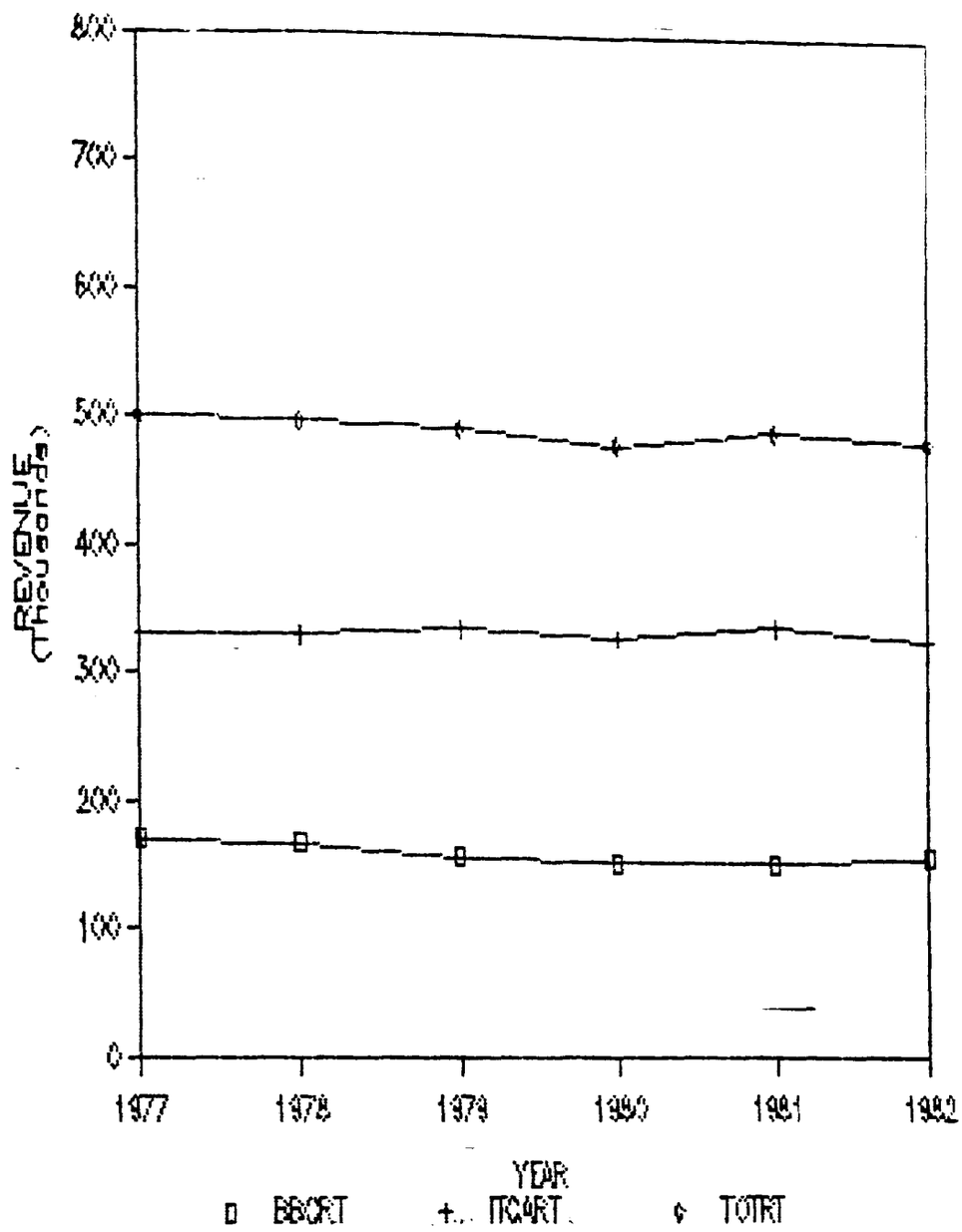


FIGURE 5.7 MCPS BLANKET FEE

INCOME (TELEVISION) - REAL TERMS

BBCRT = BBC REVENUE (REAL TERMS)

ITCART = ITCA REVENUE (REAL TERMS)

TOTRT = TOTAL REVENUE (REAL TERMS)

Whereas for other areas of MCPS activity, there seems to be some excuse for low income whether for economic, political or expedient reasons, this does not seem to be the case for broadcasting, where MCPS collects all broadcasting revenue for its members, although the fact remains that MCPS is only an agent and this may influence the situation. One would

expect a better performance in this area, however. The problem has been that MCPS had to renegotiate all blanket fees after the MPA takeover. Some idea of the extent of the problem is that for the year ending June 30 1976, collections from this source were £380,000 yet three years earlier they were £420,000. A long term agreement linked to inflation in return for a doubling of blanket fees was offered. In analysis of real term changes, one must remember time lags, so one must be careful not to attach too much importance to any one year. In fact, new agreements have just been negotiated with the BBC and ITCA producing over £2.4 million in 1983, some of which will be collected in arrears in 1984. MCPS does not agree that it has a monopoly in the broadcasting field but that it rather acts "as a negotiating body on behalf of the very large number of members"[43] and is, along with MRS, "an oligopoly in a market where product substitution represents a real possibility"[44]. Its position as an agent negates the possibility of it being a monopoly - major members can always try for individual licensing arrangements with television companies (apparently, this was widely discussed before the recent agreement), and television companies can always use the ephemeral exception or go for individual licensing or commission music. In the field of collection of broadcasting fees, there may be some overlap between the different copyright collecting societies - for example, if a television company wants to record a piece of music to use on television, it will need a licence and have to pay royalties to MCPS for recording the music and

to PRS for broadcasting it. This apparently is a source of some dissatisfaction to the BBC because, it argues, it is ludicrous that it has to pay two different blanket agreement fees and negotiate two different licences for the same works. On the Continent, most collecting societies combine collection of royalties and negotiation of licences in the recording and performance/broadcasting of music fields. GEMA, the German society, for example, simply takes all the money it receives from the television companies and divides it up one-third recording, two-thirds performance/ broadcasting. The BBC would prefer to just have to pay and negotiate for one blanket agreement to record and perform/broadcast music, rather than two, with MCPS and PRS respectively. (It also has to negotiate separately with PPL for broadcasting/performance of sound recordings.)

The broadcasting companies send in cue sheets to MCPS of every programme made for broadcasting and MCPS processes them, looking for works in which MCPS has an interest. However, there is a difference between radio and television in this respect and MCPS is not interested in all programmes. A large proportion of MCPS' royalties from broadcasting come from television. This is because of the ephemeral recording exception whereby if a recording is made just for the purpose of broadcast and is destroyed or erased within 28 days of the date of broadcast, and no further reproductions have been made, it is deemed that no infringement of the work took place. This particularly applies to radio where a large

proportion of recordings are ephemeral, although the exception also applies to television. Thus, the local radio stations, both BBC and independent, do not provide significant returns to MCPS (the ephemeral recordings are just not reported) and "royalties paid on BBC network programmes do not necessarily bear any obvious relation to works played"[45] (as far as radio is concerned). Nor does MCPS process repeats, on which royalties are not payable, since MCPS is only interested in works recorded for inclusion in broadcast programmes and repeats do not involve additional recording and will have already been covered by the initial recording. Royalties are not payable on programmes imported from abroad (which will be covered in their own country and are not recorded here), nor on commissioned works where the writing and recording of the works are covered in the contract, nor on live programmes. As well as covering domestic recording of copyright musical works for inclusion in broadcast programmes, MCPS' blanket agreements also cover recording of such works for inclusion in broadcast programmes for export to authorised broadcasters Worldwide, but it is the broadcaster's responsibility to ensure that the MCPS member holds the World or foreign country(ies) broadcast rights and so can grant them under the agreement. These works in which MCPS does not have an interest mark it out again from PRS which processes all works broadcast - royalties are payable to PRS on all works broadcast. Further restrictions on MCPS' blanket agreements concern dramatico-musical works and the length of recordings. The

agreements do not cover video rights and cable television is only partly covered[46]. The licence only covers works recorded for the programmes themselves, not music used in commercials, which has to be cleared separately, although some independent radio stations have blanket agreements which allow them to use library music in commercials without paying any more[47].

Once MCPS has received the cue sheets, it goes through them giving one point for each 30 seconds of background use or part thereof for every piece of music recorded in a broadcast programme. If the music is featured, this figure is doubled to 2 points for each 30 seconds or part thereof (although under new agreements, this has been changed to a ratio of 4:3 between featured and background music for distribution of blanket revenue). Suppose the work is used 10 times a year by the BBC - each use of the work will have a points total associated with it and these 10 points totals are added up to give a total points figure for that work. This is done for each work so that each work has a points total of use at each distribution. These individual points totals are then added to give a total points figure for all works which is divided into total blanket agreement revenue to give a sum of money per point. This is done separately for BBC television, ITCA television and BBC radio (for example, BBC television points are divided into BBC television blanket revenue, ITCA television points divided into ITCA television blanket revenue and so on). One then goes back to each individual

work and calculates royalties payable to it according to the points it has earned and the sum per point. For example, if the sum per point for domestic recording is £1.50 and the work accrued 1½ minutes of background use, this is 3 points, which gives a sum payable for that work of 3 x £1.50 = £4.50. The same system - total revenue divided by total points - is used for works recorded in programmes for export abroad. The value per point both for domestic programmes and exported programmes varies greatly from year to year. In 1981, the BBC domestic figure was £3.26 as against £4.79 for the ITCA and the export figures were £0.58 and £0.76 respectively. The ITCA figure is usually above the BBC figure quite substantially. The export value is weighted according to where the programme is sold. For example, World export is 39 times the basic export value [48]. For BBC Radio there is no distinction between featured and background music and the figures are given as per minute values - 53 pence per minute in 1981. This value, unlike that for BBC television, has gone up every year since 1977. MCPS commission on broadcasting royalties is 15% for both tariff A and B and distribution of royalties is within 8 months of the end of the calendar year to which they relate. In 1983, distribution of blanket fees was £2.3 million.

Licensing & Video

In theory, this is everything not covered by commercial sound recordings, broadcasting and overseas and includes recordings

of members' works in films, audio-visual productions, videograms, background music, tapes and so forth. No royalty rate is set by law for such uses, so it is a matter for individual negotiation, usually with representative bodies - for example, negotiations concerning video are usually conducted between the British Video Association (BVA) and MRS. A team of Licence Negotiators establishes the type of exploitation and the details such as, for a film, who the stars are, what type of film it is, the director's name (whether he is well-known or not) which will affect the royalty paid. They also negotiate clearance of music and fees payable, advise production companies as to use of music and answer questions on copyright and music generally[49]. Income from licensing (general and video) was £1.6 million in 1983.

Where a person or organisation wants to use pre-existing music, the terms of the licence are a matter of negotiation while if the music is commissioned, there is a direct composer - commissioner relationship and MCPS is not involved in collection and control of the copyright. MCPSis sensitive to the fact that commissioned music can be used when it is negotiating and this will influence the eventual rate negotiated. The Negotiators try to ascertain a minimum figure the copyright owner is prepared to accept for use of his music, reflecting his view as to the market value of the music, and obviously try to obtain a figure better than this minimum.

Most of the music the licensing department deals with is library music specifically designed for use in films and licensed at set rates. This is in contrast to non-library music where there are no set rates and conditions and licensing is on an individual basis. A potential user of musical works will want to find out how much it will cost him to use that music and whether the works concerned are readily available or not. This is very easy with library music. It may be difficult to clear use of commercial recorded non-library music if a record company has contracted with the musicians and/or composer and clauses in that contract either prohibit or lay down rules for further exploitation of the record or provide for certain subsequent payments. The broadcasting companies have blanket agreements with MCPS except for Channel 4, which obtains its programmes independently and does not produce its own. Thus, Channel 4 music use has to be specifically cleared each time for each use, although there is actually what amounts to a fixed rate. Library music enables a company to approximate its budget before production. All a user has to do is phone up MCPS, obtain a quote for the price and availability of the music and it will be automatically cleared. Royalties are collected by MCPS. Such music contains edit points at various intervals so that the music can be used in snatches of 15 seconds or 30 seconds, for example, and is sold by the second or minute, so that it is easily possible to tell how much has been used. Users must inform MCPS of how much they have used (timewise).

The type of music involved is very varied and the advantages are its cheapness and ready availability at published rates without the need for pre-clearance - and the fee covers both the copyright in the music and in the recording. There are different fees for different uses in different parts of the World in different media and the fee schedules are divided between film and television on the one hand, and radio on the other. Clearance for all media Worldwide for all categories including those not yet devised but not including commercial advertising is £140 for each 30 seconds. The minimum unit is 30 seconds. For films, television and video productions, the library music schedule is divided by territory and by category of use, such as recordings made for cinema advertising (not television transmission) and productions shown to non-paying audiences (including through closed-circuit television and individual monitors)[50]. For example, North American clearance for recordings for pay and cable television is £17 per 30 seconds (or part thereof) while World coverage for recordings for cinema advertising is £220 per 30 seconds. For recordings for broadcast television advertising in the UK examples of fees are London £165 for ITV1, Channel 4 £85 and ITV1/Channel 4 combined £208. The regions obviously cost less. Full UK network clearance is £500 for ITV1, £250 for Channel 4 and £625 combined. Radio licences for library music are of two types - non-advertising recordings for radio transmission and recordings for radio advertising. Fees are again divided by territory, so World clearance for radio advertising is £365 per 30 seconds and

North American non-advertising recording for radio transmission is £10 per 30 seconds. UK radio advertising is divided by radio station, Capital (London) and Radio Luxembourg being £62 per station, for example. The regional stations again cost less. Full network clearance is £200. VAT is added to the fee plus MCPS' Service Charge of £3. A dubbing fee of £3 per track per production (to cover the permission of the record manufacturer where an existing record is used as the source of the musical work to be reproduced) may also be payable[51]. The fees mentioned earlier are for background use, featured use doubles the fee. Licences must be obtained before transmission. Concessionary rates are available for charity or religious appeal films and block fees for commercials for a single piece of music used to identify a good or service.[52] Copying of part or all of a film for sale or hire to the general public is usually excluded and changes to productions either sound or visual are regarded as separate productions requiring separate licences and payment of fees. All those involved in authorising the making of a film or production are equally liable for making sure that a licence is obtained. Library music may be recorded before a Licence is granted but as soon as the dubbing/synchronisation is complete, the user must send MCPS a Music Cue Sheet (MCS) containing all relevant information such as intended exploitation and duration and copyright information for all music used. Similarly, for non-library music and commercial recordings, a Music Cue

Sheet must be sent in, but in this case before recording as against after recording but before exploitation for library music. This is because there is no fee schedule for non-library music and commercial sound recordings so that every use has to be separately cleared and negotiated and this takes time. Non-library music used from a commercial record involves two copyrights - in the music and in the record - so two clearances and two fees have to be obtained, negotiated and paid by the user. The MCPS Licence Negotiators usually handle clearance and negotiation of fees for non-library/commercial record music on behalf of the MCPS member[53].

The MCS is a formal application for a licence, from which MCPS takes the necessary information. Licences are conditional on payment of the fee within a certain time so the next step is for MCPS to issue a Conditional Licence/Invoice. If the relevant payment conditions are not met the Licence will be inoperative and if the user goes ahead he may infringe copyright. Users or stock-holders of Mood Music Library recordings have to sign a Letter of Agreement with MCPS before they are allowed to have library works, an agreement which lays down the process for recording and declaring copyright music and includes a number of undertakings by the user including the need for all premises where music is recorded to keep a log of the recordings made and to supply MCPS with a copy of it. The Log Sheet is a self duplicating set which is also an MCS when completed, the

studio and facility house completing the first part of the form and sending a copy to MCPS as a Log Sheet and giving another copy to the payer of the royalty for submission as an MCS. Only the exploitation asked for in the MCS will be allowed by the Licence - if the user wants to make other uses of the work and to increase territorial cover, he must apply anew and pay extra royalties. Videogram exploitation is usually expressly excluded in the Licence. MCPS will usually negotiate clearance of records because recording of music into audio-visual productions often involves dubbing from a commercial record but in some areas MCPS cannot do this and users have to deal with the record companies concerned[54]. Most of the music MCPS deals with is for use in information films, prestige films, training films and short films, each of which do not bring in a vast sum of money by themselves. MCPS does not get too much work from feature films where the music is usually commissioned.

MCPS also offers a number of other licences - for example, it has contracts with background music operators who produce specially recorded tapes for use in establishments such as shops, factories and offices, a Licence for amateur film and slide/tape makers and licences and special licensing arrangements for educational institutions. MCPS also issues a discretionary Miscellaneous Licence for small-scale uses where negotiation of individual clearances would be impractical.

Video is an expanding area. The 1982 distribution target for video was £200,000 which was reached and the 1983 target was £300,000 - £350,000. Use of music in videograms has to be specifically cleared and there is a royalty per copy manufactured and sold, a situation similar to that in the record department. Clearance for library music is automatic and there is the same division between commercial and library music. MCPS defines a videogram as "a programme originated on, or transferred to, a video format for exploitation by way of retail sale and/or rental to the general public for private and domestic use"[55]. It is not a film or programme for public exhibition to a paying or non-paying audience, although it may start life as such and then be made available to the general public in video form for private and domestic use. A videogram company is defined as "persons or organisations involved in the duplication and the marketing of multiple video copies of films or programmes to the general public for private and domestic use". The royalty for videogram use is not fixed and varies according to circumstances but the conditions of the licence largely dictate the size of the royalty. Copyright music in existing films and programmes is unlikely to have been cleared for use in videograms so either a new licence or an extension to the original one will be needed. Music in copyright specifically originated for video programmes or films would also have to be cleared for use in videograms. A videogram maker must make sure all music used on it is cleared before production is finalised and copies made available to the public as must

a person or company who obtains videogram rights to a programme or film already existing where the music has not been already cleared for videogram use. If this is not done, the programme or film producer or videogram company may lay himself/itself open to an infringement action and if the music is not cleared, the production may have to be stopped or the sound track re-dubbed if the works cannot be cleared for videogram use, which may be costly. A person or company which originates new material to be used in a videogram or obtains video rights to existing material must supply MCPS or the copyright owner(s) with a Music Cue Sheet showing all the musical works used in the videogram, copyright ownership, duration and types of uses before the videogram is exploited or distributed. Each individual use of music in a video has to be cleared and a royalty fee paid and MCPS acts as a clearing house in this respect and calculates the royalty payable and collects and distributes it. A person selling programme rights to a videogram company must obtain the consent of the owner of the music in the film or programme to avoid breach of contract and warn the video company that the music has not been cleared for video use if this is the case[56]. Anyone who wants to duplicate videograms must sign an agreement with MRS which lays down the procedure for declaring and clearing copyright music on videograms, which has to take place before duplication and for declaring sales and calculating and paying royalties as well as allowing MRS representatives to audit returns.

Royalties on music in videos are usually payable quarterly based on videos sold (although some video companies pay on manufacture as and when this occurs) and only cover retail sale or rental to the general public for private and domestic use, not further exploitation. There is again a division between featured and background music - background music only counts as 75% of its true duration[57] (hence 1 minute counts as 45 seconds). The royalty rate is based on featured use duration on the assumption that 8.5% is the maximum royalty rate a video taken up entirely with featured music can attract. The royalty rate payable is calculated according to the formula:-

$$(58) \qquad \frac{8.5\% \times \text{Total Featured \& Background Music Duration}}{\text{Programme Duration}}$$

For example, a 45 minute programme with 25 minutes featured music and 8 minutes background music would produce a royalty rate of:-

$$\frac{8.5\% \times 31}{45} = 5.86\%$$

The 31 represents the 25 minutes featured music plus the 8 minutes background music reduced by 25%. Thus, the royalty would be 5.86% of the published dealer price (exclusive of VAT) for each video made and sold. For music programmes, however, there is a maximum royalty of 7% of the published

dealer price (excluding VAT). Thus, a 45 minute video with 42 minutes of featured music will produce a royalty of 7.93% normally but this is automatically reduced to 7% -

$$\frac{8.5 \times 42}{45}$$

There is also a videogram production fee of £1 per minute or part thereof of music (after deductions for background use) which has to be paid by the videogram company and an MCPS service charge of £3 per licence. Library music is licensed according to territory of sale per 30 seconds unit and on a once and for all fee basis so that, for example, the World fee is £33 per 30 seconds and Europe is £14 per 30 seconds. There is also a dubbing fee of £3 per track. The licence is conditional on payment of royalties due within 21 days of its issuance. Derivation of the 8.5% figure is based on a royalty payable for maximum featured use of 12.15% of the Published Dealer Price but with a 30% deduction for high production costs. Some uses of music in videos may produce a higher royalty rate than those above, which are only minimum rates. The royalty per copy is payable on all videograms duplicated in the UK regardless of the territory in which the sale occurs subject to territorial control by the copyright owner but World clearance on any title cannot be guaranteed. The rates do not cover dramatico-musical works and in cases where a programme's music content is not very great and the programme's life is limited, a once and for all payment may

be acceptable or, if the royalty rate per copy does apply but the music content is minimal, there may be batch licensing covering a number of sales at one time rather than a royalty on each copy made[59]. MCPS' main market in this field is films and existing television programmes but there are a growing number of videos specifically made for specialised purposes, such as video juke-boxes and in-store videos in which case it will be necessary for companies to get in touch with MCPS to enquire about the video rights to see whether existing agreements cover them or not. In the case of in-store videos, there are 2 aspects - using the music in the video to sell the music, for which only a nominal rate is likely to be charged,and using it to sell unrelated products, for which full fees will be payable. Music is now being put on video games and computers too. The situation is, in fact, very encouraging for MCPS since a lot of record companies are now entering the market - after all, videos are really just another way of selling records from their point of view and from MCPS' point of view another way of selling licences and earning income. The market is new and there are many novel problems, however, one of the greatest being to establish a claim by coming up with documents as evidence, for example, that rights were meant to extend to video or showing that a particular person owns the video rights. The audio-visual market is more fragmented and less understood than the other markets and infringement tends to be at the bottom end, for which MCPS has agreements with those in the field. At

present, MCPS is making a survey of the whole audio-visual market.

Overseas

The Anglo-American repertoire is very popular throughout the World and royalties for this are collected by sister societies throughout the World. Worldwide, there are over 50 mechanical societies linked by reciprocal agreements so that each society collects in its own country for its own composers and copyright owners and for the members of all other societies in the World with which it has agreements. Most money from overseas arrives at MCPS unsolicited and there is not really that much MCPS can do to influence income from this source, although it is a joint partner with PRS in the Music Copyright Overseas Society (MCOS) under which PRS and MCPS jointly control their repertoires in countries where there are as yet no copyright organisations. (In fact, some of the highest earning members actually give MCPS an assignment of rights in certain territories outside the UK and Europe in its MCOS activities). The accounts show a deteriorating position in the overseas areas both in real and money terms with MCPS earning over £190,000 less in real terms now than in 1978. The years 1978-79 saw a rapid increase in overseas income of over 26% in money terms but thereafter the position worsened considerably with a fall in real terms in 1980 and falls in money and real terms

thereafter, by over 18% in money terms in 1982. In 1983, overseas revenue was about £1.3 million.

Some societies are just not worth bothering about because of the problems and difficulties encountered in collecting royalties and because so little money comes out of them and the countries concerned. For example, the South American countries have copyright laws but it is not enforced. In such areas, it is theoretically possible to collect royalties but in practice it is impossible. In other countries, there is just no copyright law - in the Middle East with the exception of Egypt, for example. In Jamaica, the situation is similarly very bad and nobody really bothers about copyright so that composers are just not paid.

The Continental societies are the strongest by tradition, especially in France and West Germany. There, they are like songwriters' unions. In the US and UK most works are sub-published so royalties tend not to be paid to the country concerned (the country of residence of the copyright owner) but stay with the sub-publisher. The Harry Fox Agency collects for MCPS in the US. The publisher and sub-publisher would account to each other so not so much money would need to be sent abroad, saving costs. This is not so much the case in West Germany where there is rather less sub-publishing, one reason for which is the general view that GEMA is so strong that it can pick up royalties itself instead of the publisher/sub-publisher and probably make as

good as, or even better, a job of it. The 1983 Report & Accounts notes that "there is a trend towards a single copyright within the EEC and it is becoming increasingly difficult to collect mechanical income from sub-publishing agreements for individual countries." In addition, there is increasing centralisation of European production by the major record companies and those companies often pay "mechanical royalties to the collecting society in the country of production". Commission on royalties from overseas societies is 10% for tariff A and 15% for tariff B and distribution is within 6 months of receipt of the statement or money from overseas.

COVERING COSTS

	1978	1979	1980	1981	1982	1983
1. Commission [Money Terms(£)]	372,553	760,512	838,641	868,357	987,106	1,269,479
2. Commission [Real Terms(£)]	189,017	340,274	318,028	294,358	308,086	378,723
3. Administration Costs[60]. [Money Terms(£)]	992,966	1,157,867	1,294,972	1,770,105	2,069,040	2,163,835
4. % of 3 covered by 1	37.5%	65.7%	64.8%	49.1%	47.7%	58.7%

Source Rows 1 & 3:MCPS Reports & Accounts 1978-83

TABLE 5.4 MCPS COMMISSION, REAL AND MONEY TERMS, AND PERCENTAGE OF ADMINISTRATION COSTS COVERED BY IT

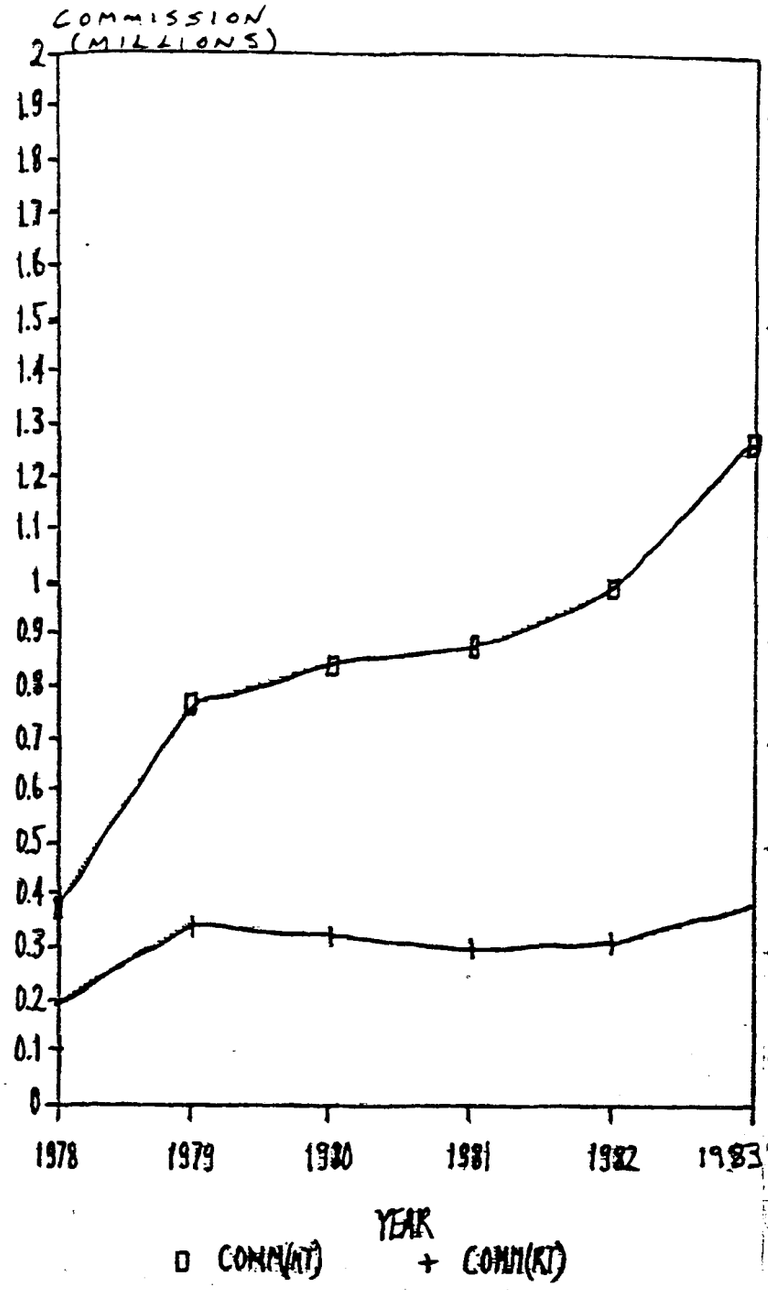


DIAGRAM 5.8 MCPS COMMISSION REAL AND MONEY TERMS 1978-83
Source: Table 5.4

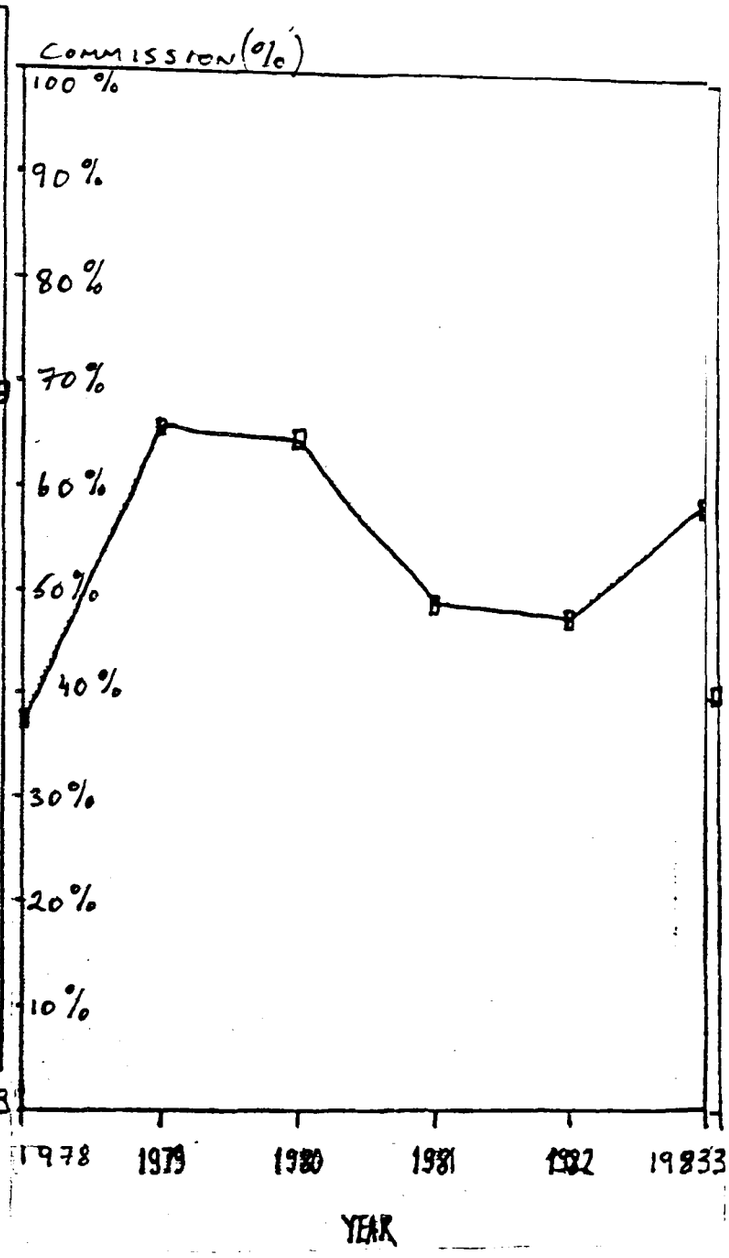


DIAGRAM 5.9 PERCENTAGE OF MCPS COSTS COVERED BY COMMISSION
Source: Table 5.4

	1978	1979	1980	1981	1982	1983
Interest (Money Terms) (£)	528,038	709,292	1,086,265	1,023,047	904,093	873,691
Interest (Real Terms) (£)	267,904	317,357	411,932	346,796	282,176	260,648
Administration Costs (Money Terms)	992,966	1,157,867	1,294,972	1,770,105	2,069,040	2,163,835
% of 3 covered by 1	53.2	61.3	83.9	57.8	43.7	40.4

TABLE 5.5 MCPS INTEREST RECEIVABLE, REAL AND MONEY TERMS, AND PERCENTAGE OF ADMINISTRATION COSTS COVERED BY IT

Source Rows 1 & 3: - MCPS Reports and Accounts 1978-83

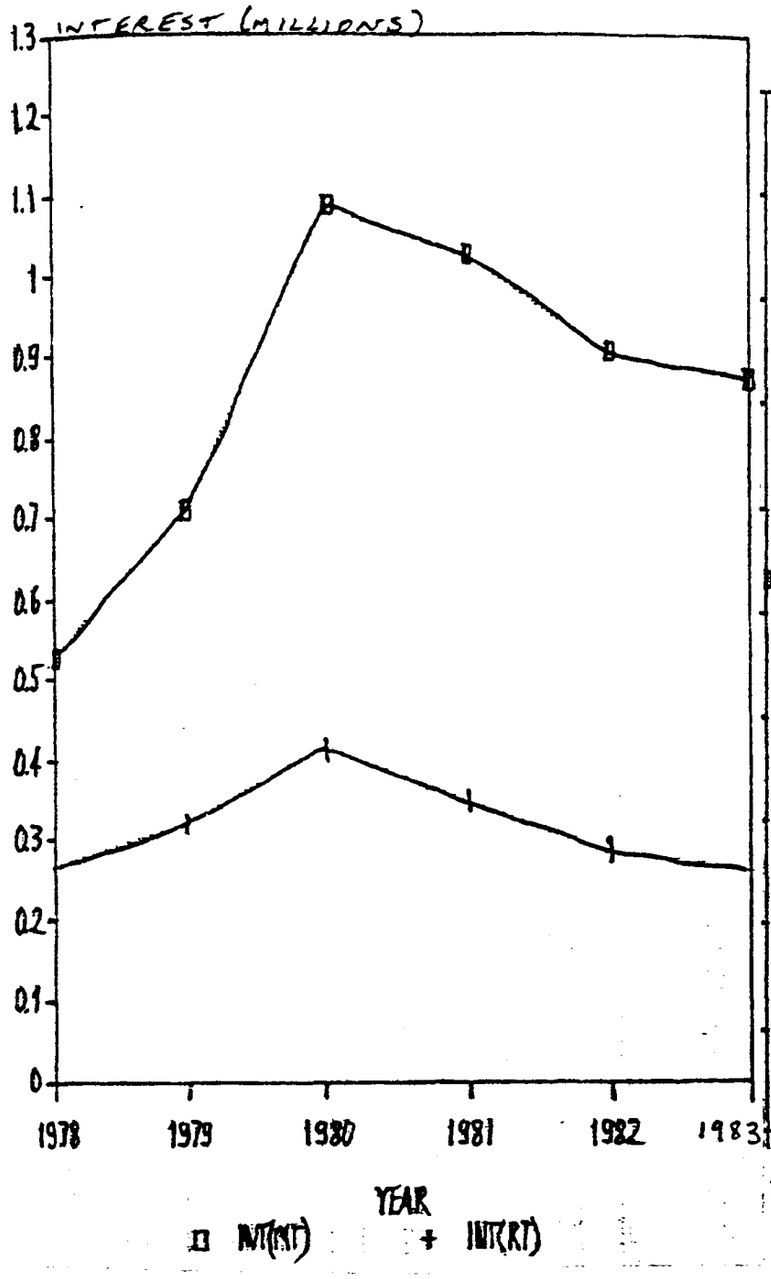


DIAGRAM 5.10 MCPS INTEREST RECEIVABLE, REAL AND MONEY TERMS, 1978 -83.
Source: Table 5.5

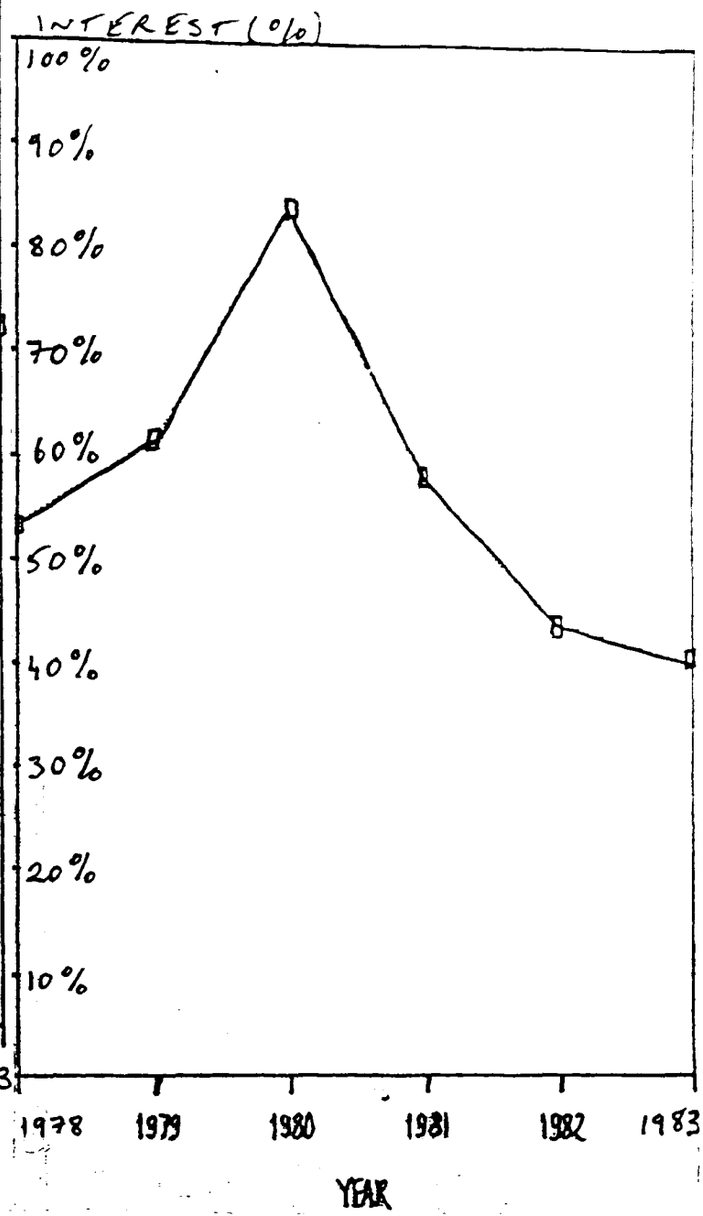
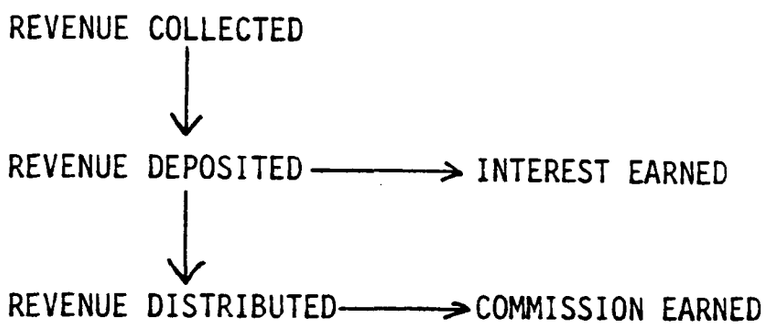


DIAGRAM 5.11 PERCENTAGE OF MCPS COSTS COVERED BY INTEREST RECEIVABLE
Source: Table 5.5.

Because of the way MCPS conducts its business, the commission it receives from its members for royalties collected on their behalf from various sources and the interest it receives from deposit of royalties collected but not distributed are crucial. The above tables and diagrams should amply illustrate this. Whereas the other two societies are virtual monopolies and collect royalties and then take out their administration costs from the big "pot", MCPS is only an

agent and charges its members a commission at the time of the transaction in an effort to at least partly cover its costs. Interest earned on the money collected is similarly used to help cover costs, a source of revenue which is also important to the other relatively small collecting society, PPL. Thus, commission and interest are essential in the economics of MCPS' operations. The process may be depicted as:-



As regards commission, one must remember that MCPS only earns it once the money has left the premises, once it has been distributed. One must differentiate between tariffs as MCPS applies them to its commission and the way the term is used by PRS, for example. MCPS has two main tariffs, A and B, in which it charges different commission - in B, it is 15% in all markets (record companies, overseas, broadcasting) while in A it varies according to each market. In MCPS' case, the tariff refers to the commission payable by the member to help cover the cost of collection, processing and distribution. The amount of processing required would seem to influence the size of the commission (as well as political factors and the extent of the mandate given by the member) and the different lengths of time required for distribution in different

markets will reflect this. In fact, most publishers and all composers are on tariff A. PRS, on the other hand, uses the term 'tariff' to apply to "the negotiated rate for use of recorded music"[62]. PRS has about 50 tariffs which lay down the rate payable for public performance of musical works for different uses according to various criteria. In this respect, the term tariff applies to the royalties payable side of the equation and to the criteria for deciding how much is payable. Another way in which MCPS and PRS differ is that PRS is largely free to determine the rate payable for use of music in the areas in which it operates, which springs in part from its position as a monopoly. MCPS is only an agent, an intermediary between those wishing to record musical works and the copyright owners, so it can influence the royalty rate payable, but not really set it and in the field of commercial sound recordings, it is powerless to do anything with the rate since it is set by statute at 6.1/4% (although MCPS can influence to a degree the point at which the 6.1/4% is payable, what the 6.1/4% is of - manufacturers' recommended retail price, actual retail price or whatever). The commission rates at MCPS have stayed the same for 5 years (although they may change in 1985 following a major review by MCPS of its operations) and were originally set at a level MCPS thought the market could stand and which would, at the same time, be attractive to members and induce them to increase their mandate to MCPS. Commission plus interest plus other non-royalty income must be sufficient to cover costs. At the same time, MCPS is a non-profit making

organisation (although, as noted, it does not have to be), so it does not want to make a large profit (non-royalty income minus costs). Apparently, the aim is for each sector of MCPS' operations to be self-financing but in practice some areas subsidise others. It was pointed out during interview and in the answers to the questionnaire I sent MCPS that because of its industry-wide activities and point of view, MCPS cannot really limit itself to just its profitable areas and if it did, this might lead members to withdraw their mandates, which would have repercussions far beyond MCPS itself. MCPS regards itself as an industry body and as such has to accept that certain aspects of its work will not cover its costs. If one assumes that PRS and PPL taking out its costs from the "pool" is the equivalent of MCPS' commission, MCPS certainly seems to be performing as well as they are. PRS' costs represented 17½% of its gross royalties in 1982 against PPL's ratio of about 10% and MCPS' average commission of about 12%. One could argue that these figures are not strictly comparable and that one ought to use the cost/revenue relationship for MCPS, too. In this respect, MCPS' performance is much worse than the other two societies with a cost/revenue ratio of 21.5% in 1983. Out of the three societies, MCPS is the odd one out in that it charges a commission and this is both an historical development and a result of MCPS objectives and 'raison d'etre'. MCPS was set up as a private independent company by a number of publishers to act for them in certain areas and the commission was

introduced as a way of covering costs. The other societies were set up for other reasons, as monopolies[63].

Income from commission more than doubled in money terms between 1978-79 following the introduction of the new tariff structure but then fell in real terms in 1980 following the downturn in real terms of distributions. Even so, at that stage it represented round about 65% of administration costs. In 1981, the percentage fell to below 50%. In real terms, it rose again in 1982 but fell to only about 48% of costs in money terms. Commission rose considerably in money terms in 1983 (by about 29%), to represent an increased 59% of costs. It has always been MCPS' aim to increase the percentage of its costs covered by commission and minor sums and income and reduce its dependence on interest earned. Commission can also be used as a bargaining counter- members can be offered a lower commission in return for a wider mandate. A wider mandate for MCPS means that it can collect more royalties hence earning commission from more sources and thus hopefully increasing the percentage of costs covered by commission. It is, in essence, the old high price low volume versus low price high volume argument. MCPS wants to increase its shares of the different markets and the volume of the business it processes. If, however, MCPS tried to increase its commission, members would quite likely withdraw their mandates, the opposite of what MCPS wants.

While there is an incentive for MCPS to distribute quickly in that it does not earn commission until the money is distributed, the opposite incentive also applies in that the longer MCPS keeps the money the more interest it earns. The constraint on this is that MCPS is contracted through its membership agreements to distribute revenue in different markets within a certain time period. The longer MCPS keeps the money invested without distributing it, the more money it can earn, so one would expect it to keep the money invested as long as possible. However, as mentioned, MCPS is contracted to distribute within a certain time period. If the royalties are distributed on time, commission is earned over and above interest already earned, so that total income for MCPS from this transaction will be:-

$$I = r(K) + C$$

the amount of money earned on the capital (capital being represented by royalties collected in that particular transaction) plus the commission [rate of interest (r) x royalties (K) + commission (C)]. Money earned over and above the lump sum, is used to partly offset its administration costs. The lump sum goes to the members. If MCPS waits until the last possible moment to distribute but distributes on time, earning interest up to the time of distribution, the maximum it can earn is the interest earned on royalties plus the commission. If the royalties are not distributed within the contracted period, MCPS has to pay penalty interest to

members, currently at the market rate of interest plus 3%. However, since MCPS may expend a lot of time, effort and resources in "chasing" companies which have not paid royalties, it still charges commission. In the majority of cases, MCPS will not be responsible for late distribution. In the case of a record company with a sales agreement with MCPS, it will charge that company the penalty interest and then pay it to the members concerned. The interest payable will be based on the accounting period to which the royalties relate, not on the date of payment. The commission rate is not dependent on time of distribution - no matter when the money is distributed (up to the contractual distribution time), it is expressed as a constant percentage of the royalty collected, this percentage varying between markets. If MCPS is not going to distribute on time it might be best for it to invest the royalty and earn interest to offset the penalty if this is payable. Assuming interest earned, MCPS will always be better off investing royalties and earning interest, even if it does not distribute on time.

Thus, the best possible case is to wait until the last possible moment, at which maximum interest is earned, and commission is added to this. This is called the LAST FREE DATE by MCPS.

Thus, we would expect MCPS to keep the money until the last free date in most cases. Cash flow problems should not arise because of the different distribution periods in each market.

In view of this, it is rather interesting to note MCPS' wish to move away from earning interest and towards earning commission and the fact that it distributes money to members every month. Apparently, the once-a-month distribution was initially introduced because there were so many royalties to distribute following the departure of the previous management and MCPS was having to pay large amounts in penalty interest.

The members were pleased, it would seem, with the earlier distributions and herein may be one of the reasons for the move away from reliance on interest and towards commission. MCPS is an agent dictated to by its members, to a large extent. Would it have been possible for MCPS to increase the interval between distributions after the catching-up period anyway? It was noted in interview that MCPS could distribute even more quickly if need be but that the only justification for quicker distribution was the belief that you could attract sufficient new business or more business to outweigh the loss of interest. MCPS obviously thinks it can do this with a lower commission and a wider mandate from members. Increasing the number of distributions is one part of the package MCPS can offer for a wider mandate. A further reason for relying on commission rather than interest might be that commission is a more certain income, easier to predict and to influence than interest, which may fluctuate quite wildly.

MCPS is a non-profit making organisation but because of the way it covers its costs, it is quite likely to overshoot or

undershoot - its costs are likely to be greater or less than its income (income not, in this case, being royalties but commission, interest and others sums). Other sums include the likes of profit on redemption of investments, rent and so forth. MCPS has made a profit every year since 1979. In 1983, there was a profit of £124,665 (before tax). In fact, MCPS rebates most of the profit it earns back to members in one way or another so that the members benefit rather than the society itself. In 1983, the rebate was £145,000. Profit is given after rebate. Usually, a sum of £10,000 - £20,000 is used to supplement titles which have a low value for broadcasting. MCPS' policy is only to retain those profits required to provide the working capital needed by the company. The rebate is usually pro rata according to how much commission the member has paid, although a different criterion may be used each time - for example, the rebate may be distributed amongst low earning composers. The criterion in each case is decided by the Board. Despite its non-profit making nature, the Financial Controller, Mr. Lowde, pointed out during interview that he had tried to instil a commercial attitude into the organisation so that personnel at least act as if they are in a business environment. Although MCPS does not seek to make a distributable profit, it wants to have as much money in surplus funds as possible to spend on copyright control expenditure. Mr. Lowde had tried to prevent personnel from thinking of themselves as working for a society since this encourages a public service, non-commercial quango-like attitude rather than a

businesslike atmosphere. MCPS is not a society but a trading company, he noted, an attitude reinforced by the MPA resolution, which lays down that MCPS' "terms of business should be defined on a strictly commercial basis"[64].

The general impression at interview was that quite a lot has been done to develop such an attitude and it was interesting to note that MCPS does seem to have done quite a lot to try to control costs. This seems to have had an impact in 1983 but the system is very new and only future years will show whether Mr. Lowde's words on the subject are borne out - but the intent and attitude certainly seems there. MCPS can now boast having a total analysis of all the money in the organisation down to the last penny - a fact which the other societies might find hard to match. There is now accounting control, which did not exist prior to the new regime. All revenue, collections and distributions are now monitored and controlled fully and can be measured easily. At the beginning of the year, a budget is set for the whole year and for each month a target is set for distribution, based on the previous year's performance, the areas in which MCPS is doing best, the fastest growing sectors, the state of the market and so forth. MCPS also projects how much it is going to distribute each week, which provides a certain amount of discipline for the managers involved and allows them to compare real with actual so that they can decide whether they need to pull more strings and work harder. Performance is monitored against budget. Mr. Lowde said that costs are very

tightly controlled and monitored. The basis of such cost control is the maxim, "you cannot control income but you can control costs". Accounts are prepared on a monthly basis and any changes in budget, resources, costs or whatever have to be approved by a member of the Executive. The Board decides the overall resources available and the individual manager has to state his requirements and make out a case. Allocation of resources is thus a two-way process between the Executive and the management. There is a 5-year corporate plan.

Table 5.6 and diagrams 5.12 and 5.13 show administration costs as a percentage of turnover and of total royalties and fees collected - and the situation could hardly be described as good. 1983 saw a large drop in the ratio, though, and there does seem reason for optimism, especially as the cost control system is rather new and is unlikely to have had a dramatic impact yet. Mr. Lowde seemed to paint a hopeful picture of the future.

	1978	1979	1980	1981	1982	1983
1. TURNOVER	5,138,547	7,132,455	7,542,176	7,610,055	8,011,163	10,046,305
2. COLLECTIONS	6,756,335	7,989,950	7,780,176	7,707,250	9,200,000	
3. ADMINISTRATION COSTS	992,966	1,157,867	1,294,972	1,770,105	2,069,040	2,163,835
4. 3 AS A PERCENTAGE OF 1	19.3%	16.2%	17.2%	23.3%	25.8%	21.5%
5. 3 AS A PERCENTAGE OF 2	14.7%	14.5%	16.6%	23.0%	22.5%	

TABLE 5.6 MCPS ADMINISTRATION COSTS AS A PERCENTAGE OF TURNOVER & COLLECTIONS[65]
(Source for rows 1, 2 and 3: MCPS Reports and Accounts 1978-83)

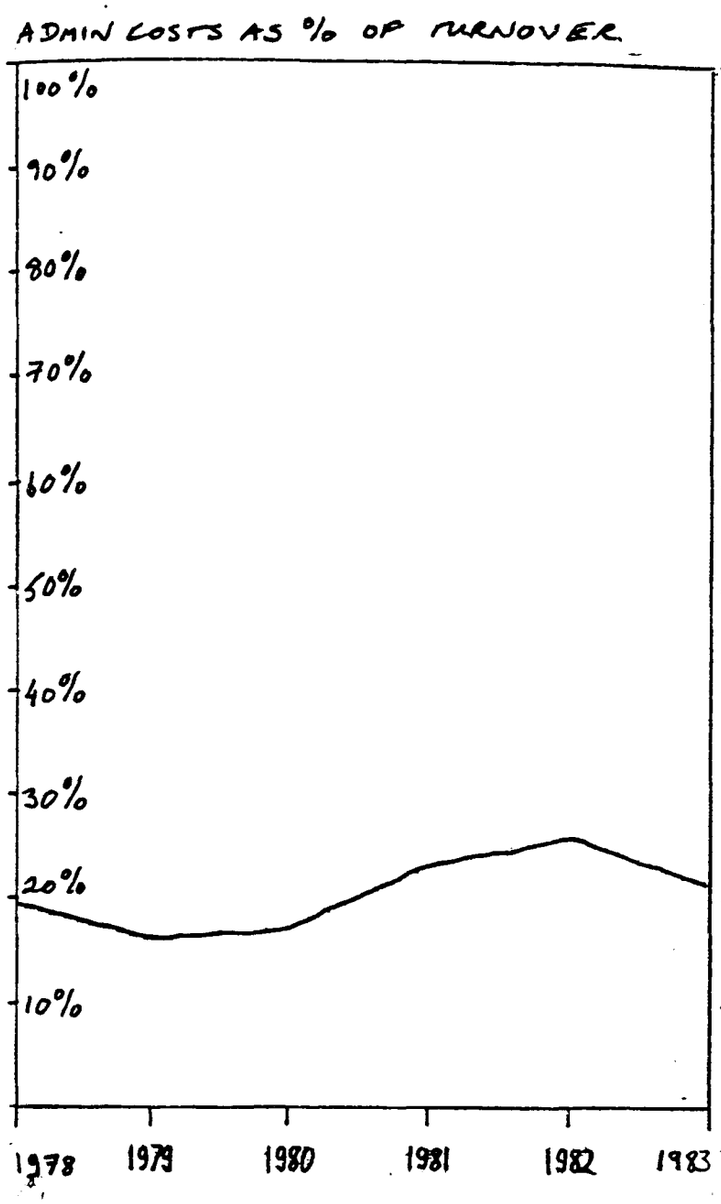


DIAGRAM 5.12 ADMINISTRATION COSTS AS A PERCENTAGE OF TURNOVER

Source: Table 5.6

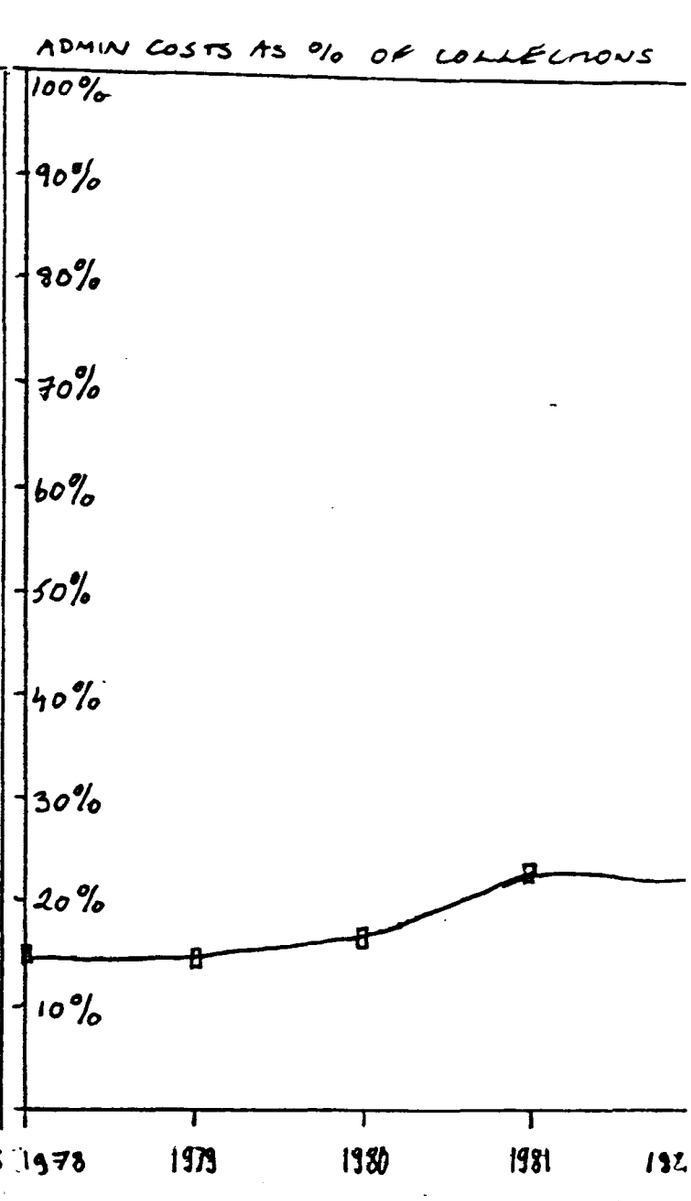


DIAGRAM 5.13 ADMINISTRATION COSTS AS A PERCENTAGE OF TOTAL ROYALTIES AND FEES COLLECTED

Source: Table 5.6.

MCPS completed an exercise in 1983 to calculate the cost of work done by function and the profitability of each market sector[66]. Since staff costs account for the largest proportion of administration costs (about 58.5% in 1983), personnel were grouped together into cost centres representing groups of people who "either individually carry out similar work functions or work collectively as an integral team" and costs grouped to these personnel cost centres. About 80% of

costs were accounted for in this way. Cost centres were then grouped into four categories - member registration, title registration, collection and copyright control and distribution. Cost centres which did not easily fall into one of the four categories were allocated to "computer" or "support". Support costs were then allocated to the four other groups on the basis of headcount - the people employed in the support function were excluded and support costs reallocated equally to the other functions on the basis of a cost per non-support head (support costs to be allocated divided by total number of employees minus "support" employees) multiplied by number of people employed in the function to which the support cost is allocated. "Computer" costs were allocated on the basis that each yellow book, green book (which are thick telephone directory-type computer produced indexes of titles and copyright owners with which and with whom MCPS deals) and VDU was counted as one unit, each unit allocated to a group, each group unit total expressed as a percentage of total units and this percentage applied to total computer costs. Remaining overheads which had not yet been allocated to any category were then allocated on an ad hoc basis. This produced one new category - "Ireland" - where MCPS collects virtually all mechanical royalties. The result was then fine-tuned for anomalies.

These total costs by function were then allocated to market sector - commercial sound recordings, broadcasting, licensing

general, licensing video, international and other (such as import stamps, dial-a-disc and background). Each function was considered separately and allocated to market sector on a different basis. As regards registration (title and membership), each market sector was weighted according to the problems encountered in registration from MCPS' point of view. The broadcasting sector was weighted by three on the basis that some members only register for blanket fees (from broadcasting) and regard any other income as a bonus. Thus, revenue from broadcasting was multiplied by three and then registration cost for broadcasting taken as total registration cost multiplied by the percentage weighted broadcasting revenue represents of total weighted revenue. Weighted broadcasting revenue equals actual broadcasting revenue multiplied by three. This gave the registration cost. Licensing does not deal with as many titles and many of those it does deal with are registered by library publishers who give a virtual 100% mandate and register in a more orderly manner. Thus, licensing revenue was given its basic unweighted value and this expressed as a percentage of total weighted revenue. This percentage, multiplied by total registration cost, gives registration cost for licensing. The international sector is very difficult to control and was weighted by 3. Commercial sound recordings were weighted by 2. It is noted in the MCPS documents that distributions affect only 6% of MCPS titles in any year, but 100,000 new works are registered every year and the cost of such registration is very high. As a result, MCPS is considering

introducing a registration fee or membership qualification criteria which seems only good sense. Most collecting societies do this, anyway. As to collection and copyright control, allocation to market sector was a mixture of judgement and the reallocation of Support costs carried out earlier. For distribution costs, allocation to market sector was by heads associated with the activity in each market sector. Thus, 6 people are involved in distribution in the field of commercial sound recordings, which is 30% of the total number of people involved in distribution at MCPS (the total complement is 20). 30% of the total distribution cost is then taken as the cost allocation to the commercial sound recording sector. The same is done for the other market sectors.

Profitability per market sector was ascertained by comparing costs and revenue from commission, interest, minor sums and fees. Allocation of commission between market sectors was based on forecast distribution. Interest receivable was allocated according to an average balance of undistributed royalties (undistributed royalties in each market sector expressed as a percentage of total undistributed royalties and this percentage multiplied by total interest). By deducting costs from revenue, profitability per market sector was derived. This shows an interesting picture with a small profit in commercial sound recordings, a small loss in broadcasting, a heavy loss in licensing (general and video), a large profit in the international field and in the 'other'

sector and a small profit in Ireland. Overall, the picture is one of breaking even. The summary notes a few points.

Although licensing is not profitable at the moment, it is a growth area. Little interest is earned in the sector so it is suggested that the situation could be improved by waiting a further month before distribution and increasing the service charge. The need for a registration fee was also mentioned although it was also noted that a large part of the cost of the function is in converting a manual index system to a computerised database. The field force which MCPS has to police and monitor the system, also costs a lot to run and is spread throughout the market sectors but falls most heavily proportionately on the low-income ones. It is accepted that this is probably not a cost effective operation but the service is vital and its dismantling would result in widespread copyright infringement at the lower end of the market sectors which would undoubtedly spread upwards. In any case, this is the sort of service which would be expected from an industry body. Its loss would be strongly felt. The commercial sound recordings market has 5 main areas, whose performances vary greatly. The television-promoted record sector shows a large profit, the sales agreement record companies sector (the large companies) shows a very large profit in six figures. The pressing agreement record companies sector (small companies) shows a large loss while the sector containing the record companies with which MCPS has no agreement shows a very large loss in six figures. The

royalty services sector shows a smallish loss. Overall, there is a small profit. The summary notes that the bottom end of the commercial sound recordings market represents a totally cost ineffective operation and a 50% commission would still not solve the problem. But, as with the field force, loss of this operation would be sorely felt. It is suggested that if publishers and composers want MCPS to continue with this operation, they might be asked to pay a greater percentage of the cost. The costing exercise represents, if nothing else, a point of discussion drawing attention as it does to a number of points worthy of further study. It raises a number of questions of importance and illustrates many of the problems MCPS encounters - should it jettison the loss-making areas and just concentrate on the profitable ones or continue with its industry functions? Is there a better way of financing the work? The exercise, however, was very judgemental and subjective in its allocation of costs so it can only show orders of magnitude not detailed situations. Thus, one should not pay too much attention to small losses and profits since the margin of error could take them either way.

Efficiency versus Effectiveness

One has to say that MCPS has not always been the most efficient of organisations, although things do seem to be changing. The cost-revenue ratio is much higher at MCPS than at the other two collecting societies. As to effectiveness, there is, of course, always room for improvement in the

objective of "maximising the net income of all copyright owners by offering services which can be economically and commercially justified". The word to note here is "all" copyright owners which no doubt could be used to justify MCPS involvement in the low income sectors and its industry services but as we have seem some of its activities are just not cost effective. How does this square with the later part of the objective of "offering services which can be economically and commercially justified"? And it is just these sectors which reduce MCPS' efficiency by putting up the cost-revenue ratio. In interview, it was stated that MCPS attempts to be both effective and efficient although measurement of both is elusive and very subjective. It was noted that "distribution of every single penny to every rightful copyright owner" could be described as efficient by one member and inefficient by another, but Management, Executive and the Board try to reach a consensus as to "what is achievable, practical and worthwhile"[67]. As regards enforcement of the mechanical right, MCPS has to decide whether it is worth it in each individual case. MCPS is frustrated in this because it does not own the copyright and has to sue in the name of the copyright owner, according to his instructions. One of the main problems is in ascertaining title to a work, proving that a certain person is the copyright owner and having the necessary paperwork to prove the passing of title. In general, title is put in doubt in court cases. MCPS spends about £50,000 a year in legal fees and some members of staff spend most of their time dealing

with such problems. MCPS is not obliged to take legal action - in general, it would not take such action if the cost of doing so exceeded the benefit, although benefit does not just cover monetary benefit. MCPS might, for example, take such action if it wanted to justify a principle or set a precedent. The case has to be argued on an individual basis, which is an inefficient way of doing things but is necessary because it has not to date been possible to reach a consensus on an overall basis.

MCPS has attempted to improve its effectiveness and efficiency greatly in recent years with the effects being particularly felt from 1981 onwards. Virtually every major position in the organisation was changed from 1976 onwards. This meant that MCPS was very inexperienced in the industry because it had an entirely new management team. This accounts for many of the poor recent results, but the changes do seem to have been necessary and the benefits of the changes are just starting to accrue now. The new management team had to make a number of very difficult, expedient decisions at the time and MCPS is still paying the price for these to an extent but the price is falling as time goes by. The organisation is now looking forward, not back, is more sophisticated and professional in how it carries out its activities and has introduced a number of new internal systems adding to effectiveness and efficiency which have already been dealt with. The structure of the company was completely reorganised. Everyone now knows exactly what they

are supposed to be doing, whereas before there was apparently some ambiguity in job assignments and titles. It has taken a number of years for MCPS to come to terms with the widespread changes which took place in the organisation, to develop the necessary experience and reach the top of the learning curve. The copyright system is very complex and produces very novel problems, so there is a longer learning curve than in most industries. The organisational structure at MCPS was changed approximately every 6 months in the space of two years because of the move to the new premises and of the mess MCPS was in. It is just starting to stabilise the situation it inherited in 1977, which was not a very easy job considering the problems it had but more change obviously cannot be ruled out. The organisational change followed a structured, programmed, gradual approach. It was decided not to change everything dramatically in one go because it was felt that this was only really possible if you have a good staff who know exactly what they are doing - but this was not really the case at MCPS. To change everything in one go, it was felt, would have been unduly dangerous. The first major change followed the move in July 1981 with minor adjustments since. There was a major re-organisation of responsibilities with one of the first moves being recruitment of a Deputy Managing Director, who is also the Financial Controller and Company Secretary (this is Mr. Lowde). The Deputy Managing Director tends to concentrate more on the internal organisation and working of the company, while the Managing Director looks outwards and deals with

MCPS' relationships with customers, members, other organisations and the like.

Mr. Lowde is responsible for cost control - for example, staff salary increases have to be approved by him, while other costs are controlled by him or the Board. Accounts are prepared monthly and the Executive Team has to ensure that costs are within budget and make any adjustments needed. The major cost is staff. The Board form a sub committee each year to review salaries and recommend a percentage increase.

The next area in which MCPS wants to improve its efficiency is in its documentation and this is related to computerisation. It realises that it is rather inefficient in this area but no more so than its members or even the other collecting societies. The data MCPS receives from its members is not always very good and any mistakes contained in it may be compounded when MCPS puts it on the computer or in its index. MCPS has 2 million titles to deal with, the quality of the information varying greatly. Another problem may arise from different versions of the same title. It was noted that there are two main ways of getting information ready for the computer. One may get all the titles ready in a useable form first, before putting anything on the computer, which may take a number of years to achieve, or one may get the information in a useable form and then put it on the computer immediately as one goes along. MCPS is using the second approach and has already put on some of the titles. It

receives 100,000 new titles a year but only about 6% of its total number of titles are used each year. At present, it has about 32,000 works on the database on which MCPS has full ownership details around the World and MCPS has decided to only put on the computer those works which are used a lot. Thus, it will have a partly manual, partly computerised system. The capacity of the database is virtually unlimited, however, and will include 500,000 works at various levels of completion, the lowest level being just the title and interested parties in the UK known. The problem was in deciding how much time and effort to expend to sort everything out and whether it was worth investing a lot of resources in it. It does seem, however, that a partly computerised, partly manual system is rather strange, one might almost say inefficient since it will be necessary to go to the database first and then if the title is not in this to search through the manual system. However, the staff using the database would eventually come to know by memory the most popular titles on the computer, which would reduce time and effort wasted in looking in both the computer and manual index system; nor is there anything which says that the search through the database and the manual system has to be sequential - one could get someone else to look through the other system. In any case, MCPS has estimated that it would take over 400 man years to fully database its repertoire. On the computer itself, each work has a tune code which identifies the musical work and a member code which gives

information on the copyright owner and the person(s) to whom the royalties are to be paid.

MCPS has recently carried out a Resources and Revenue Review involving discussions with managers as to the resources (usually human) they were likely to need in the future. As a result, it soons intends taking on 27 new people. It is believed that MCPS can afford these new resources out of the new revenues generated by the improvement in the organisation in every area. In 1983, following the Review, there was a programmed over-budget. Investment in new areas is particularly important to MCPS, especially since MCPS has to invest in order to obtain a mandate from its members to collect in those areas in future. The extent of this investment will obviously affect MCPS' costs and cost-revenue relationships. The new systems MCPS has introduced allows it "to monitor the company's financial activities, determine its potential and appropriate resources accordingly"[68].

One view put forward was that it is difficult for a copyright organisation to be efficient anyway because so often in the field creation comes first and business acumen second. In addition, the majority of MCPS' members are music publishers and MCPS performs a number of administrative tasks that the publishers used to do and does them just as well and just as cheaply. Thus, MCPS represents something of a competitor to the music publishers since it may take work away from them and the more efficient it becomes the greater

the competition. One of the main requirements of copyright owners is for someone to look after and administer the copyright so that they do not have to bother with all the problems - and MCPS can do this just as well as, probably better than, a publisher. MCPS is constantly trying to persuade publishers that it is better to put their money through it than do the work themselves. MCPS faces a rather novel situation with the shareholders being the major customers and it being in competition with those shareholders for the available business. The different markets in which MCPS operates are each very different in nature and size and rather complex and in each case it is dealing with businesses which get a product to its users (consumers) in different ways and it does not deal with the actual user (consumer) of the product. MCPS is constantly trying to serve a number of different, often conflicting, interests. The organisations MCPS deals with vary from large to very small with different objectives, methods of finance, type of customer, purpose of end product and so forth. This is all in addition to the problem of piracy and politics, internal and external.

DIAGRAM 5.14 - MCPS ORGANISATIONAL STRUCTURE

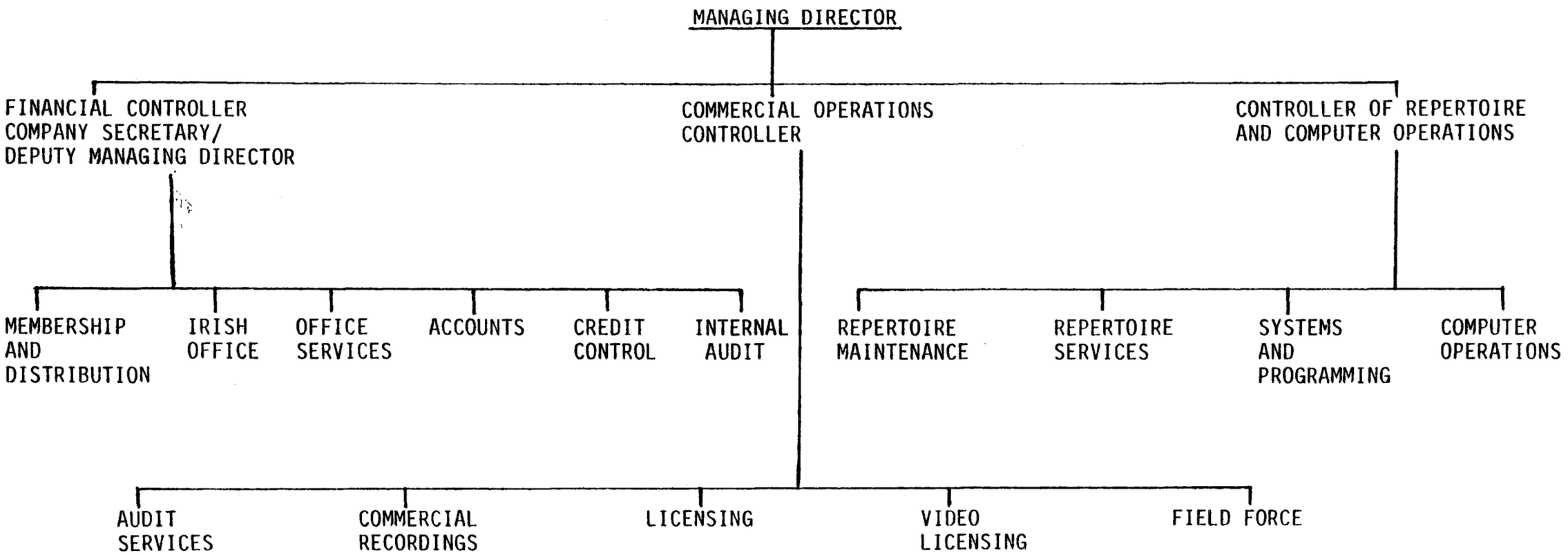


DIAGRAM 5.15 MCPS POLICY MAKING

MPA COUNCIL (Parent Company)

MPA appoints a NON EXECUTIVE BOARD FOR MCPS which determines MCPS policy. Members of the Board only go to Board meetings and assist - they do not take part in the general running of MCPS. Implementation of policy is vested in the Executive Team which consists of:-

THE MANAGING DIRECTOR who is a full time Executive and also a member of the Board.

COMPANY SECRETARY/ FINANCIAL CONTROLLER/ DEPUTY MANAGING DIRECTOR	COMMERCIAL OPERATIONS CONTROLLER	CONTROLLER OF REPERTOIRE & COMPUTER OPERATIONS (COMPUTER & INDEX)

Assisting the Executive Team, but separate from it are:

SPECIAL PROJECTS CONTROLLER

INTERNATIONAL RELATIONS EXECUTIVE - who maintains working relationships with foreign societies

PERSONNEL CONTROLLER

These three posts have virtually no staff. They work individually whereas the executives work as a team.

Diagram 5.14 shows the organisational structure at MCPS and diagram 5.15 illustrates how the Music Publishers Association can influence MCPS policy. MCPS has a non-executive Board of twelve Directors appointed by the MPA Council which determines policy and strategy and monitors performance against this. In April 1984, the Board was enlarged from seven to include two more publisher members and to introduce three writer representatives for the first time. Each member of the Board retires every 3 years. In general, the MPA does not get involved in MCPS policy although there has sometimes been friction between the MPA Council and the Board. There is, however, a liaison committee with the MPA in case anything of a controversial nature comes up. The Managing Director is the only full-time executive of the Board. Below the Board is the Executive Team consisting of the Managing Director, the Company Secretary/Financial Controller/Deputy Managing Director (the same person), the Commercial Operations Controller and the Controller of Repertoire and Computer Operations. Implementation of policy is vested in the hands of the Executive Team which heavily influences Board policy. There were major changes in organisational structure at MCPS in 1982 and minor changes since, restricted, if possible , to January and June to provide at least some stability and "to keep the staff feeling comfortable"[69]. A few points to note about the organisational structure are that the Controller of

Repertoire and Computer Operations has two parts to his job - dealing with the computer and database side of the organisation and with the index system. "Systems and Programming" and "Computer Operations" is the computer side; "Repertoire Maintenance", (which involves "loading and maintaining members works and agreements on the computer")[70], and Repertoire Services (which involves "interpretation of complex ownership structures including foreign claims and documentation")[71] is the index side. On the index side, it was noted by MCPS that documentation involves both quantity and quality. Repertoire Maintenance corresponds to quantity and Repertoire Services to quality. How best to organise the Repertoire Maintenance function is regarded as one of the most important questions for the future. The Credit Control function involves collection of royalties and fees while Membership and Distribution is concerned with registration of members and allocation of royalties. The Internal Audit function deals with "quality control of all information processing systems" and Audit Services with "investigation and audit of uses of recorded music"[72]. MCPS is organised by function and span of management seems not to be excessive.

One suggestion I put to Mr. Lowde was whether MCPS had considered using a system of project management which seems to be geared to fast moving environments creating lots of novel problems. Project Management involves a normal structure of, for example, division of task by function, but superimposed on this is another structure centred around a

series of projects and project managers who can gather round them personnel from the various functions to develop a project team. This has the advantage of enhancing effectiveness and objective achievement as well as making reaction to new problems quicker even though it may be at the cost of some ambiguity in role definition and some loss of efficiency. Mr. Lowde explained that there had not as yet been a system of project management at MCPS because it was felt not to suit the size of the company and its style of management, but that limited project management is about to be introduced to tackle the next level of problems. It certainly seems true that project management is most effective in large organisations, not small ones like MCPS. It was felt by Mr. Lowde that the time available also necessitated against such a system. Time was so valuable and there was so much to do that it was not possible to have the large number of meetings required to explore new ideas. It seems true that project management leads to a large number of meetings, rather too many in fact. Mr. Lowde thought project management required very careful control and that it led to rather too much talking and not enough achieving. At the time that the new management took over, MCPS was at a stage in its development where it was more interested in achieving than anything else. It had some very severe problems which needed dealing with immediately. There was no time to debate the solution to the problem. Time was of the essence. Instructions were issued to achieve specific results. If you have experience of such situations and know what you are

doing, you do not debate the issue, you take action. In such cases, project management is totally inappropriate - action is required and fast. Some form of dictatorship is essential. Quick decisions have to be taken even if these are later found to be wrong. MCPS is now moving away from a system of dictatorial management because it has achieved a certain amount of success in combatting its problems, rooted out weak management and improved management in general through a mixture of on-the-job and selective off-the-job training, movement of managers between functions and increased delegation of authority, so that it can now deal with less severe problems and can afford to adopt a different managerial style. The other managers can be relied on more now because they are more competent than previously and there is no need to be as autocratic. It will be interesting to see how MCPS changes under such a new management and what problems are encountered. In fact, it is very difficult to know exactly what type of structure is best suited to MCPS since it is such a peculiar animal - "sui generis", one on its own, is one phrase often used to describe collecting societies, requiring a certain type of knowledge and unique qualities, and capabilities. Mr. Lowde's management philosophy is best described as "entrepreneurial" and would seem to be more of an autocratic nature than democratic. As he said himself, an entrepreneur would not think along the lines of project management - he is the project manager himself and does not use anyone else. He said that MCPS consists of a series of mini dictatorships and he believes in

giving people their heads and giving them a lot of scope for individual initiative while monitoring everything carefully. This even goes as far as deliberately stirring things up and creating situations while making sure that things do not go too far by monitoring events. The first thing Mr. Lowde did when he joined MCPS was to ban all meetings and committees . There are no company committees at MCPS with one exception - the Staff Council. Members may form committees but these are industry committees or committees formed to look after specific interests - such as the Library Publishers Committee - and the management may meet with these, but they are not company committees. The Staff Council meets each month and tells senior management of general staff requirements and grievances but it does not negotiate salary structures. Meetings and committees are kept to a minimum because it is felt that they produce few results and waste rather too much time. Major problems are resolved by heads of department or controllers. I put it to Mr. Lowde that many of MCPS' advantages arose from the fact that it was a relatively small organisation and that many of these advantages would disappear as MCPS grew larger. In reply, it was felt that the management techniques applied by large firms should be largely the same as those of small firms and that the problems arose when the top of the organisation became divorced from the bottom, regardless of size. The problem of scale is a matter of forgetting when you are at the top of the organisation what it is like at the bottom. The major advantage of being large in the industry was that it gave you

more 'clout' and meant you could use specialists full time in specific areas. Smaller organisations had less clout and executives were less specialised and had to perform a broader variety of functions and had wider responsibilities but lines of communication were shorter, and easier to control and less subject to distortion making implementation of policy easier. When the MPA took over in 1976, management consultants were called in to look at the organisation and many of the recommendations were implemented but in general MCPS believes that it can identify and solve its own problems and does not see the need for management consultants. The company does use market research companies, however.

Different parts of the organisation deal with different sectors of the music industry so they have different objectives. However, there is no conflict of interest between what the different parts of the organisation do and there is interdependence between the objectives. The resources devoted to each objective and each department depends on how MCPS looks at the situation at the time but it tries to take the industry view if it can. The Manager of each department or group of departments has a job specification stating the main purpose of the job and specific responsibilities. Certain departments are also given specific financial objectives and targets. The Commercial Operations Controller and Financial Controller work together closely to decide a reasonable target for invoicing and collecting royalties and these targets are set

for each department for which the Commercial Operations Controller has responsibility. The exception is overseas income which MCPS is not readily able to control or influence, so no target is set for this. Each Executive who has departments to run (as we have seen there are only three executives) is responsible for achieving the company's objectives individually and as part of the Executive Team and they work closely together, and with the Managing Director. Allocation of resources within the organisation is discussed regularly by the Team. The Revenue and Resources Review arose from the Executive Team asking the next line of managers to report on their own departments' resource requirements and potential and on that of each others' operations and it resulted in the Board approving an extra budget of £300,000 mainly for recruitment. No financial or other incentives and benefits are used to encourage staff to reach their targets on the basis that "good management does not need an incentive". Staff are expected to have pride in the company and in reaching targets, which should be incentive enough. Constant monitoring by the Executive is one form of incentive, however, and further incentives are being considered. The main problem is finding criteria which are generally useable and applicable in all the different areas in which MCPS operates and into which it is divided and one must guard against the incentive system working against you resulting in conflicts of interest. Unless an incentive scheme is systemised and made generally applicable through -out the organisation, ill-feeling may be generated which

one must guard against the incentive system working against you resulting in conflicts of interest. Unless an incentive scheme is systemised and made generally applicable throughout the organisation, ill-feeling may be generated which will defeat the object of the exercise ultimately. Performance of individual managers is mainly monitored through contact with them, contact which is easier in a small organisation, and this is an on-going process. There are regular informal discussions with managers and yearly formal performance appraisals with superiors, the aim being to ensure that personnel are managing and supervising effectively. As far as possible the monitoring is done in such a way that it does not interfere with the day-to-day running of the organisation. Company performance is monitored carefully by the Board on the basis of information provided by the accounts department. There is a lot of interdependence between departments, so interaction and liaison between departmental heads is common and MCPS would like to develop a team spirit. Before the move to one location, it was the case that departments could and did form their own autonomous units, there was empire building and interaction and liaison between departments was not all it should have been. The move and re-organisation has improved communication and broken down many of the barriers which previously existed, making MCPS operate much more as a team. A few members of the management have management experience outside MCPS but not many. The Executive Team, however, was recruited from outside the company and they all have management experience

outside the industry. MCPS uses a mixture of internally-bred managers and personnel recruited from outside MCPS. It is now consciously trying to train staff in management techniques selectively. Performance appraisal identifies the training needs of managers and appropriate training courses are selected where these are thought worthwhile. MCPS does not usually recruit personnel from the music industry because of the peculiarities of its business and the special qualities needed. Some members of staff do have experience of the music industry, but not as a rule. A large part of the music industry is concerned with the creative/promotional side rather than the administrative side with which MCPS is involved. It is very difficult for MCPS to recruit managers from outside the copyright field because it is a very unusual, specialised area and there are few people with the necessary experience. Thus, MCPS tends to develop its own managers internally.

MCPS is gradually trying to raise its profile in the market. However, it is severely constrained in what it can do in the field of marketing because of its relationship with its members and shareholders. It cannot be seen to carve up their business since by signing up composers, MCPS is taking away business from its publisher members. Thus, MCPS cannot solicit composer membership and has to use a low profile publicity campaign. Its relationship with copyright users is currently under review. MCPS does not therefore actively

look for new members, especially since individual composers cost a lot relatively to represent so it is not really in the company's interest to go after them. However, all publishers should know that MCPS exists and generally belong to it so as to share in blanket licence (broadcasting) income. MCPS is trying to increase its credibility and respect in the industry and awareness of it is growing. It used to be something of a joke but this is no longer the case and the situation definitely seems to be getting better. MCPS is more interested in its reputation and awareness in the market that in awareness amongst the public since public awareness will not increase its revenue because MCPS does not deal or negotiate with the general public. It is only in specific areas such as home taping that the public has to be made aware.

MISCELLANEOUS POINTS ON DISTRIBUTION

Work coming into MCPS for processing is broken down into batches so that if problems are encountered or mistakes made (in which case work on a particular batch may have to be temporarily stopped) this does not foul up the whole system and all work does not have to cease. Most of the money MCPS distributes goes to publishers and there is no limit to the publisher's share (it may be 100%, for example). This differentiates MCPS from PRS, where the maximum publisher share is 50%.

The main processing workers aim at speed and accuracy. However, if the copyright owner of a particular piece of music cannot be identified or relevant information is missing so that the full process cannot be carried out, for example, then the claim will go into interim suspense - it will be left aside so that someone else can look at it and spend more time on it. MCPS also has a royalty research department which investigates royalties which have been wrongly paid or not paid at all when they should have been. The most often used source of information is index cards although, as we have seen, MCPS is computerising its processes very quickly. In many cases, where there is doubt or confusion or where the cost of processing or investigation is disproportionately high, expedient measures may have to be taken as with small claims, for example. The minimum figure below which MCPS will not distribute royalties owing because the cost would be disproportionately high usually depends on the circumstances of the case. Royalties and fees which are below £15 for UK resident members and £30 for non-UK resident members are carried forward to the next distribution until the gross value exceeds these figures. If the individual royalty line value (or title total, when this is supplied) for royalties from UK and Irish commercial record companies or overseas is less than £1, it will not be distributed, but it is credited as MCPS income. 50% of all the lines MCPS processes are under £3. In addition, PPL pays 8% of its gross revenue to MCPS each year - about half a million pounds - and this is

included in the figure for broadcasting. This is just an historical throwback arising from a de facto agreement between the two societies dating back to the Second World War. Station identification music only counts half a point for each 30 seconds of background music, (as against the normal one point). Accounts held in suspense because of lack of information are made available to members at the MPA offices in some cases. Sometimes sums of money are unallocable, in which case the Board will decide what to do with the money - for example, it may be given to impecunious composers.

THE LICENSING REPRESENTATIVES

Like PRS but unlike PPL, MCPS has a number of licensing representatives, whose job it is to enforce and police the mechanical right in their specified area. MCPS has 6 of these representatives - one covering the North East, one the North West, one London, one the South, one Ireland and one Scotland. There is also a difference between MCPS' representatives and PRS' since MCPS uses them to police the law, survey markets, educate, identify infringements, resolve problems of procedure, and collect debts, while PRS uses them to sell licences as well.

LICENSING, NEGOTIATION AND TARIFICATION POLICY

In negotiations, MCPS sees itself as a go between for the copyright owner and the user. It does not set the rate but it may influence it. The user may ask 'what does MCPS usually charge for such and such a use?' so MCPS may influence the outcome this way. In general, MCPS is just a jobber, influencing the rate through negotiation. The main principle underlying MCPS' tariffs is the immediacy of a market, the existence of a market. Where there is a market, MCPS will have a tariff (remember the difference in the term 'tariff' between MCPS and PRS). Different people put different values on their copyrights. A member may even say that he will not allow a certain use of his music because it would, or might, damage the long-term commercial value of the copyright. MCPS has no licensing policy as such because it acts according to members' mandates, although it does work carefully with industry interests. Acting on behalf of its members, MCPS monitors use of recorded music and where a use is unlicensed may take action but only if the members' mandate allows.

MRS involvement in negotiation is not direct since the direct right of negotiation is delegated by MRS to MCPS although the right to negotiate rests with MRS. Once negotiations are concluded, MCPS goes back to the MRS Council and explains what it has done. MRS delegates the day-to-day operations to MCPS. Its only real function is negotiation for industry interests.

A single person from the licensing department, a negotiator, will deal with matters where individual licences are involved and there are seven such negotiators. Where the negotiations are for major licences such as blanket licences with the broadcasters, the Managing Director takes charge aided by 2 - 4 people often with additional research help. Negotiations are discussed with copyright owners beforehand on the basis that "any negotiator will seek to provide himself with as much information as possible about the market place" so that "he can carry out his function effectively"[73]. A vital part of such information is the value of the use of the music. The aim is to make as much money as possible for the copyright owner for the least amount of work and cost in terms of administration in collection and distribution although the use must not be excessive or it may not occur at all. Negotiations revolve around what rights are to be included and their value. MCPS may commission reports and surveys before negotiation if this is likely to help, sometimes from outside bodies. Preparations for negotiations generally depend on the type of negotiation involved. In the simple case of a low value individual licence, a user will want to use a copyright owned by an MCPS member and the negotiator uses "experience and knowledge" to determine the royalty rate the owner requires for the use of his copyright work. "His research is immediate and short lived". For major negotiations, a lot of preparation is required with a lot of time and effort expended. For this, sometimes MCPS

deals with a number of different people to establish a recommended rate for the use. This involves market research, use of the field force to gather information, discussions with copyright owners and users, comparisons with overseas, analysis of internal records to work out use values, studies of the other party's position and ability to pay, developing a negotiating strategy and so forth. The aim is to determine the various arguments for and against the use and the value of the copyright. Usually, negotiations are rehearsed to cover all points of view.

MEMBERSHIP

The membership agreement differentiates between composers and publishers but MCPS does not consciously act differently for different types of member. Publishers, though, can choose whether they are on Tariff A or B while composers are automatically on Tariff A and they cannot exclude any record companies - MCPS collects all composers' royalties. In all, MCPS has about 10,000 members of which 4,500 are publisher members and 5,500 composer members but most of the money, about 80%, is distributed to publishers.

ATTITUDE TO OTHER SOCIETIES

There is a lot of co-operation between PRS and MCPS but not a lot between PPL and MCPS. A generally expressed view was that

PPL was rather a secretive organisation and that not a lot was known about it. It was thought that MCPS - PRS co-operation resulted from the fact that PRS and MCPS dealt with the two most likely causes of copyright infringement - recording and public performance/broadcasting of music. MCPS is somewhat frustrated in its dealings with PRS because the chain of command at PRS is long so that often decisions take a long time to be made and implemented because no-one seems sure who should be making the decision. This was an often mentioned criticism. It was also thought that PRS was rather more of a political organisation than a commercial one and that its commercial motives were somewhat muted. One sign cited of discontent at PRS was the existence of a union. A further criticism was that PRS was so large and powerful that it could really buy its way out of trouble so that it did not have to be particularly cost-conscious. It was generally thought that the collecting societies did not view themselves as being in competition with each other because they all dealt with different rights but one does get the impression that there is a certain amount of rivalry and in some cases the societies do confront each other in the market, as in the broadcasting field, and settlement of royalties with one society may, in practice, affect the size of the royalty to another, although in theory this should not happen because a royalty has to be paid for each act restricted by law.

THE FUTURE

MCPS needs and wants more money going through the society, through increased commission, and it wants to extend its control over its sphere of activity, increase its mandate from members, and be stronger. At present, it can influence the smaller publishers quite well and has 100% of members' mandates in the broadcasting market but the situation in the UK at the moment is rather patchy and slightly confused so quite a few infringements slip through the net and people avoid paying royalties which are payable. There is no one organisation strong enough to wield power and confront and take the situation in hand, although PRS comes nearest. It was stated that MCPS did not want to be a monopoly provided it had sufficient money without this to be able to carry on its operations successfully - it did not want to be a monopoly just for the sake of the resultant power. Too much money was spent on administration in the field. It would be much better to centralise the whole process more, ideally on an international basis, with just one Central European collecting society. This is highly unlikely, however - imagine the politics involved in such an idea. It is in peoples' interests for there to be a powerful central organisation to an extent because the entertainments industry is becoming more and more fragmented due to new technology and, it was suggested, records are losing their selling power. Users and copyright owners find themselves

increasingly unsure and uncertain about what to do with copyrights - how to clear them, collect royalties, find the associated documentation and so forth. It is in the interests of the music business for music to be used but if people are discouraged from using it because of uncertainty and administrative problems, the great potential increases in revenue will not be forthcoming (there is also the opposite problem, of course, that people may react to such uncertainty and difficulties by ignoring copyright law and go ahead with the use anyway).

REFERENCES - CHAPTER 5 - THE MECHANICAL-COPYRIGHT PROTECTION SOCIETY (MCPS)

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2. Answer to MCPS questionnaire.

3. MCPS Pamphlet, "WHY YOU NEED MCPS. Film and video companies, advertising agencies, sound tape and audio-visual producers, facility houses and studios, amateur film makers and educational establishments".

4. PEACOCK, ALAN & WEIR, RONALD. "The Composer in the Market Place" London. Faber Music. 1975. p 49.

5. ibid.

6. ibid.

7. ibid.

8. Plant, (Sir) Arnold. "The Economic Aspects of Copyright in Books". Economica. May 1934. pp 167-95. Reprinted in Plant, (Sir) Arnold, "Selected Economic Essays and Addresses". London and Boston. Routledge & Kegan Paul. 1974. pp 57-86.

9. Peacock & Weir, op cit, p 148.

10. ibid.

11. Much of the discussion below is based on interview with K.R.D. Lowde and Caroline Robertson at MCPS on 25 May, 1983.

12. Peacock & Weir, op cit, p 158.

13. Taken from answers to a questionnaire by MCPS.

14. WHALE, R.F., "Copyright. Evolution, theory and practice". LONDON. Longman. 1971. p 192.

15. "Library Music". MCPS pamphlet.

16. From 1983 onwards, MCPS no longer publishes figures for royalties collected; from 1982 to 1983, however, royalties invoiced rose from £9.4 million to £11.8 million (a 25.5% increase).

17. This is not the figure which appears in the 1983 Report & Accounts but is a figure I have calculated to make it consistent with previous years. The difference results from a change in the costs included in administration costs in 1983. It is just the published figure plus rents receivable and profit on exchange, which did not previously figure in the category but were included under "gross profit".

18. Answer to questionnaire.

19. Taken from an MCPS internal document, "Costing 1983/4. Summary for the Board of MCPS".

20. MCPS comments on draft chapter.

21. ibid.

22. MCPS document, "Application for Facsimile Concession (Sales) Agreement".

23. MCPS pamphlet, op cit, reference (1).

24. ibid.

25. ibid.

26. ibid.

27. ibid.

28. ibid.

29. ibid.

30. MCPS leaflet, "So You Want To Make A Record".

31. MCPS leaflet, "Rules Governing The Issue of Records of Copyright Musical Works For The Purpose Of Retail Sales.

32. MCPS pamphlet, "MCPS Import System".

33. ibid.

34. MCPS pamphlet, op cit, reference 1.

35. ibid.

36. ibid.

37. MCPS pamphlet, op cit, reference 32.

38. ibid.

39. ibid.

40. ibid.

41. ibid.

42. ibid.

43. MCPS comments on draft chapter.

44. ibid.

45. MCPS leaflet, "Broadcasting Blanket Agreements".

46. ibid.

47. MCPS pamphlet, op cit, reference 1.

48. MCPS leaflet, "Broadcasting Blanket Agreements", op cit, Broadcasting (Television).

49. MCPS pamphlet, op cit, reference 3.

50. MCPS pamphlet, op cit, reference 15.

51. ibid.

52. ibid.

53. MCPS pamphlet, op cit, reference 3.

54. ibid.

55. MCPS pamphlet, "Rate Card. Recommended Proposals For A Music Royalty Rate For Videograms Made In The UK For Retail Sale".

56. ibid.

57. ibid.

58. ibid.

59. ibid.

60. The administration cost figure for 1983 was again the one I have calculated to make the figures consistent.

61. The 1983 figure for interest (Money Terms) is not the one shown in the MCPS Report & Accounts, 1983, but is calculated by adding "Interest Receivable" and "Income from quoted investments" to the figure in the Report & Accounts, 1983. This is to make it consistent with previous years.

62. Answer to questionnaire.

63. ibid.

64. 1979 Report & Accounts. MCPS.

65. The administration cost figure for 1983 is as calculated earlier; I have no figure for collections in 1983.

66. The following is based on an MCPS internal document, "Costing 1983/4".

67. Answer to questionnaire.

68. ibid.

69. ibid.

70. MCPS document, "Management Structure 1st January 1984".

71. ibid

72. ibid.

73. Answer to questionnaire.

CHAPTER 6

PHONOGRAPHIC PERFORMANCE LIMITED

Phonographic Performance Ltd (PPL) is the smallest of the three UK collecting societies operating in the music field (in terms of staff and revenue collected) and seems to be regarded with a certain amount of suspicion by the other two. It seems to have a reputation as rather a secretive organisation and there have been problems of communication with other organisations, although the situation does seem to be getting better. Since it deals with 'neighbouring rights' it has less contact with the rest of the copyright world, that is with those who only regard Part I works (and perhaps cinematographic works) as "true" copyright works in that they are really creative works whereas most Part II works are (they say) merely industrial products or mechanical works.

PPL's main objective is to secure the greatest amount of revenue for the rights assigned to it by its member companies and to distribute such sums to them[1]. British producers of sound recordings (record companies) assign the rights of public performance and broadcasting of their sound recordings (this covers discs and tapes) to PPL, which licenses such use. The system is one of collective licensing with all the advantages that entails and most of PPL's licences are blanket, so that in return for a royalty, the licensee has

use of the entire PPL repertoire. In rare cases, only a limited licence is given where dubbing of specific items of the repertoire is involved, such as for commercial promotional exercises and political campaigns. However, there is a very big constraint on PPL's activities in view of its relationship with the Musicians' Union concerning employment of musicians as a condition of the use of records in certain circumstances. Thus, a sub- objective of PPL is to look after the legitimate interests of musicians in the field. PPL's conditions for issuing licences, however, never call for replacement of musicians for records. If it is a condition of the licence that musicians be employed, however, this may be in addition to or in replacement of records, depending on the user's needs and resources. It is his decision. In many cases, use of live music will not even apply such as for background music systems.

Like all the collecting societies, PPL is a non-profit making organisation. In its field, PPL has an effective monopoly in that virtually all UK record companies belong to it and its only competition comes from public domain, out of copyright records and library music which is in copyright. Since it takes an assignment of the rights concerned, it can sue as principal, in its own name, and does not have to act as an agent like MCPS. This gives it much more scope for action. PPL regards itself as a business but, as already mentioned, it is difficult for collecting societies to act as ordinary

businesses because there are too many constraints, too many political rather than commercial decisions made and artistic creation and business are difficult bedfellows. PPL, though, seems to regard itself more as a commercial enterprise than the other two societies, however, and this may be borne out somewhat by the fact that all PPL's members are record companies managed by businessmen rather than creators of musical works. They are more likely to instil a commercial attitude into their organisation (PPL). MCPS, too, is dominated by the music publishers whom one would expect to have a similar approach, although its agency relationship with its members is a severe constraint in this respect. PRS, on the other hand, seems to be more of a composer's organisation, although the publishers have an equal say, and here the commercial-artistic attitude may meet head-on and cause conflict, although one would not expect a composer or author who joined PRS to be totally naive commercially. In any case, PRS is there primarily to collect money. PPL apparently does not look on copyright from any ethical or moral point of view but as a commercial transaction to be performed. Certain rights have been given by statute and PPL is there to collect the revenue accruing from the copyright owner's exploitation of those rights.

History

PPL was formed in 1934 following the case of Gramophone Company V Carwardine (which concerned public performance of a record in a West of England restaurant[2]) and before that the development of electrical recording and reproduction. In the case above, it was alleged that under S19(1) of the 1911 Copyright Act, there was a public performance right in records. McFarlane[3] notes that before the 1909 Copyright Committee, gramophone manufacturers had said that a person who bought a gramophone record also acquired a right of public performance in that record so that he could play it in public or private and did not have to pay any more money in the form of royalties for such public performance. Apparently, this was accepted as the position by everyone. It was, until the time of the Carwardine case, thought that the Section only gave protection to record manufacturers against copying of their records, to prevent piracy[4] - that it only gave a reproduction right, not a public performance right. Until then, the record manufacturers seemingly regarded public performance as a great advertisement for the record and the composer[5]. McFarlane[6] suggests that by the early thirties, the recession had begun to hit record sales and the record companies looked around for another source of income, noting the success of PRS and the large-scale use of records in broadcasting. Interested groups thought the lack of control over public performances of records to be "an

objectionable restraint on their opportunities to secure additional profits[7]. In the Carwardine case, it was decided that there was a public performance in records after all and this was given statutory form in the 1956 Act along with a broadcasting right in records. It was soon realised that it was better to exercise the right on a collective basis and PPL was formed by a number of record companies including the Gramophone (and Typewriter) Company (now EMI), Decca, Regal Zonophone, the British Crystalate Company and British Honophone.

Since its formation, PPL seems to have aroused a fair amount of antagonism. Many did not want the record companies to have a public performance right at all, on the basis that records are not artistic creations, only mechanical devices, while others were only prepared to grant a right to remuneration for public performance rather than the right to control it. In essence, formation of PPL turned it into a right to remuneration anyway[8]. The right has similarly been accepted and a society formed in a number of countries such as Australia, West Germany, India, New Zealand and in the Scandinavian countries[9]. Opinions are divided on whether there is a future for the right - McFarlane thinks it has reached its peak and is unlikely to be introduced in many more countries (although he is a former employee of PRS and may be biased on the subject) while Mr. Rogers at PPL (who is likely to be equally biased) thinks it is gaining more and

more acceptance. Many find it difficult to come to terms with the record companies' change of mind. However, PPL pointed out that the Green Paper states, in its rejection of a levy on blank tapes and equipment, that the record industry may have to rely on income from public performance and broadcasting as its main source of income in the future. This suggests that the government, at least, is sure of the future acceptance of the public performance and broadcasting right in records. The US does not have such a right.

PPL is a company limited by guarantee and without share capital. At first, it was very small because when it was formed there were no discotheques in the UK, no juke boxes and no broadcasting right, although the BBC did pay PPL royalties for playing records because it saw an equitable right if not a legal one. With the coming of World War II, use of the gramophone and records expanded greatly since many musicians were away fighting or entertaining troops. However, even when the War was over and the musicians came back, sound recordings were still used on a large scale. Similarly, talking pictures put musicians out of work. The growth of the mass media and new forms of recordings had similar effects on musicians. The result was negotiations between PPL and the Musicians' Union which produced an agreement whereby PPL would not authorise the use of sound recordings where 'live' musicians might otherwise have been used or in lieu of musicians where musicians were previously

used. This agreement affects the whole of PPL's operations, so that it cannot just maximise revenue but is constrained by the need to maintain the musician's position vis-a-vis records and to ensure that his employment is not unduly affected by new technology. In some cases, it even has to forego revenue because of this agreement so it tends to engage in more litigation than the other societies. One of the most famous results of the agreement is that of "needle time" under which the number of hours of record broadcasting is restricted. One of the general long- standing policies of the Musicians' Union is the elimination of the use of all records where musicians could be used instead, although this is rather an idealistic, unpragmatic view. It is an impossibility to totally eliminate records and the massive increase in the scale and size of the record industry has opened up many new areas and opportunities for musicians and others.

PPL was also criticised by music users before the 1951 Copyright Commission, which was concerned about the way the rights had been "enforced in an arbitrary and autocratic manner, with the minimum of consideration"[10]. The arbitrary way in which licences were withheld or withdrawn was attacked[11]. PRS, the MPA and the Songwriters Guild attacked the way the public performance of records was exercised on the basis that it affected composers' earnings through preventing public performance[12]. In any case, the 1956 Act

set up the Performing Right Tribunal to adjudicate on disputes between licensing bodies and those requiring licences from them. PPL and PRS, but not MCPS, are subject to its jurisdiction. As a result of the establishment of the PRT, complaints about PPL have subsided, although one cannot help but think that PPL suffers for its past and its low profile contributes to its reputation for being rather secretive. The late 1960's - early 1970's coincided with many changes in the industries associated with copyright, such as the growth of discotheques, and the establishment of local radio. It was accepted that PPL does lag behind developments somewhat but it has changed a great deal in recent years because of the enormous increase in public performance and broadcasting of copyright works and it would be very difficult to react to such developments straight away.

Revenue

Table 6.1 shows PPL's performance in terms of revenue collected in money and real terms for the period 1980-1983. Although this covers a shorter period of time than for the other societies, it at least provides some idea of the main trends in PPL's operations.

YEAR	GROSS REVENUE Money Terms[a] (£)	INCREASE↑ FALL ↓ (£)	% INCREASE↑ FALL ↓	REVENUE Real Terms[b] (£)
1980	6,123,340			2,322,086
1981	6,632,723	509,383↑	8.32% ↑	2,248,381 ↓
1982	7,620,453	987,730↑	14.89% ↑	2,378,419
1983	9,005,578	1,385,125↑	18.18% ↑	2,687,430

TABLE 6.1: Changes in PPL's Gross Revenue, Real and Money Terms, 1980-83

Source: a - PPL Annual Reviews 1981, 1982. General Manager's Report 1983.

b - calculated as in Chapter 4 (1983 = 335.1)

These gross revenue figures do not include interest from investment of undistributed revenue, which is of vital importance for PPL in covering its costs. Over the period, the rise in gross revenue was £2,882,238 or 47.07% in money terms but only £365,344 (15.73%) in real terms. In real terms, revenue fell between 1980 and 1981 but this has been more than made up since.

Thus, in terms of gross revenue, PPL seems to be performing pretty well. Distributions in the period were as in Table 6.2.

YEAR	DISTRIBUTION Money Terms [a] (£)	INCREASE ↑ FALL ↓ (£)	% INCREASE ↑ FALL ↓	DISTRIBUTION Real Terms [b] (£)
1980	3,473,230			1,317,114
1981	3,862,795	389,565 ↑	11.22% ↑	1,309,422 ↓
1982	4,622,460	759,665 ↑	19.67% ↑	1,442,715
1983	5,237,458	614,998 ↑	13.30% ↑	1,562,954

Table 6.2. Changes in PPL Distributions, Real and Money Terms, 1980 - 83.

Source: a - PPL Annual Reviews 1981, 1982: General Manager's Report 1983.

b - calculated as in Chapter 4.

Over the period, PPL's distributions have grown by £1,764,228 (50.80%) in money terms, 245,840 (18.67%) in real terms. These distribution figures reflect only money distributed to member companies, and are after allowing for money distributed not to members but to performers and after payments on behalf of the industry. As we shall see, PPL distributes part of the money it collects to named artists and the Musicians' Union. Some money is also given to the

BPI for its anti-piracy campaign in Britain (£300,000 in 1983) and to the international federation of record companies, the IFPI, for the international anti-piracy campaign (£35,370 in 1983) and to cover the costs of the IFPI operation (£167,727 in 1983). Money is also paid to the BPI for the IFPI Board and Conference (£5,610 in 1983). A constant percentage of revenue is also given to the music publishers. Over the period 1980-83, distributions to members have grown roughly in proportion to the growth in gross revenue. Thus, given the fact that the data covers only a relatively short period of time, PPL seems to be doing quite well in terms of collection and distribution. In any case, there is a limit on how large PPL can grow, which means that it is unlikely to ever grow as much as PRS since the amount of public performance and broadcasting of records is much less than that of music.

Administration Costs

PPL seems to have a pretty good record as regards administration costs when compared with the other two societies, although the figures for the last two years have put a question mark over this conclusion to an extent. Table 6.3 shows how costs have changed over the period.

YEAR	ADMIN COSTS - Money Terms[a] (£)	INCREASE ↑ FALL ↓ Money Terms (£)	% INCREASE ↑ FALL ↓	ADMIN COSTS-Real Terms[b] (£)
1980	915,498			347,174
1981	688,169	227,329 ↓	24.83% ↓	233,278
1982	792,061	103,892 ↑	15.10% ↑	247,210
1983	1,004,349	212,288 ↑	26.80% ↑	299,716

Table 6.3. Changes in PPL Administration Costs 1980 -83, Real and Money Terms

Source: a - PPL Annual reviews 1981, 1982: General Manager's Report 1983.

b - calculated as in Chapter 4

The fall in administration costs in 1981 is attributed to the non-recurring expenses of the PRT by the 1981 Annual Review.

As we can see, costs have risen rather alarmingly in the last couple of years but this cannot be attributed to the effects of inflation since this was on the way down generally during the period. Office running costs also remained fairly constant over the period. In real terms, costs fell by nearly 33% between 1980 and 1981 and then rose by only about 6% in 1982. Despite a large rise in real terms in 1983, administration costs are still not back to the level of 1980

in real terms. In addition, PPL still more than matches the other societies in terms of costs as a percentage of gross revenue - costs represented 14.95% of gross revenue in 1980, 10.38% in 1981, 10.39% in 1982 and 11.15% in 1983. Remember, too, that these figures for gross revenue for PPL do not include investment income. Including investment income in the figure for gross revenue, the figures for costs as a percentage of revenue would be - 1980 13.28%, 1981 9.32%, 1982 9.40%, 1983 10.30%. (The figures for gross revenue plus investment income are 1980 £6,893,646; 1981 £7,379,968; 1982 £8,430,558; 1983 £9,749,635). As a comparison, PRS' costs as a percentage of revenue in 1982 were 17.5%, the revenue figure including investment income. Excluding investment income, the figure would be 18.5% (there might be costs associated with investment that should be excluded from the cost figure but this is unlikely to make that much of a difference) PRS might say that this comparison is unfair because its figures include overseas activities, which cost a disproportionate amount to administer and whose income is uncontrollable, whereas PPL does not engage in overseas operations. If we just include UK and Eire public performance and broadcasting income and costs for PRS, costs as a percentage of revenue for 1982 shoot up to 24.24% without investment income included and 22.42% with investment income included. Another point is that PPL does not operate in Eire, whereas PRS' does and its operations are not really very profitable there. In addition, PRS employs about 40

licensing inspectors to travel the country looking for infringements, enforcing copyrights and issuing licences, whereas PPL does not and this increases the PRS cost revenue ratio (but not by very much). This item accounts for about 5-6% of administration costs at PRS (although this figure also includes the cost of temporary staff) but only about 1.3 - 1.5% of gross public performance, broadcasting and investment income. Thus, even making many allowances, PRS can get nowhere near PPL's cost revenue ratio. MCPS has the worst cost-revenue ratio of all at about 26% in 1982, although as mentioned in chapter 5, there are special factors at play. If we include investment income, the figure drops to 23%. PPL's operations are similar to PRS' and it does a similar job. Administration costs are deducted from total collections (unlike MCPS, which charges a commission) - and one wonders why there is such a large gap between the respective cost-revenue ratios. Surely, it is not just a difference of scale of operation - and in any case, PRS should be able to exploit economies of scale. PPL does not break down its costs publicly, however, so it is difficult to make comparisons. It seems safe enough to conclude that PPL is the most efficient of the three collecting societies, however.

PPL collects revenue for the public performance and broadcasting of records. Most of its revenue, however, comes from broadcasting (about 78% as against about 22% for public performance). PPL, unlike PRS, does not break down its costs (at least not publicly), so it is difficult to tell what percentage of costs is accounted for by public performance yet it was mentioned in interview that this sphere of activity takes up most of the time and staff. Virtually the whole of the staff at PPL is engaged in public performance areas with the broadcasting sphere being covered by the General Manager and a few others. It was also noted that PPL was probably still understrength in the public performance area (which covers juke boxes, discotheques and Dial-a-Disc amongst other things) and that public performance is unlikely ever to produce as much revenue as broadcasting. To get an estimate of PPL's public performance costs, we might have a look at PRS' costs. PRS' public performance costs were 67.6% of the total of public performance and broadcasting costs in 1982, which for PPL would mean public performance costs being about £679,000. We might tune this figure for the fact that PPL does not employ licensing representatives and for the fact that PPL is much smaller than PRS so it is unlikely to be able to take advantage of economies of scale, but all we really require is an order of magnitude. Using a similar method for broadcasting costs, PPL's broadcasting costs would

be about 32.4% of total costs - about £325,000.

Tables 6.4 and 6.5 show how public performance and broadcasting revenue have changed over the period 1980-83.

YEAR	PUBLIC PERFORMANCE Money Terms (£)	INCREASE ↑ FALL ↓ Money Terms (£)	% INCREASE ↑ FALL ↓	REAL PUBLIC PERFORMANCE REVENUE (£)
1980	1,359,320			515,480
1981	1,474,095	114,775 ↑	8.44% ↑	499,693
1982	1,767,399	293,304 ↑	19.90% ↑	551,623
1983	1,917,272	149,873 ↑	8.48% ↑	572,149

Table 6.4. Public Performance Revenue 1980-83, Money & Real Terms

Source: PPL Annual Reviews 1981, 1982; General Manager's Report 1983

YEAR	BROADCASTING REVENUE (Money Terms) (£)	INCREASE ↑ FALL ↓ Money Terms (£)	% INCREASE↑ FALL ↓	REAL BROAD-CASTING REVENUE (£)
1980	4,764,020			1,806,606
1981	5,158,628	394,608 ↑	8.28% ↑	1,748,687
1982	5,852,514	693,886 ↑	13.45% ↑	1,826,627
1983	7,088,306	1,235,792 ↑	21.12% ↑	2,115,281

Table 6.5 Broadcasting Revenue 1980-83, Money & Real Terms

Source: PPL Annual Reviews 1981, 1982; General Manager's Report 1983

Public performance revenue represents about 22% of gross revenue (without investment income) while broadcasting revenue accounts for about 78% of the same gross revenue figure. We can see that public performance revenue actually fell in real terms in 1981, although this was more than made up in 1982. It rose again in real terms in 1983. The PPL Review of 1982 and General Manager's Report of 1983 note that this is particularly good in view of the fact that public performance users were particularly hard hit by the recession with an unprecedented number of liquidations among clubs, dance halls and juke box operators. Within the public performance figure is revenue from British Telecom's

'Discline' service. This showed a large rise of 26.66% from £165,669 to £208,186 in 1982. The promise of increased revenue from this source was somewhat lost, however, with a fall to £204,965 in 1983. Negotiations have been taking place with British Telecom on this subject, however. For broadcasting revenue, the last two years have been particularly good, following a fall in real terms in 1981. Most broadcasting revenue comes from radio, and trends within this figure are rather interesting. Table 6.6 shows the make up of broadcasting revenue.

YEAR	1980	1981	1982	1983
(a) BBC Revenue (Money Terms)(£)	2,086,642	2,563,675	3,304,472	4,133,334
(b) BBC Revenue (Real Terms) (£)	791,294	869,042	1,031,358	1,233,463
(c) (a) as a percentage of (j)	43.80%	49.70%	56.46%	58.31%
(d) Commercial Radio Revenue (Money Terms) (£)	2,647,892	2,549,783	2,508,000	2,747,252
(e) Commercial Radio Revenue (Real Terms) (£)	1,004,130	864,333	782,772	819,830
(f) (d) as a percentage of (j)	55.58%	49.43%	42.85%	38.76%
(g) Commercial TV Revenue (Money Terms (£)	29,486	45,170	40,582	207,720
(h) Commercial TV Revenue (Real Terms (£)	11,182	15,312	12,666	61,987
(i) (g) as a percentage of (j)	0.62%	0.87%	0.69%	2.93%
(j) Total Broadcasting Revenue	4,764,020	5,158,628	5,852,514	7,088,306

Table 6.6. Composition of Broadcasting Revenue, 1980-83

Source: PPL Annual Reviews 1981, 1982; General Manager's Report, 1983

The figures for commercial radio include revenue from Manx Radio, although this is not a particularly high figure - for example, in 1982 it was about £29,000. The percentage of broadcasting revenue accounted for by commercial radio has consistently fallen over the period while that for the BBC has consistently risen. We must remember, however, that the figure for the BBC includes both radio and television. Between 1980 and 1983, BBC revenue rose by £2,046,692 (98.09%) in money terms, £442,169 (55.88%) in real terms, while that for commercial radio and television only rose by £277,594 (10.37%) in money terms and fell in real terms by £133,495 (13.15%). PPL, in fact, has just concluded a new agreement with the BBC worth £15.1 million over 3½ years covering the period 1 October 1981 to 31st March 1985. The final instalment , from 1st April 1984 to 31st March 1985 will bring in £5 million. This is in return for an extra 30 hours a week needletime, mainly on Radios 1 and 2. Nevertheless, this apparently represents an increase in the rate at which the BBC has to pay for use of PPL members' works. Without the right to use PPL members' works, the broadcasting network would shrink or at least change fundamentally. The figures for commercial radio represent a source of some concern and annoyance to PPL in that the falls from 1980 - 82 resulted from a new tariff introduced by the PRT under which the four bands of charges are index linked so that radio companies can earn more in advertising revenue but pay less to PPL if

advertising revenue increases by less than the Retail Price Index. 1983 saw an increase in the amount paid by the commercial radio stations because of increases in advertising revenue, a lower RPI, resulting in real increases in advertising revenue and new stations coming on air. PPL has been engaged in litigation with the Association of Independent Radio Contractors (AIRC) for a couple of years and this still drags on, having gone through the PRT and now being on its way to the High Court. The AIRC believes that only nominal rather than substantial royalties should be paid to PPL and is presently trying to get the royalties it pays cut. Revenue from independent television has been less than 1% of broadcasting revenue, although 1983 saw a rise to nearly 3%. This follows an agreement with the Independent Television Companies Association (ITCA) to phase in an increase in ITV Companies' hourly rates over 16 months, 1st August 1982, 1st January 1983, and 1st January 1984, although needletime remains the same (and is erratic anyway). This agreement involves a 361% increase in ITV hourly rates. A one-year agreement was also signed with Channel 4, starting November 1982, worth about £200,000 if Channel 4 uses two hours a week needletime (although its use is erratic too). A longer-term agreement is on the way. One other problem PPL has is that TV-AM disputes the level of royalty PPL claims and it is noted in the General Manager's Report for 1983 that the amount involved is small but a principle is at stake, and PPL is trying to assess the royalty so that it is consistent with

other commercial television companies' agreements. I suggested that perhaps PPL might have different objectives in its different markets of public performance and broadcasting - for example, in broadcasting, it might be more interested in maximising revenue, while in the field of public performance it might have the objective of maximising enforcement of the copyright. This might arise from the fact that in the broadcasting field, it is very easy to enforce copyright (except when it comes to pirate broadcasting) so it is a lot easier to have an objective concerning revenue maximisation while in the public performance field, enforcement is very difficult and often revenue does not play the major part. The short answer is that PPL does not have different objectives in different areas of activity - it wants to maximise revenue overall (subject to the musicians' employment constraint) - although the way PPL goes about this in each area may be different. PPL's function is to enforce the copyright as well as collect and distribute the revenue because the acts of collection, distribution and enforcement are inextricably linked. If a person says he is not going to pay the royalties he owes, you have to make him pay somehow, you have to enforce the copyright. One could argue that in certain cases the copyright is unenforceable, because of new technology, for example, but this is because sometimes circumstances create a situation where the copyright is unenforceable. This is not the same as not exercising the right, however, it is just a case of not being able to do so. The only reason for

enforcing the copyright is to obtain the royalties and you can only get the money by enforcing the copyright. The only areas where PPL cannot obtain the money are likely to be those which are subject to exceptions under the 1956 Copyright Act - and here PPL cannot enforce the copyright by law anyway. For example, under S12(7) it is not an infringement of the copyright in a sound recording to cause the recording to be heard in public (a) at any premises where people reside or sleep as part of the amenities provided exclusively or mainly for residents or inmates or (b) as part of the activities of, or for the benefit of a club, society or organisation not established for profit and whose objects are mainly charitable or otherwise concerned with the advancement of religion, education or social welfare. The exception does not apply in the case of (a) where a special admission charge is made to the part of the premises where the recording is to be heard. (a) was meant to cover prisons and hospitals but also covers hotels and holiday camps (as shown in the case of PPL V Pontins), a situation which PPL finds rather irksome. The Whitford Report and the Green Paper recommended deletion of this part of the exception. Nor does (b) apply if an admission charge is made to the place where the recording is to be heard and the proceeds are applied otherwise than for the purpose of the organisation. PPL does not like this part of the exception either on the basis that it is very vague, applies to no other rights than sound recordings and assumes that PPL will not waive its claims to royalties for deserving

cases - PPL already has special agreements with the National Council for Social Services, for example.

PPL does not use licensing representatives in the field of public performance to enforce the right like PRS does because it was thought that it had found a method of operation which did not require this although it was also stated that the business is inconstant, so the matter is under review. It is, however, not current PPL policy to use licensing representatives. In any case, public performance of records does not take place to anywhere near the extent of public performance of musical works, so if PPL did want to put licensing representatives on the road, it would not be on the scale PRS did it. There is also the question of whether these representatives are just meant to enforce and police the right, as at MCPS, or whether they also sell licences as at PRS. In the ideal case, PPL is informed of a public performance by the performer or owner of the premises where the public performance is to take place and it then tells him the conditions attaching to the public performance. He would then agree to the conditions and obtain a licence. In most cases, however, PPL has to discover the infringing performance itself, tell the infringers that they are acting illegally and then proceed to legal action or not as the case requires. PPL often has to resort to legal action and at any given time there are 400-600 cases in progress, ranging from correspondence before a Writ, cases where a Writ has been

issued and correspondence is continuing towards negotiation for an out-of-court settlement and cases where there have been settlements after judgement, following a Writ and solicitors' letters. PPL can sue for infringement, damages, costs and an injunction. There are numerous sources of discovery such as spot checks, advertising, the press and so forth. There are 5 - 6 injunctions a month and rarely are cases defended.

The Collection/Distribution Process

The royalties PPL collects are distributed to record companies, recording artists and musicians and the record company must register with PPL and tell it about each record released if the artists and musicians are to receive royalties. Only UK record companies or foreign record companies which license product through UK record companies or which can legally assign their rights to PPL are eligible for royalties and artists have to be contracted to such record companies before they are eligible[13]. Once licences have been issued and fees collected in advance a pool of money is created. After deduction of administration costs, this pool is distributed in accordance with the amount of airplay and the amount of estimated public performance. The BBC and most of the commercial stations (this is a rolling exercise so that not all the commercial stations provide information at any one time - only a certain number of them do so each time) provide second-by-second accounts of the records played, through a log

compiled by computer, and a certain amount of information for the weighting of public performance revenue. PPL assumes that in general, by and large, public performance data resembles broadcasting data, that use of records for public performance reflects to a reasonable degree the use of records in broadcasting, so that insofar as possible, information received is used to weight broadcasting figures and these figures used as a proxy for public performance figures and applied to public performance revenue. This is because PPL believes that analysis has shown that the additional costs involved in any attempt to obtain a more accurate public performance distribution would dissipate any additional gains that might be made for any given mark or artist. Thus, although PPL loses something in accuracy, it gains in terms of reducing administration costs. This is in contrast to PRS which tries to be as accurate as possible and analyses both broadcasting and public performance returns as thoroughly as possible. The difference between the two may have something to do with the fact that PRS has over 16,000 members while PPL has only about 350, so PPL does not have so many people to please so it can get away with less accuracy with fewer people clambering for money. Thus, PPL does not allocate the revenue on a fixed basis nor on a sliding scale according to size of record company but according to the indicated amount of broadcasting and public performance. Royalties are paid according to the record label (the mark), not the title of the record, and according to the recording artist. Under the Rome

Convention, 1961, each country is supposed to make provision in its domestic law for performers to be remunerated for secondary uses of their recordings. Although the UK is a signatory, there is no such provision in our law. However, the spirit of the Convention is met by a voluntary arrangement between the Musicians' Union and PPL by way of an ex-gratia payment. There would also seem to be a moral right to pay performers. Thus, of the distributable income collected by PPL (that is, after deduction of administration expenses), 67½% goes to member companies of PPL. This represents the only statutory right PPL has to comply with and is the only statutory right in the field - the copyright owners (record companies) are entitled to royalties from broadcasting and public performance of their copyright sound recordings. In other countries it is a legal obligation that other parties share in such royalties but this is not the case in the U.K. Of the remaining 32½% of the royalties, 20% is given to the named artists on the record and 12½% goes to session and other musicians, not directly but through their representative body, the Musicians' Union. This is the voluntary arrangement.

When it has received the returns from the BBC and commercial stations, PPL knows how many seconds worth of music on records have been played, in total, over a given period. It does not work out how much each record has been played but rather how many times each record mark has been played and how many times a given artist's records have been played in total (so the

artist may have had several different records played or only one - the title of the record is largely irrelevant). What we have to start with is a gross total pool of revenue collected. From this, administration costs are deducted. Then, 8% of what is left is, for various historical reasons, given to the music publishers via MCPS. In 1983, this figure to the music publishers amounted to £607,434. What remains is net distributable revenue and this is then divided into two parts of 67½% and 32½%. At this stage, a rate per second has to be calculated by dividing the total number of seconds of record playing on the air (derived from the logs sent in by the BBC and commercial stations) into the appropriate pool of distributable revenue. The 67½% share of distributable revenue is destined to be distributed to the record companies. For this, the rate per second is calculated by dividing the total number of seconds into this 67½% share of distributable revenue. It is then necessary to find out how much money each record mark has earned. This is found by multiplying the rate per second by the total number of seconds accrued by each record mark as shown by the submitted log sheets. As regards the 32½% share of distributable revenue, this has to be divided into two parts - 12½% goes to help musicians in general, represented by a block payment to the Musicians Union for the furtherance of music generally. This amounted to £919,893 in 1983. The other 20% is used to calculate how much goes to each artist, (which amounted to £1,471,829 in 1983). A rate per second is determined by dividing the total number

of seconds into the 20% share of distributable revenue and this is then multiplied by the total number of seconds accrued by each artist to give the amount of money to be distributed to each artist. The rate per second is the same whether the record has been produced by a large multinational company or the smallest member of PPL in one case or by a famous or obscure artist in the other. The total number of seconds to be divided into distributable revenue is the same in each case. Public performance revenue is distributed in the same way as broadcasting revenue according to the broadcasting figures, weighted accordingly. The amount of revenue coming in from each station depends on factors such as its size and the area to which it plays. There are two distributions a year (unlike at MCPS where there is one every month) - one in March/April based on the year ending May 31st of the previous year[14] and the other in September/October based on the year ending November 31st of the previous year[15]. PPL also makes payments on account of its final distribution during the year. In fact, three distributions were made in the year April 1st, 1982 to May 31st, 1983 and its distribution periods are improving, due mainly to its internal computerisation.

Licensing, Negotiation and Tarification Policy

PPL cannot really go out to sell itself or sell its licences, it has to be almost passive and wait for potential copyright music users to come to it. It is a legal obligation on the

part of such users to obtain a licence to cover the acts they intend doing with the music - or else they will infringe copyright and breach the 1956 Act. Nor is PPL allowed to try to persuade people to buy more records, even though it would swell PPL's revenues if it was successful. PPL is reactive rather than active. All the collecting societies are faced with a fait accompli, although one could say that PPL has a lower profile than the others. This no doubt has something to do with its size.

The theme of the business at PPL is that simplicity pays. This is not just because of the scale of PPL's business but a state of mind and an underlying principle of the organisation. PRS, on the other hand, depends and relies more on accuracy and aims to be as accurate as possible so as to, as far as possible, make sure that revenue is distributed according to the extent of use of any particular composer's work. Thus, it analyses returns and data much more than PPL and has more complicated distribution procedures and tariffs. This obviously adds to administration costs. The aim of PPL's tariffs is to make sure that the tariff reflects the value of the sound recording to the person(s)/organisation(s) using it without being unduly oppressive. For example, without records there would probably be considerably fewer discotheques. When one considers that the owner of the discotheque is paid admission charges and that he has to pay PPL a not very large royalty, he gets away quite lightly. It would not be a good

idea to impose the tariff as a percentage of the income from admission charges because then the discotheque owner could just set the admission price at zero and increase the price of drinks proportionately, although presumably PPL could introduce into its tariff a condition that the percentage of admission revenue criterion would only apply if admission was over a certain figure. PPL does not think its coverage of discotheques is particularly good and is trying to improve this. The trouble is that it is very difficult to obtain high level coverage of discotheques because they keep opening and closing and changing hands. In addition, the structure of catering has changed over the years so that it is often the caterers themselves who run the discotheques these days, in pubs and clubs, rather than independent operators. This trend though, might make coverage of discotheques easier since they are often owned by large conglomerates so that all one really has to do is approach the Head Office of the organisation in question and negotiate a licence for all the establishments owned or controlled by that organisation. This is obviously much easier than having to deal with individuals and single sites since it reduces transactions costs and, to the advantage of the organisation, bulk discounts may be available. It is all really a matter of how much you have to pay to obtain the extra revenue - if the cost of doing so exceeds the revenue, what do you do? It is collecting from the small establishments that adds to expenses disproportionately. PRS collects from these establishments

much more than PPL, hence its higher costs. It was thought that PPL had coverage in the discotheque field of under 50% and that its tariff there was too low but that the situation was improving. In the field of juke boxes, coverage is about 90%. There are discounts in the juke box tariff if the money is paid within a certain period of time, for example, and if the juke box owner is an operator, hiring out juke boxes from his stocks to individual premises. Coverage of tariffs varies from area to area. The tariff, however, is always applied consistently and discounts are actually part of the tariff, not separate - they are not negotiated. PPL knows that in some cases, its tariffs are not good enough, that they are not high enough, and that it does not have enough penetration, enough coverage, in the public performance field. It expects public performance revenue to rise, though, due to increased business and increases in its tariffs. Dial-a-Disc revenue will rise as the cost of calls rises.

In the field of broadcasting, PPL has coverage of close to 100% because it is very easy to deal with the radio stations, to know where they are and when they are broadcasting. Most of them are large anyway and negotiation with the independent commercial stations is through the AIRC (Association of Independent Radio Contractors). PPL also negotiates with the Independent Television Contractors Association (ITCA) for use of its repertoire on television and has recently concluded a new agreement with it. Royalties are set by negotiation.

Negotiations do not just centre around the level of royalties payable, however, but also cover limits on the use of records (needle time) and employment opportunities and levels for musicians. The main difficulties in the broadcasting field arise from pirate radio stations. Public performance tariffs are negotiated where possible with representative bodies. Thus, the tariff for discotheques is negotiated with the British Association of Ballrooms, that for juke boxes and background music systems with the British Amusement Caterers Trade Association and that for hotels and public houses with the Brewers Society. If there is no representative body, PPL has to come to an ad hoc agreement with parties concerned. Like the other societies, PPL also differentiates between featured and background music, calling the former specially featured entertainment (SFE), where music is the main attraction. Musicians' employment conditions relate only to SFE. This avoids problems of categorising featured music since the initial immediate defence is to deny that you fall into a certain category of user. The example put forward was of a discotheque operator who denies that this is his occupation but says he is a DJ presenter or a dance hall operator so as to pay lower royalties or so as not to have to fulfill certain conditions. For featured music, there is just this one category, SFE.

PPL's licensing policy is based on the concept that "[t]he public use of recording can..... only be authorised subject

to the condition that such use will not be detrimental to the recording companies and others who contribute to the production of sound recordings"[16]. The interests of the recording artists and musicians must also be taken into account. Licensing is also designed "to preserve a reasonable ratio of live entertainment at the locations concerned"[17]. The musicians' conditions only apply to SFE, however. Most licences are blanket giving the licensee the ability to use all the works in PPL's repertoire for the purpose designated in the licence and they must be obtained in advance of the use. PPL only deals with the public performance and broadcasting of sound recordings not the copying or re-recording of then which can only be authorised by individual record companies[18]. It is up to the organisers to obtain the licences, although other parties may be jointly and severally liable.

The special relationship PPL has with the Musicians' Union affects its licensing policy. The special problems musicians have is explained in a leaflet from PPL entitled "Records and Musicians. The Sociological Problem Explained". This notes that advances in broadcasting and recording technology severely affect musicians' livelihoods but the British record industry needs musicians to keep up professional excellence in production of records, which requires a healthy, broad-based musical profession covering all types of performance. Records are unique in repeatedly producing "the actual work and skill

of the recording musicians; technology, in effect, has frozen their performance in time and space for later use anywhere and for any purpose". Lassen[19] writes that "It is a characteristic of the record that it can - perhaps more than any other commodity - be used and exploited for purposes quite different from what was originally intended and these secondary uses generally involve an enrichment for the user". This, in fact, applies to music in general. The leaflet goes on to say that everyone has a right to decide when and under what conditions their work is used, including musicians, and that musicians only allow recordings on the basis that they will be sold to the general public for home use and that PPL will control public performance. Thus, musicians interests should be considered in applications for licences for public performance. Records are generally made by the top quality musicians while the grass roots of the profession have to rely on a variety of different performances in different establishments. If there were no limits on use of records for public entertainment, it is argued, the possibility of employment for musicians would be severely reduced, even eliminated in some cases. This would cause unemployment and prevent new musicians from developing and practising their skills. The profession would contract and eventually demand for musicians would exceed supply. The public interest and music itself would suffer. Thus, PPL only authorises use of records for public use for specially featured musical entertainment on condition that there are reasonable

employment opportunities for musicians and that a reasonable ratio of live to recorded performances is maintained so that the conflicting interests are balanced. One must remember that the performers have no copyright in their performances, although they do have a remedy in the Performers' Protection Acts 1958 - 72 which makes it a criminal offence to record a musical or dramatic performance, directly or indirectly, without the performers' prior written consent and to sell, hire or publicly perform such a record. Despite this, the record industry still has trouble with 'bootlegging'.

Sir Arnold Plant[20] had some thoughts on this subject, too. Performers always have the option not to record, although this would be a very unusual step in view of the money that can be earned and access gained to the media, particularly broadcasting, through records. There is a precedent, however, in Serjiu Celibadachi, the Rumanian conductor who has refused for 30 years to make records on the basis that music is naturally transient and it is artificial and unnatural to recreate it through technological means in that way. Plant noted that there will be a difference in reaction to records by musicians between solo performers and performers in orchestras, bands and the like. This presumably would also apply to famous and non-famous performers (it was, however, felt at PPL that these views did not really accord with reality). Solo performers are unlikely to find themselves less in demand as a result of record playing and one might

expect them to prefer their income to be maximised through the tariffs PPL charges rather than have limits on record playing. Increases in broadcasting and recording are likely to increase demand for their services and attendances at concerts and performers can be more selective in the performances they give (by restricting appearances they can also increase demand even more and force prices up). Performers in bands, orchestras, and choirs, Plant went on, however, are more likely to want "punitive rates and positive refusals" since they are likely to think that demand for their services will fall as a result of increased broadcasting and recording. There are more of them for a start and they are not employed on the strength of their reputation, they are unlikely to appeal on the strength of their personal appearance. They are not so much in demand. Also, "the appeal made by their personal appearances is not always so markedly superior to that made by their records". There is also competition with other records of the same ilk or of the same work, too. All of this, of course, may not apply to a popular well-known orchestra but will apply to a grass roots musician. The organiser of a small social gathering is likely to have to consider cost very carefully and is likely to favour a selection of recordings by well-known orchestras rather than a live performance by the best orchestra funds can buy. In fact, Plant was rather against the ability of record manufacturers and performers to control public performance of their records and thought it led them to form combinations to restrict trade. The PRT,

however, would seem to be pretty good protection against arbitrary restriction of public performance and broadcasting.

Efficiency versus Effectiveness

When asked about the possibility of a trade-off between efficiency and effectiveness, it was stated that PPL tried to be as effective as it can in the most efficient manner possible and vice versa. In all cases, there have to be compromises on the objectives mentioned at the beginning of this chapter, but it may be difficult to decide what is efficient and to decide on the trade-off. For example, in the short-run, it may be inefficient to pursue an infringing performance if the cost of doing so exceeds the revenue thereby generated. Taking a longer term view of the situation, however, to do so may be efficient in that otherwise a precedent may be set in favour of the infringing act. It was thought that PPL had a more radical view of cost-revenue relationships than PRS in situations where the ultimate cost of the exercise exceeds the benefit or revenue, for example, and that for PRS such exercises were just an obligation and a duty to be carried out almost regardless whereas for PPL commercial reality and whether cost exceeded revenue was more important. PPL would not pursue an action if it thought the cost would exceed the revenue unless it could get something else out of the situation. It was felt that PRS would pursue the course of action even if costs exceeded

revenue. One must be careful, however, to not let your desire to achieve the greatest benefit in the short term cloud your view of the overall long term situation since this may lead to confusion and surprise when those with a more long term view of the picture turn against you. As regards enforcement, there are two types of efficiency, it was noted - efficiency at discovering infringements and efficiency in the time it takes you to deal with the infringement. The latter may be the most difficult to achieve because of delays in the judicial system.

It was thought that as the years have gone by a more realistic market value has been set for the rights PPL deals with and in fact for all the rights dealt with by the collecting societies and this has been one aim of all the collecting societies. All the rights under copyright have a history of being undervalued, but the situation is gradually getting better. The problem is that there is no natural market for the rights, so there is no price as such. There is, in fact, a situation of bi-lateral monopoly with a representative body of music users facing a monopoly collecting society. One must also remember that revenue and costs are going up all the time anyway because of inflation. If costs are increasing with inflation then so should revenue and there comes a point at which you do not have to employ any more staff but revenue is still increasing. PPL did not think it had reached the maximum attainable level of revenue yet because, for example,

of the problems of discovery and the fact that something new is happening all the time and new markets are constantly opening up. In fact, this is the case for all collecting societies. PPL does have a cost control system as well as a budgeting system and an estimating system, although no details were available on this. In any case, there is a level of costs at which management judgements have to be made. A management decision has to be made about increasing the level of costs in order to pursue a certain objective - it cannot always be an automatic process. PPL also thought its staff was of a high calibre and that it was likely to get even better in the future at carrying out its operations, although all the societies would no doubt say the same and it is a matter which would be difficult to check anyway. If we take costs as a percentage of revenue as a measure of efficiency, however, PPL does seem to be more efficient than the other societies. In addition, we might take as a very simple measure of staff efficiency the revenue collected divided by the number of staff employed. Using this revenue measure, each member of PRS staff collected £77,998, each member of MCPS staff collected £58,228 and each member of PPL collected £162,137 in 1982, so PPL would seem to be the most efficient. PPL regards itself as tight in how it spends the money it collects, and PRS as rather inefficient in some respects. It may overspend at times, it was felt. For example, PRS prepares a very glossy yearbook in large quantities each year and sends out large quantities of information, leaflets and so forth to members. One might say that comparisons of costs and

revenue are not particularly valid because each collecting society operates in a different market and there may be some truth in this but PRS and PPL in particular do operate in at least a similar way so there is likely to be some comparison possible. MCPS, however, operates in a very different way, so one must be careful. Further control on costs would seem to spring from the fact that the Board at PPL is composed of member companies which provides some degree of implicit control. This would seem to apply since the members of PPL are record companies and businessmen although a cynic might reply that the record companies have not been loathe in the past to 'waste' money through extravagance and have not had a noticeably good record on cost control. In any case, the fact that the shareholders in the company and the members are also on the Board means that there is less separation of ownership from control than in "traditional" companies and industrial organisations and therefore less scope for the economic concept of managerial discretion and less chance of going overboard on costs.

It was felt that PPL had become more efficient over the years mainly because of the greater division of labour that has become possible. PPL was very small when it started but has expanded quite a lot since, although it is still quite small employing only 51 people, (47 in 1982). This has made greater departmentalisation possible, which has added to efficiency, particularly in the field of investigation. Information

systems have been improved and word processing and computerisation facilities introduced. In fact, PPL has just installed its own in-house computer, meaning that the 1983 final members' distribution was the first done entirely in-house). An indication of its growth is that it has taken over another floor of its accommodation, Ganton House. An ever present problem for the collecting societies is that the money it distributes does not mean very much to the big stars but for its smallest members every penny counts and they naturally want the societies to collect down to the last penny although the cost of doing so may be so large as to make it uneconomic.

Covering Costs

PPL has in common with MCPS that it uses interest received from investment of undistributed revenue to cover its costs, although it does not charge a commission like MCPS. However, its distributions are a lot less frequent (twice a year as against monthly at MCPS - although this is changing) so it is able to earn a lot more interest. In 1980, investment income, at £770,306 covered 84% of costs, while in 1981 interest was £747,245, which more than covered costs. The same was true in 1982 when interest income amounted to £810,105. In 1983, however, interest, at £744,057, covered only 74% of costs. The advantage of all this is that it means that PPL does not usually have to eat into the money it has collected to pay its

costs. PPL relies a lot more on interest than PRS does to cover costs. One might suggest that the reason is that PRS collects a much larger amount of revenue - £54 million against £7.6 million in 1982 - so it is more able to stretch a point and take the vast amount of costs out of revenue collected and still have a very large amount available for its distributions. Although PRS' costs as a percentage of revenue are higher than at PPL, at PRS the percentage is of a much higher figure. PPL starts from a much lower base and to take the vast bulk of costs from revenue would not leave a very high figure in relative terms. PRS' investment income, at about £3 million in 1982, could only cover about 30% of costs of £9.5 million. In addition, there definitely seems to be a difference in emphasis on investment income between PPL and PRS. PRS has a whole section in its yearbook on investment income yet it does not even mention its impact on costs, it does not mention the percentage of costs covered by investment income. In interview with PPL, however, and in their review of the year's performance, emphasis is placed on the fact that interest is used to offset cost. The difference in emphasis may be accounted for by differences in size between societies - PPL and MCPS are much smaller than PRS. As an organisation grows, costs are going to increase too and there is always going to be a limit on the amount that can be earned from investment because the market rate is likely to only ever be at about 10-15% which means only this amount of revenue can be earned from it assuming that capital investments are not sold off.

Thus, if costs represent more than 10-15% of revenue, the collecting societies will not be able to cover all their costs with investment income. This also assumes that all revenue collected is invested and for a full year, which is obviously not going to be the case since the organisation is always going to need working capital and money at hand and PPL has two distributions a year and PRS four. An organisation which wants to earn as much interest as possible will obviously try to keep the revenue as long as possible.

Organisational Structure

PPL has just changed its organisational structure "to produce, by internal promotion, a management team able to help PPL to cope with the industry's future demands"[21]. The new structure is as in Diagram 6.1. PPL is controlled by a 10 man Board headed by a Chairman, and this determines policy, although some policies will be management decisions. All directors are non-executive. In everyday affairs, the General Manager is at the top of the organisation and may advise the Board although he is not part of it. Below him is the Company Secretary and the Financial Controller. All departments have their own manager who reports to the General Manager. Basic departmentation is then[22] as below. Licensing Support (also called the General Office) (12 people) deals with most of PPL's standard licensing correspondence. The Filing

Department, which is presently being computerised, maintains past and present records as well as the licence renewal system. Accounts (8 people) deals with all the normal accounts functions, computerised processing of broadcasting returns and distributions to members and artists. This department also houses the Computer Manager, who joined PPL in July 1982. Audio Typing (4 people) deals with all the secretarial services for the General Manager and Company Secretary, all non-standard correspondence for licensing staff, mainly senior staff, all correspondence with new and current member companies, and all Board documents. Membership and Office Services (a staff of one) deals with the processing of new membership applications and all day-to-day correspondence with current members. Music Systems Licensing (a staff of 6) licenses all audio juke boxes and background music installations and some video juke boxes. New Business Licensing (with a staff of 7) is the investigatory arm of PPL, seeking out infringements and unlicensed users and dealing with them up to and including the issue of the first licence. They are then added to existing revenue and renewed each year. Business Affairs Department (Large Operations Licensing) (3 staff) is a new department set up to look into and find solutions to the problems associated with dealing with large organisations since PPL believes that such organisations require a different approach and special negotiating and administrative techniques. This covers the likes of Mecca, hotel chains, brewers and so forth. General Licensing (which

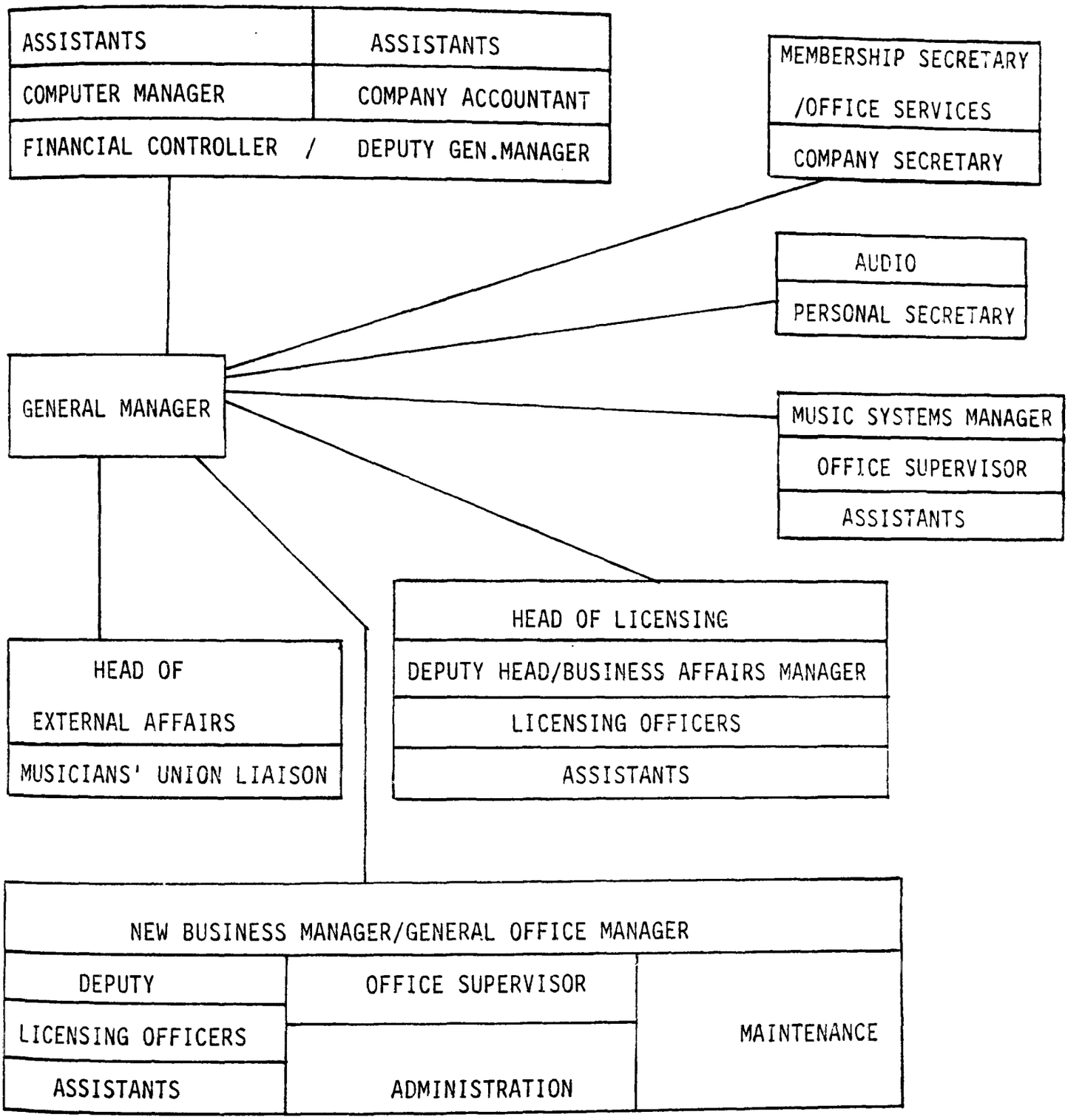

DIAGRAM 6.1. PPL ORGANISATIONAL STRUCTURE AS AT 8TH MARCH 1984

has a staff of 7) deals with renewals to licences and any problems arising with existing licences. The lines from the General Manager to the various positions show lines of communications and superior-subordinate relationships are shown by movements up or down from the Head of Department. Thus, PPL is divided along functional lines, so that it can deal with any specific problem in any particular function. It does have a fairly stable organisation structure although it also tries to stay sensitive to changes in the industry. The environment is ever changing, the industry is one of the least stable and PPL is very open to the environment in every sense. It believes itself to be very adaptable but is aware that it is not perfect and that there is room for improvement.

Select committees are used to deal with particular problems which arise, problems of an internal or external nature, and the organisation is something of a talking shop with a lot of discussion and regular meetings which is obviously very different from MCPS where there are no internal company committees. When the committees meet, there is no-one particularly in charge, it is based on who knows something about the subject under discussion. The report of the committee then goes to the General Manager for comment. It was pointed out that there is really no need for anyone to be in charge since only 51 people in total are employed by PPL and about 30 of these are support staff. A system of project management is not used, however. Where necessary, however,

PPL uses management consultants and specialised management services. In interview, I noted that PRS seems to have rather a bureaucratic structure with a lot of rules and regulations and strictly defined and complicated procedures especially where members are concerned and asked whether this also applied to PPL. In fact, PPL does have a number of rules but these are mainly guidelines, although it is recognised that such rules are necessary so that PPL may operate in a 'coherent' manner. With infinite alternatives like there are in the industry, it was felt that one could not expect things to stand still and rules were not cast in concrete. The sheer diversity of PPL's activities means that these rules often just do not apply and original thought is required. There are rules about the administrative structure which must be obeyed, however. One of the disadvantages of a lot of rules, it was noted, is that sometimes there is pressure for the introduction of rules for the wrong reasons, such as when people want to shed responsibility. It was felt that one of the advantages of PPL's small size was that communication was enhanced, a fact also noted by MCPS. In addition, in a small organisation, the decision making staff are of high ability so that they can be given a lot of responsibility without the need for referral to a higher authority. As to recruitment, there is no particular industry from which PPL takes on more people. Some, but not all, members of the organisation have a management background and at the moment PPL is actively trying to improve the management skills of its staff using outside

help. PPL is apparently more concerned about first recruiting someone who can do the job and then training him, or her, in management skills. As to the job itself, it was felt that a combination of outgoing negotiating ability, as one would expect to find in a salesman, and an ability to cope with complex arguments, often of a legal nature and detail, often of a very fine nature, was required.

Membership

PPL now has over 350 members of all sizes and controls over 1500 labels. There are two main types of member, associate member and full member, the difference being that a full member can go to the Annual General Meeting and vote. An associate member can become a full member on Board approval and the number of full members increases from time to time. The two main criteria for becoming a member are that the company has to be a bona fide record company, which means that it must produce and/or manufacture records in the UK (subject to the criteria about foreign companies mentioned earlier), which means that importers are excluded and that the company must be able to assign the rights in the recording to PPL (it must have the legal right to do so). There is no charge for joining and no commission. PPL does not and cannot tout for business - it waits for prospective members to come to it, since the rights are legal obligations. With a few exceptions, members are mainly specialised record companies.

Attitude to Other Societies

All the comments under this category concerned PRS. For example, it was felt that PRS considered itself to be in competition with the other societies particularly PPL. This is a throwback to the "slice of cake" argument that apparently used to be put forward in the literature - that there is a cake of available money which is at the disposal of the societies to collect and which is fixed. Thus, each society has to take out as much as possible before the others do. There might be some truth in this at least from the point of view of the user who will probably argue that he has already paid a certain amount to the other societies and that this should be taken into account in negotiations. This "competition theory" would certainly seem to apply in the U.S. but it is generally thought not to be the case in the UK and PRS denies it. In any case, it was felt at PPL that PRS follows a policy of trying to charge less for use of the music under its control than PPL that PRS regarded it as a competitor. Despite this, however, virtually all PRS' tariffs exceed PPL's for the same use of music. It seems to be generally thought in the industry, however, that each society operates in a distinct separate market, although it was pointed out that from the consumer's point of view this is not the case since it is often difficult to comprehend the concept of different copyrights in the music and in the record. The consumer just thinks he is paying twice for the same use. The

point also noted by MCPS was voiced - that at PRS the lines of communication were rather long and that it was often difficult to get decisions made and to get staff to take the initiative. For example, licensing inspectors will not commit themselves or take decisions until Head Office is contacted. Despite all the comments below, however, the relationship between PPL and PRS has been greatly improved in recent years.

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8. Lassen, Otto. "Worldwide Trends In Neighbouring Rights" in "The Music Industry: Markets and Methods for the '70s". New York. 1970 Midem Conference.

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10. Quoted in Peacock & Weir. op cit. p 133.

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12. Peacock & Weir. op cit. p 134.

13. "Royalties breakdown". Business section of Music & Video Week. October 16, 1982.

14. ibid.

15. ibid.

16. PPL leaflet. "Broadcasting And Public Use of Sound Recordings".

17. ibid.

18. ibid.

19. op cit.

20. op cit. reference 5 at p 107-109.

21. PPL General Manager's Report 1983.

22. This section is based on information in the 1982 PPL Annual Review and the 1983 General Manager's Report.

CONCLUSIONS

Since the first acknowledged copyright act, the Statute of Anne, in 1709, there have been many Acts dealing with copyright and copyright material, culminating in the 1956 Copyright Act. As time has gone on, the subject has become more and more complex and more and more political, especially in the international field. The bargaining of many interest groups and the need for compromise, a clear head and a sound knowledge of general principles is no-where better illustrated than in the US, where the campaign for reform of the 1909 Copyright Act lasted for well-nigh 20 years of acrimonious public debate, private compromise and powerful lobbying. The advance of technology makes it imperative that copyright law and practice be dynamic and subject to change. A constant re-evaluation of solutions and ways of thinking is needed. Since laws change very slowly, the various parties involved have to try to influence the course of events and thinking through lobbying and the practical application of the law. What seems very likely is that problems are likely to grow, complexity will increase and interest groups will continue to grow in number.

As to the two technological problems mentioned earlier - reprography and audio and visual copying - there seems little doubt that there is a problem and a large problem at that. The question is, what is the solution? It is tempting to

suggest that these problems have been around for a long time without the record and publishing industries collapsing unduly. One might even put down the main problems encountered by these industries to other factors. This ignores the fact, however, that in most cases such copying is illegal. Two approaches then suggest themselves - either one says that it is a bad law since it cannot be enforced and, for example, takes away the right in these spheres, or one finds a way of making a right which is presently unenforceable enforceable. Since the first approach strikes seemingly at the very heart of copyright and is rather a negative solution, it is to be rejected. Equally, though, the simple argument that copying breaches the reproduction right is not enough. What is required is a practical solution to a practical problem. One wants a solution which will make the marginal cost of copying greater - which would suggest a levy on blank tapes and photocopying paper or copies made with a photocopier. For photocopying, this might simply be achieved by putting up the cost of a copy from a slot machine. For non-slot photocopiers, a levy on the paper might be the best idea. Or these methods might be combined. For blank tapes, the levy would not have to fully compensate for estimated losses. Exemptions and non-copyright material could be taken care of in negotiations. The idea of full record keeping would probably have to be dropped in the reprography field and is not applicable in the audio-visual field so some other basis of distribution would have to be arrived at in the latter

field - information on record sales and public performances (which PRS might be able to supply) for example - and information on book and journal sales and library lending (which is required for Public Lending Right anyway), and sampling or limited record taking in the reprography field. Since journals are not normally lent out by libraries, some other form of information would be required on this. To keep costs down, an existing society would collect and distribute revenue and a tribunal would oversee the licensing schemes. Eventually, representatives such as those used by PRS might be required to police the scheme - here I am mainly thinking of the reprography problem. Questions of fair dealing could also be taken care of in negotiations. A new copyright statute could lay down exemptions to the right of reproduction - existing societies have to take account of exemptions in their spheres of activity - although the number of these would have to be kept fairly low. Since the difficulty in both the fields of reprography and audio/video taping is to find someone to enforce the right against (it is really impossible to enforce it against the individual copier), one might make the owner or occupier of the premises where pnotocopying takes place or the makers or importers of blank tape responsible for authorising such copying and for obtaining a licence. This is one of the suggestions of PRS. I make no claims to originality for these suggestions - it is really just a "cobbling together" of solutions already put forward. Before any solution is arrived at in the reprographic field, however,

there is going to have to be real compromise on all sides. It is very difficult to put over the idea that a solution is genuinely sought when the copyright owners themselves (publishers/authors) cannot put up a united front. If care is not taken, the correct time for a solution may pass. In the audio-visual field, the campaign for a levy on blank tapes is unlikely to be dropped until it is achieved - if not with this government then with another. There is a lot at stake, especially in the infant video industry which, it was noted at the BPI, was experiencing the same problems the record industry had had for a while but with one exception - that these problems had arrived at a much earlier stage in its development for the video industry, which might do untold harm.

As Whale notes[1], criticism of collecting societies does not usually attach to the system of licensing itself but rather to "operational procedures, which are necessarily highly complex". Both PPL and PRS have effective monopolies, which in the past has been the subject of some criticism - but the advent of the PRT seems to have diffused these criticisms somewhat. It was felt at PPL that collecting societies were more like oligopolies, with one large organisation dominating the market. It is true that they do not cover the whole field, they do not control 100% of works, and in some cases it is possible for broadcasters and places of public performance to negotiate individually with copyright owners and, of

course, there are always public domain works, but the collecting societies are the only organisations operating in their fields in their areas of competence and they do not have competition from other similar organisations, so the "monopoly" label seems nearer the truth. One might also note that they fulfill the criterion used by the Monopolies and Mergers Commission in determining what is a monopoly - they control over 25% of the market. It is worth noting the comment made by Mr. Lowde at MCPS, however, (although one must remember that MCPS does not operate in the same way as PRS and PPL and is only an agent, and does not have a monopoly in most areas of its operations anyway) that MCPS is "an oligopoly in a market where product substitution represents a real possibility".

One must admit that all three societies do a very good job, even though the benefits of its work are not felt equally by all composers and writers, with earnings being highly skewed to a small percentage of composers. A recent survey by Jean-Loup Tournier[2], General Manager of SACEM, revealed that only about 4% of living authors were on the minimum wage in their respective countries when one considers the royalties they received from their national collecting societies. About 30 collecting societies took part in the survey, virtually all in Europe and North America. A skewed earning distribution would be expected since only a small minority of composers reach the top of their profession, but this figure at least

shows the material problems of being a composer. Think what the situation would be without collecting societies! PRS, PPL and MCPS between them collected over £71 million in 1982, about three-quarters of that by PRS. With new markets for composers such as cable and satellite television and video (the music video market is now estimated at £25 million a year and growing[3]) opening up all the time, this figure promises to grow at an exponential rate and reach heights undreamt of when the societies were first set up, one might even say undreamt of even in the 1960s. A number of landmarks have been reached recently - PRS has gone through the £50 million barrier, MCPS has just exceeded £10 million for the first time and PPL should exceed the £10 million mark in 1984. In terms of revenue, the picture seems very rosy.

As with most situations, though, a note of caution must be sounded. Criticisms of the system are likely to revolve around whether members receive the maximum possible amount of money after deduction of administration costs. PRS would probably be the main target here, since costs are taking up a greater and greater proportion of costs, a trend which is likely to continue as broadcasting, for example, takes on a more localised nature. One may argue that PRS can no longer afford to be as accurate as previously in its distribution methods. PRS is going to have to analyse returns less and less as the sheer number of such returns grows and grows, unless it is willing to employ an ever-growing staff,

something which it seems not to want. If more staff are employed, costs are likely to grow at an even faster rate. Computerisation will undoubtedly help, however. One may ask whether PRS needs to be as accurate in distribution, anyway - PPL, for example, uses something of an approximate method in some cases but seems to cope well. It does not attempt to be that accurate and has a very low cost revenue ratio as a result. This may reflect a political aspect, however, - that PPL has a lot fewer members, who are likely to be less demanding and they are all companies not individual composers. One must remember that PRS has been subject to quite a lot of criticism from members in the past, however, which may influence the situation. PRS is subject to increasing workloads and says that it could cut corners on distribution but it all really depends on what the General Council will accept. It does not believe that costs have gone up more than justified and recognises that some of its licensing is not cost effective but PRS does a lot to defend the credibility of copyright and is constantly engaging in a balancing act which is subject to continuous review. In general, PRS does not want to reduce the present level of its service, although it is going to have to make some very important decisions soon in all areas of its operations. In all cases of assessing performance by collecting societies, however, we must remember that it is very difficult and probably unfair to rely entirely on economic criterion.

Despite the fact that PPL has an effective monopoly, it does seem to be pretty efficient and, in fact, from this point of view, seems to perform the best of all the societies. PPL was set up by the record companies to look after their interests and it seems to do this well. It will be interesting to see if PPL employs licensing representatives in the future and whether it attempts to increase the accuracy of its distribution system. At the moment, it is still quite a small organisation and it has some very important decisions to make in the future, not least because of the development of the new markets mentioned which will present some new problems and some old ones. The outcome of PPL's restructuring of its organisation will also be of great importance. PPL has something of a reputation for secrecy in the industry but I must admit that I did not find this.

MCPS' actions are more limited than the other societies because it receives only a limited mandate from its members and does not have an effective monopoly in most areas of its operations like PRS and PPL. All the societies are constrained by the political environment in which they operate. In many ways, MCPS is the most interesting of the three societies to study because its method of operation is so different from the others. It seems to be trying its best to develop a more commercial approach and improve its methods of operation. There is still quite a long way to go but the effort is there. Costs still seem to be too high, requiring a

correspondingly larger amount of money from commission, interest and other fees to cover them but some allowances must be made for the fact that MCPS collects from the very lowest parts of the market in many cases, operations which are just not cost effective but are required by members. In fact, it will be interesting to see if MCPS keeps its industry functions in the review of its operations which has been taking place. Overall, though, one would expect MCPS' performance to improve significantly in years to come if the promising signs are borne out.

All the societies do a great deal to promote the concept of intellectual property and to extend the copyright system.

The music industry has changed somewhat in recent years so that now the rule is short-term agreements between composers/artists and the publisher/record company, for example for a certain number of albums/singles. If the composer/artist is successful, he may set up his own publishing company. Another interesting development is that many of the biggest music publishers are also owned by record companies - for example, EMI has both a music publishing and a record arm, Chappells is owned by Polygram and April Music/United Artists is owned by CBS. The collecting societies are naturally affected by such developments. Gavin McFarlane[4] regards this as an "insidious threat" to the independence of collecting societies - after all, record

companies are music users, which represent the other side of the coin to copyright owners. If such publishing houses which have been taken over by record companies are members of collecting societies and are economically dependent on these record companies, this may compromise negotiations with music users. As McFarlane says, it may allow a "Trojan Horse into the inner counsels of the authors' societies".

All the collecting societies will, in the future, have to come to terms with and face up to the challenge of new technology, such as cable and satellite television, the former of which at least would seem to be about to take off. There still seems some doubt about the future of satellite television. Decisions made now in this area will vitally affect the future of individual collecting societies and the copyright system in general. When one remembers that copyright is entirely a statutory right conferred by law and that technology seems to have outstripped the law, the need for quick action and influence on the copyright system through practical procedures is evident. For example, one problem in the field of satellites at the moment is that Satellite Television PLC, which PRS licenses for transmissions from the UK, wants PRS to license it for all rights at source in the UK, even those rights of transmission by cable systems in European countries. This is not very easy for PRS to do, however, since it deals differently with those societies in the EEC and those outside it. For those societies outside the EEC, PRS can sign an

agreement giving the foreign society an exclusive licence to handle the PRS repertoire, but inside the EEC, because of its competition policy, it can only give a non-exclusive licence so that any society which wants to handle the PRS repertoire can do so[5]. We have noted how the advent of local radio has greatly increased the cost of licensing the broadcasting right. This is a trend which is likely to continue with cable television. The advent of local radio in Ireland will no doubt have the same effect.

This thesis has been an attempt to cast more light on a subject which has as yet received relatively little academic attention. This is a pity since there is an abundance of interesting topics to discuss in all fields, economic, social, political, philosophical and managerial. I have just concentrated on what I regard as some of the more interesting questions. Even this is not exhaustive, however. The next 5-10 years could be crucial for the copyright system as a new wave of technological devices establish themselves on the scene. There have always been criticisms of the system as regards its monopoly nature, the fact that it may keep prices higher than they need be, that the protection period is too long and so forth and these attacks are likely to grow in volume as new technology develops. However, it would seem unlikely that a better system can be developed and such criticisms can be met by various devices such as compulsory licensing, returning rights assigned to publishers to authors'

heirs before the copyright term has run out and so forth. In any case, it will be interesting to watch what happens in the next decade and how the collecting societies I have investigated develop and what new societies appear. The field is worthy of further study.

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POSTSCRIPT

Since this thesis was written, as one would expect there have been a number of interesting developments in the field. In view of the fact that some of these are important, I felt that it would at least be worth noting some of them.

Firstly, in the photocopying field there has been something of a breakthrough for the proposed licensing scheme. The ALCS and PLS, through the CLA, have reached agreement with the Local Authorities on a 12 month experimental scheme for schools and colleges. Polytechnics and Universities are not covered because of the peculiarities of their copying practices. In return for a purely notional sum of £350,000, the Local Authorities are licensed to photocopy from books and periodicals for one year. It is stressed that this is just a small scheme to start, not related to the amount of copying actually taking place, but the principle of such licensing has been finally accepted and it is a step in the right direction. It is accepted that after administration costs are taken out of this sum, there will not be a great deal left to distribute but at least it will provide statistics for a more permanent scheme. A sample of the schools and other educational institutions (about 10% of those involved) will keep full records. The scheme started in the autumn of 1984 and the sum to be paid is divided between the 116 or so Local Authorities taking part. Local Authorities in England, Scotland and Wales

are covered but not those in Northern Ireland where, at the time of writing, an agreement is still to be finalised. The terms of the licence are generally as in the chapter on photocopying - up to 5% of a work and enough for a class may be copied. Works controlled by the music publishers are not covered. Negotiations continue with the Universities and Polytechnics. A few individual licences have also been issued, such as to English language schools.

In the audio-visual field, the BPI noted that there had been a change of Minister at the Department of Trade & Industry, the Department responsible, amongst other things, for copyright matters. Before this, it apparently seemed likely that the Government was going to introduce piecemeal legislation on copyright - for example, on the proposed blank tape levy. The BPI thought that this had now been largely shelved but that it now seemed likely that there would soon be another Green Paper on copyright matters to deal, in particular, with the most contentious matters in the field - on the blank tape levy and design copyright. It was felt that such a Green Paper will deal with the practicalities of a blank tape levy and that the Government seems to have at least accepted the principle of the levy. The distribution system is one of the main focuses of attention. The Green Paper will be a discussion document and the BPI hopes that this discussion will be brief and that legislation will be enacted no later than autumn 1985. Whether a White Paper will follow the Green Paper is not

clear. The BPI at least felt that opposition to the levy was not as strong as it was and it was more optimistic than in 1981, since it perceived a shift in the Government's views, from almost total opposition to acceptance of at least the principle of a levy. It was also noted that the EEC Commission is soon expected to bring out a Green Paper on harmonisation of copyright legislation in the Community and that it too seems to have accepted the principle of a blank tape levy, although it was thought unlikely that it would come out in favour of a measure binding on member countries. Another suggestion put forward was that Government and EEC action might be linked - that the Government is waiting for an EEC measure before it commits itself so as to take the sting out of an unpopular measure with the electorate. An EEC-forced measure would allow the Government to say that its hands were largely tied.

In the chapter on problems in the audio-visual field, I noted that the problem of record rental had not really caught on like it has in Japan although it seems to be becoming a problem in the UK now. In any case, rental and hire is not illegal under the 1956 Act. The BPI, however, feared that the problem might get worse with the development of compact discs in the audio field since these are about double the cost of a normal LP. In fact, it was going to introduce a Private Members Bill on the subject to make rental and hire of records an infringing act but did not eventually do so because Government action looked likely in the form of piecemeal

legislation (which did not finally materialise). Japan has recently introduced legislation on record rental which gives 6 months - 1 year protection to new releases but then allows a free-for-all. The BPI would not like this taken as a precedent, however. The US is also in the process of introducing legislation to provide a distribution right in records, apparently, so the concept of the distribution right seems to be gaining more ground. Of course, the video industry actually encourages rental as part of the exploitation of its product but it is concerned with uncontrolled rental forcing prices down to uneconomic levels. It wants to be able to authorise who rents out its products and who does not, so that it has control over the market.

There have been other developments in the fields of computers and cable television. In the US, the House of Representatives has approved a Bill to protect computer chip designs under Federal copyright laws for up to 10 years (reported in "The Times" October 11, 1984). A new Act with copyright implications has also been enacted in the UK, in the Cable and Broadcasting Act, 1984. This Act introduces another Section (Section 14A) after Section 14 of the 1956 Act to provide that copyright subsists in cable programmes included in cable programme services. However, this copyright does not apply if the programme is included in the cable programme service through reception and immediate re-transmission of a television or sound broadcast. The person providing the

cable programme service is entitled to the copyright, which lasts for 50 years from the end of the year in which the cable programme is originally included. (Repeats do not produce another copyright). The restricted acts for a cable programme are: making a film of it or a copy of such a film, other than for private purposes, in so far as it consists of visual images; making a sound recording of it or a record embodying such a recording, again other than for private purposes, in so far as it consists of sounds; causing it to be seen or heard in public by a paying audience; broadcasting it or including it in a cable programme service. A cable programme is to be taken as seen or heard by a paying audience if people have been admitted to the place where it is seen or heard or to a place of which that forms part, for payment or if they have been admitted to the place where the programme is seen or heard in circumstances that suggest that the goods and services supplied there are priced higher than they would normally be and these higher prices result from the facilities provided for seeing or hearing the programme. However, the "payment" criterion does not apply if people are admitted as residents or inmates or as members of a club or society, where the payment is for membership and the facilities are only provided as an incidental part of the main purposes of the club or society. Inclusion in a cable programme is also made a restricted act for copyright in television and sound broadcasts, sound recordings and films. The PRT's terms of reference are also changed to include the diffusion right in

sound recordings. Section 40(3), under which a person who receives a BBC or IBA broadcast and thereby causes a programme to be transmitted to subscribers to a diffusion service is deemed to hold a licence to do so is also amended. First, it is limited to those who receive and immediately re-transmit the broadcast, but secondly is extended to include programmes comprising a sound recording. It is also limited only to programmes included in cable services because of the requirements of Section 3(1) of the 1984 Act and if and to the extent that the broadcast is made for reception in the area in which the service is provided.

It is around S.40(3) that the "inequitable double payment" argument revolves with copyright owners consistently maintaining that this subsection is in contravention of the Paris revision of the Berne Convention (Article 11 bis) which holds that "authors of literary and artistic works shall enjoy the exclusive right of authorising..... (ii) any communication to the public by wire or by re-broadcasting of the broadcast of the work, when this communication if made by an organisation other than the original one" (as quoted in the Performing Right Yearbook 1984-5, page 58). Thus, while the subsection has been limited somewhat it will still continue to be the subject of dispute.

The collecting societies have also announced results in recent months. PRS total revenue rose by 5.66 million (10%) in money terms in 1983 to reach £60,100,624 (5.6% in real terms to

£17,935,131). Costs, however, rose by 1.6 million (16.5%) to reach £11,098,125 (£3,311,885 in real terms, a rise of 11.4%). Thus, costs as a percentage of gross revenue increased to 18.47% and NDR as a percentage of gross revenue fell to 81.2%, an all time low although NDR rose by 9.1% in money terms. The cost figure does not include "special costs" including expenditure on setting up the computer database (£602,200), costs of a Performing Right Tribunal reference (£350,000) and costs of "upgrading the Society's computing and communications equipment to meet the increased volume of processing (£127,000). These were financed from PRS' distributable reserves. There seems no particular reason for the large increase in non-special costs. The main problem seems to have been operating costs (printing, stationery, telephones, travel and so forth) which increased by 66%. Domestic revenue rose £2.6 million (7%) in money terms (2.4% in real terms).

Public performance revenue rose £914,288 (6.7%) in money terms (2.1% in real terms) to £14,468,192 while public performance costs rose £918,325 (15.4%) in money terms (10.4% in real terms) to £6,868,799. Thus, public performance NDR fell slightly in money terms. Public performance costs represented 47.48% of gross public performance revenue in 1983. Public performance revenue represented 24.1% of gross revenue and public performance costs were 61.9% of total costs. Performance in this field thus seems to be rather disappointing again although PRS thinks it satisfactory when

one considers the problems of many public performance licensees. One reason for the rise in public performance costs, PRS says, is the allocation of a higher proportion of general costs.

Broadcasting revenue rose £1,680,427 in money terms in 1983 (7.4%) (2.7% in real terms) to £24,419,374 while broadcasting costs rose £420,422 (14.8%) to £3,266,338 (a rise of 9.7% in real terms). Broadcasting NDR rose by 6.3% in money terms. Broadcasting costs represented 13.38% of gross broadcasting revenue in 1983. Broadcasting revenue represented 40.6% of gross revenue and broadcasting costs were 29.4% of total costs in 1983. Both these figures represent falls from 1982. BBC revenue rose 4.7% in money terms but only 0.1% in real terms while independent television and local radio revenue rose 11.1% in money terms, 6.2% in real terms. Radio Telefis Eireann income was up 6.8% in money terms. Satellite and cable income rose 174% to £157,530. The year saw the end to the dispute with the ITCA with technically a defeat on a point of principle for PRS but a substantial rise in the royalty payable. PRS wanted the basis of calculation changed to a percentage of revenue. According to the Performing Right Yearbook 1984-5, the PRT put great store by the agreements and negotiations between the parties over the years and did not regard the percentage of net advertising revenue basis as reasonable since there is not an adequate correlation between use of PRS music and the ITCA companies' net advertising

revenue (NAR). Other factors than music come into play in attracting television audiences - it is part of a package - and factors which have nothing to do with music affect NAR and NAR ignores other factors that are relevant. The PRT did take account of the fact that royalties from the ITCA companies had only just grown in line with inflation, that ITV use of PRS music had grown 30% between 1967-82, that the potential audience had grown by 30% and that there had been a "material increase in the range of choice of repertoire". It also noted that it cost PRS more to administer the repertoire now than previously and that changes in the standard of living, which were not fully reflected in the RPI, had a part to play. It was felt that comparison with the BBC was not possible because of its different structure and, interestingly, an ITCA argument that it already paid royalties to MCPS was regarded as irrelevant. The award by the tribunal was an annual lump sum allied to a cost of living increase for six years from 1st April 1980 to 31st March 1986. For the period 1st April 1980 to 31st March 1983, PRS was awarded an increase of £2,507,450 (25%). For the three years beginning 1st April 1983, PRS has been awarded royalties of £4,700,000, £4,800,000 and £4,900,000 plus a cost of living increase in each year. Thus, although PRS did not achieve all it set out to win, it at least managed a sizeable increase in royalties. The dispute with local radio continued in suspense awaiting the settlement between PPL and the AIRC.

MCOS revenue before deduction of Head Office costs rose £265,329 (44%) in money terms, which represents an excellent performance. Head Office costs for the overseas agencies sector, at £221,748, were up 58%, however. Distributable revenue was up 39% at £650,347. Gross revenue from affiliated societies rose 17% to £17,083,281 although costs rose 25.4% to £741,240. Costs still only represent 4.33% of gross revenue from these societies, however. Distributable revenue rose by 16.6%. The depreciation of the pound against the US dollar was a major factor in the good results in this area.

Membership of PRS rose by 1,777 to reach 17,919 at the end of 1983. There were also a number of changes in membership criteria, which I will not go into here. On the managerial side, the most interesting development was the creation of a new post, that of Financial Planning Manager.

MCPS' encouraging performance continues. In the year ending June 30th 1984, MCPS turnover was £12,055,208, a rise of £2,008,903 (20%). It is thought that £14 million will be distributed in the year ending 30th June 1985. Administration costs rose 15.68% to £2,503,219. This represents something of a setback after the fairly small rise in 1983. Administration costs rose 15.68% to £2,503,219. This represents something of a setback after the fairly small rise in 1983. Administration costs were 20.76% of MCPS turnover in 1984, however, a fall from 21.5% in 1983. This is because turnover grew by more

than costs. Provided this situation can be maintained, it is a good performance. £14.1 million was invoiced in 1984 (against £11.8 million in 1983) and £1.7 million was distributed in the form of income from abroad. Commission rose by over £300,000 (23.7%) to cover 62.7% of costs in 1984, (as against 58.7% in 1983) while interest, at £836,439, fell by 4.3% to cover 33.4% of costs (40.4% in 1983). This increase in the percentage of costs covered by commission is in line with MCPS' aim of reducing its dependence on interest. In the year, MCPS made a profit of £190,833 after tax and in addition it rebated back to UK and Eire resident members £145,000 and £25,000 was put aside for low value broadcast titles.

All in all, MCPS seems to have had another successful year with collections rising 17.2% to £13,380,000 and the volume of lines processed on members' statements increasing by 17%. Other points highlighted by MCPS are the fact that MCPS now employs project management within the company structure and that 1985 is likely to see radical changes in the commission structure and the Membership Agreement, which are likely to produce a lot of debate within the industry. Finally, in the past year MCPS has been involved in developments in the field of cable television and virtually all the licensing of music on video promotions for use on cable television is now handled by MCPS. It is also involved in use of music on home computers.

At the time of writing, no additional information was available on PPL.

The future of all the collecting societies is worth following, especially with the growth of so many new technologies in recent years. Only time will tell if they can fully come to grips with the problems involved but they are expending a lot of resources and effort in attempting to do just this. They do have a number of pressing problems, not least that of costs, highlighted in the main body of this thesis and nothing in this postscript has altered that view but they are organisations which are likely to grow in number and they warrant further study.