

COPYRIGHT (RIGHTS AND REMUNERATION OF MUSICIANS, ETC.) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Copyright (Rights and Remuneration of Musicians, Etc.) Bill as introduced in the House of Commons on 16 June 2021 (Bill 19).

- These Explanatory Notes have been prepared by the Member in Charge of the Bill, Kevin Brennan MP, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice, provide background information on the development of policy and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill is intended to give effect to certain recommendations made by the House of Commons Digital, Culture, Media and Sport Committee in their July 2021 report on the Economics of Music Streaming,¹ in relation to the rights of songwriters and performers, in addition to proposals made by the UK Musicians' Union, The Ivors Academy, and the #BrokenRecord campaign.
- 2 The use of music streaming services has grown rapidly over the last 20 years to become the predominant means by which music is consumed in the UK. This Bill seeks to update the law of performer, composer and songwriter rights, in a manner coherent with the UK's international commitments under various treaties, to reflect this changed landscape. It does so by placing the treatment of revenue gained from music streaming services onto a common footing with the treatment of revenue gained from other sources.
- 3 The Bill also seeks to ensure performers and composers do not suffer from negative consequences arising from unequal bargaining power when entering into business relationships for the exploitation of their works. In particular, it seeks to allow performers and composers to access means to ensure a fair sharing of revenues generated from those works.
- 4 In addition, the Bill seeks to allow performers and composers to reclaim rights after defined periods of time, thus seeking to ensure that they are able to benefit from (a) the levelling of bargaining power which may come from success, and (b) an ability to arrange other exploitation of their works where their initial arrangements may not be generating exploitation, thus ensuring wider availability of works to the public.
- 5 The main measures of the Bill provide for:
 - The establishment of a right to equitable remuneration for performers on musical works, where works that they have performed upon are made available to the public.
 - The establishment of a right for composers of musical works to receive information concerning exploitation of their musical works.
 - The establishment of a right for composers of musical works to receive additional, fair and reasonable remuneration in relation to their works, where an arrangement entered into by them provides them with a disproportionately low level of remuneration when compared to the overall revenue generated from their work by that arrangement.
 - The establishment of a right for composers to have arrangements entered into in relation to the exploitation of their musical works, being assignments and licenses, revoked after expiry of a period of twenty years.
 - The establishment of a right for performers upon musical works to receive information concerning exploitation of those musical works.
 - The establishment of a right for performers upon musical works to receive additional, fair and reasonable remuneration in relation to those works, where an arrangement entered into by them provides them with a disproportionately low level of remuneration when compared to

¹ House of Commons Digital, Culture, Media and Sport Committee, [Economics of music streaming](#), Second Report of Session 2021–22, HC 50, 15 July 2021

the overall revenue generated from their work by that arrangement.

- The establishment of a right for performers to have arrangements entered into in relation to the exploitation of musical works upon which they have performed, being assignments and licenses, revoked after expiry of a period of twenty years.
 - The establishment of a right for performers and composers to refer matters concerning disputes in relation to the above noted provisions to the Copyright Tribunal for determination.
- 6 The rights provided are generally inalienable, being capable of transfer in certain respects only to collecting societies, or via testamentary disposition or operation of law. They may also generally not be avoided by contract.

Policy and legal background

- 7 Where an original musical work is created or lyrics accompanying music are created, the composer or composers of those works have rights under the Copyright, Designs and Patents Act 1988 (“the 1988 Act”) to control exploitation of those works. Such rights include the right to control copying of those works, including by placing the works into a sound recording, and the right to control making available copies of those works to the public, including by radio, television, music download or music streaming.
- 8 Similarly, performers upon recordings of musical works have rights to control the making available of those works to the public. Such rights also are set out in the 1988 Act.
- 9 In certain instances composers and performers transfer the administration of those rights to collecting societies, bodies of which they become members, and which address exploitation of member works with respect to users on a collective basis, charging those using works for such use. These bodies include the Performing Right Society, who administer the making available right on behalf of composers, with respect to end users such as radio, television, and music download and streaming platforms. In respect of performers, a similar function is performed by Phonographic Performance Limited.
- 10 Composers and performers may transfer their rights to receive revenue from the exercise of the making available right to third parties, such as record companies, publishing companies and such like. Their entitlement to receive a share of that revenue is determined contractually, however in many instances they have a right under law for that share to be equitable, pursuant to the 1988 Act.
- 11 Music streaming accounts for the predominant part of the music industry’s UK revenue. However, around 8 out of 10 performers earn less than £200 a year from music streaming. As noted above, performers upon musical works have a right to authorise and control the making available of a work upon which they have performed to the public. Performance can be, for example, via radio or via television, or by music streaming. In relation to radio, television and other forms of “making available”, performers are entitled to an “equitable remuneration”. However, in respect of music streaming they are not, due to an exception set out in s182D(1)(b) of the 1988 Act. As they have no right for music streaming income distribution to be equitable, the predominant part of income therefore typically remains with the persons to whom the performer has transferred their rights.
- 12 In relation to music use generally, composers and performers do not have a right (except to the extent agreed under contract) to receive information on how their music is being used, and the revenue it is generating, from persons other than collecting societies. Often information provision is significantly limited. Composers and performers therefore may be unable to properly ascertain

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information suitable to verify how their music is being used, and whether the revenue they are receiving is correct.

- 13 Further, it is often the case that composers and performers enter into contract arrangements for their work to be exploited at an early stage in their career, often without the benefit of legal advice. Such arrangements are often for long terms, and result in the transfer of rights held to those seeking exploitation. Those seeking exploitation of musical works, generally record companies, are often well resourced and able to access legal advice. They may not need the composer or performer to enter into an agreement with them to ensure their survival in business; conversely, that single arrangement is often the sole or main source of income for the composer or performer. Situations arise where due to an inequality in bargaining power and different drivers, composers and performers enter into arrangements which substantially benefit exploiting parties to the composer or performer's disadvantage – the relationships are unequal. As these relationships are long term, and often result in the transfer of rights, composers and performers are precluded from exploiting their work elsewhere, where they may be able to obtain more beneficial terms.
- 14 As such arrangements are often long term, involving a transfer of rights, there exists a risk that the drive on the part of the exploiting party to seek exploitation of transferred works decreases over time. The composer or performer, however, cannot seek new exploitation arrangements due to the existing exploiting party retaining rights.
- 15 This Bill seeks to address both inequality of bargaining power and non-use of rights by providing for an automatic revocation of rights to composers and performers. This is intended to incentivise rights owners to seek exploitation whilst they have rights, allow composers and performers to renegotiate arrangements after a defined period, perhaps when they have greater bargaining power, and/or allow composers and performers to seek exploitation of non-exploited rights elsewhere.

Territorial extent and application

- 16 Intellectual property is a reserved (non-devolved) matter. This Bill extends and applies to the whole of the United Kingdom. That is in keeping with the Copyright, Designs and Patents Act 1988 which it amends. Legislative consent from the devolved assemblies is therefore not required for this Bill.

Commentary on provisions of Bill

- 17 The four substantive Clauses of the Bill amend the Copyright, Designs and Patents Act 1988 ("the 1988 Act"):
 - Clause 1 makes provision for performers' rights to equitable remuneration where the making available right is transferred.
 - Clause 2 makes amendments to the rights of composers and songwriters in relation to transparency, contract adjustment and the right of revocation.
 - Clause 3 makes equivalent amendments to the rights of performers.
 - Clause 4 allows applications regarding equitable remuneration, transparency and contract adjustment to be made to the Copyright Tribunal.

Clause 1

- 18 Clause 1 (through adding new section 191GA to the 1988 Act) sets out a right to equitable

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remuneration for performers on musical works, where works that they have performed upon are made available to the public, which right may only be transferred to a collecting society or via testamentary disposition.

- 19 Currently a right to equitable remuneration is provided under the Copyright, Designs and Patents Act 1988 in relation to other exploitation of musical works, however, in relation to the “making available” right, that right to equitable remuneration is excluded by the operation of s182D(1)(b) of the Copyright, Designs and Patents Act 1988.
- 20 “Making available” of musical works is now the principal source of exploitation in the UK. This provision seeks to ensure that, under such arrangements, performers have equal rights when compared to other sources of exploitation.
- 21 Performers are not able to transfer the right provided, except to collecting societies, who already act for the majority of UK performers in relation to remuneration in other respects, or by testamentary disposition or operation of law (for example pursuant to insolvency proceedings). The reason for this is to ensure simplicity of administration, by allowing access to existing structures already engaged in rights management for the benefit of performers, but also to avoid performers being coerced into transferring away the right to equitable remuneration on unequal terms in relation to an arrangement where they have unequal bargaining power.
- 22 The equitable remuneration is payable by the person or persons to whom the right was transferred, and their successors, being those persons who will benefit from revenue generated by the exercise of the “making available” right. The amount of equitable remuneration may be agreed between the performer and those persons, but absent agreement the performer has the right to refer the matter to the Copyright Tribunal for determination.

Clause 2

- 23 Clause 2 (through adding new section 93D to the 188 Act) sets out a right for composers of musical works (including songwriters) to receive information concerning exploitation of their musical works. Composers already have a right to certain information where exploitation is undertaken by a collecting society under the Collective Management of Copyright (EU Directive) Regulations 2016, but they do not have that right where exploitation is undertaken by another person other than a collecting society.
- 24 The provision of information is important to allow composers to determine whether the remuneration they are receiving is fair, or whether it is disproportionate to the overall revenue generated from their work.
- 25 The right to receive information concerns all persons involved in the exploitation of the work. Excluded from this right are instances where works are incidentally utilised, for example in the background of a live news report, where works were created under an employment relationship and the composer already has the protections offered by employment law, or where the Crown is the first owner of the relevant work and as such the composer has the other protections set out in the 1988 Act.
- 26 Clause 2 further sets out (via new section s93E) a right for composers of musical works to receive additional, fair and reasonable remuneration in relation to their works, where an arrangement entered into by them provides them with a disproportionately low level of remuneration when compared to the overall revenue generated from their work by that arrangement. The remuneration is due from any person exploiting the work. The amount of fair remuneration may be agreed between the composer and those persons, but absent agreement the performer has the right to refer the matter to the Copyright Tribunal for determination. Collecting societies are excluded, as they are member organisations, as such composers already have the ability to influence remuneration policies.

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- 27 Clause 2 additionally sets out (through new section s93F) a right for composers to have arrangements entered into in relation to the exploitation of their musical revoked after expiry of a period of twenty years. The rationale for this is twofold – to allow composers to renegotiate arrangements which may have been entered into by them early in their career, which may be on terms not entirely favourable due to inequality in bargaining power, and also to allow composers to exit arrangements which may not be generating exploitation of their work, but which notwithstanding preclude them from seeking exploitation elsewhere.
- 28 The right has to be exercised with a two year notice period. This allows those persons against whom the right of revocation is exercised time to make appropriate arrangements prior to the revocation becoming effective. Subsection (6) sets out a series of matters that must be covered by the guidance.

Clause 3

- 29 Clause 3 implements amendments to the 1988 Act the same as those set out in Clause 2, save for the fact that they are applied to performers rather than composers. Performers are provided with a right to information (through new section s191N), a right to fair remuneration (through new section s191O), and a right of revocation (through new section s191P).

Clause 4

- 30 Clause 4 (through adding new section to the 1988 Act 142A) addresses the situations where performers and composers, and the persons against whom they exercise their rights, cannot reach agreement, for example on the amounts of remuneration or the exercise of information rights. In these instances reference to the Copyright Tribunal is allowed.
- 31 The Tribunal may make orders and a person in favour, or against whom, an order has been made may apply to vary that order, but only after a year has expired. This is intended to avoid vexatious complaining; however the Tribunal has the ability to dispense with requirements relating to the expiry of that period.
- 32 The Copyright Tribunal is a body experienced in dealing with matters such as remuneration levels in relation to copyright exploitation.

Commencement

- 33 Under Clause 5(2), the Bill will come into force two months after the day on which is given Royal Assent.

Financial implications of the Bill

- 34 The Bill does not make any requirements for increased public expenditure or taxation. It therefore does not require a Money Resolution or Ways and Means Resolution.

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