



Mr Andrew Hanson  
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Direct Dial: 020 7551 7822

Your ref:  
Our ref: MDT/SF/017521/0010

31 July, 2007

Dear Andrew,

### Legal right of PRS to enquire into CCPR A/V set up

1. Your initial correspondence, asks for advice on 3 specific issues, namely, (1) whether the PRS has a clear legal basis under the Copyright, Designs and Patents Act 1988 ("The Act") for charging sports clubs a fee for having audio-visual ("a/v") equipment on the premises, (2) whether the PRS has a legal right to demand that a sports club inform it of the a/v equipment it possesses and (3) whether the PRS has any right of access to a sports club to identify the audio-visual set up.
2. Firstly it is necessary to examine the different types of licences potentially necessary for organisations such as sports clubs that play music on their premises.

### Types of Licence Fees

3. There are two separate licence fees that are generally required when a sound recording is played in public. There is a copyright in the **actual sound recording**, for which a licence fee from the **Phonographic Performance Limited (PPL)** is needed. These fees are then distributed to record companies and performers.
4. There is a separate copyright in the **musical and lyrical composition** for which a licence from the **Performing Rights Society (PRS)** is needed. These fees are then distributed in the main, to composers and publishers.
5. Under Chapter VII of The Act, licensing bodies such as the PPL and PRS have the authority to collect licence fees on behalf of the members of their organisations.

### Playing of Sound Recordings

6. Under s. 67 of The Act, there is an exemption from having to pay a licence for the **playing of sound recordings** for the purposes of a club, society, or other organisation if certain conditions are met. Those conditions are:
  - i. The club or society, must not be established or conducted for profit.

- ii. The main objects must be charitable (under the current Charities Act 2006, the advancement of amateur sport is a charitable purpose) or otherwise concerned with social welfare. In determining whether or not a club or society is charitable or concerned with social welfare, the indicator is the way an organisation's affairs have been conducted, as well as its rules.
- iii. The individual playing the sound recording must be a person acting primarily and directly for the benefit of the organisation and not acting with a view to gain; therefore not a DJ.
- iv. Any proceeds of charge, must be applied solely for the purposes of the organisation.
- v. Any proceeds from the sale of goods or services must be applied solely for the purposes of the organisation.
7. If all the above criteria are satisfied, the exemption under this part of The Act, will exclude the club or society from liability for payment to the **PPL** for the copyright in the actual sound recording, but this **will not** preclude the liability to pay the PRS for the copyright in the underlying musical and lyrical composition.

#### **Free Public Showing or Playing of Broadcast**

8. Under s.72 of The Act, there is another exception to the infringement of copyright for the **showing or playing in public of a broadcast and any film or sound recording included in it** to an audience.
9. Certain criteria have to be satisfied however for the sports clubs to be captured by this exception:
  - i. The persons must not have paid admission to the place where the broadcast is to be seen or heard. What is meant by this is that the persons must be;
    - a. admitted as members of a club or society where the payment is only for membership of the club or society, and
    - b. the provision of facilities for seeing or hearing the broadcasts, must be only incidental to the main purposes of the club.
  - ii. the playing or showing of the broadcast must also form activities of an organisation that is not established or conducted for profit. The criteria for such an organisation have already been outlined in paragraph 6 above.
10. However, this exception also only applies to the need for a **PPL** licence for the excepted sound recording played in any film or broadcast and **will not** preclude the need for a PRS licence.



### **Need for PRS License**

11. Therefore the sports clubs who have referred this matter to the CCPR may be captured by any exemptions under The Act with respect to payment of PPL license fees, but not PRS licence fees. There is no similar regime of exemptions for PRS licence fees.
12. The licence fee that the PRS charge, is not for having the a/v equipment on the premises, rather for the copyright in the lyrical and musical composition of the works played on the equipment.

### **PRS Right to Information & Right to Access**

13. The PRS does not have a legal right as such to demand that clubs inform them of their audio visual set up, nor to demand physical entry onto club premises, if those premises are private property.
14. However, as has been established, a licence fee is required to be paid to the PRS and it has also been found, through an investigation into industry practice, that it is customary for clubs to permit PRS 'inspectors' onto their premises to examine the a/v set up principally for the purposes of ensuring an accurate tariff is set, in accordance with its own criteria for determining licence fees.
15. It should also be borne in mind that although the sports clubs are under no legal obligation to permit access to the PRS, the PRS has a legal right to commence civil proceedings if it has reasonable grounds to believe that copyright infringement is taking place on the premises.
16. A number of remedies would be available to them if their case is made out, including damages, and or an injunction to prohibit the playing of the copyrighted music by the clubs. The PRS also have the option of applying to the Court for a search order to enter and inspect items, where there is strong evidence to suggest that infringement is taking place.
17. As you stated in your initial correspondence, you are currently in negotiations with representatives from the PRS as to fee level and it is advisable that these continue with a view to achieving a uniform and mutually agreeable tariff for all the sports clubs.
18. There is an additional recourse in applying to the Copyright Tribunal if ultimately, it is felt that the licence fee being set by the PRS is unreasonable. However experience suggests that pursuing this route can be both time consuming and costly.
19. Should you require any further assistance and or clarification on the aforementioned issues, please do not hesitate to contact me.



Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Mike Townley', written over a horizontal line.

Mike Townley,  
For Bates, Wells & Brathwaite, London LLP