

REMOVING EXEMPTIONS FROM PUBLIC PERFORMANCE LICENSING – CONSULTATION RESPONSE

Introduction and background

The Association of Charity Shops welcomes this opportunity to comment on the IPO's proposals for amending current arrangements for exemptions from performance rights licensing. We are very grateful to the IPO for its agreement to the late submission of this response. However, we have grave concerns about these proposals, and the harmful impacts which charges will have on charity shops' work.

In 2008, the Association has 300 charity members which operate 6,800 shops across the UK. Last year they generated more than £110m for vital local, national and international causes.

Many shops operate radios, usually tuned to music stations, for the comfort of customers and staff. It is normal retail practice to try to create a good ambience and shopping experience for customers; in the case of charity shops, however, this is designed solely for the purpose of raising charity funds, rather than for personal or other corporate benefits.

Charity shops which play music are currently liable to PRS licensing, but are exempted from PPL licensing. **The costs of PRS licensing, and any new costs associated with PPL licensing, can only be met from funds earmarked for charitable causes.**

Consultation comments – general

We are surprised that this consultation has even been issued. There seems to be no imperative for changes in current exemptions – there seems to be no established case law questioning current exemptions, for example – and there seems to be no evidence base that the balance between public interest and private gain is, in fact, wrong.

We are equally concerned that this consultation presupposes changes to exemptions, without considering alternatives, including the “do nothing” option. This goes against both the letter and the spirit of the Government's well-established regulatory reform agenda.

Most importantly, the consultation does not consider the unintended consequences of imposing significant additional costs on charitable bodies, such as charity shops. We believe these consequences will include the inevitable closure of a number of charity shops with a potentially disastrous impact on charity funds. Charity Trustees are required in law to ensure that charity funds and investments are put to the best possible use. Many charity shops run on tight margins, and Trustees – of both large and small charities – may consider that the additional costs of PPL licensing will squeeze margins to the extent that keeping shops open would not be a good investment of charity funds. In the current very poor retail climate, such short term considerations have led one medium-sized charity to announce recently the closure of all its shops.

In addition, charity shops play music to provide a pleasant working atmosphere for their volunteers (each shop is supported by about 19 volunteers on average). Were they to cease playing music, there would be impacts on volunteer numbers and productivity as well as on footfall. Indeed, there is the twin danger of both a fall-off in levels of volunteering and of customers. *The former is in direct contradiction to the Government's policies and funding efforts to increase volunteering, and the latter would be a serious blow to charity fundraising.*

For these reasons, we oppose all the options in the consultation document. Indeed, the imposition of the PPL licensing regime on charity shops might have such devastating consequences for the sector that we must use all legal means available to oppose these changes.

Specific comments

Given that we cannot support any option in the consultation document, our specific comments are attached to particular questions raised in the consultation document for convenience. We have included only relevant questions below. We are commenting as the representative body of UK charity shops that are users of music within their premises. Charity shops have s67 exemptions.

Questions under Option 1

1. Is the removal of the exemptions so that PPL and its members have exclusive rights over public performance of recorded and broadcast music in the public interest?

No, it is not. The consequences of imposing PPL licensing on charity shops will lead to a fall-off in fund-raising via shops, and a clear reduction in public benefits from parent charities' work.

4. We would be interested in hearing from organisations that are currently exempt

a. What are the practical consequences for your organisation if you have to obtain a copyright licence from PPL in terms of the cost of the licence and the administration in obtaining it?

Charity shops are classed as retail outlets (in planning law, for example) and – for PRS licensing – are subject to retail rates. We assume the same would apply for PPL licensing. If so, we estimate that costs across the sector would be in the order of £900,000 per annum, and possibly considerably more. Such costs would be disproportionate and entirely unsustainable.

Charity shops are supported by an army of dedicated volunteers, and, on average, about 1.5 full time equivalent paid staff per shop. Shop managers have considerable burdens placed on them, including ensuring compliance with retail and consumer law, charity law and waste management law. Any additional administrative costs and duties would impose significant and **disproportionate burdens on staff and volunteers**.

b. Are there any circumstances in which your organisation would stop using recorded or broadcast music rather than obtain a copyright licence?

Yes, this is a likely outcome for some of our members. By way of illustration, one of our members recently instructed all its shop managers to cease playing music pending the purchase of licence permissions from PRS. However, this charity has had to arrange specific fundraising events to raise sufficient money to pay for PRS licensing. This situation has led to local public concern over the need for such payments to be made by charities in support of their activities to raise funds. In the absence of this additional fundraising, music playing would cease. The addition of charges for PPL licensing would increase greatly the likelihood of this, given that charity shops would have to raise additional money to meet such increased charges and vital funds would be diverted from charitable causes.

Question under Option 2

1. Is the removal of exclusive rights over public performance of music and lyrics in the limited circumstances proposed in this option in the public interest?

No. As with a blanket removal of exemptions, public benefits would be diminished considerably. In addition, an arbitrary threshold or set of conditions to be met for exemption is divisive and fails to recognise the contributions that charity organisations – both large and small – make. To that extent, and given the rationale for small-scale exemptions, **the only fair and equitable solution is the application of exemptions from PRS and PPL licensing for all registered charities.**

8. Is this proposal suitable for introduction through a Legislative Reform Order?

It most certainly is not. Any proposal to impose such charges should be subject to full and open debate. The Secretary of State seems minded to recommend the affirmative procedure. This would be insufficient. Even if a draft Order were to be subject to the super-affirmative procedure, it would not be open to the level of Parliamentary scrutiny that such a potentially devastating measure would need, and which MPs and Peers should rightly demand. Such scrutiny will only come from consideration of a Bill.

Questions under Option 3

2. Are the following factors relevant when assessing what constitutes equitable remuneration?

- a. The size and nature of the audience
- b. The extent to which the broadcast or recording shown or played is likely to include copyright sound recordings of music
- c. What commercial benefit the user is likely to obtain from playing the sound recording
- d. The extent to which the owners of copyright...will receive equitable remuneration from other sources
- e. The size and turnover of the organisation using the work

3. If they are not correct, please specify what additions or omissions are needed and why.

Each of these factors (and others) might be relevant from the point of view of the copyright owner. However, they do not in any way reflect a balanced approach to considering the trade-off between public interest and private gain. Given the nature of the charity shop sector, much more relevant considerations include;

- a) the intended outcome of playing music – to motivate volunteers and encourage charitable buying
- b) the public benefit the user is likely to obtain – raising vital funds, raising awareness, promoting environmental and ethical shopping
- c) the purpose of the organisation using the work – which is entirely charitable.

None of these could be used to support a case for imposing additional, disproportionate, unnecessary and poorly targeted burdens.

Conclusion

We are implacably opposed to the imposition of PPL licensing on charity shops – there is no evidence of a need or benefit, and the unintended consequences would be the closure of shops and the loss of vital charity funds. Affected charities would lose their presence on the High Street and, therefore, in many people's consciousness, and considerable volunteering opportunities would be lost. Any gain to copyright holders would be paltry and inconsequential in comparison. Like other retailers, charity shops are suffering from the consequences of the credit crunch, and any increase in costs – from whatever source – would be devastating.

From discussions with others in the VCS, it is clear that there is a need for a wider public debate and raising awareness amongst more charities likely to be affected. We will be ensuring our members are aware and will also be working to raise the awareness of MPs and other policy makers to ensure this debate takes place before any final decisions are taken.

We are normally keen to engage with Government in a constructive way to promote sustainable policies within a positive framework for charitable giving via charity shops. And, we are keen to engage in this way with IPO/DIUS. We urge the Office to bring forward alternatives to these proposals which do not impose these unfair burdens on charities and would be happy to discuss further the key issues or possible alternative proposals.

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