



Gowers Review of Intellectual Property
Zone 4/E 1 HM Treasury
1 Horse Guards Road
London SW1A 2HQ

21st April 2006

Dear Mr Gowers,

**Initial input to the Review of Intellectual Property, on behalf of
UK independent music companies**

AIM welcomes the review which you are leading, and we fully agree with your statement that the UK's IP framework, in legal provisions and in the operations of Government, is "a critical component of our present and future success in the global knowledge economy". It is with such key considerations in mind that my organisation has developed the firm views set out in this brief submission.

Your Review intends to fulfil Government's commitment to examine whether the current term of protection for sound recordings and performers' rights is appropriate, and to report with targeted and practical policy recommendations. AIM believes strongly that the term of protection should be extended and has very carefully thought through targeted and practical policy recommendations relating to that. We are soon to publish a full paper detailing our proposals and the research which supports them, and we intend to present you with an advance copy of our *Copyright Reform in the Digital Age* paper. Prior to that, we set out our position very briefly in this letter, which forms our response to the IP Review's call for evidence.

As the Association for Independent Music, we represent a significant creative, IP rights-generating and IP rights-owning sector of the UK music industry. AIM has therefore contributed to correspondence and submissions to this Review from the Music Business Forum, of which we are a very active member; including a separate letter to you from the Business Focus sub-Group of the MBF – of which I am co-Chair.

The scope of the IP Review which the Government has appointed you to lead is of the greatest interest to AIM members, and it is important to stress that on some key issues, which you will be reviewing, the independent music sector's view differs significantly from that of the major multinational record industry.

It is as Chairman and Chief Executive of AIM that I am now writing to you specifically on behalf of the independent music sector. As SMEs, our member companies are



interested in opening up revenue pathways offered by the new digital distribution channels, and wish to see a modernisation of copyright, whilst securing the opportunity for rights owners to earn from copying and sharing.

AIM represents some 900 members varying in size from micro businesses to substantial companies with turnovers in £millions. This sector comprises around 23% of the UK music market, and is worth around £650m. A relevant comparison, which emphasises the significance of the independent music sector, would be with the entire British film industry: on a like-for-like basis that has a value of about £673m¹. Worth noting in that context is the contrast in terms of funding – the British film industry being heavily subsidised while our independent music sector is totally unsubsidised.

AIM certainly supports the Government’s commitment to modernise copyright and intellectual property so that they are appropriate to the digital age. I note that your Review will offer analysis of the performance of the UK IP system, including whether the current technical and legal IP infringement framework reflects the digital environment, and whether provisions for “fair use” by citizens are reasonable; as well as examining the current term of copyright protection for sound recordings.

While not offering an itemised response to the General Questions in your Call for Evidence, the text of this letter does directly or by implication address the Specific Issues which are most appropriate to us:

- Current term of protection on sound recordings and performers’ rights
- Copyright exceptions - fair use/fair dealing
- Copyright- digital rights management
- Copyright – orphan works

As I have indicated, AIM’s position is well considered, and we are currently exploring a range of options concerning the reform of copyright. Prime among these considerations is the entire concept of how recorded music will be accessed and consumed via known, and as yet unknown, digital channels. Other concerns are:

- Digital Rights Management (DRM) and its implications: this is one of the issues on which independents differ from the music industry majors, in that our sector sees DRM as “the accountant and not the policeman”, a means of tracking usage and payments due but not for spying on, policing or preventing such usage
- the relationship between the artist and the record company
- the issue of fair use - an area in which AIM has imaginative and progressive views, about which we are to publish detailed analysis and proposals very soon.

Linked to the issue of fair use is the fundamental question of compensation to music copyright holders for the use of their rights, in terms not only of *how much?* but also for *how long?* and most importantly - *how?*



At this stage AIM's thinking embraces the following points:

1. Independents are in principle happy to have their music copied and shared provided there is a proper system for remuneration: in this context AIM would differentiate between “sharing” which is essentially the private passing on of music as electronic files via the internet between individuals for non-commercial use, and private copying whereby an individual makes one or more copies of a commercial copyright recording onto a blank recording medium for personal use (a usage which is covered by levies in countries which have such legislation).
2. AIM would also differentiate between non-commercial file sharing, and the commercial version of that activity whereby music files are offered by suppliers to consumers: the latter would need separate licensing by the copyright holders (I refer to this again below)
3. AIM member companies hold that proper provision for fair use improves distribution – traditionally controlled by major and multinational music companies – and improves the music economy (both improvements are already to be seen)

AIM's position is that copyright should be reformed, liberalised and strengthened. And that such reform should embrace a radical departure from the current structure of copyright legislation and administration.

The independent sector wants an environment in which their music is widely accessible to a public which has the technical means, and inclination, to find it, listen to it and enjoy (or reject) it – but within a changing and evolving commercial structure in which the creators of that music receive fair recompense.

The means of recorded music consumption will force a change away from the traditional business model of asset ownership and retail sale initiated by the rights owner (“top down” model), and towards a user-led and consumption-based (“bottom up”) business model. In that new transaction the music user should pay for the use of copyright as part of the act of consumption.

Music consumers are already changing their consumption habits. There needs to be a constructive response to that fact. Where the consumer has on-demand access to the product, regardless of supplier, usage might be monitored and payment called for either at a flat rate or on a per-unit basis.

AIM supports a position that an appropriate new means of usage-based compensation must confer a private copying right to consumers: i.e. a significant new fair use provision. Our independent sector is ready and willing to give this to the public, provided that



remuneration flows to the creators of the copyright works from commercial interests which profit from consumers' copying activities. Referring to numbered point 2 above, I would add here that a satisfactory remuneration scheme in this context of a private copying and sharing right could well provide a useful platform on which collective licensing agreements for commercial sharing could be built.

Independents are primarily artist-orientated and want to give their artists every possible opportunity to reach national and international markets - using rather than refusing new technologies; encouraging broad and niche consumer access to new music; avoiding a punitive approach to copyright enforcement; knowing that Digital Rights Management Systems (DRM) cannot and will not offer a complete answer (as explained above); realising that loss of some measure of copyright control is a factor in reaching new and enthusiastic music markets around the world; and believing that there can be a fresh approach to all these factors.

AIM understands the issues of balancing consumers' and rights-holders' interests, and we are willing, as copyright owners, to examine a new copyright paradigm allowing for greater consumer enjoyment and experience of copyright works provided this is not at the expense of legitimate services. (In this sense, we do not see, for example, how the recent announcement by the French government will support these legitimate interests).

We will therefore welcome the opportunity to examine in more detail with you our position, when our major discussion paper *Copyright in the Digital Age* is completed. It is currently being reviewed in advanced draft form by other key music industry organisations, and by the Smith Institute. We will have all these views in June, and expect to be able to provide you with a final draft at that point. In early July the Smith Institute will host a round table discussion, in which we very much hope you will participate.

Yours sincerely,

Alison Wenham
Chairman and CEO, Association of Independent Music

¹ The value given here for the British film industry is based on information from the British Film Council relating to UK share of total box office earnings in 2004 and UK share of total volume of DVD & VHS retail sales and rentals (most up-to-date figures available being those for 2003).