

THE PUBLIC PERFORMANCE LICENCE  
FOR BACKGROUND MUSIC IN SHOPS  
AND STORES

REPRESENTATIONS FROM THE BOOKSELLERS  
ASSOCIATION TO THE CHAIRMAN OF THE  
COPYRIGHT TRIBUNAL FOLLOWING THE  
INCREASE IN LICENCE FEES IMPOSED BY  
PHONOGRAPHIC PERFORMANCE LIMITED



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## **BOOKSELLERS ASSOCIATION OF THE UNITED KINGDOM & IRELAND LTD**

**To:** the Chairman of the Copyright Tribunal  
**From:** The Booksellers Association of the United Kingdom  
**Subject:** THE PUBLIC PERFORMANCE LICENCE FOR BACKGROUND  
MUSIC IN SHOPS AND STORES: representations to the  
Copyright Tribunal following the increase in Licence Fees  
imposed by Phonographic Performance Limited  
**Copy:** Phonographic Performance Limited  
**Date:** 20<sup>th</sup> February 2006

### **1 INTRODUCTION**

- 1.1 Following a meeting with Janette McNeill [Intellectual Property and Innovation Directorate at The Patent Office] on 17<sup>th</sup> November 2005, The Booksellers Association of the United Kingdom is grateful to be given the opportunity to make representations to The Copyright Tribunal following the Secretary of State for Trade & Industry's decision to refer the licence increases imposed by Phonographic Performance Limited ["PPL"] to the Tribunal under Section 128A of the Copyright Designs and Patents Act 1988.
- 1.2 Booksellers work in an industry in which copyright is regarded as essential in protecting creativity and we fully support all efforts made by book authors and book publishers to protect their Intellectual Property Rights. The dissemination of a creator's ideas should be rewarded.
- 1.3 Thus we have no problem whatsoever with the concept of performers and copyright holders being rewarded in some way if their music is played in shops as background.
- 1.4 It is the level of the swingeing increases which greatly concern us, together with the lack of proper consultation carried out initially by PPL.

## 2 THE BOOKSELLERS ASSOCIATION

2.1 The Booksellers Association [the "BA"] is a trade association, based in London SW1, with 4,545 bookselling outlets in membership. The Association's purpose is to help members:

- Sell more books
- Operate from a lower cost base
- Improve competitiveness and productivity
- Network with others in the book 'world'
- Represent their views.

### Membership

2.2 Members range from all the large bookselling chains to independents and specialists, both big and small. The table below gives some examples of the types of booksellers in membership. Government estimates suggest that BA members account for over 90% of all book sales in the high streets.

<u>Type of bookseller</u>	<u>Example(s) of BA member</u>
Large chain with mixed business	W H Smith
Large specialist chain	Waterstone's, Borders, Ottakar's
Large academic business	Blackwells
Department store	Selfridges
Small independent	Daunt Books, John Sandoe
Large independent	Foyles
Library supplier	Holt Jackson
Supermarket	Tesco, Sainsbury
Wholesaler	Bertrams, Gardners, THE

2.3 Some booksellers sometimes play background music in shops and those BA members that do so are so concerned about the licence fee increases that have been announced, that The Booksellers Association has been asked to make representations to the Copyright Tribunal on behalf of all its members.



### 3 SIZE OF PPL INCREASES

- 3.1 The table below shows what we believe the PPL fees to be for Shops and Stores [Tariff 111] for 2004 and 2005.
- 3.2 The increases in the bands are shown in the last column. As can be seen, six of the bands show an increase of between 100% and 190%.

Size of Premises (Audible Area in metres squared (m <sup>2</sup> ))	2004/2005 Licence Fee per annum (exclusive of VAT)	2005/2006 Licence Fee per annum (exclusive of VAT)	% inc
Up to 50		£50	
Up to 100	£86	£100	16.28%
101 to 200	£86	£150	74.42%
201 to 300	£86	£200	132.56%
301 to 500	£86	£250	190.70%
501 to 750	£108	£300	177.78%
751 to 1000	£145	£350	141.38%
1001 to 1250	£182	£400	119.78%
1251 to 1500	£219	£450	105.48%
1501 to 1750	£256	£500	95.31%
1751 to 2000	£293	£550	87.71%
2001 to 2500	£367	£600	63.49%
2501 to 3000	£441	£650	47.39%
3001 to 3500	£515	£700	35.92%
3501 to 4000	£589	£750	27.33%
4001 to 4500	£663	£800	20.66%
4501 to 5000	£737	£850	15.33%
5001 to 6000	£885	£900	1.69%
6001 to 7000	£1,033	£950	-8.03%
7001 to 8000	£1,181	£1,000	-15.33%
8001 to 9000	£1,329	£1,050	-20.99%
9001 to 10000	£1,477	£1,100	-25.52%
Every additional 1 to 1000 (above 10000)	£148	£50	

- 3.3 According to the Treasury, The Retail Prices Index in 2005 went up by 2.8%, and in 2004 by 3.0%.
- 3.4 PPL says in its submission to the Tribunal: "PPL submits that its licence & Tariff 111 for Shops and Stores are reasonable". Reasonable? How can increases up to sixty three [63] times the rate of inflation be reasonable?

- 3.5 PPL's website states "*PPL is a not-for-profit company, limited by guarantee. After the deduction of our running costs, we distribute the rest of our money we receive from licensing the public performance of sound recordings to the record companies, artists, session musicians and backing singers who create these recordings.*"
- 3.6 So what were PPL's actual running costs in 2003, 2004 and 2005? Have they actually gone up by way over inflation in 2005? And if so, what is the reason?
- 3.7 Have the artists themselves done something different which merit huge increased payouts?
- 3.8 PPL have given no good reason whatsoever for these increases.
- 3.9 In the last couple of days, British Gas has announced that they will be putting up prices by 22%. There has been a public outcry. The Public Relations Department of British Gas has been going into overdrive trying to justify the increases. But what reasonable justification for far higher increases have we heard from PPL?
- 3.10 **Appendix A** shows figures presented by Blackwells, one of the bookselling companies in membership of The Booksellers Association. As can be seen, Blackwells' costs have gone up by 62%.
- 3.11 Bookselling is hugely competitive. The price competition between specialist terrestrial booksellers, internet booksellers and supermarkets has been intense these past two years.
- 3.12 Almost every retail bookselling outlet has software in their EPOS system provided by Nielsen BookScan. Every time a book is sold in the UK the title, price and location is logged and a main computer polls all the tills daily. Thus we know precisely what books are selling where and at what prices.
- 3.13 Nielsen BookScan data has indicated that the average selling price was £7.31 in 2005 and £7.42 in 2004. In other words, book prices have gone down in 2005 when compared to the previous year.
- 3.14 On the other hand, booksellers' costs have gone up beyond inflation – especially occupancy costs, utilities and wages. This has led to booksellers' margins being squeezed and the profitability of our sector has been under great pressure. The fact that Waterstone's is currently trying to buy Ottakar's because of the prospect of operating jointly a lower cost base is testimony to the difficult trading conditions.
- 3.15 So when booksellers, who are facing such difficulties, are faced with these swingeing increases from PPL that are way above inflation, booksellers' anger and frustration can be understood.

## 4 LACK OF CONSULTATION BY PPL

- 4.1 PPL claim that 11,000 users were consulted about their proposed new fees and that, inter alia, they sent out a questionnaire in February 2004 and a consultation paper some seven months later.
- 4.2 The first we knew about the increases was when Maher The Bookseller, one of our independent booksellers, rang us in real concern in September 2005, having just been told by PPL to pay the new prices.
- 4.3 The Booksellers Association has not been consulted. Where did all these missives from PPL go to? Some e-mails seem just to have been sent by e-mail using the following address - [info@nameofcompany.co.uk](mailto:info@nameofcompany.co.uk) Why were the notes about the proposed increases not sent clearly to the licence holders themselves by name? And why did these notices not explain very clearly the proposed increases and the reasons for making such an increase?
- 4.4 Perhaps PPL knew that they were imposing unpalatable increases and so they considered putting together a campaign which would end up with the minimum response? There has, we believe, been no outrage from trade associations until late 2005? In our view, if PPL had done a proper job in consulting, we would have made these observations in 2004 and not in 2006.
- 4.5 There has to be the suspicion that:
- PPL wanted to increase its revenue received
  - It saw an opportunity to revise its tariffs when the new Copyright & Related Rights Regulations 2003 was introduced to incorporate a new category of 'excepted sound recordings'
  - PPL realized that the increases it proposed to levy would be regarded as outrageous
  - PPL conducted a consultation exercise which would result in the minimum amount of aggravation.
- 4.6 The Copyright Tribunal might consider whether there is any foundation in the suspicions?



## **5 CONCLUSION**

- 5.1 We ask the Copyright Tribunal to reject these Tariff 111 increases proposed by PPL. In no way are they 'reasonable' as argued by PPL. They are way over the RPI and we are not aware that any good reason has been given by PPL for imposing such high increases.
- 5.2 We urge the Tribunal to see that PPL's increases mirror inflation generally and that any annual increases in subsequent years should be linked to the RPI.
- 5.3 We hope that booksellers and other retailers who have paid these recent increases to date will be able to seek reimbursement.

Tim Godfray

Chief Executive

**On behalf of The Booksellers Association**

20<sup>th</sup> February 2006