



All Party Internet Group Inquiry on Digital Rights Management (“DRM”)
Submission by EMI

EMI is a member of the BPI, and we have read and agree with all the points made in the BPI's formal response on this issue. In our submission we have concentrated on explaining our digital strategy, and how we are using DRM to develop and support a range of new consumer products and services.

EMI

The EMI Group, a British company, headquartered in London, is the world's largest independent music company, operating directly in 50 countries and with licensees in a further 20 and employing over 6,600 people. Revenues in the last financial year were nearly £2 billion, generating operating profit of over £225 million. Around 20 - 25% of EMI Group's turnover is reinvested in new talent each year.

The company comprises two divisions – EMI Music, one of the top global recorded music companies, and EMI Music Publishing, the world's largest and most successful music publisher.

EMI Music represents more than 1,000 recording artists worldwide, spanning all musical tastes and genres. The company's roster includes music legends such as The Beatles, The Rolling Stones, Pink Floyd and Mstislav Rostropovich; global superstars like Norah Jones, Robbie Williams, Gorillaz and Coldplay; newly successful acts such as Joss Stone, Keith Urban and Yellowcard; plus some of the world's finest classical artists including Nigel Kennedy, Simon Rattle, Itzhak Perlman and Angela Gheorghiu.

EMI Music's record labels include Angel, Astralwerks, Blue Note, Capitol, Capitol Nashville, EMI, EMI Classics, EMI CMG, EMI Televisa Music, Mute, Narada, Parlophone and Virgin.

With around 6,000 employees worldwide, EMI Music's turnover last year was over £1.6 billion, earning profits of £125 million.

EMI Music Publishing has the largest catalogue of songs in the world, containing over a million contemporary and classic titles. Its roster of songwriters is unparalleled. The company has won and continues to win more industry accolades and publisher of the year awards than any other music publisher. Its catalogue of best-selling songs includes *Bohemian Rhapsody*, *I Heard It Through The Grapevine*, *New York, New York*, *Over the Rainbow*, *the James Bond theme*, *Singin' In The Rain*, *Santa Claus is Comin' to Town*, *Wild Thing*, *We Will Rock You*, *Angels*, *Baby Love*, *Crazy in Love* and *Daydream Believer*.

With offices all around the world, EMI Music Publishing has about 630 staff and last financial year generated around £400 million in turnover and profits of about £100 million.

Digital music

EMI's strategy is to deliver music to consumers in any form, at any time and in any place. The availability of our music on any platform - from high-speed broadband, 3G, portable music devices and music phones - is one of the critical factors driving increasing consumer use of those technologies. Almost weekly, services are being launched around the world offering new and exciting ways for us to deliver our music to consumers. In October 2005 music video download services, a new revenue stream for music, were successfully launched.



The digital landscape is very dynamic and growth rates vary significantly by platform, product and region, largely reflecting advances in technology. In the six months to 30 September 2005, EMI Group's digital sales were £44.6 million representing 4.9% of total revenues, up from 2.1% in the same period in 2004. EMI Music's digital sales in this period were £35.9 million, a growth (in constant currency) of 191.9%, while EMI Music Publishing's digital revenue increased from £6.1 million to £8.7 million, 42.6% growth (in constant currency).

It is estimated that digital revenues could account for up to 25% of EMI Group's total revenues within 5 years.

We believe that music is not about round discs with holes through them. We want to separate music from the format. Music should be sold to consumers however they want it. And not just with one business model. We are experimenting with as many models as we believe can rationally work.

EMI's digital strategy - summary

Consumers

- Aim to offer consumers the ability to buy 100% of our repertoire through all legal and commercially viable platforms via subscriptions, downloads and other models
- Let consumers burn a reasonable number of copies for personal use

Business partners

- Make our content available through all legitimate retailers where it makes business sense – ensuring proper value for our content
- Make relevant content available for all appropriate formats and channels
- Enable retailers to pursue the widest range of potential legal business models
- Collaborate with business partners to define and develop new products

Artist relationships

- Find and develop the best talent in the market
- Generate attractive revenues for artists through digital channels

Digitising EMI

In order to deliver these objectives, we have set up a comprehensive strategic business change programme to redefine the way we deliver music, putting in place the digital links all the way from artist to consumer, allowing us to manage seamlessly our physical and digital business. For example, all daily operations of EMI Music are being upgraded and systems built to allow us to process orders for music whether in physical or digital format, and to account properly to our artists for music and other content sold in an ever increasing variety of ways. Change has not just been technological, but involves people and processes too. We have all changed the way we work, think and behave.

The investment we are making, while substantial, has been beneficial for our whole business. For example, we can now deliver online tailor-made digital press/review packs, DRM protected, giving journalists secure access to materials they need for review, whilst minimizing risks of pre-release piracy by obviating the need for large numbers of promotional CDs to be supplied to large numbers of people.



Digital milestones

EMI has been a leader in recognising the opportunities in the digital age to connect our music with fans. We are at the cutting edge of the industry in bringing our music to fans in digital form:

- In September 1999, EMI made the world's first album digital download available – David Bowie's *...hours*; in October 2001 it offered Lenny Kravitz's *Dig In* as the first video single on the Internet
- In 2002, the company became one of the first music companies to offer its music online at the same time as its release to radio and ahead of any physical single release
- In 2003, EMI helped make available The Rolling Stones' catalogue of historic recordings from Virgin Records, and all of Queen's catalogue for the first time ever in digital form, marking a major step forward for online music
- Also in 2003, EMI kicked off the most ambitious music download initiative by a record company in Europe when it made 140,000 tracks from over 3,000 EMI artists available online and also enabled consumers to burn music to CD-Rs and transfer music to portable devices
- 2004 saw EMI offer Robbie Williams' new video exclusively on the 3 mobile network in the UK before the video appeared on TV; and was first to release a single – Chingy's *Balla Baby* – via ring tune before it went to radio
- In 2005 EMI and Apple collaborated on the world's first digital pre-order for Coldplay's *X&Y*, and OK Go! became one of the first bands to offer podcasts from the road. Other podcasts launched in 2005 include those for the Live 8 DVD and Capitol Records artist Liz Phair and from EMI Music UK's site www.the-raft.com (award winning website set up in 1995 bringing consumers CDs, downloads, news, ringtones, realtones, games and podcasts...including footage of the Houses of Parliament's own "House Band" MP4!)
- Also in 2005, EMI Music Publishing helped make numerous new digital music formats possible including ring tunes, ring back tunes, video on demand, and DualDisc, by signing groundbreaking deals with Sony BMG Entertainment and Universal Music Group

Intellectual property and digital rights management (DRM)

The current policy debate over intellectual property which forms the backdrop to this Inquiry seems to be the result of the tension between, on the one hand, the system for rewarding creators, and, on the other, the growing capabilities of computers and the Internet. This tension arises because the very technologies that are helping to drive creativity and the digital economy can also be used to undermine it. Over the past five years in particular the music industry has had to grapple with unprecedented levels of copyright infringement, both in commercial CD piracy and in illegal copying and distribution of music online, both fuelled by advances in digital technology. In this period the worldwide music industry has contracted by some 25%, due in part to these problems.

In developing strategies to use technology to improve our efficiency, and to develop new ways of reaching our consumers, we have also had to incorporate into our new systems and business models some means of protecting our rights, since without this protection we cannot create a viable digital music market.



The music industry has suffered criticism from some quarters, in particular from the academic world, for what some perceive as our attempts to persist with supposedly “obsolete” business models. If technology allows music to be taken freely, without the consent of artists or music companies, the argument goes, the law should be amended to allow this to happen legally. We could not disagree more. Technology now allows bank-notes to be forged with ease....yet there is no suggestion that forgery laws should be changed to facilitate such theft. And when art can be delivered in intangible form, it needs more protection...not less.

We are in the midst of a digital revolution, and the content industry is leading a tidal wave of innovation making new deals to deliver new packages of content and new kinds of content to our consumers quicker and more flexibly than ever before.

The common feature of all EMI's deals is that we require our property to be protected by some form of DRM. The terms and conditions of access will vary with each package offered at a variety of different price points, but the overall aim is to offer our consumers more choice, letting consumers pay for precisely what they want at the appropriate price. This benefits everyone.

The rights of creators and consumers are not in conflict. Creators want to create, and want to find a market for their works. Consumers want access to those works. From our perspective the issue is not the need for a “balance”, whatever that means, but for a working market system. DRM is a vitally important tool, helping us to construct this.

What is DRM?

DRM is the umbrella term referring to any of several technical methods used to handle the description, layering, analysis, valuation, trading and monitoring of the rights held over a digital work. In the widest possible sense, the term refers to any such management.

Part of what DRM does is to protect the copyrights of data circulated via the Internet or other digital media by enabling secure distribution and/or disabling illegal distribution of the data. Typically, a DRM system protects intellectual property by either encrypting the data so that it can only be accessed by authorized users or marking the content with a digital watermark or similar method.

In simple terms DRM ensures that consumers get what they pay for, and pay for what they get.

DRM is being used to support and enable the development of many new music products and business models and to provide consumers with even greater secure access to audio and video content. Such new DRM-supported services include:

- a la carte downloads
- subscription
- video on demand and pay-per-view
- preview
- legal P2P
- ring tones / ring tunes / ring backs
- podcasts / time-shifted radio



DRM is more of an ecosystem that is constantly changing as we and other content companies try to work through with our consumers and our various business partners a solution that works for all involved.

Some basic principles apply from EMI's perspective.

- All legitimate services must include DRM
- The DRM format is to be selected by the distributor – EMI is agnostic, provided the DRM is effective
- The DRM must facilitate the business rules surrounding the type of product to be offered, e.g. the rules which apply to a timed-out preview of a track will differ from those which apply to a download of that track offered for sale from which multiple copies can be made
- In no case should the DRM system used prevent consumers using the music they have bought for the purpose they have bought it, or harm their computers or operating environment in any way. In all cases consumers should be made aware of the precise terms of the package of rights they have paid for by proper labeling or other explanation.

Lack of interoperability is a potential problem

Although EMI is agnostic on the issue of DRM formats, we are trying our hardest to make the different systems compatible. Lack of compatibility is something we recognise as a significant barrier to growing the legitimate market for digital music.

At the heart of the problem are different DRM systems from commercial rivals Apple Computer and Microsoft. Files using either company's DRM are currently incompatible with players that support the other DRM.

Microsoft's Windows Media DRM is supported on more than 60 devices and used for digital files sold by dozens of retailers, including Napster, AOL, Yahoo, RealNetworks, Virgin, FYE and Wal-Mart. Apple's DRM is called Fair Play and works only in Apple-controlled products and services like the iPod and the iTunes Music Store.

As more consumers go digital, the compatibility issues between Apple and Microsoft become more pronounced.

Key to the long-term proposition of digital music is the idea of building a system where music can be accessed anywhere and everywhere.

Efforts are being made to resolve this issue:

- One industry association, Coral, is due to launch a new, interoperable DRM next year
- Sun Microsystems is supporting interoperability – by putting their DRM into open source
- There is increased government attention on the issue:
 - US Congressional hearings have been held and a study is to be commissioned
 - EC Reports consistently mention the issue and warn of regulation if market fails
- But in the end, Microsoft and Apple hold the key



Copy protection technology issues

EMI has been using content protection technology on our discs throughout the world for several years now. We recently upgraded the technology and also began deploying it on a pilot test basis in the United States and UK.

Some issues related to content protected discs have emerged recently which we should address.

Several news accounts have reported that the method Sony-BMG is using on its content protected discs – known as a “rootkit” -- is the same difficult-to-remove technique often used to install viruses or spyware. The vendor of this technology is First4Internet, and EMI does not use this technology.

EMI instead is using Macrovision for content protection. We recently upgraded our technology to Macrovision CDS 300. We believe that this technology provides us the tools we need to not only protect our discs from piracy but also to provide a superior consumer experience.

EMI's content protected discs allow consumers to burn three copies of the full disc (the copies are 'sterile,' meaning one can't copy the copy) and make a further seven copies of individual songs for compilations. In addition, consumers can move the songs onto portable music players that are compliant with Windows Media technology.

This technology also allows for the addition of bonus content like photos, lyrics, videos and more. All our content protected discs will go out with some form of this type of bonus content to enhance the consumer value proposition.

It is also important to note that no consumer is forced to accept the Macrovision technology on their computer. When a disc is first put into a computer, a pop up window informs the consumer that software is about to be installed and asks for their consent. If they consent, then the full functionality of the disc is available to them – the extra content, the one-click ability to make burns of the disc, etc. If they decline to install the software, they are still able to play the disc on their computer. But the trade off is they cannot make copies and cannot get the extra content.

Moreover, Macrovision's software can be easily uninstalled. There is no 'rootkit' behaviour. And there are no processes left running in the background when the disc is ejected. Macrovision has sent their technology to a leading member of the Anti-Spyware Coalition who has certified it to be 100% spyware free. It has also gone through a rigorous Microsoft certification process allowing Macrovision to certify that it is designed for the Windows operating systems and meets programming best practices.

We have tested Macrovision's CDS300 technology in several parts of the world -- including in the U.S. and UK -- and have been pleased with the results. We believe it strikes a balance by allowing fans to be flexible with their music, while protecting what our artists create.

We have done extensive consumer research on this technology and have found that the vast majority of consumers never realise there are limits on their copying abilities because the EMI allowance is generous and more than enough for the average consumer. In fact, the rules on the physical disc are exactly the same as those for a purchased download from Napster or iTunes. Our goal is to ultimately harmonize the digital and physical rule sets.

Whenever we use technology we are committed to observing several key principles, chief among them being: that we give full and fair disclosure to the consumer prior to purchase; that the technology conforms to generally accepted programming practices; that the technology be independently certified and tested to not interfere with consumers' equipment; and that any software installed by the consumer can be undone.



Apple has not yet opened up its technology to work with Macrovision or any of the content protection technologies. This means consumers who buy content protected discs may experience problems with importing the contents of the disc into Apple's iTunes software or the iPod player. We have been working very closely with Apple to convince them that it is essential that their software and hardware be interoperable with our discs, and that we are essentially seeking the same usage rules that are used on music sold in the iTunes Music Store.

Protecting creative content and intellectual property benefits everyone - comments from others

"The Role of DRM. One aspect that is frequently missed from definitions and descriptions is the 'enabling' function of DRM in the marketplace, though this aspect is becoming increasingly apparent as DRM emerges. DRM provides the means by which different kinds of consumer services can be established at different price-points to satisfy diversity in marketplace demand. Content providers want to reach their customers in new ways, some examples of which include:

Flexibility & Choice. DRM allows models such as 'a la carte download', 'subscription', 'rental' and 'preview' and meaningfully differentiates the different provisions of such alternative options. DRM provides a balance, by allowing different services at different price-points, while preventing unintended substitution among the service/price-point options. Superdistribution – that is, authorised forwarding of licensed and paid content between users – is another area that many stakeholders believe could be facilitated by DRM.

Wider Access. Content owners envisage a future in which consumers can access content wherever and whenever they choose within a marketplace that also provides for commercial competition and payment. DRM should provide a balance, allowing content to be accessed on devices the consumer wants to use, but while preventing massive quantities of content 'leaking' to form an unauthorised and uncontrolled 'free-for-all' that would cannibalise the legitimate market."

[EU Commission High Level Group Report on Digital Rights Management, March – July 2004]

"Suitable protection for intellectual property rights serves to underpin incentives to invest in the kind of content that can really drive convergence"

["Capitalising on Convergence – delivering value and driving growth in a digitally converged world" , report by Intellect, the trade association for the UK hi-tech industry, July 2005]

"DRM is an essential component of a vibrant digital media marketplace. Consumers benefit from DRM that allows content owners to release digital media in myriad ways, at different prices, and for different uses. DRM is already being deployed in many consumer products, from online music services to cell phones to DVD players, and is helping to expand consumer choices in the market for content."

["Protecting Copyright and Internet Values – a balanced path forward, Report by the US Center for Democracy & Technology, Spring 2005]

"Over the past half-century, the increase in the value of raw materials has accounted for only a fraction of the overall growth of U.S. gross domestic product (GDP). The rest of that growth reflects the embodiment of ideas in products and services that consumers value... This trend has,



of necessity, shifted the emphasis in asset valuation from physical property to intellectual property and to the legal rights inherent in intellectual property."

[Alan Greenspan, former Chairman of US Federal Reserve]

"IP is at the heart of Britain's success in the knowledge economy. And the UK's IP regime is a critical component of our present and future success in the global knowledge economy. "

[James Purnell, Minister for Creative Industries and Tourism]

"Taken as a whole the creative industries make a huge contribution to our economy, as well as to our social and cultural life. They employ almost two million people. They produce almost £1 in £12 of our total GDP – a higher proportion than in any other country. They contribute £11.4billion to our balance of trade, well ahead of the construction industry, insurance and pensions, and twice that of the pharmaceutical sector.

So our creative industries are not some light or peripheral sector contributing at the margins of our economy. They are serious business.

Take our music industry – for the past forty years, a real British success story. A recognised world leader, generating 130,000 jobs, and contributing nearly £5 billion to the UK economy, of which £1.3 billion comes from exports earnings.

...

Without IP protection the creative sector could not exist, let alone prosper. In a digital world, intellectual property is the key to our future prosperity. Because in an increasingly competitive global economy any attack on our intellectual and creative capital is an attack on our economy itself."

[Patricia Hewitt, former Secretary of State for Trade and Industry]

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