



PPL STATEMENT & BRIEFING ON COPYRIGHT TRIBUNAL DECISION*

[*The Copyright Tribunal 'In The Matter of References Under Sections 128A and 128B of the Copyright, Designs and Patents Act 1988' CT 91/05, CT 92/05 and CT 93/05]

22nd October 2009

Following the July 30th 2009 hearing, the Copyright Tribunal has today published its decision in regard to the rates paid to music licensing organisation PPL, on behalf of performers and record companies, for the right to play music on TVs and radios in public in the hospitality sector (pubs, bars, restaurants, cafes, hotels, shops) and offices & factories.

PPL had proposed a tariff, based on the principle of fairness, where larger establishments paid more than smaller ones. The Tribunal rejected this and took the view that small pubs and cornershops should pay the same as large bars and shops. This is currently just over £100 per annum. The result of the Tribunal's decision, therefore, is that bars with a thousand drinkers will pay exactly the same as a pub with a handful of regulars.

In response to this decision, Fran Nevrkla, Chairman and CEO, PPL said,

"We are extremely disappointed by the decision of the Tribunal which, even by its own admission, is 'ill-equipped' to perform its new investigatory role. The Tribunal has failed to have proper regard for the real value of music to businesses, ignoring PPL's extensive consultation with licensees. On behalf of our 42,000 performer and 5,000 record company members, many of whom themselves are small businesses, we are appealing this decision in the High Court."

He also added, "The Tribunal's 'one-size-fits-all' approach, which was proposed by the hospitality industry, is particularly unfair to small pubs and shops that in future would pay exactly the same as much larger businesses.

Despite a total absence of opposition to PPL's tariff for factories and offices, the Tribunal has completely overturned that tariff, ignoring the clear views of respondents to PPL's consultations."

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BACKGROUND NOTES

1. This Copyright Tribunal process was triggered by the Secretary of State for Trade and Industry referring PPL's tariffs to the Copyright Tribunal, under a new process (S128A) introduced in 2003.
2. The new Copyright Tribunal process, S128A of the Copyright, Designs and Patents Act, was introduced in October 2003. PPL submitted tariffs under the new procedure in December 2004. This Decision on these tariffs was handed down in September 2009; four years and nine months after the tariffs were notified to the Secretary of State. The Background Chronology attached provides more detail.
3. Under S128A, there are five factors which must be taken into account when determining a tariff. They are:
 - (a) the extent to which sound recordings are actually used;
 - (b) the size and the nature of the audience;
 - (c) the commercial benefit to the licensee;
 - (d) other comparable licences; and
 - (e) the extent to which the rightholders receive remuneration from other sources.
4. Following a year-long consultation with licensees, PPL had proposed a fee for small pubs and shops of £100 to play background music for a year, increasing for larger establishments (over 100m²).
5. PPL's tariffs for pubs (Tariff 110) and shops (Tariff 111) were opposed at the Tribunal by parties such as the BBPA (British Beer and Pub Association) and the BHA (British Hospitality Association) representing respectively the major pub and hotel chains who objected to the higher charges for larger establishments. The tariffs for offices and factories (Tariff 112) were not opposed at the Tribunal but were still amended.
6. In conjunction with PRS for Music earlier this year, PPL conducted extensive external research aimed at a wide range of businesses, demonstrating the valuable contribution using music as a business tool has on many areas in any company from increasing consumer spending, enhancing footfall to improving morale, productivity and therefore potential revenue. For further information please visit www.musicworksforyou.com

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ABOUT PPL

PPL is the music licensing company which, on behalf of 42,000 performers and 5,000 record companies in the UK, licenses recorded music.

This enables TV and radio stations, online streaming services and hundreds of thousands of shops, pubs and other establishments, large and small, using music in their business to obtain a single licence which gives them legal access to literally millions of recordings.

As an industry service, PPL does not retain any profit for itself. The costs of collecting, processing and distributing the licence fees are taken from the gross revenues that the company collects. All these revenues are distributed and paid to all PPL's record company and performer members. These include featured artists as well as session musicians, ranging from orchestral players to percussionists and to singers, 90% of whom earn less than £15,000 per year.

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Also attached separately, please find Background Chronology and you can find the decision in the link below:

<http://www.ipo.gov.uk/ct-2009-10-19.pdf>

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COPYRIGHT TRIBUNAL DECISION 22nd OCTOBER 2009

Background Chronology

31 October 2003	<p>UK Government implements the Copyright Directive (10 months late) and reduces the scope of the Section 67 and 72 exceptions, giving PPL the right* to license use of radio by commercial establishments. Government also introduces new Copyright Tribunal process (Section 128A) giving the Tribunal an investigatory role.</p> <p><i>*PRS for Music have always been able to license such usage</i></p>
October 2003	PPL alerts relevant licensees and potential licensees of change in legislation and begins consultation process.
November 2003 – November 2004	<p>PPL consultation:</p> <ul style="list-style-type: none"> • Questionnaire on new rights sent to 11,000 licensees (1300 returned). • Letter to 51 trade associations inviting them to take part in the consultation. • New tariff structure and fees developed from responses. Final tariff proposals sent for consultation to all interested parties. • National Hairdressers' Federation and Scottish Licensed Victuallers' Association agreed new tariffs. The British Beer and Pubs Association still had concerns but had not provided alternative proposals nor given reasoned objections to the PPL tariffs. • Throughout, the Patent Office was kept fully informed through meetings and briefings to ensure the rigour of the consultation process.
1 December 2004	PPL submits new tariffs to Secretary of State, including detailed reasoning and full outline of the consultation process.
1 January 2005	New tariffs come into force subject to transitional arrangements.
5 October 2005	UK Government refers PPL tariffs to the Copyright Tribunal under the new Section 128A (even though there is still no procedure set out).
1 January 2006	New tariffs come fully into force
8 November 2007	Copyright Tribunal holds preliminary Hearing on jurisdiction.
26 February 2008	Copyright Tribunal hands down Decision on Preliminary Hearing. Both PPL and the Interested Parties appeal.
30 October 2008	High Court Hearing of Appeal.
21 November 2008	High Court judgement on Appeal. Copyright Tribunal Decision struck out. High Court Order for fresh Hearing.
30 July 2009	Copyright Tribunal Hearing on tariffs.
18 September 2009	Copyright Tribunal makes interim decision on tariffs.
22 October 2009	Copyright Tribunal publishes Decision.