

**Research Briefing**

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# Copyright (Rights and Remuneration of Musicians etc.) Bill

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## Summary

The [Copyright \(Rights and Remuneration of Musicians Etc\) Bill \(161 KB, PDF\)](#) is a Private Member's Bill sponsored by Kevin Brennan MP. It was introduced in the House of Commons on 16 June 2021 and is due to have second reading on 3 December.

The Bill would amend the [Copyright, Designs and Patents Act 1988](#) (“the 1988 Act”) to introduce new intellectual property rights for musicians. In doing so it would implement recommendations of the Digital, Culture, Media and Sport Committee's 2021 inquiry into the [economics of music streaming](#).

## Streaming music

The Bill seeks to update the law of performer, composer and songwriter rights, by creating a right to “equitable remuneration” for artists whose music is streamed. This reflects the fact that streaming has become the predominant way that music is consumed in the UK.

It would also protect performers and composers from the negative consequences of unequal bargaining power when entering into agreements for the use of their work (referred to in copyright law as ‘exploitation’). It would do so by ensuring that revenues generated by that work are shared fairly.

## Reclaiming rights to music

Finally, it would allow performers and composers to reclaim rights after defined periods of time. This would allow them to benefit from more equal bargaining power at later stages of their career, and to arrange more effective exploitation of their work.

The sponsoring Member has prepared [Explanatory Notes](#) (317 KB, PDF) to accompany the Bill.

The Bill would extend to the whole of the UK.

# 1 Background

The 1988 Act provides copyright owners with the exclusive rights for certain acts, including copying, issuing, performing in public and communicating to the public.

Performers and creators also have rights to control the exploitation of their work, including copying and making the work available to the public.

A performer is entitled to equitable remuneration from the owner of the copyright, except where the performance is made available to the public “by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them”.<sup>1</sup>

Therefore, where music consumption is classified in this way as ‘making available’, creators are remunerated in accordance with the terms of their publishing or recording deals by the companies that their rights are assigned to, licensed by or distributed with, without any requirement that it is equitable.<sup>2</sup>

As a result, most income from music streaming remains with the copyright owner rather than the creator, according to the Bill’s explanatory notes (EN),<sup>3</sup> which contains further detail on the legal and policy background.

## 1.1 Digital, Culture, Media and Sport Committee inquiry: Economics of music streaming

The DCMS Committee report, [Economics of music streaming](#), published in July 2021, noted that creator remuneration was the fundamental issue raised by the inquiry and described the situation as untenable in the context of the Covid-19 pandemic, when other income streams have dried up.

The Committee found that major music companies and independent record labels had consistently asserted that music streaming is ‘making available’ and that performers should not therefore be remunerated as though it was a sale. However, it noted that this failed to take account of the complexities of streaming, created inconsistencies, and did not capture the realities of costs associated with the distribution of digital music.

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<sup>1</sup> Copyright, Designs and Patents Act 1988, s182CA and 182D

<sup>2</sup> For a detailed explanation of the complex copyright issues involved in music streaming, see [Economics of music streaming](#), Digital, Culture, Media and Sport Committee, 2021 HC50, part 2

<sup>3</sup> Para 11

The Committee therefore recommended that:

... the Government legislate so that performers enjoy the right to equitable remuneration for streaming income. Amending the Copyright, Design and Patents Act 1988 so that the making available right does not preclude the right to equitable remuneration, using the precedent set by the co-existence of the rental right and right to equitable remuneration in UK law, would be an effective solution. This would be relatively simple to enact and would appropriately reflect the diminished (and increasingly externalised) marginal costs of production and distribution associated with digital consumption. Furthermore, were the Government to do this by echoing existing UK law, this remuneration right would apply to the rightsholders (i.e. the record labels) rather than the streaming services.<sup>4</sup>

## 1.2 Government response

The Government responded to the Committee in September 2021.<sup>5</sup> It noted the evidence taken by the Committee that current arrangements appear to disadvantage some players in the streaming environment. However, in response to the recommendation that the Government introduce legislation on equitable remuneration, it noted that many witnesses had suggested that this type of change might not be in the interests of all performers.

It concluded that the issues were complex and needed to be better understood, and committed to assessing different models such as equitable remuneration to explore how they might affect different parts of the music industry. It also proposed to explore the issues through engagement with a music industry contact group and to update on progress in spring 2022.

The Government has since published research commissioned by the Intellectual Property Office: [Music Creators' Earnings in the Digital Era](#).

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<sup>4</sup> [Economics of music streaming](#), Digital, Culture, Media and Sport Committee, 2021 HC50, para 7

<sup>5</sup> [Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report](#), Digital, Culture, Media and Sport Committee, HC 719, 22 September 2021

## 2

# The Bill

The Bill has four substantive clauses, all of which would amend the 1988 Act. The [EN](#) provide a full explanation of each clause.

## Clause 1

Clause 1 would insert a new section 191GA into the 1988 Act, which would provide a right to equitable remuneration for performers on musical works, where those works are made available to the public. Currently a right to equitable remuneration exists in relation to other forms of exploitation of musical works, but not in relation to “making available”.

This right could only be transferred by performers to collecting societies, or by testamentary disposition or operation of law. The EN state that this aims to avoid performers being coerced into transferring away the right to equitable remuneration on unequal terms.<sup>6</sup>

## Clause 2

Clause 2 would insert a new section 93D into the 1988 Act, which would set out a right for composers of musical works to receive information concerning exploitation of their musical works.

The EN state that this is necessary to allow composers to determine whether the remuneration they are receiving is fair.<sup>7</sup>

Clause 2 would also insert a new section 93E into the 1988 Act, which would provide a right for composers of musical works to receive additional, fair and reasonable remuneration in relation to their works, where an arrangement provides them with a disproportionately low level of remuneration when compared to the overall revenue generation from their work.

Finally, clause 2 would insert a new section 93F into the 1988 Act, which would provide a right for composers to have arrangements entered into in relation to the exploitation of their work revoked after 20 years. The EN explain that this would enable composers to renegotiate arrangements which may have been entered into by them early in their career, which may be unfavourable

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<sup>6</sup> Para 21

<sup>7</sup> Para 25

due to inequality of bargaining power. It would also enable them to exit arrangements which are not generating exploitation of their work.<sup>8</sup>

## Clause 3

Clause 3 would insert new sections 191N, 191O and 191P into the 1988 Act. These would provide performers with a right to information, a right to fair remuneration, and a right of revocation equivalent to those provided for by clause 2 for composers.

## Clause 4

Clause 4 would insert a new section 142A into the 1988 Act, providing that the Copyright Tribunal should determine any disagreement between performers or composers and those against whom they are exercising their rights in relation to fair remuneration and the provision of information.

# 3

## Reaction

The Bill is in part a response to two online campaigns, #fixstreaming and #brokenrecord, and has been welcomed by parts of the music industry who support artists having a statutory right to equitable remuneration when their music is streamed.<sup>9</sup>

The Musicians' Union has also supported the Bill, lobbying MPs to vote in favour of it. As well as introducing equitable remuneration, the MU has said that it would fix "other issues with the music streaming model that disadvantage UK musicians and music creators".<sup>10</sup>

44 Conservative MPs wrote to the Prime Minister in October. The letter, which was organised by Esther McVey, called for the 1988 Act to be amended to provide for equitable remuneration for streaming.<sup>11</sup>

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<sup>8</sup> Para 27

<sup>9</sup> [Kevin Brennan MP proposes "a new right to fair remuneration" from streaming for musicians in private members bill](#), 17 June 2021, [completemusicupdae.com](http://completemusicupdae.com)

<sup>10</sup> [Take Action to Fix Streaming: Ask Your MP to support Kevin Brennan's Bill](#), 8 November 2021, [musiciansunion.org.uk](http://musiciansunion.org.uk)

<sup>11</sup> [Streaming services exploit British artists and 'should start paying musicians properly', say MPs](#), The Telegraph, 23 October 2021

Music industry trade body the BPI has opposed the Bill, suggesting it would “bind British music in red tape” and “would be a damaging step backwards, eroding the foundations of the UK’s extraordinary global success in music”.<sup>12</sup>

The Association of Independent Music, another trade body, was also opposed, suggesting it would be reckless to legislate before a proper consultation had been conducted with stakeholders.<sup>13</sup>

Tony Wadsworth, former chairman and chief executive of EMI Music UK and former chairman of the BPI, wrote in the Times on 29 November that the Bill would “harm the very model that has underpinned the industry’s renaissance” and “cripple the amount of investment labels are able to make in new artists, especially at smaller independent companies”.<sup>14</sup>

He explained that, during the early and mid-2000s, online file sharing posed an existential threat to the music industry, because it raised the possibility that people would stop buying recorded music altogether. However, the industry formed partnerships with emerging platforms and changed their business models to adapt to the streaming and subscription era.

He highlighted the “‘additional right’ payments, the unprecedented potential for agreements already negotiated between willing parties to be pulled apart and the spectre of copyright assignment being retrospectively slashed from 70 years to 20 years” as being of particular concern.

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<sup>12</sup> [Music industry clashes over MP Kevin Brennan’s Bill to ‘fix streaming’ – AIM and BPI call it ‘reckless and damaging’](#), Music Week, 24 November 2021

<sup>13</sup> [Ibid](#)

<sup>14</sup> [Kill the bill that would stifle UK music investment](#), The Times, 29 November 2021

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