PRS for Music

Cinemas tariff consultation response summary

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Introduction

PRS for Music announced a consultation on the terms of the cinema tariff "Tariff C" on 26 July 2023, following our research into the changes within the cinema sector since the introduction of the current tariff in 2005. The aim of the consultation was obtaining feedback on a revised licensing tariff specifically for cinemas, including arts centres, drive-ins, temporary 'pop-up' cinemas, and any other premises that show cinematic presentations of live music events.

The consultation was undertaken in accordance with our Code of Conduct, which requires us to consult relevant parties whenever significant changes are considered to our public performance tariffs.

As part of the consultation process, we approached 293 Tariff C exhibitors, as well as 9,328 PRS members who received a royalty income from exhibitors licensed under Tariff C. We also welcomed comments from all interested parties.

The following sections of this document mirror the sections of the responses form sent out to obtain feedback on the proposal. In each section we have gathered the responses received and summarised them.

For responses received via email or letter that did not follow our prescribed response format, we have allocated them to the appropriate section.

We sought views on the following:

1. *Our intention to apply a single metric (pence per admission) to calculate royalties for the use of PRS for Music members' repertoire in films, pre-film content, foyer areas and cinematic presentations of live music events (CPLM) such as concerts.*

2. *The basis on which the films, pre-film content and foyer areas pence per admission royalty rate has been calculated.*
    a) *The increased proportion of music within the top 70 UK feature films released in the UK between 2005 and 2022*
    b) *The inclusion of a separate pence per admission royalty rate for admissions incurring booking fees*

3. *The basis on which the new cinematic presentations of live music (CPLM) pence per admission royalty rate has been calculated.*

4. *The proposed phased removal 4% prompt payment discount over two years following the introduction of the new tariff.*

5. *Our proposal to retain the benefit provided to exhibitors under the low admissions discount and if considered, other than low admissions, would you have any suggestions for an alternative methodology for PRS for Music to support small independent cinemas*

6. *Our proposal to allow customers the option to declare and pay for music usage on a 6-month basis as well as annually.*

7. *The treatment of UKCA carer card admissions*

8. *Thoughts on the proposed inflation adjustment (mean of CPI/AWE)*

9. *General comments to the consultation*

1. Single metric (pence per admission)

Question: What are your thoughts on our intention to apply a single metric (pence per admission) to calculate royalties for the use of PRS for Music members' repertoire in films, pre-film content, foyer areas and cinematic presentations of live music events (CPLM) such as concerts?

There was support for the pence per admission metric from several members. One member noted that the shift to a single metric will result in greater royalties to music creators whose works are used within audio-visual content exhibited in the cinemas. Another member suggested that the application of pence per admission would be more efficient to calculate cinema royalty payments and pay the composers and publishers accordingly.

One member noted that pence per admission was their preferred metric as it aligns the Tariff C royalty with the actual number of people that view the exhibited audio-visual content. In contrast, another member noted that the growth in the variety of ticket types and prices in recent years may render the pence per admission metric too inflexible. They suggested retaining the percentage of box office receipts only as this is based on the price cinema goers pay to view films.

Most exhibitor respondents opposed our proposal to limit the calculation of tariff C royalties to a single metric (pence per admission).

Many of the responses noted that the retention of the dual metrics within the current tariff C would be preferred.

Several commented that the impact of the change to a single pence per admission metric would disproportionately affect small independent exhibitors that offer lower than average ticket prices. They noted that this type of exhibitor routinely selects the percentage of box office metric to calculate their annual royalties for film exhibition as it is the cheaper of the two options.

One exhibitor noted that there are different cinema types operating within the sector offering a wide variety of ticket prices. They elaborated suggesting that ‘one size fit all’ approach serves only to penalise the operators of those cinemas who, for necessity keep their prices low. It will hurt those cinemas in less affluent areas and only benefit ‘Premium’ cinemas in affluent areas or city-centres.

Several exhibitors suggested that the retention of the current dual approach is essential if there is to be equity and the complexities of the current market are to be accommodated.

One exhibitor suggested that a better approach would be for the PRS charge to be calculated based on annual net box office after the film distributors percentage and staff and energy costs had been paid.

One exhibitor asserted that it is a discrimination of their business model as they have always accounted 1%.

2a. Increased proportion of music within feature films

Question: To what extent do you agree with the basis on which the films, pre-film content and foyer areas pence per admission royalty rate has been calculated? Specifically, the increased proportion of music within the top 70 UK feature films released in the UK between 2005 and 2022.

Several members agreed with the justification of ensuring Tariff C royalty rates reflect the increased use of music in films exhibited at cinemas.

One member commented that it was necessary to adapt to the recent evolution of both the presence and usage of music in films and the evolution of audiences consuming music in cinemas.

We observed that most exhibitors provided a similar response to this question noting that in recent years, PRS for Music members have benefited from rising admissions and box office revenue, which were driven by the investments to the cinema experience and clearly unrelated to music. Exhibitors explained they had invested in maintaining and upgrading facilities to improve the experience for their customers, and most noted that PRS for Music members had not shared in the financial risks or investments associated with these improvements. They argued that despite any increase in music usage over this time, its value needs to be considered in the context of all the other improvements within the cinema experience.

Several exhibitors commented on our assertion that the proposed Tariff C royalty rate must reflect the current value of PRS members' music by suggesting that the cost of music to consumers has decreased significantly since the Tariff C was introduced in 2005. These exhibitors suggested that there is significant evidence that the value of music at the consumer level has decreased significantly with the advent of streaming services.

One exhibitor provided evidence to support this claim noting that since music streaming had become dominant, the pricing model had remained relatively low and static, which should necessitate a net decrease in the current Tariff C to reflect the current value of music.

Another exhibitor noted that the proposed changes do not account for the fact that composers and other PRS members who are commissioned to create music for films, or whose existing compositions are synchronised with films have two opportunities to extract value from the distribution chain.

2b. Booking fees

Question: To what extent do you agree with the basis on which the films, pre-film content and foyer areas pence per admission royalty rate has been calculated? Specifically, the inclusion of a separate pence per admission royalty rate for admissions incurring booking fees.

One member expressed the view that the inclusion of a separate pence per admission sold with additional booking fees was justifiable as it reflects "how the cinema market has evolved since the setting of the outgoing tariff in 2005."

A member also agreed with our proposal for exhibitors to declare revenue from booking fees and suggested Tariff C should only apply the "percentage of box office receipts" metric to charge for music to ensure consistency with other public performance tariffs where booking fee revenue must be declared such as our live popular tariff "Tariff LP".

Most exhibitors did not agree with our proposal to charge a separate uplifted pence per admission royalty for admissions incurring a booking fee.

Some exhibitors suggested that booking fees are unrelated to the music in films and are often only charged by exhibitors to cover the cost of operating the infrastructure required to operate online ticketing facilities.

Several exhibitors expressed concern that the accounting for booking fees and non-booking fee admissions separately would likely increase the administration burden to satisfy the annual tariff renewal process.

3. Cinematic presentations of live music events

Question: To what extent to you do you agree with the basis on which the new cinematic presentations of live music events (CPLM) pence per admission royalty rate has been calculated?

Several publisher members felt the CPLM royalty charged to exhibitors should be aligned with the equivalent royalty rates applied in the physical live performance world.

Several publisher members expressed the view that the royalty rate to charge for CPLM events should be based on the equivalent royalty rates within our classical events tariff (Tariff LC) and live popular concerts tariff (Tariff LP). The royalty rate for Tariff LC is 6.5% of gross box office receipts and the royalty rate for Tariff LP is 4.2% of gross box office receipts. These members further explained their view that “Grand Right” productions such as cinematic presentations of musicals and operas should be subject to a greater royalty rate than Tariff LC to reflect what publishers customarily receive for direct licensing of the venue.

One member suggested that a small rights classical concert exhibited in a cinema should receive an increased royalty rate that is proportionate to the difference between Tariff LC and Tariff LP.

Most exhibitors did not agree with proposed new CPLM royalty rate citing that the increased licence fee would make screenings economically unviable.

One exhibitor stated event cinema performances are their best revenue generator in the current economic climate. The exhibitor suggested that the “increased royalty rate proposed would place a significant financial burden on them with further impact felt at the customer level given older audiences make up most exhibitors’ demographic.”

4. Prompt payment discount (PPD)

Question: We are proposing to remove the 4% PPD. How, if at all, would this likely affect your business?

One member agreed with the removal as it potentially increases licence fees to be distributed, although they also acknowledged that there had not been universal uptake of this discount in recent years.

Another member shared the same sentiment but commented that the removal of PPD may reduce cashflow from licensing income if exhibitors decide to pay as late as possible due to no prompt payment discount.

Most exhibitors rejected our proposal to remove the 4% PPD. Many exhibitors voiced that the impact of PPD removal would add further financial burden on top of the other proposed uplifts and disputed that there was a reasonable justification for its removal.

Several exhibitors commented that they have always taken advantage of the PPD as it reduces costs, assists with cashflow, and allows for better budgeting. These exhibitors also noted the discount has been in place for a significant period and intimated that PRS for Music was penalising cinemas who have historically provided PRS for Music with a cashflow benefit.

Further to this, it was noted by one exhibitor that the lack of a PPD in other public performance tariffs is of little relevance due to the significant period that PPD has been part of within Tariff C.

It was also noted by one exhibitor that a variation of PPD (linked to music setlist reporting) is included within Tariff LC (Live Classical) launched in September 2023 following an industry-wide consultation within the sector.

Another exhibitor noted the relative lack of PPD uptake in recent years is indicative of the cashflow pressures that many cinema operators are currently under, rather than a reflection on any lack of benefit recognition.

A suggestion to increase the PPD to 8% was made by one exhibitor, noting the Performing Right Tribunal (now Copyright Tribunal) ruling of 7% in 1961 and further historical reductions agreed with CEA or UKCA by PRS for Music.

5. Low admissions discount

Question: What are your thoughts on our proposal to retain the benefit provided to exhibitors under the low admissions discount and if considered, other than low admissions, would you have any suggestions for an alternative methodology for PRS to support small independent cinemas?

We observed that most member and exhibitor respondents acknowledged and welcomed the retention of the low admissions discount for smaller venues.

However, many exhibitors commented that given the level of increases proposed in this review, even those venues eligible for this discount will be paying significantly more. Therefore, it has been suggested that PRS should do more to assist smaller operators in the context of the review.

One exhibitor suggested an alternative discount scheme to support small operators where any venue with under 50k annual admissions pay no royalties, and that any venues and chains with greater than 1m annual admissions are charged more to cover the difference.

Several members suggested that small independent exhibitors who are unable to generate similar box office revenues or admissions to the larger multiplexes should be charged based on a reduced pence per admission.

Several exhibitors noted that the percentage of box office metric should be maintained as a payment option/discount for smaller operators, as it provides a fairer system for cinemas with lower average ticket prices.

One exhibitor also voiced the need for a discount structure that benefits smaller operators with relatively high admissions and low-ticket prices. It was suggested that the discount could be supplied to cinemas based on the number of screens, average ticket price or type of business i.e., independent vs multiplex. As well as this, one exhibitor voiced there should be no charge for solo, twin, or triple screen cinemas.

6. Flexible music usage declarations and payment

Question: What are your thoughts on our proposal to allow exhibitors the option to declare and pay for music usage on a 6-month basis as well as annually?

One member commented that a flexible approach should make it easier for exhibitors to pay their annual royalties.

The option to declare usage on a 6-monthly or annual basis was widely acknowledged by several exhibitors. However, the majority of these stressed that a broader range of payment options should be made available, including a 30-day ‘in arrears’ approach, based on actual attendance rather than predicted admissions.

Many exhibitors noted the current advanced payment structure is anomalous with supplier contracts in other sectors.

Several exhibitors highlighted that the collection of advance payments was financially and administratively burdensome for small operators.

One suggestion stated that an ‘in arrears' payment of 30 days would allow smaller cinemas to better manage cash flow and mitigate risk of paying in advance for un-used admissions. It was also suggested that PRS should consider a contractual surcharge on late payers rather than discount for prompt payers.

One exhibitor also noted that the proposed increases would leave many cinema operators with no other option than to pay in instalments.

7. UKCA carers card

Question: What are your thoughts on the proposal to exclude admissions from valid UKCA carer card holders?

The proposal for PRS to remove the charges applied to UKCA Carer cards was misunderstood by several exhibitors, who believed PRS’ intention was to include eligible UKCA carer holders within overall admissions totals and therefore charge for these tickets.

These exhibitors strongly opposed the position and argued that the inclusion of carer admissions was unfair and immoral.

A group of exhibitors welcomed the exclusion of UKCA carer card holders from our royalty calculations.

8. Tariff annual royalty inflation mechanism

Question: What are your thoughts on the proposed inflation adjustment (mean of CPI/AWE)

One member welcomed the revised inflation calculation as this allowed the tariff royalty rates to appropriately track the changing value in the cinema market over time. Most exhibitors opposed our proposal to applying the mean of the percentages by which the CPI and AWE index change in the year from the previous August to inflate Tariff C royalty rates, noting that previous inflationary measure of 3.25 per cent significantly benefited PRS members during a period of low inflation.

One exhibitor noted that the fixed annual increase applied since 2005 provides cinema exhibitors and PRS for Music with certainty over future royalty payments. They further commented that fixed annual increase will support exhibitors budgeting and facilitate further investment in venues to enhance customer experience to maximise admissions.

Several exhibitors also noted that PRS for Music was ‘opportunistic’ with the timing of the proposal considering the current period of high inflation.

9: General thoughts on the consultation

Several members noted that the proposal was due and positive as it ensures Tariff C royalties represent the appropriate value in the current cinema market.

A member welcomed the simplicity of the proposal in comparison to the outgoing tariff.

Most exhibitors felt that the cinema market has not sufficiently recovered following the enforced Covid disruptions in 2020 and 2021. Despite successes such Oppenheimer and Barbie in summer 2023, admissions and box office receipts continue to remain below the equivalent pre-Covid 2019 levels.

An exhibitor noted that since the pandemic, over 20 cinemas have closed in the UK and it that increased royalty rates proposed will increase further pressure on individual businesses and will cause others to cease trading leading to a drop in income for PRS for Music.

Another exhibitor felt that the proposals might be more palatable once the cinema industry had recovered in a few years’ time.

Next steps

We are now in discussion with the UK Cinema Association (UKCA) to explore whether the proposed tariff should be amended to address the consultation responses. If you are not represented by UKCA and wish to give further feedback on the consultation or need further support, please contact us directly at cinemaconsultation@prsformusic.com. Please ensure you make any additional comments before 22 February 2024.

PRS for Music
1st Floor, Goldings House,
2 Hays Lane,
London SE1 2HB

www.prsformusic.com

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