



PRS for Music

Classical Music Concerts and Recitals Tariff 'LC'

## Public Consultation Document

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# Contents

Page

1	Introduction	3
1.1	PRS for Music	3
1.2	The Consultation Process	4
1.3	Tariff LC Background	5
1.4	Rationale for Review of Tariff LC	6
2	PRS for Music Proposals	8
3	Next steps	9
3.1	How to respond	9
3.2	Steps following the submission of responses	9

# 1. Introduction

## 1.1 PRS for Music

*PRS for Music* is undertaking a public consultation on the terms of Tariff LC (Live Classical) which is used to license the use of copyright music, controlled by *PRS for Music*, at classical music concerts and recitals.

*PRS for Music* is a collective management organisation (CMO), owned by and accountable to its songwriter, composer and publisher members. We license organisations to play, perform or make available copyright music, distributing the royalties from these licences to our members fairly and efficiently.

We represent the rights of 140,000 members, promoting and protecting their copyright. We also manage the rights of millions of songwriters, composers and music publishers who are members of affiliated collecting societies overseas.

We are a not for profit organisation. After deducting the costs of running our organisation, all the income we receive from licence fees is distributed back to our members.

For businesses and organisations, *PRS for Music* plays a valuable role. Our members have entrusted us to make their copyright-protected songs available to be used in exchange for fair compensation and we provide the required licences for this in a simple and cost-effective way. By doing this we give organisations, businesses and individuals the right legally to use millions of copyright-protected songs and musical compositions registered around the world, without the need to negotiate individual licensing terms for these works with the songwriters or publishers.

The *PRS for Music* Code of Conduct<sup>1</sup> outlines our commitments to existing and prospective licensees, including being transparent in our dealings with licensees. Where we are considering or proposing to make significant changes to a tariff or to introduce a new tariff, this includes undertaking fair, reasonable and proportionate consultations and negotiations.

We aim to set reasonable terms and to apply and administer our schemes fairly and consistently. The Copyright Tribunal has jurisdiction over all existing and proposed schemes operated by *PRS for Music*.

<sup>1</sup> Available at <http://www.prsformusic.com/codeofconduct/Pages/default.aspx>

## 1.2 The Consultation Process

*PRS for Music* is holding this public consultation on the terms of Tariff LC following a series of informal discussions and consultations with several key stakeholders and representative bodies in the period since March 2019. This public consultation provides an opportunity for all licensees under Tariff LC and other stakeholders with an interest in the tariff terms to give their views on the proposals developed by *PRS for Music*.

Hundreds of events are licensed annually under the terms of Tariff LC covering classical music concerts and recitals at which thousands of copyright-protected works are performed across the range of classical venues including major concert halls, cathedrals, theatres and local church halls.

Following a careful review by *PRS for Music* of how live music events are licensed (the Copyright Tribunal approved the revised terms of Tariff LP "Light and Popular", covering popular music concerts and festivals, on 14 May 2018), the purpose of this consultation is to outline and seek views on *PRS for Music's* proposals for revising Tariff LC to ensure that *PRS for Music* operates a fair tariff which is fit for the purpose of licensing classical music concerts and recitals.

The consultation will apply to all music usage licensed under *PRS for Music's* Tariff LC. Concerts, classical music festivals and works performed by chamber and other classical ensembles are therefore in the scope of the consultation.

*PRS for Music* is seeking responses to the consultation by **31 December 2019**. All responses received on or before this date will be reviewed. Details of how to respond are set out later in this document.

We will be writing to all current Tariff LC licensees and our members as well as representative bodies and other stakeholders, with details of the consultation and how to be involved. Information about the consultation will also be posted on our website and we invite responses from all interested parties.

Once the responses to the consultation have been reviewed, we will publish a summary of these responses along with our further proposals as to the terms of a revised Tariff LC.

## 1.3 Tariff LC Background

The current terms of Tariff LC were approved by the Copyright Tribunal in a Consent Order that was effective from 1 July 2003 and remained in force until 30 June 2013.

Under the current terms of Tariff LC where a classical music event has an average admission charge over £5.00, the royalty charged is a percentage of net admission receipts. The percentage is at either the fixed or variable rate. The standard fixed royalty rate is 4.8% of net admission receipts. (Where a licensee provides the reporting information specified in clause 5.1.2 of Tariff LC and pays their quarterly invoice within 28 days, the standard royalty in respect of that quarter is reduced to 4.5%).

The variable percentage rate depends on the proportion of the programme time occupied by the performance of controlled works for each event. This option is available to a licensee who opts in advance for the assessment of the royalty charge in this manner for all events in a whole licence year. Where a licensee complies with the required conditions the variable percentage royalty rate is 8%, applied pro-rata to the proportion of controlled works performed relative to the duration of all works performed at the event.

The fixed percentage and variable percentage royalty rates are subject to a minimum charge for each event in which controlled works are performed. For events with no admission charge or an average admission charge of £5.00 or less, there is a fixed charge for each event relative to the size of the audience admitted.

The fixed percentage and variable percentage rates are payable on the “net admission receipts” for the event, which Tariff LC defines as “all monies paid or payable in respect of admission charges (whatever the form of such charges) in connection with any concert or recital to which Tariff “LC” applies, less any party booking discounts and Value Added Tax”.

Live music is mostly licensed under *PRS for Music*'s Tariff LP (Live Popular) and Tariff LC (Live Classical) and (prior to the Copyright Tribunal decision on Tariff LP in 2018) LP had not been reviewed since 1988 and LC has not been reviewed since 2003.

*PRS for Music* members initiated a “Live” review in 2015 to examine how live performances of our members' work were licensed and whether the arrangements were up to date in the market-place, adequately reflecting the value of their rights.

Given the different markets and other factors relating to live popular and classical music, *PRS for Music* completed its review of Tariff LP in 2018 before developing proposals to update and revise the terms of Tariff LC.

The decision of the Copyright Tribunal on 14th May 2018 in relation to Tariff LP entailed a revision of the tariff terms, including an increase in the headline royalty rate for popular music concerts (from 3.0% to a headline rate of 4.2%) and a revised definition of “gross receipts”, which widened and clarified the revenue base (in particular to include booking fees) to which the royalty applies.

## 1.4 Rationale for Review of Tariff LC

### Historic factors

Historically there had been a differential between the (higher) Tariff LC rate and the rate for Tariff LP. This differential was effectively acknowledged and accepted by the live classical community in 2003 when the current headline LC rate of 4.8% was agreed in mediation when the prevailing LP rate (until May 2018) was 3.0%. Separately, the Tribunal's Order in 2003 approving the current Tariff LC terms stated expressly that it was to remain in force only until 30 June 2013, which suggests strongly that the Tribunal considered that the tariff terms were not set in stone and anticipated that they may need to be revisited in due course.

The members of *PRS for Music* believe this differential between the public performance value of classical and popular works is established and justified and is one of the factors considered to be critical by *PRS for Music* in this review given the recent increase in the rates for Tariff LP.

### Economic and market factors

*PRS for Music* has carefully researched changes to the live classical music market since 2003 alongside the current licensing of *PRS for Music* members' classical works. The findings from this analysis have been considered in making the proposals arising from this review, which are the subject of this consultation. An outline of the main *PRS for Music* findings and the implications of these is set out below.

### *Effect of subsidies/reliefs*

We estimate that in 2018 the total subsidy from the UK's Arts Council to all classical music organisations (excluding opera, ballet and local authority subsidies) amounted to £60M. The absolute level of subsidy is considerable and none of it is reflected in the value payable to *PRS for Music* members for the public performance of their works. The view of *PRS for Music* members is that if the live performance of classical music is valued as a matter of public policy (given that substantial public funds are paid to subsidise it, while none are paid to support popular music), it is also one reason why it is reasonable for *PRS for Music* to charge a proportionate differential value under Tariff LC, in relation to Tariff LP. It is the rate of Tariff LC which determines how much the composer will receive from the public performance of their work, while it is also logical to infer that if public subsidy is in part used to maintain lower ticket prices this will adversely affect composers income.

We have looked at the effect of orchestra tax relief introduced in 2016, as a significant economic development in the funding "eco-system" supporting the live performance of classical music. Although this does not directly benefit most of the major *PRS for Music* licensees under Tariff LC (since they are venues and promoters) it does so indirectly because of the economic benefit to contracted orchestras. A review of the accounts of four selected orchestras showed that in 2017 this tax relief accounted for an average of 7% of their incomes, which amounted to over £1M for the largest orchestra reviewed. This is also a differential in the treatment of classical music performances under public policy and for *PRS for Music* members further justifies a higher, differential charge for classical music.

In addition, our research on identifying whether the ticket prices of the subsidised classical concerts from which *PRS for Music* members mainly generate income from the public performance of their works have changed over the same period shows (with a few exceptions) an across-the-board fall in real terms. This contrasts with a general significant increase in ticket prices for commercial, popular music live events.



## *Other factors/indicators*

Our research into the public accounts and other publicly available financial information about the main licensees under Tariff LC shows that *PRS for Music* public performance licence fees are a marginal element of their cost base. Our analysis shows that in 2017 the top 21 licensees under Tariff LC (by value) paid the equivalent of 0.2% of their total turnover as Tariff LC licence fees. This highlights the disparity between the cost to licensees of exploiting our members' repertoire on the one hand and the actual return to those members from the tariff on the other.

Finally, in terms of comparators, the headline *PRS for Music* rate of 4.8% in Tariff LC is lower than the average rate charged by the collective management organisations in a range of major European territories (e.g. Germany, France, Italy, Spain, Switzerland and The Netherlands). The members of *PRS for Music* (publishers in particular) are also aware of course that the public performance of Grand Rights works is licensed directly for UK performances at royalty rates that are typically at least double the Tariff LC rate of 4.8%.

Effectively, in combination these economic factors have meant that *PRS for Music* members' whose classical works are licensed under Tariff LC are stuck in a declining position in terms of valuing their public performance income; this contrasts with orchestra and other performers' fees as well staff costs in classical music organisations which have increased over the period.

## **Qualitative factors**

There are several qualitative differences relating to the live performance of classical works compared to popular works which *PRS for Music* members consider justify the retaining of the proportionate differential in royalty rates between live classical and live popular music events:

- The skill and labour entailed in writing a classical work is normally greater than in relation to a popular work, and therefore entails a far longer period of effort;
- Where classical music is commissioned it is generally for the purpose of being performed live (rather than for other types of exploitation);
- Live performance(s) of the work may provide the only income stream for the composer;
- The specific work being performed is critical in the promotion and marketing of classical concerts and (in contrast to popular live events) is always specified;
- The public performance of commissioned classical works is vital to the critical reception and public reputation of performing groups and venues alike; creating a "premium" value for the premiere of classical work which has no equivalent in the live performance of popular music.

The review findings above have been considered in forming the *PRS for Music* proposals, and we have also had an opportunity to reflect on the points that arose in our informal discussions with some key stakeholders we have met on an informal basis in recent months to discuss Tariff LC. We have considered the points that were made by some stakeholders in these discussions relating to the artistic and budgeting cycles of venues, performing groups and promoters. We have therefore proposed to phase in an increase to the Tariff LC royalty rate. In addition, we would be willing to discuss in further detail the definition of specific, non-commercial circumstances in which complimentary tickets would be excluded from the definition of "gross receipts" to which the Tariff LC royalty is applied. We discussed with some stakeholders including the cost of concert programmes in the definition of gross receipts and would welcome further views on this. We would also welcome views on whether there should be a dedicated rate within Tariff LC for the public performance of television and film scores. Finally, we would be willing to discuss the reporting requirements in relation to gross receipts to ensure that full and accurate reporting is made to *PRS for Music* on an administratively friendly basis for licensees.

## 2. PRS for Music Proposals

In outline, the key *PRS for Music* proposals for revising the terms of Tariff LC, and on which wider views are now sought are:

- (i) With effect from 1st January 2020 to increase the Tariff LC headline rate (currently 4.8%) to 5.3%, and subsequently to 6.3% on 1 January 2021 and to 7.3% on 1 January 2022 as shown below (the variable rate will increase on a proportionate basis);

Date	1 January 2020	1 January 2021	1 January 2022
<b>Tariff LC headline rate</b>	5.3%	6.3%	7.3%
<b>Tariff LC variable percentage</b>	8.8%	10.4%	12.0%

It is proposed that the revised rates above would apply to all events within the scope of the tariff in respect of which the general sale of tickets began on or after 1 January 2020, provided that the revised rates would in any event always apply to any event taking place on or after 1 January 2021.

- (ii) With effect from 1st January 2020 to implement revised Tariff LC terms including a definition of "gross receipts" to replace the current definition of "net admission receipts", in substantially the same form as the definition of Gross Receipts set out in *PRS for Music's* Tribunal approved Tariff LP, with appropriate changes made in respect of the live classical music market. Each element of the proposed Gross Receipts definition is summarised below:

Gross Receipts Definition	Effect of Definition
	The royalty is applicable to all monies paid or payable by the consumer in respect of admissions charges specified in (a) to (g) below:
a.	The total aggregate price paid for admission purchased on primary sales platforms;
b.	The total aggregate price paid for admission purchased on secondary sales platforms, where the tickets have been directly allocated to those platforms including by third parties;
c.	The total aggregate price paid for single event admission to boxes and suites, where hospitality such as food and drink or other private and exclusive facilities are provided within the ticket price;
d.	An appropriate proportion of the total aggregate price paid as part of any multi-event pre-purchase admission to boxes and suite;
e.	The equivalent value of complimentary or discounted admissions that are part of any commercial arrangement from which revenues are earned by the licensee;
f.	The equivalent value of any optional features purchased by the consumer that have a nexus with the public performance of <i>PRS for Music</i> repertoire;
g.	The total aggregate value of all ticket booking, administration, service, handling or like fees and charges;
<b>Exclusions</b>	The royalty does not apply to certain specific exclusions.

- (iii) A proposed revised draft of Tariff LC reflecting the changes above and other consequential revisions is attached.

- (iv) The provision in the current Tariff LC (para. 4.2) relating to Events with no / low admission charge does not appear in the proposal. Live events with no admission charge, or a very low admission charge will be licensed by *PRS for Music* under a new, separate tariff. The revised Tariff LC therefore proposes to cover those live classical events with an average admission charge of at least £5.00.



## 3. Next steps

### 3.1 How to respond

Respondents should complete the consultation questionnaire either by submitting a [response online](#) or by using the [printable form](#) and emailing it to [LC.consultation@prsformusic.com](mailto:LC.consultation@prsformusic.com), by **31 December 2019**, providing evidence in support of any answers.

We will consider all responses that we receive but would ask that you follow the prescribed format in the consultation questionnaire, to assist us in reviewing comments efficiently and accurately.

If you are licensed under Tariff LC in multiple capacities (e.g. as a concert promoter but also as a venue owner or classical performing group), please submit separate consultation questionnaires to reflect your position in each of these capacities. If you are a *PRS for Music* member, please answer only those questions in the consultation questionnaire that are relevant to you.

If you wish us to keep any of or all your response confidential, or if you wish to provide confidential data in support of your response, please indicate this clearly in the consultation questionnaire. We will assume that any information not marked as confidential can be made available to third parties or referred to in documents made available to the public by us. Please also indicate whether you object to us naming you in any published material which summarises or includes quotes from responses.

If you have any questions in relation to the consultation itself, responding to the consultation or any other relevant matter, please contact us at [LC.consultation@prsformusic.com](mailto:LC.consultation@prsformusic.com).

Following the deadline for submission of consultation responses, we will carry out a review of all responses received and publish a summary of these on our website.

### 3.2 Steps following the submission of responses

*PRS for Music* will issue a summary of the responses to this consultation and make final proposals for a revision of the terms of Tariff LC before the end of 2019.



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