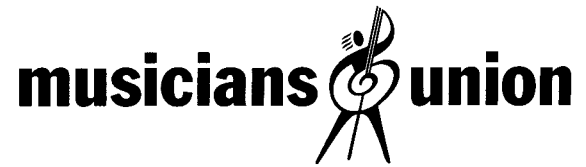


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Scotland & N Ireland Region

1 Woodside Terrace, Glasgow G3 7UY

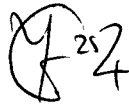
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Mr Barry Matthews
Scottish Executive
1-A North
Cultural Policy
Victoria Quay
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Acknowledged. 
81265350
Permission to put on web.

26 March 2007

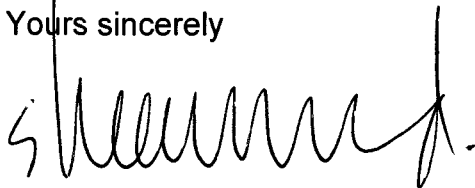
Dear Barry

Musicians' Union repose to the Draft Culture Bill consultation

Please find enclosed the Musicians' Union response to the draft Culture Bill consultation. The response includes the Executive Summary of the 'Status Quo...?' Report.

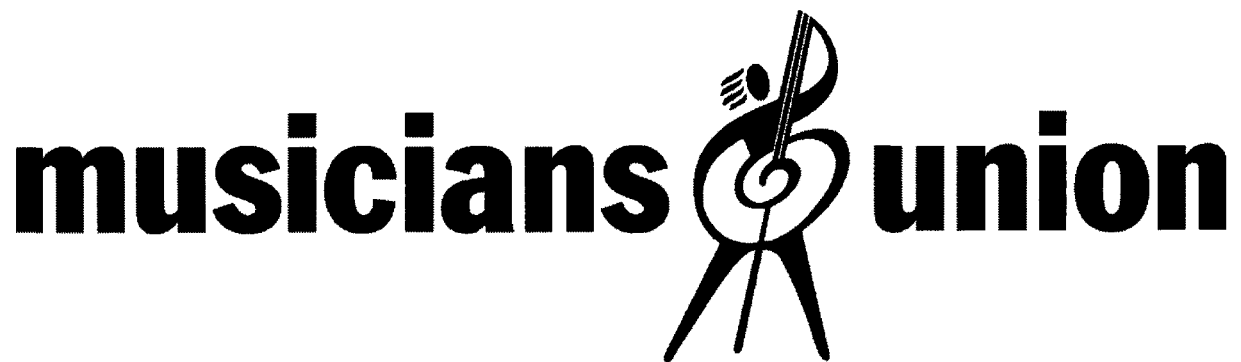
I also enclose the completed Annex C, respondent information form.

Yours sincerely



Sheena Macdonald
Regional Organiser

Encs



Draft Culture (Scotland) Bill
Consultation Document

Response from the Musicians'
Union

March 2007

1. Introduction

1.1 The Scottish Executive recently published a Consultation Document on the draft Culture (Scotland) Bill. The Musicians' Union were among those invited to comment.

1.2 Our understanding is that the main purposes of the draft Bill are to:

- enable the provision of 'local cultural entitlements' by local authorities;
- establish a new public body, "Creative Scotland"; and to
- amend legislation related to the National Collections.

1.3 We are grateful for the opportunity to offer comments on the draft Bill.

2. The Musicians' Union

2.1 Founded in 1893, the Musicians' Union represents, protects, and campaigns on behalf of over 33,000 members in the UK working in all sectors of the music business. With over 2,100 members in Scotland, we include every musician whose professional work involves the composition, performance, recording, teaching and participation in music related activity, whether in the classroom, theatre, live music venue, or concert hall stage.

2.2 The Musicians' Union is the most influential organisation representing professional musicians throughout the UK; promoting the rights and interests of members and campaigning to protect and promote work opportunities for musicians across all musical genres.

2.3 The Musicians' Union provides a wide range of services to members, including legal and contract advice, financial and insurance services; learning and networking opportunities and careers and business advice. The Musicians' Union also negotiates agreements with major employers and industries bodies including the BBC, the Theatre Management Association, the Association of British Orchestras and the British Phonographic Industry.

3. General Comments

3.1 The Musicians' Union believes' that the draft Culture Bill is a missed opportunity.

3.2 The First Minister Jack McConnell, in his St Andrew's Day speech of 2003 set out his ambition to have culture at the very heart of government and public policy. The Executive commissioned, at a cost of £½ million, the Cultural Commission whose final report was published in June 2005. The Executive's response to the report, 'Scotland's Culture' published in January 2006 diluted, disregarded, or ignored the majority of the key recommendations made by the Cultural Commission.

3.3 The Musicians' Union does not believe the draft Bill or draft guidance provides the infrastructure and mechanisms to deliver an enhanced future for Scotland's culture here and internationally, or the development of our creative industries, or recognise that no matter what employment status they may have that the artist makes a distinct and vital contribution to both society and the economy and that this must be recognised in a more active and positive way.

4. Local Cultural Entitlements

- 4.1 Section Two of the consultation document and the draft guidance to accompany the Bill relate to the establishment of 'local cultural entitlements'.
- 4.2 The Musicians' Union believes that the provision of local cultural entitlements would be a positive step towards ensuring "culture sits at the very heart of the nation's life and identity"¹ and benefit our communities. We would welcome the employment of a critical mass of professional artists and performers in delivering both educational opportunities and access to amateur performance opportunities and cultural activities at a local level.
- 4.3 However, the draft Bill does not deliver this opportunity.
- 4.4 The Bill only requires that local authorities 'have regard' to guidance issued by the Executive about cultural entitlements. There is no guarantee of entitlement.
- 4.5 The Musicians' Union believes that if citizens have cultural entitlements, then local authorities, along with others, must have cultural responsibilities.
- 4.6 We are concerned that the draft Bill will lead only to a box ticking exercise – with local authorities only being required to provide information about their cultural planning, how they are considering using cultural activity, how they do, how they tell the community it exists, and what if any evidence there is about what results this might have achieved – and not the provision of access to quality cultural activities.
- 4.7 We believe that local authorities who have a commitment – both in terms of policy and resources – to providing local cultural activities will continue to do so, and that those who do not will continue not to.
- 4.8 The draft Bill does not provide a robust enough statutory framework to deliver to local citizens and communities, and equally crucially there does not appear to be any additional funding to support the establishment and implementation of entitlements.
- 4.9 We believe that with investment in resources and a statutory requirement to deliver cultural entitlements – without being prescriptive about the what and the how but with national standards – local authorities would invest in, for example, local theatre productions, arts venues, music performance spaces and cultural projects which would increase participation in cultural activities, provide employment opportunities, and create the conditions in which talent can flourish.
- 4.10 The Youth Music Initiative (YMI), has empowered local authorities to invest in music tuition provision and created a layer of young people who have benefited from access to music creation. The YMI target that by 2006 all schoolchildren will have had access to one year's free music tuition by the time they reach Primary 6 has been reached. We welcome the publication of the National Youth Music Strategy 2006-2008 which we hope will build on the success of the YMI so far and lead to increased government and local authority investment.

¹ Scotland's Culture, Cultar na h-Alba January 2006

5. Creative Scotland

5.1 Section Three of the consultation document relates to the establishment of a new national cultural development body, Creative Scotland.

5.2 Establishment of Creative Scotland

5.2.1 The Musicians' Union is concerned that the establishment of Creative Scotland will result in confusion, disarray and the unnecessary costs of re-organisation and re-branding. We believe that a more appropriate approach would be to reform and redefine the existing bodies, Scottish Arts Council and Scottish Screen.

5.3 Business Support and Advice

5.3.1 It is stated in the consultation document that the Executive is considering ... "to what extent business advice and support to these industries should be provided in future by the Enterprise Networks and/or by Creative Scotland".

5.3.2 We understand that Creative Scotland will have a role in supporting the creative industries; however, we believe that any business advice and support role must add value to existing provision. The Cultural Enterprise Offices already provides services and support which recognise the nature and needs of individuals and small businesses; assistance is available to businesses through local enterprise companies and their gateways; Arts and Business Scotland provides a range of business services and expertise to arts organisations.

5.3.3 Highlands and Islands Enterprise (HIE) has made a commitment to and played a leading role in promoting economic and social and cultural development over recent years. In particular HIE has made a policy and resources commitment to creating an infrastructure which will support the music industry with the aim of having local businesses which can compete on an international stage – this commitment is already resulting in successes.

5.3.4 We believe there is a role for Creative Scotland in having a strategic overview of the business support and advice available across Scotland and working with these service providers and others in developing a strategy to support the creative industries.

5.3.5 We welcome the announcement made by the Enterprise Minister in February 2007 of the establishment of the Scottish Music Futures Fund and better co-ordinated support for the music industry from the enterprise networks.

5.4 Ministerial Direction

5.4.1 Schedule 1.16 (i) states;

"The Scottish Ministers may –

(a) give directions of a general or specific character

(b) issue guidance to Creative Scotland as to the exercise of Creative Scotland's functions

5.4.2 The Musicians' Union is concerned that this is open to wide interpretation. We do not believe that Ministers or civil servants should have the power to direct Creative Scotland on artistic or creative decisions.

6. National Companies

6.1 Musicians' Union members are employed and engaged by the Royal Scottish National Orchestra, Scottish Chamber Orchestra, Scottish Ballet, and Scottish Opera.

6.2 The draft Bill is silent on the changes in the funding arrangements for the National Companies. From 1 April 2007 these companies will be funded by the Executive and managed by civil servants.

6.3 There are a number of matters relating to these changes which need clarification and explanation.

6.4 What are the criteria used to determine whether an organisation is a national company? What are the remit and responsibilities of a national company? What requirements are there in terms of repertoire and artistic policy, over and above excellence, – will they be responsible for acting as the nation's curators and promoters of existing and new indigenous work? What are the accountabilities for a national company – will these include fair employment standards?

7. Status of the Artist

7.1 The draft Bill is silent about the status of the artist.

7.2 This Bill could have been an opportunity to have set up a much more robust structure for the training, support and representation of musicians in Scotland.

7.3 In our view cultural provision and 'entitlements' are too often delivered at the expense of professional artists who are expected to work for poverty wages, or in some cases for nothing. This Bill should contain provisions for improving the training and career paths of musicians working in Scotland, and for guaranteeing agreed minimum working conditions on all publicly-funded projects.

7.4 We believe artists should help design policy and infrastructure and therefore the Bill should be ensuring the representation of practising artists on the boards or councils of all bodies covered by the Bill.

7.5 The Musicians Union and the British Academy of Composers & Songwriters recently published the report 'Status Quo...?'² which looks at the status of composers, performers and songwriters in the creative economy and recommends policies and practices to further increase the contribution of for music creators.

7.6 These include;

- Understanding the role of artists in improving the quality of life
- Having artists help design policy and infrastructure

² Status Quo...? An exploration of the status of composers, performers and songwriters in the UK's creative economy. A consultancy report commissioned by the Musicians' Union & BACS Andrew Missingham 2006.

- Better protecting artists in the changing technological environments
- Making premises available for rehearsals and live performance
- Elevating the arts in education to have equal status – teaching the arts and using the arts to inform creative learning
- Understanding that new technology can't substitute direct contact and that success depends on quality
- Allowing artists to better control the exploitation of their work
- Helping artists receive fair pay for their work
- Artists' collective bargaining should not be restricted by competition law
- Helping artists at the beginning of their careers
- Creating an appropriate framework of laws for tax, social security and employment

7.7 Whilst some of these issues may be reserved by the Westminster government we would suggest that the draft Culture Bill needs to address the need for policies and practices in the areas outlined in the 'Status Quo...?' Report in order to deliver the First Minister's ambition to have culture at the very heart of government and public policy.

7.8 The Executive Summary of the 'Status Quo...?' Report is attached to this submission and copies of the full report are available from the Musicians' Union.

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The Executive Summary of:

**A Consultancy Report Commissioned by
the Musicians' Union and
The British Academy of Composers and Songwriters**

FOR A COPY OF THE FULL REPORT PLEASE CONTACT
THE MUSICIANS' UNION ON
020 78405512

Status Quo...?

An exploration of the status of composers, performers and songwriters in UK's creative economy

Executive Summary

Overview

This report explores the status of music creators' to the UK's growing creative economy. It uses the interchangeable terms "artists" and "creators" to cover all composers, songwriters and performers of musical work who create a new piece of intellectual property (IP), either in a new musical work or a new performance of a musical work.

It is the government's expressed aim to "make the UK the world's creative hub". However, most existing creative industries initiatives have focused upon facilitating the *exploitation* of IP, often within existing or modified forms of current business models, as opposed to encouraging the *creation* of IP which will be the raw material of any existing or emerging business model. This one-sided focus will not lead to the best results for the UK economy.

We are living in a time of market-place upheaval in the creative economy where artists (as the creators of IP, and distinct cultural identity) are one of the only constants in a variable world. Building strategies which allow artists to better sustain their careers and facilitate the full, fair and sustained exploitation of UK artists' IP, will significantly improve the chances achieving our goal, and leading the world in the creative economy in the 21st Century. If we are to do so, the status quo cannot remain.

To explore how we can improve our chances of success in the future, we need to see the strategies that we put in place in the UK in their international context at the highest level. In 1980 UNESCO produced recommendations regarding the status of the artist and in 1997 held a World Congress on the implementation of these recommendations which adopted a Final Declaration. If we are to understand the conditions under which artists work, and better coordinate our approach to their sector to maximise its economic contribution, the 1997 Final Declaration on the Status of the Artist provides a useful benchmark and starting point for exploration.

The UK's music business offers us a telling case study of how our creative economy might develop. Current trends suggest music will form an increasingly significant component of our economy, not just as an industry in its own right, but also as a lever for trade in many other industries. This report will therefore explore the status of artists in the field of music, using the 1997 Final Declaration on the Status of the Artist as a framework for study.

Our Recommendations

Having explored the status of composers, performers and songwriters within the creative economy, benchmarked against key clauses in the 1997 Final declaration of the World Congress on the Status of the Artist, this report recommends the following policies and practices to increase the contribution of music creators to the creative economy:

Creating Sustainable Careers

- Artists are viewed as a distinct and separate employment category
- The Copyright Design and Patents Act is amended to both prohibit the moral rights waiver and remove the need to 'assert' moral rights before the creator of a work must be attributed with its creation
- The Recommendations of the McAndrew Report of 2002 are used as a basis for reviewing tax and social security provision for artists

Rewarding Research & Development and Disseminating Knowledge

- Guidelines for corporation tax credits for R&D are changed so that the arts are included within their scope, means of similarly rewarding R&D for individuals are explored and the government speaks directly to the recording and publishing industry to find ways that the industry itself could play its part in sustaining the careers of young artists
- Support is made available that enables musicians and composers to find and exploit new and emerging routes to market by linking musicians to developers of emerging technology
- A central online portal is created, holding all information (for instance, tax, employment law, social security provision, sources of support and advice) that relates to creative businesses and individuals, both to provide guidance to industry professionals and to encourage a joined-up approach to the creative industries within government
- Trade associations and trade unions should be actively encouraged by government to disseminate information regarding best practice, for instance by allowing them to claim charitable status for educational work
- Artists are included from the start in every decision making process that either has a cultural dimension, or affects the cultural sector

Stimulating the Market

- Third-Party exploitation of copyright should be by license only
- Unexploited IP should be returned to the creator so they can both minimise consumers reverting to sourcing this IP illegally, and to allow the creator to find alternative, legal routes to market for their work
- Contracts are presumed in the favour of the IP creator where they are unspecific, giving the IP creator more autonomy and financial security and focusing rights exploiters on how they will bring to market the IP they are licensing
- All digitised copies of music should be encoded with the details of all rights holders, including details of the composers and musicians who have performed and written the material, both to protect the UK's IP from abuse and to make it easier for the consumer to find and buy the music that they want
- Performers' rights, in recorded music are extended, subject to conditions
- Longitudinal research and legislative amendment (where necessary) are taken up to ensure that the Licensing Act is indeed a "music friendly act"

Safeguarding our Intellectual Property

- To protect our creative economy, the government reviews the methods of enforcement available for IP infringement, including infringement of moral rights
- Live event promoters adopt an 'honesty code' and where necessary they alert audience where performers are miming
- Measures are enacted that oblige digital carriers and platform operators to take responsibility for IP abuses that happen via their services and contribute towards the supply of the music that their services rely on.
- In the same way that the EU recognises the benefit of professional footballers' collective negotiation, the government works with the EU to similarly recognise the need for a body such as the UK's Musicians' Union to collectively bargain on behalf of creators and performers, regardless of their employment status.

Developing Education and Skills

- Encourage young people to acquire the full set of skills that may enable them to enter the profession and increase the amount of more broadly held "tacit" knowledge relating to music in the UK by making music a core curriculum subject. Music business and other related skills should also be taught in the curriculum as part of this core subject
- Local authorities take up the initiative of the Live Music Forum that has appealed for at least one unused building per authority to be made available for music rehearsal
- The government continues to invest in the New Deal for Musicians and develop this pioneering scheme where appropriate