

REQUEST FOR DMPC DECISION – DMPCD 2015 35

Title: Performing Rights Society Licence

Executive Summary:

This is a request to approve a single tender action to award a contract to the value of £193,206 to the Performing Rights Society (PRS) for a licence which is a requirement under the Copyright, Designs and Patents Act 1988.

Recommendation:

The DMPC is asked to approve the award of a contract at a value of £193,206 to the Performing Rights Society for a licence for the period 1 April 2015 to 31 March 2016.

To Note – MOPAC will work with the MPS to explore options to reduce future payments.

Deputy Mayor for Policing And Crime

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct. Any such interests are recorded below.

The above request has my approval.

Signature



Date

26/3/2015

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DMPC

Decision required – supporting report

1. Introduction and background

- 1.1. The copyright relating to music and lyrics is owned by the writers and composers and is covered by the Performing Rights Society (PRS) licence which MOPAC/MPS have been compliant with since 2006 by annually purchasing a licence based on the staff levels in the MPS.
- 1.2. The rights for PRS to charge are enshrined in the Copyright, Design and Patents Act 1998.

2. Issues for consideration

- 2.1. The recharging formula has been agreed by the Association of Chief Police Officers (ACPO) on behalf of all forces and is based on the number of employees an organisation employs and the number of buildings it uses.

3. Financial Comments

- 3.1. The cost of the 2015/16 licence will be met from within existing budgets.
- 3.2. The 2015/16 licence cost is £6k higher than the 2014/15 licence this is due a 1% increase in tariff rate and an increase in the MPS establishment.

4. Legal Comments

- 4.1. The MOPAC is required by law to hold a valid PRS licence to play music, including live performances, on its premises. In addition, when playing recorded music a valid Phonographic Performance Limited licence is required. If music is played in public without valid licences, the MOPAC will be in breach of the Copyright, Design and Patents Act 1998.
- 4.2. The PRS is the only economic operator which can licence the use of these exclusive rights to MOPAC; therefore, the MOPAC can obtain a licence directly from the PRS in full compliance with the Public Contract Regulations 2006.

5. Equality Comments

- 5.1. Any equality and diversity implications linked to the provision of the PRS licence are assumed to have been considered under the Copyright, Design and Patents Act 1998.

6. Background/supporting papers

- 6.1. MPS Paper

Public access to information

Information in this form is subject to the Freedom of Information Act 2000 (FOIA) and other legislation. Part 1 of this form will be made available on the MOPAC website within 1 working day of approval. Any facts/advice/recommendations that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would compromise the implementation of the decision being approved.

Is the publication of **this** form to be deferred? NO

If yes, for what reason:

Until what date (if known):

Is there a **part 2** form – NO

If yes, for what reason:

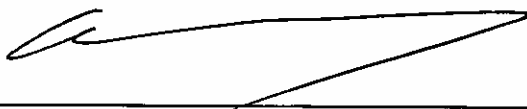
ORIGINATING OFFICER DECLARATION:

	<i>Tick to confirm statement (✓)</i>
Head of Unit: Annabel Cowell has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	✓
Legal Advice: The MPS legal team has been consulted on the proposal.	✓
Financial Advice: The Head of Strategic Finance and Resource Management has been consulted on this proposal.	✓
Equalities Advice: Equality and diversity issues are covered in the body of the report.	✓

OFFICER APPROVAL**Chief Operating Officer**

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Deputy Mayor for Policing and Crime.

Signature



Date 26/3/15

1000

1000

1000

Not Protectively Marked

Management Board Investments & Resources - 24 March 2015

Single Tender Action Request

THE PROVISION OF A PERFORMING RIGHTS SOCIETY (PRS) LICENCE

Report by Director of Digital Policing

EXECUTIVE SUMMARY

The Mayors Office for Policing And Crime (MOPAC) / The Metropolitan Police Service (MPS) is required to hold a Performing Rights Society (PRS) Licence under the Copyright Designs and Patents Act 1988.

A. RECOMMENDATIONS - That

1. **Approval is given to pay the licence fees to Performing Rights Society, the only official suppliers of the licence. The cost of the 2015-16 Licence is £193,205.81, commencing on the 1st April 2015 and ending on 31st March 2016.**

B. SUPPORTING INFORMATION

1. The copyright relating to music and lyrics is owned by the writers and composers and is covered by the Performing Rights Society (PRS) licence which the MPS have been compliant with since 2006 by annually purchasing a licence based on the staff levels in the MPS.
2. The right for PRS to charge is enshrined in the Copyright, Design and Patents Act 1988. So where a musical work is performed in public either live or from any sound recording source (radio, TV, CD, MP3 etc), the rights of composer and publisher (as assigned to PRS) are engaged.
3. The charging regime formula has been agreed by the Association of Chief Police Officers (ACPO) on behalf of all Forces and is based on the number of employees an organisation employs and the number of buildings it uses.
4. A no music policy would need to be put in place if the MPS want to remove this cost. In order for this to be effective the MPS would have to source workstations that did not have speakers/sound cards. This measure is not practical as internal video messages and some forms of training would not be possible. A total ban on devices such as: radio, TV, mobile phones, MP3, CD etc. Removing all broadcast devices across the estate was deemed impractical due to the number of buildings and difficulty in imposing such a policy.

Not Protectively Marked

5. The Deputy Mayor approved the backdated payment of Phonographic Performance Limited (PPL) Licence fees in December 2013. PPL are a separate licensing authority which also protects the copyright relating to the playing of music. MPS Management Board tasked the Deputy Commissioner to conduct an urgent review to establish if the PPL and PRS licences were required in the future. This review concluded it was appropriate to continue paying the licenses. In particular, it was noted one of the two forces contacted who had ceased to pay the licence fees has subsequently resumed as enforcing compliance was apparently costing more than paying the Licence fee.

C. OTHER ORGANISATIONAL & COMMUNITY IMPLICATIONS

Equality and Diversity Impact

1. Any equality and diversity implications linked to the provision of the PRS licence are assumed to have been considered under the Copyright, Design and Patents Act 1988.

Financial Implications

2. The cost of the 15/16 PRS licence (£193k) will be met from within Locally Delivered Support Services budgets, which has a budget provision of £195k. Given that a primary driver of the licence fee is related to staff numbers, if these reduce in future years there is expected to be a correlating reduction in the contract price.

Value for Money Statement

3. The cost of the licence has increased year on year in line with an increased of staff numbers across the business and a 1% increase in the tariff rate used (tariff used is 1).
4. The increase in staff numbers has been applied in the 2015 pricing, and the first quote came in at £198,203.32. Procurement Services challenged this as this is more than a 1% rise in the tariff, based on the current number of employees.
5. Subsequently PRS revised the quote and the cost for 2015 is £193,205.81, which is in line with the 1% tariff increase and the current number of MPS employees. This is a saving of £4997.51 or 2.5% on the original quote.

	Staff no.
2014	44,226
2015	44,880

Legal Implications

6. The MOPAC is required by law to hold a valid PRS licence to play music, including live performances, on its premises. In addition, when playing recorded music a valid Phonographic Performance Limited ("PPL") licence is required. If music is 'played in public', without valid PRS and a PPL licence being in place, the MOPAC will be in breach of the CDPA. This will expose the organisation to risk of civil action and potentially prosecution for copyright infringement.
7. The Public Contracts Regulations 2015 (the Regulations) apply to contracting authorities, such as the MOPAC, seeking offers for proposed public service contracts, which exceed the value of £172,514. As the value of the licence is over that threshold then the Regulations apply.
8. The MOPAC can rely on regulation 32(2)(b)(iii) which provides that a contracting authority can negotiate directly with an economic operator (i.e. the PRS) when, for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator. The PRS is the only economic operator which can licence the use of these exclusive rights to the MOPAC therefore, the MOPAC can obtain a licence directly from the PRS in full compliance with the Regulations.
9. Under paragraph 4.13 of the MOPAC Scheme of Delegation, authority must be sought from the DMPC for all contract exemptions valued at £100,000 or above.

Environmental Implications

10. Any environmental implications linked to the provision of the PRS licence are assumed to have been considered under the Copyright, Design and Patents Act 1988.

Risk (including Health and Safety) Implications

11. Any risks linked to the provision of the PRS licence are assumed to have been considered under the Copyright, Design and Patents Act 1988.

Report author: Jack Nash, Category Analyst, 0207 161 1507

Background papers:

None

PART 2: EXEMPT SECTION OF THE REPORT

None