

CURRENT TERM OF PROTECTION ON SOUND RECORDINGS AND PERFORMERS' RIGHTS

1) I am in broad agreement with the suggestion that protection on sound recordings be extended, although I would suggest the longer of seventy years or the lifetime of the performer rather than the 45 years suggested. Alternatively, despite the Sonny Bono Copyright Extension Term Act introduced in America in 1998, several other countries have adopted a period of seventy years.

2) It is my understanding that the major record companies (and certain artists) are concerned with Rights that are to expire within the next few years (i.e. the Elvis Presley recordings, etc.), rather than Rights long expired. A further extension in addition to the current fifty years is not unreasonable, although it pre-supposes that interest in these artists will be as strong twenty years hence as it is now.

3) However, it appears that if Rights were extended retrospectively to 95 years, then this could mean that all sound recordings after about 1910 would become subject again to copyright, despite many of them having been in the public domain for over forty years. Should this happen, then it could present problems in several areas:-

a) The major companies have little or no interest in historic material, be it classical, jazz, dance music or music-hall. Indeed, they hold few original issues of these, let alone metal stampers, and in some cases might well find it difficult to prove title to Rights. Nearly all that has survived from the years prior to the Second World War is in the hands of private collectors and one or two archives

b) Although there is a market for re-issues of historic material, that market is fairly small, and for many years has been supplied by small re-issue companies who have produced limited quantities of pressings of recordings out of copyright, usually at a modest profit only. (In some cases, sales of such CDs would be of the order of 100 copies or less.) These small producers have supplied re-issues of recordings that the major companies have no interest in producing, and would probably regard as not being a viable proposition.

So far as I am aware, other royalties are always paid where required by these small producers, and in those rare instances where it is possible, the original artist is also consulted.

If these recordings were suddenly to become the subject of copyright again, such re-issues would cease and much historic material would no longer be available.

COPYRIGHT EXCEPTIONS-FAIR USE AND DEALING

The earliest sound recordings are now more than a century old, and part of the purpose behind re-issue companies is to ensure that this recorded legacy is preserved. The original recordings will not survive for ever, and therefore some preservation must take place to ensure they survive in some form. (In the case of some early Music Hall artists, only single copies of their recordings have survived.) Given their lamentable past record in this direction, it is most unlikely the major companies will show any interest in such preservation.

Should it be necessary, for whatever reason, to extend Rights retrospectively, then there should be some form of "fair dealing" clause by which the limited issues of recordings of historical and academic importance are permitted.

An alternative to this would be that where an Owner of Rights has not exercised those Rights for an agreed period of time, then they may not unreasonably refuse the use of those Rights to others.

COPYRIGHT -DESIGNATED ARCHIVE STATUS

I am not quite certain as to what is being proposed here; the on-line notes do not really address this subject. On the assumption that this refers to historic recordings being given some special status or exemption, then I would comment that this might go some way to meeting the concerns regarding preservation and ongoing availability of early recordings.

OTHER COMMENTS

For about twenty years until retirement, I held the position of Licensing Manager at the British Society of Plant Breeders, an organisation set up to administer Plant Variety Rights on behalf of Plant Breeders. One of the conditions for holding a Grant of Plant Variety Rights was that the holder of those Rights should at all times be able to supply a minimum quantity of Breeders Seed for further multiplication. A further condition was that a licence to others must not be unreasonably refused. In the event of the Controller of Plant Variety Rights being made aware of transgressions, he had the power to suspend or even terminate the Rights in respect of that variety, or order that a licence be issued. This was enshrined in the Plant Varieties and Seeds Act, 1964, and continued in the Plant Varieties Act, 1983. Whilst I accept that copyright in Sound Recordings is a different area of Intellectual Property Rights, I have always found it strange that similar restrictions did not apply.