

Date 20th April, 2006

Dear Mr Gowers,

Copyright term: sound recordings

I write in my individual capacity as a songwriter, arranger, singer and conductor, but also as Chairman of Dramatico Entertainment Ltd, a small but successful entertainment company whose most instantly recognisable activity is as management and record label proprietors marketing and promoting the work of 21- year old singer Katie Melua, Britain's biggest selling female artist for the past two years. Last year, our label despite having only eight employees, managed to come ninth on the Billboard magazine chart of record label market share in the UK. We are active and successful to various degrees throughout the world but particularly strong in Europe, where Ms Melua has achieved number one or top three placings with both her albums in most continental European countries. Points of reference for myself include production writing and singing all of the Wombles¹ records in the seventies, writing and producing ³Bright Eyes² for Art Garfunkel and writing and producing for such acts as Steeleye Span, Elkie Brookes, David Essex, Cliff Richard, Vanessa Mae and more recently, Ms Melua. I am also active in the classical genre, having arranged for and conducted many of the major Symphony Orchestras. I have served on the board of the Performing Right Society for many years in the past, and currently sit on the board of the British Phonographic Industry and the IFPI (European Board).

The subject of copyright term for sound recordings is something I have had strong feelings about for many years. I am aware that this a subject about which many of the same things will inevitably have been said and yet not to add my voice would, even though I am making the same or similar points, seem to me to be a dereliction of my duty to contribute. I am particularly aware of the submission made by Ian Anderson of the group Jethro Tull, which seems to me to put the points very well, and more succinctly probably than I shall, here. I fully support his position on every point he makes.

Much statistical information is already available to you about the longer terms of copyright for recordings in other countries. I shall not burden you with a repetition of those figures, but would point out that if a copyright extension is not the result of current efforts, I, for one, would relocate both my copyright-owning entity and the execution of all my recordings to the United States or other more copyright-friendly territory.

Before going into the detail of my arguments, may I confess that I am a bit of a hard-liner on copyright. I do realise that the Public Domain exists so that we can all enjoy our cultural heritage without having to pay through the nose for it, if at all. Nevertheless, if one builds a beautiful house, should it fall automatically into the ownership of the National Trust fifty years after it is built, causing the eviction of the now elderly person who built it? My opening position (although I realise that it is untenably

idealistic) is that copyright should never expire. Property is property, whether intellectual or physical. I can see no reason why it should not remain protected forever by law, unless it is gifted to the Public Domain in the will of its creator or by his or her estate.

This is not just a matter of finance, it is also a matter of protecting the integrity of the work. Under the 1988 Copyright Act (and its 1956 predecessor) I can prevent others from changing the words, tune or arrangement of my copyright work. I am talking here of both song copyrights and recorded copyrights although I am aware that it is recorded copyright that is the issue currently. When copyright expires, we can all jump on and plunder the work, like so many hyenas tearing apart a carcass. Was it right that in 1975 I could cause Mozart to spin gyroscopically in his grave when I ³borrowed² his Jupiter Symphony, added silly lyrics and converted it into a song called ³Minuetto Allegretto², and then sang it whilst jumping around on TV in a Womble costume? I suppose there is an argument that new art can grow from old, and indeed this does happen. I would like to think that sometimes I have created something of worth by adapting a Public Domain work, - but I use the above example, albeit relating to a different kind of copyright, just to illustrate that the nature of copyright is that it is delicate and that its preservation and protection is not just a financial matter.

The matter currently the subject of your review is very simple. Should it be extended or not, and if so by how much? Many of my colleagues at the various official bodies have come up with plans to ³offer something back² (I am particularly thinking of AIM's submission to you) but I must say that even though I myself run an independent record company, and am member of AIM, I believe they see themselves (understandably) as champions of the small companies against the major record companies, claiming, - sometimes quite rightly that big record companies tend to sit on recordings and allow them to languish in their vaults rather than issue them. This does happen, and has been a matter of enormous frustration for me personally as an artist. The idea put forward by AIM that there should be reversion with a renewal opportunity only if there is an undertaking to release or exploit the work (called the ³use it or lose it² approach) seems to miss the point that these matters could be and should be negotiated between management for the artist and the record company or producer/owner at the time of the recording or renegotiated during the term of its exploitation. AIM's suggestion is actually a very good idea as an arrangement to protect artists from record companies who sometimes even deliberately keep an artist's records off the market either as a disciplinary or vengeful act against the artist or purely to prevent others from releasing the product into the same marketplace in case it is successful and the first record company looks foolish. Large companies often make the rules because they have historically had huge negotiating power, and some of them have not always in the past favoured the

interests of the artist. Some record company chiefs are pragmatic, charming and sympathetic to artists' problems and wishes, but others can be arrogant and obstructive in the use of their power, just as can heads of Hollywood studios or other powerful bodies, possibly even including Government departments! Disagreement between parties within an industry does not degrade the value of the principle that drives the industry, - in this case, copyright.

My point is simpler. Copyright in recordings should be extended. It is not for government to settle disputes between the creator and the owner if these are two separate entities. I fully support AIM's most laudable attempt to insert an obligation that copyright should be exploited and promoted, but in my view if a record company or other producer or owner fails so to do, the copyright should fall back into the hands of the artist rather than into the Public Domain.

I had dinner two weeks ago with my friend Bruce Welch, a founder member and guitarist of the group The Shadows. Like many artists of his generation, his early recordings do not earn him a fortune but they provide him with some comfort for his approaching old age. In two years¹ time they fall out of copyright and he will have no further right to receive royalties from those recordings, just at the time he will most need them. This flies in the face of moral logic. It contradicts the ethic that created the law protecting song and composition copyright until 70 years after the death of the composer or lyricist. That period of time was designed (as recently extended from 50 years to bring us into line with other countries) so that at least the immediate first generation of descendants of a deceased composer can enjoy the income created for them by their parent. In the ³house² analogy, only the composer's grandchildren will be evicted from the house but the artist himself will be evicted as he reaches his seventies, if indeed he made the recordings in his teens or twenties.

As I have said, I represent Katie Melua. We made her first album when she was eighteen years old. Under the current law, when she is sixty-eight she will lose all right to receive anything from her work as an artist in relation to the recording. It initially sold three million copies Worldwide, and one might deduce that she did very well from it and that that should be the end of the matter. Firstly I would say that substantial marketing costs diminish enormously the profit (or exacerbate the loss) imagined by many uninformed observers. It can take years with some recordings particularly the braver, higher risk catalogue investments typical of classical and jazz recordings, - even to recoup the cost of recording, never mind marketing. I would even go so far as to say that the majority probably never recoup. These recordings have to be subsidised for years by the profitable ones, or at least their losses atoned for by the more successful ones.

The onset of new technology is already placing into the hands of the creative artist the ability to bypass and therefore in many cases severely

to cramp the bargaining power of major record companies. The fact that in the past the big companies (in a free market) have always had the upper hand is no longer something we should waste time on now. It is irrelevant. This is the beginning of the age of artist-power. My own small company has been one of a handful of artist-run companies who have completely bypassed the major record companies who formerly represented an obstacle to our reaching an audience we knew existed but about which they disagreed or didn't care. These days an artist can go around, over or under the record companies and even the media.

I urge you to focus not on any internal wrangles between artists, big record companies, independent companies and/or other parties, but merely to answer the question, is it right and equitable that a creator should be deprived of the right to prevent others from defiling his work, and the right to earn a living from it during his lifetime?

Many thanks for your attention to this submission.

Yours sincerely,

Mike Batt

(Chairman, Dramatico Entertainment Ltd)