

REVIEW OF INTELLECTUAL PROPERTY IN THE UK: A SUGGESTED AMENDMENT TO THE PROPOSED EXTENSION OF MECHANICAL COPYRIGHT.

Dear Mr. Gowers

My name is Fred McCormick and I am the co-editor of Musical Traditions, an on-line music magazine at <http://www.mustrad.org.uk> . I am writing to you and the rest of the Review Committee with a suggested amendment to the proposed extension of mechanical copyright.

In essence, I'd like to suggest that the present royalty expiry date should be retained, but that it should be applied only to the first 1,000 records sold of any re-issue. Such an exemption would apply to copies sold in any medium, CDs, MP3 downloads or whatever.

This idea is designed to protect those small-scale record re-issue companies, who are largely enthusiast driven, who cater for specialist audiences, and who would be severely disadvantaged by the proposed extension. Many of these companies deal with the kinds of music which Musical Traditions represents and which I enjoy listening to.

Musical Traditions has a small publishing arm, which carries a total of six out of copyright CD reissues. These have been in catalogue for about ten years now, and sales are down to a minimum. That is the extent of any personal or financial interest on my part.

The situation I'm concerned about is as follows. The major record companies are not interested in reissuing music which has gone out of fashion, for the simple reason that there is no money in it. However, there are small but significant numbers of enthusiasts for minority interest music; EG., blues, early jazz, vintage classical records, music hall etc. Generally speaking, the major record companies cater for the tastes of such enthusiasts, either badly or not at all.

Instead, they are met by specialist re-issue companies, who are able to cover their costs by re-releasing records which have gone out of copyright. These companies are typically small and typically vulnerable, and their primary motivation is to keep the music they love in public circulation. Their releases sell in extremely small numbers, and the fact that they do not have to pay royalties is an important factor in terms of their staying in business.

The vast majority of the music which these people work with dates from the 1920s and later, and therefore was published within the time scale of the proposed copyright extension. If this extension is introduced, re-issue companies will either be forced to quit the market, or make crippling and prohibitive payments. Moreover, I understand that the extension could be made retrospective. That would not just prevent future re-issues. It would wipe out existing catalogues. It would demolish virtually the entire specialist re-issue industry

Incidentally, I am not referring to 'bargain basement' budget companies such as Pickwick or Hallmark. They also exist largely by reissuing out of copyright material, but are mostly concerned with easily saleable mainstream entertainment . As an example of the sort of label I have in mind, you might want to look at Frog, a tiny Hampshire based company, which specialises in re-issues of early jazz. (<http://www.frogrecords.co.uk>) In terms of

size, resources commitment and motivation, Frog could not be further removed from the major record companies. Even so, many people regard their products as invaluable.

Companies like Frog (early jazz), or Document (blues), or Pearl (vintage classical records), fill a niche which the major record companies have no interest in. Yet, once the law is changed, these same companies will be quite happy to receive royalties, which have been generated by the unselfish efforts of others.

We are talking about small specialist labels and we are also talking about small specialist audiences. When aggregated, however, the numbers of people who would be deprived by the proposed extension represent a sizeable section of the public. Also, the collective output of the various re-issue labels adds up to a formidable body of music. Their releases are typically well produced and meticulously re-mastered. They often come with copious and scholarly booklet notes, and they are invaluable social documents. As a music historian, I can state that these releases give us a much clearer picture of the musical culture and listening habits of previous generations than we could otherwise have hoped for.

To add insult to injury, re-issues of pre-1931 material invariably have to be taken, not from the original master recordings, but from old and second hand and often extremely battered 78 rpm copies. That is because the original metal masters were sold for scrap, in the teeth of bankruptcies and mergers, which accompanied the great depression. There is something sad and ironic in the thought that the inheritors of those mergers could soon be claiming copyright on material, which was thrown away as worthless over 70 years ago, and which they have done nothing to preserve.

Moreover, preparing good quality digital masters from old 78s is a long and tortuous process and is usually undertaken as a labour of love. The effect of all this reissuing has been to restore a very large body of music to a listenable standard, for the benefit of future generations. It is hard to imagine the major record companies taking over this work.

Therefore, to ensure the continued availability of minority interest ex-copyright material, I want to propose that a 'limited edition' clause be added to any extension of copyright expiry. This would place a restriction on the number of copies which re-issuers were able to press, whilst facilitating their continued exemption from mechanical copyright royalty payments.

I am suggesting in fact that the present fifty year public domain deadline be retained, for sales of up to 1,000 copies or less per release. Anything over that would be subject to royalty payment. This would benefit both sides, since record sales of the kind we are talking about almost never go above three figures. Therefore, re-issue companies could continue to trade as at present. On the other hand, if a re-issuer found itself with a runaway success on its hands (and strange things do happen in the music business), then the copyright holders could be justly reimbursed.

I hope you have found these opinions useful.

Best wishes,

Fred McCormick.