

The Incorporated Society of Musicians is the UK's professional body for all musicians, representing some 4.500 performers, composers, teachers, lecturers, therapists and musicologists. We welcome the chance to contribute to the independent review examining the UK's intellectual property framework. The accompanying cover sheet shows those specific questions to which we have responded.

1. How IP is awarded

- (a) Are there barriers to obtaining IP rights due to system complexity? What could be done to improve this situation?

The ISM does not believe that the current system under which copyright arises automatically on the creation of a work capable of copyright protection is unduly complex. Further, the absence of any formal legal requirement to register IP rights, with the associated cost savings, is of financial advantage to creators.

- (b) How easy is it to find out about obtaining IP rights? What could be done to improve awareness for businesses and innovators? Is there sufficient awareness of the need to protect IP internationally?

While creators themselves are aware of IP rights, and reasonably well-informed about the benefits flowing from such rights, there needs to be greater public awareness not only of the existence of such rights, but also of the reason for their existence, namely as a mechanism for rewarding the effort of the creator and encouraging future innovation and creation.

3. How IP is licensed and exchanged

None of the questions in this section specifically addresses our major concern in this area, which is the non-negotiable nature of the assignment of copyright frequently demanded by commissioning bodies (for example broadcasters, record companies and publishers) from an individual creator.

We broadly oppose the assignment of copyright as resulting in a loss of income for and, perhaps more importantly, control over the material by, the creator. There will, of course, be occasions when an assignment is in the interest of both parties and we recognise this. However, we also believe that any negotiation about whether the rights in a work are to be licensed or assigned must take place on a genuinely 'level playing field'.

We do not accept *prima facie* the argument that the acquisition of all rights by assignment is a necessary prerequisite for the efficient exploitation of a creator's work, and believe that those organisations seeking to exploit such work should be encouraged to look more proactively at licensing as an effective, flexible, and above all fair tool for enabling such exploitation.

4. How IP is challenged and enforced

- (b) Are there barriers to challenging infringement and enforcing your IP rights on grounds of cost? What drives these costs?

The main and obvious barrier in terms of costs to enforcing rights is the cost of litigation.

Other problems occur when a work has been licensed or assigned, as the case may be, to an entity which, at the point of alleged infringement, is found no longer to exist. Establishing a chain of ownership can be time-consuming and extremely costly, particularly where a subsequent owner may not even be aware of the existence of the intellectual property of which he took ownership (for example, on the sale of a business by a liquidator, the purchaser may not be aware that intellectual property formed part of the assets of the business being purchased).

- (f) Are there specific barriers to challenging and enforcement of IP rights for small businesses or individuals?

Cost!

- **Current term of protection on sound recordings and performers' rights**

(a) What are your views on this issue?

It would seem appropriate that the protection to sound recordings and performers' rights should be extended to match the copyright term, namely seventy years.

(e) If term were to be extended, should it be extended retrospectively (for existing works) or solely for new creations?

Any extension of the term should mirror the arrangements made when the copyright term was extended in 1996.

- **Copyright exceptions**

(a) What are your views on the current exceptions in copyright law?

The ISM is a member of the Educational Recording Agency, and as such welcomes the s.35 exception allowing for the grant of rights on a licensing basis in a very specific area.

(b) Could more be done to clarify the various exceptions?

We would welcome clarification, possibly through the extension of s.35, on the status of broadcasts recorded off-air by ERA licensees and subsequently made available to students through Virtual Learning Environments. We would refer the team to ERA's own detailed submission on this point, which we fully endorse.