

SUBMISSION TO THE GOWERS REVIEW OF INTELLECTUAL PROPERTY FROM THE MUSIC USERS' COUNCIL

Introduction

The Review comes at a time when many aspects of intellectual property are being considered both in the United Kingdom and by the European Commission in Brussels. In October 2005 the Internal Market Directorate published a Recommendation on cross-border licensing of copyright which is being considered by Member States; a month ago the EU Competition Directorate commenced proceedings against the international federation of copyright collection societies – CISAC ; The UK Patent Office has announced a review of the Copyright Tribunal and launched a new mediation service.

The Music Users' Council is an umbrella body representing all users of music in any delivery format. Its members are trade associations and individual companies which together represent some 280,000 separate businesses. These include service providers and end users such as places of recreation (public houses, restaurants, hotels, etc), shops, factories and offices.

For more than ten years MUC has called for a fairer deal in its members' interrelationship with those organisations, collection societies, that negotiate copyright licences for the exploitation of musical works on behalf of rights owners. In general it maintains that the current system lacks transparency, is non-competitive due to the monopoly position of collection societies and lacks accountability.

How IP is awarded

As already stated there exists a monopoly situation in the awarding of copyright licenses for the use of music. Only two collection societies are established in the UK. Performing Right Society – MCPS which grants rights on behalf of composers and publishers and mechanical rights and Phonographic Performance Limited which collects licensing fees on behalf of record companies.

Because of this situation the collection societies have the whip hand in determining the cost of licences with a "take it or leave it" attitude. It is frequently the case that these organisations demand an outrageously high fee in the knowledge that they will be turned down. This usually ensures that licensees seek a lower fee through reference to the Copyright Tribunal. However, this is time consuming and costly. In the past these references have cost many thousands of pounds.

At the end of the day if companies wish to stay in business these costs in attempting to gain a fair deal for the use of music have to be incurred. With regard to the international situation is the case that different collection societies, again monopolies in their own countries, charge comparable fee levels to the UK although it is the case that some are cheaper. It is because of this situation that we have sought to open up European competition by the abolition of the concept of territoriality so permitting users to negotiate licenses with the society of choice, irrespective of country.

Currently there are proposals to increase the cost of licensing background music in stores by between 17% and 400%. This is just one example but with this and past increases in this sector the collection societies have in effect discouraged the use of music to the detriment of all sides of the industry. As an indication of the sums involved the 2005 financial report for Phonographic Performance Ltd (PPL) show an income from licence fees of £82 million of which some £71 million was remitted to the record companies which own the organisation. It is now the case, because of advances in technology, that the major cost of playing music involves the fees paid for the copyright.

We would suggest the continual increases in copyright fees is a brake on further music use to the detriment of composers, publishers, artistes and, ultimately, the record companies who, ironically, are behind the fee increases. Recent press reports show that there has been a decline in music use with not only CD sales down by some 17% but also in the digital market place.

How IP is challenged and enforced

It has already been stated that because of the attitude of the UK collection societies negotiation over copyright fees fraught and frequently users have no alternative but to seek redress through the Copyright Tribunal. We note with interest that the Patent Office has launched a pre-Tribunal mediation service (3 April 2006) but obviously, because this development is very recent, there is no experience of how it will be used in practice.

SPECIFIC ISSUES – Current term of protection on sound recordings and performers' rights

The extension of protection is the subject of an Impact Assessment currently being undertaken by the Internal Market DG of the European Commission. In our submission we have stated that we are against an extension from the present 50 years. If such an extension is implemented many works would be lost. There would be a reduced availability of repertoire from classical and jazz catalogues long after any residual copyright interest had expired.

Recently a company which specialises in issuing re-mastered copies of original recordings estimated that some record companies have in excess of 25,000 CD-length classical recordings yet offer in the region of only 2,000 of these to the public. A similar ratio exists in the areas of jazz, folk, blues and world music. Increasing the current period of protection from 50 years would leave consumers with a significantly reduced choice of music.

In short an extension of the period of protection would be detrimental to the use of the work concerned and be a further brake on the use of music generally.

Copyright – digital rights management

Much has been made in the recent past about the use of digital rights management (DRMS). Potentially they have a good future for music users because they allow direct interaction between users and rights holders. However, much remains to be done in perfecting these systems, not least in achieving a common standard of operability. This is another situation where technological development is racing far ahead of legislation.

Summary

From the point of view of the MUC our members have a vested interest in using copyright music on a commercial scale. The current situation is artificially restrictive, discourages the use of music and is controlled by copyright monopolies operating under a regime that is some seventy years old.

To encourage more use of music, in all its forms, a simpler copyright system is called for at reasonable cost and a more level playing field for the players concerned.