

**Musicians' Union Submission**  
**to the Gowers Review of Intellectual Property**

Introduction

- 1) The Musicians' Union (MU) is the only trade union, in the UK, for professional musical performers' and music writers. It has over 30,000 members who work in all genres of music. Most musicians take part in recording and broadcast work, therefore strong intellectual property rights are vitally important to them.
  
- 2) Upon joining and renewing their membership of the MU, members authorise the union to administer their exclusive performers' rights. These form the basis of the collective agreements that the MU has with record companies, film and TV producers, broadcasters and other audio and audio-visual producers. N.B. if a musician or a group of musicians signs an exclusive contract with a producer, the union's mandate is superseded by the recording contract. However the MU continues to act for such individuals outside their individual contracts where appropriate.
  
- 3) We are pleased to be able to contribute to this review of Intellectual Property which is broad and far-reaching. However, we are concerned that the points raised in the discussion paper appear to place an emphasis on the opinions of corporate bodies and consumers. We would contend that as much attention should be given to the position of the original creators whose work is subject to commercial exploitation by these corporate interests.
  
- 4) The Musicians' Union is a member of the Creators Rights Alliance (CRA) and wishes to associate itself fully with the broad points made in the CRA

submission. Therefore this submission will concentrate on three major issues that directly affect MU members. These are: the duration of the period of protection for sound recordings, performers' audio-visual rights and private copy levies.

### Sound Recording

- 5) We strongly support the proposal put forward by the Music Industry for a review and extension of the duration of the period of protection for sound recordings.
- 6) The current period of protection of 50 years is not only considerably less than the period enjoyed by authors (and publishers), but makes our industry highly uncompetitive with many overseas territories.
- 7) The UK is second to the USA in the volume of music produced. It is more that equal to any territory in the quality of its music. However, a straight comparison with the USA shows that whereas income can be derived from US recordings for 95 years, in this country it remains at 50 years. Many other territories have settled for a period of protection of 70 years.
- 8) Digital dissemination of music via the internet and direct to mobile phones, has made music in all its genres, a more valuable commodity. Much music has been given a 'second lease of life' through digital technology, but now we are faced with famous recordings by many significant artists falling into the public domain in the next few years. These include the early recordings of Cliff Richard, Shirley Bassey, the Beatles and the Rolling Stones.
- 9) Performers will benefit from an extension in the period of copyright for sound recordings in two ways:

a) Additional income from the Communication to the Public and Public Performance Right:

This right was extended to performers by the Rome Convention of 1961. It was enacted into UK law through transposition of the Rental and Lending Directive (92/100) in 1996. In this country Phonographic Performance Ltd (PPL) administers this right on behalf of performers and record companies. The income is derived from licensing broadcasters and other users of recorded music, and is divided equally between record companies and performers. The 50% of this equitable remuneration that is apportioned to performers is subject to another division between featured artists (usually 'signed' to the record label) and non-featured session and orchestral musicians.

This important source of income is paid throughout the duration of the copyright in the recording. An extension in the term would benefit all performers and in particular session musicians who, due to the volume and the variety of work that they undertake can earn more 'PPL income' than many featured artists.

b) An extension of royalty income based on sales

When an artist signs to a record label they receive an income based on a percentage of the profit made from the sale of the recording. Careers are often short in the performance sector of the music industry and only a very small percentage of artists achieve 'superstar' status. An extension of the period during which royalties are paid could make a vast difference to the career structure of many artists.

10) It is no secret that the music industry must reach an internal settlement regarding how any extension to the period of copyright should apply. The

performers' community and the record labels are entering into a positive dialogue and we believe that a sensible internal industrial settlement can be achieved. On this basis, the Musicians' Union totally supports the principle of extension of term.

### Audio Visual Rights

- 11) The two main international instruments which afforded Intellectual Property Rights to performers were the Rome Convention (1961) and the World Intellectual Property Organisation's Phonograms and Performances Treaty (1996), the WPPT.
- 12) Both of these treaties apply to audio fixations and live performances only. This means that performers find themselves in the ridiculous situation of having a dual level of protection depending on the type of work that they are undertaking. This applies equally to property rights and to equitable remuneration and moral rights.
- 13) WIPO is currently formulating a Broadcasting Treaty and it is thought that a full diplomatic conference will be held in Geneva in 2007. We find it incredible that the international community may soon agree to confer a higher level of protection, i.e. a rights regime which applies to both audio and audio visual fixations, to broadcasters as oppose to performers.
- 14) Given the convergence of delivery systems and new technologies, we are fast approaching the time when there will be no distinction between audio and audio visual products. Many CD's now contain visual images as do DAB radio broadcasts. The definition of a phonogram must be re-examined in order to recognise that modern 'carriers' often contain visual images as well as sound.

15) We wish to see audio visual exclusive , equitable remuneration and moral rights introduced into UK law. Realistically we understand that this will have to be achieved at a European or international level. We ask for the UK government's active support for performers' in their quest for a level playing field with other rights holders.

### PRIVATE COPY LEVIES

16) The UK, Ireland and Luxembourg are the only EU member states not to operate a system of levies to facilitate private copying. In France alone the audio and audio visual private copy levies realised over €140 million in 2004.

17) Our law puts us in an anomalous situation by only allowing 'time shifting' amongst the many variations of private copying. For example the practice of re recording a CD onto an i-pod, an MP3 player or even an audio cassette is an illicit act in the UK.

18) We know that an immense amount of private copying takes place, therefore we feel that the government should adopt the European model and legitimise what has already become common practice.

19) We firmly believe that the lack of private copy levies in the UK seriously disadvantages authors and performers viz a viz their European counterparts. Digital Rights Management and Technical Protection Measures will never stop the practice of copying, we must end our outdated attitude of regarding such levies as a form of taxation and see them for what they really are: a legitimate source of income received in return for providing the consumer with a popular service that we know to be in great demand.

## CONCLUSION

20) The original creators are seriously disadvantaged by both poor rates of remuneration and often by the coercive acquisition of rights by powerful corporate interests. We ask the government to afford special protection and status for the artistic community which provides the raw material for this nations vibrant and growing creative industries.

John F Smith  
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