

Changes in the term of protection on sound recordings and performers¹ rights

I am the owner of a small recording company and would like to comment upon the proposal to increase the term of protection on sound recordings and performers¹ rights from 50 to 95 years.

I am opposed to a 'blanket' increase as I consider it will have an adverse effect on the accessibility of the UK's recorded legacy.

I am opposed to a retrospective increase as it would set a dubious legal precedent by demanding retrospective payment for something which was free at the time of use.

Because of the history of mergers in the gramophone industry, such an increase would place the IP rights to the majority of this country's recorded legacy in the ownership of a single company: E.M.I.

That company has disregarded the majority of its own legacy recordings and has reissued virtually nothing from the legacy recordings it has acquired from other companies. The master recordings of most of the early recordings on 'popular' labels no longer exist in the company's vaults. The recording studio log books and other written historical documents for a large proportion of recordings made during the early recording years have been lost to posterity - either destroyed by EMI themselves or by the companies they acquired.

I consider this demonstrates that there is no general requirement to extend the period of protection on IP rights on recordings in the UK, as the owners of those recordings have no interest in exploiting such general rights. There may be specific cases and I shall comment on those later.

By contrast, small independent companies have produced many re-issues of legacy recordings and have done much useful research on the history of recording artistes, composers and recording methods. These companies contribute greatly to the accessibility of the UK's recorded legacy and knowledge of recording history in this country; they also take British cultural history to a wider audience across the world.

My own company has developed special techniques for handling and re-recording historical material and has subsequently put these at the disposal of the the British Library National Sound Archive and the Public Records Office, as well as many smaller research projects. Without the impetus of commercial re-issue, few of these techniques would have been considered worth following-up and the equipment to perform the sound recovery would not have been built.

If this increase in protection period were to become law:

- 1) Small independent re-issue companies would, with very few exceptions, be forced to cease trading. If it were applied retrospectively, many of the companies would be bankrupted, as no financial provision has been made for such a change.
- 2) Much of our national recorded heritage would become inaccessible to researchers and consumers across the world. Experience in the USA [1,2] confirms this.
- 3) Most of our recorded heritage would become the property of a single company with little or no interest in its preservation or re-issue.
- 4) Re-issues, which are sometimes the only way in which heritage recordings survive for the future, would cease altogether.
- 5) Research into better ways of recovering and preserving historic recorded sound would virtually cease through lack of commercial funding.
- 6) A dangerous precedent would be established which would have disastrous consequences if it were subsequently applied to historic books, films, designs and other works of art.

Alternative Arrangements:

If a recording company or a performer regards a specific recording or set of recordings to be worth continuing to exploit after 50 years, I can see no objection to permitting them to extend the period of the rights for that particular case. I would suggest that a moderate fee should be charged for this service, on a title-by-title basis, so as to cover the administrative costs and discourage wholesale abuse of the system.

Refs:

1] Library of Congress Press Release
PR 05-190 October 3rd., 2005

2] <http://www.clir.org/pubs/reports/pub133/pub133.pdf>

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