

SUBMISSION TO THE GOWERS REVIEW OF INTELLECTUAL PROPERTY

I am writing to the Gowers Review to express my views on the specific subject of the record industry's desire to extend the existing 50-year copyright period for sound recordings.

I am opposed to this proposal on the grounds that it would not benefit the public and I would even argue that, under certain conditions, there is a case for the period to be reduced rather than extended.

The campaign the record industry has waged via trade magazines such as Music Week has rarely been equalled for the number of misleading and incorrect statements that have been made. Throughout their campaign they have failed to mention just what would be lost to a world wide record buying public and a significant number of composers if their wishes became reality.

The truth is that the record companies' concerns are centred on a very small part of the material which is now approaching the present 50 year deadline. This is almost all "pop" material, recorded by the likes of The Beatles, The Rolling Stones, Cliff Richard, Elvis Presley *et al* and one can understand their wish to retain control of these recordings. The problem is that this 50 year old material they are so anxious to protect amounts to but a small fraction (probably less than 1%) of recordings of this vintage. If we consider all of the recordings which would be embraced by the sought for extension, then the figure is even smaller.

The record companies lobbying for a change have little or no interest whatsoever in the other 99% plus of their material that is more than 50 years old. Their accountants tell them that it is not cost effective for them to make it available to the substantial minority who wish to buy and listen to it. We are talking about hundreds of thousands of recordings spanning a wide range of differing musical genres – dance bands, singers, jazz, light orchestral music, brass bands, military bands, film music, folk music, spoken word, opera, musicals and classical music covering a period from the 1920s to the 1950s. The desire of people to hear this music again, which they usually last heard on scratchy 78s, has resulted in a significant number of British and European companies that specialise in restoring and re-mastering onto CD large amounts of this material. These CDs sell in sufficient quantities for such companies to make a reasonable return from material in which the mainstream record industry has lost all interest – indeed they often do not know that they made these recordings in the first place!

These specialist companies operate quite legally. They also pay the royalties due on the music on these CDs. This generates a significant income for composers and arrangers, many of whom would currently have no income whatsoever if they had to rely on royalties from those seeking an extension. I doubt if the record companies have mentioned this in any of their submissions.

Just one of these specialist British labels, Living Era, has a catalogue of over 500 CDs, most of which sell all over the world in large quantities, the majority containing material that the major record companies would not even consider re-issuing.

If we take into account the catalogues of the dozens of smaller re-issue labels in Britain and Europe, then we are talking about several thousand CDs containing "forgotten" music which generates revenue for composers and music publishers and provides much pleasure for those who purchase it.

BPI Executive chairman Peter Jamieson is on record as saying "I can't see that it benefits anyone not to extend it" – he appears to be completely unaware of these royalties being paid to composers and music publishers.

He also seems to think that the companies, and the hundreds of people who make a perfectly honest living restoring these old recordings, writing the booklets, doing the art-work, and re-issuing them would "benefit" from losing their livelihoods! And we should also consider the pressing plants, the wholesalers and the retailers whose turnover is enhanced by these re-issues.

More importantly, extension of the copyright in these recordings would result in this music being lost forever because, and I can't emphasise this enough, the major record companies have no interest whatsoever in making this material available should they win. Do we really wish to deny thousands of people the pleasure of listening to it simply because these companies want to protect the recordings of a handful of "pop" artists? Doubtless such deprivation would be considered another "benefit" by the BPI.

The PPL's Director of government relations Dominic McGonical said at a DTI seminar at the beginning of March "There would be thousands of musicians right now who would benefit straight away from extension of copyright". He should be challenged to substantiate this reckless statement.

Who are these "thousands of musicians"? Maybe a handful of pop singers would benefit and a few star names from the classical world, but the "musicians" (i.e. backing groups, choruses, orchestral players etc.) would have been paid a one-off fee for the recording and receive neither royalties nor a percentage share of sales revenue. Even many solo artists were forced into contracts where the main beneficiary from sales was the record company rather than the artist. I would also suggest that, for the majority of pre-1950s recordings, the artists concerned are either dead or untraceable and therefore the only ones to gain from re-issues of this material would again be the record companies. In any case, the claim completely ignores the fact that these "thousands" would only benefit if the record companies chose to re-issue their recordings and, in most cases, this is unlikely to say the least.

Research in America shows that the extension there has had little effect on the re-issue programmes of the major record companies. The net effect therefore was to considerably reduce the choice of recordings available to the public. The same would apply in Europe - an extension of the copyright would have little or no effect on the amount of back catalogue issued by the major record companies so, despite their bold claims, few artists would gain anything and the public would undoubtedly be the losers.

It is worth considering this extract from the American survey:

The argument was made that giving the companies such lengthy ownership would encourage them to preserve and reissue older recordings. With nearly 30 years of experience, however, it is now clear that nothing of the sort has happened. My own recent study of early African-American recordings (surely a field of interest) reveals that only one half of one percent of covered recordings made prior to 1920 have been reissued by the copyright holders (Brooks, Lost Sounds 10). Another study indicates that of the pre-1965 recordings of greatest interest to scholars and collectors, those listed in major discographies, only 14 percent are made available by rights holders, and for recordings made prior to the 1940s the percentage dwindles to almost nothing (Brooks, "Sound Recording"). Undeterred by such experience (or ignorant of it) Congress in 1998 passed the now-notorious "Sonny Bono Copyright Term Extension Act," lengthening all the terms in the original act by 20 years. Now no covered recordings will pass into the public domain until 2067.

I suggest that the following questions be asked of each of the record company representatives:

1. How many recordings more than 50 years old are there in your current catalogue?
2. What percentage of your more than 50 years old recordings does this represent?
3. What percentage of your recordings have not been available for purchase for thirty years or more?

I can assure you that the answers to these questions will severely embarrass the record companies and considerably weaken their case for an extension – for example the answer to question 2 will be less than 1% and to question 3 it will be in excess of 99%. For some companies the answer to question 1 will be "none".

They could then be asked a supplementary question – "If this extension is so essential, then why do your answers reveal a total lack of interest in re-issuing the vast majority of old recordings?"

Despite my objections, I have no desire to prevent the record companies winning a copyright extension if, in return, they would undertake to make all of their recordings available to members of the public who wish to purchase them. However, as most of the recordings outside the "pop" field currently being re-issued by third parties haven't been available from the original copyright owner for the past 50 years and, in many cases, 70 or 80 years, the chances of the original record companies ever re-issuing them are slim.

Of course, in reality, there is little need for an extension at all. There is nothing to stop the major companies from re-releasing their own recordings that are more than 50 years old. Provided that they have looked after their archives they should have the master tapes or pristine pressings of the discs in

their vaults. This places them at a considerable advantage compared with the independent labels who usually have to rely on second hand copies of the discs, which are usually less than perfect. If the majors kept this material available, attractively packaged and reasonably priced, there would be no reason for any independents to want to get in on the act and duplicate these reissues.

However, except for the recordings of a (very) few pop artists, the record companies don't currently do this (and never have), so why should an extension of copyright change anything, except to deprive the public of music they want to hear and ageing composers of an income?

There has been some suggestion that, should a change be made, it should be retrospective (i.e. apply to recordings which were already out of copyright the day the legislation is passed).

I find this not only unbelievable but totally unacceptable. Surely this would be akin to allowing a company to renew an expired patent on, say, an industrial process with all the ramifications and problems that such an action would cause? And what if the next step was to allow pharmaceutical companies to retrospectively re-patent drugs which are currently being manufactured cheaply and are saving lives all over the world? Some will dismiss this as pure fancy, but my view is that corporate greed knows no bounds and it wouldn't surprise me one jot to see the extension of recording copyright being quoted as a precedent for further, potentially much more serious, claims.

Therefore, any extension should not be retrospective. i.e. any recording that is 50 years or more old on the day the legislation is passed remains out of copyright.

In addition to the above, I suggest that if the record companies insist on pursuing this matter then, in return for a copyright extension, they should be forced to agree to the following:

1. Recordings that have been unavailable for purchase for 30 years or more should come out of copyright as they are obviously not considered to be of any significant commercial value by the owning company. It is worth noting that there are thousands of LPs, most of which are less than 30 years old, that have never appeared on CD because the record companies don't consider the sales would justify it – so why should anything more than 30 years old be they be protected if it has been ignored for so long? Such a change would generate much extra income for the composers concerned.
2. The copyright should only remain valid if the recording continues to be available for purchase by the public. With so many recordings in existence there would have to be some leeway here – perhaps along the lines of a condition that recordings should not be out of the catalogue for more than 5 years at a time.

The record companies also claim that a copyright extension would generate funds that they would use to promote new artists. Frankly, if anyone believes that, they probably also believe in flying pigs! The record industry's track record in this area is abysmal and the way that they have treated artists over the years disgraceful. Perhaps everyone should read Louis Barfe's excellent book "Where Have All The Good Times Gone – The Rise And Fall Of The Record Industry" before making a judgement on whether the record industry deserve a copyright extension.

Finally, I would urge the Review to constantly bear in mind that the motivation for requesting this extension is based on the paranoid desire of the major record companies to protect a few "pop" titles which represent but a fraction of a percent of the recordings which any change in copyright would affect.

The fact that an extension of the copyright period would effectively prevent public access to well over 90% of the music ever recorded and thus deprive Europe of its musical heritage and history does not concern them in the slightest.