

Dear Mr Gower

I am writing to let you know my views on the proposed extension of mechanical copyright on sound recordings from 50 to 95 years. Having run one of the leading sound restoration facilities for over a decade, serving large clients and small, I hope I may speak with some authority.

Firstly, we should dispose of the spin which the major record companies are applying to their case. It seems to be being presented as a means for artists to continue receiving royalties on their recordings into old age. Two major errors spring to mind here. Firstly, whether royalties are paid to an artist or not is entirely a question of the contract he or she has with the record company, and is not a universal legal obligation. Secondly, the expiry of mechanical copyright on a recording does not preclude the originating company from reissuing it; it merely means that the said company is open to competition, to which the answer is to reissue before anyone else does and to do it better. In the modern era (since about 1960), the majors are usually in a strong position to do this, since they hold (or should hold) the original tapes, which are generally the best source for reissue. The most telling point, however, is that to earn royalties at all, an artist's work has to be sold; and to be sold it has to be in catalogue. The track record of the major companies in reissuing even the hardest perennials, even whilst still in copyright, is patchy at best, hence the existence of a large and thriving cottage industry dedicated to the reissue of out-of-copyright recordings.

Secondly, the existing 50-year period, besides being plenty of time for the originating company to make its money back, has proved to be about right for the majority of artists. Once most material reaches this age, it is usually of specialist interest only, and hence ideally suited to issue by the smaller concerns who can actually survive on typical sales figures in the high hundreds or low thousands, which is all PD reissues usually achieve. The exception which proves this rule is an issue with which I was involved, namely the Glenn Miller "Lost Recordings", issued by Conifer on their Happy Days label. This sold over 100,000 copies in the UK alone, but BMG, who produced Miller's commercial output, did not suffer - they merely bought Conifer lock, stock and barrel, absorbed the Miller issue and killed the rest of the label because all the other issues were selling under 2000 copies annually. It is a fair bet, on this showing, that any concern exhibiting dangerously high sales figures will be swallowed forthwith by one of the majors, preserving their hegemony.

The real reason for this campaign, it seems to me, is the majors' desire to retain control of their catalogues from the pop explosion of the sixties and beyond, and especially those of The Beatles and Elvis Presley. Although these artists are still popular, and rightly so, they are unlikely to be in 25 years' time, never mind 50. Bing Crosby, George Formby and Gracie Fields, all top artists in their day, are now forgotten by the majors for all practical purposes and by default the province of the PD labels. If the majors must have an extension, let them have 70 years on material after 1960, and leave all material before then in the public domain. To bring all material since 1911 back into copyright would be absurd and iniquitous - it would effectively remove 95% of such material from the market, since the majors have no knowledge of, and less regard for, this period of their output, and in most cases do not even hold copies of the original recordings; EMI's archive, the most comprehensive in the industry, is far from complete, and other companies sold or destroyed most of their material from the 78 rpm era long ago.

Also, a unilateral extension of copyright period would be a retrograde step, given the time and effort recently expended on harmonising Europe at 50 years. It could reasonably be described as an unfair restriction of trade, and I wouldn't put it beyond some disgruntled enthusiasts to bring a case under Human Rights legislation, citing denial of access to material relevant to their personal, cultural and social history!

In a nutshell, therefore, if EMI *must* keep The Beatles, let 'em, for another twenty years - but don't throw the baby out with the bathwater, and kill the Public Domain reissue market in the process. It might not be large, but it serves a useful purpose, and brings enjoyment (not to say employment) to many, many people.

If it would be useful to you to have any of the above clarified or expanded, please get in touch.

Yours sincerely

Ted Kendall