

## **Extension of rights in sound recordings and performances to foreign nationals**

The British Copyright Council (BCC) represents those who create, hold interests, or manage rights in literary, dramatic, musical, and artistic works. The following response has been developed with our membership which includes professional associations, industry bodies and trade unions which collectively represents the voices of over 500,000 creators, spanning the creative industries.

These rights holders include many individual freelancers, sole traders, and SMEs, as well as larger corporations within the creative and cultural industries. Our members also include collecting societies which represent rights holders, and which provide licensed access to works of creativity.

The BCC represents a broad church of creators, artists and rights holders. The BCC membership is strongly against Options 2 and 3, due to the potential dangers to the UK music industry (as acknowledged in the Impact Assessment – e.g. para 65). However, our membership has a range of different (and notably preliminary) views regarding a preference for either Option 0 or Option 1.

It is impossible to put forward a clearly defined position at this stage given the uncertainties about the potential impacts. In our view, it seems preferable to wait for information on such impacts before initiating changes to the law ensuring Government's aim for a long-time approach to Public Performance Rights (PPR) as expressed in the consultation. This in particular relates to question 1 about the legal situation under international copyright treaties. The UK's accession to the CPTPP provides an opportunity to change the detailed provisions of the CDPA in passing but it is not a necessity. It seems crucial that the assessment of Options 0 and 1 not only considers the legal situation and the compliance with international obligations but also its practical impact.

We note Government's express aims (para 30 of the consultation) and stress that any change should not be at the expense of UK rights holders; qualifying the potential impact with reference to "significant costs" will invariably lead to uncertainty on what constitutes "significant" costs.

### **Option 0: Maintain the status quo - Questions**

Some of our members suggest that the current legal position is not as clear as reflected in the consultation, i.e. whether a change to the primary provisions in the CDPA to address the specific issues raised in the Consultation is required in the first place. They understand that further legal analysis/ jurisprudence might be forthcoming whether changes are required by our international obligations.

The status quo should not be changed in legislation without sufficient evidence and information if not definitely required. As the Government acknowledges in the Consultation: any estimates underlying the impact assessment are uncertain.

### **Option 1: Provide PPR to producers and performers of sound recordings on a broad basis**

Other members across rights represented by the BCC prefer this option. It is a question of fairness to treat performers the same way regardless of their nationality or the place where the performance occurred or where it was fixed. They support Option 1, which entails providing PPR (as defined in the Consultation) to both producers and performers of sound recordings on a broad basis linked to the provisions of the relevant International Treaties which have been ratified by the UK. Option 1 underscores a commitment to fairness and equity within the national and international music industry; the “caveats” enabled by the Order process in s 208 CDPA should be recognised and maintained alongside the principle of the high level commitment. By supporting the principle of foreign performers being entitled to receive an equitable share of PPR revenues, this option acknowledges the contributions and rights of all stakeholders involved in the creation of sound recordings.

We note from a UK perspective that the monetary impact of Option 1 will concern mostly US sound recordings and US performers (c.f. para 46 of the consultation). Government needs to ensure that any option will not trigger costs for UK performers and producers. UK record label rights holders report that under option 1 there would be an impact on the amount of revenue currently retained in the UK (especially in relation to the US), which is currently used to invest in new British talent and music.

PPL collecting the relevant PPR licensing fees from users, and distributing that revenue to international performers and rights holders will be best qualified to describe the practical prerequisites and resources required, if any at all.

### **Option 2: Provide PPR to producers and performers of sound recordings on material reciprocity terms**

As noted above, the BCC membership is strongly against Option 2. While Option 2 aims to establish a form of reciprocity in granting PPR to foreign nationals, it introduces complexities, potential discrimination, and risks stifling international collaboration within the music industry. Option 2 introduces a restrictive criterion for qualifying for PPR, linking eligibility to reciprocal treatment from the foreign national's country of origin. This approach limits access to PPR for foreign producers and performers, potentially hindering their ability to receive fair remuneration for their contributions to sound recordings.

If anything, Option 2 requires further research on the impact of introducing material reciprocity on the market, whether reciprocal rights would lead to administrative burdens and potential discrepancies in treatment. This could also lead to potential discrimination against foreign producers and performers from countries that do not offer PPR to UK nationals.

Clearly, UK performers on US recordings would lose out under this Option. We are in particular concerned about the danger that the possible renegotiations would lead to very significant costs not only to US performers and labels but also to UK performers and labels whose income from PPR might be reduced if less fees were collected from broadcasters and users playing music in public. There would also likely be an impact on writers and publishers given that PPL and PRS for Music's joint venture, PPL PRS, offers public performance licences to premises (the MusicLicence) and Option 2 (and 3) would likely lead to increased complexity and confusion in the marketplace and higher costs (due to the time needed to explain the licensing position and more disputes). This conflicts with the aims not to create costs for UK performers and rights holders.

Furthermore negotiating and maintaining the new situation under Option 2 will require significant resources in particular from the relevant collective management organisation, PPL. Such costs ultimately have a negative impact on its members, record labels and performers alike. Whilst the exact damage to record labels and performers is not yet identifiable, it is clear that costs of renegotiating and implementing such complex licensing structures will be considerable further reducing incentives for investment in new UK music.

Notably, the lack of evidence on the impact of material reciprocity constitutes a main challenge in the European Union having to react to the CJEU decision in *RAAP v PPL Ireland*, case C 265/19.

This option may also be inconsistent with international standards and obligations, such as those outlined in the Rome Convention and the WIPO Performances and Phonograms Treaty.

The ideal and most elegant outcome would be for the US to also provide equitable remuneration for terrestrial broadcasting and public performances but it is unrealistic to assume that the UK introducing material reciprocity would incentivise the US legislator to do so.

**Option 3: Apply Option 1 to pre-existing sound recordings and performances, and apply Option 2 to new sound recordings and performances**

As noted above, the BCC membership is strongly against Option 3. This option mixes various options without providing any certainty; assessing treatment for sound recordings and performances according to their time of fixation may create extreme administrative burdens. This uncertainty is even aggravated given the uncertainties surrounding the justifications of Option one and Option two.

We are looking forward to discussing next steps with Government once they had a chance to consider the responses to this consultation.