

3 March 2013

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By e-mail to copyrightpolicy@ipo.gov.uk

Dear Nick,

Proposals for the implementation of European Directive 2011/77/EC Amending Directive 2006/116/EC on the Term of Protection of Copyright and Certain Related Rights

The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights. A complete list of BCC members can be found on our website at <http://www.britishcopyright.org/page/12/members/>.

Our response to the consultation takes the form of a short letter, as we wish to leave it to member organisations, particularly those representing musicians, record producers, lyricists and composers and other performers and which are directly involved with industry discussions, to provide you with responses on the detailed application of the termination and “use it or lose it” provisions within the draft Regulations. They will address how they apply in practice to the owners of commercial phonograms and the performers and musical works fixed within them.

The purpose of this letter is to raise a point about the “scope” of the Regulations which the BCC has identified and which, it understands, was also raised at the earlier Open Meetings held by IPO.

Further thought should be given to how the Regulations will apply in practice to the many “sound recordings” that are created for radio, film and television production along with their application to “new formats” for sound recordings – such as audio books. In other words, “sound recordings” which are made by producers other than the record producers referred to in the Impact Assessment prepared to support the Regulations.

In this respect, Recital 16 of Directive 2001/77 EC is significant. “This Directive shall not affect national rules and agreements which are compatible with its provisions, such as collective agreements concluded in Member States between organisations representing performers and organisations representing performers”.

Why is further thought needed?

The BCC believes that practical concerns will arise if all “sound recordings” are treated in the same way as commercial music sound recordings when addressing tests or requirements set

out in the Regulations.

The Consultation invites views on whether the Regulations should provide a clear definition of “sufficient quantities” within the provisions of Regulation 8.

However, the suggested definition of “sufficient quantities” - being “such quantity which can reasonably be regarded as sufficient, having regard to current and likely future demand by the public for copies of the sound recording” has to be applied to the two distinct conditions set out in the proposed insertion of clause 191H (2) of the CDPA.

In the view of the BCC, recognising “sufficient quantities to meet demand” also needs to recognise that for some sound recordings, there is no “demand” or need to issue the sound recordings in physical formats in any significant quantities during the first 50 years from the end of the calendar year in which the sound recording is released.

This would be the case for sound recordings made and forming part of radio programmes and radio programme archives.

It follows that the Regulations should recognise that, for the purposes of such sound recordings, producers of radio programmes should be able to satisfy the notice requirements under the proposed clause 191H(2) of the CDPA if the producer is able to show that a radio archive programme is still available to the public by electronic transmission in such a way that a member of the public may access the recording from a place and at a time chosen by him or her.

This must be on the condition that the collective bargaining arrangements and secondary payments (including equitable remuneration under statutory schemes when relevant) in place immediately prior to expiry of the first 50 years of protection should continue to apply for performers during the 20 year extended term (subject only to express further agreements reached during the 20 years of extended term).

Such arrangements may also be appropriate for sound recordings that are created for film and television production, along with their application to “new formats” for sound recordings – such as audio books.

It is vital for performers in such recordings to benefit from the further term of protection accorded under the Directive and the Regulations.

Future significance

The issue raised is particularly important as we look to the European Commission taking further steps to review the terms of protection for performers whose performances are fixed in films and other audio-visual works.

The BCC continues to believe that there is a need to address the current difference in treatment, as far as extension of term of protection is concerned, between performances in audio visual works and those in musical works.

Clearly, the BCC has no desire to delay the implementation of these Regulations. Implemented correctly, they provide important benefits for musicians, composers and lyricists and for record producers.

However the potential problem of application of the use it or lose it provisions within the Regulations, to sound recordings which are not commercial music phonograms within the

descriptions to which the Impact Assessment for the Regulations, needs further consideration.

The BCC understands that this letter may be subject to publication or disclosure on the same basis as other responses to this consultation.

If you need any further information, please do not hesitate to contact me.

Kind regards.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Janet Ibbotson', written over a light grey rectangular background.

Janet Ibbotson
Chief Executive Officer