

## EXTENSION OF TERM FROM 50 TO 95 YEARS BUT ONLY IF THERE IS A LIMITATION ON THE TERM OF ASSIGNMENT OR LICENCE

The IMMF applauds EC Commissioner Charlie McCreevy's bold press release on 14th February wherein he states that the EC recommends an extension in the term of copyright protection for sound recordings and an extension in the public performance right of 45 years bringing the EU in to harmony with the US at 95 years.

His statement also put forward provisions for 'use it or lose it' and a special fund to provide additional income for session musicians both of which are supported by the IMMF.

However, there is one fundamental issue which the EC also needs to address and that is the issue of a limitation of assignment or licence for featured performers. In the US there is a limit of 35 years. In other words, the maximum period that a record company can acquire recording rights from the artist in the US is 35 years. If there is to be true harmonisation with the US that provision also needs to be in the EC legislation.

Why should record companies be 'gifted' an extra 45 years of copyright protection when the featured artist will have, by that time, paid all the recording costs? Most recording agreements provide that the record company is reimbursed for all recording costs from the artist's royalty account. There can be few other situations in the business world where someone pays for something in its entirety, but never gets to own it.

The IMMF wants to see a limitation of assignment or licence of 25 years for future recording agreements and a limitation of 50 years for existing agreements. This provision would ensure a broad doctrine of 'use it or lose it' as the featured artist would know that their recordings would be returned to them and would thus be able to either assign or license them to the same record company, assign or license them to another record company or put the recordings out themselves on their own label. The IMMF would like to see a 'use it or lose it' rule applied not only in any extension period but throughout the entire term of copyright controlled by the record company. To be deemed to be fully exploiting the recording the record company would need to have physical copies available and have all tracks available for digital download on at least 5 digital platforms at all times. If the record company failed to do this for a period, of say, two years they would be obliged to return the rights in the recordings to the artist.

How will this impact on related rights collection societies such as PPL and SENA? A limitation of assignment will have no effect on their public performance income. They will collect the same income in either case. In the UK, however, it would be very helpful for the public performance right in sound recordings to be made against the user rather than against the

copyright owner as is the case in the rest of Europe. This would mean that performers would have the right to license and collect public performance income directly from users such as the BBC ( via PPL) instead of being reliant on the record companies (via PPL). The UK government somewhat eccentrically gave the right to the copyright holders in the UK's Copyright and Related Rights Regulations 1996. Because the public performance right is with the copyright owner (the record company) they have ultimate control of licensing negotiations with users resulting in performers being beholden to the record companies for their PPL performance income.

How will this effect the record companies? The record companies will still enjoy the 50 years of copyright protection they have today for existing agreements so there will be no negative impact. After the initial 50 year period the rights in the recording will move around amongst the record companies instead of necessarily staying with the same one. This will stimulate the entire music industry and ensure that the recordings are available to the public. The record companies will still gain during the extension period.

Going forward, the IMMF would like to see all transfer of copyright being exercised only by license rather than by assignment. In this way the artist would always have ultimate ownership of their copyrights and a permanent artistic bond would be preserved with their creations. Also, if the licensee record company should go in to liquidation or be in material breach of their agreement with the artist, the artist will have strong grounds to have the copyrights returned to them. If the rights are assigned there is a complete transfer of intellectual property ownership and the assignee is usually free to sell the rights on to a third party. Even if the licence is for the maximum period allowable by law, it is still far better than an assignment which is a complete ownership change. It's the same principle of selling a car to someone (assignment) or renting it out to them (licensing).

The suggested 25 year limitation of assignment or licence for future agreements will ensure that the recordings come back in to public focus at least three times during their copyright lifetime. Imagine the Pink Floyd recordings coming on to the market 3 times at 25 years, 50 years and 75 years. It would create huge interest in their recordings and would give a boost to the commercial activity of the whole industry. This would be a constant recurring process with different artists which would breath life and vitality in to their creations and their country's culture.

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*The International Music Manager's Forum represents featured artist music managers and through them the featured artists (performers and authors) themselves. These featured artists are those that are the source of over 95% of the economic activity in the global music industry. Featured artist music managers are uniquely placed to comment on music industry issues, as they are the only group of professionals that deal with every aspect of the music industry and the copyright system as it applies to music on a daily basis. Music managers are responsible for every aspect of the artist's career including interfacing and negotiating with phonogram producers, music publishers, making arrangements for touring, sponsorship, merchandising, and ensuring that all the available income streams, including those from collection societies, are properly managed. Managers are generally remunerated on a commission basis (usually in the region of 20% of income actually received by the artist) so income streams affecting the artist also directly affect those of the manager. The International Music Managers Forum comprises 15 Music Managers Forums around the world including Australia, Belgium, Canada, Denmark, Finland, France, Germany, The Netherlands, New Zealand, Norway, Poland, South Africa, Sweden, United Kingdom and United States.*