Response ID ANON-AXEP-YQ59-6

Submitted to Consultation on extension of rights in sound recordings and performances to foreign nationals Submitted on 2024-03-11 12:41:48

Introduction What is your name? Name:

## What is your organisation?

Organisation:

ARTISTAS INTERPRETES O EJECUTANTES, EGDPI (AIE)

## What is your email address?

Email:

# Option 0: Maintain the status quo - Questions

## Question 1 Do you consider the way UK currently provides PPR to foreign nationals to be consistent with the UK's international obligations, including those in the Rome Convention and the WPPT? Why or why not? If not, what are the changes needed to bring UK law into line with those obligations?

Provide answer here:

The reflection made by UK IPO about Option 0 considers that under this option, "UK law would continue to provide PPR to foreign performers and foreign producers on different terms. This would continue to lead to circumstances where a producer of a recording can qualify for PPR in UK law, but the performers involved in that recording may not qualify for PPR”. This is the reality at present and such system implies that foreign producers not only get their share on PPR but are paid additionally the share that would correspond to performers involved in that recording. This affects foreign performers that are not protected when playing in third countries sound recordings (such as US). It is an unfair system for performers and against the Rome Convention and the WPPT because it does not ensure a fair share between performers and producers, as those treaties request.

We consider that the IPO statement on not keeping the status quo in this point is a positive approach.

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

## Question 2 Do you agree with the assessment of the impacts of Option 1? If you disagree, why?

Provide answer here:

In our view, the protection to performers and producers of sound recordings on a broad basis in the UK, that Option 1 is assessing, would be the best decision. AIE has defended that the principle of national treatment should be extended to the whole EU territory since it would promote the cultural diversity, and this is also applicable to the UK. As it is set up in the assessment of Option 1 “this option would affect both foreign performers who are currently not entitled to PPR in the UK and the producers that own recordings involving those performers” “these impacts to be concentrated on music owned by US record labels. This is because US performers are generally not entitled to PPR in the UK and because US music is especially popular in the UK”.

Those statements imply that producers (US producers mainly) will be obliged to distribute the performers’ part to them which is a fair adjustment for performers. Notice that it will not only benefit US performers but every performer, although not being a US national, whose performances are involved in a US sound recording and generate revenues in the UK.

It should be noted that it is more frequent each time that Spanish and other European performers, (including UK) have a significant market share in the US and are recording in such country. If the material reciprocity regime applies in Europe, we will have the paradoxical consequence that European performers are not protected in our own territory because they have recorded in the US and the music that will be used will be the non-paying one, the music coming from the US although with European performers, since the users would not be obliged to pay it.

On the contrary, material reciprocity has the negative effect of restricting the protection of performers in general, US, Europe and performers such as those represented by AIE who are recording in the US, despite of their nationality, and would not benefit of an European and specifically UK protective framework. Applying material reciprocity in the UK would imply acting against performers, a so underprivileged sector whatever their nationality is. It is such an unfair solution that any action from the UK institutions must avoid this effect.

## Question 3 Do you have any other comments on Option 1?

Provide answer here:

The arguments accompanying Option 1 state “we would not expect this change to result in music licences becoming more expensive for UK users, who would continue to pay for and enjoy access to the same music. Instead, we expect this change to primarily result in a redistribution among foreign record labels and foreign performers of the music licence fees paid by UK users”.

If this is the case, it is another argument to consider Option 1 as an advantageous solution for users because they will not have to pay more to cover a broader repertoire since it is already covered; moreover, performers will receive their fair share since it will result in a fairer redistribution for performers whose performances are involved in foreign sound recordings.

US record labels will have more costs as stated in the arguments to Option 1, but those costs will come from distributing to performers their share and complying with international treaties (Rome Convention and WPPT). It is an anomaly that those record labels receive the performers share without paying them. Option 1 instead will establish a fair situation for performers and producers because of an equal distribution between them.

Another positive outcome would be that the performers’ CMO (PPL in the UK) will be allowed to collect for performers from a third country and it will have an impact in the distribution for members of the organization. The collection will increase because of the addition of the third country repertoire and the administration costs will decrease because of the application of economies of scale to a higher collection, even if the number performers to which the CMO is distributing have increased.

The result would be that the overall performers’ remuneration will be increased in the UK because all performers will be protected, the whole repertoire will be a paying repertoire. The distribution will be based on the use of the repertoire made and no discrimination will take place based on the nationality or other point of attachment.

As explained before, through national treatment the cultural diversity will be improved. If all performers are paid in the UK because it protects on a national treatment basis, the professional opportunities and remuneration will be increased. The UK will be considered a friendly environment to develop a professional career because performers will be paid despite of the country where the recording was fixed, and they will have the certainty that they will receive the appropriate income for their work everywhere; the cultural diversity will certainly grow, and performers will consider the UK as a safe, interesting, and dynamic place to develop their careers.

Finally, Option 1 will be cost effective. Systems already exist in all major territories to collect on behalf of performers and producers and to pay both parties. For example, in the UK, PPL has sophisticated systems to collect and distribute for performers and producers and the management cost to performers and producers is low.

Option 2: Provide PPR to producers and performers of sound recordings on material reciprocity terms - Questions Question 4 How will/ should licence prices for the broadcasting and public playing of recorded music change under this option? Provide answer here:

If Option 2 is implemented, the repertoire represented by the CMOs (both for performers and producers) will be reduced because users (broadcasters) will be only obliged to pay for the repertoire covered by material reciprocity. Therefore, they will request a decrease on the tariffs for the use of the music and what is even more serious, users will prefer to use non-protected repertoire, namely US repertoire (including the one from non-US performers that have recorded in this country). In the UK in particular, the licence fee is pro rata to the repertoire used. The result would be that performers’ remuneration will significantly decrease in the UK: in the case of EU performers because their repertoire will not be used since it is a paying repertoire and in the case of performers from countries whose repertoire, like the US, is not protected because their music will be used without paying for it.

Therefore, this is not a recommendable option because broadcasters will be tempted to use non-protected repertoire since they would not need a license for a non-paying repertoire.

## Question 5 What would be the benefits of savings for UK broadcasters or those that play music in public under this option?

Provide answer here:

Broadcasters would certainly be benefited because they would not have to pay for the non-protected repertoire, but as explained before this would be done in the detriment of rightsholders work, namely performers and producers because their music would be used without fairly remunerating such rightsholders for their performances and sound recordings. Broadcasters would have free repertoire.

## Question 6 What would be the benefits or costs in terms of increased or reduced remuneration to UK record labels and performers under this option?

Provide answer here:

In the case of material reciprocity, performers and record labels would not receive an increased remuneration in general terms because their repertoire would not receive payments from countries that do not apply a material reciprocity principle towards the UK. Therefore, it would be a cost for those rightsholders (loss of profits) because they will not be paid although their performances and sound recordings would be used (for free).

## Question 7 What upfront and ongoing administration and legal costs (such as the costs of renegotiating licences) might arise under this option? Can you quantify these?

Provide answer here:

Renegotiating the licenses would certainly originate costs for performers and producers. Nevertheless, the worse problem would be that the repertoire represented by the CMOs will be reduced, as stated in the precedent question users will request a decrease on the tariffs for the use of the music and what is worse users will prefer to use non-protected repertoire, namely US repertoire (including the one from non-US performers that have recorded in this country). See our answer to Question 4.

## Question 8 Do you think this option will cause users to reduce the amount of UK music they play? If so, why, and to what extent will this effect take place? How will this affect the UK music industry?

Provide answer here:

As explained in the precedent questions, the users would use music from non-paying repertoires preferably, if such option exists. In the case of material reciprocity, a part of the repertoire, namely the one which is not covered by the material reciprocity, would be of free use and the users would take the advantage of using such non-paying repertoire in the detriment of UK music which is protected. The UK music industry will be affected because it would lose potential revenues and it would disincentivize the investment in UK talent, promotion, and new releases.

## Question 9 How might the costs on foreign (especially US) record labels under this option indirectly affect the UK music industry or UK consumers?

Provide answer here:

As explained in answer to question 8, In the case of material reciprocity, the US repertoire would be of free use and the users would take the advantage of using such non-paying repertoire. As a result, US record labels would not get any revenue for the use of their recorded music, and it would discourage the investment in new artists. It would certainly affect US performers but not only because it is frequent that foreign performers, such as the UK performers in this case, collaborate in international productions. This situation will restrict their possibilities of developing their careers and their professional opportunities.

## Question 10 Do you have any other comments on Option 2?

Provide answer here:

No.

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

## Question 11 How will/ should license prices for the broadcasting and public playing of recorded music change under this option?

Provide answer here:

Broadcasters and public places will certainly use non-paying repertoire such as US repertoire and other third countries repertoire to the detriment of UK music industry including UK performers. Applying a different option to pre-existing sound recordings and performances would only solve the problem partially if Option 1 includes a complete national treatment protection, including not only producers but also performers, as we have explained in our comments to Option 0. Moreover, applying Option 2 to new sound recordings and performances will bring all the inconvenient that we have explained in our comments to this Option and would complicate very much the management of rights for UK and international CMOs that would have to distinguish Option 1 and 2 in their remuneration exchanges, which would bring additional costs.

## Question 12 What would be the benefits of savings for UK broadcasters or those that play music in public under this option?

Provide answer here:

Users will request a decrease on the tariffs for the use of the new recorded music which would be under material reciprocity and will prefer to use new non-protected repertoire that would be a non-paying repertoire, instead of pre-existing repertoire that would be subject to license. The result would be that broadcasters would benefit from savings in the detriment of performers’ remuneration for the new releases that will significantly decrease in the UK. It would not be a fair situation for performers.

## Question 13 What would be the benefits or costs in terms of increased or reduced remuneration to UK record labels and performers under this option?

Provide answer here:

The accompanying study to the questionnaire considers (nº 69) that Option 3 will generate “Gains of £130 million to be split equitably between UK record labels and artists” during the period 2024-33. We are not in the position to confirm such figures that correspond to UK market. In any case they are lower than the figures foreseen for Option 1 that sets up a protection for all sound recordings and fixed performances, so Option 1 would be preferable for us for the reasons explained above.

What is undeniable is that extending the protection will increase the remuneration for performers from the UK and from other countries, such as the US artists mentioned in nº 69 too: “Gains of £119 million for US artists whose performances are contained in pre-existing sound recordings”. In our view this should not be limited to the preexisting sound recordings but also to the new releases since we are in favor of Option 1.

## Question 14 What upfront and ongoing administration and legal costs (such as the costs of renegotiating licences) might arise under this option? Can you quantify these?

Provide answer here:

In this case renegotiating the licenses will be also necessary but only to include the repertoire partially, because the pre-existing repertoire will be included but the new repertoire will be not. Covering a new repertoire would originate costs for performers and producers but this would be compensated because of a wider collection for the use of their protected content. The negative consequence, once again, would be that users will prefer to use non-protected repertoire, namely the new released unprotected repertoire. The result would be that performers would be treated in a different way depending on the date of the releases of their fixed performances which is discriminatory and moreover both type of performers would be negatively affected: 1) the ones whose repertoire is protected because it will be less used by the users, since it is a paying repertoire and 2) the ones whose repertoire is not protected because they will receive no remuneration despite of being used by the users.

## Question 15 Do you think this option will cause users to reduce the amount of UK music they play? If so, why, and to what extent will this effect take place? How will this affect the UK music industry?

Provide answer here:

As outlined before, the users will prefer to use non-protected repertoire, namely the new released unprotected repertoire for which they will not be obliged to pay, if it does not meet the material reciprocity criteria. It would affect all performers whose repertoire is protected, therefore UK and foreign performers. Moreover, it would affect cultural diversity because only a part of the available music (the non-protected) will be played.

## Question 16 How might the costs on foreign (especially US) record labels under this option indirectly affect the UK music industry or UK consumers?

Provide answer here:

As regards new releases, US record labels would be reluctant to facilitate the use of their music in the UK and invest in this market because their new releases would not be protected and therefore their repertoire would be a non-paying repertoire. It would certainly affect UK music industry that would lose the opportunities brought by the US industry and would also affect UK consumers because their access to more diverse music would be more difficult.

## Question 17 Do you have any other comments on Option 3?

Provide answer here:

No.

# Preferred Option

## Question 18 What is your preferred option and why?

Option 1

Provide answer here:

As explained in the answer to Question 2, in our view the protection to performers and producers of sound recordings on a broad basis in the UK, that Option 1 is assessing, would be the best decision. AIE has defended that the principle of national treatment should be extended to the whole EU territory since it would promote the cultural diversity, and this is also applicable to the UK. As it is set up in the assessment of Option 1 “this option would affect both foreign performers who are currently not entitled to PPR in the UK and the producers that own recordings involving those performers” “these impacts to be concentrated on music owned by US record labels. This is because US performers are generally not entitled to PPR in the UK and because US music is especially popular in the UK”.

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It should be noted that it is more frequent each time that Spanish and other European performers, (including UK) have a significant market share in the US and are recording in such country. If the material reciprocity regime applies in Europe, we will have the paradoxical consequence that European performers are not protected in our own territory because they have recorded in the US and the music that will be used will be the non-paying one, the music coming from the US although with European performers, since the users would not be obliged to pay it.

On the contrary, material reciprocity has the negative effect of restricting the protection of performers in general, US, Europe and performers such as those represented by AIE who are recording in the US, despite of their nationality, and would not benefit of an European and specifically UK protective framework. Applying material reciprocity in the UK would imply acting against performers, a so underprivileged sector whatever their nationality is. It is such an unfair solution that any action from the UK institutions must avoid this effect.

# Confidentiality and data protection

## Confidentiality request:

Provide answer here:

I prefer that my name and e-mail are not published, but we agree on the answers and name of the organization to be published.