

BECS response to Consultation re. Extension of rights in sound recordings and performances to foreign nationals

The British Equity Collecting Society (BECS) is a not-for-profit organisation, established in 1998. BECS has perhaps the largest representation of performers with audio-visual fixations in the UK. Representing over 32,000 direct members and over 100,000 performers through our network of bilateral partners, BECS manages and enforces their rights and collects remuneration for the use of their audio- visual work through licensing agreements. We are a Collective Management Organisation (CMO), subject to the Collective Rights Management Regulations 2016 and governed by our members. We have performers’ best interests, accountability and transparency at the heart of everything we do.

# Option 0

**Question 1.** Do you consider the way UK law 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?

The criteria for qualification for protection for performances do not seem to us to be consistent with the requirements of Art 4 (b) and (c) and Art 12 of the Rome Convention and by extension the WPPT. While those treaties give Contracting Parties discretion as to application of the provision re. single equitable remuneration for secondary uses of phonograms, they do not allow for it to be applied in a different way to performers than it is to producers. Therefore, consistency in the UK’s treatment of performers and producers in this regard is required by the treaties and we do not consider Option 0 to be a possible option.

# Option 1

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

Yes, we agree with the assessment of impacts (though we are not in a position to know whether the estimated cost to US record labels and gain to US musicians is accurate).

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

Option 1 is our preferred option. We believe it is in accordance with international treaty obligations and also principles of fairness that performers should be eligible to receive PPR whenever producers receive it and whenever their work is exploited in the relevant ways. It is unfair that PPR is currently collected at a level which assumes that it will be shared between producers and performers but then in circumstances where the performers on the relevant sound recording do not meet the narrower eligibility criteria, all of the equitable remuneration in respect of the use of that sound recording is paid to the producers.

We also want to highlight that UK performers in audiovisual recordings (who do not benefit from statutory equitable remuneration for broadcasting and communication to the public in the UK) are currently beneficiaries of statutory remuneration when their work is broadcast and communicated to the public in various other countries around the world which have introduced such remuneration rights without requiring reciprocity. If these countries were to introduce reciprocity requirements, users in

those countries would continue to use UK audiovisual works (which are hugely popular worldwide) but UK performers would cease being remunerated – thus losing out twice over - when their work is used in countries that have statutory equitable remuneration systems with a reciprocity requirement, as well as by not receiving statutory equitable remuneration in their home country, the UK. This would be an unfair and undesirable situation for UK performers and is another reason why we support Option 1 and also support the introduction of statutory equitable remuneration for performers in audiovisual works for some of these uses in the UK.

# Option 2 and 3

BECS is against Options 2 and 3 for the same reasons that we have given above for supporting Option

1. Either of these options would be a step backwards in terms of creators’ rights. Also, they would create extreme complexities administratively and increased costs.

It is overestimating the importance of UK equitable remuneration to the US market to suggest that the UK requiring material reciprocity would have any impact on the decision-making process of the US legislature about whether to widen their own system of statutory remuneration.

# Overall

**Question 18.** What is your preferred option and why?

Option 1 – see reasons mentioned in response to Question 3.