SUBMISSION TO IPO CONSULTATION ON THE EXTENSION OF RIGHTS IN SOUND RECORDINGS AND PERFORMANCES TO FOREIGN NATIONALS

Submission from David Stopps

INTRODUCTION

I was on the PPL Board for 14 years from 2007 to 2021 representing performers in the context of public performance rights and public performance income. I have also been an advisor on copyright and related rights for the Music Managers Forum UK. From 2002 to 2011 I was a member of the British Copyright Council and was the United Nations representative for The International Music Managers Forum at WIPO (World Intellectual Property Organisation) in Geneva. At WIPO I represented all featured artists worldwide concerning new international treaty negotiation in the field of copyright and related rights. In 2011 I was involved in setting up of the Featured Artists Coalition (FAC).

I am the author of the book “How to make a Living from Music’ which is published by the United Nations. Commissioned by WIPO, the book is mainly targeted at the developing world but is equally useful in developed countries. The second edition of this book was published in 2014 and an expanded third edition was published in August 2022 which has been translated into Arabic, French, Spanish, Russian and Mandarin. The book is available as a free PDF download. An updated third edition will be published in May 2024.

I am a consultant and educator and have presented a series of international workshops mainly for WIPO and The British Council. The workshops focus on informing music authors, performers, managers, governments and collective management organisations, but also telecoms, brands and any organisation interested in expanding their business using music. I have presented workshops in Antigua, Argentina, Belgium, Barbados, Brazil, Bulgaria, Canada, Chile, Cote D’Ivoire, Ecuador, Indonesia, Jamaica, Kenya, Mozambique, Namibia, Netherlands, New Zealand, Peru, Philippines, South Africa, Spain, Thailand, Trinidad & Tobago, Tunisia, Turkey, UK and USA. In January 2017 I made two presentations on ‘How to make a Living from Streaming’ and ‘Branding a Music City’ at the NAMM show in California.

In March 2013 I gave a speech at the European Parliament in Brussels concerning the EU’s Collective Rights Management Directive and in July 2013 gave a speech at the WTO (World Trade Organisation) Aid for Trade Global Review in Geneva. In 2017 I was appointed by the European Union (via ARCA) to be the UK Copyright Expert on their review of the implementation of the EU Term Directive, which extended copyright protection in sound recordings in EU Member States from 50 to 70 years.

SUBMISSION

I very much welcome this consultation on the extension of rights in sound recordings and performances to foreign nationals which is long overdue. I have argued for many years that the UK was not complying with the Rome Convention and the WPPT in that the treatment of foreign phonogram producers and the treatment of the performers that performed on their recordings was not equitable. The fact that PPL applied equitable remuneration to recordings from foreign phonogram producers, but also paid the performer share (if the performer was deemed non-qualifying) to the phonogram producer, has attracted strong criticism from performer organisations worldwide. The UK has been and continues to be a complete outlier in this regard.

**I am overwhelmingly in favour of OPTION 1. Option 0 is clearly unsustainable. Options 2 and 3 would be highly disruptive for the entire music industry but especially for PPL.**

SPECIFIC QUESTIONS

Q1 UK Law is clearly inconsistent with Rome and the WPPT in regard to foreign non-qualifying performers. Equitable remuneration is stated as being equitable between phonogram producers and performers. The fact that the UK pays 100% of PPR income to the phonogram producer, where there is a non-qualifying performer, is in contradiction of this. 50% of the money collected is performer money and should be paid to or used for the benefit of performers, not phonogram producers. The application of Option 1 in the consultation would correct this.

Q2 I broadly agree with the IPO assessment of the impacts of Option 1.

Q3 Option 1 is clearly the way to go. It would be fairly straightforward for PPL to implement the changes required as they already have the performer information in their database created when judging whether a foreign performer is qualifying or non-qualifying. In the USA the one enormous hole in US Copyright law is that the US took a reservation on Article 15 of the WPPT which resulted in US terrestrial radio stations not having to pay the performers or the phonogram producers on recordings they broadcast. The irony here is that they do pay the music authors of the works in those recordings via ASCAP, BMI, SESAC and GMR. This lack of a public performance right in sound recordings for terrestrial radio in the USA seriously impacts UK performers and UK phonogram producers, particularly as UK recordings receive considerable play in USA. The adoption of Option 1 will also re-focus US phonogram producers and performers on the huge potential benefits of their campaign to establish terrestrial PPR in their country. Sound Exchange, which is already by far the largest CMO for PPR in sound recordings rights in the world, collecting over $1billion annually from digital alone could triple their turnover. This would bring enormous benefit for both US and UK phonogram producers and US and UK performers.

Q4-Q17: Options 2 and 3 are clearly undesirable. As noted, either of these options would cause serious disruption in the current broadcast and public performance licensing ecosystem. If broadcasters no longer had to pay for foreign non-qualifying recordings there would be a direct incentive for them to increase the number of plays of those recordings, particularly American recordings. In the absence of a quota system this would have a directly negative impact on UK phonogram producers and UK performers.

As we know American artists are very popular outside of the USA and particularly in the UK. It is only fair and reasonable that the performers on those recordings are paid equitable remuneration in the same way as their UK counterparts.

CONCLUSION

I strongly urge the IPO to adopt Option 1. I have seen the submission from the Council of Music Makers and am in complete agreement with it.

David Stopps

E: [davidstopps@fmlmusic.com](mailto:davidstopps@fmlmusic.com)

T: +44 7899870023

Address: 30 Napier Road, Aylesbury, Buckinghamshire HP197BS