Response ID ANON-AXEP-YQGJ-9

Submitted to Consultation on extension of rights in sound recordings and performances to foreign nationals Submitted on 2024-03-22 16:54:42

# Introduction

## What is your name?

Name:

Timothy A. Cohan, Esq.

## What is your organisation?

Organisation:

Peermusic Neighbouring Rights, Ltd.

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# 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:

We do not take a position on the UK’s strict compliance with the Rome Convention, WPPT, or other international obligations, but share the IPO’s conviction that the principles embodied in these and other international treaties and agreements require greater consistency in the approach to PPR (and specifically equitable remuneration) than Option 0 provides.

# 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:

We broadly concur with the assessment of IPO. If the producers of sound recordings, who are entitled to PPR in the UK, are required to pay an equitable share of the PPR revenues to the performers involved in those recordings, the impact will be felt primarily by US record labels, who are currently receiving the “non-qualifying performance re-allocation”. We don’t believe that the implementation of Option 1 would impact the licensing state, nor would it change overall PPR collections or impact consumers of music.

In our experience, when UK record labels work with foreign performers (from non-qualifying territories), those foreign performers will almost always receive UK PPR payments for the recordings/performances they make with those UK record labels, because the foreign performers become eligible for equitable remuneration of PPR when the performance is made in a qualifying territory – and PPL makes the reasonable assumption that when a recording is made in the UK, all the performances were in the UK.

Hence, UK record labels should be collecting negligible amounts that would be allocated to performers under this option. As a result, the UK labels should very rarely bear any additional costs under this option. Exceptions would include cases in which the UK label has made recordings in non-qualifying territories including the performances of performers from non-qualifying territories, or cases in which they control repertoire which was originally recorded in a non-qualifying territory and includes performances by non-qualifying performers.

[General reference about performance qualification criteria:

[https://www.ppluk.com/wp-content/uploads/Governance/Schedule-3-Performer-Qualification-June-2015.pdf]](http://www.ppluk.com/wp-content/uploads/Governance/Schedule-3-Performer-Qualification-June-2015.pdf)

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

Provide answer here:

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:

Published reports and analysis typically suggest the percentage of UK music consumption from ‘domestic’ artists to be in the range of 40-60%. After domestic artists, US artists will be the most-consumed nationality. If this proportionality were to apply to the usage of music which is currently licensed for PPR, then it would suggest that a significant proportion – perhaps 25-40% - of popular recorded music would no longer require a licence for broadcast or public performance. This would undoubtedly lead to a reduction in the licence prices, and many existing licensees may determine that there is sufficient recorded music available without a licence that one is not required for their purposes.

## 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:

The licences issued by PPL are typically ‘blanket’ in nature, so it is unlikely that reduced licence fees will enable broadcasters or those playing music in public to spend more money on licensing additional (UK) recordings – it is more likely that those savings of reduced or halted licences will be channeled into licensee overhead, profits, or other areas and will not benefit the UK music sector,

## 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:

As noted in question 5, we don’t see the benefits, and would anticipate reduced remuneration to UK record labels and performers.

## 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:

We agree with the principle that the transaction costs and administrative burdens of renegotiating all UK PPR licenses must be taken into consideration when assessing Option 2. Licensees will seek the maximum reduction in license fees they are able to obtain based on their estimates of non-qualifying recordings and performances no longer included in the PPL licence. PPL will seek to minimize the discounts to the status quo licence fees, pointing to overhead costs that will not reduce linearly with a reduction in works licensed, and will rely on the most conservative estimates of affected repertoire. Negotiations will be contentious, and agreements on the appropriate value will be difficult to reach. Transaction costs could be high, particularly if arbitration or litigation ensues.

Under Option 2, we can expect administrative costs to be higher as well. Not only will a reduced number of clients bear a greater proportion of PPL’s administrative costs, but those costs are more likely to increase rather than decrease with a reduction in qualifying repertoire. The point of blanket licensing is to enable users and licensors to benefit from efficiencies lost when recordings must be assessed for inclusion or exclusion from the license.

## 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:

It seems clear that many businesses will play less recorded music originating from the UK if music originating from the US and other non-qualifying territories is available for free. Where music is ancillary to a licensor’s main business (e.g., background uses, audiovisual productions, retail establishments), the incentive to minimize or eliminate the PPL license entirely through reliance on non-qualifying recordings alone will be high. In the broader group of non-interactive music offerings, licensees with discretion to select content will undeniably face commercial pressure to select content at the lowest possible cost. Customer dissatisfaction with the loss of variety may mitigate the extent to which UK music will be excluded from certain offerings, but only insofar as the costs of such dissatisfaction can realistically be expected to exceed the substantial savings of exclusion.

## 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:

Clearly, cutting off all PPR revenue streams to US record companies will provoke an industry response that can be expected to be even greater than the loss of reallocated income under Option 1. Pressure on pending and future trade negotiations with the US can be expected, with unpredictable effects on the UK’s broader aims in the protection and promotion of UK commercial interests.

While it is true that US performers signed to US labels are more likely to be harmed by the effects of a significant reduction in US label revenues, a decrease in investment in new US artists will reduce the UK public’s access to and enjoyment of a category of content that represents 25-40% of current UK market demand.

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

Provide answer here:

# 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:

Our response to this question and to the five that follow (through and including Question 16) are reflected in our responses to the questions surrounding Option 2. The application of Option 2 to a smaller class of new recordings does not, in our view, cure the defects in Option 2.

## 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:

See replies above.

## 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:

See replies above.

## 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:

See replies above.

## 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:

See replies above.

## 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:

See replies above.

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

Provide answer here:

# Preferred Option

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

Option 1

Provide answer here:

We believe that Option 1 is the best choice in terms of law, policy, and the overall health of the neighbouring rights economy in which the UK plays an important role. The approach captures the fundamental principle of equitable remuneration: where a phonogram producer is compensated for the public performance of a sound recording, the performer is entitled to a fair share of that compensation. The approach does not conflict with international treaties and other obligations, maintains the status quo in terms of the value and processes in place around current PPL licenses, and will have a minimal impact on UK commercial and artistic interests.

# Confidentiality and data protection

## Confidentiality request:

Provide answer here:

We kindly request that the client-related stats contained in our answer to question #2 be redacted when the response is published.