

The Young Ones get older: copyright in sound recordings extended by 20 years

The EU Council has voted to extend the copyright on sound recordings from 50 to 70 years. This change marks the culmination of much publicised campaigning from a number of high-profile musicians and producers. Known colloquially as “Cliff’s law”, after reportedly receiving the support of the artist Sir Cliff Richard, the new EU law will have an impact on performers, record companies and collecting societies.

The directive also contains provisions for the remuneration of performers during the additional 20-year period. This includes establishing a central fund paid for by record companies and administered by collecting societies. Performers will be able to claim back their rights after 50 years.

The thinking behind the amendments is that, because performers begin their careers at a young age, the existing term of 50 years copyright protection is insufficient to protect their recordings and performances for their entire lifetime. This leaves some performers facing an income shortfall and unable to object to the unauthorised use of their records and performances during their lifetime. Copyright in sound recordings by the Beatles, Cliff Richard and Elvis Presley, amongst other high-profile artists, were due to expire over the next few years.

The key changes to copyright law brought about by this directive are:

- The term of protection for fixations of performances in sound recordings and sound recordings themselves will be increased to 70 years from the date of first publishing or communication to the public.
- At the expiry of 50 years, if the record company fails to make a record available to the public in sufficient quantity or does not make it available to the public in such a way that they may access it at a time and a place individually chosen by them (i.e. does not sell records, broadcast or “narrowcast” the recording), performers may reclaim the rights in the recording of their performances by terminating the agreements assigning them. If this happens, the record company loses copyright over the records and the performers are then free to negotiate the exploitation of the sound recordings for the additional 20-year copyright period. Performers must give notice of their intention to reclaim the rights and the rights holder will have one year in which to “use it or lose it”. The performer’s right to terminate cannot be waived.
- Performers who assigned their rights for a one-off fee (such as session musicians), will have the right to receive an annual income from the record producer after the 50-year term expires (i.e. during the extra 20 years). This will predominantly be funded by record companies, who will have to put 20% of the income earned on those records during the 20-year extension period into a central pot administered and distributed by collecting societies.
- Where performers are instead entitled to receive recurring payments (i.e. royalties) under the terms of agreements transferring their rights, during the additional 20-year period, such payments will not be subject to deductions for advance payments nor any contractually agreed deductions. In other words, the slate is wiped clean and the clauses relating to deductions cannot be carried over to the extended period.
- The rules on determining the duration of copyright in works of joint authorship have been harmonised across the EU. Copyright now expires 70 years after the death of the last surviving author of either the music or the lyrics of the composition.

Whilst the extension of the copyright period for recordings will be of benefit to both performers and record companies, there will be a number of administrative changes that will have to be thought through, including setting-up and managing the central fund. Record companies will also need to ensure that they are adequately exploiting their rights or face losing them at the expiry of the 50-year term.

The new law will have to be implemented in the UK and other member states within two years of the directive entering into force.

In the United States the position is different and depends on when the record was made. Records created after 1 January 1978 receive copyright protection for the life of the performer plus 70 years or, in the case of works made for hire, the earlier of 95 years from first publication and 120 years from creation. Copyright in records created before 1 January 1978 can last for 95 years from first publication, provided that the copyright is renewed after the initial 28-year term for a further 67 years.

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