

Extended copyright term in sound recordings: UK Regulations published

The UK Regulations that will implement the EU law extending copyright in sound recordings and performers' rights from 50 to 70 years and harmonising the copyright term for co-authored works, have been laid before Parliament. They will come into force on 1 November 2013. We summarise the main points.

Background

The Copyright and Duration of Rights in Performances Regulations 2013 (SI 2013/1782) (the "**Regulations**") implement Directive 2011/77/EU (the "**Directive**"), which amends the Copyright Term Directive (2006/116/EC). As we reported in our [Legal Update of January 2013](#), as well as extending copyright in sound recordings and performers' rights from 50 years to 70 years and harmonising copyright for co-authored works, the Directive includes:

- A "use it or lose it" provision, providing that record companies may lose the right to exploit a record if they fail to issue it in sufficient quantities or make it available to the public via the internet at the expiry of the 50-year period.
- A "clean slate" provision, prohibiting record companies from withholding or deducting any sums from royalties payable to a performer from the end of the 50-year period.
- A central fund, allowing performers who assigned their rights for a one-off fee (e.g. session musicians) to receive an annual payment for exploitation of the record during the 20-year extension period. Record companies will have to pay 20% of gross revenue received for the record to a collecting society for distribution to the performer.

The new Regulations

The Regulations, which amend the Copyright, Designs and Patents Act 1988, are largely the same as the draft regulations published in January 2013, when the Intellectual Property Office ("**IPO**") launched a consultation on its proposals to implement the Directive.

The following is a summary of some noteworthy changes to the Regulations since its draft phase:

- The "use it or lose it" provision is now fleshed out with various definitions, including the meaning of "sufficient quantities", which was discussed in the IPO consultation and is defined in the Regulations as: "such quantity as to satisfy the reasonable requirements of the public for copies of the sound recording".
- The "use it or lose it" provision now makes it clear that a performer may give notice to the record company of his or her intention to terminate their agreement *at any time* after the end of the 50-year period, if the record company fails to issue copies in sufficient quantities or make the record available via the internet.
- The record producer (or exclusive licensee, if the producer has granted an exclusive licence of the copyright in the record) will have to pay the 20% gross revenue over to collecting societies *within six months* of the end of each 12-month period. (This six-month period had not been defined in the initial draft regulations.)
- Regulation 19 of the January draft, which provided for compulsory licensing where copyright was revived as a result of harmonising the term of co-authored works, has been *removed* from the Regulations following the IPO consultation.

Comment

The Regulations (like the Directive) do not provide any detail about how the “use it or lose it” right will apply where there are multiple performers, nor do they explain what proportion of the annual payment will be received by each performer (they simply say that this will be done in accordance with the collecting society’s rules).

The Explanatory Memorandum published by the IPO with the Regulations says that guidance on the Regulations will be made available no later than 12 weeks before the implementation date of 1 November 2013, so we can expect publication of this imminently. The guidance may provide further detail on these points.

A copy of the Regulations can be found [here](#).

If you would like more information about this Legal Update please contact:

Sarah Byrt

Partner

T: +44 20 3130 3832

E: sbyrt@mayerbrown.com

Daniel Gallagher

Associate

T: +44 20 3130 3537

E: dgallagher@mayerbrown.com

Mayer Brown is a global legal services organisation advising many of the world’s largest companies, including a significant portion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world’s largest banks. Our legal services include banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Washington DC
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai, Singapore
EUROPE: Brussels, Düsseldorf, Frankfurt, London, Paris
TAUIL & CHEQUER ADVOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro

Please visit our website for comprehensive contact information for all Mayer Brown offices. www.mayerbrown.com

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the “Mayer Brown Practices”). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe–Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorised and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. “Mayer Brown” and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2013. The Mayer Brown Practices. All rights reserved.