

MONEY FOR OLD NOTES

By Mark Dennis

Veteran music performers such as Sir Cliff Richard made the national headlines in July this year when the European Commission proposed a new copyright initiative to help older performers and musicians.

The Commission proposed a Directive to extend the term of copyright protection for recorded musical performances from 50 years to 95 years. The Commission's aim is to bring the right more in line with the duration of protection given to authors (life plus 70). This should give older performers such as Sir Cliff the right to receive income from their performances for their entire lives, even though they may not own the copyright in the lyrics or music.

The Commission believes that the proposal would also benefit less well-known performers including anonymous session musicians, as well as record producers who could then reinvest the additional sales revenue in new talent.

The proposal contains some accompanying measures such as:

- establishing a fund for session musicians into which producers must pay at least 20% of their revenues earned during the extended period;
- introducing “use it or lose it” clauses into contracts between performers and producers, which would allow the performer to get their rights back if the producer does not market the sound recording during the extended period (and for the recording to enter the public domain if neither the performer nor the producer are interested in marketing it); and
- setting the term of protection for a co-written musical composition at 70 years after the death of the last surviving author, whether they are the author of the lyrics or the composer of the music.

The Commission's proposed Directive has met some vocal criticism. Opponents argue that it would have a detrimental effect on the music industry and society as a whole. They argue, for example, that the costs of these additional royalties would ultimately be borne by the consumer through higher prices. The extended period would also hold back the release of older recordings into the public domain and do nothing for innovation and creativity.

The European Parliament and Chamber of Ministers will need to approve the Directive before it becomes law. The Directive looks likely to meet resistance on the way, including perhaps from the UK. The Gowers Review in 2006 considered this very issue and recommended retaining the length of protection at 50 years.