

Title: Impact Assessment of: Directive 2011/77/EU of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights IA No: BIS1562 Lead department or agency: Intellectual Property Office Other departments or agencies:	Impact Assessment (IA)			
	Date: 13/06/2013			
	Stage: Final			
	Source of intervention: EU			
	Type of measure: Secondary legislation			
Contact for enquiries: Nick Ashworth Tel: 01633 814397				

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£5.01M	-£5.01M	£0.3m	No	N/A

What is the problem under consideration? Why is government intervention necessary?

The copyright term for performers and record producers of their performance and sound recordings are harmonised at European level and last for 50 years. After this term of copyright expires, performers and record producers no longer receive a source of income from sales or from royalties. The EU has approved a directive to extend the period of protection for sound recordings (not including audiovisual performances) to 70 years. Government intervention is required as copyright term protection is governed by acts of Parliament through EU competency; the UK is bound to implement the Directive by 1 Nov 2013. The Directive also harmonises the rules concerning the term of protection for musical compositions with words.

What are the policy objectives and the intended effects?

To enhance the welfare of all performers by improving their sources of potential income throughout their lifetime and to distribute income to those previously excluded due to contractual agreements. Record companies will also benefit from royalties that accrue from the extended term of protection. Harmonising the rules concerning co-authored works should also provide greater legal certainty to users and rightsholders.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The Directive has been agreed at EU level and will provide an extension of the term of protection for sound recordings which more closely reflects the lifespan of performers. The inclusion of permanent measures for performers will ensure that they benefit from an extension to their rights in respect of new and existing recordings. The Directive gives clear instructions to Member States governing the length of the extension, the rights that need to be adjusted or provided for and the distribution of these income sources. All will need to be covered by Regulations in order that they are legally binding and harmonised. Non-compliance with the Directive could lead to infraction proceedings and the risk of legal action by disadvantaged businesses.

Will the policy be reviewed? Yes. The implementing regulations will be subject to regular review.
If applicable, set review date: November 2018

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Lucy Neville-Rolf _____ Date: 23/07/2014 _____

Summary: Analysis & Evidence

Policy Option 1

Description: Extend the term of copyright protection for sound recordings and for performances in sound recordings from 50 to 70 years.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 20	Net Benefit (Present Value (PV)) (£m)		
			Low: -6.8m	High: -£3.21	Best Estimate: -£5.01m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£9.1m	£17.7m	£242.3m
High	£10.1m	£53.1m	£709.7m
Best Estimate	£9.6m	£35.4m	£476.0m

Description and scale of key monetised costs by 'main affected groups'

The cost of this option is £476m over 20 years (the length of the copyright extension). The average annual costs of £35.4m to the main groups are the costs to licensing authorities/collecting societies (£4.8m), UK content distributors, such as broadcasters (£29.5m), lost sales in the public domain (£1m), the cost to producers of a session fund (£0.2m) and transitional cost of adapting to the new system (£9.6M).

Other key non-monetised costs by 'main affected groups'

Public Domain Broadcasters, who only use recordings and performances that are out of copyright, will not be able to expand their repertoire for a further 20 years until tracks fall out of protection. This might reduce their ability to attract new audiences. This cannot be quantified. Record companies who specialise in re-mastering and releasing records in the public domain will be prevented from expanding their repertoire. This cannot be quantified. There will also be a small cost for setup for PRS for Music which we are unable to quantify further.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	£17.9m	£235.5m
High	0	£53.7m	£706.5m
Best Estimate	£0.00	£35.8m	£471.0m

Description and scale of key monetised benefits by 'main affected groups'

The benefits of this option are £471m over 20 years (the length of the copyright extension). The average annual benefit of £35.8m to the main groups are the benefits to performers (£15.3m), record companies (£15.3m) additional sales revenue (£0.9m) and additional PPL administration fees (£4.4m).

Other key non-monetised benefits by 'main affected groups'

Performers will have the ability to terminate the contract with a producer if the record producer fails to market or exploit a track, which could provide a cultural benefit by widening the stock of recordings available for exploitation. The extension may incentivise record companies to digitise back-catalogues potentially increasing availability to consumers. The additional income generated by the 20 year extension or protection could help record companies invest in new talent. Finally, the status of performers in society could be improved by providing greater recognition of their work. Session musicians will benefit from the session fund although this has not been monetised as it is not possible to estimate the take up. There will also be a non-quantifiable benefit for members of PRS for Music who will benefit from the enhanced provision for co-authored works, but this is likely to be small.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<ul style="list-style-type: none"> - The figures have been discounted over 20 years rather than the standard 10 years as the benefits of the Directive will have effect over the whole period of extended copyright protection. - The assumptions underlying the cost and benefit estimates are linked, therefore comparing a mix of low cost to high benefit and low benefit to high cost would be inaccurate. Additionally in this case, the net benefit of the low estimates happens to be higher than the net benefit of the high estimates. 		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £28.3m	Benefits: £28m	Net: -£0.3m	No	N/A

Background

Copyright term

Both record producers and performers enjoy rights in their sound recordings and recorded audio performances. These rights can either be exclusive rights or rights to receive equitable remuneration for the commercial use of recorded performances and sound recordings:

- Performers' exclusive rights in their performance (the right of reproduction, distribution, rental and 'making available' online) are usually transferred to the producer of the sound recording. Performers also have moral rights: that is the right to be identified as the performer in a performance (subject to asserting that right) and the right to object to modifications made to performances that are prejudicial to the performer's reputation.
- Record producers also have exclusive rights of reproduction, distribution, rental/lending and 'making available' on line in relation to their sound recordings.

Under EU law, an equitable remuneration is paid by the user and shared between the record producer and performer when a sound recording published for commercial purposes or a copy of that recording, is used for broadcasting by wireless means or for any communication to the public. In the UK, this is achieved by record producers receiving an exclusive right over the public performance and broadcasting of their sound recordings. Record producers are then required to pay equitable remuneration to the performers when their recorded performances are played in public or communicated to the public off-line. In the UK these revenues are split 50/50 between the producers and the performers. Performers cannot assign this right; they may only transfer the right to a collecting society for the purposes of administering the collection and distribution of equitable remuneration; most performers and record producers exercise these rights to royalties for broadcasting and public performance through collecting societies (as this makes administration of multiple tracks much easier). In the UK, PPL is the collecting society that collects revenues on behalf of performers and producers of sound recordings.

All rights in sound recordings and performances in sound recordings last for 50 years from the date of making the recording of the performance or sound recording or, if later and within 50 years of the date on which the recording was made, 50 years from the date of release. If there is no publication of the recording in that 50 year period but the recording is lawfully communicated to the public in this period, the 50 year term runs from the date it is first lawfully communicated to the public. This means that over a period of 50 years, performers receive remuneration each time their work is played on air or in public places and, if the contract permits, they also receive royalties from sales. Once the term of protection expires, the recordings fall into the public domain and performers and record producers can no longer charge royalties for the use of their rights in the recordings. The performers' moral rights also expire when the term of protection expires.

Performers and record producers play an important role alongside composers and lyricists in creating new musical works. Currently composers and lyricists enjoy protection for their lifetime and 70 years after their death and it is argued that the term of protection for performers should better reflect their status by being increased (although not as long as the creators of the underlying works).

Directive

In July 2008, the European Commission published a draft Directive proposal that copyright term for sound recordings and performers' rights be extended from 50 years to 95 years. The proposal also included a number of provisions aimed at benefiting performers – but some of these were merely transitional and would not apply to new works.

In April 2009 the European Parliament voted in favour of amendments to the Commission proposal providing an extension to 70 years. The amendments also included permanent benefits for performers and other provisions intended to help artists whose works were no longer commercially exploited after the initial 50 year period.

The benefits for performers provided in the Directive take the form of:

- Extension of copyright protection from 50 to 70 years.

- A fund for session artists. Where 20% of revenues (from the exclusive rights of distribution, reproduction and making available of phonograms) made in the period 50 to 70 years are paid to those 'session musicians' who only received a one-off fee at time of recording (potentially forfeiting years of royalties if the track became successful).
- A 'use-it-or-lose-it' provision. This provides the possibility of ensuring that rights in the performance will revert to, and be retained by, the performer if the record producer/performer does not exploit the track in the extended term
- A 'clean slate' provision. This will mean that contracts, which require performers to pay all their royalties to their record label until they have paid back the costs of making the track in the first place, are no longer enforceable after the expiry of the original 50 year term.
- Harmonising the rules concerning the calculation of the term of protection for musical compositions with words. Currently in the UK, if a lyricist and composer collaborate on a song so that one writes the lyrics and the other writes the music, the music and lyrics will attract their own copyright (expiring 70 years after death of the particular author). The Directive will bring all Member States into line with those EU Members where songs written in such a way are treated as a single work with a single term of protection, calculated from the death of the last surviving author (i.e. the composer of the music or the lyricist).

A small blocking minority of Member States held firm against the European Parliament's proposal; however in September 2011 a change of position by some Member States removed the block and the Directive was approved by the Council of Ministers.

The Directive (as written and agreed by Member States) is designed to achieve a set period of protection of 70 years, linked to a defined act such as the date of release or recording; it also gives the provision of additional measures to enhance the remuneration possibilities for musicians whilst also providing certainty to those who wish to exploit works in the public domain. In addition, the provision to harmonise the term of protection for musical compositions with words will help simplify the collective licensing arrangements across member states, as the current inconsistency in copyright protection in the EU causes problems with regards to the distribution of royalties.

Consultation

Following publication of the Commission proposal in July 2008, the UK Government carried out an informal consultation, based on the Commission's impact assessment. This consultation resulted in some 80 comments. There was strong support for an extension from those representing record companies and producers. A large number of responses, from members of the public, argued against extension and pointed to the lack of access to older recordings.

In January 2013, the Government published a further consultation on the detail of the UK's implementation of the Directive. The responses received demonstrated general support for the Government's approach, but no further evidence was received on the costs and benefits of implementation of the Directive. One submission from an organisation which had previously provided evidence of one-off transition costs questioned the Government's analysis and interpretation of the figures. This has been addressed in this impact assessment,

Impact Assessment

Methodology

The stakeholders affected by the Directive have been identified as:

- Performers (both featured artists and non-featured artists)

- Record producers¹ and their representative bodies
- Phonographic Performance Limited (PPL) - collecting society administering rights in sound recordings and performances
- PRS for Music - collecting society administering rights in music and lyrics - who are affected by the Harmonisation proposal
- Consumers
- Record companies specialising in public domain music
- Broadcasters of public domain music
- Lyricists, composers and music publishers
- Content distributors and broadcasters

Specific Impact Tests

The statutory impact tests on race, disability and gender were considered and the policy options are not deemed to adversely impact any particular group. The Small Firms Impact Test was also considered and the results of the consultation and policy options are considered in the following evidence base.

Impact on performers

Performers will be able to benefit from revenue streams relating to their work for a period that equates more closely to their life expectancy. This is in contrast to the present position, in which others can exploit a performer's work for financial gain during his or her lifetime after the initial 50 years with no financial reward to the artist.

Performers will benefit from the opportunity to gain remuneration for an additional 20 years when their sound recording or performance is played in public or otherwise communicated to the public. More famous featured artists will have most to gain given the popularity of their work but other artists, featured and non-featured, will benefit from the measures.

During negotiations on the proposal the overriding issue was that performers would not benefit greatly from term extension owing to the fact that they usually assign their exclusive rights to the record producer, which may never generate enough royalties to repay the fees and advances already made. By including a 'clean slate' provision, record companies will no longer be able to enforce contracts which require royalty payments to go to the label beyond the original 50 year term to repay initial costs in producing the recording. The European Commission estimates that performers receive between 5%-15% of net royalty revenues, as per their contract, depending on their bargaining power. This measure will ensure that this percentage of the additional royalties (for reproduction, distribution, rental and 'making available' online) is channelled towards performers in the extended 20 year period, thereby enhancing their receipts.

Monetised benefits

The total benefits from additional revenue earned from term extension are calculated by multiplying the number of members who will benefit the copyright extension by the value of the royalties. The royalties derived from sound recordings in the UK are then split 50:50 between the record producer and the rights-holding recording artist. As the extension only applies to EU exports the value of non EU exports are removed from the royalty calculation.

In order to calculate the number of works that are set to come out of the current term of copyright for sound recordings, it has been assumed that the number of PPL members is the same in 2012 as it was in 2011 (a figure for 2012 is not currently available). It is also assumed that the distribution of members whose works will come out of copyright each year is spread equally over the nominated time frame. It is recognised that this may not be the case for all members as they may have works that cover all decades

¹ Record Producers will, in many cases work for Record Companies; in these cases it's the Record Company that will be the beneficiary of any revenues generated under the terms of the Directive.

within the period of copyright term (50 years), although many members may only own works in copyright from the most recent decades. A DCMS select committee report in 2006 suggested that “7,000 performers, including session musicians and backing singers will, over the next ten years, lose airplay royalties from recordings they made in the late fifties and sixties.” There is no methodology or justification for this estimate and therefore a conservative approach has been taken and assumed that the split of works that come out of copyright is consistent each year.

Calculation

a	Number of members whose copyright is set to expire per year	= Number of PPL members / number of years of copyright protection = $60,000^2 / 50$	1,200
b	Value of royalties per member	= Annual disbursement per member / Number of PPL members = $£147m^3 / 60,000$	£2,443
c	Percentage to performers	Earnings are split 50:50 between performers and producers	50%
	Earnings for Performers	= a x b x c = $1,200 \times £2,443 \times 0.5$	£1.5m
d	Non EU Exports	= Earnings for performers x % of revenues from exports x % of revenues received from non EU countries = $£1.5m \times 16.3\%^4 \times 5.3\%^5$	£0.1m
	Total Benefits	= Earnings for Performers – Non EU Exports	£1.49m

This benefit shows the value of royalties for year 1, i.e. the first year where member’s works become 51 years old but still remain in copyright. In year 2 the previous year’s members will still receive the same benefits (£1.5m), but there will also be another 1,200 members whose records no longer fall out of copyright. So the royalties for performers in year 2 are £2.9m (£1.5m + £1.5m).

This continues with the works of an additional 1,200 members, whose works no longer fall out of copyright each year. In year 20 the total benefit equals £29m.

On average this equates to £15m per year (constant prices) and over twenty years this equates to £200m (present value)

A summary of this benefit as well as the calculation for high and low estimates are shown on page 16.

² PPL Annual Review 2011

³ Source: PPL Financial Statements 2012 “ Amount available for Distribution

⁴ PPL Annual Accounts 2003-2012, (2012: 56 = 16.3%)

⁵ PPL annual accounts 2003-2012 [range 4.7%-42.1%], (2012 = 5.3%) “Rest of World” percentage of countries which will not be extending term due to EU regulation

In its impact assessment of the proposal for a Directive to extend the term of copyright in sound recordings, the European Commission found that up to 89.5% of all income distributed to performers goes to the top 20% of earning performers.⁶ We expect that if we were to break down these figures further we would see a more disproportionate distribution of revenues with the top 1% of earning performers receiving the largest share. However we have found no evidence to support a further breakdown of the revenue distribution. On this basis the distribution of these revenues would be skewed towards the top 20% of earners. The best estimate of this is demonstrated in Annex A.

Non monetised benefits

Session musician fund

All performers who assigned their rights for a one-off payment will now benefit from a permanent session fund, to which record companies must contribute 20% of the revenues from the exclusive rights of distribution, reproduction and making available of phonograms. Although the ability for member states to exempt small record companies from contributing to the session fund would remain in place, the criteria has been narrowed so that it would only apply to microenterprises (reducing potential scope for record companies to avoid payment by reducing their size and dividing responsibility).

We are unable to estimate the potential benefit to session musicians, as while the maximum benefit is clear (the value of the session fund, as described in the impact on record producers section below) it is not possible to estimate the take up of session musicians who recorded over fifty years ago, that would make use of this fund. On this basis it is prudent not to overestimate the benefit of this session fund we have not monetised this benefit.

The use-it-or-lose-it measure

The use-it-or-lose-it measure would also provide a mechanism whereby: if in the extended term the record producer (a) does not offer copies of the phonogram for sale in sufficient quantity or (b) does not make it available online, the performer can serve notice to terminate the contract under which he transferred or assigned his rights to the record producer. The record producer then has one year to both offer copies of the recording for sale in sufficient quantities and offer it online. If the record producer fails to do so, the producer's rights in sound recording expire. The performers' rights to request this transfer cannot be waived. If the sound recording contains more than one recorded performance, each performer terminates their contract on transfer or assignment, in accordance with the applicable national law.

If after termination of the contract, a public domain specialist, for example, wanted to exploit the recording of a performance, they would still require a licence from the performer who would retain their right to control reproduction, distribution, rental and 'making available' online. The performer would however lose the entitlement to receive equitable remuneration for public performance and broadcasting during the extended term, as this right can only be exercised through the producer.

The permanent nature of these measures guarantees that it offers equal treatment and consequent benefits for both future and current performers.

Impact on record producers (other than those specialising in public domain music)

Monetised benefits

Record producers will benefit from increased royalties and the preservation of their rights

Royalties

⁶ Source: Commission Staff Working Document accompanying the Proposal for a Council Directive amending Council Directive 2006/116/EC as regards the term of protection of copyright and related rights - available at http://ec.europa.eu/internal_market/copyright/docs/term/ia_term_en.pdf

Record producers will benefit from the additional royalties of the extended copyright term. As explained above this royalty is split 50:50 with performers and has been calculated for performers on page 6. As this value is split 50:50 the record producer receives the same benefit.

On average this equates to £15m per year (constants prices) and £200m (present value) over 20 years.

Preservation of rights

When copyright expires, record producers no longer have the right to be sole supplier of the given recordings; this allows other firms to sell such recordings and results in the record producers losing revenue. The extension of copyright will preserve the rights of the record producers and will benefit them through the exclusive right to reproduce and sell a recording.

Evidence shows (PWC, 2006⁷) that an extension to the copyright period would result in additional revenues from record sales of between £7.2m and £82.3m over ten years. To account for costs relating to the production and distribution of these recordings and because it is more prudent to underestimate benefits, we use the lower estimate, £7.2m. This benefit is for a ten year period so represents £0.7m per year. Inflating this to 2012 prices provides a benefit of £0.9m per year.

Therefore the benefit of the extended monopoly right in terms of sales of material equates to £0.9m per annum (in constant prices) and £13m (present value) over 20 years.

Non monetised benefits

The additional income generated by the 20 year extension of protection could help record companies invest in developing new talent. Alternatively, some record companies may be less inclined to invest in new acts if they are able to rely on old, popular recordings to generate revenue, this risk is assessed to be low when taking the market as a whole.

Record companies may also use the additional revenues to digitise back catalogues and increase the availability of music.

Monetised costs

Session fund

Record companies will need to set aside monies equal to 20% of revenues generated from sales of the recording in the extended period for the session fund. The session fund is to be use to compensate those 'session musicians' who only received a one-off fee at time of recording (potentially forfeiting years of royalties if the track became successful).

Session Musician fund per year	= Additional revenues from extended copyright term x % of revenues reserved for session musicians = £0.9m x 20%	£0.2m
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The monies set aside for the session musician fund will cost record producers £0.2m per annum (constant prices) and £2.6m over the twenty year period (present value).

Set up costs

⁷ The Impact of Copyright Extension for Sound Recordings in the UK. <http://www.ipso.gov.uk/report-termextension.pdf>

In addition there will be a set-up cost incurred by record producers to compile and process the relevant sales data related to the session musician fund. PPL estimate this set up cost as £7.1m.⁸

This cost will update the current system to set aside monies from the revenues paid to the record producer and will be paid to those performers who received a one-off payment at the time the recording was made (i.e. session musicians) minus any charges payable to the collecting society who must administer the payment according to the terms of the Directive. The funds will be deducted from the new revenue stream created by the extension of copyright term and not from currently existing sources.

Non monetised costs

Under the use-it-or-lose-it provision, record producers will be forced to assess the merits of existing sound recordings in their back catalogue and decide whether to market such tracks or risk the performer(s) asking for their rights to be returned. This may operate so only high-volume marketable music is held on catalogue and will allow the movement of revenues from niche products towards the performers, with the possibility that the performers will exploit the recording themselves or seek deals with the smaller, public domain labels; we cannot monetise this impact at this time.

A summary of these costs and benefits as well as the calculation for high and low estimates are shown on page 16.

Impact on PPL

PPL will be affected by this Directive from a one off cost for upgrading the system to distribute the new session fund, an ongoing cost for the extra work required and a benefit in terms of the administrative fee from the monies they collect.

Monetised costs

Upgrading PPLs system

There is a one off cost for upgrading PPL's system to account for the administering and distributing royalties. The one-off transition cost estimate which was provided by PPL on 'first-look' basis⁹ was £2m to £3m - we have taken £2.5m as the mid-point of this estimate.

This £2.5m combined with the £7.1m cost to record producers to compile and process the relevant sales data (as described in the impacts on record producers section above), equates to a transitional cost of £9.6m.

Annual administrative cost

PPL will also have to pay an annual administrative cost, which relates to the variable cost of day to day activity per performer. The variable costs would consist of finding additional beneficiaries, maintaining a larger repertoire, maintaining and dealing with a larger member base.

Calculation

⁸ Estimate from PPL by email Sep 2012

⁹ By email to IPO Sep 2012

a	Variable administration cost per member	= (Administrative cost – Fixed Administrative cost) / Number of members (PPL admin costs ¹⁰ – PPL fixed costs ¹¹) / number of PPL members ¹² = (£25m - £2m) / 60,000	£380
b	Number of additional members requiring administration due to the extension of copyright per year (this is the same as the number of works that will expire each year from copyright)	Number of PPL members / number of year of copyright =60,000 ¹³ / 50	=1,200
	Annual PPL administrative cost	Variable cost per member x number of additional members requiring administration due to the extension of copyright. = £380 x 1,200	£0.5m

The Variable administration costs per member suggests that the additional variable administrative cost for processing royalties for the 20 year extension is the same as for processing the first 50 years. This calculation would seem an overestimate of the variable cost as process and procedures of administration are already in place and collecting for an additional 20 years of rights should not require like for like capacity as collecting for the current 50 years of rights. We have not been able to determine a more suitable variable cost. This means the following estimation for the PPL administrative cost is overestimated, but we consider it more prudent to overestimate this cost than to underestimate or not include.

The administrative costs accumulates year on year. The first year after the Directive came into force the additional administrative cost would be £0.5m, for the administration of the members whose works copyright is now extended. The second year after the Directive came into force would be the administration cost of copyright works now remaining in force in the first year (£0.5m) plus the administrative cost of copyright works now extended in the second year (an additional £0.5m). On this cumulative basis the administrative cost in year 20 is £9.1m.

Over the 20 year period this equates to an average annual cost of £4.8m per year (constant prices) and £62.8m over the twenty year period (present value).

Monetised benefits

PPL will offset this administrative fee from the royalties that they collect for members. In the context of an IA this is classed as a benefit. In 2012 PPL charged an administration fee of 14.4%¹⁴ on royalties collected. We assume that PPL cost income ratios are unchanged.

Calculation

¹⁰ PPL Financial Statements 2012, "Total Cost of Collection and Distribution"

¹¹ Based on PPL Annual Accounts (2008: 56, 57), range goes from no fixed costs (implied by constant cost-income ratio) to £2.8m which is an IPO estimate of the PPL distinct fixed costs in the accounts (£1.881m for depreciation, land and vehicles), plus an approximate expenditure on building overheads and IT systems maintenance.

¹² PPL Annual Review 2011, "Record Company Members", "Performer Members"

¹³ PPL Annual Review 2011

¹⁴ Source: PPL Financial Statements 2012 "Cost to income ratio"

Royalties collected for members (average per year)	= Benefit to performers + Benefit to producers (calculated on page 6 and 8) = £15m + £15m	£30m
Proportion to cover administrative fees		14.4%
PPL Royalty fee	= Royalties collected for members x the proportion charged to cover administrative fees = £30m x 14.4%	£4.4m

Over a 20 year period this equates to a benefit to PPL of £57.7m (present value).

Impact on companies specialising in public domain music

Specialists can continue to exploit works already out of copyright, but will be prevented from extending their repertoire to the more popular music of the 60s and 70s until the expiry of the additional term unless they obtain copyright clearances. Income could still be generated from work which falls out of copyright in the extended term if the performer(s) ask for the rights to be returned and they seek an agreement with another company to exploit their rights under licence. However, many tracks could remain in copyright during the extended term. If tracks were successfully released under the use-it-or-lose-it provision, specialists would only avoid paying royalties for the sound recording, however, permission and a licence would still be required from the performer(s) and as now, fees would still be payable to the lyricist and composer if the music and lyrics are still in copyright.

There will be some lost revenues to public domain record sales, as firms specialising in this area will not be able to sell such records without the necessary licenses/permissions.

It is not possible to directly compare the revenue gained from the extended copyright license by the record companies to the revenue lost by public domain record companies. This is because public domain work will generally be priced lower than those within copyright term.

Generally, when goods are cheaper they are demanded in greater quantities. Work by Stevans and Session (2005¹⁵) shows that this increase in revenues for music (taking into account the changes in price and demand) between music in the public domain compared to copyright is a multiple of 1.1. Therefore for every £1 spent on music within copyright, you would expect £1.1 to be spent on the same music if it were out of copyright.

Monetised costs

Calculation

¹⁵ <http://ideas.repec.org/a/kap/jcopol/v28y2005i3p311-324.html>

Additional sales due to copyright extension	Calculated on page 9	£0.9m
Multiplying factor	Increased revenue due to high demand explained above	1.1
Loss to public domain	= Additional sales due to copyright extensions x the increased revenue due to higher demand (the multiplying factor) = £0.9m * 1.1	£1.1m

This equates to a loss of £1m per year (constant prices) and £14.3m over 20 years (present value).

A summary of this cost as well as the calculation for high and low estimates are shown on page 16.

Non monetised costs

The measures, including the harmonisation of the term of musical compositions with words, address the problems surrounding retrospective application of copyright. It has been amended to ensure protection for those already exploiting out of copyright works which fall back into copyright as a result of the harmonisation.

Currently, publishers of musicals and operas often experience demands for a reduction in royalty payments when one element of the musical composition with words is already out of copyright. Public domain users will have to wait longer for musical compositions with words to fall into the public domain, reducing the negotiation tool afforded by the separate protection currently given to the composition and lyrics.

There will be no additional costs to Public Domain Broadcasters who continue to use their existing play lists but there may be additional costs if they wish to expand their play lists into tracks which will remain in copyright for longer. It has not been possible to quantify these here. This sector may also fail to attract new audiences and advertising revenues if they do not expand their play lists.

Impact on consumers

The impact on the retail price of music is unclear. Those purchasing licences from PPL could suffer if higher license fees are charged to offset the additional royalties needed to pay performers and record producers. This cost is to be paid by one of two groups. Those who buy the music for personal consumption and those who indirectly pay higher prices passed onto them by shops, pubs, clubs, media to name but a few, who will charge higher prices to recover the increased license fee. The cost per consumer is likely to be higher for personal consumption, but the consumer group who will indirectly pay is likely to be much larger. However, if consumers consider any additional charges to be excessive then they could choose not to make use of copyrighted works in a way that requires a licence. Similarly, if retailers increase prices of affected sound recordings, consumers can choose not to make a purchase. If record companies utilise the additional revenue gained to digitise back-catalogues, this could provide consumers with a wider choice. These options cannot be monetised.

Impact on creativity

The increased term of protection could increase funding for new bands by supplying extra revenue and improve the status of performers, giving greater recognition to the importance of their contribution and encouraging creativity. The Gowers review pointed out that because such revenues are so far in the future, the discount that people place on the expected revenue reduces this creative incentive to near zero. Creative output based on 'mash-ups' and sampling would be restricted as less material would be available out of copyright. It is not possible to monetise these effects.

Impact on society

The European Commission argued that aligning the term of copyright protection with that of the US (95 years) would prevent a diminution in cultural diversity as it would avoid the creative efforts being channelled towards repertoire that appeals to the US market where there is scope for higher returns. It should be noted that the revenue system in the US is different to that in Europe. It could also be argued that, because of its size, the US market would always be attractive regardless of any disparities in copyright protection.

Alternatively research such as Heald and Buccafusco¹⁶ suggests that the negative impact on society may be greater if copyright term extension took place and suggests that industry worries about, under-exploitation, over-exploitation, and tarnishment should work become available in the public domain are unsupported. Their research shows that for publications, more books are available in the public domain from 1850 than those covered by copyright in 1950. This could suggest that the benefit/access to society is greater for those works out of the public domain than those who are just within copyright term.

This Directive will increase copyright term for the sound recording to be closer to that of lyrics and music. For this reason the impact on society is not expected to be as significant as that of the publication market, as in most cases the lyrics and music of an out of copyright sound recording will be protected by copyright for seventy years already.

Therefore, on balance, a negative impact on society caused by term extension to 70 years is unlikely.

Impact on lyricists and composers

The heir to a lyricist/composer who creates music compositions with words would benefit from an additional period of protection if the other lyricists/composer dies later. The number of revenue generating works where this will happen is believed to be small; therefore a significant monetary effect is unlikely.

Impact on PRS and music publishers

As the process of creating songs is often collaborative, a single term of protection for musical compositions with words across member states may simplify licensing arrangements including cross-border use. There will be some small set up costs required to adjust the reporting mechanism but this is unknown at present and is estimated to be a low one-off cost. Similarly, the commercial value of music publishers' repertoire would be preserved for longer if the term of protection is harmonised, but the volumes of significant revenue generating works that benefit from the gains made in this regard are expected to be low and cannot be quantified.

Content distributors and broadcasters

The content industry will be liable to pay royalties for use of copyrighted material (e.g. rental, communication to the public and broadcasting royalties). Some of the royalties will be received from exports, this IA only accounts for the effect on UK businesses, therefore the royalties paid by exporters are removed.

Calculation

¹⁶ Heald, P. Buccafusco, C. 2012 "Do Bad Things Happen When Works Enter the Public Domain?: Empirical Tests of Copyright Term Extension"

a	Royalties earned by performers from exports per year	= % of revenues from exports ¹⁷ x Royalties earned by performer per year = 16.3% * £1.5m	£0.25m
b	Royalties paid by UK business for performers per year	= Royalties earned by performers per year – Royalties earned by performers from exports per year ¹⁸ =£1.5m - £0.2m	£1.25m
c	Royalties paid by UK business for performers per year	As the royalties are shared 50:50 between performers and producers, therefore the royalties paid to producers are the same as those paid to performers per year	£1.25m
d	Royalties paid by UK businesses for performers and producers per year	= £1.25m + £1.25m	£2.5m
e	PPL administrative cost		14.4% ¹⁹
	PPL administrative costs paid by UK businesses	= Royalties paid by UK business for performers and producers x PPL administrative cost multiplier, calculated as a % of royalties collected = £2.5m x 14.4%	£0.4m
	Royalty payments for use of copyright materials per year	= Royalties paid by UK businesses for performers per year + royalties paid by UK businesses for producers per year + PPL administrative cost paid by UK businesses per year =£1.25m + £1.25m + £0.4m	£2.8m

This is the cost of royalties for year 1. In year 2 the content distributors and broadcaster will have to pay royalties for the content that was extended in year 1 (£2.8m), plus the royalties for the works that are

¹⁷ PPL Annual Accounts 2003-2012, (2012: 56 = 16.3%)

¹⁸ Taken from earnings for performers page

¹⁹ Source: PPL Financial Statements 2012 "Cost to income ratio"

newly extended in year 2 (an additional £2.8m). Therefore the royalties paid in year 2 will be £5.6m (£2.8m + £2.8m). The total royalties paid in year 20 are £56.1m.

This equates to an average annual cost of £29.4m (constant prices) and £386.7m (present value) over 20 years.

These sums represent the additional revenue that will be passed from the content users to PPL for distribution to performers and producers. The industry has extensive knowledge of the market and is unlikely to be willing to bear any losses arising from the obligation to pay royalties in the extended period of copyright protection. However, it is not possible to calculate the proportion of royalties that will be taken from industry profits and that which could be passed onto consumers by way of higher charges.

A summary of this cost as well as the calculation for high and low estimates are shown on page 16.

Risks and Assumptions

The numbers of PPL members losing copyright in a sound recording per annum has been assumed to have an even distribution. This should not change the totals over the time period, but the yearly distributions will be unnecessarily smooth.

We have made an assumption that revenues remain stable and based our figures on the latest information available for 2012. If sales and use of material vary significantly in the next 20 years, then the total benefits will change accordingly.

The high and low estimates have been calculated as 50% either side of the best estimate. The estimates provided in this IA have been calculated using relevant proxies; however, there could be notable deviation from this best estimate, hence the use of 50% for the high and low estimate. As described in the direct costs and benefits to business calculations section below, unlike most IA's the high costs are linked to the higher benefits and the low costs to the low benefits. Therefore the use of a relative large margin of error (50%) does not disproportionately exaggerate or understate the high or low estimates.

The figures for transitional costs are based on a very broad estimate by PPL and may vary considerably. This would have an effect on the total costs of the measure.

Direct Costs and Benefits to Business Calculations

As this is a European measure, it is out of scope for OITO.

We have calculated that this will have a net cost to business of £5.01m over 20 years. This extension is in accordance with the EU proposal to extend copyright term. We have considered that performers are treated as businesses.

For the purpose of Impact Assessments, the overall high estimate is normally calculated by subtracting the lowest cost figure from the high benefit figure. For this exception this is not possible as the estimates of benefits and costs are linked and therefore inseparable. For this reason, the high estimate must be attained by subtracting the high cost estimate from the high benefit estimate (and likewise for the low estimate).

Calculating the estimates in this manner leads to a further complication. The new high net benefit is of a lower value than the low net benefit, since the estimate for high cost is proportionally larger to the estimate of high benefit, than the low cost estimate is to the low benefit estimate. For this reason, the costs and benefits described in the above text as high, contribute to the low net benefit, likewise the costs and benefits describe as low contribute to the high net benefit.

It is not possible for this exception to result in a net positive benefit for to increase copyright will result in consumers paying more and collecting societies incurring extra cost finding and redistributing any revenues gained.

Difference between this and previous Impact Assessments

There is a notable difference between the values reported as cost and benefit calculations within this IA than those originally proposed. The main reason for this is that the original IA included an option for a 45 year extension. The inclusion of this option meant that all costs and benefits were calculated over a 45 year period. This IA covers the 20 year period of the proposed extension. For this reason the costs and benefits of the proposed extension of 20 years are not comparable between this and the original IA.

Summary

The Directive has been agreed in Europe and requires implementation. The Directive states a clear extension of term of protection and also provides for additional measures designed to enhance the financial benefits to performers. It also has one provision to harmonise the term of protection for a specific class of works (co-authored works).

UK Acts of Parliament govern the regulation and, therefore, Government legislation is required to implement the Directive into UK law. The suite of powers already provided for within UK law and harmonised EU law mean that there is only a small scope for implementation of the Directive whilst complying with rules preventing 'gold-plating' and restricting the ability to interpret meanings within the Directive.

The Impact assessment shows a net cost to business of £0.28m per year, which is unavoidable as revenue shifts from businesses and consumers to pay performers for their lengthened rights provided by the extension. The principle distributional effects of the Directive will result in a net transfer from mid-income consumers to a few high income performers and a small number of rights owners.

The Directive must be take effect in UK law by 1 November 2013 in order to comply with the requirements of the Directive.

Evaluation

These changes are being introduced to implement an EU Directive. The IPO will monitor and evaluate the impact of these changes on an on-going basis through regular discussions with stakeholder groups, monitoring of customer complaints and consideration of any legal decisions which make specific reference to the changes introduced and the impact achieved. A post implementation review will also take place to pull together information gathered in respect of the changes, and to review certain provisions as specified by the Regulations; this is currently scheduled for 2018.

A summary of the monetised costs and benefits is below, both for average annual and for the 20 year period:

The high estimate is calculated as the best estimate multiplied by 1.5.

The low estimate is calculated as the best estimate multiplied by 0.5

The high and low estimates have been calculated at 50% either side of the best estimate. We have no evidence to suggest that this is an unreasonable assumption as the data used is the best available and we have no further high or low benefit and cost estimates.

Average annual costs and benefits (£m constant prices)			
	High Estimate	Best Estimate	Low Estimate
Additional Performers Earnings (page 6/7)	22.9	15.3	7.6
Additional Producers Earnings (page 8)	22.9	15.3	7.6
Additional earnings form Sales (page 8)	1.3	0.9	0.4
Additional Administration Fees gained by PPL (page10/11)	6.6	4.4	2.2
Total benefits	53.7	35.8	17.9
Transition Cost (page 9)	10.1	9.6	9.1
Additional Administrative Cost to PPL (page10)	7.2	4.8	2.4
Lost revenues from sales of public domain recordings (page 11)	1.5	1.0	0.5
Additional Cost to Content Distributors (page 13/14)	44.2	29.5	14.7
Cost of session fund to record producers (page 8/9)	0.3	0.2	0.1
Total cost (not including transition cost)	53.1	35.4	17.7

Costs and benefits over the 20 year period (£m present value)			
	High Estimate	Best Estimate	Low Estimate
Additional Performers Earnings (page 6/7)	300.3	200.2	100.1
Additional Producers Earnings (page 8)	300.3	200.2	100.1
Additional earnings form Sales (page 8)	19.5	13.0	6.5
Additional Administration Fees gained by PPL (page 10/11)	86.5	57.7	28.8
Total benefits	706.5	471.0	235.5
Transition Cost (page 9)	10.1	9.6	9.1
Additional Administrative Cost to PPL (page 10)	94.2	62.8	31.4
Lost revenues from sales of public domain recordings (page 11)	21.4	14.3	7.1
Additional Cost to Content Distributors (page 13/14)	580.0	386.7	193.3
Cost of session fund to record producers (page 8/9)	3.9	2.6	1.3
Total cost (including transition cost)	709.7	476.0	242.3

Annex A – Demonstrating the skew in royalty distribution towards top earners

In its impact assessment of the proposal for a Directive to extend the term of copyright in sound recordings, the European Commission found that up to 89.5% of all income distributed to performers goes to the top 20% of earning performers.²⁰ We expect that if we were to break down these figures further we would see a more disproportionate distribution of revenues with the top 1% of earning performers receiving the largest share. However we have found no evidence to support a further breakdown of the revenue distribution. On this basis the distribution of these revenues would be skewed towards the top 20% of earners. The best estimate of this is calculated as follows:

The top 20% of performers earn 90% of revenues per annum:

90% of the best estimate of benefits to performers (as shown on page 6) per annum = £15m x 90%	£13.5m
20% of the number of performer members = 51,000 x 20%	10,200
Top 20% of earners revenue per performer per annum	£1,324

The remaining 80% of performers earn 10% of revenues per annum:

10% of the best estimate of benefits to performers (as shown on page 6) per annum = £15m x 10%	£1.5m
80% of the number of performer members = 51,000 x 80%	40,800
Remaining 80% of earners revenue per performer per annum	£37

The high and low estimates are calculated as 50% either side of the best estimate.

This gives a spread as follows (per annum):

	High estimate	Best estimate	Low estimate
Top 20% earners	£1,986	£1,324	£662
Rest of performers	£56	£37	£19

²⁰ Source: Commission Staff Working Document accompanying the Proposal for a Council Directive amending Council Directive 2006/116/EC as regards the term of protection of copyright and related rights - available at http://ec.europa.eu/internal_market/copyright/docs/term/ia_term_en.pdf