[GB] Copyright Protection Extended in UK from 50 to 70 years for Performers in Sound Recordings

IRIS 2014-1:1/28

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As from the 1st November 2013, the UK government has implemented new regulations, The Copyright and Duration of Rights in Performances Regulations (the Regulations), in order to implement Directive 2011/77/EU amending Directive 2006/116/EC on the term of protection of copyright and certain related rights. In accordance with the new Regulations, copyright protection is extended for sound recordings and performers rights in such recordings, from 50 years following publication of a sound recording, to 70 years.

The 50 years rule is contained in section 13 of the Copyright, Designs and Patents Act 1988 (1988 Act). This section originally read that copyright in a sound recording performance lasted for a period of 50 years from the end of the calendar year in which it is made, or if it is released before the end of that period, 50 years from the end of the calendar year in which it is released. Regulation 6 of the Copyright and Duration of Rights in Performances Regulations substitutes 70 for 50 years.

Section 13(2) of the 1988 Act originally defined the release of a sound recording as being when (a) it is first published, broadcast or included in a cable programme service, or (b) in the case of a film or film sound-track, the film is first shown in public; but in determining whether a work has been released, no account shall be taken of any unauthorised act.

The Regulations introduce a so called “use it or lose it” clause whereby performers and/or musicians can recover their performance rights in sound recordings that are not being commercially exploited. Regulation 9 of the Regulations allows the performer or musician to serve written notice on the producer, and if within 12 months from the notice date the producer does not exploit the recording by issuing sufficient quantities to the public or make available to the public via electronic transmission then the relevant performing rights revert to the notice server.

Regulation 9(9) allows the performer to apply to the civil court for an order for unpaid royalties to be paid and these have to be paid in full by the producer, who cannot make any deductions or withhold any payments, even if they are allowed to do so pursuant to any agreement that they had with the performer.

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Regulation 9(3) ensures that the producer or their licensee pay to the royalty collecting society 20% of the gross revenue received from physical sales (e.g. CDs) and electronic transmissions (e.g. downloads) of sound recordings to the public. This money is to be distributed to all performers and musicians who performed on a particular sound recording.

The amendments made by the Regulations to section 13 of the 1988 Act should be contrasted with section 12 of the 1988 Act whereby the copyright in the musical work expires at the end of 70 years from the end of the calendar year in which the author dies. Regulation 5 harmonises the length of the copyright term for co-authorship works, where a work is produced by the collaboration of the author of a musical work and the author of a literary work, such as a musical, where the works are created to be used together. Regulation 5 amends section 12(8) of the 1988 Act so co-authors will be treated the same as joint authors with the 70 years period being calculated from the death of the last person to die if both co-authors are identified, or from the death of the author whose identity is known. If Regulation 5 revives a copyright that would have previously been deemed expired under previous law, then anything agreed regarding use of the sound recording prior to 1 November 2013, but implemented post 1 November 2013 will not be regarded as an infringement of the revived copyright (Regulation 21 of the Regulations).

The Copyright and Duration of Rights in Performances Regulations 2013 -2013 No. 1782

http://www.legislation.gov.uk/uksi/2013/1782/made

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