



COPYRIGHT TERM EXTENSION: FAQs FOR RECORDING RIGHTSHOLDERS

INTRODUCTION

On 1 November 2013, UK law was changed to extend the duration of the copyright term for sound recordings from 50 years to 70 years. This has important consequences for both performers and recording rightsholders.

PPL has therefore put together some Frequently Asked Questions (FAQs) which we hope you will find useful. There is a set of FAQs primarily for performers and a set primarily for recording rightsholders. This is because there are some key differences between the rights and responsibilities of performers and recording rightsholders in the context of copyright term extension, although much of the content is very similar between the two sets of FAQs.

PPL intends to keep these FAQs under regular review and will be updating and expanding them as appropriate, so please check back from time to time for the latest guidance.

NOTES:

- *The relevant legislation is the Copyright and Duration of Rights in Performances Regulations 2013 (www.legislation.gov.uk/uksi/2013/1782/made), amending the Copyright, Designs and Patents Act 1988. In these FAQs, references to regulations are to the relevant provisions of the 2013 Regulations, and references to statutory sections are to the relevant provisions of the 1988 Act.*
- *Unless otherwise defined, capitalised terms used in these FAQs are taken from PPL's Distribution Rules (available at www.ppluk.com/I-Make-Music/Understanding-Your-Payments/How-is-money-distributed/PPL-Distribution-Rules/).*
- *These FAQs are a summary only and do not constitute legal advice.*

FAQs FOR RECORDING RIGHTSHOLDERS

1. What is the impact of copyright term extension?

On 1 November 2013, the duration of the copyright term for sound recordings was extended from 50 years to 70 years. The additional 20 years is called “the extended term”. This extension is only for sound recordings released from 1963 onwards.

This extension means that recording rightsholders can continue to exploit their sound recordings (including licensing through PPL) during the extended term of copyright for those recordings. Similarly, performers can continue to earn equitable remuneration when commercially-published sound recordings containing their performances are exploited (i.e. where those recordings are broadcast or played in public), during the extended term for those recordings.

The extension is also accompanied by three new rights for performers:

(1) Supplementary remuneration right

Some performers (principally certain session musicians) will gain a right to “supplementary remuneration” in the extended term and the relevant record company will be under a statutory duty to pay them a share of its revenues in the extended term of any sound recording.

PPL has a statutory role in administering the collection and distribution of supplementary remuneration, and these FAQs focus primarily on the supplementary remuneration right.

(2) “Use it or lose it” right

Where a performer has assigned certain rights to a record company in respect of a sound recording, he or she can exercise a “use it or lose it” right, subject to certain criteria, if a record company does not sufficiently exploit that sound recording in its extended term. Broadly, the effect of exercising this right is that the agreement assigning the performer’s rights to the record company is terminated, and the extended copyright in the sound recording comes to an end.

PPL does not have a statutory role in relation to the “use it or lose it” right but would, for example, need to be notified if the copyright in a sound recording is brought to an end during its extended term, as this would be relevant to PPL’s licensing of that sound recording. As PPL updates and expands these FAQs over time, it will publish further guidance in this respect.

(3) “Clean slate” right

In the extended term of a sound recording, a record company which has a contract to pay a recurring remuneration to a performer in respect of that recording (in return for the performer’s assignment of rights) must make those payments in full, regardless of any provisions in the contract allowing for sums to be withheld or deducted (such as provisions for recoupment of advances). This is sometimes referred to as the “clean slate” right.

Recordings affected

2. Which recordings are affected?

The general rule is that the term of copyright protection will be extended to 70 years for all sound recordings currently protected by UK copyright and which were released from 1963 onwards. The new rights (supplementary remuneration, “use it or lose it” and “clean slate”) only apply in respect of a sound recording once it enters the extended term.

3. How is copyright term measured?

For released recordings, the law calculates the duration of copyright protection for sound recordings by counting years from the end of the year of release. The year of release will be the first of:

- the year in which the recording was first published (this means physical publication); or
- the year in which the recording was first played in public or communicated to the public.

Following copyright term extension, the copyright term for sound recordings will generally be:

- 50 years for sound recordings released on or before 31 December 1962 (and so copyright in these sound recordings has now expired, and is not “revived” by copyright term extension).
- 70 years for sound recordings released on or after 1 January 1963, subject to termination of the copyright in the extended term (years 51 to 70) under the “use it or lose it” provisions.

If a sound recording is not released within 50 years of the end of the year in which it is made, the copyright in the sound recording expires at the end of that 50th year, even if it is released at a later date.¹

4. What about remasters?

If a recording is remastered, copyright law may in certain circumstances deem that the remaster is effectively a “new” sound recording with its own sound recording copyright. If this applies, the original (un-remastered) recording entering the extended term will not affect the copyright status of the new recording; the remaster will not enter the extended term until 50 years from the release of the remaster.

On this basis, if a performance is included in a remaster that qualifies for a new copyright, the performer will be able to claim supplementary remuneration for:

- (1) use of the original sound recording during the extended term of the original sound recording; and
- (2) in due course, use of the remaster during the extended term of the remaster.

For example: a sound recording was released in 1963 and remastered in 1993 (with the remastering being sufficient to create a new sound recording copyright). From 2014, supplementary remuneration is payable in respect of the 1963 recording, but revenue attributable to the use of the 1993 remaster will only become relevant for supplementary remuneration in 2044.

PPL is working on separate guidance for its members regarding when a remaster is likely to be deemed by copyright law to benefit from a new sound recording copyright. We will update these FAQs with a link to that guidance, once published in due course.

¹ Section 13A(2)(a).

5. What about samples?

If a performance is sampled, the performer will be able to claim supplementary remuneration during the extended term of the sound recording that features the sample (not just the extended term of the sampled sound recording).

Supplementary Remuneration

6. Who has to pay supplementary remuneration?

In respect of UK copyright, the duty to pay supplementary remuneration falls on the current owner of certain aspects of the copyright in the sound recording – unless they have granted an exclusive licence of those rights in the sound recording, in which case the duty falls on the exclusive licensee. (For ease of reference, the term “record company” is used in these FAQs but this does not alter the above test and references to “record company” should be read accordingly.)

The relevant aspects of the copyright in the sound recording are: the reproduction right, the right to issue copies to the public, and the making available right.

7. Who is entitled to receive supplementary remuneration?

Performers are entitled to supplementary remuneration to the extent that they do not receive a “recurring remuneration” (i.e. a regular royalty payment) in respect of the rights that they have assigned to the record company).²

Although the main beneficiaries of the right to supplementary remuneration are session musicians, performers may also benefit if they are a “Featured Performer” or “Other Featured Performer” (as defined under PPL’s Distribution Rules) on a sound recording, provided that they are not entitled to a “recurring remuneration” for that recording. If they have contributed a performance and meet the above criteria, this may also include studio producers.

A performer’s entitlement to equitable remuneration for the broadcast or playing in public of a recording on which they have performed³ does not count as “recurring remuneration” in this context. Receipt of equitable remuneration is an entirely separate legal entitlement.

8. Can performers’ entitlement to supplementary remuneration be “bought out”?

No. The law specifies that any agreement purporting to exclude or restrict a performer’s entitlement to supplementary remuneration is ineffective.

9. What revenue is relevant to the payment of supplementary remuneration?

During the extended term of a sound recording, the copyright owner (or exclusive licensee) should pay to PPL 20% of the gross revenues received in each 12 month period (from 1 January to 31 December) in respect of the reproduction, issue to the public and the making available of that sound recording.⁴ The table below gives some examples of the types of activities undertaken in practice which fall into the legal categories of “reproduction, “issue to the public” and “making available”.

Right	Examples
Reproduction	<ul style="list-style-type: none">• Copying of sound recordings for sale of physical copies• Copying of sound recordings for hire of physical copies• Copying of sound recordings for other distributions (such as cover-mounts)• Copying of sound recordings for inclusion in samples• Licensing of television and film companies to include sound recordings in their pre-recorded television programmes and films• Licensing by PPL of copying for subsequent public performance and/or broadcast

² Section 191HB(1).

³ Under Section 182D.

⁴ Section 191HB(3). These are the rights under Sections 17, 18 and 20(2)(b) respectively.

Issue to the public	<ul style="list-style-type: none"> • Sale of physical copies (whether in retail stores or via online retailers) • Sales of DVDs/CDs of television/radio programmes containing sound recordings • Supply of cover-mounts
Making available	<ul style="list-style-type: none"> • Provision of digital downloads via online retail services • On demand streaming services where a track or collection of tracks can be accessed by the user, such that the “making available” right is being exercised • Customised streaming services where the level of interaction means that the service involves the exercise of the “making available” right (either in place of or in addition to the exercise of the standard broadcast right that applies for straightforward non-interactive webcasts) • Temporary downloads of television and radio programmes • “Download to own” services

10. What if a sound recording only features performers who receive a recurring remuneration from the record company in respect of that recording?

In this situation, the record company does not need to include revenues from that sound recording when remitting its supplementary remuneration payment to PPL.

11. When must record companies pay PPL?

The first period for which monies should be paid by the copyright owner (or exclusive licensee) to PPL is the 12 month period from 1 January 2014 to 31 December 2014 (in respect of recordings released in 1963).⁵ The table below demonstrates the deadline by which they must pay PPL the 20% of the relevant revenues in respect of particular sound recordings over the next few years.

Year of revenue	Year of record release	Deadline for payment to PPL
2014	1963	30 June 2015
2015	1963, 1964	30 June 2016
2016	1963, 1964, 1965	30 June 2017

Record companies will therefore need to collate and retain information regarding the relevant recordings and revenues in respect of 1 January 2014 onwards.

12. What if a record company fails to pay on time and/or in full?

In such circumstances, PPL has a specific statutory right to claim the money as a debt.

13. What information can performers request from record companies?

Any performer who is entitled to supplementary remuneration also has a statutory right to request information from the copyright owner (or, if there is one, the exclusive licensee) to enable the performer to ascertain the amount of the payment to which they are entitled and/or to secure its distribution. This only covers information which is in the possession, or under the control, of the recipient of the request. The request must be made by the performer in writing to the copyright owner (or exclusive licensee). If the relevant information is not provided within 90 days, the performer has a specific right to apply for a court order requiring the copyright owner/exclusive licensee to provide the information.⁶

14. What if a performer disputes the amount remitted by a record company to PPL?

Record companies should be aware that any performer who is entitled to supplementary remuneration also has a statutory right, in the event of a dispute regarding the amount which should be remitted to PPL, to apply to the Copyright Tribunal to determine the correct amount which should be remitted by the record company to PPL.⁷

⁵ Section 191HB(2).

⁶ Section 191HB(6).

⁷ Section 191HB(8).

15. What about monies from other countries?

As noted above, supplementary remuneration is based on 20% of the gross revenues received by the copyright owner/exclusive licensee for the exercise of certain aspects of copyright (reproduction, issue to the public and making available) in respect of sound recordings that have entered the extended term. Copyright subsists separately in different territories, and PPL will only be collecting such monies from copyright owners (or exclusive licensees) in respect of the exploitation of UK copyright.

However, record companies should be aware that they may be obliged to remit supplementary remuneration to collecting societies in other countries in respect of the exploitation of non-UK copyright. At present, PPL's understanding is that the only countries with similar schemes will be the Member States of the European Union (but record companies may wish to seek specific legal advice in respect of each country where they exploit their sound recordings).

16. Why must record companies remit supplementary remuneration to PPL (and not directly to performers)?

The law states that the copyright owner (or exclusive licensee) must pay a collecting society.⁸

17. How will PPL distribute supplementary remuneration?

PPL is currently working to develop specific distribution rules for the fair, reasonable and proportionate distribution of supplementary remuneration to performers. They will be published in due course, following approval by the PPL Board and Performer Board.

18. How will PPL fund the administration of the supplementary remuneration scheme?

The law states that PPL is to pay out in accordance with its rules.⁹ It follows that PPL is entitled to cover its costs in administering the scheme and will deduct those costs before distributing supplementary remuneration. This will be addressed in PPL's specific distribution rules for supplementary remuneration.

⁸ Section 191HB(3).

⁹ Section 191HB(3).