

Background

1. I am an active and successful recording artist and performer. My career has been centred on the United Kingdom where I am presently resident and domiciled but I have had significant success in many parts of Europe and indeed throughout the world.

2. I am now 63 years old. My recording career began in 1958 when I signed my first recording contract with EMI Records (or The Columbia Graphophone Company as it was then) and had my first 'Top Ten Hit' with my first single, "Move It". I remained exclusively signed to EMI as a recording artist until 2000. EMI owns the copyright in all of the recordings which I made for them during that period. Since then I have recorded independently and have licenced rights in my recordings to a number of different record companies, retaining the copyright in those recordings in my own company, Balladeer Ltd. My latest album, "Something's Goin' On", is about to be released by Decca Records. I am told that, in total, more copies of my singles have been sold in the United Kingdom than of any other artist's.

3. I continue to perform regularly in the United Kingdom and abroad. This year (2004) I have so far (31st August) performed 25 concerts to a total audience of approximately 190,000 people. My records are played on radio stations throughout the world. I made a number of musical films during the early years of my career which are regularly shown on television and which are still available on video (DVD and VHS). Over the years many of my concert performances have been filmed as well. They continue to be made widely available on video. The most recent, "Castles in the Air", featuring a concert at Leeds Castle, England, is about to be released by Universal Pictures.

4. During my career I have recorded and released approximately 1,000 different songs, most of them newly written and composed for me. I estimate that as many as 500 different authors have been involved. I do not write very much myself. Of the songs I have recorded, less than 50 were written or co-written by me and, of those, only one or two have generated significant earnings.

5. In the case of many of these songs it is entirely, or largely, my performances of them and the exploitation of my recordings of them (whether by the sale of records and DVDs, or by radio and television broadcast or in years to come, over the internet), which has given rise and will continue to give rise to an income for the authors.

Copyright / Other artists

6. I have always been aware that there was a difference between the term of copyright applicable to sound recordings and the term applicable to musical compositions, but I had not appreciated until recently that there was such a disparity between the two. Whilst in respect of the earliest of my recordings the copyright expires in four years time and I will cease to be entitled to an income from those recordings or to have any control over how they are exploited, ownership of the copyright in the underlying works and of the associated moral rights will continue to provide the authors, their families and the publishers of the works with an income and, in effect, control over the exploitation of my recordings of those works, for many years to come. I return to these issues below. The point I wish to make first is that I am sure I am not the only artist in the EU who will be affected in this respect. Many other artists are in a similar position, although not all will be directly affected quite so soon. On the other hand, some of my early contemporaries whose success was short-lived, will probably see all of their royalty earnings dry up entirely within their lifetimes. Because I have continued to work throughout this period my later recordings will undoubtedly remain in copyright after my lifetime but certainly all of my biggest 'hits' will, under current legislation, fall into the public domain during the next 10 years. As, arguably, the first British 'pop' artist of the modern era to achieve significant international success I am likely to be the first major British artist of that era to be significantly affected by the copyright in my recordings expiring. Consequently

even though I have no formal role as a spokesperson for the artists who followed me and have not been asked to make any representations on anyone else's behalf, I feel a responsibility to speak out as much for them as on my own behalf.

Extension of Term of Copyright Protection

7. Frankly I am appalled to find that there are no plans at present to extend the term of copyright applicable to sound recordings in Europe. I had assumed that when the period of protection in respect of musical works was extended from life plus 50 years to life plus 70 years it was indicative of a recognition within Europe that the former periods of protection granted to creators of musical works were generally inadequate to protect their legitimate interests and that a similar extension of copyright in sound recordings would follow, in recognition of the need to continue to protect the interests of the performers and the creators of those recordings. I understand that 'harmonisation' of the period of protection within Europe is desirable and that it is unnecessary to effect an extension of the copyright in sound recordings within Europe beyond 50 years in order to achieve this, but surely this issue is about more than simply achieving uniformity? This is a matter of protecting European culture: others more learned than I will no doubt make representations about this.

8. As a performer and recording artist it seems to me that there is a manifest injustice in awarding authors a period of protection which exceeds their lives by 70 years whilst at the same time allowing sound recordings to fall into the public domain within the lifetime of the artists whose performances are embodied in them. Most of the authors of the songs I have recorded are still alive. Their works are and will be protected by copyright until (at least) 70 years after their death. In many cases the protection of moral rights is available for a like period. It seems that performers are regarded by some people as mere 'interpreters' of the works which they record. But making recordings is not simply a mechanical process. It is a creative process in its own right. Surely the creativity of the artists whose performances breathe life into the authors' works is worthy of recognition for at least the same period? It is perhaps ironic that for some years the USA was criticised for having a relatively short period of copyright applicable to musical works and was encouraged to bring that term into line with Europe (which it has now done) but that now that it has done so and has also extended the period of copyright protection applicable to published sound recordings to 95 years (or 120 years if unpublished) the concept of parity between the USA and Europe has apparently lost its appeal.

Consequences of Loss of Protection.

9. As to the effect which this is likely to have on me personally, my concerns are two-fold:

Control: My first concern is that I will lose control over the way in which my recordings are exploited in the future. Whilst EMI owns the copyright in the vast majority of my recordings, Balladeer Ltd has certain contractual rights (and a long working relationship) vis a vis EMI through which I have been able to exert a degree of control over the manner in which my recordings are exploited by them and they in turn can control the exploitation of my recordings by virtue of their ownership of the copyright. Once copyright expires contractual rights will become irrelevant. Neither I, nor Balladeer, nor EMI, will be able to stop my recordings being altered and exploited by anyone and everyone in whatsoever manner they choose without reference to me, including use in advertisements for products and causes of which I disapprove and films whose subject matter I find distasteful. It is rarely the author of a musical work who is associated with it in the minds of the public but rather the artist whose recording of that work is publicly released. I am told that, provided the publishers of the underlying musical work grant a licence, my recordings could even be used in pornographic films and that I would not be able to do anything about it.

Remuneration: My second concern is that not only will I cease to be entitled to any remuneration from EMI's use of my recordings (a situation which I hope they will see fit to review when they read this statement) but that the use of my recordings by third parties whilst generating an income for those third parties, the authors, their families and the

publishers, will be free of any obligation to remunerate me or my family. I feel that this is clearly unfair. I hasten to add that I do not begrudge the writers and their families what they receive. Many of the songs I have recorded are true works of art and I would not have achieved what I have achieved without them. Nonetheless, that they should enjoy an income from my recordings whilst I do not, seems very strange, when it is my recordings and performances which have been responsible for the success of those songs in the first place.

10. For the reasons set out above I would urge the Commission to give active consideration to extending the period of copyright within Europe in respect of sound recordings so that it lasts beyond the period of 50 years and for at least the lifetime of the artists whose performances are embodied on those recordings.

Moral Rights / Equitable Remuneration.

11. However if the Commission is not minded to do this – and I can understand the argument that the general public's access to recordings of musical works should not be unnecessarily restricted, or provided only at an unacceptable cost - then I believe that there remain strong arguments why I and the other artists concerned should at least be given some form of 'moral rights' protection in respect of the use of their recordings during their lifetime and a right for them and their families to receive equitable remuneration in respect of the exploitation of their recordings during that period and for a reasonable period thereafter. The granting of moral rights to authors, and rights of equitable remuneration to performers in respect of the broadcasting or making available of recordings of their performances during the present period of copyright protection in respect of sound recordings, has begun to work well, as far as I can see, and in the latter case has provided a mechanism which when fully developed would be ideally suited to the collection and distribution of such remuneration.

Sir Cliff Richard
12 October 2004