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Dear Ms Squires

Draft Directive on the Term of Copyright for Sound Recordings

I am writing to you on behalf of the Joint Information Systems Committee (JISC)¹ to express my concern regarding the proposed extension of copyright term in sound recordings and performers' rights as proposed by the European Commission and call for comments by the UK's Intellectual Property Office on 17th July 2008.

The JISC supports UK higher and further education by providing strategic guidance, advice and opportunities to use information and communication technologies to support teaching, learning, research and administration. The JISC is funded by the UK Higher and Further Education funding bodies. JISC is also a sponsor and lead co-ordinator of the Strategic Content Alliance² (SCA), a UK national initiative, whose aim is to build a common information environment where users of publicly funded content can gain best value from the investment that has been made by reducing the barriers that currently inhibit access, use and re-use of e-content.

JISC is committed to ensuring that access to JISC-funded resources and projects is free to the community and in accordance with internationally recognised open standards. To this end, it encourages the use of Open Access models (which includes the use of Creative Commons licences), and, where appropriate, Open Source solutions.

To achieve its aims, JISC has made substantial investment of public funds in a number of programmes to support teaching, learning and research. These have included its Digitisation Programme³, and its Repositories and Preservation Programmes⁴. These programmes have supported the preservation and access to a wide range of resources, which include all types of creative works, including interviews, talks, lectures, recitals, music and broadcasts. In many cases, whilst the commercial value of such recordings may be negligible or extremely low, they will be of massive potential use for teaching, learning and research purposes.

There are a number of diverse and academically, culturally and historically significant projects that JISC has recently supported which incorporate sound recordings and works containing performers' rights. Unlike the tone of the proposal to extend term, the financial value of many of the recordings

¹ Further information about the JISC can be found at <http://www.jisc.ac.uk>

² <http://www.jisc.ac.uk/whatwedo/themes/eresources/contentalliance.aspx>

³ http://www.jisc.ac.uk/whatwedo/programmes/programme_digitisation.aspx

⁴ http://www.jisc.ac.uk/whatwedo/programmes/programme_rep_pres.aspx

held in sound archives is almost negligible, rendering redundant much of the proposal's hypothesis. Examples of the types of projects that JISC has funded include:

Archival Sound Recordings 2⁵

Building on the British Library's ground-breaking work in creating the first online fully-searchable digital library of sound recordings from one of the world's treasure houses of audio heritage, JISC is funding a further nine collections from the archive to make a total of around 4,200 hours of audio content available. The recordings, which range from canonical classical repertoire to interviews with Holocaust survivors, will be supported by images and added value features to enhance the existing service and transform teaching, learning and research.

The Spoken Word⁶

This project uses existing digital audio from a variety of sources to create an integrated learning environment in which staff and students can exploit the sound recordings for learning and teaching. The collections are wide ranging, from history and political science to medicine and health. This project has been led by Glasgow Caledonian University in collaboration with the BBC and institutions in the United States

Digitisation of the Independent Radio News Archive⁷

Led by Bournemouth University, the Independent Radio News/London Broadcasting Company radio archive consists of 7,000 reel-to-reel tapes in a collection that runs from 1973 to the mid-1990s. It is the most important commercial radio archive in the UK and provides a unique audio history of the period. The archive includes invaluable recordings of a wide range of broadcasts including coverage of the Falklands war, the miners' strike, Northern Ireland and the whole of the Thatcher period of government. It includes the first hours of UK commercial radio and the first commercial radio news. Users will be able to access the recordings via a website which combines access to the archive catalogue and digital audio files

JazzHub⁸

JazzHub is a digital repository based at Leeds College of Music. It aims to provide access to a number of key resources, including the LCM Jazz Archive, international conference proceedings, sector-wide jazz research/teaching and learning materials, project outcomes and publications. The 2-year project will involve the development of infrastructure, working in partnership with a number of academic and non-academic stakeholders. JazzHub will be used as a key resource for the UK Jazz Research Network, an open access membership organisation representing UK scholars and educators across 15 disciplinary areas, including Musicology, Film Studies, Education and Comparative Literature.

It should be noted that many of these projects will include sound recordings as well as potential performers' rights for which third parties will own the copyright. Current costs in researching and administering rights clearances as well as the payment of copyright fees, already places a worryingly high financial burden on projects of this kind which are increasingly seen as essential to learning, teaching and research. Indeed, the growing body of rights in these works for which rights holders are unknown or cannot be traced, also presents colleges and universities with the choice

⁵ http://www.jisc.ac.uk/whatwedo/programmes/programme_digitisation/asr2.aspx

⁶ http://www.jisc.ac.uk/whatwedo/programmes/programme_dlitc/project_spoken_word.aspx

⁷ http://www.jisc.ac.uk/whatwedo/programmes/programme_digitisation/radionews.aspx

⁸ http://www.jisc.ac.uk/whatwedo/programmes/programme_rep_pres/repositories_sue/jazzhub.aspx

to carry out resource-intensive searches and incurrance of unacceptable levels of risk, or if not used, the lock-down of content from further preservation and access, in effect creating large “dark archives” which cannot realise on the promise on OECD “Future of the Internet Economy”⁹ declaration which the UK Government has signed. .

JISC is concerned that any extension to term for sound recordings and performers’ rights will have a substantially detrimental effect on its digitisation programme and greatly reduce the contribution of sound archives to the UK’s Knowledge Economy and harm the public interest. Whilst we recognise that the proposal includes measures to deal with the creation of new “orphan works” and other limited measures, we believe that these are piece-meal and will have little long term impact upon the increased resource burden on the digitisation and other e-content activities that we are funding. Specific issues which are likely to arise for JISC funded projects if the UK IPO does not block the extension of term include:

- For current and future digitisation projects, it would greatly increase the costs of *tracing* copyright holders, already a hugely time consuming business for post-1958 recordings.
- For current and future digitisation projects, it would also increase the costs of *clearing* rights, as performers will be able to continue claiming rights in works beyond 50 years after creation
- The excessive costs involved in IPR clearance might prevent digitisation taking place, and lead to the loss of material held on fragile media, thereby destroying our cultural and scholarly heritage.
- More broadly, despite claims to the contrary in the proposal, these issues would restrict access to content of cultural and scholarly worth, thereby damaging the possibilities for research, teaching, learning, creative re-use and general enjoyment and understanding.

While these issues will impact on JISC funded projects they will also be problematic for learning, teaching and research more broadly. JISC would like to remind the UK’s IPO that the UK Government has already accepted the findings of its independent *Gowers Review*, which said that “the European Commission should retain the length of protection on sound recordings and performers’ rights at 50 years” (Recommendation 3)¹⁰.

JISC supports the position of Bournemouth University and signed by leading academics in a letter to Jose Manuel Barroso¹¹, in which the negative impact of such an extension is outlined. We also support the findings of “The Recasting of Copyright & Related Rights for the Knowledge Economy”¹² carried out on behalf of the EC’s DG Internal Market and Services by The Institute for Information Law (IViR) of the University of Amsterdam, in which the authors note: “*The term of related rights must reflect a balance between incentive and market freedom. This balance will be upset when terms are extended for the mere reason that content subject to expiration still has market value. The public domain is not merely a graveyard of recordings that have lost all value in*

⁹ <http://www.oecd.org/dataoecd/49/28/40839436.pdf>

¹⁰ <http://www.hm->

[treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_index.cfm](http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_index.cfm)

¹¹ <http://www.cippm.org.uk/images/Sound%20recordings%20%28Barroso%29.pdf>

¹² http://www.ivir.nl/publications/other/IViR_Recast_Final_Report_2006.pdf

the market place. It is also an essential source of inspiration to subsequent creators, innovators and distributors. Without content that still triggers the public imagination a robust public domain cannot exist.”

JISC believes that such an extension of the duration of term for sound recordings and performers' rights would be severely detrimental to academia and the public interest. JISC strongly urges the UK's Intellectual Property to honour its findings within the Gowers Review of IP, consider the full negative implications of such measures across the UK and subsequently seek to block such proposals.

Yours sincerely

Malcolm Read
Secretary
JISC

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