Europe Extends Copyright on Music

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In a victory for the financially troubled recording industry, the European Union on Monday extended the term of copyright on sound recordings to 70 years from 50, while declining to include provisions that would allow artists in Britain and elsewhere in Europe to recoup ownership of their music easily. Had the Council of the European Union not acted, many of the most famous and popular recordings of the British Invasion of the 1960s, including albums by the Beatles, the Rolling Stones, the Who and the Yardbirds, would have fallen into the public domain in the coming years. For example, the Beatles’ first hit record, “Love Me Do,” which was released in 1962, could have been treated next year in much the same way as works by classical composers whose exclusive ownership of their music has expired. With multiple versions available at cheaper prices, the four major record labels would be deprived of one of their biggest sources of income.

“This important decision comes not a moment too soon,” said Geoff Taylor, chief executive of the British Phonographic Industry, a trade group that represents the major labels. “An exceptional period of British musical genius was about to lose its protection. As a matter of principle, it is right that our musicians should benefit from their creativity during their lifetimes, and that they should not be disadvantaged compared to musicians in other countries.”

Musicians, however, were not as enthusiastic. “This is extremely good news for record companies and collection agencies, but bad news for artists,” said the singer Sandie Shaw, who along with Nick Mason of Pink Floyd and Ed O’Brien of Radiohead is one of the leaders of the Featured Artists Coalition, a British group that advocates for musicians’ rights. “It means they have 20 more years in servitude to contracts that are no longer appropriate to a digital age.”

For the record labels, whose sales have dropped by more than half over the last decade, the decision is a marked contrast to coming copyright challenges in the United States. The copyright law approved by Congress in 1976 includes a provision, known as “termination rights,” that allows recording artists and songwriters to reclaim ownership of their work after 35 years.

Many American musicians who made recordings in the 1970s, including Bob Dylan, Tom Petty and Loretta Lynn, are now filing such claims. The four major labels — Sony, Universal, EMI and Warner — are strenuously resisting, arguing that the performers were employees doing “work for hire,” and thus not entitled to claim copyright.

The Council of the European Union said in a statement issued after the vote — which was 17 to 8, with two abstentions — that the main reason for approving the copyright extension...
was to benefit performers and songwriters. The existing system “often does not protect their performances for their entire lifetime,” and “therefore some performers face an income gap at the end of their lifetimes,” the statement said. But in many cases the artists who made the original recordings back in the 1960s are not the actual owners. In recent years there has been an outpouring of biographies of, and autobiographies by, musicians from that era, including members of the Beatles and the Rolling Stones, in which the artists say that they were duped as youngsters into signing contracts with low royalty rates and relinquishing ownership of their own music to record or management companies.

As a result, 72 percent of the financial benefits from the new directive will accrue to record labels, according to calculations done by the Center for Intellectual Property Policy and Management at Bournemouth University in England. Of the 28 percent that will go to artists, the calculations say, most of the money will go to superstar acts, with only 4 percent benefiting musicians like those mentioned in the European Union statement.

“A term extension is not an appropriate measure to improve the situation of the performing artists,” Belgium argued in its written dissent to the action. “It seems that the measure will mainly benefit record producers and not performing artists, will only have a very limited effect for most of the performing artists” and “will have a negative impact on the accessibility of cultural material” for consumers.

In contrast to copyright law in the United States, copyright law in Europe does not include a “termination rights” clause, nor was one inserted into the new regulations approved on Monday. Instead, the new directive, which the 27 member states are obliged to put into effect within two years, contains a vague assurance that “foresees measures” to guarantee that musicians “actually benefit from the term extension and may recuperate their rights subject to certain conditions.”

The directive does include a “use it or lose it” clause that allows artists to reclaim ownership rights to recordings, but only after 50 years and only if a recording is no longer available commercially. It also sets up a new fund for payments to session musicians and a “clean slate” provision that is supposed to wipe out musicians’ debts to their labels. But Ms. Shaw said the artists’ group wanted “the 35-year thing, because record company ownership in perpetuity is immoral.”

The recording industry lobbied heavily for the new copyright directive, which had been blocked in the past by a coalition of smaller European countries that see the extension as harmful to innovation. Under Prime Minister Tony Blair, the British government commissioned a study that also recommended against the extension, but Prime Minister David Cameron came out in favor of the measure, one of whose chief beneficiaries will be the beleaguered British label EMI, whose assets include records by the Beatles and Pink Floyd.

“This is a dreadful day” for musicians and consumers, said Martin Kretschmer, director of the Bournemouth University institute. “Over all, policymakers are schizophrenic, speaking a language of change and innovation, but then respond to lobbying by extending the right, which gave rise to the problem in the first place. This only entrenches a cynical attitude toward copyright law and brings it into further disrepute.”