



A Short History of IFPI, 1933-2013

An Interview with Professor Adrian Sterling

Professor Adrian Sterling is a walking encyclopaedia on the 80-year history of IFPI. Professor Sterling joined IFPI's Head Office in 1954, recruited by Brian Bramall, the organisation's first Director General. Bramall had helped found the International Federation of the Phonographic Industry back in 1933.

To mark IFPI's 80th anniversary, in 2013 we have interviewed Professor Sterling, drawing out memories that give a fascinating insight into the heritage of IFPI. They show an organisation that has changed dramatically over the decades since the battles of the recording industry for the establishment and maintenance of the record performing right (covering broadcasting and public performance of sound recordings) back in the 1930s.

Professor Sterling worked at IFPI from 1954, latterly as IFPI Deputy Director General until 1974, before moving on to new chapters in his own distinguished career.

Sterling is now a Professorial Fellow of the Queen Mary Intellectual Property Research Institute, University of London, a Vice-President of the British Copyright Council, and an Honorary Member of the British Literary and Artistic Copyright Association, the British Group of ALAI, the International Literary and Artistic Association.



Above: IFPI Council Meeting at the Excelsior Hotel, Rome in May 1954, including Director-General Brian Bramall (near row third from right) and Assistant to the Director-General, Adrian Sterling (near row right)



Above: IFPI's first director-general, Brian Bramall (front row second from right) and Assistant to the Director-General, Adrian Sterling, at IFPI's General Meeting of 1957 in Vienna.

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“Are we getting paid for that?”

IFPI’s history begins in 1933 with a simple question – a question not so different from one that might be lobbed across the meeting room table by an IFPI member today.

It came from Sir Louis Sterling (no relation to Adrian), a tough New York born entrepreneur who, in 1933, headed the Columbia Graphophone Company, one of the two companies forming Electronic and Musical Industries Ltd (EMI) based near London. One day Sir Louis walked into a meeting of EMI company lawyers. “I put the radio on this morning. I heard them playing one of our records. I want to know something: are we getting paid for that?”

The lawyers’ answer was a regretful “no”. The BBC, then only a few years old, did not pay royalties to record producers for the records it played. This was not good enough for Sir Louis Sterling. “Who is the top copyright lawyer in the UK?” he asked.

A legal view was sought about whether the Companies could secure royalties from those who publically performed their records. They turned to Sir Stafford Cripps, then top copyright lawyer in the UK (later to become a famous British politician). The great man’s advice was disappointing. He doubted that they had a case for royalty payments.

Things may have rested there. However, Sir Stafford’s opinion was challenged by a young solicitor who was working in the Copyright Department of the Gramophone Company. His name was Brian Bramall and, surprisingly for a young solicitor to challenge the view of a senior barrister, he wrote to Sir Stafford respectfully pointing out that he considered that Sir Stafford’s argument was challengeable.

Bramall, the young man with a point to prove, was showing the mettle that would make him the first Director General of IFPI.

The birth of performance rights

Sir Stafford, agreed that Bramall's argument had merit.

So it was that, in the UK in early 1933, the claim for the record performing right was, with relation to public performance, put before the High Court of England and Wales in the landmark case *Gramophone Company Ltd v. Stephen Cawardine & Co.* ([1934] Ch. 450 (Ch.D.)). Stephen Cawardine & Co., had a chain of cafes in which records were played to its customers. In a historic judgment, Mr Justice Maugham (brother of Somerset Maugham) upheld the case put by Sir Stafford and ruled that, under section 19(1) of the UK Copyright Act 1911, the sound recording producer had a full copyright in his sound recordings, including the record performing right covering public performance of the record, as distinct from the copyright of the author of the recorded musical work. (There had been a precedent in the Australian case *APRA v 3DB Broadcasting Co.* ((1929) VLR 107).)

The *Cawardine* case had huge reverberations. If the right was recognised in the UK, then why not elsewhere? Record producers saw the need for the claim for the record performing right in all countries where it could be established.

There was another reason why record producers saw the need for being represented as a whole, rather than fighting cases individually. This was because around 1930 the *Bureau Internationale de l'Edition Mécanique* (BIEM) had been formed, with mandates from authors to license the making and sale of sound recordings of their works. Record companies realised that their negotiating position would be strengthened if they could speak with one voice.

These initiatives lead to the founding of IFPI, which celebrates its 80th birthday in 2013.

An international conference of the record industry was organised for the inauguration of the new body. It took place in Rome in the Palazzo dei Conservatori on the Capitoline Hill. The Italian Government of the time was the only one approached which was in favour of supporting the conference, perhaps to demonstrate its desire to be recognised for its support of cultural (and not only political) initiatives. In 1933, at the Rome meeting, the International Federation of the Phonographic Industry was founded.

IFPI's mission in these early days was clear – to take advantage of the *Cawardine* judgment in the UK and establish its members' rights in as many other jurisdictions as possible, and to negotiate an international contract with BIEM. In 1934 Phonographic Performance Limited (PPL) was formed in London to exercise the record performing right in the UK. Outside the UK, the international campaign moved, in the first instance, to Germany.

An unlikely victory in 1930s Germany

It was in 1930s Germany that another important figure emerges in IFPI's early history. Sterling recounts the extraordinary story of Dr Alfred Baum, who became champion of rights for Germany's music industry. Sterling recalls:

“In 1933 after the Cawardine case in the UK, the German industry thought it should claim the right to remuneration when records were broadcast on the German radio.

“The industry initiated a case against the German radio which in the 1930s was under the control of Dr Goebbels, head of the Propaganda Ministry, which controlled all German broadcasts, so it took a courageous person to take such a case. Basically the case averred: ‘You are broadcasting our records, so you need our permission to do so and should pay us royalties’.

“The German record industry engaged Germany's leading copyright expert, Dr Alfred Baum, a Jewish lawyer. I have always thought it courageous that the German record industry turned at that time to a Jewish lawyer to represent it before the highest court in Germany. In ‘Rundfunksendung von Schallplatten’ (‘Broadcasting of records’) (Reichsgericht, 14 November 1936) the highest court in Germany ruled that the performer's arrangement right granted under the German law of 1901 as amended in 1910 impliedly passed to the record producer upon recording, giving the producer copying and record performance rights.

“Baum left Germany and went to Switzerland soon after the case was decided and continued his advisory work for the record industry.

“When I first met Baum in 1954, he told me more about that day when he left Germany. A rather truculent German border guard asked him ‘What

have you got in your trunk there?’ Baum opened the trunk and there on the top was his German army captain’s uniform which he had worn in the First World War. The guard passed him on without another word.”

Baum’s involvement with the record industry did not end there. From 1954 he continued as IFPI Legal Adviser for some years: he died in 1967. Sterling says that he regards it as one of the highlights of his legal career that he had the great fortune in 1954 to be sent to Zurich by Bramall to sit at the feet of Baum for a month, during which Baum expounded to him the principles of the Berne Convention. When today he teaches international copyright law Sterling tells his students that the basic principles of the Convention are national treatment and minimum rights and says that if his students are asked how he knows that they should reply “Because Dr Baum told him”, and if asked how Dr Baum knew, reply “Because Dr Baum knew some of the drafters of the original Berne Convention of 1886”.

The growth of IFPI’s international mission

IFPI originally had its headquarters in the EMI offices at Hayes, near London. After the war, as the organisation grew, it was time for IFPI to find independent premises. The proposal to move the IFPI headquarters was agreed by EMI and supported by the other major record companies. In 1953 IFPI moved to its new offices at Hanover Court (a fine early 20th century building now demolished) in Hanover Square, London.

There, in the early 1950s, Sterling’s story resumes.

“IFPI was now established in London in Hanover Court, with Brian Bramall as Director General and Alfred Baum as Legal Adviser. These two great men carried IFPI forward into the 1950s and 1960s. IFPI’s work consisted mainly in submissions to governments and national and international bodies in support of the establishment and development of laws for the protection of the sound recording. Extensive meetings were held with governments and with national and international bodies including the Berne Union Permanent Committee later to become the World Intellectual Property Organisation (WIPO). In particular IFPI’s work in the 1950s was promoting the adoption of an international Convention for the protection of record producers’ rights, as well as continuing negotiations with BIEM and the International Federation of Musicians (FIM) (representing performers’ rights).”

It was at this point that Adrian Sterling comes into the picture. He recalls:

“In 1954 I was practising at the Bar in London. One lunch hour in March 1954, in Middle Temple Common Room I was looking through the Personal Column of The Times and saw an advertisement (rather out of place there) reading: ‘Young barrister or solicitor needed for international organisation in London. Must speak French, additional language an asset.’ As soon as I read that, I knew that that was what I was going to do for the next 20 years.

“So I wrote a letter to the quoted Box number. In those days we did not send CVs. My letter simply said: ‘Dear Sir, I read your advertisement with interest. I am a barrister, just on 27 years of age. I speak French fluently and have knowledge of German. I hope to hear from you. Yours faithfully.’

“A few days later I got a telephone call. ‘My name is Bramall. I am Director General at the International Federation of the Phonographic Industry. Can you come and see me next Tuesday at 10 o’clock?’

“I went to Hanover Court, and was ushered into Bramall’s office. He asked me to sit down and immediately launched into a description of the Cawardine case. At the end I said ‘So there are two rights, one in the work recorded, and the other in the sound recording’. Bramall replied ‘You have put your finger on it. We will be in touch. Good morning’.

“So I walked out and thought this was a strange interview. Bramall had not asked me about my interests in the law, or whether I had published anything, or about my work. Two weeks later I had a further meeting with Bramall and IFPI Vice President James Gray, and was offered and accepted the post of Assistant to the Director General. I started work on 3 May 1954, sixty years ago next year, when I complete 60 years of work in international copyright law. A few days later in May we went to Rome to the IFPI General and Council Meeting, marking the 21st anniversary of IFPI, in the very same room on the Capitoline where IFPI had been founded. Then right afterwards in June 1954 Bramall sent me to represent IFPI at the Berne Union Permanent Committee meeting in Lugano, Switzerland. My task was to address the Committee and present IFPI’s position as regards the negotiations for the international instrument which later became the Rome Convention 1961. In sum, in the first weeks of my work with IFPI, I was

able to meet the industry leaders and legal advisers and the world experts in copyright.

“IFPI’s Head Office only had a small staff at that time. Bramall and I each had secretaries, there were two assistant secretaries, the accountant and a list analyst and a receptionist and that was it. The accountant’s main job was to process the returns of use of sound recordings in broadcasts in British Commonwealth countries and territories, such as Kenya and Nigeria, whose copyright laws were based on the UK Copyright Act 1911. Every month broadcasting stations under contract would send these lists to IFPI and they would be processed for division of the royalties which were paid to the entitled IFPI record companies.

“Bramall had drafted an extensive training programme for me. I had lengthy discussions with Bramall about the recognition and development of the record producers’ rights and negotiations with BIEM. I attended with Bramall the IFPI meeting with BIEM in Brussels in December 1954. I spent a month working in each of the copyright departments of five major European record companies, EMI and Decca in the UK, Pathé Marconi in Paris, Philips in Baarn and Deutsche Grammophon in Hanover. I should mention that each department had remarkable experts at their head: J.F. Axtmann (Decca), C.B. Dawson Pane (EMI), J. Siwiorek and Jacques Dougnac (Legal Adviser) (Pathé Marconi), J. Binsma and A. Kusters (Legal Adviser) and Walter Krug and Günther Gentz (Legal Adviser) (Deutsche Grammophon). This training period continued to March 1955. From then on for the next twenty years I was working in the London Head Office and attending meetings in Europe, Canada and the USA, Hong Kong, Japan, Singapore, Indonesia, Israel, Lebanon, Australia and New Zealand.”

Performance rights go global

In 1960 Bramall retired as Director General of IFPI and was succeeded in January 1961 by Stephen Stewart. Sterling became Deputy Director General. The work for the adoption of the international Convention to establish the rights of performers, record producers and broadcasters intensified and in Rome from the 10th – 26th October 1961 the Diplomatic Conference was held with the object of adopting the draft Convention.

Sterling reminisces *“The Diplomatic Conference was held in the Palazzo dei Congressi, the splendid complex on the outskirts of Rome. Government*

representatives of some 40 countries around the world attended, together with many non-governmental organisations. The IFPI delegation consisted of Stewart and myself, our legal advisers, Otto Lassen (Denmark), Maître Curtil (France), and Dr Hans Hugo Von Rauscher auf Weeg (Germany), as well as lawyers from the various National Groups of IFPI. Most of the leading copyright experts of the world were present. The Conference had a draft Convention before it which proposed copying rights for the three parties, and, in Article 12, equitable remuneration for the broadcasting and public performance of sound recordings, to be shared between record producers and performers according to systems adopted by national laws.

“While the copying rights were accepted without difficulties, the battle over the recognition of the record performing right in Article 12 raged throughout the three weeks of the Conference, mainly in discussions and lobbying behind the scenes. Acceptance of the principle needed a two thirds majority of countries voting at the final meeting. The votes of some countries could be counted upon, in particular those countries such as the UK with laws based on UK copyright law. But France and some other countries were not in favour of the right. France took the position that sound recordings were not creative, so should merely be protected by unfair competition laws. In addition countries like Japan, and South Africa, where the national broadcasting station had a powerful political influence, were opposed to the right. The US had a delegation of twenty members, including eight Government and official representatives (including Arpad Bogsch, then of the US Copyright Office, subsequently Director General of WIPO) and twelve non-governmental members (representing not only the record industry but also broadcasters and the film industry), so the US could not take a unified position and eventually abstained from voting on Article 12.

“The main opposition was from broadcasting organisations: the brilliant legal adviser of the European Broadcasting Union, Dr Georges Straschnov managed to be appointed as the Government delegate of Monaco so could participate in the debates as of right, whereas non-governmental organisations like IFPI had to ask for permission to speak.

“Lobbying carried on right up to the final vote, which took place on 25th October 1961. In such a finely balanced environment, where the two-thirds majority rule applied, IFPI hoped it could rely on delegates from the Scandinavian countries, where broadcasting and public performance rights applied or were being introduced. However, the night before the final vote,

the Scandinavian delegations (except the delegate of Iceland) decided to abstain from the vote on Article 12 because they agreed with the Swedish proposal that if Article 12 failed, they would support a counter proposal which limited the right to broadcasting of records, in line with Swedish law at that time.

“So when we entered the Conference hall for the final meeting on 25 October we did not know whether the two thirds majority would be obtained. I saw the retired Judge Eyolfsson, Iceland’s delegate entering the Conference hall. I asked him if he could vote for Article 12. He said ‘I came to Rome to vote for Article 12 and I will vote for it’.

“The vote on Article 12 was taken in alphabetical order country by country. We reached Czechoslovakia, near the end of the list under “T” because country names were called in French. Czechoslovakia voted in favour. Stewart threw down his pen and cried ‘We have beaten them’. Article 12 was adopted with 20 votes in favour, 8 against, out of 28 votes cast, with 9 abstentions.”

The Rome Convention was a moment of major and lasting importance in the history of the recording industry. Today, rights covering broadcast and public performance account for 6 per cent of the recording industry’s global trade revenues – over US\$1 billion of revenues and one of the industry’s fastest-growing income streams.

Australia: a turning point

Sterling recounts:

“In the 1960s Australian copyright law was based on the UK Copyright Act 1911, so the Cawardine case supported the maintenance of the record performing right in Australia.

“In 1967 the broadcasters launched a determined campaign for the abolition of the record performing right in the new Australian Copyright Act then being debated. The initial Bill introduced by the then Attorney General abolished the right. A few months later a new Attorney General was appointed: Nigel Bowen, one of Australia’s most distinguished lawyers. IFPI sent me to Australia in February 1967 to help the industry in its battle for the retention of the right. I saw Bowen in his office and said ‘Mr

Attorney, this is not a political matter, but a legal matter’, and argued the case for the retention of the record performing right. At the end Bowen simply said ‘Now I will hear the other side. Good morning’ Great lawyer.

“I had meetings with the Australian record industry and we agreed the outline of the campaign for the retention of the record performing right. In Canberra I went to see Government representatives to give additional information on the world situation as regards the right.

“The leader of the Labour Party Opposition at that time was Lionel Murphy. I went to see him to ask for the support of the opposition. ‘What are you doing for the little man, the rank and file musicians?’ he asked. I referred to IFPI’s commitment to share record performing royalties with performers, covering not only soloists but rank and file musicians. ‘Then on that basis we will support retention of the right’, he replied. Which the Labour Party did.

“When in May 1967 the Bill was re-introduced in Parliament, the record performing right was included. A furious battle broke out between the many commercial and national broadcasting stations on the one hand, fighting for the abolition of the right, and the record producers, fighting for its retention. There was at that time a coalition government of what we would call the conservatives, and the Country Party. The Country Party opposed retention of the right because the many small country radio stations feared the imposition of new royalties. The Country Party threatened to leave the coalition if the right was retained.

“IFPI sent me to Australia again in October 1967 to continue support of the record industry in its fight. I went to see Bowen in his office in Parliament House, Canberra. ‘Mr Sterling’, said Bowen, ‘when you saw me in February you said this was not a political matter. Now the Government is about to fall because of it. Explain yourself’. I did the best I could and Bowen said ‘I want you to stay here in Canberra and see if you can straighten things out with my Department’.

“So I stayed in Canberra over some weeks, drafting submissions to Parliament and negotiating with the broadcasters, not face to face, but through the Attorney General’s senior legal officer, Lindsay Curtis. I would make a proposal, Lindsay would give it to the broadcasters, and back would come the broadcasters’ counter proposal. Finally after six weeks the

broadcasters offered a compromise. 'Retain the right with 1% of station income as maximum royalty'. The Australian industry said 'What do you advise?' I called Stewart in London asking for directions. He replied 'You are the man on the spot, so you decide'.

"I concluded a small loaf was better than no bread, particularly as neither side could be sure of victory on the vote for the retention of the right. So I proposed acceptance of the compromise, the Australian industry agreed, and the right was accordingly written into the Australian Copyright Act 1968 with the agreed maximum. The provision is still part of the Act, though the industry seeks to have the maximum removed.

"Victory in Australia was a turning point in the history of the record performing right, contributing to the acceptance of the right in debates in other jurisdictions, including Canada."

Canada: A champagne moment

Through the 1960s and 1970s IFPI now had to work to persuade individual countries to join the Rome Convention and update their own laws to reflect its terms. The campaign was, in general, remarkably successful.

One determined attack was in Canada. Sterling recounts:

"In 1971, the record industry in Canada founded an administration company (Sound Recording Licences Ltd (SRL)) to exercise the record performing right on the basis of the existing Canadian law and the precedent of the Cawardine case. SRL made application (as required by law) to the Copyright Appeal Board for confirmation of the tariff it claimed should apply to the broadcasting of records by the Canadian broadcasting stations (the national station and some 400 commercial stations). The claim was strongly opposed by the broadcasters, who argued that the right did not exist in Canada. The Copyright Appeal Board (before which I gave evidence) found in SRL's favour. However, three months later in 1971 the government of Prime Minister Pierre Trudeau delivered a bombshell. Acceding to pressure from Canadian and US broadcasters, new legislation was proposed, retrospectively abolishing the record performing right in Canada. I went to Canada again to assist the industry in its struggle for the retention of the right but, influenced by the argument (not true) that most of the record performing right royalties from Canada would go to the USA, the

Canadian Parliament adopted the proposal by a strong majority vote. I was in Parliament for the vote, then left Ottawa on the cold December night.

“I caught the plane to Montreal to fly to back to London. At Montreal airport I bought a bottle of champagne and I said ‘I am going to drink this champagne when that right is re-established’. Twenty six years later, the Canadian Parliament re-established the right by a new law. I opened the champagne. It tasted very sweet.”¹

Collaboration with performers

IFPI had now established committee structures involving its National Groups and member companies, such as it has today. In 1964, the Copyright Committee was formed on Sterling’s proposal, with lawyers joining from the companies and National Groups, effectively acting as a precursor to the modern International Legal Committee. In the main, legal representation was provided by National Groups working in collaboration with IFPI Head Office.

The image of the recording industry was hardly a serious issue for IFPI in those early days. But even in the 1960s, campaigning for the interests of an industry was seen as a lot more challenging than representing the author. Sterling recounts:

“Appearing for the authors was a comparatively easy case. People thought that the poor author struggling away should be protected. Arguing for the record industry was harder. Now many people are saying the internet should be free, using author’s works, performances and film and sound recordings without payment. These people do not acknowledge that without these creations and contributions there would be no sound recordings and films to put on the internet.”

IFPI had already been working in collaboration with performers for many years. Back in 1954, IFPI made its landmark agreement with the International Federation of Musicians (FIM), under which record producers agreed to give performers twenty five percent of what they received from broadcasting of records.

¹ A detailed description of the history of the recognition of the record performing right, together with descriptions of the Rome Convention and Australian, Canadian, German and other relevant cases is given in J.A.L. Sterling *World Copyright Law* (3rd Sweet & Maxwell 2008).

Sterling says the FIM agreement was a “brilliant step” *“The industry realised that it would be strengthened in its argument for rights in sound recordings by the support and collaboration of performers. You can’t make a record of a song without a performer. It meant IFPI could go into negotiations representing both industry and performers’ interests in this area.”*

A new threat: piracy

In the early 1970s the recording industry’s landscape changed dramatically. A new threat emerged – piracy. Life for IFPI would never be the same again.

Sterling noticed the problem first hand on a visit to Hong Kong in 1967, enroute back from Australia.

“When I was in Hong Kong I saw what was going on there, and I realised we had a major piracy problem on our hands. When I returned to London I proposed to the IFPI Board that we set up the IFPI Asia Pacific Committee in Hong Kong, specifically to fight piracy. The IFPI Asian Pacific Committee was established, with its first meeting in Hong Kong in November 1968, with representatives from Australia, Hong Kong, India, Japan, New Zealand, Pakistan and Singapore, with myself and I.D. Thomas (legal executive) of IFPI Head Office also present.

“Piracy was a new issue for us. There had not been extensive piracy of 78rpm records, for which a factory with employees was needed to undertake the slow and expensive task of producing such records. But then the cassette recorder came along and tape copying piracy began. In Hong Kong, you could run it as a cottage business at home, mother changing the tapes as she did the cooking, sister producing the inlay cards and uncle selling the pirate tapes around the city. Then factories manufacturing pirate LPs sprang up in Hong Kong and other countries of the region, posing a major threat to the industry throughout the region.”

The IFPI Asian Pacific Regional Office was subsequently set up in Hong Kong in 1970 with John West, an outstanding lawyer from New Zealand as Director and Sterling as Secretary General.

1970 was a critical year in the fight against piracy. The Berne Union countries met in Paris for discussions on global problems facing recognition of authors' rights and the need to update the Berne Convention. Sterling recalls:

"I was on the IFPI non-governmental delegation, and the Chairman of the Conference kindly allowed me to speak. I said to the assembled delegates that while the discussions were proceeding the house of authors' rights was in effect on fire underneath - because record piracy threatened the rights of the author, the performer and the record producer. We needed to act together to achieve a Convention to combat piracy of records."

France and India supported the proposal which was adopted by the Berne Union meeting. A year later, the Geneva Phonograms Convention 1971 was adopted, under which Contracting States agreed to protect phonogram producers against unauthorised copying of records, against importation of such unauthorised copies, and against the distribution of such copies to the public. The industry's long struggle to contain piracy continues to the present, with the new problems posed by the internet.

The next frontier

In 1974, Adrian Sterling decided to move on from IFPI after 20 years' service, and return to the Bar. While he is no longer formally associated with the recording industry, he continues to support its cause and is still a doughty defender of copyright.

Today, full of insights and enthusiasm, only one thing interests Professor Sterling more than copyright's past – and that is its future. The next frontier, for him, is copyright in Space. Sterling says he is proposing that WIPO extend the remit of its treaties to cover the Universe, because soon, he predicts, sound recordings and other copyright material will be communicated from Space to the public on Earth, and at present no international law protects copyright owners where protected material is transmitted from extraterritorial areas, either on Earth or (such as the Moon), in Space, as regards the commission of acts in such areas.

"The issue of copyright in extraterrestrial areas will I believe become a live issue in the coming years. My proposed Treaty extends the terms of the

Berne and Rome Conventions throughout the Universe. I'd like IFPI's support of this proposal."

Sterling's proposal and other of his research material is available at <http://www.qmipri.org/research.html>.

Sterling says that his special memories of his time with IFPI are not only of the places he visited and meetings he attended round the world, but also of the many distinguished lawyers and industry leaders whom he met: outstanding people whose personalities, expertise and friendship he always remembers.

This paper was compiled by IFPI staff and includes a number of extensive sections and quotations by Sterling, © J.A.L. Sterling 2013.

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