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Committee on Legal Affairs

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights (COM(2008)0464 – C6-0281/2008 – 2008/0157(COD))

Committee on Legal Affairs

Rapporteur: Brian Crowley

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights (COM(2008)0464 – C6-0281/2008 – 2008/0157(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0464),
 - having regard to Article 251(2) and Articles 47(2), 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0281/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive – amending act

Article -1 – point -1 (new)

Directive 2006/116/EC

Recital 14 a (new)

Text proposed by the Commission

Amendment

(-1) The following recital shall be inserted:

“(14a) In order to rebalance the contracts whereby performers transfer their exclusive rights, on a royalty basis, to a phonogram producer, a further condition attached to term extension should be a

'clean slate' for those performers who have assigned their above-mentioned exclusive rights to phonogram producers against royalties or remuneration. In order for performers to benefit fully from the extended term of protection, Member States should ensure that, under agreements between phonogram producers and performers, a royalty or remuneration rate unencumbered by advance payments or contractually defined deductions is paid to performers during the extended period.'

Or. en

Justification

This provision is essential for performers to enjoy all the royalties due to them for the extended period, against a refusal by labels, on grounds that advance payments to the artists have still not been recouped. Without this additional provision, the extension of the term of protection may ultimately only be beneficial to a minority of featured artists.

Amendment 2

Proposal for a directive – amending act

Article 1 – point 1

Directive 2006/116/EC

Article 3 – paragraph 1 – sentence 2

Text proposed by the Commission

(1) The second sentence of Article 3(1) is replaced by the following:

"However,

- if a fixation of the performance otherwise than in a phonograph is lawfully published or lawfully communicated to the public within this period, the rights shall expire **50 years** from the date of the first such publication or the first such communication to the public, whichever is the earlier,

- if a fixation of the performance in a phonograph is lawfully published or lawfully communicated to the public

Amendment

1) The second sentence of Article 3(1) is replaced by the following:

"However,

- if a fixation of the performance otherwise than in a phonograph is lawfully published or lawfully communicated to the public within this period, the rights shall expire **95 years** from the date of the first such publication or the first such communication to the public, whichever is the earlier,

- if a fixation of the performance in a phonograph is lawfully published or lawfully communicated to the public

within this period, the rights shall expire 95 years from the date of the first such publication or the first such communication to the public, whichever is the earlier."

within this period, the rights shall expire 95 years from the date of the first such publication or the first such communication to the public, whichever is the earlier."

Or. en

Justification

The discrimination between music and audiovisual performers is totally unacceptable as the Directive 93/98/EEC, whose codified version is Directive 2006/116/EC doesn't make any discrimination between performers), so create different regimes for the same category performers would be a discrimination under the European Law and against national treatment. Furthermore there is no reason for such discrimination.

EXPLANATORY STATEMENT

The rapporteur supports the Commission proposal which aims to improve the social situation of performers, and in particular session musicians, taking into account that performers are increasingly outliving the existing 50 year period of protection for their performances.

The main proposal of Directive involve extending the term of protection for performers and phonogram producers countries from 50 to 95 years but they also provide for several accompanying measures such as establishing a fund for session musicians and introducing “use it or lose it” clauses in contracts between performers and phonogram producers. Legally, the proposals involve amending Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights. That Directive codified and superseded the earlier Directive 93/98/EEC on the term of protection of copyright and certain related rights (often referred to as the “Term Directive”) without making substantive changes.

The intention of the proposals is to benefit both performers and record producers. The extended term would benefit performers who could continue earning money over an additional period. A 95-year term would bridge the income gap that performers face when they turn 70, just as their early performances recorded in their 20s would lose protection. They would continue to be eligible for broadcast remuneration, remuneration for performances in public places, such as bars and discotheques, and compensation payments for private copying of their performances.

The extended term would also benefit the record producers. It would generate additional revenue from the sale of records in shops and on the Internet.

The proposals also put forward a uniform way of calculating the term of protection, when it concerns a musical composition, containing the contributions of several authors as music is overwhelmingly co-written; EU-wide, the term of protection of a musical composition would expire 70 years after the death of the last surviving author, be it the author of the lyrics or the composer of the music.

Commission’s proposal to apply a uniform method of calculating the term of protection of musical compositions with lyrics whereby, when a musical composition is published with lyrics, the term of protection will be calculated from the death of the last surviving person: the author of the lyrics or the composer of the music.

The current differences in term of protection, particularly between Europe and the US, cause legal uncertainty and piracy especially in the digital environment where there are no boundaries and the works can be used at the same moment in different countries. It is an undeniable fact that different terms of protection could help to develop the piracy: performances that have fallen into the public domain in one country can be distributed online from there to other countries where they are still protected. Finally, Europe is able to protect its artists, one the most important expression of its cultural diversity.

Equalising term of protection with the U.S. would be an excellent opportunity for Europe economy to further the progress of the EU Lisbon Strategy for growth and jobs, which recognised the particular importance of promoting the creative industries. At a time when

creative industries based on intellectual property are generating an increasing percentage of GDP in the EU, the current disparity between the term of protection in the EU and the US clearly puts European record companies and performers at a competitive disadvantage. If the European recording industry is to be truly competitive in the global marketplace, the EU needs to close the gap by equalising term of protection at 95 years to provide a level playing field with Europe's main trading partner. A shorter period of time would not achieve this.

Furthermore, the current increase of the life expectancy of the population during the last years makes the extension of the protection of performers' rights even more essential for the artists concerned. Unfortunately, many performers know popularity and success especially when they are young so it is essential that they receive the right economic reward when they are old every time their work is communicated to the public.

Besides, an extended term would encourage cultural diversity: with an unchanged term, old performances gradually losing copyright protection would inevitably be favoured to the detriment of contemporary creations. Furthermore, the latter would inevitably seek to please those markets where protection is longer, ignoring the call for local, diversified, content. Finally, it must also be understood that the lack of proper status makes it extremely difficult for performers in Europe to make a living from their creations, regardless of the size of their contribution to the economy of culture in EU. The vast majority of performers has very little access to social security, unemployment compensation or health and safety protection and is generally confronted with widespread unfair contractual practices. In this context, the income generated by the intellectual property rights represents a vital source of income for performers.