

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

2008/0157(COD)

12.12.2008

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

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))

Rapporteur: Emmanouil Angelakas

PA_Legam

SHORT JUSTIFICATION

Your rapporteur generally supports the Commission proposal to extend the term of protection for performers and phonogram producers countries from 50 to 95 years. Taking the view that the proposal is a sensible reflection of the fact that performers are increasingly outliving the existing 50 year period of protection, your rapporteur is not proposing any amendments to this extension.

The proposal also include accompanying measures such as establishing a fund for session musicians and it also seek to introduce a uniform way of calculating the term of protection that applies to a musical composition with words which contains the contributions of several authors. Different Member States apply different systems for such co-written compositions. This leads to difficulties in administering copyright across the Community and difficulties in cross-border distribution of royalties for the exploitation that occurs in different Member States. Your rapporteur supports the proposal to harmonise rules in this respect, taking the view that the current discrepancies is hampering the effective functioning of the Internal Market.

Generally supporting the idea of introducing “use it or lose it” clauses in contracts between performers and phonogram producers, your rapporteur however takes the view that some changes should be introduced in this part of the proposal.

Firstly, in the case of several performers being recorded together, the current proposal obliges them to act jointly to terminate their contracts on transfer or assignment. This means that 50 years after a recording took place, the performers would have to actually agree. This is not realistic and it is the view of your rapporteur that this should be changed allowing them to act individually.

Secondly, the current proposal is referring to allowing the performer a reasonable time to have his performance, for which the rights are about to expire, exploited. However, in the proposal this one year is suggested for this. Your draftsperson does not consider this as a reasonable time and takes the view that five years is more appropriate in this respect.

Your rapporteur is also proposing to include an amendment calling upon the Commission to report to the European Parliament and the Council on the operation of the transitional measures after five years.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 5

Text proposed by the Commission

(5) Performers generally start their careers young and the current term of protection of 50 years with regard to performances ***fixed in phonograms and for phonograms*** often does not protect their performances during their entire lifetime. Therefore, performers face an income gap at the end of their lifetimes. They are also often not able to rely on their rights to prevent or restrict objectionable uses of their performances that occur during their lifetimes.

Amendment

(5) Performers generally start their careers young and the current term of protection of 50 years with regard to ***the fixation of*** performances often does not protect their performances during their entire lifetime. Therefore, performers face an income gap at the end of their lifetimes. They are also often not able to rely on their rights to prevent or restrict objectionable uses of their performances that occur during their lifetimes.

Justification

The creative contribution of all performers should be recognised and reflected in the modification of the directive. To achieve this goal, the scope of the proposal should be extended so that audiovisual performers could also benefit from the extended term of protection; therefore the distinction between fixation of the performance in a phonogram or in another way is proposed to be deleted. (Linked to the amendment on Article 3 - paragraph 1 of Directive 2006/116/EC.)

Amendment 2

Proposal for a directive – amending act Recital 7

Text proposed by the Commission

(7) The term of protection for fixations of performances and for phonograms should therefore be extended to 95 years after ***publication of the phonogram and the***

Amendment

(7) The term of protection for fixations of performances and for phonograms should therefore be extended to 95 years after ***the***

performance fixed therein. If the phonogram or the performance fixed in a phonogram has not been published within the first 50 years, then the term of protection should run for 95 years from the first communication to the public.

relevant trigger point.

Justification

The creative contribution of all performers should be recognised and reflected in the modification of the directive. To achieve this goal, the scope of the proposal should be extended so that audiovisual performers could also benefit from the extended term of protection; therefore the distinction between fixation of the performance in a phonogram or in another way is proposed to be deleted. (Linked to the amendment on Article 3 - paragraph 1 of Directive 2006/116/EC.)

Amendment 3

Proposal for a directive – amending act Recital 9

Text proposed by the Commission

(9) For the sake of legal certainty it should be provided that in the absence of clear indications to the contrary, a contractual transfer or assignment of rights in the fixation of the performance concluded before the date by which Member States are to adopt measures implementing the directive shall continue to produce its effects for the extended term.

Amendment

(9) Member States should remain free to adopt provisions on the interpretation, adaptation, termination and further execution of contracts governing the transfer or assignment of the rights of the performer in the fixation of his performance to a phonogram producer concluded before the extension of the term of protection resulting from this Directive.

Justification

It does not appear suitable that the proposed changes to Directive 2006/116/EC modify Member States' rules on the interpretation, adaptation, termination and further execution of contracts on the transfer or assignment of performers' rights to a phonogram producer. Therefore, national rules on how performers' rights are transferred, assigned and how the contracts on such assignments and transfers are terminated should govern the exercise of the 'use it or lose it' clause as foreseen in Article 10a, paragraph 6.

Amendment 4

**Proposal for a directive – amending act
Recital 12**

Text proposed by the Commission

(12) The first transitional accompanying measure should not entail a disproportionate administrative burden on small and medium sized phonogram producers. Therefore, Member States shall be free to exempt certain phonogram producers who are deemed small and medium by reason of the annual revenue achieved with the commercial exploitations of phonograms.

Amendment 5

**Proposal for a directive – amending act
Recital 13**

Text proposed by the Commission

(13) Those monies should be reserved solely for the benefit of performers whose performances are fixed in a phonogram and who have transferred their rights to the phonogram producer against a one-off payment. The monies set aside in this manner should be distributed to non-featured performers at least once a year on an individual basis. Member States ***may require*** that distribution of those monies is entrusted to collecting societies representing performers. ***When the distribution of those monies is entrusted to collecting societies***, national rules on non-distributable revenues may be applied.

Amendment 6

**Proposal for a directive – amending act
Recital 14 a (new)**

Text proposed by the Commission

Amendment

deleted

Amendment

(13) Those monies should be reserved solely for the benefit of performers whose performances are fixed in a phonogram and who have transferred their rights to the phonogram producer against a one-off payment. The monies set aside in this manner should be distributed to non-featured performers at least once a year on an individual basis. Member States ***should ensure*** that distribution of those monies is entrusted to collecting societies representing performers. National rules on non-distributable revenues may be applied.

Amendment

(14a) In order to rebalance contracts under which 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 those rights to phonogram producers in return for 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 unencumbered by advance payments or contractually defined deductions is paid to performers during the extended period.

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 7

Proposal for a directive – amending act Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Where a phonogram contains the fixation of the performances of a plurality of performers, Member States should be free to decide whether the performers may terminate the transfer or assignment jointly or individually.

Amendment 8

Proposal for a directive – amending act Article 1 – point 1 Directive 2006/116/EC Article 3 – paragraph 1 – indent 1

Text proposed by the Commission

Amendment

- if a fixation of the performance otherwise

- 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,

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,

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.

Amendment 9

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10a – paragraph 4 – subparagraph 2

Text proposed by the Commission

Member States may provide that a phonogram producer whose total annual revenue, during the year preceding that for which the said remuneration is paid, does not exceed a minimum threshold of € 2 million, shall not be obliged to dedicate at least 20 percent of the revenues which he has derived, during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available of those phonograms in regard of which, by virtue of Article 3 (1) and (2) in their version before amendment by Directive [// insert: Nr. of this amending directive]/EC, the performer and the phonogram producer would be no longer protected on 31 December of the said year.

Amendment

deleted

Justification

As the transitional accompanying measure (the 20%) will be measured on net revenues, there will be no disproportionate costs incurred by SMEs, therefore to ensure that all performers benefit from these monies, it is reasonable to include them within the measure.

Amendment 10

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10a – paragraph 5

Text proposed by the Commission

5. Member States ***may regulate whether and to what extent administration by collecting societies of*** the right to obtain an annual supplementary remuneration referred to in paragraph 3 ***may be imposed.***

Amendment

5. Member States ***shall ensure that*** the right to obtain an annual supplementary remuneration referred to in paragraph 3 ***is administered by the collecting society.***

Justification

For the sake of simplifying the administrative procedures, the collecting societies should be entrusted with the administration of the annual supplementary remuneration. (Linked to amendment on Recital 13)

Amendment 11

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10a – paragraph 6 – subparagraph 1

Text proposed by the Commission

6. If, after the moment at which, by virtue of *Article 3 (1) and (2)* in their version before amendment by Directive [// insert: Nr. of this amending directive]/EC, the performer and the phonogram producer would be no longer protected in regard of, respectively, the fixation of the performance and the phonogram, the phonogram producer ceases to offer copies of the phonogram for sale in sufficient quantity or to make it available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time

Amendment

6. If, after the moment at which, by virtue of *Article 3(1) and (2)* in their version before amendment by Directive [// insert: Nr. of this amending directive]/EC, the performer and the phonogram producer would be no longer protected in regard of, respectively, the fixation of the performance and the phonogram, the phonogram producer ceases to offer copies of the phonogram for sale in sufficient quantity or to make it available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time

individually chosen by them, the performer may terminate the contract on transfer or assignment. Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate their contracts on transfer or assignment **only jointly**. If the contract on transfer or assignment is terminated pursuant to sentences 1 or 2, the rights of the phonogram producer in the phonogram shall expire.

individually chosen by them, the performer may terminate the contract on transfer or assignment. Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate their contracts on transfer or assignment **in accordance with the applicable national laws**. If the contract on transfer or assignment is terminated pursuant to sentences 1 or 2, the rights of the phonogram producer in the phonogram shall expire.

Justification

The obligation for performers to act jointly is not realistic.

Amendment 12

Proposal for a directive – amending act

Article 1 - point 4

Directive 2006/116/EC

Article 10a - paragraph 6 – subparagraph 2

Text proposed by the Commission

If, **one year** after the moment at which, by virtue of Article 3 (1) and (2) in their version before amendment by Directive [// insert: Nr. of this amending directive]/EC, the performer and the phonogram producer would be no longer protected in regard of, respectively, the fixation of the performance and the phonogram, the phonogram is not made available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, the rights of the phonogram producer in the phonogram and the rights of the performers in relation to the fixation of their performance shall expire.

Amendment

If, **five years** after the moment at which, by virtue of Article 3 (1) and (2) in their version before amendment by Directive [// insert: Nr. of this amending directive]/EC, the performer and the phonogram producer would be no longer protected in regard of, respectively, the fixation of the performance and the phonogram, the phonogram is not made available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, the rights of the phonogram producer in the phonogram and the rights of the performers in relation to the fixation of their performance shall expire.

Justification

The obligation for performers to act jointly is not realistic. Moreover, recital 16 is referring

to allowing the performer a reasonable time to have his performance, for which the rights are about to expire, exploited. However, one year is not considered as a reasonable time, and five years are more appropriate.

Amendment 13

Proposal for a directive – amending act

Article 1 - point 5 a (new)

Directive 2006/116/EC

Article 11 a (new)

Text proposed by the Commission

Amendment

(5a) the following Article shall be inserted:

"Article 11a

Reporting

Within five years of the date of entry into force of Directive .../.../EC of the European Parliament and of the Council of... *, the Commission shall submit to the European Parliament and to the Council a report on the operation of the provisions of Article 10a(3) to (5) of this Directive.

**** OJ: please insert the number and date of this Directive."***

Justification

The reporting will allow the European Parliament and the Council to monitor the effect of the changes, in particular in relation to the transitional measures.

PROCEDURE

Title	Term of protection of copyright and related rights
References	COM(2008)0464 – C6-0281/2008 – 2008/0157(COD)
Committee responsible	JURI
Opinion by Date announced in plenary	IMCO 2.9.2008
Drafts(wo)man Date appointed	Emmanouil Angelakas 10.9.2008
Discussed in committee	10.11.2008
Date adopted	2.12.2008
Result of final vote	+: 26 –: 4 0: 2
Members present for the final vote	Gabriela Crețu, Mia De Vits, Janelly Fourtou, Evelyne Gebhardt, Martí Grau i Segú, Małgorzata Handzlik, Malcolm Harbour, Christopher Heaton-Harris, Anna Hedh, Edit Herczog, Eija-Riitta Korhola, Lasse Lehtinen, Toine Manders, Catiuscia Marini, Arlene McCarthy, Catherine Neris, Bill Newton Dunn, Zita Pleštinšká, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Christel Schaldemose, Andreas Schwab, Eva-Britt Svensson, Marianne Thyssen, Jacques Toubon, Barbara Weiler
Substitute(s) present for the final vote	Emmanouil Angelakas, Brigitte Fouré, Joel Hasse Ferreira, Anja Weisgerber
Substitute(s) under Rule 178(2) present for the final vote	Maddalena Calia