

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2008/0157(COD) Procedure completed
Intellectual property: term of protection of copyright and related rights Amending Directive 2006/116/EC	2006/0071(COD)
Subject 3.50.15 Intellectual property, copyright	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		22/09/2008
		UEN CROWLEY Brian	
	Committee for opinion	Rapporteur for opinion	Appointed
	ITRE Industry, Research and Energy		25/09/2008
		PPE-DE HENNICOT-SCHOEPGES Erna	
	IMCO Internal Market and Consumer Protection		10/09/2008
		PPE-DE ANGELAKAS Emmanouil	
	CULT Culture and Education		10/09/2008
		PPE-DE HEATON-HARRIS Christopher	
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	3109	12/09/2011
	Competitiveness (Internal Market, Industry, Research and Space)	2910	01/12/2008
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	

Key events			
16/07/2008	Legislative proposal published	COM(2008)0464	Summary
02/09/2008	Committee referral announced in Parliament, 1st reading		
01/12/2008	Debate in Council	2910	Summary

12/02/2009	Vote in committee, 1st reading		Summary
18/02/2009	Committee report tabled for plenary, 1st reading	A6-0070/2009	
22/04/2009	Debate in Parliament		
23/04/2009	Results of vote in Parliament		
23/04/2009	Decision by Parliament, 1st reading	T6-0282/2009	Summary
12/09/2011	Act adopted by Council after Parliament's 1st reading		
27/09/2011	Final act signed		
28/09/2011	End of procedure in Parliament		
11/10/2011	Final act published in Official Journal		

Technical information

Procedure reference	2008/0157(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2006/116/EC 2006/0071(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1; Treaty on the Functioning of the EU TFEU 062; Treaty on the Functioning of the EU TFEU 114-p1
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/66001

Documentation gateway

Legislative proposal		COM(2008)0464	16/07/2008	EC	Summary
Document attached to the procedure		SEC(2008)2287	16/07/2008	EC	
Document attached to the procedure		SEC(2008)2288	16/07/2008	EC	
Committee draft report		PE414.350	22/10/2008	EP	
Amendments tabled in committee		PE416.322	09/12/2008	EP	
Committee opinion	CULT	PE414.333	10/12/2008	EP	
Committee opinion	IMCO	PE415.148	12/12/2008	EP	
Committee opinion	ITRE	PE415.141	16/12/2008	EP	
Economic and Social Committee: opinion, report		CES0039/2009	14/01/2009	ESC	
Committee report tabled for plenary, 1st reading/single reading		A6-0070/2009	18/02/2009	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0282/2009	23/04/2009	EP	Summary
Commission response to text adopted in plenary		SP(2009)3507	25/06/2009	EC	

Draft final act		00016/2011/LEX	28/09/2011	CSL
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Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

Final act
Directive 2011/77 OJ L 265 11.10.2011, p. 0001 Summary

Intellectual property: term of protection of copyright and related rights

PURPOSE: to extend the term of protection for performers and phonogram producers to from 50 years to 95 years.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: The paper points out that the large scale production of phonograms is essentially a phenomenon that commenced in the 1950s. If nothing is done, over the next 10 years an increasing amount of performances recorded and released between 1957 and 1967 will lose protection. Once their performance fixed in a phonogram is no longer protected, around 7000 performers in any of the big Member States and a correspondingly smaller number in the smaller Member States will lose all of their income that derives from contractual royalties and statutory remuneration claims from broadcasting and public communication of their performances in bars and discotheques.

This affects featured performers (those who receive contractual royalties) but especially the thousands of anonymous session musicians (those who do not receive royalties and rely solely on statutory remuneration claims) who contributed to phonograms in the late fifties and sixties and have assigned their exclusive rights to the phonogram producer against a flat fee payment ('buy out'). Their 'single equitable remuneration' payments for broadcasting to the public, which are never assigned to the phonogram producer, would cease.

In addition, the proposal also seeks 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. In different Member States, such co-written musical compositions are either classified as a single work of joint authorship with a unitary term of protection, running from the death of the last surviving co-author or as separate works with separate terms running from the death of each contributing author. This means that in some Member States, a musical composition with words will be protected until 70 years after the last contributing author dies, while in other Member States, each contribution will lose protection 70 years after its author dies. These discrepancies in term lead to difficulties in administering copyright in co-written works across the Community. It also leads to difficulties in cross-border distribution of royalties for exploitation that occurs in different Member States.

CONTENT: this proposal aims to improve the social situation of performers, and in particular sessions musicians, taking into account that performers are increasingly outliving the existing 50 year period of protection for their performances.

The main points of the proposal are as follows:

- Article 1 amends the existing Articles 3(1) and 3(2) of Directive 2006/116/EC which governs the term of protection applicable to performances. The existing term of 50 years would be extended for both the phonogram and the performance embodied therein to 95 years;
- the new Article 10a introduces a series of measures accompanying the term extension while Article 10(5) would contain the rules on which phonograms and performances are affected by the proposal. The aim of the measures contained in Article 10a is largely to ensure that featured and non-featured performers whose performances are fixed in a phonogram effectively benefit from the proposed term extension. Articles 10a (3), (4) and (5) seek to remedy the situation whereby session musicians, upon entering into a contractual relationship with a phonogram producer, often have to transfer their exclusive rights of reproduction, distribution and 'making available' to the phonogram producers. Session musicians transfer their exclusive rights against a one-off payment ('buy out');
- the proposed remedy for the 'buy out' is that session musicians will obtain a claim to receive a yearly payment from a dedicated fund. In order to fund these payments, phonogram producers are under an obligation to set aside, at least once a year, at least 20% of the revenues from the exclusive rights of distribution, rental, reproduction and 'making available' of phonograms which, in the absence of term extension, would no longer be protected under Article 3. Member States may require that distribution of these monies is entrusted to collecting societies representing performers;
- producers' revenues deriving from single equitable remuneration for broadcasting and communication to the public and fair compensation for private copying shall not be included in the revenues to be set aside in favour of session musicians, as these secondary claims are never transferred to phonogram producers. Moreover, producer's revenues deriving from the rental of phonograms shall not be included, as performers still benefit from a right to equitable remuneration from such exploitation, under Directive 2006/115/EC;
- Article 10a (6) provides for a statutory 'use it or lose it' clause. Therefore, if a phonogram producer does not publish a phonogram, which, but for the term extension, would be in the public domain, the rights in the fixation of the performance shall, upon his request, revert to the performer and the rights in the phonogram shall expire. Further, if after one year subsequent to the term extension, neither the phonogram producer nor the performer made the phonogram available to the public, the rights in the phonogram and the rights in the fixation of the performance shall expire. A further purpose of the clause is to ensure that phonograms which neither the phonogram producer nor the performers wish to exploit are not 'locked up'. This also means that orphan phonograms, for which neither the phonogram producer nor the performers can be identified or found, will benefit from the clause because such orphan phonograms will not be exploited by either the producer or the performer. All types of phonograms which are not exploited would thus be available for public use. This clause has the purpose of allowing performers whose performances fixed in a phonogram are no longer published by the original phonogram producer after

the initial 50 year term to regain control over their performance and make it available to the public themselves. On the other hand, the producers' right should expire in order to ensure that the performers' efforts to make their performances available as widely as possible are not hindered;

- lastly, under the new Article 1(7), when a musical composition is published with lyrics, the term of protection (70 years) shall be calculated from the death of the last surviving person: the author of the lyrics or the composer of the music.

Intellectual property: term of protection of copyright and related rights

The Council took note of a progress report on a proposal for a Directive amending Directive 2006/116/EC on the term of protection of copyright and related rights. It asked its preparatory bodies to continue discussions with a view to finding solutions to the questions outstanding.

The report was drawn up by the Presidency on the basis of discussions held by the Council's experts following presentation by the Commission of the draft Directive in July 2008.

The draft Directive is intended mainly to extend the term of protection of related rights enjoyed by performers and phonogram producers. It also aims to improve the social situation of performers, in particular that of session musicians, given that performers increasingly live beyond the term of protection of their performances.

As this is a codecision draft law, the European Parliament is expected to give its opinion on the proposal at first reading in February 2009.

Intellectual property: term of protection of copyright and related rights

The Committee on Legal Affairs adopted the report drawn up by Brian CROWLEY (UEN, IE) amending, under the first reading of the codecision procedure, 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.

The main amendments are as follows:

Scope: the creative contribution of all performers should be recognised. The scope of the proposal should be extended so that audiovisual performers could also benefit from the extended term of protection. Accordingly, it is proposed that the distinction between fixation of the performance in a phonogram or in another way is deleted

Assigning of protection: in order to ensure that performers, rather than record producers, benefit from the extended term of protection, the Directive should provide that any contract in force assigning any extension of the term of protection shall have no effect as regards the extension of the term of protection from 50 years to the lifetime of the performer.

Clean slate: in order to rebalance 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 exclusive 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 or remuneration rate unencumbered by advance payments or contractually defined deductions is paid to performers during the extended period.

Similarly, in order to ensure that performers that transfer their exclusive rights in return for a recurring payment or remuneration to a producer benefit fully from the extended term of protection, Member States should ensure that the royalty or remuneration rate, unencumbered by deductions for advance payments or contractually defined deductions, is paid to performers during the extended period.

The committee notes that these provisions are essential for performers to enjoy all the royalties due to them for the extended period, against a refusal by labels, on the 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.

Mandatory collective licensing scheme for on demand services by broadcasters: among the accompanying transitional measures there should also be included the mandatory collective exercise of the rights of performers and phonogram producers concerning on-demand services by broadcasters of their radio or television productions of which music from lawfully published phonograms is an integral part. This system of collective rights management complements the remuneration regime for the broadcasting of lawfully published phonograms under Article 8(2) of Directive 2006/115/EC and guarantees that, throughout the full term of protection of lawfully published phonograms, the relevant performers and phonogram producers receive a fair share of the remuneration also for the on-demand use of broadcast productions.

Collecting societies: for the sake of simplifying administrative procedures, the collecting societies should be entrusted with the administration of the annual supplementary remuneration. The text provides that with respect to the administration of rights concerning the on-demand services by broadcasters of their radio or television productions incorporating music from lawfully published phonograms, Member States shall ensure that the rights of performers and phonogram producers to grant or refuse authorisation for such use may be exercised only through the collecting society which has been established for collecting and distributing the remuneration for broadcasting such phonograms.

Collecting societies shall distribute those remunerations on an individual basis and taking into account the use of each performer's performances.

Joint termination of contracts by performers: the committee deleted the obligation for performers on phonograms to terminate their contracts on transfer or assignment only jointly, stating that the obligation for performers to act jointly is not realistic.

Length of exploitation term: the performer has 5 years (rather than 1 year as the Commission had proposed) to exploit his performance.

Impact assessment: the Commission should launch an impact assessment procedure in relation to the situation of the European audiovisual sector in order to consider the need for an extension of the term of protection of copyright to producers and broadcasters in the audiovisual sector. That procedure should be completed by 1 January 2010 so that a proposal for a new directive may be presented before June 2010.

Legislative provisions: if necessary, Member States should ensure that the extension of the term of protection of performers' rights is

accompanied by legislative provisions that offer protection to performers in the form of fair contractual terms in respect of transfer or assignment.

Report: no later than three years after the deadline for transposition, and every four years thereafter, the Commission shall a report on the application and effects of this Directive in which inter alia, on the basis of specific information supplied by the Member States, consideration is given to the effectiveness of the measures taken, when this Directive was revised, in the light of the objectives pursued. The Commission shall examine in particular whether extension of the duration of rights has had a positive effect on the social situation of performers and on musical output and whether additional measures appear appropriate in order to attain those objectives.

Lastly, the committee deleted the exception for a phonogram producer whose total annual revenue does not exceed a minimum threshold of EUR 2 million.

Intellectual property: term of protection of copyright and related rights

The European Parliament adopted by 377 votes to 178 with 37 abstentions, a legislative resolution amending, under the first reading of codecision procedure, 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. The text states that the term of protection for fixations of performances and for phonograms should be extended to 70 years, rather than 95 years as the Commission had proposed.

The main amendments are as follows:

Term of protection: the term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words. However, protection for musical recordings will expire after 70 years.

Assigned rights: if, 50 years after the phonogram was lawfully published, or failing such publication, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract whereby he has transferred or assigned his rights in the fixation of his performance to a phonogram producer ("contract on transfer or assignment"). The right to terminate the contract may be exercised if the producer, within a year from the notification by the performer of his intention to terminate the contract, does not carry out both acts of exploitation described above. This right to terminate may not be waived by the performer. Where a phonogram contains the fixation of the performances of several performers, they may terminate their contracts on transfer or assignment in accordance with the applicable national law. If the contract on transfer or assignment is terminated, the rights of the phonogram producer in the phonogram shall expire.

Annual supplementary remuneration: Parliament provided extended rights for session musicians. It pointed out that some performers are paid an advance on royalties and enjoy payments only once the phonogram producer has recouped the initial advance and made any contractually defined deductions. Other performers transfer or assign their exclusive rights against a one-off payment (non-recurring remuneration). This is particularly the case for performers who play in the background and do not appear in the credits ("non-featured performers") but sometimes also for performers who appear in the credits ("featured performers"). Producers will be under an obligation to set aside, at least once a year, a sum corresponding to 20 % of the revenues from the exclusive rights of distribution, reproduction and making available of phonograms. "Revenues" means the revenues derived by the phonogram producer before deducting costs. Phonogram producers must be required to provide to performers, who are entitled to the annual supplementary remuneration, on request, any information which may be necessary in order to secure the payment of that remuneration.

Clean slate: where performers transfer their exclusive rights, on a royalty basis, to a phonogram producer, there should be a 'clean slate' for those performers who have assigned their exclusive 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 or remuneration rate unencumbered by advance payments or contractually defined deductions is paid to performers during the extended period.

Derogation: Parliament deleted the derogation for producers with less than EUR 2 million annual revenue.

Collecting societies: the right to obtain an annual supplementary remuneration must be administered by collecting societies.

Transfer or assignment: Member States may provide that contracts on transfer or assignment whereby a performer is entitled to recurring payments and concluded before a certain date can be modified after 50 years.

Report: the Commission shall submit in 3 years a report on the application of the Directive in the light of the development of the digital market and, where appropriate, submit a proposal to further amend Directive 2006/116/EC.

Assessment on the audiovisual sector: the Commission shall carry out an assessment of the possible need for an extension of the term of protection of rights to performers and producers in the audiovisual sector and report not later than 1 January 2010. If appropriate, the Commission shall submit a proposal to amend Directive 2006/116/EC.

Intellectual property: term of protection of copyright and related rights

PURPOSE : to adopt new rules on the length of protection for music recordings.

LEGISLATIVE ACT : Directive 2011/77/EU of the European Parliament and of the Council amending Directive 2006/116/EC on the term of protection of copyright and certain related rights.

CONTENT : following an agreement at first reading with the European Parliament, the Council adopted by qualified majority a directive increasing the level of protection of performers by acknowledging their creative and artistic contributions. The Belgian, Czech, Dutch, Luxembourg, Romanian, Slovak, Slovenian and Swedish delegations voted against and the Austrian and Estonian delegations abstained.

The main provisions of the new Directive are as follows :

Term of protection: performers generally start their careers young and the current term of protection of 50 years applicable to fixations of performances often does not protect their performances for their entire lifetime. Therefore, some performers face an income gap at the end of their lifetime. In addition, performers are often unable to rely on their rights to prevent or restrict an objectionable use of their performances that may occur during their lifetime.

Accordingly, a Directive extends the term of protection of the rights of performers and phonogram producers on music recordings within the EU from 50 to 70 years. Furthermore, it harmonises the method of calculating the term of protection of songs and other musical compositions with words created by several authors. The term of protection will expire 70 years after the death of the last person to survive: the author of the lyrics or the composer of the music.

Assigned rights: if, 50 years after the phonogram was lawfully published, or failing such publication, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract whereby he has transferred or assigned his rights in the fixation of his performance to a phonogram producer. The right to terminate the contract may be exercised if the producer, within a year from the notification by the performer of his intention to terminate the contract, does not carry out both acts of exploitation described above.

Accompanying measures: the Directive also provides measures in order to ensure that artists who have transferred their exclusive rights to phonogram producers actually benefit from the term extension and may recuperate their rights subject to certain conditions.

- a first accompanying measure is the imposition on phonogram producers of an obligation to set aside, at least once a year, a sum corresponding to 20% of the revenue from the exclusive rights of distribution, reproduction and making available of phonograms. Payment of those sums must be reserved solely for the benefit of performers whose performances are fixed in a phonogram and who have transferred or assigned their rights to the phonogram producer in return for a one-off payment. The sums set aside in this manner must be distributed to non-featured performers at least once a year on an individual basis;
- a second accompanying measure designed to rebalance contracts whereby performers transfer their exclusive rights on a royalty basis to a phonogram producer, is a 'clean slate' for those performers who have assigned their above-mentioned exclusive 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 must 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.

Report: the Commission must submit :

- by 1 November 2016, a report on the application of this Directive in the light of the development of the digital market, accompanied, where appropriate, by a proposal for the further amendment of Directive 2006/116/EC ;
- by 1 January 2012, a report assessing the possible need for an extension of the term of protection of rights to performers and producers in the audiovisual sector, with a proposal for the further amendment of Directive 2006/116/EC if appropriate.

ENTRY INTO FORCE : 31/10/2011.

TRANSPOSITION : 01/11/2013.