

Amendment 1

Proposal for a European Parliament and Council Directive amending Directive 2006/116/EC of the European Parliament and the Council on the term of protection of copyright and related rights

{SEC(2008) 2287}

{SEC(2008) 2288}

Recital 1

Recital 3

Recital 7

Article 1(1)(2)(3)

Text proposed by the Commission

(1) Under Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights [24], the term of protection for performers and producers of phonograms is 50 years.

(3) For phonogram producers the period starts with the fixation of the phonogram or from its publication within 50 years after fixation, or, if not published, from its communication to the public within 50 years after fixation.

(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 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.

Amendment

(1) Under Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights [24], the term of protection for performers is 50 years.

delete

(7) The term of protection for fixations of performances should therefore be extended. If the performer is still alive at the end of the end of the existing period of protection under Directive 2006/116/EC, the performance rights shall continue for the rest of the performer's life.

Article 1

Directive 2006/116/EC is amended as follows:

– (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 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."

– (2) In the second and third sentence of Article 3(2) the cipher "50" is replaced by the cipher "95"

– (3) In Article 10 the following paragraph 5 is inserted:

"5. Article 3 (1) and (2) in their version as amended by Directive [// insert: Nr. of the amending directive] shall continue to apply only to fixations of performances and phonograms in regard of which the performer and the phonogram producer are still protected, by virtue of these provisions, on [insert date before which Member States are to transpose the amending directive, as mentioned in Article 2 below]."

Article 1

Directive 2006/116/EC is amended as follows:

(1) After the second sentence of Article 3(1) the following shall be added:

"However, if at the end of this period, a performer is alive, the rights of that performer shall continue to subsist until the date of his or her death."

delete

Replace with

– (3) In Article 10 the following paragraph 5 is inserted:

"5. Article 3 (1) [delete: and (2)] in their version as amended by Directive [// insert: Nr. of the amending directive] shall apply only to fixations of performances in regard of which the performer is still protected, by virtue of these provisions, on [insert date before which Member States are to transpose the amending directive, as mentioned in Article 2 below]."

Justification

The extension should apply to performers only, and only until they die. This proposal mirrors the current Greek law, which has not been harmonized. The Commission has indicated that it has declined to bring enforcement proceedings against Greece, because it regards the Greek provision as preferable to the current harmonized law. No extension is justified for phonogram producers, a 50 year fixed term being more than sufficient time in which to recoup any investment.

Amendment 2

Proposal for a European Parliament and Council Directive amending Directive 2006/116/EC of the European Parliament and the Council on the term of protection of copyright and related rights

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Recital 9

Recital 10

Recitals 11-17

Article 1(4)

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.

(10) In order to ensure that performers who have transferred their exclusive rights to phonogram producers before the extension of the term of protection actually benefit from that extension, a series of accompanying transitional measures should be introduced. These measures should apply to contracts between performers and phonogram producers which actually continue to produce their effects for the extended term.

(11)-(17)

Article 1 (4)

The following Article 10 a is inserted:

"Article 10a

Transitional measures relating to the transposition of directive [// insert: Nr. of the amending directive]

Amendment

(9) In order to ensure that performers, rather than record producers, benefit from the extended term, it should be provided that any existing contract purporting to assign any extension in the term shall have no effect as regards the extended period from 50 years to life.

delete

delete

Article 1 (4)

The following Article 10 a is inserted:

"Article 10a

Transitional measures relating to the transposition of directive [// insert: Nr. of the amending directive]

1. In the absence of clear indications to the contrary, a contract, concluded before [insert date before which Member States are to transpose the amending directive, as mentioned in Article 2 below], whereby a performer has transferred or assigned his rights in the fixation of his performance to a phonogram producer (hereinafter: a "contract of transfer or assignment"), shall be deemed to continue to produce its effects beyond 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], the performer and the phonogram producer would be no longer protected in regard of, respectively, the fixation of the performance and the phonogram.

2. Paragraphs 3 to 6 of this article shall apply to contracts of transfer or assignment which continue to produce their effects beyond 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.

1. A contract, concluded before [insert date before which Member States are to transpose the amending directive, as mentioned in Article 2 below], whereby a performer has transferred or assigned his rights in the fixation of his performance to a phonogram producer, shall be deemed not to produce any effect beyond the moment at which, by virtue of Article 3 (1) in their version before amendment by Directive [// insert: Nr. of this amending directive], the performer would be no longer protected in regard of, respectively, the fixation of the performance.

Replace paragraph 2 as follows:

2. Where a performer has not transferred the management of his rights to a collecting society as regards the additional term of protection that is conferred as a result of this Directive, the collecting society which manages rights of performers shall be deemed to be mandated to manage his rights. The performer shall retain his moral rights.

Replace paragraph 3 as follows

3. The collecting society shall distribute revenues it receives on behalf of performers from the exploitation of phonograms embodying their performances equitably, and in such a manner as to reflect the nature and extent of the contribution of each performer whose protected performance is embodied in a phonogram.

Delete paragraphs 4 -6 inclusive.

Justification

This amendment is designed to ensure that the additional term actually benefit performers. Existing contractual arrangements must not therefore be treated as assigning the additional term to a phonogram producer. In order to avoid co-ordination problems with respect to the additional term, management of the rights is to be entrusted to collecting societies. This will require collecting societies to administer the reproduction and distribution rights in relation to fixations of performances for the extended term. Given that collecting societies will allow for any operator to exploit the performance, there will be no need for a 'use it or lose it provision'. Given that collecting societies will keep details of the performers whose performances are embodied on phonograms, concerns about lack of clarity as to when a work falls into the public domain can be avoided.

Amendment 3

Proposal for a European Parliament and Council Directive amending Directive 2006/116/EC of the European Parliament and the Council on the term of protection of copyright and related rights

{SEC(2008) 2287}

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Recital [x]

Article 1(2)

Amendment 3

Proposal for a directive – amending act

Article -1 – point -1 (new)

Directive 2006/116/EC

Recital 7

Text proposed by the Commission

Amendment

Recital [x]

In order to ensure that performers are remunerated during the existing 50 year term, it is desirable to provide a mechanism to ensure phonograms embodying their performances are adequately exploited. In cases where no such exploitation occurs, performers should be able to exploit the phonograms themselves. Provision should therefore be made to facilitate transfer to performers of the rights in any phonogram which is not exploited for three years. In order to enable performers fully to take advantage of this right, Member States may provide for a right for performers to access the original recordings (so-called ‘masters’). The right conferred by this provision is to be regarded as unwaivable by contract..

Article 1

Directive 2006/116/EC is amended as follows:

– (2) In the second and third sentence of

Article 1

Directive 2006/116/EC is amended as follows:

- (2) At the end of Article 3(2) the following shall be inserted:

Article 3(2) the cipher "50" is replaced by the cipher 95"

"If the fixation of a performance on a phonogram has at any time been made available to the public through the sale of copies or otherwise, or communicated to the public, but that phonogram ceases to be 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 for a period of three years, the performers whose performances are embodied in that phonogram shall be entitled to call upon the phonogram producer to transfer all rights in the phonogram and all rights in the performances to the performers."

"Where a phonogram embodies the performances of more than one performer, this right may be exercised by all the performers collectively or by any individual performer, but where the right is exercised by an individual performer the rights must be vested in a collecting society."

Justification

In order to ensure that phonograms are exploited during the fifty year term of protection for the benefit of performers, an additional qualification is added to the rights of phonogram producers. Where a published phonogram ceases to be available to the public for a period of three years, the performers shall be entitled to reclaim both the rights in the performances embodied and the rights in the phonograms (without which it would not be possible to exploit the former rights). Where all performers act in concert, these rights vest in the performers, which will enable them either to enter into a new exploitation contract, to make the fixation available or to place the fixation in the public domain. Where the performers are unable or unwilling to act in concert, the rights must be vested in a collecting society, which will distribute revenues to the various performers equitably.