

Intellectual property: term of protection of copyright and related rights

2008/0157(COD) - 12/02/2009

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.