

# Intellectual property: term of protection of copyright and related rights

2008/0157(COD) - 23/04/2009 - Text adopted by Parliament, 1st reading/single reading

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.