

Intellectual property: term of protection of copyright and related rights

2008/0157(COD) - 27/09/2011 - Final act

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.