Basic information

2008/0157(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	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	CROWLEY Brian (UEN)	22/09/2008

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	HENNICOT-SCHOEPGES Erna (PPE-DE)	25/09/2008
IMCO Internal Market and Consumer Protection	ANGELAKAS Emmanouil (PPE-DE)	10/09/2008
CULT Culture and Education	HEATON-HARRIS Christopher (PPE-DE)	10/09/2008

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3109	2011-09-12
Competitiveness (Internal Market, Industry, Research and Space)	2910	2008-12-01

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
		COM(2008)0464	Summary

16/07/2008	Legislative proposal published		
02/09/2008	Committee referral announced in Parliament, 1st reading		
01/12/2008	Debate in Council		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	Decision by Parliament, 1st reading	T6-0282/2009	Summary
23/04/2009	Results of vote in Parliament		
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
Amendments and repeals	Amending Directive 2006/116/EC 2006/0071(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 053-p1 Treaty on the Functioning of the European Union TFEU 114-p1 Treaty on the Functioning of the European Union TFEU 062
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/66001

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE414.350	22/10/2008	
Amendments tabled in committee		PE416.322	09/12/2008	
Committee opinion	CULT	PE414.333	10/12/2008	
Committee opinion	IMCO	PE415.148	12/12/2008	
Committee opinion	ITRE	PE415.141	16/12/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0070/2009	18/02/2009	
Text adopted by Parliament, 1st reading/single reading		T6-0282/2009	23/04/2009	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00016/2011/LEX	28/09/2011	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2008)0464	16/07/2008	Summary
Document attached to the procedure	SEC(2008)2287	16/07/2008	
Document attached to the procedure	SEC(2008)2288	16/07/2008	
Commission response to text adopted in plenary	SP(2009)3507	25/06/2009	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0039/2009	14/01/2009	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2011/0077
OJ L 265 11.10.2011, p. 0001 Summary

Intellectual property: term of protection of copyright and related rights

2008/0157(COD) - 01/12/2008

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

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.

Intellectual property: term of protection of copyright and related rights

2008/0157(COD) - 16/07/2008 - Legislative proposal

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

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.