

EUROPEAN PARLIAMENT

2004



2009

18.03.2009

Amendment 1

Eva Lichtenberger, Helga Truepel, David Hammerstein, Carl Schlyter
on behalf of the Greens/EFA Group

Report

Brian Crowley

Term of protection of copyright and related rights

Proposal for a directive – amending act

on 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

(COM(2008)0464 – C6-0281/2008 – 2008/0157(COD))

Proposal for a directive – amending act
Article 1 – point 1
Directive 2006/116/EC
Article 3 – paragraph 1

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>(1) The second sentence of Article 3(1) is replaced by the following:</i>	<i>deleted</i>
<i>"However,</i>	<i>deleted</i>
<i>- 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,</i>	<i>deleted</i>
<i>- 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."</i>	<i>deleted</i>
	<i>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."</i>

Justification

The extension should apply to performers only, and only for their lifetimes. 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

Eva Lichtenberger, Helga Truepel, David Hammerstein, Carl Schlyter
on behalf of the Greens/EFA Group

Report:

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Proposal for a directive – amending act

Article 1 – point 3

Directive 2006/116/EC

Article 10 – paragraph 5

Text proposed by the Commission

"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]."

Amendment

"5. Article 3 (1) and (2) in their version as amended by Directive [// insert: Nr. of the amending directive] shall apply only to fixations of performances and phonograms which are created after [insert date before which Member States are to transpose the amending directive, as mentioned in Article 2 below]."

Justification

The extension should apply only prospectively. No incentive effect is achieved by conferring rights on performers and phonogram producers as regards existing performances and

fixations. An incentive effect can only exist in relation to future activities.

Amendment 3

Eva Lichtenberger, Helga Truepel, David Hammerstein, Carl Schlyter
on behalf of the Greens/EFA Group

Report:

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Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10a

Text proposed by the Commission

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 ***on*** 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

Amendment

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 ***other than to a collecting society*** in the fixation of his performance to a phonogram producer (hereinafter: a "contract ***of*** transfer or assignment"), 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 *and the phonogram*.

2. Paragraphs 3 to 6 of this article shall apply to contracts on 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.

3. Where a contract on transfer or assignment gives the performer a right to claim a non recurring remuneration, the performer shall have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year in which, by virtue of Article 3 (1) and (2) in its 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.

Paras 4.-6.

performance.

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 the same category shall be deemed to be mandated to manage his rights. The performer shall retain his moral rights.

3. The collecting society shall distribute revenues it receives from the exploitation of phonograms 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. The extension should apply only prospectively. No incentive effect is achieved by conferring rights on performers and phonogram producers as regards existing performances and fixations. An incentive effect can only exist in relation to future activities.

Deleted

Justification

This amendment is designed to ensure that the additional term actually benefits 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. It should be noted that the recommendation here of a collecting society based approach is not intended to downplay the existing concerns regarding the operation of collecting societies as discussed, for example, in the Levai Report on collective cross-border management of copyright and related rights for legitimate online music services.

Amendment 4

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Proposal for a directive – amending act

Article 1 – point 2 a(new)

Directive 2006/116/EC

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The following point shall be inserted:

(2a) 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.

If the holder of such rights fails to transfer the rights voluntarily within 3 months of receiving such a request, the rights shall be deemed to be so vested. No compensation shall be payable.

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.

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Amendment 5

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Draft legislative resolution

Paragraph 1

Draft legislative resolution

1. **Approves** the Commission proposal as amended;

Amendment

1. **Rejects** the Commission proposal as amended;

Justification

The extension envisaged in this proposal will generate costs that significantly outweigh any benefits. Furthermore, while the primary beneficiaries will be large recording companies and a relatively small number of (already highly successful) performers, the costs will be borne by new, younger artists, and European citizens at large. If the aim is to help performers, without undue harm to consumers and other users there are far more effective, and equitable, ways to provide such assistance than are contained within this proposal.