European Commission: Proposal for an Extension of the Term of Protection in Phonograms

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Christina Angelopoulos
Institute for Information Law (IViR), University of Amsterdam

On 16 July 2008, the European Commission adopted a proposal to amend Directive 2006/116/EC on the term of protection of copyright and related rights. This proposal aims at extending the term of protection of related rights in phonograms and in performances fixed thereon from 50 to 95 years. The term extension should apply to all performances and sound recordings that are still protected at the moment of the proposal's entry into force, but will not extend to performances that have already fallen into the public domain at the time of the amended Directive's adoption. The Commission believes this should benefit performers and phonogram producers alike. To begin with, should bring performers' rights more into line with those of authors, thereby guaranteeing the former a proper income throughout retirement. In addition, the proposal is intended to help phonogram producers generate additional revenue from sales both on and off-line, which the Commission claims they would need so as to adapt to the rapidly changing trade environment, as well as to continue their investments in new talent.

The proposal includes accompanying measures for the benefit of session musicians, in the form of a compensation fund financed by 20% of record companies' revenues resulting from the extended period of protection. In addition, a "return of rights" rule is envisioned for performers that have assigned all their rights to record producers. Hereby, a "use it or lose it" clause in contracts between performers and phonogram producers should prevent producers from "locking up" those phonograms that are not commercially interesting and enable performers to either find another producer or release the sound recording independently, e.g. through the Internet. Recordings not marketed at all would loose protection and enter the public domain. The proposal also includes a "clean slate" for contracts concluded before the amending Directive's entry into force for the extended period beyond that at which the rights would, under the previous regime, have ceased.

Finally, the same initiative concentrates on harmonising the criteria for calculating the term of protection of copyright in co-written musical works. Currently, the criteria vary between the different Member States, something which may lead to difficulties in the administration of rights and the distribution of royalties in case of a cross-border exploitation of these works. The Commission aims at removing

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these difficulties by establishing a uniform method of calculation, according to which the term shall expire 70 years after the death of the last surviving author, be it the lyricist or the composer.

Neither of these topics is uncontroversial. This becomes apparent, in particular, from the differing responses to the consultation based on the Commission's Staff Working Paper on Copyright Review (see IRIS 2004-8: 4), as well as from an independent academic study that was commissioned by the Commission's DG Internal Market in 2006.

The proposal has now been transmitted to the Council and the European Parliament for further consideration.

Proposal for a European Parliament and Council Directive amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights, Brussels, 16 July 2008, COM(2008) 464 final, 2008/0157 (COD)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0464:FIN:EN:PDF

Institute for Information Law (IViR), "The Recasting of Copyright & Related Rights for the Knowledge Economy", report to the European Commission, DG Internal Market, November 2006

http://ec.europa.eu/internal_market/copyright/docs/studies/etd2005imd195recast_report_2006.pdf

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