Council of the EU: Amended Directive Extends the Term of Protection for Performers and Sound Recordings

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

On 12 September 2011 the EU Council of Ministers, in the final stage of the adoption process, accepted the long-debated proposed amendments to Directive 2006/116/EC on the term of protection on copyright and certain related rights (see IRIS 2008-8/3). Under the new rules the term of protection for performers' and phonogram producers' rights in sound recordings is extended from 50 to 70 years from the starting point which sets the term running (either the date of first publication of the sound recording or the date of first communication to the public, depending). The change is intended to bring the protection of neighbouring rights more into line with that offered to copyright, which already lasts (as a general rule) for 70 years after the death of the author.

The amended Directive also contains accompanying measures intended to benefit performers. Under the new "use it or lose it" clause, if a record company does not market a sound recording during the first 50 years after it was first lawfully published or communicated to the public, the performer may opt to reclaim the rights, enabling him/her to exploit the sound recording in another way. Thus, phonogram producers are prevented from "locking up" phonograms they do not find commercially interesting. In addition, record companies are obliged to set up a compensation fund intended to help session musicians, into which they will have to pay 20% of the revenues earned during the extended 20-year period of protection. Finally, to ensure that a percentage of the royalties arising during the extended term will go to performers, regardless of pre-existing contractual arrangements, a "clean slate" is given to performers, preventing record producers from making deductions to the royalties due to performers after the initial 50 years of protection are over.

Changes to the rules governing the term of protection of copyright in co-authored musical works (musical compositions with words) have also been introduced. Under the new provisions, copyright in works shall last for 70 years after the death of the last of the following persons to survive, regardless of whether they are designated as co-authors under national law: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the co-authored musical work. The new provisions apply to co-authored musical works which are already the subject of protection in at least one member state two years from the date of entry into force of the new rules or

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which are created after that date.

It should be noted that, although the new term of protection has been cut back by the European Parliament from the Commission's initial proposal of 95 years from the event that sets the term running, the extension remains controversial. After a two-year stall before the Council, the proposal was finally adopted after Denmark removed itself from the blocking minority last April. However, with Belgium, the Czech Republic, Netherlands, Luxembourg, Romania, Slovakia, Slovenia and Sweden all voting against and Austria and Estonia abstaining, the list of dissenting countries remains quite long.

Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:265:0001:0005:EN:PDF

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