

Brussels, 12 September 2011

The Directive for Term Extension [DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2006/116/EC on the term of protection of copyright and certain related rights] adopted

– Frequently Asked Questions

What are the main elements of the revised Directive?

* ***Copyright for performers extended from 50 to 70 years:*** The Directive narrows the gap between the copyright term of protection for authors (currently life plus 70 years after the authors' death) and the term of protection for performers (currently 50 years after the performance). Performers will now be guaranteed remuneration over a longer period of time. *(More detail below)*

Additional measures to improve performers revenue:

*The Directive also strengthens the position of performers with a number of accompanying measures. Since performers usually assign their rights to the record producers, these measures will ensure that performers will get additional revenue from the extension (session musicians' fund).

* Additionally, if record producers fail to market a recording, performers can get their rights back and market it themselves ('use it or lose it' provision).

* Finally, record producers would be prevented from making deductions to the royalties they pay to featured performers after the initial 50 years are over (a 'clean slate').

(More detail below)

Today's adoption of the Directive is one of the deliverables announced by the Commission in its [Strategy on intellectual property rights](#) adopted in May 2011.

How does the extension of copyright to 70 years work in practice?

This Directive extends the term of copyright for performers to 70 years by amending the Directive 2006/116/EC. Under current EU laws, recorded musical performances are protected for a maximum of 50 years after their fixation in a record. This means, for instance, that over a period of 50 years, performers are paid each time their work is played on the air and in public places such as bars and discotheques. After 50 years, performers lose control over the use of their performances and no longer receive any income from them.

Most performers start their career in their early 20's or even before. Average life expectancy in the EU today stands at 76.4 years for men and 82.4 years for women. This means that a performer who lives well into his 80s would not be able to enjoy the benefits of his creation because the term of protection would have already run out at the most vulnerable period of his life.

For composers and lyricists, on the other hand, copyright protection lasts throughout their life and for 70 years after their death. The extension of the term of protection for

performers now adopted means that artists in Europe will receive a fairer treatment and be assured of a steady income for their performances during their entire lifetime.

How will the accompanying measures to the term extension work in practice?

The directive also introduces a set of accompanying measures to benefit performers and give them more control over their work.

- A **20% fund** for session musicians, paid by the record companies: this remuneration ensures that performers who are forced to sell their rights against a one-off flat fee obtain additional payments during the extended term. The fund would apply to all recordings which benefit from the term extension.
- A **'use it or lose it' clause**, which means the record company will have to cede control over its copyright to performers if it does not market the sound recording containing the performance. If a record company does not market a recording despite the performers' request, the performers will get their rights back and can market the recording themselves.
- A **'clean slate' provision**, which means that producers are not entitled to make any deductions from the contractual royalties due to featured performers during the extended term.

How many performers will be affected by the revised directive? Why was it urgent to change the current situation?

If the present term of 50 years was not change, some 7.000 performers, in the UK alone, would lose all of their airplay royalties over the next ten years.

The great majority of these performers are not famous rock singers who have earned millions of pounds or Euros over their career. There are thousands of anonymous session musicians¹, who contributed to sound recordings in the late fifties and sixties for example.

If the term was not extended, these musicians would no longer, for instance, get airplay royalties from their recordings, even though these royalties often contribute to their pension. They would also lose protection just when online retailing promises a new source of possible revenue.

The Commission's impact study demonstrates that the term extension will give average performers additional income ranging from € 15 0 to € 2000 per year. These amounts, mostly attributable to airplay royalties, are insignificant for the big music superstars but they are considerable for many musical performers, session musicians in particular.

Will prices paid by consumers for music rise as a result?

There is no reason to think retail prices will rise.

Empirical studies show that the price of sound recordings that are out of copyright is not lower than that of sound recordings in copyright. One study² concluded that there was no systematic difference between prices of in-copyright and out-of-copyright sound recordings.

¹ Musicians hired for one recording only and paid off with one single payment when the recording is made

² By Price Waterhouse *The Impact of Copyright Extension for Sound Recordings in the UK*, (report commissioned by the BPI), 2006

The study also indicated that there are many other factors that explain the price of a sound recording, such as the popularity of a performer's individual song or the stage in his career when he/she recorded a song. It happens for example that a performer's early song that is out of copyright is more popular, and thus more expensive, than a later and less popular song that is still in copyright.

The term extension will not affect the amount of airplay royalties that broadcasters have to pay: all the public performance rights that broadcasters rely on are managed collectively and broadcasters pay a fee based on turnover - irrespective of how many performers are protected or not. No broadcaster clears sound recordings on a 'per track' basis.

It should also be stressed that broadcasters pay less than 1% of their turnover to the music industry. In these circumstances, any financial impact of copyright on broadcasters is minimal.

Based on this evidence, we do not believe that harmonising the term of protection will have a negative impact on prices. For broadcasters and music in bars and discotheques, the licence fee does not depend on whether parts of the works performed are in the public domain. For consumers buying or downloading music, there will be no negative impact, as physical records or downloads are not priced according to whether a song is in the public domain.

What about historical archives? Will they be available for online use?

A term extension for performers will not affect projects to make available a variety of historic broadcasting archives available for dissemination. These archives are covered by the blanket license that is granted by performers' collecting societies. If old performers cannot be found, the collecting society will keep his / her share and try to locate him / her: this is not a problem to be borne by the broadcaster.

What about performers who already transferred their rights to the record labels?

The term extension will come with a provision that performers can recuperate their copyright if the label does not wish to market their recordings further. This is commonly referred to as the 'use-it-or-lose it' provision. The clause will empower performers to market their early songs themselves.

The record industry will also have to set aside a percentage of sales income and distribute these monies to performers who, at the beginning of the term, were bought off with a single payment. In addition, airplay royalties and the compensation for private copying are never assigned to producers. Session musicians hold on to these income streams which, in old age, are often their principal pension. Airplay accounts for 57% of performers collecting societies' income.

Will record producers also benefit from this copyright extension?

Yes. With the copyright term extended, record producers will receive additional revenue from the sale of records in shops and on the Internet. This should allow producers to adapt to the rapidly changing business environment which is characterised by a fast decline in physical sales (- 30% over the past five years) and the comparatively slow growth of online sales revenue.

Does extending the copyright amount to extending a monopoly?

No, copyright in a sound recording is **not** a monopoly. Copyright on a sound recording provides no monopoly power to its owner: there are many interchangeable sound tracks out there that compete for an audience. Copyright protected recordings often compete with other protected recordings and with those that are in the public domain. That keeps prices down.

What are co-written works and what does the Directive do for them?

A "co-written musical composition" is a musical composition which comprises contributions from several authors (for instance one person writing the lyrics and one person composing the music). Estimates suggest that between 60% and 70% of music is co-written. In different Member States, the protection of such co-written musical compositions is calculated differently - they are either classified as a single work of joint authorship with a unitary term of protection or separate works with separate terms for each individual author. This means that a single piece of music could have different terms of protection in different Member States.

For example, the operetta 'The Gipsy Baron' was written by Johann Strauss who died in 1899, while one of the authors of the libretto, Leo Stein, died in 1921. The music was in the public domain in Germany in 1929, while the text was protected until 1991. In Belgium, the entire operetta was protected until 1981, and in Italy, until the end of 1977.

The Directive adopted today harmonises the way of calculating the term of protection, which shall now expire 70 years after the death of the last surviving author, be it the author of the lyrics or the composer of the music.

How does the adopted directive differ from the original Commission's proposal?

The adopted directive follows the proposal as voted by a large majority in the European Parliament.

The final agreement sets the extension of the term of copyright protection for performers and record producers to 70 years and not 95 as in the Commission's original proposal. Secondly, the session musicians fund and the 'use-it-or-lose-it' provision will now be permanent rather than transitory measures. Thirdly, a so-called 'clean slate' which prevents record producers from making deductions to the royalties they pay to featured performers has been introduced.

The Commission considers the final outcome to be a very good compromise and welcomes it.

More information on Intellectual Property is available at:

http://ec.europa.eu/internal_market/copyright/term-protection/term-protection_en.htm