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PROGRESS REPORT

from: Presidency
to: Permanent Representatives Committee (Part 1)
No. prev. doc.: 15380/08 PI 81 CULT 129 CODEC 1500
No. Cion prop.: 12217/08 PI 35 CULT 82 CODEC 1023
Subject: **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**

1. The Commission submitted the above proposal to the Council on 24 July 2008. The purpose of the proposal is to extend from 50 to 95 years the term of rights of performers over the fixation of their performance on a phonogram, and that of the rights of the producer over the phonogram when the phonogram has been lawfully published or communicated to the public. It provides for a series of transitional measures designed in particular to ensure that session musicians are able to benefit fully from the extension of the term of protection and that phonograms for which the term of protection has been extended are in fact made available to the public.

In addition, the Commission proposal aims to introduce a uniform method of calculating the term of protection which applies to a musical composition with words.

2. The European Parliament has been consulted on the same proposal under the co-decision procedure but has not yet given its opinion at first reading. That opinion is expected in February 2009.
3. The Working Party on Intellectual Property (Copyright) (hereinafter "the Working Party") examined the Commission proposal on 9 September and 6 October 2008. A first compromise proposal prepared by the Presidency (14536/08) was discussed at the Working Party's meeting on 29 October 2008. At that meeting, the Working Party also had before it, following requests by some delegations, a non-paper from the Commission (14593/08) responding to the economic arguments put forward in certain academic circles against extending the term of protection. The note made it possible to clarify discussions on the economic impact of the proposed Directive, in particular on the artists' earning effect, the supply effect, the price effect and the trade argument. It was then possible for a revised compromise proposal (15380/08) to be debated by the Working Party on 18 November 2008.
4. The purpose of the present report is to inform the Competitiveness Council at its meeting on 1 and 2 December 2008 of progress so far.
5. Several delegations are maintaining a scrutiny reservation or a parliamentary scrutiny reservation at this stage. The delegations have said that they support the proposed Directive's principal objective of providing performers with better protection. While agreeing with that objective, some delegations have expressed doubts as to the ability of this proposal to achieve it in a satisfactory or balanced way.
6. In response to the doubts expressed by two delegations, the Council Legal Service has been able to confirm orally that the legal basis used by the Commission in its proposal is adequate.

7. On the proposed extension of the term of protection of rights of performers over the fixation of their performance on a phonogram and the rights of the producer over the phonogram, some delegations consider that a 95-year term of protection would be too long but have indicated that they could accept an extension for a more moderate term. The Presidency's most recent compromise proposal indicates that this figure is a matter for discussion.
8. In response to delegations which regarded the exclusion of audiovisual performers from the scope of extension of the term of protection as unjustified discrimination, the Presidency has proposed extending this extension of the term of protection to fixations of audiovisual performances.
9. In the case of application of the Directive to rights that are the subject of contracts in progress (Article 10a), some delegations wanted to reconsider the provision creating a presumption of continuity of contracts on transfer or assignment during the additional period of protection. There was a call for further examination. In response to the criticisms formulated regarding compliance with the principle of subsidiarity, the Presidency has proposed referring this question to the law of each Member State.

On the right of session musicians to claim additional annual remuneration and the option for the performer of recuperating his rights in the absence of exploitation by the phonogram producer, several delegations wanted to strengthen, adapt and clarify these measures. Even though some clarification has already been provided, examination of these issues by the Working Party continues. Moreover, following requests by delegations, the Presidency has proposed indicating that such rights may not be waived.

10. Finally, regarding harmonisation of the method of calculating the term of protection of musical compositions with words, several delegations have pointed out that the scope of such harmonisation should be made clear. The Presidency's most recent proposal tries to allay this concern by suggesting that the scope of this provision be limited solely to musical compositions and lyrics specifically created to constitute a musical composition with words. It also introduces an arrangement to settle the question of the period of application.
- 11. The Permanent Representatives Committee is asked to take note of the Presidency's intention of submitting this report to the next Competitiveness Council, inviting the latter to take note thereof and instruct its preparatory bodies to continue discussions with a view to finding solutions to the questions outstanding in the Council and reaching agreement as soon as possible.**
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