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NOTE

from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject:	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 - Outcome of the European Parliament's first reading (Strasbourg, 21 to 24 April 2009)

I. INTRODUCTION

The Rapporteur, Mr Brian CROWLEY (UEN - IE), presented a report on behalf of the Committee on Legal Affairs consisting of 20 amendments (amendments 1-20). In addition, the Greens/EFA political group tabled five amendments (amendments 21-25), the EUL/NGL political group tabled nine amendments (amendments 26-34), the UEN, EPP-ED and PES political groups tabled 41 amendments (amendments 35-46, 48-63, 65-76 and 78), and the ALDE political group tabled three amendments (amendments 79-81). Amendments 47, 64 and 77, tabled by the UEN, EPP/ED and PES political groups, had been cancelled.

II. DEBATE

The Rapporteur, Mr Brian CROWLEY (UEN - IE) opened the debate, which took place on 22 April 2009, and:

- thanked all MEPs for their contributions to the debate;
- stated his disappointment with the role played by the Council and Member States, who in his opinion had tried to hinder the process;
- pointed out the extension of the term of protection from 50 to 70 years as part of a compromise;
- emphasised the fact that proposal recognised for the first time the rights of session musicians by establishing a fund to ensure their protection;
- stated that the specificities of the audiovisual sector and of collection societies had been properly considered; and
- affirmed that the use of creative rights should be paid for.

Speaking on behalf of the European Commission, Commissioner on Internal Market, Mr Charlie MCCREEVY:

- expressed the full support of the Commission for the compromise text of the European Parliament in all its parts;
- stated his special satisfaction with the introduction of the session players' fund, the provision on the clean slate and the clause allowing performers to rescind buy-out contracts, all of which are intended to increase protection for performers, especially session musicians and lesser-known artists;
- expressed the intention of the Commission to deliver a separate impact assessment on the audiovisual sector;
- read out the Commission declaration on the issue of online rights for the redistribution of radio and TV programmes; and
- thanked the Rapporteur and the Parliament in general for their work.

Speaking on behalf of the Committee on Industry, Research and Energy, Ms Erna HENNICOT-SCHOEPGES (EPP-ED - LU):

- stressed the high level of protection provided by the proposal to musicians; and
- stated that much work remains to be done and the proposal is just a first step.

Speaking on behalf of the Committee on Internal Market and Consumer Protection, Mr Emmanouil ANGELAKAS (EPP-ED - GR) stated that the extension of protection from 50 to 70 years was a good compromise that would enhance creativity.

Speaking on behalf of the Committee on Culture and Education, Mr Christopher HEATON-HARRIS (EPP-ED - UK) noted how the proposal will protect session musicians and expressed therefore his support to it.

Speaking on behalf of the EPP/ED political group, Mr Jacques TOUBON (EPP/ED - FR):

- expressed the support of the EPP-ED group for the proposal;
- stated that the text was the result of a compromise that had taken into account many different interests;
- noted that under the Spanish presidency of the Council, the issue of the extension to the audiovisual sector will be addressed; and
- noted the protection offered to session musicians by the proposal.

Speaking on behalf of the PES political group, Ms Neena GILL (PES - UK):

- welcomed the agreement reached within the Parliament while expressing her dissatisfaction with the fact that the Council could not reach a similar agreement;
- stressed the fact that the report met the aims of the PES group;
- singled out amendments 58, 59 to 61, 62, 71 and 75 as being especially important;
- asked the support of MEPs who still had reservations; and
- called on the Council to urgently come to an agreement on the issue.

Speaking on behalf of the ALDE political group, Ms Sharon BOWLES (ALDE - UK):

- stated that the text could not, in its current form, have her support; and
- argued that assignment for life without renewal clauses was not acceptable.

Speaking on behalf of the UEN political group, Ms Roberta ANGELILLI (UEN - IT):

- thanked the Rapporteur for the work done and expressed her support for the proposal; and
- supported for the extension of the protection term to 95 years.

Speaking on behalf of the Greens/EFA political group, Ms Eva LICHTENBERGER (Greens/EFA - AT):

- noted that there was indeed a problem with copyrights and musicians;
- stated that nevertheless the right situations were in a direction contrary to that offered by the proposal; and
- argued that the proposal only defended the rights of the industry and was not adequate to the digital age.

Speaking on behalf of the EUL/NGL political group, Ms Mary Lou McDonald (EUL/NGL - IE):

- objected to the proposal as it did not improve the social situation of performers;
- argued that the extension of the protection term was unfit for the digital age and would only protect the industry; and
- asked for MEPs to reject the proposal in its current terms.

Mr Manuel MEDINA ORTEGA (PES - ES):

- stressed that the proposal was an excellent one, deserving full support.

Mr Olle SCHMIDT (ALDE - SE):

- stated that the protection offered by the proposal was disproportionate; and
- asked for a new proposal.

Mr Roberto MUSACCHIO (EUL/NGL - IT) stated that the proposal would only benefit major companies and promote the merchandising of creative activities.

Ms Athanasios PAFILIS (EUL/NGL - GR) stated that the proposal equated creativity with merchandise.

Mr Jens HOLM (EUL/NGL - SE) expressed his rejection of the extension of the protection term, as it only protects companies.

Mr Manolis MAVROMMATIS (EPP-ED - GR) expressed his support for the extension of the protection term.

Mr Glyn FORD (PES - UK) supported the extension of the protection term to 70 years but questioned who would benefit from it.

Mr Christopher FJELLNER (EPP-ED - SE) rejected the extension of the protection term.

Commissioner Charlie MCCREEVY once more took the floor and:

- noted the difficulty and complexity of all proposals relating to intellectual property;
- stated that most of the lobbying had come from performers and not the industry;
- agreed with the intervention of Mr. Manuel MEDINA ORTEGA (PES - ES) as to the need to propose a text that could be accepted by the Council; and
- repeated the support of the Commission to the proposal and his gratitude to the rapporteur.

The Rapporteur, Mr Brian CROWLEY (UEN - IE) again took the floor and:

- regretted the fact that some MEPs had still not fully grasped the object of the proposal;
- repeated that the proposal intends to protect musicians as the the weakest part in the contractual relation;
- rejected that the advent of the digital era should mean free use of music; and
- thanked the help received by his colleagues in the Parliament.

III. VOTE

When it voted on 23 April 2009, the plenary adopted the 41 amendments tabled and maintained by the UEN, EPP-ED and PES political groups (amendments 35-46, 48-63, 65-76 and 78).

The text of the legislative resolution is annexed to this note.

Term of protection of copyright and related rights ***I

European Parliament legislative resolution of 23 April 2009 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))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0464),
 - having regard to Article 251(2) and Articles 47(2), 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0281/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A6-0070/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Amendment 35

Proposal for a directive – amending act Recital 2

Text proposed by the Commission

(2) In the case of performers this period starts with the performance or, when the fixation of their performance is published or communicated to the public within 50 years after the performance is made, **50 years from** the first such publication or the first such communication to the public, whichever is the earliest.

Amendment

(2) In the case of performers this period starts with the performance or, when the fixation of their performance is published or communicated to the public within 50 years after the performance is made, **with** the first such publication or the first such communication to the public, whichever is the earliest.

Amendment 36

Proposal for a directive – amending act
Recital 5

Text proposed by the Commission

(5) Performers generally start their careers young and the current term of protection of 50 years *with regard to performances fixed in phonograms and for phonograms* often does not protect their performances during their entire lifetime. Therefore, performers face an income gap at the end of their lifetimes. They are also often not able to rely on their rights to prevent or restrict objectionable uses of their performances that occur during their lifetimes.

Amendment

(5) Performers generally start their careers young and the current term of protection of 50 years *applicable to fixations of performances* often does not protect their performances for their entire lifetime. Therefore, *some* performers face an income gap at the end of their lifetimes. They are also often not able to rely on their rights to prevent or restrict objectionable uses of their performances that *may* occur during their lifetimes.

Amendment 37
Proposal for a directive – amending act
Recital 7

Text proposed by the Commission

(7) The term of protection for fixations of performances and for phonograms should therefore be extended to **95 years** after *publication of the phonogram and the performance fixed therein. If the phonogram or the performance fixed in a phonogram has not been published within the first 50 years, then the term of protection should run for 95 years from the first communication to the public.*

Amendment

(7) The term of protection for fixations of performances and for phonograms should therefore be extended to **70 years** after *the relevant event.*

Amendment 39
Proposal for a directive – amending act
Recital 8

Text proposed by the Commission

(8) Upon entering into a contractual relationship with a phonogram producer, performers normally have to transfer to the phonogram producers their exclusive rights of reproduction, distribution, rental and making available of fixations of their performances. In exchange, performers are paid an advance on royalties and enjoy payments only once the phonogram producer has recouped the initial advance

Amendment

(8) Upon entering into a contractual relationship with a phonogram producer, performers normally have to transfer or assign to the phonogram producers their exclusive rights of reproduction, distribution, rental and making available of fixations of their performances. In exchange, *some* performers are paid an advance on royalties and enjoy payments only once the phonogram producer has

and made any contractually defined deductions. ***Performers who play in the background and do not appear in the credits ("non-featured performers") usually transfer their exclusive rights against a one-off payment (non recurring remuneration).***

recouped the initial advance and made any contractually defined deductions. ***Other performers transfer or assign their exclusive rights against a one-off payment (non-recurring remuneration). This is particularly the case for performers who play in the background and do not appear in the credits ("non-featured performers") but sometimes also for performers who appear in the credits ("featured performers").***

Amendment 40
Proposal for a directive – amending act
Recital 9

Text proposed by the Commission

(9) For the sake of legal certainty it should be provided that in the absence of clear indications to the contrary, a contractual transfer or assignment of rights in the fixation of the performance concluded before the date by which Member States are to adopt measures implementing the directive shall continue to produce its effects for the extended term.

Amendment

(15) For the sake of legal certainty it should be provided that in the absence of clear indications to the contrary ***in the contract***, a contractual transfer or assignment of rights in the fixation of the performance concluded before the date by which Member States are to adopt measures implementing the directive shall continue to produce its effects for the extended term.

Amendment 41
Proposal for a directive – amending act
Recital 10

Text proposed by the Commission

(10) In order to ensure that performers who have transferred their exclusive rights to phonogram producers ***before the extension of the term of protection*** actually benefit from that extension, a series of accompanying ***transitional*** measures should be introduced. ***These measures should apply to contracts between performers and phonogram producers which actually continue to produce their effects for the extended term.***

Amendment

(10) In order to ensure that performers who have transferred their exclusive rights to phonogram producers actually benefit from that extension, a series of accompanying measures should be introduced.

Amendment 42
Proposal for a directive – amending act
Recital 11

Text proposed by the Commission

Amendment

(11) A first accompanying **transitional** measure should be that phonogram producers are under an obligation to set aside, at least once a year, **at least** 20 percent of the revenues from the exclusive rights of distribution, reproduction and making available of phonograms **which, in the absence of the extension of the term of protection as a result of lawful publication or lawful communication, would be in the public domain.**

(11) A first accompanying measure should be that phonogram producers are under an obligation to set aside, at least once a year, **a sum corresponding to** 20 percent of the revenues from the exclusive rights of distribution, reproduction and making available of phonograms. **"Revenues" means the revenues derived by the phonogram producer before deducting costs.**

Amendments 43 and 7

**Proposal for a directive – amending act
Recital 12**

Text proposed by the Commission

Amendment

(12) The first transitional accompanying measure should not entail a disproportionate administrative burden on small and medium sized phonogram producers. Therefore, Member States shall be free to exempt certain phonogram producers who are deemed small and medium by reason of the annual revenue achieved with the commercial exploitations of phonograms.

deleted

Amendment 44

**Proposal for a directive – amending act
Recital 13**

Text proposed by the Commission

Amendment

(13) Those **monies** should be reserved solely for the benefit of performers whose performances are fixed in a phonogram and who have transferred their rights to the phonogram producer against a one-off payment. The **monies** set aside in this manner should be distributed to non-featured performers at least once a year on an individual basis. **Member States may require that distribution of those monies is entrusted to collecting societies representing performers. When the**

(13) Those **payments** should be reserved solely for the benefit of performers whose performances are fixed in a phonogram and who have transferred **or assigned** their rights to the phonogram producer against a one-off payment. The **payments** set aside in this manner should be distributed to non-featured performers at least once a year on an individual basis. **Such distribution should be** entrusted to collecting societies **and** national rules on non distributable revenues may be applied. **In order to avoid**

distribution of those monies is entrusted to collecting societies, national rules on non-distributable revenues may be applied.

a disproportionate burden in the collection and administration of these revenues, Member States may regulate the extent to which micro enterprises are subject to the obligation to contribute where such payments would appear unreasonable in relation to the costs of collecting and administering such revenues.

Amendment 45

Proposal for a directive – amending act Recital 14

Text proposed by the Commission

(14) However, Article 5 of Directive 2006/115 on rental right and lending right and on certain rights related to copyright in the field of intellectual property already grants performers an unwaivable right to equitable remuneration for the rental, inter alia, of phonograms. Likewise, in contractual practice performers do not usually transfer to phonogram producers their rights to claim a single equitable remuneration for broadcasting and communication to the public under Article 8(2) of Directive 2006/115/EC and to fair compensation for reproductions for private use under Article 5(2)(b) of Directive 2001/29/EC. Therefore, in the calculation of the overall amount to be dedicated by a phonogram producer to payments of the supplementary remuneration, no account should be taken of revenues which the phonogram producer has derived from the rental of phonograms **and from a** single equitable remuneration for broadcasting and communication to the public **and** fair compensation for private copying **should**.

Amendment

(14) However, Article 5 of Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property already grants performers an unwaivable right to equitable remuneration for the rental, inter alia, of phonograms. Likewise, in contractual practice performers do not usually transfer or assign to phonogram producers their rights to claim a single equitable remuneration for broadcasting and communication to the public under Article 8(2) of Directive 2006/115/EC and to fair compensation for reproductions for private use under Article 5(2)(b) of Directive 2001/29/EC. Therefore, in the calculation of the overall amount to be dedicated by a phonogram producer to payments of the supplementary remuneration, no account should be taken of revenues which the phonogram producer has derived from the rental of phonograms **or of the** single equitable remuneration received for broadcasting and communication to the public **or of the** fair compensation **received** for private copying.

Amendment 46

Proposal for a directive – amending act Recital 14 a (new)

Text proposed by the Commission

Amendment

(14 a) A second accompanying measure in order to rebalance contracts whereby

performers transfer their exclusive rights, on a royalty basis, to a phonogram producer, should be a 'clean slate' for those performers who have assigned their above-mentioned exclusive rights to phonogram producers in return for royalties or remuneration. In order for performers to benefit fully from the extended term of protection, Member States should ensure that, under agreements between phonogram producers and performers, a royalty or remuneration rate unencumbered by advance payments or contractually defined deductions is paid to performers during the extended period.

Amendment 38
Proposal for a directive – amending act
Recital 15

Text proposed by the Commission

(15) A second accompanying transitional measure should be that the rights in the fixation of the performance should revert to the performer if a phonogram producer refrains from offering for sale in sufficient quantity copies of a phonogram which, but for the term extension, would be in the public domain or from making such a phonogram available to the public. As a consequence, the rights of the phonogram producer in the phonogram should expire, in order to avoid a situation in which these rights would coexist with those of the performer in the fixation of the performance whilst the latter rights are no longer transferred or assigned to the phonogram producer.

Amendment

(7a) The rights in the fixation of the performance should revert to the performer if a phonogram producer refrains from offering for sale in sufficient quantity within the meaning of the International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organisations copies of a phonogram which, but for the term extension, would be in the public domain or refrains from making such a phonogram available to the public. That option should be available on expiry of a reasonable period of time left to the phonogram producer to carry out both of these acts of exploitation. The rights of the phonogram producer in the phonogram should therefore expire, in order to avoid a situation in which these rights would coexist with those of the performer in the fixation of the performance while the latter rights are no longer transferred or assigned to the phonogram producer.

Amendment 48
Proposal for a directive – amending act
Recital 15 a (new)

(15a) Member States should be able to provide that certain terms in those contracts which provide for recurring remuneration can be renegotiated for the benefit of performers. Member States should have procedures in place in case the renegotiation fails.

Amendment 49

Proposal for a directive – amending act

Recital 16

Text proposed by the Commission

Amendment

(16) This accompanying measure should also ensure that a phonogram is no longer protected once it is not made available to the public after a certain period of time following the term extension, because rightholders do not exploit it or because the phonogram producer or the performers cannot be located or identified. If, upon reversion, the performer has had a reasonable period of time to make available to the public the phonogram which, but for the term extension, would be no longer protected, the phonogram is not made available to the public, the rights in the phonogram and in the fixation of the performance should expire.

deleted.

Amendment 50

Proposal for a directive – amending act

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) This Directive does not affect national rules and agreements which are compatible with its provisions, for example collective agreements concluded in Member States between organisations representing performers and organisations representing producers.

Amendment 51

Proposal for a directive – amending act

Recital 18

Text proposed by the Commission

(18) In certain Member States, musical compositions with words are applied a single term of protection, calculated from the death of the last surviving author, while in other Member States, separate terms of protection apply for music and lyrics. Musical compositions with words are overwhelmingly co-written. For example, **regarding opera, there are often different authors to the music and to the lyrics.** Moreover, in musical genres such as jazz, rock and pop music, the creative process is often collaborative in nature.

Amendment

(18) In certain Member States, musical compositions with words are applied a single term of protection, calculated from the death of the last surviving author, while in other Member States separate terms of protection apply for music and lyrics. Musical compositions with words are overwhelmingly co-written. For example, **an opera is often the work of a librettist and a composer.** Moreover, in musical genres such as jazz, rock and pop music, the creative process is often collaborative in nature.

Amendment 52

Proposal for a directive – amending act Recital 19

Text proposed by the Commission

(19) Consequently, the harmonisation of the term of protection in musical compositions with words is incomplete, giving rise to **impediments** to the free movement of goods and services, such as cross-border collective management services.

Amendment

(19) Consequently, the harmonisation of the term of protection in musical compositions with words **whose lyrics and music were created in order to be used together** is incomplete, giving rise to **obstacles** to the free movement of goods and services, such as cross-border collective management services. **In order to ensure the removal of such obstacles, all such works in protection at the date by which the Member States must transpose this Directive should have the same harmonised term of protection in all Member States.**

Amendment 53

Proposal for a directive – amending act Recital 21 (new)

Text proposed by the Commission

Amendment

(21) In accordance with point 34 of the Interinstitutional Agreement on Better Law-Making, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating the

correlation between this Directive and the transposition measures and to make them public.

Amendment 72

Proposal for a directive – amending act

Article 1 – point 5

Directive 2006/116/EC

Article 1 – paragraph 7

Text proposed by the Commission

The term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the author of the lyrics and the composer of the *music*.

Amendment

The term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the author of the lyrics and the composer of the *musical composition*, *provided that both contributions were specifically created for the respective musical composition with words.*

Amendment 55

Proposal for a directive – amending act

Article 1 – point 1

Directive 2006/116/EC

Article 3 – paragraph 1 – sentence 2

Text proposed by the Commission

However,

- 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,

- 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.

Amendment

However,

- if a fixation of the performance otherwise than in a *phonogram* 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,

- if a fixation of the performance in a *phonogram* is lawfully published or lawfully communicated to the public within this period, the rights shall expire **70 years** from the date of the first such publication or the first such communication to the public, whichever is the earlier.

Amendment 56
Proposal for a directive – amending act
Article 1 – point 2
Directive 2006/116/EC
Article 3 – sentences 2 and 3

Text proposed by the Commission

(2) In the second and third sentence of Article 3(2) the *cipher* "50" is replaced by *the cipher "95"*.

Amendment

(2) In the second and third sentence of Article 3(2), the *number* "50" is replaced by *"70"*.

Amendment 57
Proposal for a directive – amending act
Article 1 – point 2 a – introductory part (new)
Directive 2006/116/EC
Article 3

Text proposed by the Commission

Amendment

(2 a) In Article 3, the following paragraphs 2a to 2e shall be inserted :

Amendment 58
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. If, 50 years after the phonogram was lawfully published, or failing such publication, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract whereby he has transferred or assigned his rights in the fixation of his performance to a phonogram producer (hereinafter, a "contract on transfer or assignment"). The right to terminate the contract may be exercised if the producer, within a year from the notification by the performer of his intention to terminate the

contract pursuant to the previous sentence, does not carry out both acts of exploitation mentioned in that sentence. This right to terminate may not be waived by the performer. Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate their contracts on transfer or assignment in accordance with the applicable national law. If the contract on transfer or assignment is terminated pursuant to this paragraph, the rights of the phonogram producer in the phonogram shall expire.

Amendment 59

Proposal for a directive – amending act

Article 1 – point 2 a (new)

Directive 2006/116/EC

Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where a contract of 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 immediately following the 50th year after the phonogram was lawfully published, or failing such publication, the 50th year after it was lawfully communicated to the public. The right to obtain an annual supplementary remuneration may not be waived by the performer.

Amendment 60/rev

Proposal for a directive – amending act

Article 1 – point 2 a (new)

Directive 2006/116/EC

Article 3 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. The overall amount to be dedicated by a phonogram producer to payments of the supplementary remuneration referred to in paragraph 2b shall correspond to 20 percent of the revenues which he has

derived, during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available of those phonograms, following the 50th year after the phonogram was lawfully published, or failing such publication, the 50th year after it was lawfully communicated to the public.

Member States shall ensure that phonogram producers are required to provide to performers, who are entitled to the annual supplementary remuneration referred to in paragraph 2b, on request, any information which may be necessary in order to secure the payment of that remuneration.

Amendment 61

Proposal for a directive – amending act

Article 1 – point 2 a (new)

Directive 2006/116/EC

Article 3 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. Member States shall ensure that the right to obtain an annual supplementary remuneration referred to in paragraph 2b is administered by collecting societies.

Amendment 62

Proposal for a directive – amending act

Article 1 – point 2 a (new)

Directive 2006/116/EC

Article 3 – paragraph 2 e (new)

Text proposed by the Commission

Amendment

2e. Where a performer is entitled to recurring payments, neither advance payments nor any contractually agreed deductions shall be deducted from the payments to the performer the 50th year after the phonogram was lawfully published, or failing such publication, the 50th year after it was lawfully communicated to the public.

Amendment 63

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 73
Proposal for a directive – amending act
Article 1 – point 3 a
Directive 2006/116/EC
Article 10 – paragraph 6 (new)

Text proposed by the Commission

Amendment

5. **Article 3(1) to 3(2)(e) in the** version amended by Directive [// insert Nr. of the amending directive] shall apply to fixations of performances and phonograms in regard ***to*** which the performer and the phonogram producer are still protected, by virtue of these provisions, on ... [insert ***the date in Article 2(1) of the amending directive*** and to fixations of performances and phonograms which come into being after that date.

(3a) In Article 10, the following paragraph 6 is added:

"6. Article 1(7), in its version amended by Directive [insert number of the amending Directive], shall apply to musical compositions with words of which at least the musical composition or the lyrics are protected in at least one Member State before ... [insert the date in Article 2(1) of the amending Directive] and to musical compositions with words which come into being after that date.

The previous subparagraph shall be without prejudice to any acts of exploitation performed before ... [insert the date in Article 2(1) of the amending Directive]. Member States shall adopt the necessary provisions to protect in particular acquired rights of third parties."

Amendment 65
Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10 a – paragraph 1

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 performance and the phonogram.***

Amendment

1. In the absence of clear ***contractual*** indications to the contrary, a contract ***on transfer or assignment concluded before [insert date as mentioned in Article 2(1) below]*** shall be deemed to continue to produce its effects beyond the moment at which, by virtue of Article 3 (1) in ***its*** version before amendment by Directive [// insert: Nr. of this amending directive], the performer would be no longer protected.

Amendment 66

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10 a – paragraph 2

Text proposed by the Commission

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.

Amendment

deleted.

Amendment 67

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10 a – paragraph 3

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. **deleted.**

Amendment 68

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10 a – paragraph 4

4. The overall amount to be dedicated by a phonogram producer to payments of the supplementary remuneration referred to in paragraph 3 shall correspond to at least 20 percent of the revenues which he has derived, during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available of those phonograms in regard of 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 on 31 December of the said year. **deleted.**

Member States may provide that a phonogram producer whose total annual revenue, during the year preceding that for which the said remuneration is paid, does not exceed a minimum threshold of € 2 million, shall not be obliged to dedicate at least 20 percent of the revenues which he has derived, during the year preceding that for which the said remuneration is

paid, from the reproduction, distribution and making available of those phonograms in regard of 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 on 31 December of the said year.

Amendments 23, 28 and 69

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10 a – paragraph 5

Text proposed by the Commission

Amendment

5. Member States may regulate whether and to what extent administration by collecting societies of the right to obtain an annual supplementary remuneration referred to in paragraph 3 may be imposed. **deleted.**

Amendments 23, 28 and 70

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10 a – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

6. If, after 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, the phonogram producer ceases to offer copies of the phonogram for sale in sufficient quantity or to make it 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, the performer may terminate the contract on **deleted.**

transfer or assignment. Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate their contracts on transfer or assignment only jointly. If the contract on transfer or assignment is terminated pursuant to sentences 1 or 2, the rights of the phonogram producer in the phonogram shall expire.

Amendment 71

Proposal for a directive – amending act

Article 1 – point 4

Directive 2006/116/EC

Article 10 a – paragraph 6 a

Text proposed by the Commission

Amendment

6a. Member States may provide that contracts on transfer or assignment whereby a performer is entitled to recurring payments and concluded before ... [insert date in Article 2(1) of the amending Directive] can be modified following the 50th year after the phonogram was lawfully published, or failing such publication, the 50th year after it was lawfully communicated to the public.

Amendment 74

Proposal for a directive – amending act

Directive 2006/116/EC

Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee not later than [3] years from ... [insert the date in Article 2(1)] a report on the application of this Directive in the light of the development of the digital market and, where appropriate, it shall submit a proposal to further amend Directive 2006/116/EC.

Amendment 75
Proposal for a directive – amending act
Directive 2006/116/EC
Article 1 b (new)

Text proposed by the Commission

Amendment

Article 1b

The Commission shall carry out an assessment of the possible need for an extension of the term of protection of rights to performers and producers in the audiovisual sector and it shall report on the outcome of such an assessment to the European Parliament, the Council and the Economic and Social Committee not later than 1 January 2010. If appropriate, the Commission shall submit a proposal to amend Directive 2006/116/EC,

Amendment 76
Proposal for a directive – amending act
Directive 2006/116/EC
Article 2 - paragraph 1 - subparagraphs 1 and 2

Text proposed by the Commission

Amendment

1. Member States shall ***adopt and publish, by*** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions ***and a correlation table between those provisions and this Directive.***

They shall apply those provisions from [...].

1. Member States shall ***bring into force, by... [2 years after entry into force of this Directive]*** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Amendment 78
Proposal for a directive – amending act
Directive 2006/116/EC

Article 3

Text proposed by the Commission

Amendment

This Directive shall enter into force ***on the day*** following that of its publication in the Official Journal of the European Union.

This Directive shall enter into force ***20 days*** following that of its publication in the Official Journal of the European Union.

