

Draft directive on extension  
on the term of protection of copyright and certain related rights

AUDIOVISUAL	MUSIC
<p><b><u>Definition:</u></b></p> <ul style="list-style-type: none"> <li>▪ Cinematographic works</li> <li>▪ TV series/fiction/documentaries</li> <li>▪ Animation/Cartoons</li> <li>▪ Other items covered by copyright</li> </ul>	<p><b><u>Definition:</u></b></p> <ul style="list-style-type: none"> <li>• Musical works – compositions</li> <li>• Sound recordings/phonograms</li> <li>• Performances</li> </ul>
<p><b><u>Rights management</u></b></p> <ul style="list-style-type: none"> <li>▪ Individual contractual and collective bargaining agreements between authors and producers, between performers and producers</li> <li>▪ Assignments of the rights of authors to producers; assignments of the rights of performers to producers on the basis of contracts and/or presumptions of transfer (cf. Article 2.5 Rental Right Directive)<sup>1</sup></li> <li>▪ No collective management of rights except for private copy, cable retransmission and rental (in certain countries)</li> <li>▪ AV works are licensed by producers/distributors</li> </ul>	<p><b><u>Rights management</u></b></p> <ul style="list-style-type: none"> <li>• Mandatory Collective management: communication to the public (performers/producers have only remuneration right), private copy, cable retransmission. For authors and performers, even where not mandatory, their rights are usually assigned to collective societies and licensed collectively to different platforms</li> <li>• Music producer acquires by contract only rights necessary to make the sound recording. Rights acquisition by operation of law does not exist.</li> <li>• 3 separate categories of right holders all of which engage in certain licensing activities</li> </ul>
<p><b><u>Duration</u></b></p> <ul style="list-style-type: none"> <li>▪ Author's life plus 70 years after his death (for film from last surviving author)</li> <li>▪ Producers get the right to exploit the work in exchange for contractual remuneration, including residuals, to be paid to authors and performers.</li> <li>▪ No competitive disadvantage, vis-à-vis US producers</li> </ul>	<p><b><u>Duration</u></b></p> <ul style="list-style-type: none"> <li>• Author's life plus 70 years after death (lyricists/composers)</li> <li>• Performers' rights – 50 years</li> <li>• Producers' rights – 50 years</li> <li>• Music producers do not acquire music author's rights in such a manner that they may rely on them once their own related rights expire.</li> </ul>
<p><b><u>Consequences</u></b></p> <ul style="list-style-type: none"> <li>▪ Term extension not needed for AV sector. Back catalogue can be exploited.</li> <li>▪ Possible <u>negative impact</u> of term extension for AV performers: <ul style="list-style-type: none"> <li>- Interference with contractual relations of AV performers, producers and broadcasters</li> <li>- Upsetting of delicate balance in the Member States which have developed systems based on the nature of their national film sectors</li> <li>- AV performers' claim extension of transitional provisions, "use it or lose it" principle and possibly other measures. Exacerbating the above in terms of relations and exposing producers to double payment of remuneration and increased costs for consumers.</li> </ul> </li> </ul>	<p><b><u>Consequences</u></b></p> <ul style="list-style-type: none"> <li>• Reasons for term extension for music are detailed in Commission's proposal and based on the impact assessment (audio-visual was not covered)</li> <li>• The "transitional provisions" were designed specifically with recorded music in mind.</li> <li>• While there are some differing views on exactly how these provisions should be applied, there is a general consensus on the principles.</li> <li>• Music producers contractual royalty payments to performers/authors are limited to CDs sales (while residuals/royalties in film sector may extend to a wide range of secondary uses beyond DVD sales).</li> </ul>

<sup>1</sup> This provision establishes a rebuttable presumption of transfer with respect to the performer's rental right at the EC level.