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EUROKINEMA

Association de producteurs
de cinéma et de télévision



FIAD



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SVERIGES FILMPRODUCENTER



January 26, 2009

Ref : Term of protection of copyright and related rights

Dear Commissioner McCreevy,

The EU co-legislators are considering the European Commission's proposal to amend Directive 2006/116/EC on the term of protection of copyright and related rights in the music sector. We are writing to you as representatives of the audiovisual sector - commercial broadcasters, film producers, film/video distributors and public broadcasters. All of us are concerned about recent attempts to extend the scope of the Directive without sufficient debate, motivation, or proper consultation of stakeholders.

This legislative proposal suggests a term extension from 50 to 95 years for music performers' and music producers' related rights. It should not extend to the audiovisual sector.

The Commission's proposal covers only musical recordings as the result of the Commission's impact assessment study following the EU's "better regulation" procedures¹. This impact assessment did not consider the audiovisual sector, even in passing. Even more, it acknowledged that the two sectors are fundamentally different and respond to different cultural and commercial imperatives.

As the Commission explains in its impact assessment: "Audiovisual performers and producers are not considered, as their economic and legal situation is significantly different. This concerns their legal status as well as the assignment and transfers of their rights."

The Directive would have dramatically different effects on the two sectors the more so by splitting out particular types of audiovisual right holders as the audiovisual and music sectors display distinct licensing and exploitation patterns. Therefore, this is not a case of discrimination - the same legislative measure will not achieve the same objectives in the two industries.

In view of the above, the signatories believe that (i) it is imperative to keep the treatment of the "music" and "audiovisual" sectors separate, (ii) it is equally important to maintain the unity of treatment of the audiovisual sector and not to split the treatment of the relevant players and stakeholders by, e.g., extending the current proposal to just one or two such categories, and (iii) the debate over the current proposal should be pursued in relation to the music sector only, without it being confused or corrupted by alien elements.

Therefore, it would seem appropriate to ask the Commission to launch a study and consultation of all stakeholders over the possible extension of the term of protection in the audiovisual field, rather than rush into this blindly, creating confusion and uncertainty by just picking one or the other category of right holders.

In light of the above, the undersigned organisations call on:

- the European Parliament and the Council, acting as co-legislators, to refrain from adopting any amendments which would extend the term of protection to any or all elements of the audiovisual community (broadcasters, performers and producers).
- the Commission to launch a study and consultation of all stakeholders over the possible extension of the term of protection in the audio-visual field and therefore refrain from suggesting any extension of the scope of its original proposal to the audiovisual sector (in part or in full).

Any possible extension of the term of protection in the audiovisual field should first be discussed in a proper impact assessment, as suggested by the "Culture and Education"

¹ The Impact Assessment Guidelines provide that *"The decision to develop a policy (...) should be based in every case on sound analysis fed by the best data available."* Furthermore, the Commission's Impact Assessment explicitly states that *"Audiovisual performers and producers are not considered, as their economic and legal situation is significantly different. This concerns their legal status as well as the assignment and transfers of their rights."*

Committee of the European Parliament. This opinion was adopted unanimously. However, we are concerned about amendments in the Legal Affairs Committee proposing the extension of the scope to audiovisual disregarding the need for a prior economic analysis that would determine whether such a policy measure is proportionate or not.

We respectfully urge the European Parliament, the European Commission, and the Council of Ministers to keep this Directive limited to music and to refrain from extending its scope to the audiovisual sector, in part or in full.

Yours sincerely,

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