



Term Extension of Copyrights and Related Rights

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BEUC statement

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Summary

BEUC opposes the proposal presented by the European Commission aiming at extending from 50 to 95 years the term of protection of performers and record producers for the following reasons:

- it involves costs for consumers, competitors, innovators as well as for society as a whole;
- the proposal will not provide the benefits it claims will be provided for performers;
- long terms of protection are counter-productive and a burden to innovation/hinder production in the creative industries;
- more and higher license fees would increase the price of services for consumers;
- it impedes the move of content into the public domain;
- it threatens consumers' access to knowledge;
- with a long copyright term, most protected content would be commercially unavailable, while more and higher license fees would increase the price of online services for consumers;
- this approach does not sufficiently facilitate the search for new business models or address the need for the increased provision of legal content.

It is extremely important that artists of content such as music are justly compensated for their work. We completely support that and in this sense welcome that the Commission has opened up discussion on these issues. But we also find that longer intellectual property protection is not the solution. Longer copyright protection will only be an extension of the situation we are faced with now: an industry that is not incentivised to develop new ways of doing business.

Intellectual property rights (IPRs) aim to stimulate the creative industries by granting temporary monopoly profits. The term of protection needs to carefully balance the incentives to produce with the higher prices which result from it. Consumer organisations want a competitive, innovative and balanced European intellectual property (IP) regime which provides a fair return to creators and investors while imposing the minimum necessary burden on the general public.

BEUC fully supports the right for artists to a fair protection and remuneration, longer intellectual property protection is not the right solution to reach that aim and will have significant negative consequences for European consumers and cultural industry/culture.

The right for artists to a fair protection and remuneration

Better protection of artists is indeed needed – especially of young music performers. However, a “longer” term of protection does not mean “better” protection for artists.

Instead, the best way of improving performers’ earnings would be to ensure they receive a fair share of the revenues generated from their creativity from the date of publication as most earnings are likely to be in the early years following release. In addition, clearer rules of transfer of rights to the benefit of performers, tackling unfair terms in recording contracts and social protection measures should be considered to improve performers’ welfare.

Lack of conclusive evidence

Any development of copyright law should be based upon an independent assessment of the costs and benefits to society as a whole. Any extension of the duration of intellectual property rights should therefore be based on independent data proving the need for such an extension.

The available empirical analysis¹ demonstrating the damaging effects of copyright term extension has not been factored into the European Commission proposal. The Impact Assessment² completely overlooks what the financial consequences of this extension will be on European consumers (see below).

Furthermore, one has to keep in mind the rationale behind term extension i.e. to provide producers with incentives for producing new sound recordings, by allowing them to recoup investments that are needed for the production – without unduly restricting competition. One may wonder if investments have not been recouped within the first 50 years whether extending this period for an extra 45 years would make any sense....

On the contrary, all copyright terms should be reduced to fit more closely the time period over which most of the returns on investments are normally made.

Costs for society as a whole

Recognising the social costs of monopoly rights, intellectual property rights (IPRs) have always been limited both in time and in scope. This equilibrium should not put in jeopardy.

- Shrinkage of the public domain content, cultural diversity & access to knowledge

Longer terms of protection will impede the move of content into the public domain, will prevent its use by the public for an additional period of time and finally threaten consumers' access to knowledge.

¹ See in particular the Gowers Review - independent review into the UK Intellectual Property Framework, December 2006,

http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_index.cfm and the briefing of Nobel-prize winning economists to the United States Supreme Court in the Eldred v. Ashcroft case, <http://cyber.law.harvard.edu/openlaw/eldredvashcroft/supct/amici/economists.pdf>

² Impact assessment on the legal and economic situation of performers and record producers in the European Union, 23 April 2008

The public domain serves as a valuable (re)source for users, creators, researchers and authors, who are inspired by older material or use it in new creations (e.g. songs remix). Works in the public domain are also used as input to innovative content distribution models, both commercial and not-for-profit³.

In addition, whereas tougher enforcement of intellectual property rights is conducted by national and international policy-makers, any extension of the duration of protection would be inconsistent with all the efforts made to encourage the development of and the legal access to offers of creative content.

- Higher prices for consumers

In its impact assessment⁴, the European Commission claims that between € 44 million and € 843 million Euros will be gained from copyright term extension without demonstrating where this extra money will come from.

This increase will come from users and consumers. Monopoly prices – i.e. excessive prices - will be charged for a longer period to consumers. In addition, the level of copyright levies will rise as right holders will claim compensation for extra damage suffered as the period of time during which their works can be copied will be longer.

With a long copyright term, most protected content would be commercially unavailable, while more and higher license fees would increase the price of (online) services for consumers.

- Burden to innovation in the creative industries

Long terms of protection are counter-productive and hinder production and innovation. This would create a longer monopoly that would allow record producers to control (a) reproductions that competitors are allowed to make, (b) certain secondary uses e.g. in new media and for new online distribution channels as well as (c) distribution.

Ultimately, the development of new business models will be affected.

Chilling effect on new business models

The Commission's approach does not sufficiently facilitate the search for new business models or address the need for the increased provision of legal content.

Record producers need to adapt to the changing business environment. It is high time for the European Commission to send the right signal and to foster work on innovative business models enabling fair remuneration for performers and musicians. Reasonable tariffs and conditions of access to legal and diversified content have to be encouraged.

Longer copyright certainly does not offer an appropriate response for right holders in aiding their business of delivering globally competitive creative works to EU consumers.

In the end, it will be European consumers who will pay the price for extending the term of protection, and who will fall victim if record producers have a century-long legal monopoly to prevent and fight alternative, innovative and competing models of making music accessible.

END

³ M.M.M. van Eechoud, S.J. van Gompel, N. Helberger, P.B. Hugenholtz et al.), The Recasting of Copyright and Related Rights for the Knowledge Economy, report to the European Commission, DG Internal Market, November 2006, 308 p., online available at: http://ec.europa.eu/internal_market/copyright/studies/studies_en.htm

⁴ Impact Assessment, page 60