

Directive 2006/116/EC of the European Parliament and of
the Council of 12 December 2006 on the term of protection
of copyright and certain related rights (codified version)

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PARLIAMENT AND OF THE COUNCIL

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on the term of protection of copyright and certain related rights
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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular
Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights⁽³⁾ has been substantially amended⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) The Berne Convention for the protection of literary and artistic works and the International Convention for the protection of performers, producers of phonograms and broadcasting organisations (Rome Convention) lay down only minimum terms of protection of the rights they refer to, leaving the Contracting States free to grant longer terms. Certain Member States have exercised this entitlement. In addition, some Member States have not yet become party to the Rome Convention.
- (3) There are consequently differences between the national laws governing the terms of protection of copyright and related rights, which are liable to impede the free movement of goods and freedom to provide services and to distort competition in the common market. Therefore, with a view to the smooth operation of the internal market, the laws of the Member States should be harmonised so as to make terms of protection identical throughout the Community.
- (4) It is important to lay down not only the terms of protection as such, but also certain implementing arrangements, such as the date from which each term of protection is calculated.
- (5) The provisions of this Directive should not affect the application by the Member States of the provisions of Article 14 bis (2)(b), (c) and (d) and (3) of the Berne Convention.

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- (6) The minimum term of protection laid down by the Berne Convention, namely the life of the author and 50 years after his death, was intended to provide protection for the author and the first two generations of his descendants. The average lifespan in the Community has grown longer, to the point where this term is no longer sufficient to cover two generations.
- (7) Certain Member States have granted a term longer than 50 years after the death of the author in order to offset the effects of the world wars on the exploitation of authors' works.
- (8) For the protection of related rights certain Member States have introduced a term of 50 years after lawful publication or lawful communication to the public.
- (9) The Diplomatic Conference held in December 1996, under the auspices of the World Intellectual Property Organization (WIPO), led to the adoption of the WIPO Performances and Phonograms Treaty, which deals with the protection of performers and producers of phonograms. This Treaty took the form of a substantial up-date of the international protection of related rights.
- (10) Due regard for established rights is one of the general principles of law protected by the Community legal order. Therefore, the terms of protection of copyright and related rights established by Community law cannot have the effect of reducing the protection enjoyed by rightholders in the Community before the entry into force of Directive 93/98/EEC. In order to keep the effects of transitional measures to a minimum and to allow the internal market to function smoothly, those terms of protection should be applied for long periods.
- (11) The level of protection of copyright and related rights should be high, since those rights are fundamental to intellectual creation. Their protection ensures the maintenance and development of creativity in the interest of authors, cultural industries, consumers and society as a whole.
- (12) In order to establish a high level of protection which at the same time meets the requirements of the internal market and the need to establish a legal environment conducive to the harmonious development of literary and artistic creation in the Community, the term of protection for copyright should be harmonised at 70 years after the death of the author or 70 years after the work is lawfully made available to the public, and for related rights at 50 years after the event which sets the term running.
- (13) Collections are protected according to Article 2(5) of the Berne Convention when, by reason of the selection and arrangement of their content, they constitute intellectual creations. Those works are protected as such, without prejudice to the copyright in each of the works forming part of such collections. Consequently, specific terms of protection may apply to works included in collections.
- (14) In all cases where one or more physical persons are identified as authors, the term of protection should be calculated after their death. The question of authorship of the whole or a part of a work is a question of fact which the national courts may have to decide.

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- (15) Terms of protection should be calculated from the first day of January of the year following the relevant event, as they are in the Berne and Rome Conventions.
- (16) The protection of photographs in the Member States is the subject of varying regimes. A photographic work within the meaning of the Berne Convention is to be considered original if it is the author's own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account. The protection of other photographs should be left to national law.
- (17) In order to avoid differences in the term of protection as regards related rights it is necessary to provide the same starting point for the calculation of the term throughout the Community. The performance, fixation, transmission, lawful publication, and lawful communication to the public, that is to say the means of making a subject of a related right perceptible in all appropriate ways to persons in general, should be taken into account for the calculation of the term of protection regardless of the country where this performance, fixation, transmission, lawful publication, or lawful communication to the public takes place.
- (18) The rights of broadcasting organisations in their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, should not be perpetual. It is therefore necessary to have the term of protection running from the first transmission of a particular broadcast only. This provision is understood to avoid a new term running in cases where a broadcast is identical to a previous one.
- (19) The Member States should remain free to maintain or introduce other rights related to copyright in particular in relation to the protection of critical and scientific publications. In order to ensure transparency at Community level, it is however necessary for Member States which introduce new related rights to notify the Commission.
- (20) It should be made clear that this Directive does not apply to moral rights.
- (21) For works whose country of origin within the meaning of the Berne Convention is a third country and whose author is not a Community national, comparison of terms of protection should be applied, provided that the term accorded in the Community does not exceed the term laid down in this Directive.
- (22) Where a rightholder who is not a Community national qualifies for protection under an international agreement, the term of protection of related rights should be the same as that laid down in this Directive. However, this term should not exceed that fixed in the third country of which the rightholder is a national.
- (23) Comparison of terms should not result in Member States being brought into conflict with their international obligations.
- (24) Member States should remain free to adopt provisions on the interpretation, adaptation and further execution of contracts on the exploitation of protected works and other subject matter which were concluded before the extension of the term of protection resulting from this Directive.

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- (25) Respect of acquired rights and legitimate expectations is part of the Community legal order. Member States may provide in particular that in certain circumstances the copyright and related rights which are revived pursuant to this Directive may not give rise to payments by persons who undertook in good faith the exploitation of the works at the time when such works lay within the public domain.
- (26) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives, as set out in Part B of Annex I,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) Opinion of 26 October 2006 (not yet published in the Official Journal).
- (2) Opinion of the European Parliament of 12 October 2006 (not yet published in the Official Journal) and Council Decision of 30 November 2006.
- (3) [OJ L 290, 24.11.1993, p. 9](#). Directive as amended by Directive 2001/29/EC of the European Parliament and of the Council ([OJ L 167, 22.6.2001, p. 10](#)).
- (4) See Annex I, Part A.