

COUNCIL DIRECTIVE 93/98/EEC

of 29 October 1993

harmonizing the term of protection of copyright and certain related rights

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

provisions of Article 14a (2) (b), (c) and (d) and (3) of the Berne Convention;

- (1) Whereas 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 organizations (Rome Convention) lay down only minimum terms of protection of the rights they refer to, leaving the Contracting States free to grant longer terms; whereas certain Member States have exercised this entitlement; whereas in addition certain Member States have not become party to the Rome Convention;
- (2) Whereas 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; whereas therefore with a view to the smooth operation of the internal market, the laws of the Member States should be harmonized so as to make terms of protection identical throughout the Community;
- (3) Whereas harmonization must cover 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;
- (4) Whereas the provisions of this Directive do not affect the application by the Member States of the
- (5) Whereas 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; whereas the average lifespan in the Community has grown longer, to the point where this term is no longer sufficient to cover two generations;
- (6) Whereas 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;
- (7) Whereas 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;
- (8) Whereas under the Community position adopted for the Uruguay Round negotiations under the General Agreement on Tariffs and Trade (GATT) the term of protection for producers of phonograms should be 50 years after first publication;
- (9) Whereas due regard for established rights is one of the general principles of law protected by the Community legal order; whereas, therefore, a harmonization of the terms of protection of copyright and related rights cannot have the effect of reducing the protection currently enjoyed by rightholders in the Community; whereas in order to keep the effects of transitional measures to a minimum and to allow the internal market to operate in practice, the harmonization of the term of protection should take place on a long term basis;
- (10) Whereas in its communication of 17 January 1991 'Follow-up to the Green Paper — Working programme of the Commission in the field of copyright and neighbouring rights' the Commission stresses the need to harmonize copyright and neighbouring rights at a high level of protection since these rights are fundamental to intellectual creation and stresses that their protection ensures the maintenance and development of creativity in

⁽¹⁾ OJ No C 92, 11. 4. 1992, p. 6 and OJ No C 27, 30. 1. 1993, p. 7.

⁽²⁾ OJ No C 337, 21. 12. 1992, p. 205 and Decision of 27 October 1993 (not yet published in the Official Journal).

⁽³⁾ OJ No C 287, 4. 11. 1992, p. 53.

the interest of authors, cultural industries, consumers and society as a whole;

whereas these Articles should accordingly be repealed;

- (11) Whereas 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 harmonized 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;
- (12) Whereas 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; whereas those works are protected as such, without prejudice to the copyright in each of the works forming part of such collections, whereas in consequence specific terms of protection may apply to works included in collections;
- (13) Whereas in all cases where one or more physical persons are identified as authors the term of protection should be calculated after their death; whereas the question of authorship in the whole or a part of a work is a question of fact which the national courts may have to decide;
- (14) Whereas 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;
- (15) Whereas Article 1 of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs⁽¹⁾ provides that Member States are to protect computer programs, by copyright, as literary works within the meaning of the Berne Convention; whereas this Directive harmonizes the term of protection of literary works in the Community; whereas Article 8 of Directive 91/250/EEC, which merely makes provisional arrangements governing the term of protection of computer programs, should accordingly be repealed;
- (16) Whereas Articles 11 and 12 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property⁽²⁾ make provision for minimum terms of protection only, subject to any further harmonization; whereas this Directive provides such further harmonization;
- (17) Whereas the protection of photographs in the Member States is the subject of varying regimes; whereas in order to achieve a sufficient harmonization of the term of protection of photographic works, in particular of those which, due to their artistic or professional character, are of importance within the internal market, it is necessary to define the level of originality required in this Directive; whereas 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; whereas the protection of other photographs should be left to national law;
- (18) Whereas, 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; whereas 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;
- (19) Whereas the rights of broadcasting organizations in their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, should not be perpetual; whereas it is therefore necessary to have the term of protection running from the first transmission of a particular broadcast only; whereas this provision is understood to avoid a new term running in cases where a broadcast is identical to a previous one;
- (20) Whereas 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; whereas, in order to ensure transparency at Community level, it is however necessary for Member States which introduce new related rights to notify the Commission;
- (21) Whereas it is useful to make clear that the harmonization brought about by this Directive does not apply to moral rights;
- (22) Whereas, 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

⁽¹⁾ OJ No L 122, 17. 5. 1991, p. 42.

⁽²⁾ OJ No L 346, 27. 11. 1992, p. 61.

be applied, provided that the term accorded in the Community does not exceed the term laid down in this Directive;

- (23) Whereas 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, except that it should not exceed that fixed in the country of which the rightholder is a national;
- (24) Whereas comparison of terms should not result in Member States being brought into conflict with their international obligations;
- (25) Whereas, for the smooth functioning of the internal market this Directive should be applied as from 1 July 1995;
- (26) Whereas 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;
- (27) Whereas respect of acquired rights and legitimate expectations is part of the Community legal order; whereas 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,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Duration of authors' rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for seventy years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author

discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

4. Where a Member State provides for particular provisions on copyright in respect of collective works or for a legal person to be designated as the rightholder, the term of protection shall be calculated according to the provisions of paragraph 3, except if the natural persons who have created the work as such are identified as such in the versions of the work which are made available to the public. This paragraph is without prejudice to the rights of identified authors whose identifiable contributions are included in such works, to which contributions paragraph 1 or 2, shall apply.

5. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.

6. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within seventy years from their creation, the protection shall terminate.

Article 2

Cinematographic or audiovisual works

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.
2. The term of protection of cinematographic or audiovisual works 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 principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

Article 3

Duration of related rights

1. The rights of performers shall expire 50 years after the date of the performance. However, if a fixation of the performance 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.
2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the

phonogram is lawfully published or lawfully communicated to the public during 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.

3. The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during 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. The term 'film' shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

4. The rights of broadcasting organizations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 4

Protection of previously unpublished works

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

Article 5

Critical and scientific publications

Member States may protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.

Article 6

Protection of photographs

Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection. Member States may provide for the protection of other photographs.

Article 7

Protection *vis-à-vis* third countries

1. Where the country of origin of a work, within the meaning of the Berne Convention, is a third country,

and the author of the work is not a Community national, the term of protection granted by the Member States shall expire on the date of expiry of the protection granted in the country of origin of the work, but may not exceed the term laid down in Article 1.

2. The terms of protection laid down in Article 3 shall also apply in the case of rightholders who are not Community nationals, provided Member States grant them protection. However, without prejudice to the international obligations of the Member States, the term of protection granted by Member States shall expire no later than the date of expiry of the protection granted in the country of which the rightholder is a national and may not exceed the term laid down in Article 3.

3. Member States which, at the date of adoption of this Directive, in particular pursuant to their international obligations, granted a longer term of protection than that which would result from the provisions, referred to in paragraphs 1 and 2 may maintain this protection until the conclusion of international agreements on the term of protection by copyright or related rights.

Article 8

Calculation of terms

The terms laid down in this Directive are calculated from the first day of January of the year following the event which gives rise to them.

Article 9

Moral rights

This Directive shall be without prejudice to the provisions of the Member States regulating moral rights.

Article 10

Application in time

1. Where a term of protection, which is longer than the corresponding term provided for by this Directive, is already running in a Member State on the date referred to in Article 13 (1), this Directive shall not have the effect of shortening that term of protection in that Member State.

2. The terms of protection provided for in this Directive shall apply to all works and subject matter which are protected in at least one Member State, on the date referred to in Article 13 (1), pursuant to national provisions on copyright or related rights or which meet the criteria for protection under Directive 92/100/EEC.

3. This Directive shall be without prejudice to any acts of exploitation performed before the date referred to

in Article 13 (1). Member States shall adopt the necessary provisions to protect in particular acquired rights of third parties.

4. Member States need not apply the provisions of Article 2 (1) to cinematographic or audiovisual works created before 1 July 1994.

5. Member States may determine the date as from which Article 2 (1) shall apply, provided that date is no later than 1 July 1997.

Article 11

Technical adaptation

1. Article 8 of Directive 91/250/EEC is hereby repealed.

2. Articles 11 and 12 of Directive 92/100/EEC are hereby repealed.

Article 12

Notification procedure

Member States shall immediately notify the Commission of any governmental plan to grant new related rights, including the basic reasons for their introduction and the term of protection envisaged.

Article 13

General provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 11 of this Directive before 1 July 1995.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such a reference shall be laid down by the Member States.

Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

2. Member States shall apply Article 12 from the date of notification of this Directive.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 29 October 1993.

For the Council

The President

R. URBAIN