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On behalf of over 100,000 performers, record labels, composers, publishers and retailers.

Commissioner Charlie McCreevy
Internal Market and Services
European Commission
1049 Brussels

24 January, 2008

Dear Commissioner McCreevy,

Re: Fairness on Term of Protection and Harmonisation of Co-Written Musical Works

If Europe is going to achieve its goal of becoming a leading knowledge-based economy, it has to put its creative sector on a level playing field with other parts of the world. This is essential to ensure a thriving European musical culture and a competitive music business that will drive growth in the creative economy. The current disparities in term of protection, both within the European Union and between the EU and other music markets, have to be fixed if the European music sector is going to compete on an equal basis. The outcome of the current review of the Term of Protection Directive will, therefore, have a significant impact on the livelihoods of tens of thousands of people working in the European music sector. As representatives of performers, music publishers, independent and major record producers, entertainment retailers and collecting societies, we want to raise with you three issues of importance to the European music sector in the context of this review.

1. Improve the Duration of Term of Protection

Improving the 50-year term of protection is a matter of fairness for the tens of thousands of talented performers who contribute to Europe's exciting, diverse musical culture. An increasing number of performers are losing this revenue stream later in life at a time when they most need it, as their early works fall into the public domain. Artists and producers are already having discussions to ensure that all performers, including session musicians, will benefit from any term extension for example via the setting up of a special fund. On a global level, the EU should narrow the large gap that exists between the 50-year term of protection provided to performers and producers in Europe and the many other music markets that provide a longer term of protection (70 to 95 years). This situation does not allow European performers and record companies to compete on an equal footing with the rest of the world, so an extension is urgently needed by both parties. It is also important to note that a longer term of protection would promote record company re-investment in fresh talent and a diverse range of new music, to the benefit of both artists and consumers.



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2. Harmonise the Term of Protection for Co-Written Musical Works

At present, some EU Member States provide for the term of protection applying to co-written works to run for life plus 70 years from the death of the last surviving co-author. In other Member States the authors of co-written works and parts of such works are treated separately and the period of protection provided is life plus 70 years from the death of the individual authors. This in turn will see the co-written “whole” artificially separated, with its parts falling into the public domain at different times. Such a discrepancy in the criteria used in the EU for calculating the term of protection of co-written musical works, has a negative impact on the harmonisation of copyright protection for musical works in the Internal Market and inevitably results in market distortions. Additionally, such discrepancies impact rights management and hurdles are bound to increase as back-offices have to deal with more and more multi-territory usage of music. This can be solved by means of an amendment to the Term Directive which would clarify the criteria for calculating the term of protection of co-written musical works, i.e. with a term which would run as of the death of the last surviving person having contributed to the creation of the musical work. The same method has been successfully used in the Term Directive to achieve harmonization of term for audio-visual works. We see no reason not to follow the same path in order to achieve fairness and harmonization for co-written musical compositions.

3. Eliminate discrepancy for performers as regards when term will expire

Article 11.2 of the Information Society Directive (2001) modified the criteria for calculating the term of protection for producers only, thus creating a discrepancy with performers. There appears to be no logical reason for this discrepancy and we believe that it was unintentional. The Term of Protection Directive should therefore be modified in the course of the current review, to ensure that performers are provided with a term of protection calculated according to the same criteria as producers, as set out in Article 11.2 of the Information Society Directive.

Conclusion

Commissioner, we very much hope that you will take all of these factors into account by proposing an improvement in the term of protection on sound recordings in Europe, harmonising the terms of protection for co-written musical works and removing the discrepancy identified in point 3 above. The undersigned organisations remain at your disposal if you have any questions or require any additional information.

Signed by:

FIM – International Musicians’ Union

GERA Europe – Global Entertainment Retail Association-Europe

GIART – International Organisation of Performing Artists

ICMP - International Confederation of Music Publishers

IFPI – Representing the Recording Industry Worldwide

IMPA - International Music Publishers Association

IMPALA – Independent Music Companies Association

European Collecting Societies:

AGATA, Lithuania

AGEDI, Asociación de Gestión de Derechos Intelectuales, Spain

Estonian Association of the Phonogram Producers

Gramex, Denmark

Gramex, Finland

GVL, Germany

Grammo, Greece

LaiPA, Latvia

LSG, Austria

MU-YAP, Turkey

PHONOSJUS Ltd., Hungary

PPI, Ireland

PPL and VPL, UK

Prophon, Bulgaria

SAMI, Sweden

SCPP, Société Civile des Producteurs Phonographiques, France

SIMIM, Belgium

SENA, Netherlands

Union of Phonogram Producers, Romania

ZAPRAF/HDU, Croatia

ZPAV, Poland