



**Mrs. Viviane REDING**  
Member of the European Commission  
DG Information Society and Media

Cc:  
**Mr. Charlie McCREEVY**  
Member of the European Commission  
DG Internal Market and Services

**Mr. Jan FIGEL**  
Member of the European Commission  
DG Education, Training, Culture and Youth

Brussels, 18 June 2008

**Re: Extension of the performers' term of protection**

Dear Commissioner Reding,

The community of European performers warmly welcomed Commissioner McCreevy's proposal, on February 14<sup>th</sup>, to extend the performers' term of protection from 50 to 95 years. This initiative finally addressed a concern that performers have been raising relentlessly for many years and aimed at improving the extremely dire financial conditions that an overwhelming majority of them have to face throughout their professional careers and, especially, as they get older.

The undersigned organisations have already had several opportunities to explain in detail why they find this move both necessary and legitimate. Some of the main reasons that have been put forward are the following:

- **No objective reasoning can justify treating performers' rights significantly less favourably than authors' rights:** the economic and moral rights of these categories of right holders are similar in nature and the value of their respective contributions cannot be covered by any general hierarchy, either from an artistic or from a commercial point of view.
- **There is an increasing distortion between the 50-year term and the average life expectancy:** if things were to remain unchanged, the protection would often come to an end during the performers' lifetime, at a moment where their revenues tend to be at their lowest, especially given that very few of them are eligible to retirement pensions.
- **In a number of countries already performers are granted a longer term:** US (95 to 120), Turkey (70), most Latin American countries (60 to 80). In Peru, the term for performers is the life + 70 years. Far from being a burden for the end users, this has granted them the ability to continue to choose among a wide variety of creative works.

- **An extended term would foster cultural diversity:** with an unchanged term, old recordings gradually emerging from copyright protection would inevitably be favoured to the detriment of contemporary creations. Furthermore, the latter would inevitably seek to please those markets where protection is longer, ignoring the call for local, diversified, content.

We believe that these arguments should already be convincing enough. However, it must also be understood that the lack of proper status makes it extremely difficult for performers in Europe to make a living from their craft, regardless of the size of their contribution to the economy of culture in EU. The vast majority of performers has very little access to social security, unemployment compensation or health and safety protection and is generally confronted with widespread unfair contractual practices. In this context, the income generated by the intellectual property rights represents a vital source of income for performers.

We are therefore deeply concerned about the fact that DG INFSO is not supporting the term extension as proposed by DG MARKT. We believe that the impact assessment has adopted a fair and balanced view of the market, carefully balancing the interests of all concerned parties. The accompanying measures proposed, although regrettably not addressing the specific needs of performers in the audiovisual sector, are an absolute necessity and could put an end, during the extended period, to some of the unfair practices that record producers are continuously imposing to signed artists (recoupment clauses and locked-up contents). We also consider the proposed 20% fund as a crucial innovation, allowing session musicians - for the very first time – to benefit in the extended period from a fair share of the revenues generated by their recorded performances.

We fail to understand your lack of support to a proposal that delivers fair justice to performers and that would, especially in the record industry, redress some of the imbalance that has always tarnished contractual relationships in this field. This is even more worrying as creators are, at the same time, systematically excluded from the platforms that your DG has been putting in place since last April to discuss creative content in the new media environment. Given your personal involvement in Cultural matters in recent years, we would expect a much more supportive attitude towards cultural creators - rather than what appears to be an increasingly one-sided promotion of the interests of the ITC and telecom industry.

We wished to express these concerns as clearly as possible before, any possible future media campaign by the creative sector, to make sure we do not communicate on a wrong basis. We would be happy to meet you – as always - at your best convenience in order to clarify any additional concerns that you may have and that may prevent you from strengthening the European cultural environment – and improving the livelihoods of its creators.

Yours sincerely,

**FIA**

International Federation of Actors  
Dominick Luquer, General Secretary

**FIM**

International Federation of Musicians  
Benoît Machuel, General Secretary

**GIART**

International Organisation of Performing Artists  
Francesca Greco, Managing Director