



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.5.2006
COM(2006) 219 final

2006/0071 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the term of protection of copyright and certain related rights

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights³. The new Directive will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex I, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 93/98/EEC and the instrument amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex II to the codified Directive.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the term of protection of copyright and certain related rights

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 Committee⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

Whereas:



- (1) Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights⁷ has been substantially amended⁸. In the interests of clarity and rationality the said Directive should be codified.

↓ 93/98/EEC Recital 1 (adapted)

- (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.

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ 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).

⁸ See Annex I, Part A.

↓ 93/98/EEC Recital 2

- (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.
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↓ 93/98/EEC Recital 3 (adapted)

- (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.
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↓ 93/98/EEC Recital 4 (adapted)

- (5) The provisions of this Directive ☒ should ☒ not affect the application by the Member States of the provisions of Article 14a(2)(b), (c) and (d) and (3) of the Berne Convention.
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↓ 93/98/EEC Recital 5

- (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.
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↓ 93/98/EEC Recital 6

- (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.
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↓ 93/98/EEC Recital 7

- (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.
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↓ 93/98/EEC Recital 8

- (9) 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.

↓ 93/98/EEC Recital 9 (adapted)

- (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 prior to 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 operate in practice, those terms of protection should be applied for long periods.
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↓ 93/98/EEC Recital 10 (adapted)

- (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.
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↓ 93/98/EEC Recital 11

- (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.
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↓ 93/98/EEC Recital 12

- (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.
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↓ 93/98/EEC Recital 13

- (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 in 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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↓ 93/98/EEC Recital 14

- (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.

↓ 93/98/EEC Recital 17 (adapted)

- (16) The protection of photographs in the Member States is the subject of varying regimes. In order to ☒ ensure a sufficient ☒ 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. 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.
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↓ 93/98/EEC Recital 18

- (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.
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↓ 93/98/EEC Recital 19

- (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.
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↓ 93/98/EEC Recital 20

- (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.
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↓ 93/98/EEC Recital 21 (adapted)

- (20) It ☒ should be made ☒ clear that this Directive does not apply to moral rights.
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↓ 93/98/EEC Recital 22

- (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.

↓ 93/98/EEC Recital 23

- (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, except that it should not exceed that fixed in the country of which the rightholder is a national.
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↓ 93/98/EEC Recital 24

- (23) Comparison of terms should not result in Member States being brought into conflict with their international obligations.
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↓ 93/98/EEC Recital 26

- (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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↓ 93/98/EEC Recital 27

- (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.
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- (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 set out in Annex I, Part B,
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↓ 93/98/EEC

HAVE 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 70 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 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 70 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.

↓ 2001/29/EC Art. 11(2)

2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.

↓ 2001/29/EC Art. 11(2)
(adapted)

However, ☒ if those rights were no longer protected on 22 December 2002 pursuant to Article 2(2) of Directive 93/98/EEC, ☒ this paragraph shall not have the effect of protecting ☒ them ☒ anew.

↓ 93/98/EEC

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 organisations 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.

↓ 93/98/EEC (adapted)

3. Member States which, ☒ on 29 October 1993 ☒, 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 of copyright or related rights.

↓ 93/98/EEC (adapted)

Article 8

Calculation of terms

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

↓ 93/98/EEC

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

↓ 93/98/EEC (adapted)

1. Where a term of protection, which is longer than the corresponding term provided for by this Directive, ☒ was ☒ already running in a Member State ☒ on 1 July 1995 ☒, 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 ☒ were ☒ protected in at least one Member State on the date referred to in ☒ paragraph 1 ☒, pursuant to national provisions on copyright or related rights, or which meet the criteria for protection under ☒ Council ☒ [Directive 92/100/EEC] ☒ ⁹ ☒.
3. This Directive shall be without prejudice to any acts of exploitation performed before the date referred to in ☒ paragraph 1 ☒. Member States shall adopt the necessary provisions to protect in particular acquired rights of third parties.

↓ 93/98/EEC

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

↓ 93/98/EEC Art. 12 (adapted)

Article 11

Notification ☒ and communication ☒

☒ 1. ☒ 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.

⁹ OJ L 346, 27.11.1992, p. 61.

↓ 93/98/EEC (adapted)

⊠ 2. ⊠ 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.

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Article 12

Repeal

Directive 93/98/EEC, as amended by the Directive listed in Annex I, Part A, is repealed without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 13

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

↓ 93/98/EEC (adapted)

Article 14

⊠ Addressees ⊠

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President



ANNEX I

Part A

Repealed Directive with its amendment (referred to in Article 12)

Council Directive 93/98/EEC
(OJ L 290, 24.11.1993, p. 9)

Directive 2001/29/EC of the European Parliament and of the Council
(OJ L 167, 22.6.2001, p. 10) Article 11(2) only

Part B

List of time-limits for transposition into national law and application (referred to in Article 12)

Directive	Time-limit for transposition	Date of application
93/98/EEC	1 July 1995 (Articles 1 to 11)	19 November 1993 (Article 12) 1 July 1997 at the latest as regards Article 2(1) (Article 10(5))
2001/29/EC	22 December 2002	

ANNEX II

CORRELATION TABLE

Directive 93/98/EEC	This Directive
Articles 1 to 9	Articles 1 to 9
Article 10(1) to (4)	Article 10(1) to (4)
Article 10 (5)	-
Article 11	-
Article 12	Article 11(1)
Article 13(1) first subparagraph	-
Article 13(1) second subparagraph	-
Article 13(1) third subparagraph	Article 11(2)
Article 13(2)	-
-	Article 12
-	Article 13
Article 14	Article 14
-	Annex I
-	Annex II