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PI 11
CULT 8
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WORKING DOCUMENT

from: **DELETED** delegation

to: Working Party on Intellectual Property (Copyright)

No. prev. doc. : 5877/09 PI 7 CULT 4 CODEC 96

No. Cion prop. : 12217/08 PI 35 CULT 82 CODEC 1023

Subject : Proposal for a European Parliament and Council Directive amending
Directive 2006/116/EC of the European Parliament and of the Council on the term
of protection of copyright and related rights
- Drafting suggestions by the **DELETED** delegation

Delegations will find in Annex a set of drafting suggestions regarding the above proposal submitted
by the **DELETED** delegation.

Article 1

Directive 2006/116/EC is hereby amended as follows:

- (1) In the second sentence of Article 3 (1), the number “50” shall be replaced by 70
- (2) In the second and third sentence of Article 3(2), the number “50” shall be replaced by 70.
- (3) After art 3(2) the following paragraph is inserted:

2 bis. The rights of phonogram producer expire if ,after 50th year of protection, he does not offer , during a period of six months [one year] copies of the phonogram for sale in sufficient quantity or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

- (4) In article 10 the following paragraph shall be inserted

“5. Article 3(1) and (2) in the version amended by Directive [number of the amending directive] shall apply only to fixations of performances and phonograms in regard to which the performer and the phonogram producer are still protected, by virtue of these provisions, on [insert the date by which the member States must transpose the amending Directive, as mentioned in Article 2 below].”

(5) The following article 10A shall be inserted:

Article 10A
Transitional measures

1st OPTION

1. The contracts concluded before [insert the date by which the Member States must transpose the amending Directive, as mentioned in Article 2 below], whereby a performer has transferred or assigned his rights in the fixation of his performance to a phonogram producer (hereinafter referred to as “contracts on transfer or assignment”), continue to produce their effects beyond the date on which, by virtue of Article 3(1) in its version before amendment by Directive , the performer would be no longer protected, only if the performer and the producer, within the term of six months, agree, with a new negotiation, to prolong their duration.

The agreement can also provide for new economic clauses.

If the performer or his heir can't be found ,the agreement can be signed by the collecting society that manages his rights.

Where a contract on transfer or assignment gives the performer a right to claim a non-recurring remuneration, the performer can ask that the agreement to prolong the contract provides for a recurring remuneration.

Member States may ensure that , regarding performers having a right to a non recurring remuneration, the negotiations in order to find an agreement to prolong the contract are conducted by collecting societies representing them.

If no agreement is reached within the dates indicated before, the rights of the performer and of the producer expire unless Member States provide that in case that no agreement is found in order to prolong the contract, the performers or the producers may ask a Court or an administrative Authority to decide the case.

Article 3(2 bis) applies also in transitional period.

2 th OPTION

1. The contracts concluded before [insert the date by which the Member States must transpose the amending Directive, as mentioned in Article 2 below], whereby a performer has transferred or assigned his rights in the fixation of his performance to a phonogram producer (hereinafter referred to as “contracts on transfer or assignment”), continue to produce their effects beyond the date on which, by virtue of Article 3(1) in its version before amendment by Directive , the performer would be no longer protected.

In any case, the performer or the producer may ask, within three months after the date beyond which the performer rights would be extinguished, to negotiate new clauses (also economic) in order to modify the prolonged contract.

Where a contract on transfer or assignment gives the performer a right to claim a non-recurring remuneration, the performer may ask for a recurring remuneration.

Member States may ensure that, regarding performers having a right to a non recurring remuneration, the negotiations in order to find an agreement about new clauses may be conducted by collecting societies representing them.

In case of no request of renegotiation, the original contract is prolonged as it was.

If, in the term of nine month from the request of renegotiation, any agreement is reached, the contact is terminated unless Member States may provide that in case that no agreement is found in order to modify the contract clauses, the performers or the producers may ask a Court or an administrative Authority to decide the case.

Article 3(2 bis) applies also in transitional period

ALL THE OTHER PARAGRAPHS TO BE DELETED
