

Charles McCreevy
European Commission
European Commissioner for
Internal Market and Services
200, rue de la Loi
1049 BRUXELLES
BELGIUM

14 November 2008

Amending the Term of Copyright and Certain Related Rights (COM (2008) 464/3)

Dear Mr McCreevy,

We write to question the policy framework for the proposed amendment to the InfoSoc Directive.

The Conference of European National Librarians (CENL) is a foundation whose aim it is to increase and reinforce the role of national libraries in Europe. In particular this is in respect to national libraries responsibilities for maintaining the national cultural heritage and ensuring a wide access to knowledge. Members of CENL are the national librarians of all member states of the Council of Europe.

National libraries are committed to a robust copyright regime – one that respects the interests of rights holders and users alike. But we believe that the copyright law creates must have boundaries, as expressed through limitations and exceptions and a finite term of copyright. This is to ensure the advancement of creativity, innovation, research and knowledge in all its forms, in the interests of all.

CENL would ask that the following points are reflected in any consideration of term extension:

1. Empirical Evidence

As a group we would endorse and reaffirm the principles outlined in the Adelphi Charter on Creativity, Innovation and Intellectual Property¹:

“Copyright and patents must be limited in time and their terms must not extend beyond what is proportionate and necessary.”

¹ http://sitoc.biz/adelphicharter/adelphi_charter.asp.htm

The Charter goes on to state:

“There must be an automatic presumption against creating new areas of intellectual property protection, extending existing privileges or extending the duration of rights. The burden of proof in such cases must lie on the advocates of change. Change must be allowed only if a rigorous analysis clearly demonstrates that it will promote people's basic rights and economic well-being.”

CENL is concerned that the Commission's recommendation potentially contradicts two independent evidence based studies on the issue of term extension. The first is a study by the Institute for Information Law at the University of Amsterdam commissioned by the DG Internal Market.² The second, the CIPIL study for the United Kingdom HM Treasury Gowers Review of Intellectual Property which concluded that “we believe it very likely that term extension ... would cause a net welfare loss to society.”

CENL believes that evidence based policy formulation in the field of intellectual property is of the uppermost importance. If the Commission is being seen to ignore independent studies, we are concerned that the view that intellectual property formulation is not the result of rational evidence-based policy, but more about the strength of lobbying by stakeholders, will grow further credence.

2. Impact on Cultural Heritage and Research

With their large holdings, libraries are very keen to engender a strong music industry as well as support the rights of performers. For this reason we welcome the Commission's attempts to channel more money to smaller artists. However we believe that tackling this issue by extending the duration of term without addressing its impact and interdependencies is inappropriate.

Term extension will affect not only the consumer and industry, but also upon the activities of educational and cultural establishments. Currently DG Information Society and Media's i2010 Digital Libraries programme, and the establishment of Europeana – the European digital library, museum and archive – are activities supported by the Commission to encourage more European culture being accessible on line to its citizenry. Term extension will in part cut across such activities – not least because of an absence of orphan works provisions at an EU level. It is also important to note that not all national libraries currently have the right to archive sound recordings, or the clear right to circumvent a technical protection measure for archival purposes.

It would seem clear that term extension in the absence of concomitant limitations and exceptions, or mechanisms to support core library cultural activities will have an adverse affect upon the cultural role and responsibility of a national library to give wide access to its collections. For this reason we believe that if term is to be extended to 95 years in the EU then exceptions relating to cultural heritage activities must also be extended.

² The Recasting of Copyright & Related Rights for the Knowledge Economy (2006), Institute for Information Law (IViR), University of Amsterdam for DG Internal Market.

3. Stimulating Cultural Diversity

As cultural organisations national libraries are dedicated to extending the breadth and depth of our cultural store for the benefit of all. To what extent term extension, which seeks to incentive an artist 50 years after a work is produced will bring *more* material into the cultural sphere is unclear. It is likely that rewards to industry and the performer may well increase 50 years after the creation of a work, but how it incentives *retrospectively* we believe is unproven.

A study commissioned by the Library of Congress looking at the reissue of historic sound recordings paints a concerning picture for cultural organisations who are driven by a cultural and academic imperative to give access to their collections irrespective of the commercial value.³ The study states that “ten percent or less of listed recordings have been made available by rights holders for most periods prior to World War II. For periods before 1920, the percentage approaches zero.” This is a matter of market economics. While national libraries understand the intent behind the “use it or lose it clause” in proposed article 10a this does not change the basic fact of a lack of economic demand for much historical material. (This is made even more complex within Europe where certain language groups have very small market bases indeed.) We would also point out that the reversion clause, by fragmenting the rights to a myriad of smaller performers may well unwittingly make rights clearance potentially more complex, more expensive, and exacerbate the issue of orphan works. This would appear to cut across European Commission and governmental encouragement for libraries to digitise their collections.

Summary

As information providers, and keen supporters of a strong and healthy copyright regime we believe that maximizing creativity is best achieved through balancing the public and the private interest. In the long term, securing access to content sustains both the creator and creativity itself.

The national libraries of Europe as represented by CENL would therefore urge the European Parliament and Council of Ministers to employ an evidence-based approach to the issue of term extension addressing it, not in isolation, but cognitive of its many economic, social and cultural impacts. The term extension would have great impact upon the national libraries’ legal and political responsibilities.

With many thanks for your attention to these points and kind regards.

Yours sincerely,

Dr. Elisabeth Niggemann
CENL Chair

³ Survey of Reissues of US Recordings. T Brooks. Co-published by the Council on Library and Information Resources and the Library of Congress. 2003.