Kluwer Copyright Blog

O No, Not Again: Term Extension

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Bad news from Denmark. According to an official press release, the Danish government has changed its position and now endorses the European Commission's proposal to extend the term of protection for sound recordings. Since Denmark was part of a fragile blocking minority in the European Council, there is a danger now that the EU Presidency (Hungary) will try to push through the proposal within a matter of weeks.

After having been adopted in amended form by the European Parliament almost two years ago, the proposal has stalled in the Council, facing fierce opposition from a bloc of mainly Northern and Eastern European countries. Why Denmark has deserted this blocking minority is unclear. But I would be very surprised if the record industry's concerted lobbying efforts had nothing to do with it.

Whereas the proposal aims at extending the rights of both phonogram producers and recording artists, it is clearly the record industry that has most to gain from term extension. The neighbouring rights in the great hits of the early nineteen-sixties, including records by the Beatles and the Rolling Stones, are soon to expire – fifty years (i.e. the current term) after the recordings were first released. Extending the rights in sound recordings to 95 years (as in the original proposal) or 70 years (as proposed by the European Parliament) would secure the record labels' monopoly in these valuable recordings for another generation.

The many arguments against term extension are well rehearsed and almost universally endorsed by copyright scholars and economists across Europe.

Probably the most powerful counterargument is that exclusive rights in sound recordings are granted for a reason. The prospect of a temporary legal monopoly acts as an incentive for the industry to invest in recording and distributing sound recordings. Logically, the term of protection should therefore be just long enough for record companies to recoup these investments. While economists cannot exactly calculate the average recoupment time they do agree that the existing term of 50 years is already very generous – in fact, far more than necessary.

Recall that the 1961 Rome Convention that recognizes rights of phonogram producers at the international level warrants a term of only 20 years. Paradoxically, while the recording and distribution costs that in the past justified this relatively short term of protection have dramatically decreased in recent years, the record industry is now lobbying for term extension.

Extending intellectual property rights in the face of expiry for the simple reason that some of these

rights still have economic value, is a denial of everything that intellectual property law stands for: granting *temporary* exclusive rights in the interest of general cultural and economic welfare.

On January 1st of this year (2011), the works of Paul Klee (the wonderful Swiss painter) and F. Scott Fitzgerald (the ever-popular American novelist) fell into the public domain – seventy years *post mortem auctoris*. While the works of Klee and Fitzgerald undoubtedly still had enormous market value, no lobby or government stood up to argue for term extension.

Like copyrights (and blogs) neighbouring rights must eventually come to an end.

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