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EU REGULATIONS

**DIRECTIVE 2006/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL OF 12 DECEMBER 2006 ON THE
TERM OF PROTECTION OF COPYRIGHT AND CERTAIN
RELATED RIGHTS (CONSOLIDATED VERSION)**

1. Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights is considerably amended, which required the drafting of a clear and rational consolidated version.

2. The Berne Convention for the Protection of Literary and Artistic Works² and the international Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) envisage minimum duration of rights protection, whereas signatory countries are allowed to prescribe longer terms. A particular number of Community states have exercised such right, however, a certain number of EC countries have still not signed the Rome Convention. From the foregoing it can be concluded that Community member states differ i.e. their legislations differ in the stipulated duration of the protection of copyrights and related rights. Such differences could possibly prevent free movement of goods and services and distort competition within the common market. Therefore, a need arose to harmonize the laws of Community member states and enable smooth functioning of internal market so that the duration of protection in the Community is rendered consistent.

3. The Berne Convention³ stipulates the minimum term of copyright protection: the life of the author and 50 years after his or her death. The copyright term

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² The Berne Convention for the Protection of Literary and Artistic Works was adopted on 9 September 1886 and supplemented in Paris on 4 May 1896, amended in Berlin on 13 November 1903, supplemented in Berne on 20 March 1914, amended in Rome on 2 June 1928, in Brussels on 26 June 1948, in Stockholm on 14 July 1967, and in Paris on 24 July 1971.

³ The Berne Convention for the Protection of Literary and Artistic Works was ratified by 113 countries. Yugoslavia signed the Berne Convention on 17 June 1930. Updated version of the Convention was published in the *Official Gazette of the SFRY* no. 15/1975.

of validity so determined was intended to provide protection to the author and the first two generations of his or her descendants. However, meantime the average lifespan in the European Community has grown longer, to the point where this term, as defined in the Berne Convention, is no longer sufficient to cover two generations. In addition, the Berne Convention allowed certain member states to grant 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. Similarly, for the protection of related rights, a certain number of member states have introduced a term of 50 years after lawful publication or lawful communication to the public.

4. 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 cannot have the effect of reducing the protection enjoyed by rightholders before 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 function smoothly, those terms of protection should be applied for long periods. In addition, 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.

5. The Article 1 of the Directive 2006/116/EC (hereinafter: Directive) regulates the duration of authors' rights in six paragraphs.

6. Paragraph 1 of Article 1 of the Directive envisages the first rule for the duration of authors' rights. According to this rule, the rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention⁴ 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. According to paragraph 2, Article 1 of the Directive, in the case of a work of joint authorship, the term referred to in paragraph 1 of that Article shall be calculated from the death of the last surviving author.

7. Paragraph 3 of Article 1 of the Directive prescribes the term of protection for anonymous and pseudonymous works. Namely, in the first sentence of paragraph 3 it is stipulated that the term of protection shall run for 70 years after the work is lawfully made available to the public. The second sentence of the same paragraph

⁴ Within the meaning of Article 2 item 1 of the Berne Convention, „literary and artistic works“ shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

prescribes that: 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 of this paragraph, the term of protection applicable shall be that laid down in paragraph 1 Article 1 of the Directive.

8. Paragraph 4 of Article 1 of the Directive stipulates the term of protection for collective works and a person to be designated as a right holder. Namely, paragraph 4 of this Article is based on the right of the Community member state to provide for particular provisions on copyright in respect of collective works or for legal person to be designated as the rightholder, after which it is defined that the term of protection shall be calculated according to the provisions of paragraph 3, Article 1 of the Directive, 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. Paragraph 4 is without prejudice to the rights of identified authors whose identifiable contributions are included in such works, to which contributions paragraph 1 or 2 of the Directive shall apply.

9. According to Article 1 paragraph 5 of the Directive, 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.

10. Finally, according to Article 1 paragraph 6 of the Directive, in the case of works for which the term of protection is not calculated from the death of the author and which have not been lawfully made available to the public within 70 years from their creation, the protection shall terminate.

11. Cinematographic works are explicitly stipulated in Article 2 item 1 of the Berne Convention within the term „literary and artistic works“ and thus, their term of protection was included in Article 1 of the Directive. Unlike cinematographic works, audiovisual works were not expressly stipulated in Article 2 item 1 of the Berne Convention and the Directive-maker felt that in the Community they should be equated with cinematographic works. This is why Article 2 of the Directive regulates the duration of protection for cinematographic and audiovisual works alike. Article 2 paragraph 1 of the Directive envisages the rule where the principal director of a cinematographic or audiovisual work is considered as its author or one of its authors. Member states are free to designate other co-authors. In addition to this rule, paragraph 2 Article 2 of the Directive stipulates the term of protection of works referred to in paragraph 1. Namely, 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.

12. Previous ten items lay down the terms of authors' protection, whereas the durations of related rights are shown from this item onwards, inclusive of the item fifteen. Article 3 of the Directive stipulates the duration of related rights in the total of four paragraphs.

13. According to paragraph 1 Article 3 of the Directive, 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.

14. According to paragraph 2 Article 3 of the Directive, 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.

15. According to paragraph 3 Article 3 of the Directive, 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.

16. Paragraph 4 Article 3 of the Directive envisages that 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.

17. Protection of previously unpublished works is stipulated in Article 4 of the Directive. The rule is that 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.

18. Calculation of terms is regulated by Article 8 of the Directive. The rule is that the terms shall be calculated from the first day of January of the year following the event which gives rise to them.

19. Article 11 of the Directive stipulates the entry into force. Namely, the Directive entered into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. Since the Directive was published in the *Official Journal of the European Union* on 27 December 2006, it entered into force on 16 January 2007.

Literature

- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version), L 372/12 *Official Journal of the European Union* 27.12.2006
- Zakon o ratifikaciji Bernske konvencije o zaštiti književnih i umetničkih dela, „*Službeni list SFRJ – Međunarodni ugovori*“, br. 15/1975
- Zakon o potvrđivanju Međunarodne konvencije o zaštiti izvođača, proizvođača fonograma i ustanova radio-difuzije „*Službeni list SRJ – Međunarodni ugovori*“, br. 13/2002
- Zakon o autorskom i srodnim pravima, „*Službeni glasnik RS*“, br. 104/2009, 99/2011, 119/2012 i 29/2016-US
- Dušan M. Popović, Slobodan M. Marković, *Pravo intelektualne svojine*, 3. izdanje, Pravni fakultet Univerziteta u Beogradu, 2015

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