

On 12 December 2006, Directive 115/2006 concerning rental and lending rights and Directive 116/2006, concerning the term of protection of copyright and neighbouring rights, were published in the Official Journal of the European Union.

Directive 115/2006 deals primarily with the “rental” and “lending” rights and defines the scope of protection of such rights within the European Union, and while it imposes an unwaivable right to equitable remuneration of authors or performers, it explicitly does not encompass rental and lending rights in relation to buildings and to works of applied art, or computer programs. In particular, the aim of the Directive is to combat piracy and to encourage individuals, who are usually self-employed and who often rely on the copyrighted material as a source of income, to get involved in the pursuit of the creative and entrepreneurial activities that bring about such copyrighted creations. For example, the Directive requires from each individual member-state to ensure, by introducing special national regulations in that regard, that a single equitable remuneration is paid by the user of a phonogram published for commercial purposes and that this remuneration is shared between the performers and the phonogram producers. Or, as another example there is a requirement that member-states ensure within their individual legal framework, that the signing of a contract between a performer and a film producer may authorize rental rights, only if there is also a provision ensuring the unwaivable equitable remuneration of the performer. Moreover, the Directive provides a useful definition of “rental” and “lending” rights, so that the respective, neighboring concepts may be effectively clarified, and protected accordingly.

Directive 116/2006 deals with the term of protection of copyright and certain related rights. The particular Directive expressly excludes moral rights from its provisions and aims to harmonize the laws of national member-states

when it comes to protection of copyright. In doing, so, it clarifies several areas of interest. In particular:

- The term of copyright protection is now set, in a uniform manner throughout member-states, to be 70 years after the death of the creator or 70 years after the work was lawfully made available to the public and for related rights 50 years after the event which sets the term running.
- While authorship itself continues to be recognized as a question of fact which falls within the jurisdiction of national courts, in all situations involving more than one identified authors, the last author's death is expressly specified as the starting point for the term of protection. In addition, by following the provisions of the Berne and Rome Conventions, the term of protection must be calculated from the first day of January of the year following the relevant event.
- The requirement of originality of a photographic work is satisfied if it is the author's own intellectual creation, reflecting his personality, without taking into account merit or purpose.
- The means of making a subject of a related right available to the public, is taken into account for the purposes of calculating the term of protection, irrespective of the country in which such a transmission, performance, fixation, lawful publication or lawful communication first took place.
- The term of protection should not be perpetual and should run specifically from the very first transmission of a particular broadcast, whether it is by wire, air, cable or satellite, despite any subsequent identical broadcasts.

It is expected that the above directives will provide useful tools in the protection of copyright throughout the European Union member-states.

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