AEPO ARTIS
ASSOCIATION OF EUROPEAN PERFORMERS ORGANISATIONS

PERFORMER ORGANISATIONS STRONGLY OPPOSE THE COMMISSION'S REPORT ON THE 2011 TERM EXTENSION DIRECTIVE (2011/77/EU)

AEPO-ARTIS is the European Association of Performers Organisations. Located in Brussels, we are a non-profit organisation that represents 41 European performers' collective management organisations (CMOs) from 30 different countries. The number of performers, from the audio and audiovisual sector, represented by our network is estimated at more than 650.000.

These performers are asking the European Parliament and the EU Member States to **challenge the conclusions** of the recently published **Report on the application of the Term Extension Directive (2011/77/EU)**, and instruct the Commission to make the necessary legislative changes to give our performers the protection they are entitled to.

The directive needs to be amended in order to:

- **Undo the unfounded discrimination against actors.** They must be granted the same 70 years of protection as musicians.
- **Provide performers' CMOs with an effective right to information** so performers effectively get the remuneration they are entitled to under this directive.
- **Solve the problems created by remastering** and specifically how it renders the right to annual supplementary remuneration (ASR) completely ineffective.

Despite pressure from performers' organisations, the **Commission failed to comply with its legal obligations and produced this report nine years later than its deadline**. This report now proposes to **prolong the delay for at least two more years** until the assessment of the 2019 CDSM directive has been delivered. This increased delay is unacceptable especially since the assessment is wholly irrelevant to the failures in the directive that performers have identified.

The only aspect where both directives intersect and which the Commission needs to look more specifically into when assessing the CDSM directive, is the **remuneration right on streaming** included in the Annual Supplementary Remuneration, and the possibility of extending it to guarantee an appropriate and proportionate remuneration to all performers.

Our performers call upon the Parlimant and the Member States to not accept the conclusions of this report and instruct the Commission to improve the existing legislation to improve the rights of performers active in the music and audiovisual sector urgently.

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THE PROBLEMS OF THE TERM EXTENSION DIRECTIVE EXPLAINED

1. Unfounded discrimination in the directive.

While performers neighbouring rights and author rights are very similar, they are not the same. A major difference, for example, lies in their **term of protection**. While authors' works are protected for 70 years after their death, performances are only protected for 50 years. And so, many performers lose control over their performances during their lifetime.

When the **directive on the term of protection of copyright and certain related rights**[1] was introduced in 2011, it acknowledged that ***performers*** "*generally start their careers young and the current term of protection of 50 years applicable to fixations of performances often* ***does not protect their performances for their entire lifetime***." and that they "*are often unable to rely on their rights to prevent or restrict an objectionable use of their performances that may occur* ***during their lifetime***" (recital 5)[2].

By providing ***performers*** with an additional 20 years of protection, the European legislator's stated aim was that the revenues derived from their rights, "*should be available to* ***performers*** ***for at least their lifetime***" (recital 6).

Despite this rationale, which applies to all performers, the extension was not granted to all performers. The **protection of performances fixed in audiovisual recordings, remained stuck at 50 years**. This results in the totally illogical situation where an opera singer will receive remuneration throughout her lifetime when a music recording of the opera is broadcasted on the radio, but not when the audiovisual recording of it is streamed on TV.

Performers' organisations have repeatedly requested that the Commission stop this discrimination, but they have failed to do so and this report perpetuates that discrimination.

In its report, the Commission attempts to suggest that the extension was (and still is) not *necessary* for film and TV because they have a shorter economic lifespan. This statement is not justified by any economic proof and does not do justice to the truth. The real reason for the discriminatory extension is that music producers needed the expansion and audiovisual producers did not.

Record labels are dependent on neighbouring rights, the ones granted to them as phonogram producers and the ones that are transferred to them by the recording artists. These are the only rights they have to control the exploitation of the records they release. Audiovisual producers, on the other hand, enjoy additional protection through the specific practice of authors rights of directors and screenwriters being transferred to them. These authors rights allow them to control the exploitation of the film for a much longer period (up to 70 years after the death of the film's longest living co-author). For that reason, it was unimportant to them whether actors were protected for 50 years or 70

[1] Directive 2011/77/EU, https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:32011L0077.

[2] For composers, lyricists and screen directors the situation is very different. Their works are protected not only for their lifetime, but 70 years beyond that.

years. A similar practice does not exist in the music industry. There, authors do not enter into a contractual relationship with record producers. The relationship between the record labels and the music authors is dealt with by the authors' collective management organisations (CMOs).

The *realpolitik* meant that the record labels lobbied strenuously for the additional 20 years, film and TV studios remained largely silent, and the voice of actors was drowned out by the record industry. Consequently, in the eyes of the European lawmaker, performers can only enjoy protection "***for their entire lifetime***" if this is also essential for the business plan of the producer they are working with. Similar discrimination doesn't exist for authors. Authors receive a term of protection of life plus 70 years, regardless of the medium in which their work is incorporated.

The discrimination also has an impact on the way performers' CMOs can provide remuneration to their members, often on the basis of remuneration rights. It forces them to apply the discrimination in the services they offer their actors and musicians. Whereas performers in music recordings are entitled to 70 years of private copy and cable retransmission remunerations, performers in audiovisual recordings are only entitled to receive these for 50 years. And so, the directive's objective that revenues derived from exclusive rights **and remuneration rights**, "*should be available to performers for at least their lifetime*" is not respected.

This is even more poignant knowing that **the real tangible benefit music performers have obtained from the extension of the term of protection comes from a remuneration right administered by their CMOs**.

2. The only effective advantage is a collectively managed remuneration right.

Knowing that performers mostly transfer their exclusive rights to producers, the directive introduced a **series of accompanying measures** in order: "*...to ensure that performers who have transferred or assigned their exclusive rights to* ***phonogram producers*** *actually benefit from the term extension.*" (recital 10).

On one hand, the directive introduced the **use-it-or-lose it clause**, the **clean slate provision** and the **right to renegotiate**. These measures all aimed at the effective sharing of additional income for record producers with musicians that receive a recurrent payment (royalty).

The main source of information supporting the Commission's report[3], a targeted study conducted in 2021, is clear on the actual benefit of these measures for performers. It's findings "*point to a very limited application of the 'use-it or lose-it' clause in practice*"[4]. On the clean-slate provision the study admits "*limited evidence collected*"[5]. On the right to renegotiate, the study states that: "*There is no available evidence on the use of this*

[3] Targeted study on the application of Directive 2011/77/EU on the term of protection of copyright and certain related rights: https://op.europa.eu/en/publication-detail/-/publication/b9e89d29-5d33-11f0-a9d0-01aa75ed71a1/language-en.
[4] See page 11 of Commission Report COM (2025) 364.
[5] See page 14 of Commission Report COM (2025) 364.

right in practice"[6]. AEPO-ARTIS shares the view of the Commission that there is no evidence that these measures have been of any meaningful benefit to performers.

On the other hand, the directive introduced the concept of an **annual supplementary remuneration (ASR)**. This offers non-featured or session musicians, who transferred their rights in the recording for a lump sum buyout, an **annual remuneration of 20%** of the value generated from any exploitation of the record (**including streaming**). Given that the lump sum they received covered 50 and not 70 years of use, this was logical and fair. The ASR has been managed in all EU Members States by the performers' CMOs and is the **only additional measure that has proven to be of any** benefit to musicians.

The potential of this right has been overshadowed by a problem that has been signalled in unison by all performer CMOs, i.e. **the difficulties to obtain the necessary information from producers. Information on the use and information needed to identify the performers who played on the recordings**. In the absence of this information, performers' CMOs must devote significant resources tracing these performers and are essentially doing the job of the producers on an unpaid basis, which ultimately results in less remuneration flowing to the relevant performers. While the Commission acknowledges the problem, it refuses to acknowledge the need for a solution.

Even though the underlying study points out that the lack of proper information sharing by producers exists in all Member States, the Commission continues to point to the Member States to further facilitate this. Since the ASR concerns not only physical sales but also the streaming of these records within the EU digital single market, **a harmonised solution at EU level is essential**.

The directive must be amended to improve the right to information at EU level. Any other solution will encourage further de-harmonisation and be detrimental to our performers.

In its report, the Commission also very quickly ignores **the problems surrounding remastering**. It's common practice in the music industry to improve the sound quality of older recordings through the technical process of remastering. This leads to confusion about whether these remastered versions should be considered as new recordings and be granted a new term of protection.

While the world's best lawyers have been debating the technicalities of the matter for years, the musicians on these remastered versions are forced to watch as they lose their right to an annual supplementary remuneration on the continued exploitation of their old recordings. Producers refuse to pay 20% of the revenue from remastered versions, even though the performance contained therein is not new and the exploitation continues takes place under the old contracts.

The Commission cannot avoid this issue and should **amend the Directive to make it undeniable that the ASR also applies to remastered versions of recordings falling within its scope**.

[6] See page 14 of Commission Report COM (2025) 364.

3. The 2019 CDSM Directive assessment needs to look at streaming revenues.

In its report, the Commission refers on many occasions to the 2019 CDSM Directive[7]. On one hand, the directive is used as an argument to motivate why it failed to meet the deadline to provide its report by 1 November 2016. On the other hand, the upcoming assessment of the 2019 directive is used to further delay a clear resolution of the pressing problems signalled by our performers.

Performers oppose any attempt to subordinate the extension of the term of protection – and the objectives that go with it – to the assessment of the 2019 Directive. This directive has its own objectives, in particular to – in the light of emerging new business models of streaming platforms and social media services – "*adapt and supplement the existing Union copyright framework, while keeping a high level of protection of copyright and related rights*" (recital 3).

The only point where both directives converge is the ASR. As the only effectively operating measure from the list of accompanying measures, it offers musicians a non-transferable remuneration right for the streaming of their recordings. In this way, it directly contributes to an objective of the 2019 Directive. This is an element to which the Commission should pay more attention and thereby the role of its non-transferability and mandatory collective management should not be underestimated.

This is all the more reason to ensure that the problems encountered in the implementation of Directive 2011/77/EU are addressed immediately and not postponed any further.

[7] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market.