

## **A Fair Rights Reversion Mechanism: a necessity for Europe's creators<sup>1</sup>**

### **Briefing paper**

First, it has to be stressed that most copyright contracts are concluded for the entire duration of the copyright term and for all territories of the world. Authors have little room to maneuver when negotiating contracts.

A rights reversion mechanism exists in several EU Member States<sup>2</sup> and in third countries (US<sup>3</sup>). However, this mechanism varies throughout these countries in regards to interpretation and applicability, which leads to legal uncertainty. In the US, an author can claim back his or her rights after 35 years of signing the contract.

Moreover, European Community Law has a rights reversion mechanism for performing artists (after 50 years after concluding the contract in case of lack of exploitation from the publisher's side<sup>4</sup>).

A study from the JURI Committee of the European Parliament demonstrates the necessity to introduce a rights reversion mechanism into the European Community Law<sup>5</sup>.

The demand of the Authors' Group to introduce a rights reversion mechanism is based on the following elements:

The rights reversion mechanism must be connected to article 14 and is applicable in the following cases:

- Insufficient or lack of information about the generated revenues and benefits through the publishing of the work
- Insufficient or lack of **exploitation** of the work and **promotion** of the work and the author

ECSA would advise complementing article 15 of the draft directive with a second paragraph which could be drafted as follows:

***“Member States shall provide authors and performers with a rights reversion mechanism to enable them to terminate a contract in case of insufficient exploitation and promotion, payment of the remuneration foreseen, as well as insufficient or lack of regular reporting.”***

The rights reversion mechanism which the Authors' Group demands refers to all forms of contracts and remuneration as well as to all categories of authors (such as composers, writers, screen writers, journalists etc.).

Why does our demand make sense?

- In order to evoke the rights reversion mechanism, the author has to prove that the publisher or producer is indeed not fulfilling his or her duties under article 14 by not doing anything to

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<sup>1</sup> Supported by ECSA, EFJ, EWC, FERA, FSE

<sup>2</sup> Belgium, Germany, Spain, Nordic Member States, Austria, Portugal

<sup>3</sup> [http://www.wipo.int/wipo\\_magazine/en/2012/04/article\\_0005.html](http://www.wipo.int/wipo_magazine/en/2012/04/article_0005.html)

<sup>4</sup> Directive 2011/77/EU, Art. 3.2a

<sup>5</sup> Contractual arrangements applicable to creators: law and practice of selected Member States; Study of the Legal Committee of the European Parliament. 2014

exploit the work or promote the author - these tasks being the justification for any publishing activity

- Primarily, we aim at giving authors the possibility to claim back their rights in case of non-exploitation of their works or insufficient promotion. This is why we put it within the context of article 14
- No one is forced to re-claim their rights if he or she has good relations with the publisher

#### **Positive arguments for a fair European Rights Reversion Mechanism:**

- The bargaining position and the situation for the authors in Europe would improve
- Users and consumers would have more certainty that copyright benefits the authors and not just the publishers
- A rights reversion mechanism is essential for cultural diversity. Unexploited works (especially niche and regional music, literature and audio-visual works) could get re-published and become widely available. This would benefit everyone
- A fair European rights reversion mechanism promotes competition: Publishers and producers would not be able to rest on their existing repertoire and the connected royalties but would need to work for the author. If the publisher is inactive, the author would have the possibility to publish his or her work on his or her own or offer it to another publisher

#### **Is a fair European Rights Reversion Mechanism a risk for smaller publishers?**

- No, small publishers are interested in keeping good relations with their authors. This can only be the case if the author gets fairly remunerated and gets well informed as proposed in articles 14 and 15
- In the case of a best seller, both publisher and author will benefit from it. If the latter gets fairly remunerated he or she will have no incentive to change the publisher

#### **Do publishers need copyright for the whole duration of the copyright term?**

- No, a number of academic studies claim that the transfer of rights for the whole copyright term cannot be justified. It is unjustified to misuse copyright in this manner because it means that several works remain underexploited

Below you can find some relevant links:

- Paul McCartney sues to get the rights back for Beatles songs  
[https://www.nytimes.com/2017/01/18/business/paul-mccartney-beatles-songs-lawsuit-sony.html?\\_r=0](https://www.nytimes.com/2017/01/18/business/paul-mccartney-beatles-songs-lawsuit-sony.html?_r=0)
- Ennio Morricone sues to get his rights back for film music  
<https://www.documentcloud.org/documents/3211630-Ennio-Morricone.html>
- M.Kretschmer, study about authors revenues in the UK and Germany  
[https://papers.ssrn.com/sol3/papers2.cfm?abstract\\_id=2619649](https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2619649)
- World Intellectual Property Organisation: Termination Right for Creators  
[http://www.wipo.int/wipo\\_magazine/en/2012/04/article\\_0005.html](http://www.wipo.int/wipo_magazine/en/2012/04/article_0005.html)
- Impact Assessment of the European Commission regarding the economic situation between performers and record labels  
[http://ec.europa.eu/internal\\_market/copyright/docs/term/ia\\_term\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/term/ia_term_en.pdf)