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Letter\Term extension

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A Joint Letter Regarding Term Extension for Phonograms

Dear Commission President Barroso,

I am writing to present to you the attached letter that has been jointly signed by a variety of eminent economists from across Europe, together with a few economists based in the United States who have worked on intellectual property issues. Most are Fellows of the Econometric Society, Fellows of the British Academy or of equal distinction in their home countries, and two are Nobel Laureates.

As you will see, the letter sets out our strong opposition to the idea of a copyright term extension for phonograms. This is an issue which is currently before the Commission and which the responsible Commissioner (Mr McCreevy) appears to favour.

We will of course also be writing to Mr McCreevy. However, given your position as President, because of the obvious potential for this issue to bring the Commission's integrity into disrepute (see our further comments in the letter) we feel this is an issue which merits your direct attention.

I look forward to hearing from you and, should you wish for any clarification of our concerns, or would like to discuss this further please let me know. Also if a hard copy of this letter would be useful I would be more than happy to provide one.

Yours sincerely,

David Newbery

Letter Opposing a Term Extension for Phonograms

We, the undersigned economists, legal scholars and other academics, wish to make known our dismay at the recent proposal of Commissioner McCreevy to extend copyright term in phonograms.¹ Our reasons are simple.

A retrospective term extension, that is an extension for existing works, run against the basic logic of any copyright grant, which is to encourage the creation of new work—after all the incentive to produce these works was clearly in place 50 years ago when they were created! At the same time, a prospective extension, that is an extension for new works, is also inadvisable as the length of term (50 years) is already such that the effects of an extension would be felt so far in the future that their effect on the incentives of either investors or creators would be negligible.

We also wish it to be clear that any gains to artists or record labels from extensions come directly at the expense of European citizens. Indeed, this extension is not just a straight transfer from consumers to the beneficiaries, but considerably worse in that the costs to European citizens of an extension are considerably larger than the gains to the recording industry. To put this concretely we have before us the evidence of the Cambridge University CIPIL report prepared for the Gowers' review on Intellectual Property, which was submitted to (and endorsed by) the UK government in 2006. According to their estimates (which were for the UK only) a term extension of the kind under consideration would generate benefits to the recording industry of around £160m but would impose costs on society of around £315m—twice as large, so that the waste is equal to the gain.

While there are, no doubt, some artists who have 'fallen on hard times' the simple fact is that a term extension will do little or nothing for them—the main beneficiaries will be the large labels with back catalogues and the tiny minority of artists who are already highly successful and therefore in scant need of additional income. Furthermore the little support it does provide will be bought at an exorbitant cost to the general public. If the Commission is really so concerned for impoverished performers it would be better to give such support in a targeted and transparent manner rather than via a term extension that is inefficient, opaque and whose main beneficiaries lie outside the focus of this concern.

To conclude, a term extension will inhibit rather than encourage creativity, first by reducing, yet again, the Public Domain on which new works may be built and, second, by diverting money away from new talent to older artists—many of whom are no longer producing new work. At the same time it will impose costs on European citizens that greatly exceed the benefits it delivers to the recording industry. As a result, if the Commission were to support this proposal it will present a stark example where special-interest lobbying has been favoured over the general welfare of all European citizens—a result that we can only imagine will reduce the Commission's reputation for integrity and concern for the Community as a whole. We therefore urge you in the strongest terms to oppose such a step and keep the term of protection for phonograms at its current length.

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¹ See the Press Release at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/240>

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