



Piratpartiet  
Boks 465 Skøyen  
0212 Oslo

Oslo, 14. november 2013

Kulturdepartementet  
Postboks 8030 Dep.  
0030 OSLO  
Sendt til [postmottak@kud.dep.no](mailto:postmottak@kud.dep.no)

**Høring - endringer i åndsverkloven – Gjennomføring av EUs direktiv 2011/77/EU om endringer i vernetiden for opphavsrett og visse nærstående rettigheter**

Dette er en besvarelse til høringsbrev av 03.10.2013.

## Innhold

Direktivets historie .....	2
Digitutvalget i Norge anbefaler redusert vernetid.....	8
Konklusjon.....	9

## **Direktivets historie**

Når et departement skal fremlegge et lovforslag, bør de presentere forslaget med hud og hår. Dette forslaget har en svært spesiell historie som burde ha vært presenteret sammen med forslaget. Ettersom dette ikke er gjort og det bare presenteres et nøytralt glansbilde, er det opp til oss å presentere forslagets noe brokete historie.

EU-direktiv 2011/77/EU ble først fremmet for EU-kommisjonen 16. juli 2008 av den irske EU-parlamentarikeren Charlie McCreevy.<sup>1</sup> Proposjonen foreslo da å utvide vernetiden fra 50 til 95 år, en anbefaling som gikk stikk i strid med to nylig utgitte, uavhengige forskningsrapporter. Den ene kom fra the Centre for Intellectual Property and Information Law ved Cambridge University, laget for the UK Gowers Review of Intellectual Property (2006)<sup>2</sup>, den andre var finansiert av EU-kommisjonen selv og var en del av et større studie av the Amsterdam Institute for Information Law (2006).<sup>3</sup>

I et arbeidsnotat fra EU-kommisjonen angående rammeverk for europeisk opphavsrett i 2004<sup>4</sup> ble det påpekt:

*«It is feared that an extended term of protection would only tend to diminish the choice of music on the market by enforcing the flow of revenues from few best-selling recordings, while at the same time not providing any real new incentives for creation of new recordings or motivating new investment. It has also been pointed out that practically all developed countries, with the exception of the USA, apply the term of protection of 50 years. As to the need to achieve parity between the EU and the USA, it has been argued that the same term of protection would not result in equal economic benefits for the right holders in these two territories. On the contrary, due to a different approach to which uses of phonograms are remunerated, US right holders already benefit from a better protection of their recordings in Europe, and the extension of the term would only aggravate this divide.*

*From the point of view of the Internal Market, the term of protection for phonogram producers does not cause particular concern since the term has been harmonised in the Community and also been incorporated by the 10 new Member States. More over, it seems that public opinion and political realities in the EU are such as not to support an extension in the term of protection. Some would even argue that the term should*

- 
- 1 Proposal for a European Parliament and Council Directive: Amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0464:FIN:EN:PDF>]
  - 2 Gowers Review of Intellectual Property - Review of the Economic Evidence Relating to an Extension of the Term of Copyright in Sound Recordings (2006), Centre for Intellectual Property and Information Law, University of Cambridge for Gowers Review of Intellectual Property [[http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/independent\\_reviews/gowers\\_review\\_intellectual\\_property/gowersreview\\_index.cfm](http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_index.cfm)]
  - 3 The Recasting of Copyright & Related Rights for the Knowledge Economy (2006), Institute for Information Law (IViR), University of Amsterdam for DG Internal Market [[http://www.ivir.nl/publications/other/IViR\\_Recast\\_Exec\\_summary\\_2006.pdf](http://www.ivir.nl/publications/other/IViR_Recast_Exec_summary_2006.pdf)]
  - 4 Commission Staff Working Paper: On the review of the EC legal framework in the field of copyright and related rights [[http://ec.europa.eu/internal\\_market/copyright/docs/review/sec-2004-995\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/review/sec-2004-995_en.pdf)]

*be reduced. At this stage, therefore, time does not appear to be ripe for a change, and developments in the market should be further monitored and studied.»*

Det dreier seg altså ikke om en harmonisering av vernetiden, selv om dette trekkes frem gjentatte ganger i høringsnotatet. Vernetiden var allerede «harmonisert».

Etter et møte ved Bournemouth University i 2008 varslet flere ledende akademikere sin motstand mot utvidelsen i et åpent brev.<sup>5</sup> Brevet var signert følgende personer:

- Professor Lionel Bently, Director, Centre for Intellectual Property and Information Law, University of Cambridge
- Professor Michael Blakeney, Co-Director, Queen Mary Intellectual Property Research Institute, University of London
- Christian von Borries, Composer, Producer, Conductor, project lead "Music about music", Berlin
- Richard Chesser, Chair, Trade and Copyright Committee, International Association of Music Librarians (UK/IRL)
- Dr Martin Cloonan, Chair, International Association for the Study of Popular Music (UK/IRL)
- Professor Nicholas Cook, Director, AHRC Research Centre for the History and Analysis of Recorded Music, Royal Holloway, University of London
- Professor Johanna Gibson, Co-Director, Queen Mary Intellectual Property Research Centre, University of London
- Professor Bernt Hugenholtz, Director, Institute for Information Law, University of Amsterdam
- Professor John Kay, Chair, British Academy Copyright Review
- Professor Martin Kretschmer, Director, Centre for Intellectual Property Policy & Management, Bournemouth University
- Professor Hector MacQueen, Co-Director, SCRIPT/AHRC Centre Intellectual Property & Technology Law, University of Edinburgh
- Professor Charlotte Waelde, Co-Director, SCRIPT/AHRC Centre Intellectual Property & Technology Law, University of Edinburgh

På tross av anbefalingene og uttalelsene fra både egne rådgivere<sup>6</sup>, Englands uavhengige analyse<sup>7</sup> og de ledende opphavsrettsforskerne vedtok EU-kommisjonen 16. juli 2008 å formelt godkjenne proposjonen.<sup>8</sup>

---

5 Open letter by Cambridge economist David Newbery, signed by 32 eminent economists (10 April 2008) [<http://www.cippm.org.uk/pdfs/A%20Joint%20Letter%20Regarding%20Term%20Extension%20for%20Phonograms.pdf>]

6 The Recasting of Copyright & Related Rights for the Knowledge Economy (2006), Institute for Information Law (IViR), University of Amsterdam for DG Internal Market [[http://www.ivir.nl/publications/other/IViR\\_Recast\\_Exec\\_summary\\_2006.pdf](http://www.ivir.nl/publications/other/IViR_Recast_Exec_summary_2006.pdf)]

7 Gowers Review of Intellectual Property - Review of the Economic Evidence Relating to an Extension of the Term of Copyright in Sound Recordings (2006), Centre for Intellectual Property and Information Law, University of Cambridge for Gowers Review of Intellectual Property [[http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/independent\\_reviews/gowers\\_review\\_intellectual\\_property/gowersreview\\_index.cfm](http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_index.cfm)]

8 Press Release: Intellectual Property: Commission adopts forward-looking package [<http://europa.eu/rapid/press->

Professor Bernt Hugenholtz, EU-rådgiver og direktør ved Institute of Information Law (IViR) ved Universitetet i Amsterdam fulgte opp dette med et brev til Dr Jose Manuel Barosso, president i EU-kommisjonen, hvor han direkte anklager EU-kommisjonen for å villedde europeiske lovgivere.<sup>9</sup> Han påpeker blant annet at EU-kommisjonen bevisst har ignorert gjennomførte akademiske studier:

*«As you are certainly aware, one of the aims of the 'Better Regulation' policy that is part of the Lisbon agenda is to increase the transparency of the EU legislative process. By wilfully ignoring scientific analysis and evidence that was made available to the Commission upon its own initiative, the Commission's recent Intellectual Property package does not live up to this ambition. Indeed, the Commission's obscuration of the IViR studies and its failure to confront the critical arguments made therein seem to reveal an intention to mislead the Council and the Parliament, as well as the citizens of the European Union.*

*In doing so the Commission reinforces the suspicion, already widely held by the public at large, that its policies are less the product of a rational decision-making process than of lobbying by stakeholders. This is troublesome not only in the light of the current crisis of faith as regards the European lawmaking institutions, but also - and particularly so - in view of European citizens' increasingly critical attitudes towards intellectual property law.»*

Den britiske rettighetsorganisasjonen Open Rights Group sendte inn sitt svar til UK Intellectual Property Office (UKIPO) 29. august 2008, etter at UKIPO hadde etterspurt kommentarer. I sitt brev påpeker de blant annet at proposjonen vil gi flertallet av utøvere så lite som €0,50 mer i fortjeneste per år i de første ti årene, opp til så «mye» som €26,79.<sup>10</sup>

I oktober 2008 fulgte akademikerene, som i april 2008 hadde skrevet et åpent brev til EU-kommisjonen, opp med et nytt åpent brev, denne gang til medlemmene av EU-parlamentet<sup>11</sup>, hvor det presiseres at proposjonen ikke vil ha den effekten det argumenteres for, og vi kan lese følgende:

*«The chief beneficiaries from extension are:*

- 1. Major rightholder who control a back catalogue of records that reaches back further than 50 years. The four major multinational record companies Universal, Sony BMG, Warner Music and EMI own almost all the key records that would benefit from retrospective extension.*
- 2. Best-selling artists such as Cliff Richard, Johnny Hallyday, and their future estates. Is*

---

[release\\_IP-08-1156\\_en.htm?locale=en](#)

9 Open Letter concerning European Commission's «Intellectual Property Package»  
[\[http://www.ivir.nl/news/Open\\_Letter\\_EC.pdf\]](http://www.ivir.nl/news/Open_Letter_EC.pdf)

10 Proposal to extend the term of copyright protection on sound recordings. Response of the Open Rights Group  
[\[http://www.openrightsgroup.org/uploads/080829\\_ukipo\\_ectermextension.pdf\]](http://www.openrightsgroup.org/uploads/080829_ukipo_ectermextension.pdf)

11 Copyright Extension for Sound Recordings: New joint statement (27 October 2008), [Cover letter  
<http://www.cippm.org.uk/downloads/Term%20Open%20Letter.pdf>] [Joint statement  
[http://www.cippm.org.uk/downloads/Term%20Statement%2027\\_10\\_08.pdf](http://www.cippm.org.uk/downloads/Term%20Statement%2027_10_08.pdf)]

*channelling money to estates a productive measure?*

3. *Collecting societies who will process increased income either from airplay or a social fund (and take a commission for it).*
4. *Minor beneficiaries are ordinary working performers. The bottom 80% of performers would each receive between € 4 and € 58 a year (calculation based on Commission's own figures). Some of these benefits however come at the costs of younger performers just entering the profession, as the same pot of money will have to be shared by more artists, many of whom are or will be dead.*

*The contrast between marginal benefits to ordinary performers, and huge benefits to multinational producers is stark. The costs of copyright extension will be borne by European society as a whole through higher prices and licence fees, stymied innovation, and hindered diversity.»*

21. januar 2009 mottok EU-parlamentet en felles uttalelse fra EFF; Open Rights Group; Consumer Forces; BEUC, som representerer 42 forbrukerrettighetsorganisasjoner i Europa; EDRI, som representerer 29 personverns- og sivile rettighetsorganisasjoner i Europa; og ILFA, en verdensomspennende organisasjon som representerer over 650.000 biblioteker.<sup>12</sup> Uttalelsen inneholdt følgende:

*«The European Parliament is being asked to nearly double the term of copyright afforded to sound recordings. Industry lobbyists suggest that extending copyright term will help increase the welfare of performers and session musicians. But the Term Extension Directive, which will be voted on by the Legal Affairs Committee in a few weeks' time, will do no such thing. Instead it will hand millions of euros over to the world's four major record labels, money that will come direct from the pockets of European consumers. The majority (80%) of recording artists will receive between €0.50 - €26 a year.*

*Helping poor recording artists is a commendable aim. But the Term Extension Directive insults these good intentions. Andrew Gowers, former editor of the Financial Times, who conducted an independent review into the intellectual property framework for the UK Government in 2006, has called it out of tune with reality. Professor Bernt Hugenholtz, who advises the European Commission on intellectual property issues, has called it a deliberate attempt on behalf of the Commission to mislead Europe's Parliament. If passed, the Term Extension Directive will have serious consequences for Europe's IP policy.*

*Any extension of copyright term will take money directly from consumers' pockets. It will also consign a large part of Europe's cultural heritage to a commercial vacuum. Europe's leading IP research centres have clearly shown the proposal does not do what it purports to do - help the poorest performers. It is simply a windfall for the owners of large back catalogues and the top earning performers.*

---

<sup>12</sup> Reject the Term Extension Directive [[http://www.openrightsgroup.org/wp-content/uploads/joint\\_statement\\_final.pdf](http://www.openrightsgroup.org/wp-content/uploads/joint_statement_final.pdf)]

*The proposal will undermine public respect for copyright law and introduce an unworkable and unproven framework for copyright, at the very time when Europe's copyright framework needs to be at its most robust.*

*We therefore ask you to vote to reject this directive, as per Amendment 15 of the ITRE opinion. (David Hammerstein).»*

Etter heftig debatt i EU-parlamentet ble vernetiden kortet ned fra 95 til 70 år. 23. april 2009 var det tid for avstemning. Fire av de syv hovedgruppene i EU-parlamentet (ALDE, GREENS/EFA, NGL, IND/ DEM), sammen med en gruppe frittstående medlemmer stemte for å forkaste hele forslaget. I tillegg var det interne stridigheter i to av de andre gruppene (PSE og EPP). 222 stemte for at proposjonen skulle forkastes, mens 370 stemte mot. Deretter stemte 317 for forslaget, 178 mot og 37 avstående. Etter tung lobbyisme i EU-parlamentet gikk altså proposjonen videre til ministerrådet på tross av alle advarslene.

I ministerrådet ble så proposjonen liggende død, etter å ha blitt blokkert av Belgia, Danmark, Luxemburg, Nederland, Portugal, Romania, Sverige, Slovakia, Slovenia, Tsjekkia, og Østerrike.

24. februar 2011 trakk Danmark seg fra koalisjonen som blokkerte proposjonen, etter press fra opphavsrettsbransjen.<sup>13</sup> Det samme gjorde Portugal, mens Tsjekkia såvidt klarte å holde fast ved sitt standpunkt.

Så fikk opphavsrettsenheten i EU-kommisjonen en ny leder, Maria Martin-Prat, 30. mars 2011. Martin-Prat hadde tidligere jobbet som Deputy General Counsel and Director of Legal Policy and Regulatory Affairs for the International Federation of the Phonographic Industry (IFPI), og kom til EU-kommisjonen i 2004. Før 2004, mens hun jobbet for IFPI, var hun påfallende nok allerede oppført med permisjon fra EU-kommisjonen.<sup>14</sup>

10. april 2011 dukket så saken opp igjen på bordet til the Legal Affairs Committee of the European Parliament (JURI).

Like etter at saken dukket opp på ny ble det, i mai 2011, lagt frem en ny uavhengig undersøkelse, Review of Intellectual Property and Growth (Hargreaves Review).<sup>15</sup> I rapporten kan vi lese følgende:

Side 19–20:

«2.16 *The Review has found that IP policy has not always been developed in a way*

---

13 Pressemeldelse: Længere beskyttelse af musikers ophavsrettigheder [<http://kum.dk/nyheder-og-presse/pressemeldelser/2011/februar/langere-beskyttelse-af-musikers-ophavsrettigheder/>]

14 Maria Martin-Prat reported to replace Tilman Lueder as head of unit for copyright at European Commission [<http://keionline.org/node/1105>]

15 Digital Opportunity: A review of Intellectual Property and Growth. An independent report by Ian Hargreaves [<http://www.ipo.gov.uk/ipreview.htm>]

*consistent with the economic evidence. We give two examples below. [...]*

### *Copyright Term Extension*

*Economic evidence is clear that the likely deadweight loss to the economy exceeds any additional incentivising effect which might result from the extension of copyright term beyond its present levels. This is doubly clear for retrospective extension to copyright term, given the impossibility of incentivising the creation of already existing works, or work from artists already dead. Despite this, there are frequent proposals to increase term, such as the current proposal to extend protection for sound recordings in Europe from 50 to 70 or even 95 years. The UK Government assessment found it to be economically detrimental. An international study found term extension to have no impact on output.*

*2.17 Economic evidence is not, of course, the sole driver of IP policy. Legitimate questions of culture, fairness and "just reward" for creators also arise, and have tended to dominate the debate on copyright issues. Indeed, they were explicitly cited by the previous Government as justification for extension of copyright term, despite the economic evidence. These questions are clearly significant, and it is not part of the Review's task to determine how they should be resolved. We simply invite Government to consider that as copyright becomes increasingly economically important, it is vital that economic considerations are fully weighed in the balance. This is especially so given the role, noted in the previous chapter, that copyright is acquiring of regulating the permissibility of technologies, such as consumer recording devices and web search engines. If the current imbalance in the debate on copyright is allowed to continue, the economic price will be high.»*

Side 93–94:

*«10.12 A prominent and persistent example of the lobbying problem concerns the duration of copyright protection, which has been periodically extended in recent decades. In spite of clear evidence that this cannot be justified in terms of the core IP argument that copyright exists to provide economic incentives to creators to produce new works. As has been noted by a number of commentators,<sup>7</sup> no one has yet discovered a mechanism for incentivising the deceased.*

*The most recent example of such extensions involved a UK decision to support a still incomplete EU process to extend the rights of owners of sound recordings from 50 years to 70 years. Such an extension was opposed by the Gowers Review and by published studies commissioned by the European Commission. A decision in favour of the change was, nonetheless, announced by the Secretary of State for Culture, Andy Burnham, in December 2008. The Government's own economic impact assessment subsequently estimated that extension would cost the UK economy up to £100m over the extended term. One justification for extension might be that Ministers wished to afford extended copyright as a mark of respect and gratitude to artists and their families – a perfectly legitimate argument, though one that ignores the fact that very*



*often artists' rights are owned by corporations. Independent research commissioned for the Gowers Review suggested that the benefits to individual artists would be highly skewed to a relatively small number of performers.»*

Ettersom koalisjonen nå ikke lenger var stor nok til å blokkere saken, ble direktivet, på tross av alle akademiske advarsler og råd, vedtatt 12. september 2011.

### **Digitutvalget i Norge anbefaler redusert vernetid**

Formålet med opphavsrett skal være å fremme allmenhetens tilgang på kunnskap og kultur. Innen teknologiområdet har opphavsrett vært en sterk klamp om foten på utvikling, og opphavsrett og patentspørsmål er en gjenganger i internett og teknologispørsmål.

Digitutvalget ble instruert av Fornyings og Administrasjonsdepartementet om å identifisere hindre for digital verdiskapning. [NOU 2013: 2](#) ble angitt FAD 7. Januar 2013. I kapittel 4 [Immaterielle rettigheter](#) trekker utvalget frem immaterielle rettigheter som et hindre for verdiskapning. I kapittel 4.7 [Behov for rebalansering av opphavsretten](#) trekker de frem flere problematiske aspekter ved dagens opphavsrett, inkludert vernetid. De anbefaler myndighetene konkret om å aktivt arbeide for å redusere vernetiden:

*Digitutvalget mener vernetiden for åndsverk er for lang og i utakt med forventninger til tilgang til innhold over nettet. The Economist har argumentert for at vernetiden bør tilbake til 28 år, mens Rufus Pollock (2007) har kalkulert optimal vernetid til 15 år, begge fra publiseringstidspunktet. Digitutvalget ønsker ikke å argumentere for en bestemt reduksjon av vernetiden, men oppfordrer norske myndigheter til å arbeide for en redusert vernetid gjennom FN; WIPO, WTO og EU.*

I [kapittel 4.11](#) trekker utvalget frem også samme viktige poeng som Piratpartiet har argumentert for, nemlig at en full reform er nødvendig, og at en reform skal baseres på økonomisk teori og dokumenterte økonomiske effekter:

*“For å fremme innovasjon og økonomisk vekst foreslår [professor Ian]Hargreaves et klart skifte i den nasjonale immaterialrettspolitikken. Hargreaves fremhever at rettsutviklingen på området i betydelig utstrekning drives av lobbyister for sterke økonomiske interesser, og at fremtidig rettsutvikling bør baseres på økonomisk teori og dokumenterte økonomiske effekter.”*



## **Konklusjon**

I samsvar med alle uttalelsene som har kommet frem i løpet av saksgangen i EU mener vi dette direktivet ikke bør innføres i norsk lov. Direktivet er et resultat av tung lobbyisme og alle akademiske undersøkelser tyder på at det er et svært dårlig trekk å utvide vernetiden ytterligere – spesielt med tilbakevirkende kraft! I stedet for å passivt akseptere EU-direktiver utformet for særinteresser bør norske myndigheter arbeide aktivt for at europeisk og internasjonal åndsverklov er til det beste for fellesskapet. Denne høringen foretar ingen vurdering av de mange negative sidene av direktivet, men viderefremmer udokumenterte påstander og legger dem til grunn for en lovendring. Høringen overser også Fornyingsdepartementets sterke anbefalinger og velger å fortsette å innføre ønskelisten til opphavsrettsindustrien uten å vurdere andre hensyn.

Vi håper norske myndigheter i vesentlig grad velger å støtte seg til akademia i fremtiden, og motstår presset fra næringsinteresser på bekostning av det øvrige samfunnet.

Piratpartiet nytter anledningen til å be departementet avslutte denne prosessen og tilsvarende ukritisk innskjerping av opphavsretten, og umiddelbart begynne en prosess for reform av åndsverkloven med mål om å identifisere hvordan samfunnet skal få tilgang på mest mulig kunnskap og kultur, og benytte fagfellevurdert forskning for å finne de beste måtene å målet.

Med vennlig hilsen



Øystein Jakobsen  
Leder