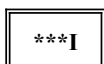


28 January 1999      A4-0026/99



## REPORT

on the proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (COM(97)0628 - C4-0079/98 - 97/0359(COD))

Committee on Legal Affairs and Citizens' Rights

Rapporteur:    Mr Roberto Barzanti

Draftsmen (\*):

Mrs Maren Günther, Committee on Culture, Youth, Education and the Media and  
Mr Bryan Cassidy, Committee on Economic and Monetary Affairs and Industrial  
Policy

(\* Hughes procedure)

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**Commented [COMMENT1]:**

(Amendment ##)

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(* Hughes procedure)	

By letter of 21 January 1998 the Commission submitted to Parliament, pursuant to Articles 189b(2), 57(2), 66 and 100a of the EC Treaty, the proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society.

At the sitting of 20 February 1998 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media for their opinions. At the sitting of 10 March 1998, the President of Parliament announced that he had also referred the proposal to the Committee on Economic and Monetary Affairs and Industrial Policy for its opinion.

At its meeting of 25 February 1998 the Committee on Legal Affairs and Citizens' Rights had appointed Mr Barzanti rapporteur.

At the sittings of 13 March and 19 June 1998 the President of Parliament announced that the report would be drawn up under the Hughes procedure by the Committee on Legal Affairs and Citizens' Rights in conjunction with the Committee on Culture, Youth, Education and the Media and the Committee on Economic and Monetary Affairs and Industrial Policy.

The Committee on Legal Affairs and Citizens' Rights considered the Commission proposal and the draft report at its meetings of 19 May, 3 June, 30 June, 21 July, 23 September, 28 October, 25 November and 7 and 8 December 1998 and 20 January 1999.

At the last of these meetings it adopted the draft legislative resolution unanimously.

The following were present for the vote: De Clercq, chairman; Palacio Vallelersundi, Rothley and Malangre, vice-chairmen; Barzanti, rapporteur; Ahern, Berger, Carlo Casini, Cassidy, De Giovanni (for Cot), Ebner (for Florio pursuant to Rule 138(2)), Falconer (for David Martin), Ferri, Gebhardt, Günther (for Mosiek-Urbahn pursuant to Rule 138(2)), Krarup (for Buffetaut), Medina Ortega, Newman, Oddy, Ryyänen (for De Clercq pursuant to Rule 138(2)), Sauquillo Pérez del Arco (for Verde I Aldea), Sierra González, Thors and Ullmann.

The opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media are attached.

The report was tabled on 28 January 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

**A**  
**LEGISLATIVE PROPOSAL**

Proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (COM(97)0628 - C4-0079/98 - 97/0359(COD))

The proposal is approved with the following amendments:

Text proposed by the Commission()

Amendments by Parliament

(Amendment 1)  
Recital 2a (new)

Whereas the proposed harmonisation helps to implement the four freedoms of the internal market and relates to compliance with the fundamental principles of law and especially of property - including intellectual property - of freedom of expression and the public interest,

(Amendment 2)  
Recital 3

Whereas a harmonised legal framework on copyright and related rights, through increased legal certainty, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors; whereas this will safeguard employment and encourage new job creation;

Whereas a harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a high level of protection of intellectual property, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of

(1) OJ C 108, 7.4.1998, p. 6.

European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors; whereas this will safeguard employment and encourage new job creation;

(Amendment 3)  
Recital 6a (new)

Whereas the harmonisation of the rules on copyright and related rights in response to technological developments in the information society must be compatible with fundamental legal principles and the principles common to the Member States according to which these rights are not absolute and their protection must not be allowed to jeopardise the fundamental principles of an open and modern society, in which freedom of expression and the public interest must be fully achieved within the framework of the provisions enshrined in international conventions on intellectual property and may prevail over the restrictions arising from the enjoyment of these rights;

(Amendment 4)  
Recital 8a (new)

Whereas this Directive is based on principles and rules already laid down in the Directives currently in force in this area, in particular Nos 92/100 of 19 March 1992, 93/98 of 29 October 1993, 91/250 of 14 May 1991, 93/83 of 27 September 1993 and 96/9 of 11 March 1996, and whereas it develops those principles and rules and

places them in the context of the information society;

(Amendment 5)  
Recital 9

Whereas if authors or performing artists are to continue their creative and artistic work they have to receive an appropriate reward for the use of their work; whereas the investment required to produce products such as phonograms, films or multimedia products, and services such as “on-demand” services, is considerable; whereas adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment;

Whereas if authors or performing artists are to continue their creative and artistic work they have to receive an appropriate reward for the use of their work, as must producers in order to be able to finance this creative work; whereas the investment required to produce products such as phonograms, films or multimedia products, and services such as “on-demand” services, is considerable; whereas adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment;

(Amendment 6)  
Recital 9a (new)

Whereas a rigorous, effective system for the protection of copyright and related rights is one of the main ways of ensuring that European cultural production receives the necessary resources and of safeguarding the independence and dignity of artistic creators and interpreters;

(Amendment 7)  
Recital 10a (new)

Whereas a common search for, and consistent application at European level of, technical measures to protect works and to provide the necessary information on rights are essential since, in the last analysis, they are what are capable of making the principles and guarantees laid down in law

effective:



(Amendment 8)  
Recital 10a (new)

Whereas this Directive needs to promote learning and culture through protecting creative and artistic works while permitting exceptions in the public interest for the purpose of education and teaching;

(Amendment 9)  
Recital 12

Whereas liability for activities in the network environment concerns not only copyright and related rights but also other areas it will be addressed horizontally in the context of a forthcoming directive clarifying and harmonising various legal issues relating to Information Society services, including electronic commerce; whereas the latter initiative should come into force, as far as possible, within a timescale similar to that of this directive;

Whereas liability for activities in the network environment concerns not only copyright and related rights but also other areas, such as defamation, misleading advertising, or infringement of trademarks, it will be addressed horizontally in the context of a forthcoming directive clarifying and harmonising various legal issues relating to Information Society services, including electronic commerce; whereas the provisions relating to liability and to electronic commerce should come into force within a timescale similar to that of this directive, since they should provide a comprehensive framework of principles and provisions for the effective implementation of inter alia important parts of this directive;

(Amendment 10)  
Recital 12a (new)

Whereas, especially in the light of the requirements arising out of the digital environment, it is necessary to ensure that collecting societies achieve a higher level of rationalisation and transparency with regard to compliance with competition rules;

(Amendment 11)  
Recital 13a (new)

Whereas this Directive must not apply to the legal protection of designs which is dealt with in Directive 98/./EC;

(Amendment 12)  
Recital 14a (new)

Whereas the objective of proper support for the dissemination of culture must not be achieved by sacrificing strict protection of rights or by tolerating illegal forms of distribution or counterfeiting of works;

(Amendment 13)  
Recital 16

Whereas the legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject matter protected by related rights over networks should be overcome by providing for harmonised protection at Community level; whereas it should provide all rightholders recognised by the Directive with an exclusive right to make available to the public copyright works or any other subject matter by way of interactive on-demand transmissions; whereas such interactive on-demand transmissions are characterised by the fact that members of the public may access them from a place and at a time individually chosen by them; whereas this right does not cover private communication;

Whereas the legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject matter protected by related rights over networks should be overcome by providing for harmonised protection at Community level; whereas it should provide all rightholders recognised by the Directive with an exclusive right to make available copyright works or any other subject matter by way of interactive on-demand transmissions; whereas such interactive on-demand transmissions are characterised by the fact that members of the public may access them from a place and at a time individually chosen by them; whereas this right does not cover direct representation or performance;

(Amendment 14)  
Recital 16a (new)

Whereas the fact that a transmission occurs between two individuals is not sufficient for it be regarded as a private communication and whereas in particular a person who lawfully receives a work over a network may view or hear it within the household and in a particular place;

(Amendment 15)  
Recital 19a (new)

19a. Whereas Member States should, as far as possible, co-ordinate provisions in respect of acknowledging rightholders for use of their works;

(Amendment 16)  
Recital 23

Whereas the exclusive right of reproduction should be subject to an exception to allow for certain acts of temporary reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling the use of protected subject matter and which have no separate economic value on their own; whereas under these conditions this exception should include acts of caching or browsing;

Whereas the exclusive right of reproduction should be subject to an exception to allow for certain acts of transient and incidental reproduction forming an integral part of and essential to a technological process carried out for the sole purpose of enabling the use of a work or other protected subject matter which is authorised or permitted by the law and which has no separate economic significance for the rightholders; whereas under these conditions this exception could also include acts of caching or browsing;

(Amendment 17)  
Recital 24a (new)

Whereas it is nevertheless important for the Member States to adopt all necessary measures to facilitate access to works by persons suffering from a handicap which constitutes an obstacle to the use of those works, and to pay special attention to accessible formats;

(Amendment 18)  
Recital 26

Whereas Member States should be allowed to provide for an exception to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use; whereas this may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders; whereas, although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society; whereas digital private copying is not yet widespread and its economic impact is still not fully known; whereas, therefore, it appears justifiable to refrain from further harmonisation of such exceptions at this stage; whereas the Commission will closely follow market developments in digital private copying and will consult interested parties, with a view to taking appropriate action;

Whereas Member States should be allowed to provide for an exception to the reproduction right (in certain cases accompanied by fair compensation) for certain types of reproduction of audio, visual and audio-visual material for private use; whereas this may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders; whereas, although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society; whereas digital private copying should be more widespread and have a greater economic impact; whereas a distinction should therefore be made between digital private copying and analogue copying and whereas the conditions of application should in both cases be harmonised to a certain extent;

(Amendment 19)  
Recital 26a (new)

Whereas it is becoming increasingly necessary and urgent to achieve the most precise and uniform harmonisation possible with regard to the procedures for charging fees for private copies to be established in all Member States;

(Amendment 20)  
Recital 27

Whereas, when applying the exception on private copying, Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available; whereas such exceptions should not inhibit the use of technological measures;

Whereas, when applying the exception on private copying, Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available; whereas such exceptions should not inhibit the use of technological measures or their enforcement against circumvention;

(Amendment 21)

Recital 28

Whereas Member States may provide for an exception for the benefit of establishments accessible to the public, such as non-profit-making libraries and equivalent institutions; whereas, however, this should be limited to certain special cases covered by the reproduction right; whereas such an exception should not cover uses made in the context of on-line delivery of protected works or other subject matter; whereas this Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as amended by Directive 93/98/EEC;

Whereas Member States may provide for an exception for the benefit of establishments accessible to the public, such as non-profit-making libraries and equivalent institutions; whereas, however, this should be limited to certain special cases covered by the reproduction right; whereas such an exception should not cover uses made in the context of on-line delivery of protected works or other subject matter; whereas this Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as amended by Directive 93/98/EEC; whereas, therefore, specific contracts or licences should be promoted which, without creating imbalances, favour such establishments and the disseminative purposes they serve;

(Amendment 22)

Recital 28a (new)

Whereas the Member States, in cooperation with the Commission, should undertake a study to improve new legal ways of solving disputes where there are accusations of infringements of authors' rights, taking into account that the present proceedings in many Member States are cumbersome;



(Amendment 23)

Recital 29

29. Whereas, when applying those exceptions, they should be exercised in accordance with international obligations; whereas such exceptions may not be applied in a way which prejudices the legitimate interest of the rightholder or which conflicts with the normal exploitation of his work or other subject matter; whereas the provision of such exceptions by Member States should, in particular, duly reflect the increased economic impact that such exceptions may have in the context of the new electronic environment; whereas, therefore, the scope of certain exceptions may have to be even more limited when it comes to certain new uses of copyright works and other subject matter;

29. Whereas, when applying those exceptions, they should be exercised in accordance with international obligations; whereas such exceptions may not be applied in a way which prejudices the legitimate interest of the rightholder or which conflicts with the normal exploitation of his work or other subject matter; whereas the provision of such exceptions by Member States should, in particular, duly reflect the increased economic impact that such exceptions may have in the context of the new electronic environment; whereas, therefore, the scope of certain exceptions may have to be reviewed when it comes to certain new uses of copyright works and other subject matter;

(Amendment 24)

Recital 29a (new)

Whereas the exceptions referred to in Article 5(2) and (3) must not, however, prevent the definition of contractual relations designed to ensure fair compensation for the holders of copyright and related rights;



(Amendment 25)  
Recital 29b (new)

Whereas there is a need for increased awareness of the value of, and respect for, the cultural heritage of indigenous communities and peoples; whereas such respect should include preventing exploitative use of their works, the status of which is not yet sufficiently regulated by international agreement and law; whereas neither copyright regimes nor reasons of freedom of communication should prejudice the legitimate right to recognition of the cultural heritage of indigenous communities and peoples;

(Amendment 26)  
Recital 33a (new)

Whereas increased legal certainty as to the legitimate identity of a specific Internet site from which copyrighted materials may be obtained will foster greater consumer confidence;

(Amendment 27)  
Recital 33b (new)

Whereas greater consumer confidence will act as a catalyst for substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of the European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors;

(Amendment 28)  
Recital 33c (new)

Whereas this in turn will safeguard employment and encourage new job creation;

(Amendment 29)  
Article 2, point (a)

a) for authors, of the original and copies of their works,      a) for authors, of their works,

(Amendment 30)  
Article 2(2) (new)

2. In case of doubt, the reproduction right shall be transferred together with the contractual or statutory authorisation of use if the reproduction required for such use is merely incidental and possesses no independent economic significance in relation to the use in question; this presumption of the concession of rights shall apply throughout the period of the authorisation of use.

(Amendment 31)  
Article 3(4) (new)

4. The mere supply of physical equipment designed to effect a communication or make one possible does not constitute an act of communication within the meaning of this Article.

(Amendment 32)  
Article 3(5) (new)

5. The exclusive right provided in paragraph 2, respectively, for phonogram producers and performers in respect of the making available of phonograms and fixations of performances incorporated in such phonograms shall not apply if a commercial phonogram forms an integrated part of a broadcasting production which is made available in a way covered by that paragraph, except where the production consists predominantly of phonograms or extracts thereof and is made available in circumstances conflicting with the normal exploitation of the phonograms and as prejudicing the legitimate interests of phonogram producers. In such cases, the phonogram producers and performers shall have the right to share a single equitable remuneration.

(Amendment 33)  
Article 5(1)

1. Temporary acts of reproduction referred to in Article 2 which are an integral part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter, and having no independent economic significance, shall be exempted from the right set out in Article 2.

1. Transient and incidental acts of reproduction referred to in Article 2 which are an integral and essential part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter shall be exempted from the right set out in Article 2. Such uses must be authorised by the rightholders or permitted by law and must have no economic significance for the rightholders.

(Amendment 34)  
Article 5(2)(a)

(a) in respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects;

(a) in respect of reproduction on paper or any similar medium, with the exception of musical works in published form, effected by the use of any kind of photographic technique or by some other process having similar effects;

(Amendment 35)  
Article 5(2)(a)

(a) in respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects;

(a) in respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, provided that the rightholders receive fair compensation;

(Amendment 36)  
Article 5(2)(b)

(b) in respect of reproductions on audio, visual or audio-visual recording media made by a natural person for private use and for non-commercial ends;

(b) in respect of reproductions on audio, visual or audio-visual recording media made by a natural person for private use and for non-commercial ends, on condition that the rightholders receive fair compensation;

(Amendment 37)  
Article 5(2)(b)a (new)

(b)a in respect of reproductions on audio, visual or audio-visual digital recording media made by a natural person for private and purely personal use and for non-commercial ends, in cases where there are no reliable and effective technical means capable of protecting the interests of the beneficiaries. For all digital private copying, however, fair compensation for all the rightholders must be provided;

(Amendment 38)  
Article 5(2)(c)

(c) in respect of specific acts of reproduction made by establishments accessible to the public, which are not for direct or indirect economic or commercial advantage;

(c) in respect of specific acts of reproduction made for documentation or conservation purposes by establishments which are not for direct or indirect economic or commercial advantage such as, in particular, libraries and archives and other teaching, educational or cultural establishments;

(Amendment 39)  
Article 5(2)(d) (new)

(d) in respect of specific acts of reproduction whose sole purpose is to facilitate a legitimate broadcasting act;

(Amendment 40)  
Article 5(2)(e) (new)

(e) in respect of the analogue use of individual works from the daily newspapers and radio in connection with news reporting in daily newspapers and on the radio on current affairs, provided that the source is indicated and to the extent warranted by the informative purpose and with a view to illustrating the event concerned;

(Amendment 41)  
Article 5(3)(a)

(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, on condition that the rightholders receive fair compensation;

(Amendment 42)  
Article 5(3)(b)

(b) for uses for the benefit of visually-impaired or hearing-impaired persons, which are directly related to the disability and of a non-commercial nature and to the extent required by the specific disability;

(b) for uses for the benefit of people with disabilities, which are directly linked to the disability and of a non-commercial nature and to the extent required by the specific disability;

(Amendment 43)  
Article 5(3)(c)

(c) use of excerpts in connection with the reporting of current events, as long as the source is indicated, and to the extent justified by the informatory purpose;

(c) use of short excerpts in connection with the reporting of current events, as long as the source and if possible the author's name is indicated, and to the extent justified by the informatory purpose and the objective of illustrating the event concerned;

(Amendment 44)  
Article 5(3)(d)

(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject matter which has already been lawfully made available to the public, that the source is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;

(d) quotations in independent, individual works for purposes such as criticism or review, provided that they relate to a work or other subject matter which has already been lawfully made available to the public, that the source and if possible the author's name is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;

(Amendment 45)  
Article 5(3)(e)

(e) use for the purposes of public security or for the purposes of the proper performance of an administrative or judicial procedure.

(e) use for the purposes of public security or for the proper performance or reporting of administrative, parliamentary or judicial proceedings;



(Amendment 46)  
Article 5(3)a (new)

3a. Member States may provide for limitations to the right of distribution for specific acts of reproduction performed in accordance with the exceptions to this right provided for in paragraphs 2 and 3 of this Article and concerning the cases referred to in Articles 2a and 10a of the Berne Convention.

(Amendment 47)  
Article 5(4)

4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter.

4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter. These exceptions and limitations must not prevent the use of technical means to protect works with the aim of safeguarding the interests of the rightholders, nor prejudice the protection of these means as referred to in Article 6.



(Amendment 48)  
Article 5(5) (new)

5. Member States shall ensure, when necessary, by such legal means as a strictly limited non-voluntary licence or a legal presumption, that broadcasting organizations are entitled to use, or to authorise others to use, their own past archive productions produced or commissioned and financed by them under their own editorial control for new broadcasting or on-demand services and for other forms of multimedia exploitation such as CD-ROMs. Such use shall be subject to payment by the TV or radio producer of equitable remuneration, as appropriate, to authors, performers or other right owners who contributed to the production.

(Amendment 49)  
Article 6(1)

1. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices or the performance of services, which have only limited commercially significant purpose or use other than circumvention, and which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect any copyrights or any rights related to copyright as provided by law or the sui generis right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.

1. Member States shall provide adequate legal protection against the circumvention without authority of any effective technological measures designed to protect any copyrights or any rights related to copyright as provided by law or the sui generis right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.

(Amendment 50)  
Article 6(2)

2. The expression 'technological measures', as used in this Article, means any device, product or component incorporated into a process, device or product designed to prevent or inhibit the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed 'effective' where the work or other subject matter is rendered accessible to the user only through application of an access code or process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders.

2. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices, products or components or the provision of services which:

(Amendment 51)  
Article 6(2)(a) (new)

(a) are promoted, advertised or marketed for the purpose of circumvention, or

(Amendment 52)  
Article 6(2)(b) (new)

(b) have only a limited commercially significant purpose or use other than to circumvent, or

(Amendment 53)  
Article 6(2)(c) (new)

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any technological measures designed to protect any copyright or any right related to copyright as provided by law or the sui generis right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.

(Amendment 54)  
Article 6(3) (new)

3. The expression 'effective technological measures', as used in this Article, means any technology, device or component that, in the ordinary course of its operation, is designed to protect any copyright or any rights related to copyright as provided by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall be deemed 'effective' where the work or other subject matter is rendered accessible to the user only through application of an access code or any other type of process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders.

(Amendment 55)  
Article 8(1)

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and act as a deterrent to further infringement.

(Amendment 56)  
Article 9(5) (new)

5. When an author transfers or cedes his exclusive right of reproduction, communication to the public or distribution, he shall receive in return reasonable remuneration proportional to the revenue from the exploitation of his work. The author may not renounce this remuneration.

(Amendment 57)  
Article 11(3) (new)

3. The protection by this Directive of rights related to copyright shall be without prejudice to copyright.

(Amendment 58)  
Article 11(4) (new)

4. A Contact Committee, chaired by a representative of the Commission and also including representatives of the Member States, shall help to ensure, by means of suitable checks carried out on a continuous basis, that there is consistency in the implementation of the provisions laid down in Article 5(2) and (3) and Article 7(1).

## DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (COM(97)0628 - C4-0079/98 - 97/0359(COD))**

**(Codecision procedure: first reading)**

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council COM(97)0628 - 97/0359(COD)) ( ),
  - having regard to Article 189b(2) and Articles 57(2), 66 and 100a of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0079/98)( ),
  - having regard to Rule 58 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media (A4-0026/99),
1. Approves the Commission proposal with the following amendments;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
  3. Calls on the Council to incorporate Parliament's amendments in the common position that it intends to adopt in accordance with Article 189b(2) of the EC Treaty;
  4. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal;
  5. Instructs its President to forward this opinion to the Council and Commission.

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<sup>(1)</sup> OJ C 108, 7.4.1998, p. 6.

<sup>(2)</sup> OJ C 80, 16.3.1998, p. 282.

## **B**

### **EXPLANATORY STATEMENT**

'The market is said to be the perfect system for providing information about what people prefer. But what about the things we do not know we want or the things we cannot see? They lie beyond the market.' (Franco Fortini)

1. Some time ago - on 19 July 1995 - the Commission submitted a Green Paper entitled 'Copyright and related rights in the information society' (COM(95) 0382) and, following a lengthy consultation procedure, the initiatives relating thereto were set out in the Communication of 20 November 1996 (COM(96) 0568). On 10 December 1997 the Commission finally drew up a proposal for a directive on the harmonisation of copyright and related rights in the information society (COM(97)0628), which forms the subject of this report.
2. Some kind of legislative measure is therefore felt to be necessary. Appropriate action is essential in order to create an atmosphere which will stimulate creativity and investment on both the traditional intellectual property markets and on new ones, which are developing rapidly. Achievement of this objective requires transparent, up-to-date and effective protection of intellectual property. In the absence of an adequate legal framework introduced at an appropriate time, the creation of material for the new multimedia sector will be discouraged or even wiped out by piracy, thus penalising authors, interpretive and performing artists and producers of other protected material. The harmful effects would inevitably have repercussions on related industries, on the users of other protected material (such as the providers of on-line and off-line services) and in particular on consumers, who would have less material (or material of lower quality) at their disposal.
3. The proposal for a directive is structured in accordance with the two new WIPO treaties and the *acquis communautaire* and it contains a substantial amount of those treaties, which were adopted in December 1996. The two treaties lay down obligations in respect of all four of the issues (including the exceptions) with which the directive is concerned. The proposal is based on the arrangements laid down in the two WIPO treaties and in the *acquis communautaire*, and also on certain aspects agreed upon by the Member States at the meetings held before and during the Diplomatic Conference. It is intended that the directive should accept the concepts on which the principle of copyright and related rights has for a long time been based and that it should devote the utmost attention to national, Community and international traditions.
4. The extent to which rights are harmonised and the exceptions proposed in the directive depend on the particular impact produced by the operation of the internal market. An internal market (and, better still, a unified and coherent area) needs to be created for goods and services which are protected by copyright, though with due respect for subsidiarity and proportionality; a fair balance of rights and interests must be established amongst the various categories of rightholder (software industry, phonographic industry, film producers, publishers, authors, broadcasters, etc.) and also between the interests of rightholders and those of all the other parties which depend on the use of material protected by copyright and by consumers' rights. This balance must reflect the new digital environment, with the risks it entails and the opportunities it affords. The so-called

'three-steps test', as proposed in the WIPO treaties, is designed to establish the criteria for application of the exceptions.

5. The proposal for a directive tries to achieve a balance between the rights and the interests (which differ widely and are often in conflict) of rightholders, the multi-media entertainment industry and users. Hence on the one hand the creativity of the authors of works must be guaranteed and must be strengthened vis-à-vis the international competition whilst, on the other, there must be no restrictions on the industry's innovative potential, nor must the interests of those who wish to have access to works be compromised.
6. Immediate Community legislation is called for in order to ensure legal protection in the following areas, in view of their importance to the internal market:
  - right of reproduction;
  - right of communication to the public;
  - technological measures and right-management information;
  - right of distribution of physical copies, including the principle of exhaustion.
7. The harmonisation provisions laid down in the proposal for a directive include the right of reproduction, the right of communication to the public (including the supply of protected works and material via the Internet), the right of distribution and the legal protection of systems against copying.
8. As regards the right of reproduction, the proposal deems copyright and the related rights of interpreters and performers to be fully equivalent to those of phonogram producers and broadcasters. This constitutes a major divergence from the WIPO treaties since (as called for by Parliament) the right of reproduction relates not just to phonograms but also to video and audio-visual reproductions.
9. As regards the right of distribution the proposed arrangement is on the whole acceptable. As far as the question of exhaustion is concerned, the relevant harmonisation process should take into account the global dimensions of the issue and should therefore not regard that right as being exhausted in international terms simply because there has been an initial sale or some other transfer of property within the European Union.
10. We need to understand which derogations should be granted (and for what reason) so that, without creating imbalances, the protection of copyright and related rights can be reconciled with the interests of those who wish to gain access to new forms of knowledge and learning. Preventive authorisation is essential if on-line services are to be provided; such a requirement is necessary in order to make transmissions explicitly lawful and thus to strengthen the campaign against any form of piracy. It should be made clear that the exception applies solely to acts which are technically transient and which do not therefore give rise to copies with a monetary value of their own. The compulsory exceptions to the right of reproduction do not therefore run counter to the criteria laid down in Article 9(2) of the Berne Convention.
11. As regards reprography the formulation used seems excessively broad, whilst for 'private copying' an arrangement is deliberately adopted which is not comprehensive and systematic. For practical purposes this matter needs to be harmonised: 11 out of the 15

Member States already impose levies of one kind or another which need to be brought into line.

12. What is laid down in Article 6 in order to provide effective protection for technological measures designed to protect and identify works seems rather tortuous. In practice, action against counterfeiting and manipulation should be continuous and incisive, whilst penalties should be severe and should be imposed at the appropriate time.
13. Amongst the exceptions, those granted to 'establishments accessible to the public' such as libraries (Article 5(2)(c)) are undoubtedly of major importance, whilst those allowed 'for the sole purpose of illustration for teaching or scientific research', for the benefit of the disabled and in other situations and circumstances (Article 5(3)(a), (b), etc.) merit particular attention. The wording used here should be made more specific since the digital environment may cause irreparable damage to rights even if we start out with the noblest of intentions.
14. The role of public libraries is not significantly different from that of a public television service which, although it serves particular ends, cannot be regarded as something divorced from the market and from the obligations which stem therefrom. What is probably required are types of contract which, without causing imbalances, reconcile the interests of users with the protection of rights. Restrictions on protection are acceptable only where specific and well-definable cases are concerned, if normal enjoyment of the work is not affected and if no unjustified damage is done to the legitimate interests of authors, producers and distributors. The list of exceptions should be compulsory and comprehensive since there is little sense in establishing a hard cord of exceptions to which any Member State can at will add a further list on a case-by-case basis. The emphasis which is placed on so-called consumers' rights is more often than not a dangerous way of constituting a pretext. Quite apart from anything else it is debatable whether the term 'consumer' should even be used in connection with goods which are there to be known rather than to be consumed - in other words, goods which are not comparable with any other kind of merchandise.
15. The expression 'communication to the public' of a work includes all methods or procedures other than the distribution of material copies, i.e. communication with or without the use of wires. An act of communication to the public may involve a series of acts of transmission or reproduction, such as, for example, the temporary storage of a work. The right of reproduction is important (see Article 2) for the purposes of acts of reproduction such as storage. If, during or at the end of a transmission, the work is communicated to the public (for example through display on a screen), each communication to the public requires authorisation from the author. In the proposal for a directive the concept of 'communication to the public' is used in the same way as in the *acquis communautaire* and in international provisions such as the Berne Convention and the WIPO Treaty on Copyright. It is for those who draw up national law to define the term 'public', but a substantial degree of affinity is essential.

It should be pointed out that the right of communication to the public (unlike the right of reproduction) maintains a clear distinction between copyright and related rights. Where authors are concerned, provision is made for an exclusive right applicable both to the various forms of interactive transmission and to broadcasts, whereas in the case of interpretive artists, performers, producers of phonograms and audio-visual works and



also broadcasters, the exclusive right is guaranteed in respect of interactive transmissions which are characterised by the provision of texts to the public on an individual basis. It will be the job of those responsible for drawing up national law to determine any other decision regarding the right of dissemination for artists and producers.

16. In view of technological developments which cannot yet be envisaged and the consequent effects thereof on copyright and related rights, it is particularly important for the implementation of the directive to be reviewed two years after it comes into effect and every three years thereafter. If the balance of interests amongst the various parties involved is not established and maintained the Commission, after consulting those parties will submit suitable proposals to Parliament, the Council and the Economic and Social Committee with a view to amending the directive.
17. The directive does not consider issues relating to the responsibility of those who provide on-line services since, according to the Commission, this is a horizontal matter involving other legal sectors. The Commission intends to settle the issue of the responsibility of on-line service providers by means of a separate directive before the end of 1998.
18. Harmonisation of copyright is of major importance to intellectual creation. Protection thereof helps to ensure that creative activities are safeguarded and developed in the interests of authors, performers, producers and consumers. The directive on the protection of copyright and related rights enables the Community to assume its own cultural responsibility pursuant to Article 128 of the EC Treaty and it is therefore hoped that the proposal for a directive will be adopted as soon as possible.

24 September 1998

## **OPINION**

(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (COM(97)628 - C4-0079/98 -97/0359(COD)) - report by Mr Roberto Barzanti

Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr Bryan Cassidy

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## **PROCEDURE**

At its meeting of 18 March 1998 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Bryan Cassidy.

It considered the draft opinion at its meetings of 22 April 1998, 3 June 1998, 3 September 1998 and 23 September 1998.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: von Wogau, chairman; Katiforis and Secchi, vice-chairmen; Cassidy, draftsman; Areatio Toledo, Arroni, Beres, Billingham, Camison Asensio (for de Brémond d'Ars), Carlsson, Christodoulou, Cox, Filippi (for Lulling), Friedrich, García Arias, García-Margallo, Glase (for Garosci), Harrison, Hendrick, Herman, Hoppenstedt, Ilaskivi, Imbeni, Kestelijn-Sierens, Konrad, Kuckelkorn, Kuhne (for Caudron), Langen, Lindqvist (for Riis-Jørgensen), Lukas, Mann E. (for Donnelly), McCarthy (for Fayot), Metten, Miller, Murphy, Paasilinna, Pérez Royo, Pomes Ruiz (for Mather), Porto (for Peijs), Randzio-Plath, Rapkay, Read, Ribeiro, Rübig, Theonas (for Svensson), van Velzen (for Thyssen), Väyrynen (for Watson) and Wolf (for Soltwedel-Schäfer).

## **INTRODUCTION**

1. The proposal for a Directive arises from the Commission Green Paper of 19 July 1995 "Copyright and Related Rights in the Information Society", COM(95)0382 final. The Commission received more than 350 written submissions, held numerous bilateral contacts with interested parties and held a hearing in Brussels on 8 and 9 January 1996. The Committee on Economic and Monetary Affairs and Industrial Policy opinion on the Green Paper was drafted by Mr. Stelios Argyros. Its conclusions were:

- i. The need for strong protection of intellectual property, balancing the needs of market operators;
  - ii. The need for harmonisation and/or clarification of the "exhaustion principle", the distribution right and the reproduction rights.; and
  - iii. The importance of voluntary licensing schemes and technical identification systems.
2. A majority of Member States and the European Parliament( ) asked the Commission to present harmonising measures to bring about a coherent and favourable environment for creativity and investment in the
3. The economic implications are considerable. In 1996, the world market in recorded music was estimated at US\$ 39.8 billion, 34 in Europe. Those figures represent a fourfold growth in value over the previous 10 years.
4. The EU market in software products was worth ECU 27.3 billion in 1995 and showed a growth of 9.2 % in 1996 and 8.8% in 1997 (further data can be found in footnote 10 of page 4 of the Commission's explanatory statement).
5. The spread of digital technology and new distribution channels such as cable, satellite and digital transmission methods, the availability of new and higher performance products and services and of "off-line applications" together with the blurring of distinctions between traditional and electronic publishing underline the need for the present proposal.
6. The new multimedia environment opens the possibility of widespread fraud and counterfeiting. The present measure is intended to protect the rights of authors, performers and producers of protected material. At the moment, there are wide differences in the protection offered by national legislations to these participants in the market.
7. It is estimated that the growth of "on demand" services will increase considerably and the anticipated demand for them to be interactive. These are characterised by the fact that a protected subject matter - stored in digital format - is made available to third parties via computers or the Internet in such a way that they may access it and request its transmission indirectly with respect to time and place. Demand is expected to escalate within the EU.
- 
- ( ) asked the Commission to present harmonising measures to bring about a coherent and favourable environment for creativity and investment in the Internal Market through harmonised legal protection, by ) resolution on the Green Paper on Copyright and related rights in the Information Society, doc. No. A4-0255/96
8. The legal protection of:
- the right of reproduction;
  - the right of communication to the public;
  - technological measures against the circumvention and rights management information;
  - the right of distribution of physical copies, including exhaustion
- require subsequent measures to avoid distortion of the Single Market within the Information Society.
9. The current proposal does not aim to change the advanced level of copyright protection which already exists in the EU and which provides for a balance between the differing interests of rightholders and users. It does, however, seek to take account of the changes to

the technological environment as a result of the development of the Information Society. The European Union also needs to take into account the compatibility of its laws on intellectual property and those required by international treaties such as those listed in Chapter 2, III, paragraph 10, on page 11 of the Commission's Explanatory Statement.

10. Particularly complex is the issue of liability. A number of participants in the market have expressed concern about the lack of any clear proposals for liability in the present draft Directive. The Commission holds the view that liability for activities in the network environment is a horizontal issue. Thus the Commission took the commitment as expressed in recital (12) of the copyright draft proposal - to address the issue of liability horizontally in the context of a forthcoming Directive dealing with a number of legal issues affecting electronic commerce. Liability would be one of these issues. The Commission is currently working on this proposal and intends to have it adopted as a draft Directive before the summer.
11. Your draftsman urges the Commission to speed up the process of presenting this Directive on electronic commerce and wants to emphasise the need to provide in it with a clear solution for the issue of liability of on-line service providers, including the liability for copyright infringements. In particular, it needs to be ensured that those participants in the market that fulfil a "mere conduit" role are exempted from liability.
12. Copyright and related rights have generally been granted for a particular country according to the laws of that country. With the development of cross border exploitation, confusion could arise from several national laws applying in parallel. Without a "level playing field", services might relocate from Member States with high levels of copyright protection to those with lower. The WIPO Treaties and other conventions already set out certain minimum standards and thereby already avoid to some extent the risk of delocalisation to third countries. Such cases of differing standards of protection have the potential seriously to hamper electronic trade and clearly require an internationally consistent framework. The effective implementation of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty should therefore be actively pursued, together with adequate harmonisation at Community level.
13. Creativity, competition and employment within the Community could be affected. The globalisation of communication and technical advances require internationally agreed minimum standards.
14. The private copying of audio and audio-visual material for private use is permitted in most Member States legislation. The impracticability of enforcing copyright is the principle reason. Most Member States in their legislation compensate rightholders through a levy system. There are, however, differences between national rules which apply to long established copying based on analogue technology, for example by VCR. However, the growth of a digital technology whereby copies are indistinguishable from 'originals' creates a further difficulty as does the different regimes on private copying for certain categories of works such as in particular computer programmes (Council Directive 91/250/EEC on the legal protection of computer programmes) and data bases (European Parliament and Council Directive 96/9/EC on the legal protection of data bases)
15. Also international treaties and conventions differ. Under the Berne Convention compulsory exemptions to the rights are permitted for such things as news of the day, miscellaneous

facts, quotations. The Berne convention in its Article 9(2) which has become known as the 'three-steps test' limits the exceptions to reproduction rights:

- certain special cases
- no conflict with the normal exploitation of the work
- no unreasonable prejudice to the legitimate interests of the author.

16. Article 5 of the Directive harmonises the limitations and the exemption to the reproduction right and the communication to the public right, including the right of making available works and other subject matter on-demand.
17. An important source and use of communication to the public are libraries and research bodies. They have expressed some anxiety about their vulnerability to actions for breach of copyright. These concerns should be addressed by the European Parliament.
18. The issues addressed in the present directive are also being considered by our trading partners such as the United States. It should be ensured that the European Union's legislative framework is coherent with the relevant legislation of third countries.
19. The draft directive will affect a variety of sectors. A non-exhaustive list is a large variety of rightholders, information providers, hardware producers, telecommunications operators, Internet operators of all types. Many participants in the market, especially those creating works for print and broadcasting as well as new media will be either individuals or small and medium-sized companies. Their interests merit particular attention.
20. A particular concern is the use of archive material particularly by broadcasters. Some of these archive material is of historic importance. Some of it is very old. In many cases, the original creators are no longer traceable. Checking and clearing rights could impose very heavy cost burdens especially on SME programme providers.

## CONCLUSIONS

1. The draft Directive will need to anticipate the likely growth of new digital, on-line and interactive on-line services and the growing use of the Internet.
2. The Commission should report back within 3 years from the coming into force of the present Directive in the light of market developments.
3. There should be specific provisions in the forthcoming electronic commerce directive to make it clear that bodies such as telecommunications companies and Internet access providers should be exempted from liability for breach of author's rights when they are acting as a 'mere conduit'.
4. The Commission should ensure that its forthcoming electronic commerce directive clarifies the situation of on-line service providers as regards their liability for infringements taking place in the network, including liability for breach of copyright.
5. The Economic Committee supports the initiative of the Community and Member States in signing the WIPO Copyright treaty and WIPO Performances and Phonograms treaty and urges that these treaties should come into force as soon as possible.

6. The Economic Committee welcomes the proposals to harmonise the limitations and exemptions to reproduction and communication to the public rights.
7. The European Commission should keep the European Parliament and the Council informed of the progress of any relevant legislation in third countries with a view to ensuring international compatibility of laws.
8. The Economic Committee welcomes including the question of the compatibility and mutual recognition of copyright-related rights in the Information Society in the Trans-Atlantic Business Dialogue (TABD).
9. The directive must ensure also that any intellectual property rights of small and medium-sized enterprises (SMEs) are fully taken into account and protected.
10. Any rules to protect Intellectual Property Rights should balance the interests of rightholders and users and define fair and appropriate exemptions essential for electronic commerce.
11. The directive should aim for providing a comprehensive protection of rights management and licencing system encouraging the use of information technology.

For these reasons, the Committee on Economic and Monetary Affairs and Industrial Policy calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

(Amendment 1)

Recital 8

Whereas any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation; whereas their protection helps to ensure the maintenance and development of creativity in the interests of authors, performing artists, producers, consumers, culture, industry and the public at large; whereas intellectual property has therefore been recognised as an integral part of property;

Whereas any harmonisation of copyright and related rights must take as a basis a higher level of protection, subject to the need for reasonable consumer and public interest exceptions, since such rights are crucial to intellectual creation; whereas their protection helps to ensure the maintenance and development of creativity in the interests of authors, performing artists, producers, consumers, culture, industry and the public at large; whereas intellectual property has therefore been recognised as an integral part of property;

(Amendment 2)

Recital 10a (new)

Whereas this Directive needs to promote learning and culture through protecting creative and artistic works while permitting exceptions in the public interest for the purpose of education and teaching

(Amendment 3)

Recital 12

Whereas liability for activities in the network environment concerns not only copyright and related rights but also other areas it will be addressed horizontally in the context of a forthcoming directive clarifying and harmonising various legal issues relating to Information Society services, including electronic commerce; whereas the latter initiative should come into force, as far as possible, within a time-scale similar to that of this Directive;

Whereas liability for activities in the network environment concerns not only copyright and related rights but also other areas, such as defamation, misleading advertising, or infringement of trademarks, it will be addressed horizontally in the context of a directive clarifying and harmonising various legal issues relating to Information Society services, including electronic commerce; whereas the latter initiative should come into force within a time-scale similar to that of this Directive, but not later than

this Directive;

(Amendment 4)  
Recital 13a (new)

Whereas the provisions of this Directive should be without prejudice to existing Community provisions in the area of competition law; whereas copyright law should strike an appropriate balance between providing adequate protection for rightholders and leaving appropriate scope for competition; whereas in particular copyright law should not hinder competition in emerging information society services and products;

(Amendment 5)  
Recital 14a (new)

Whereas this Directive should comply with the Berne Convention, and to the 1996 WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty;

(Amendment 6)  
Recital 14b (new)

Whereas, subject to Article 6 of this Directive, the mere manufacture or sale of consumer electronics, computer or telecommunications equipment which have the capability of reproducing works should not itself infringe any exclusive right in the area of copyright or related rights;



(Amendment 7)

Recital 22

Whereas this Directive provides for an exhaustive enumeration of exceptions to the reproduction right and the right of communication to the public; whereas some exceptions only apply to the reproduction right, where appropriate; whereas this list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning Internal Market; whereas it is desirable that Member States should arrive at a coherent application of these exceptions, which will be assessed when reviewing implementing legislation in the future;

Whereas this Directive provides for a non-exhaustive enumeration of exceptions to the reproduction right and the right of communication to the public; whereas some exceptions only apply to the reproduction right, where appropriate; whereas this list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning Internal Market; whereas it is desirable that Member States should arrive at a coherent application of these exceptions, which will be assessed when reviewing implementing legislation in the future;

(Amendment 8)

Recital 23

Whereas the exclusive right of reproduction should be subject to an exception to allow or certain acts of temporary reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling the use of protected subject matter and which have no separate economic value on their own; whereas under these conditions this exception should include acts of caching or browsing;

Whereas the exclusive right of reproduction should be subject to an exception to allow for certain acts of temporary incidental reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling the use or transmission of protected subject matter and which do not in themselves constitute a further materially independent economic exploitation on their own; whereas under these conditions this exception should include acts of caching or browsing;

(Amendment 9)  
Recital 26

Whereas Member States should be allowed to provide for an exception to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use; whereas this may include the introduction\_\_or continuation of remuneration schemes to compensate for the prejudice to rightholders; whereas, although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society; whereas digital private copying is not yet widespread and its economic impact is still not fully known; whereas, therefore, it appears justifiable to refrain from further harmonisation of such exceptions at this stage; whereas the Commission will closely follow market developments in digital private copying and will consult interested parties, with a view to taking appropriate action;

Whereas Member States should provide for an exception to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private and non-commercial use whereas this may include the introduction\_and continuation of\_existing remuneration schemes to compensate for the prejudice to rightholders, which must permit the introduction of effective technical protection and be phased out as such technical protection is introduced; whereas, although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society; whereas digital private copying is not yet widespread and its economic impact is still not fully known nor is the effectiveness of technical protection of copyright for digital equipment; whereas, therefore, it appears justifiable to refrain from further harmonisation of such exceptions at this stage; whereas the Commission will closely follow market developments in digital private copying and will consult interested parties, with a view to taking appropriate action; whereas, as a matter of principle, effective safeguards must be introduced;

(Amendment 10)  
Recital 26a (new)

Whereas acts for private and non-commercial use shall include time shift taping of an audio or audio-visual work, recording a free or licenced broadcast, creating a compilation record of selections from lawfully owned pre-recorded audio-visual works, making copies of such a work to view or hear on different equipment within the household or making backup copies of works which are unstable and at risk of damage or degradation;

(Amendment 11)  
Recital 28

Whereas Member States may provide for an exception for the benefit of establishments accessible to the public, such as non-profit-making libraries and equivalent institutions; whereas, however, this should be limited to certain special cases covered by the reproduction right; whereas such an exception should not cover uses made in the context of on-line delivery of protected works or other subject matter; whereas this Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as amended by Directive 93/98/EEC;

Whereas Member States may provide for an exception for the benefit of establishments accessible to the public, such as non-profit-making institutions, in particular libraries, archives and other educational, cultural or training establishments designated by a Member State; whereas this exception shall also cover uses made in the context of on-line delivery of protected works or other subject-matter; whereas the Commission will prepare, at such time when the implications of the new digital media on copyright law are more readily ascertainable, a proposal that delineates and harmonises the modalities under which Member States shall provide such an exception; whereas this Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as amended by Directive 93/98/EEC;



(Amendment 12)

Recital 31

Whereas such a harmonised legal protection should not inhibit decompilation permitted by Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, as amended by Directive 93/98/EEC;

Whereas the provision governing technological measures shall not supplant Article 7 of Council Directive 91/250/EC on the legal protection of computer programs (OJ L 122, 17.5.1991, p. 42); whereas in particular the legal protection for technological measures established by this directive shall not inhibit decompilation permitted by Council Directive 91/250/EC; whereas in particular the manufacture and distribution of devices which have the purpose of facilitating the acts permitted by Articles 5 and 6 of Council Directive 91/250/EC shall remain lawful;

(Amendment 13)

Article 2 - Reproduction right

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- (a) for authors, of the original and copies of their works,
- (b) for performers, of fixations of their performances,
- (c) for phonogram producers, of their phonograms,
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films, and
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the

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- (a) for authors, of the original and copies of their works,
- (b) for performers, of fixations of their performances,
- (c) for phonogram producers, of their phonograms,
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films, and
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the

air, including by cable or satellite.

air, including by cable or satellite.

(Amendment 14)  
Article 3(3)a (new)

3a. The rights referred to in paragraphs 1 and 2 do not include the mere provision of physical facilities for enabling or making a communication.

(Amendment 15)  
Article 3(3)b (new)

The exclusive right provided in paragraph 2, respectively, for phonogram producers and performers in respect of the making available of phonograms and fixations of performances incorporated in such phonograms shall not apply if a commercial phonogram forms an integrated part of a broadcasting production which is made available in a way covered by that paragraph, except where the production consists predominantly of phonograms or extracts thereof and is made available in circumstances conflicting with the normal exploitation of the phonograms and as prejudicing the legitimate interests of phonogram producers. In such cases, the phonogram producers and performers shall have the right to share a single equitable remuneration.

(Amendment 16)  
Article 5(1)

1. Temporary acts of reproduction referred to in Article 2 which are an integral part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter, and having no independent economic significance, shall be exempted from the right set out in Article 2.

1. The exceptions and limitations provided for in paragraphs 2 and 3 shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders legitimate interests or conflicts with the normal exploitation of their works or other subject matter.

Amendment 17)  
Article 5(2)

2. Member States may provide for limitations to the exclusive right of reproduction provided for in Article 2 in the following cases:

- (a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects;
- (b) in respect of reproductions on audio, visual or audio-visual recording media made by a natural person for private use and for non-commercial ends;
- (c) in respect of specific acts of reproduction made by establishments accessible to the public, which are not for direct or indirect economic or commercial advantage;

2. Member States may provide for exceptions or limitations to the exclusive right of reproduction provided for in Article 2 in the following cases:

- (a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects;
- (b) in respect of reproductions on audio, visual or audio-visual recording media made by a natural person of a copyright work, which that user otherwise has the lawful right to use, for private use and for non-commercial ends, by that person or any member of his household;
- (c) in respect of specific acts of reproduction made in or by establishments accessible to the public, which are not primarily for direct or indirect economic or commercial advantage, including reproduction for the purpose of archiving and preservation;





(Amendment 18)  
Article 5(3)

3. Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

- (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- (b) for uses for the benefit of visually-impaired or hearing-impaired persons, which are directly related to the disability and of a non-commercial nature and to the extent required by the specific disability;
- (c) use of excerpts in connection with the reporting of current events, as long as the source is indicated, and to the extent justified by the informatory purpose;
- (d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject matter which has already been lawfully made available to the public, that the source is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;
- (e) use for the purposes of public security or for the purposes of the proper performance of an administrative or judicial procedure.

3. Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

- (a) use for the sole purpose of education, learning and research as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- (b) for uses for the benefit of persons with sensory, mental and learning disabilities, and with significant physical disabilities, which are directly related to the disability and of a non-commercial nature and to the extent required by the specific disability;
- (c) use of excerpts in connection with the reporting of current events, as long as the source is indicated, and to the extent justified by the informatory purpose;
- (d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject matter which has already been lawfully made available to the public, that the source is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;
- (e) use for the purposes of public security or for the purposes of the proper performance of an administrative or judicial procedure.

(Amendment 19)  
Article 5(4)

4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and

4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and

shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter.

shall not be implemented in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter.

(Amendment 20)  
Article 5(4)b (new)

Member States shall ensure, when necessary, by such legal means as a strictly limited non-voluntary license or a legal presumption, that broadcasting organisations are entitled to use, or to authorise others to use, their own past archive productions produced or commissioned and financed by them under their own editorial control for new broadcasting or on-demand services and for other forms of multimedia exploitation such as CD-ROMs. Such use shall be subject to payment by the tv or radio producer of equitable remuneration, as appropriate, to authors, performers or other right owners who contributed to the production.

**Commented [COMMENT2]:**  
(Amendment ## by →##←)  
→##←

(Amendment 21)  
Article 6

1. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices or the performance of services, which have only limited commercially significant purpose or use other than circumvention, and which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of European

1. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices or the performance of services, the holding of rights, promotion, the supply of services or information which enable devices to be manufactured or distributed which have components or functions whose purpose is circumvention, and which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect any copyright or any rights related to

Parliament and Council Directive 96/9/EC.

2. The expression 'technological measures', as used in this Article, means that any device, product or component incorporated into a process, device or product designed to prevent or inhibit the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed 'effective' where the work or other subject matter is rendered accessible to the user only through application of an access code or process including by decryption, descrambling or other transformation of the work or subject matter, with the authority of the right holders.

copyright as provided by law or the *sui generis* right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.

2. The expression 'technological measures', as used in this Article, means that any device, product or component incorporated into a process, device or product, or any function, designed to prevent or inhibit the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

(Amendment 22)  
Article 6(1)

1. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices or the performance of services, which have only limited commercially significant purpose or use other than circumvention, and which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.

1. Member States shall provide adequate legal protection against all acts of removal, deactivation or circumvention of the application or operation of any effective technical measure designed to protect any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC, engaged in for the purpose of infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

(Amendment 23)  
Article 6(2)

The expression 'technological'      The expression "effective technological

measures`, as used in this Article, means any device, product or component incorporated into a process, device or product designed to prevent or inhibit the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed 'effective' where the work or other subject matter is rendered accessible to the user only through application of an access code or process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders;

measures", as used in this Article, means any device, product or component incorporated into a process, device or product that in the ordinary course of its operation controls access to a work or otherwise prevents or inhibits the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed "effective" where the work or other subject matter is rendered accessible to the user only through application of an access code or process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders;

(Amendment 24)

Article 11(1)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2000. They shall immediately inform the Commission thereof and shall also communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within one year after it enters into force. They shall immediately inform the Commission thereof and shall also communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

(Amendment 25)

Article 12

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities, but it shall not enter into force before the Directive on a Regulatory Framework for Electronic Commerce.

28 September 998

## **OPINION**

(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (COM(97)0628 - C4-0079/98 - 97/0359(COD)) (Barzanti report)

Committee on the Environment, Public Health and Consumer Protection

Draftsman: Mr Phillip Whitehead

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## **PROCEDURE**

At its meeting of 16 April 1998 the Committee on the Environment, Public Health and Consumer Protection appointed Mr Whitehead draftsman.

It considered the draft opinion at its meetings of 21 July 1998 and 23 September 1998.

At the latter meeting it adopted the following conclusions by 30 votes to 5 with 3 abstentions.

The following took part in the vote: Collins, chairman; Poggiolini, Dybkjær and Lannoye, vice-chairmen; Whitehead, draftsman; d'Aboville, Bowe, Cabrol, Corbett (for Apolinario), Diez de Rivera Icaza, Eisma, Feret (for Kronberger), Florenz, Graenitz, Grossetête, Hulthén, Jensen, Koch (for Flemming), Kuhn, Lienemann, Liese (for Burtone), Marinucci, Needle, Olsson, Pollack, van Putten, Roth-Behrendt, Sandbæk (for Blokland), Schlechter (for Kokkola), Schleicher, Schnellhardt, Sjöstedt, Tamino, Trakatellis, Viceconte, Virgin and White.

## **CONCLUSIONS**

The Committee on the Environment, Public Health and Consumer Protection calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

(Amendment 1)  
Recital 8

(8) Whereas any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation; whereas their protection helps to ensure the maintenance and development of creativity in the interests of authors, performing artists, producers, consumers, culture, industry and the public at large; whereas intellectual property has therefore been recognised as an integral part of property;

(8) Whereas any harmonisation of copyright and related rights must take as a basis a high level of protection, subject to the need for reasonable consumer and public interest exceptions, since such rights are crucial to intellectual creation; whereas their protection helps to ensure the maintenance and development of creativity in the interests of authors, performing artists, producers, consumers, culture, industry and the public at large; whereas intellectual property has therefore been recognised as an integral part of property;

(Amendment 2)  
Recital 17

(17) Whereas the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Directive;

Delete

(Amendment 3)  
Recital 19a (new)

(19a) Whereas Member States shall, as far as possible, co-ordinate provisions in respect of acknowledging rightholders for use of their works;

(Amendment 4)  
Recital 21

(21) Whereas a fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject matter must be

(21) Whereas a fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject matter must be



safeguarded; whereas the existing exceptions to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment, whereas existing differences in the limitations and exceptions to certain restricted acts have direct negative effects on the functioning of the Internal Market of copyright and related rights; whereas such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities; whereas in order to ensure the proper functioning of the Internal Market, such exceptions should be defined more harmoniously; whereas the degree of their harmonisation should be based on their impact on the smooth functioning of the Internal Market;

safeguarded and fair consumer and public interest practice which are part of a reasonable use of copyright works or needed for the purpose of cultural exchange and education must be permitted; whereas the existing exceptions to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment, whereas existing differences in the limitations and exceptions to certain restricted acts have direct negative effects on the functioning of the Internal Market of copyright and related rights; whereas such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities; whereas in order to ensure the proper functioning of the Internal Market, such exceptions should be defined more harmoniously the better to contribute to the smooth functioning of the Internal Market;

(Amendment 5)  
Recital 21a (new)

(21a) Whereas contractual provisions should take into account the concomitant minimum mandatory list of exemptions set out in this Directive;

(Amendment 6)  
Recital 22

(22) Whereas this Directive provides for an exhaustive enumeration of exceptions to the reproduction right and the right of communication to the public; whereas some exceptions only apply to the reproduction right, where appropriate; whereas this list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning Internal Market; whereas it is desirable that Member States should arrive at a coherent application of these exceptions, which will be assessed when reviewing implementing

(22) Whereas this Directive provides for a minimum mandatory list of exceptions to the reproduction right and the right of communication to the public; whereas some exceptions only apply to the reproduction right, where appropriate; whereas this list is based on a minimum level of harmonisation taking respects of the different legal traditions in the Member States and without prejudice to Member States' right to authorise additional exemptions under national law; whereas it is desirable that Member States should arrive at a coherent application

legislation in the future;

of these exceptions, which will be assessed when reviewing implementing legislation in the future;

(Amendment 7)  
Recital 23

(23) Whereas the exclusive right of reproduction should be subject to an exception to allow for certain acts of temporary reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling the use of protected subject matter and which have no separate economic value on their own; whereas under these conditions this exception should include acts of caching or browsing;

(23) Whereas the exclusive right of reproduction should be subject to an exception to allow for transient acts of reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling the use of protected subject matter that is authorised or otherwise permitted by law and which have no separate economic value on their own; whereas under these conditions this exception should include acts of caching or browsing;

(Amendment 8)  
Recital 24

(24) Whereas Member States should be given the option of providing for certain exceptions for cases such as educational and scientific purposes, for the benefit of public institutions such as libraries or archives, for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings;

(24) Whereas Member States should provide for certain exceptions for cases such as educational and scientific purposes, fair practice copying, for the benefit of public institutions such as libraries or archives, for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings;

(Amendment 9)  
Recital 28

(28) Whereas Member States may provide for an exception for the benefit of establishments accessible to the public, such as non-profit-making libraries and equivalent institutions; whereas, however, this should be limited to certain special cases covered by the reproduction right; whereas such an exception should not cover uses made in the context of on-line delivery of

(28) Whereas Member States shall provide for an exception for the benefit of establishments, such as libraries, archives and other cultural or training educational establishments designated by the Member State; whereas, however, this should be limited to certain special cases covered by the reproduction right; whereas such an exception should not cover uses made in the

protected works or other subject matter; whereas this Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property<sup>50</sup>, as amended by directive 93/98/EEC<sup>51</sup>;

context of on-line delivery of protected works or other subject matter; whereas this Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property<sup>50</sup>, as amended by directive 93/98/EEC<sup>51</sup>;

(Amendment 10)  
Recital 29

(29) Whereas, when applying those exceptions, they should be exercised in accordance with international obligations; whereas such exceptions may not be applied in a way which prejudices the legitimate interest of the rightholder or which conflicts with the normal exploitation of his work or other subject matter; whereas the provision of such exceptions by Member States should, in particular, duly reflect the increased economic impact that such exceptions may have in the context of the new electronic environment; whereas, therefore, the scope of certain exceptions may have to be even more limited when it comes to certain new uses of copyright works and other subject matter;

(29) Whereas, when applying those exceptions, they should be exercised in accordance with international obligations; whereas such exceptions may not be applied in a way which prejudices the legitimate interest of the rightholder or which conflicts with the normal exploitation of his work or other subject matter; whereas the provision of such exceptions by Member States should, in particular, duly reflect the increased economic impact that such exceptions may have in the context of the new electronic environment; whereas, therefore, the scope of certain exceptions may have to be reviewed when it comes to certain new uses of copyright works and other subject matter;

(Amendment 11)

Recital 33

(33) Whereas technological development will facilitate the distribution of works, notably on networks, and this will entail the need for rightholders to better identify the work or other subject matter, the author or any other rightholder, and to provide information about the terms and conditions of use of the work or other subject matter in order to render easier the management of rights attached to them; whereas, there is, however, the danger that illegal activities might be carried out in order to remove or alter the electronic copyright-management information attached to it, or otherwise to distribute, import for distribution, broadcast, communicate to the public or make available to the public copies from which such information has been removed without authority; whereas in order to avoid fragmented legal approaches that could potentially hinder the functioning of the Internal Market, there is a need to provide for harmonised legal protection against any of those activities;

(33) Whereas technological development will facilitate the distribution of works, notably on networks, and this will entail the need for rightholders to better identify the work or other subject matter, the author or any other rightholder, and to provide information about the terms and conditions of use of the work or other subject matter in order to render easier the management of rights attached to them; whereas, there is, however, the danger that illegal activities might be carried out in order to remove or alter the electronic copyright-management information attached to it, or otherwise to distribute, sell or let for hire, import for distribution, broadcast, communicate to the public or make available to the public, promote or market copies from which such information has been removed without authority; whereas the publishing, marketing or promotion of information should not encourage such illegal activities; whereas in order to avoid fragmented legal approaches that could potentially hinder the functioning of the Internal Market, there is a need to provide for harmonised legal protection against any of those activities;

(Amendment 12)

Recital 36

(36) Whereas Member States should provide for effective sanctions and remedies for infringements of rights and obligations as set out in this Directive; whereas they shall take all the measures necessary to ensure that those sanctions and remedies are applied; whereas the sanctions thus provided for shall be effective, proportionate and dissuasive;

(36) Whereas Member States should provide for effective sanctions, remedies and enforcement procedures for infringements of rights and obligations as set out in this Directive; whereas they shall take all the measures necessary to ensure that those sanctions and remedies are applied; whereas the sanctions thus provided for shall be effective, proportionate and act as a deterrent to further infringement;

(Amendment 13)  
Chapter I, Article 1(1)

This Directive concerns the legal protection of copyright and related rights in the framework of the Internal Market, with particular emphasis on the Information Society.

This Directive concerns the legal protection of copyright and related rights in the framework of the Internal Market, with particular emphasis on the Information Society. The protection of related rights pursuant to this Directive shall not diminish or modify in any way the protection granted by copyright.

(Amendment 14)  
Chapter II, Article 2, introductory paragraph

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, including incidental, transient and ephemeral copies:

(Amendment 15)  
Chapter II, Article 2, point (a)

a) for authors, of the original and copies of their works,

a) for authors, of their works,

(Amendment 16)  
Chapter II, Article 3, first paragraph

Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of originals and copies of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works however derived, by wire or wireless means, including the making available to the public of their works in such a way that individuals may access them from a place and at a time individually chosen by them.

(Amendment 17)  
Chapter II, Article 3(2), introductory paragraph

Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

Member States shall provide for the exclusive right to authorise or prohibit the making available, by wire or wireless means, in such a way that individuals may access them from a place and at a time individually chosen by them:

(Amendment 18)  
Chapter II, Article 5(1)

Temporary acts of reproduction referred to in Article 2 which are an integral part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter, and having no independent economic significance, shall be exempted from the right set out in Article 2.

Transient acts of reproduction referred to in Article 2 which are an integral part of a technological process and essential to its functioning and which have the sole purpose of enabling use to be made of a work or other subject matter, shall be exempted from the right set out in Article 2.

(Amendment 19)  
Chapter II, Article 5(2), introductory paragraph

2. Member States may provide for limitations to the exclusive right of reproduction provided for in Article 2 in the following cases:

2. Member States shall provide for an exception or limitation to the exclusive right of reproduction provided for in Article 2 in the following cases:

(Amendment 20)  
Chapter II, Article 5(2)(a)

(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects;

(a) in respect of reproductions on paper or any similar medium, except reproductions of musical works, effected by the use of any kind of photographic technique or by some other process having similar effects once they are carried out for private use and for non-commercial purposes which are not to the detriment of the edition of the original work;

(Amendment 21)  
Chapter II, Article 5(2)(b)

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| (b) in respect of reproductions on audio, visual or audio-visual recording media <u>made by a natural person for private use and for non-commercial ends;</u> | (b) in respect of reproductions on audio, visual or audio-visual recording media <u>where:</u><br>(i) <u>the reproduction is made by a natural person for private use and for no direct or indirect economic advantage, and</u><br>(ii) <u>the reproduction is not made in the course of and/or as a result of the making available to the public of works in such a way that members of the public may access them from a place and at a time individually chosen by them, and</u><br>(iii) <u>the rightholders are paid proper remuneration under schemes relating to all hardware and/or software of the type used in the making of such reproductions</u> |
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(Amendment 22)  
Chapter II, Article 5(2)(c)

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| (c) in respect of specific acts of reproduction made by establishments <u>accessible to the public</u> , which are not for direct or indirect economic or commercial advantage; | (c) in respect of specific acts of reproduction made <u>including those in libraries, archives and other educational, cultural or training establishments designated by the Member State</u> , which are not <u>primarily</u> for direct or indirect economic or commercial advantage <u>including reproduction for the purpose of archiving and preservation;</u> |
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(Amendment 23)  
Chapter II, Article 5(3), first paragraph

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| 3. Member States <u>may</u> provide for limitations to the rights referred to in Articles 2 and 3 in the following cases: | 3. Member States <u>shall</u> provide for limitations to the rights referred to in Articles 2 and 3 in the following cases: |
|---|---|

(Amendment 24)  
Chapter II, Article 5(3)(a)

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| (a) use for the sole purpose of <u>illustration for teaching or scientific research</u> , as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved; | (a) use for the sole purpose of <u>education, learning, research and for private purposes</u> , as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved; |
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(Amendment 25)  
Chapter II, Article 5(3)(b)

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| (b) for uses for the benefit of visually-impaired or hearing-impaired persons, which are directly related to <u>the disability and of a non-commercial nature and to the extent required by the specific disability</u> ; | (b) for uses for the benefit of visually-impaired or hearing-impaired persons, which are directly related to <u>the nature of a physical, mental or learning disability of a non-commercial nature</u> ; |
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(Amendment 26)  
Chapter II, Article 5(3)(c)

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| (c) use of <u>excerpts in connection with the reporting of current events</u> , as long as the source is indicated, and to the extent justified by the <u>informatory purpose</u> ; | (c) use <u>for the purposes of reporting of current events</u> , as long as the source is indicated, and to the extent justified by the <u>informatory purpose and in line with fair practice as set out in paragraph 3a below</u> ; |
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(Amendment 27)  
Chapter II, Article 5(3)(d)

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| (d) <u>quotations</u> for purposes such as criticism or review, provided that <u>they relate to a work or other subject matter which has already been lawfully made available to the public</u> , that the source is indicated, and that their use is in accordance with fair practice, and to the extent | (d) <u>use</u> for purposes such as criticism or review, provided that the source is indicated, and that their use is in accordance with fair practice <u>as set out in paragraph 3a below</u> , and to the extent required by the specific purpose; |
|---|--|



required by the specific purpose;

(Amendment 28)  
Chapter II, Article 5(3a) (new)

3a. Member States shall provide for an exception to the exclusive right of copyright or other related rights for any fair practice use of a copyright work. In determining whether the use of a work in any particular case is a fair practice, the factors to be considered shall include but not be limited to:

- i. The purpose and character of the use, including whether such use is of a commercial nature or is for a non-profit making or private purpose and, in the case of reproduction, the number of copies to be made;
- ii. The nature of the copyright work;
- iii. The amount and significance of the part used in relation to the copyright work as a whole;
- iv. The effect of the use upon the potential market for, or value of, the copyright work including the rightholders' ability to share in any remuneration claimed by the agency of reproduction;
- v. The explicit acceptance by the beneficiary of any of the above exceptions of the rightholders' legal ownership of any such copyright work.

(Amendment 29)  
Chapter II, Article 5(4)

4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the

4. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 3a shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the

rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter.

rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter.

(Amendment 30)  
Chapter II, Article 5(4a) (new)

4a. Any contractual provision contrary to Article 5 shall be null and void.

(Amendment 31)  
Chapter III, Article 6

1. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices or the performance of services, which have only limited commercially significant purpose or use other than circumvention, and which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of European Parliament and Council Directive 96/9/EC<sup>55</sup>.

2. The expression "technological measures", as used in this Article, means any device, product or component incorporated into a process, device or product designed to prevent or inhibit the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed "effective" where the work or other subject matter is rendered accessible to the user only through application of an access code or process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the

1. Member States shall provide adequate legal protection and effective remedies against any activities, including the manufacture and distribution of any devices or services, and the performance of services, which are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures designed to protect or limit the exercise of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of European Parliament and Council Directive 96/9/EC<sup>55</sup> except where these have a substantial non-infringing purpose upon which they can be authorised by the rightholders or otherwise permitted in law.

2. The expression "effective technological measures", as used in this Article, means any device, product or component incorporated into a process, device or product that in the ordinary course of its operation controls access to a work or otherwise prevents or inhibits the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed "effective" where the work or other subject matter is rendered accessible to the user only through application of an access code or process, including by decryption, descrambling or other transformation of the work or other

rightholders.

subject matter, with the authority of the rightholders.

(Amendment 32)  
Chapter III, Article 7

1. Member States shall provide for adequate legal protection against any person performing without authority any of the following acts:

(a) the removal or alteration of any electronic rights-management information,

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public, of copies of works or other subject matter protected under this Directive or under Chapter III of Directive 96/9/EC from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling or facilitating an infringement of any copyright or any rights related to copyright as provided by law, or of the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

2. The expression "rights-management information", as used in this Article, means any information provided by rightholders which identifies the work or other subject matter referred to in this Directive or covered by the *sui generis* right provided for in Chapter III of Directive 96/9/EC, the

1. Member States shall provide for effective and enforceable legal sanctions and remedies against any person performing without authority any of the following acts:

(a) the removal or alteration of any electronic rights-management information,

(b)(i) the manufacture, distribution, importation for distribution, sale or letting for hire, broadcasting, communication or making available to the public and marketing or promotion of works or copies of works or other subject matter protected under this Directive or under Chapter III of Directive 96/9/EC from which electronic rights-management information has been removed or altered without authority, or

(ii) the publishing, marketing or promotion of information which induces, enables or facilitates the removal or alteration of any electronic rights management information,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling or facilitating an infringement of any copyright or any rights related to copyright as provided by law, or of the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

2. The expression "rights-management information", as used in this Article, means any information provided by rightholders which identifies the work or other subject matter referred to in this Directive or covered by the *sui generis* right provided for in Chapter III of Directive 96/9/EC, the

author or any other rightholder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

The first subparagraph shall apply when any of these items of information are associated with a copy of, or appear in connection with the communication to the public of, a work or other subject matter referred to in this Directive or covered by the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

author or any other rightholder, or information about the terms and conditions of use of the work or other subject matter, or interface codes and routing devices between databases and systems which hold the necessary information, and any numbers or codes that represent such information.

The first subparagraph shall apply when any of these items of information are associated with a copy of, or appear in connection with the communication to the public of, a work or other subject matter referred to in this Directive or covered by the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

(Amendment 33)  
Chapter IV, Article 8(1)

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and act as a deterrent to further infringement.

(Amendment 34)  
Chapter IV, Article 11(2)

Not later than at the end of the second year after the date referred to in paragraph 1 and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, in which, *inter alia*, on the basis of specific information supplied by the Member States, it shall examine in particular the application of Articles 5, 6 and 8. Where necessary to ensure the functioning of the Internal Market pursuant to Article 7a of the Treaty, it shall submit proposals for amendments of this Directive.

Not later than at the end of the second year after the date referred to in paragraph 1 and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, in which, *inter alia*, on the basis of specific information supplied by the Member States, it shall examine in particular the application of Articles 5, 6 and 8. Not later than at the end of the fifth year after the date referred to in paragraph 1, it shall submit a revised version of the provisions of Article 5 with a view to ensuring harmonisation, in the sense of greater protection, of the copyright and related

rights.

(Amendment 35)

Chapter IV, Article 11 (2a) (new)

In the report referred to in paragraph 2 the Commission shall investigate the extent to which commitments (such as licences) contractually entered into between the relevant rightholders and the users of protected materials, such as libraries and comparable bodies, can form a favourable solution to the fair use of digitalised works at an affordable price.

(Amendment 36)

Chapter IV, Article 11 (2b) (new)

A contact committee of the Member States shall ensure consistency in implementation of the proposals in Article 5(2) to (4) and to guarantee a non-contentious interpretation of the concept of 'unreasonably prejudices' referred to in Article 10.

## **GENERAL COMMENTS**

The proposed Directive on copyright and related rights in the Information Society (COM(97)0628) is the result of the deliberations which followed the Commission's 1995 Green Paper (COM(95)0382). It is timely, following the negotiation of the World Intellectual Property Organisation (WIPO) treaties in late 1996, and the surge of new forms of electronic communications in the digital era. The latter are proving to be a dynamic force within the European single market, but not one which necessarily makes common practice within Member States, nor the tensions between rights holders and users, easy to resolve.

The Directive has been awaited with a mixture of expectation and foreboding. Authors, composers, performers, broadcasters and phonogram producers know that the very technology which allows them to transmit their material both more specifically and more widely than ever before also offers unparalleled opportunities to the pirate and the parasite. Unless talent is fostered and remunerated it will shrivel, with consequences both for the consumer and user and for the substantial employment creation which adapts this creative content as software for the new multiple markets.

The consumer and user, however, have other concerns, which go to the heart of the balance which the Directive attempts to strike. The Commission intends that it should be "a balance between, on the one hand, providing the strongest possible incentives to encourage the creation of original works... and, on the other, facilitating the dissemination of such works to users". Rights users are concerned that in a Directive which protects their access only in an exhaustive list of exceptions, which are not themselves harmonised but dependent on the practices of the Member States, may erode established forms of access. Rights holders, too, may not be the creators of original work or production, but others who have moved in to buy out their interest and use copyright to see what the market can bear.

This rapporteur can well understand the difficulties that have to be resolved. Having been a rights holder in written and broadcast material, but also dependent on responsible public interest access for educational and journalistic reasons, he sees how the assertion of rights and the protection of fair use can appear to be opposed. Balancing the claims of rights holders users, and indeed service providers will never be easy.

The opinion of the Environment, Public Health and Consumer Protection Committee must concern itself principally with fair consumer and public interest practice. The Directive rightly sets out the exclusive rights of copyright holders before it deals with the exceptions to their unlimited exercise. The question is how clearly this is done and how far that clarity also applies to the exceptions set out in Article 5. This Committee has no quarrel with the search for a broad and comprehensive definition of the reproduction right, whether on-line or off-line. It is in the consumers' interest that ownership should always be acknowledged and reproduction authorised. Piracy sometimes wears the mask of anarchy, or a cheerful libertarianism, but the non remuneration of rights holders in valid circumstances ultimately reduces the rewards from which the on-going creative activity should be financed.

There should be no faint hearted qualification of the protection of the right of reproduction for authors, performers, producers and the organisations involved in the preparation of original work, permanent or temporary.

When the Directive moves on to define “communication to the public” in terms of rights, however, the problems multiply. “The public” can have as many definitions as there are Member States. It comprises as many individuals as there are in society, in the inter-active age, whether a work is offered individually or severally to those who visit the site. The subsequent transference can be instantaneous, can leave a down-loaded product or a transient experience, and in the digital age opens the threat of reproduction and storing which is as perfect as it is illicit.

Rights holders, particularly in the music field, have tended to argue that because the threat is greater, the protection afforded to them must be changed in its nature. The consumer will not necessarily take this view. Expectations of access built up in the old world of print and analogue communications will not be abandoned in the new. In a majority of Member States the private copying of audio and audiovisual material for strictly private purposes has long been allowed, often balanced by levy systems on copying materials.

The digital revolution has crept up on this world of de facto exemptions from a reproduction right like a thief in the night - almost literally so since the burgeoning world of e-commerce sees its new channels of communication and delivery laid open to pirates of every form. The critical question for this Committee is whether digitalisation should close down those exemptions to protect rights holders. Digital is different, but is it that different? This is the dilemma at the heart of Article 5 of the proposed Directive, where the debate about the public interest and the consumer is joined.

The European Fair Practices in Copyright Campaign (EFPICC), representing a number of consumers groups, campaigns for the disabled, and broadcasters concerned about the right of incidental reproduction recognised in the Berne Conventions, is disturbed by Article 5, as drafted. It has argued that “if the proposed Directive does not guarantee fair practice exemptions throughout the EU, there is a real danger that they will become unlawful in the individual member states .... contrary to the public interest.”

Your rapporteur shares this concern. Disabled groups are particularly vulnerable, given the additional difficulty in making audio, audio-visual and braille versions available to them. Broadcasters, too, feel they may be cut off from classic archive material (even in some cases produced initially by themselves) if copyright is amassed and monopolistically used by large distributors, in new media forms. Article 5 should be strengthened by a minimum mandatory list of exceptions to the reproduction right and the right of communication to the public, taking due account of Member States differing legal traditions. Without it some of them may allow all prior exemptions to become unlawful. The degree of harmonisation, without a minimum mandate, would be nugatory. Member States should equally have a mandatory duty to provide for clear exceptions (subject to acknowledgement of the rights holder) for libraries, archives and designated cultural or training establishments, where their work would otherwise be curtailed and diminished. Fair practice exceptions have to be allowed for, as Member States assess the balance of public interest.

A reasonable exchange of protections can, of course, be demanded by rights holders. It is proposed that Articles 6 and 7 should be strengthened so that acts and devices which permit infringement of rights for non-authorised purposes can be more effectively outlawed. Rights holders have wanted to be specific about such measures, yet have opposed the clear definition in Article 6(2) of clearance for designated users with the authority through appropriate coding, of

rights holders. Effective legal measures against unauthorised users are the quid pro quo, in the opinion of this Committee, for exceptions where the public interest can be demonstrated.

The consumer's contribution to the Information Society will always be proportionate to the flexibility of its offerings, of learning, of culture, of redress for inbuilt disadvantages of health or locality. Rights holders deserve protection, and legal sanctions to enforce it, but that cannot be at the expense of these other elements in the social fabric, where information will always mean empowerment.



28 September 1998

**OPINION**  
(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the proposal for a European Parliament and Council directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (COM(97)0628 - C4-0079/98 -97/0359(COD)) (report by Mr Barzanti)

Committee on Culture, Youth, Education and the Media

Draftsman: Mrs Maren Günther

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**PROCEDURE**

At its meeting of 31 March 1998 the Committee on Culture, Youth, Education and the Media appointed Mrs Maren Günther draftsman.

It considered the draft opinion at its meetings of 23 June, 20 July, 2 and 24 September 1998.

At the last meeting it adopted the following conclusions unanimously with one abstention.

The following were present for the vote: Pex, chairman; Hawlicek, vice-chairman; Günther, draftsman; Daskalaki (for Guinebertière), Elchlepp (for Ahlqvist), Evans, Feret, Filippi (for Baldi, pursuant to Rule 138(2)), Fourcans (for Boniperti, pursuant to Rule 138(2)), Gröner, Heinisch, Kerr, Kuhne, Monfils, Pailler, Perry, Poisson, Porto (for Banotti, pursuant to Rule 138(2)), Ryyänen, Sanz Fernandez, Seillier, Tongue and Vaz da Silva.

**INTRODUCTION**

1. Owing to rapid technological developments in digital on-line and off-line applications, copyright is at present undergoing a radical change. World-wide availability of data and information on new media such as the Internet are increasingly jeopardising national copyright provisions. For this reason practically all the interest groups involved are pointing out the need for European legislation to be adopted. The directive does not raise any problems with regard to the principle of subsidiarity.

2. On 19 July 1995, the Commission submitted a Green Paper on Copyright and Related Rights in the Information Society, COM(95)0382 final. Following an extensive consultation process the measures proposed on the basis of the Green Paper were set out in the communication of 20.11.1996, COM(96)0568 final. On 10 December 1997, the Commission at last submitted a proposal for a directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (COM(97)0628 final) which is the subject of this opinion.
3. The declared objective of the proposal for a directive is on the one hand to speed up the harmonisation of copyright in the Member States in order to remove obstacles to products and services protected by copyright in the European internal market and, on the other, to transpose into European law the essential obligations and protection standards contained in the WIPO treaties adopted in December 1996 (WIPO Copyright Treaty - WCT and WIPO Performances and Phonograms Treaty - WPPT). In some cases, in line with the current state of Community law, a higher level of protection for authors and other rightholders than at international level is sought.
4. The proposal for a directive attempts to achieve a balance between the mostly different and often conflicting rights and interests of rightholders, industry and users. Thus on the one hand, the intention is to protect the creativity of content creators and strengthen it vis-à-vis world-wide competitors and on the other to avoid restricting the innovative potential of the industry and, last but not least, not to lose sight of the interests of consumers.
5. The Commission proposal is structured so that the exclusive rights of authors and other rightholders are laid down first of all and only afterwards an exhaustive list of exceptions to those rights in compliance with obligations under international law, especially the new WIPO Treaties. The aim of the latter is to ensure equal conditions throughout the Community with regard to copyright and related rights to the extent to which this is necessary for the completion of the internal market, and at the same time to leave the Member States sufficient discretion to maintain their national legal and cultural traditions.
6. The harmonisation provisions laid down in the draft directive cover the reproduction right, the right of communication to the public including giving interactive access to protected subject-matter and the distribution right as well as the legal protection of anti-copying systems. Issues of liability with regard to suppliers of on-line services are not dealt with in the directive as the Commission takes the view that this is a horizontal issue covering various different legal areas. The Commission intends to submit by the end of 1998 a separate proposal for a directive which will also resolve inter alia issues relating to liability.
7. Harmonisation of copyright and related rights is of great importance for intellectual creation; their protection helps to ensure the maintenance and development of creativity in the interests of authors, performing artists, producers and consumers. Through the directive on the protection of copyright and related rights the Community is thus also fulfilling its cultural obligation pursuant to Article 128 of the EEC Treaty.
8. In the medium and long term authors and performing artists can only be creative if they are properly paid for the use of their work. The further development of private copying deserves special attention in this connection. The reproduction of audio, visual or audio-visual material for purely private purposes is exempt from the exclusive right of reproduction in most Member States. In order to compensate rightholders for the losses thereby incurred, 11 of the 15 Member States provide for remuneration schemes which vary in form and extent. In most

Member States no distinction is made between analogue and digital technology. Digital private copying has two new characteristics compared with analogue copying: on the one hand any number of copies in master quality can be made (clones) and on the other, thanks to new media technologies, far-reaching dissemination is possible. The risks arising out of this for rightholders are substantial and will in the future increase rather than decrease with the rapid dissemination of digital technology. The new technologies will however in future also make it possible to prevent uncontrolled distribution of works, over and beyond purely private use and to the disadvantage of rightholders, by means of technical protection standards.

9. In the case of on-line transmissions through the networks particularly it is probable that there will be a large increase in use. In addition to extended information and communication facilities for citizens, the new technology also involves an increased risk of piracy. Rightholders should therefore be able to protect their intellectual property by means of technological identification and protection schemes. It is therefore of great importance to provide legal safeguards in respect of these protection schemes. In order to avoid a varying level of protection in Europe and the consequent distortions of competition, Community provisions with regard to this issue are very welcome.
10. Within the information and knowledge society, book shops, scientific and public libraries and archives have an increased role to play as the 'hub of knowledge'. Their efficiency and adaptability must also be ensured in the digital environment.
11. Owing to the global interdependence of the aspects addressed in the directive, it must be ensured that the legal framework to be introduced by the EU is in harmony with the main points of the legislation of third countries which dominate the market in this field. What is important is to prevent rightholders and content creators from being put at a disadvantage in global competition.
12. Because of unforeseeable technological developments and their consequences for copyright and related rights it is particularly important to examine the application of the directive after two years and subsequently at three yearly intervals. If the balance of interests between the leading players is not ensured the Commission will, after consultation with the parties involved, submit corresponding amendments to this directive to the European Parliament, the Council and the Economic and Social Committee.

## **CONCLUSIONS**

The Committee on Culture, Youth, Education and the Media calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

(Amendment 1)  
Recital 3

Whereas a harmonised legal framework on copyright and related rights, through increased legal certainty, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors; whereas this will safeguard employment and encourage new job creation;

Whereas a harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a high level of protection of intellectual property, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors; whereas this will safeguard employment and encourage new job creation;

(Amendment 2)  
Recital 9

Whereas if authors or performing artists are to continue their creative and artistic work they have to receive an appropriate reward for the use of their work; whereas the investment

Whereas if authors or performing artists are to continue their creative and artistic work they have to receive an appropriate reward for the use of their work, as must producers in order

required to produce products such as phonograms, films or multimedia products, and services such as "on-demand" services, is considerable; whereas adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment;

to be able to finance this creative work; whereas the investment required to produce products such as phonograms, films or multimedia products, and services such as "on-demand" services, is considerable; whereas adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment;

(Amendment 3)

Recital 16

Whereas the legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject matter protected by related rights over networks should be overcome by providing for harmonised protection at Community level; whereas it should provide all rightholders recognised by the Directive with an exclusive right to make available to the public copyright works or any other subject matter by way of interactive on-demand transmissions; whereas such interactive on-demand transmissions are characterised by the fact that members of the public may access them from a place and at a time individually chosen by them; whereas this right does not cover private communication;

Whereas the legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject matter protected by related rights over networks should be overcome by providing for harmonised protection at Community level; whereas it should provide all rightholders recognised by the Directive with an exclusive right to make available to the public copyright works or any other subject matter by way of interactive on-demand transmissions; whereas such interactive on-demand transmissions are characterised by the fact that members of the public may access them from a place and at a time individually chosen by them; whereas this right does not cover private communication, without prejudice to its application in connection with Internet, Extranet and electronic mail services;

(Amendment 4)

Recital 23

Whereas the exclusive right of reproduction should be subject to an exception to allow certain acts of temporary reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling the use of protected subject matter and which have no separate economic value of their

Whereas the exclusive right of reproduction should be subject to an exception to allow certain acts of transient and temporary reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling an authorised use of protected subject matter and have no economic significance to the rightholders in such subject matter permitted by contract or by law; whereas under these

own; whereas under these conditions this exception should include acts of caching or browsing;

conditions this exception should include acts of caching or browsing;

(Amendment 5)  
Recital 25

Whereas existing national schemes on reprography, where they do exist, do not create major barriers to the Internal Market; whereas Member States should be allowed to provide for an exception in respect of reprography;

Whereas Member States should be allowed to provide for an exception in respect of reprography; whereas to compensate for the resulting losses to rightholders, provision should be made, at the very least, for rightholders to have a claim to appropriate remuneration from operators of reprographic equipment offering the use thereof for valuable consideration;

(Amendment 6)  
Recital 26

Whereas Member States should be allowed to provide for an exception to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use; whereas this may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders; whereas, although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society; whereas digital private copying is not yet widespread and its economic impact is still not fully known; whereas, therefore, it appears justifiable to refrain from

Whereas Member States should be allowed to provide for an exception to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use; whereas this may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders; whereas, although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society; whereas digital private copying will be of great economic importance in the future, in both the offline and online field; whereas very widespread uncontrolled

further harmonisation of such exceptions at this stage; whereas the Commission will closely follow market developments in digital private copying and will consult interested parties, with a view to taking appropriate action;

digital copying would strongly affect the interests of rightholders and might in the medium or long term endanger their ability to survive in the digital field; whereas negotiations between the economic sectors involved should be encouraged with a view to the development of effective technological protection measures; whereas if it proves impossible to achieve technical protection standards in the field of digital private copying, an appropriate remuneration scheme must be established;

(Amendment 7)  
Recital 27

Whereas, when applying the exception on private copying, Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available; whereas such exceptions should not inhibit the use of technological measures;

Whereas, when applying the exception on private copying, Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available; whereas such exceptions should not inhibit the use of technological measures or their enforcement against circumvention;

(Amendment 8)  
Recital 38a (new)

Whereas it would be desirable for this directive to come into force only after the entry into force of the directive on horizontal liability;

(Amendment 9)  
Article 1(1)



1. This Directive concerns the legal protection of copyright and related rights in the framework of the Internal Market, with particular emphasis on the Information Society.

1. This Directive concerns the legal protection of copyright and related rights in the framework of the Internal Market, with particular emphasis on the Information Society. The protection conferred on related rights by this Directive shall be without prejudice to and shall not in any way alter the protection conferred by copyright.

(Amendment 10)  
Article 1(2)a (new)

2a. Any natural person who has contributed to the intellectual creation of the work shall be regarded as its author or coauthor. Unless otherwise proven, the following shall be presumed to be authors or coauthors of a cinematographic, audiovisual or multimedia work: the principal director, the author of the scenario, the script-writer and the composer of music written specifically for use in the cinematographic or audiovisual work.

(Amendment 11)  
Article 3(3)a (new)

The mere act of making material facilities available to permit or carry out an act of communication shall not constitute an act of communication within the meaning of this directive.

(Amendment 12)  
Article 5(1)

1. Temporary acts of reproduction referred to in Article 2 which are an integral part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter, and having no independent

1. Transient and incidental acts of reproduction referred to in Article 2 which are an integral and essential part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter, taking place within

economic significance, shall be exempted from the right set out in Article 2.

the context of the exercise of a contractual or statutory right and having no independent economic significance, shall be exempted from the right set out in Article 2.

(Amendment 13)  
Article 5(2), introductory sentence

2. Member States may provide for limitations to the exclusive right of reproduction provided for in Article 2 in the following cases:

2. Member States may provide for limitations to the exclusive right of reproduction provided for in Article 2 if the work has been lawfully published and on condition that the authors at least receive payment in compensation for these limitations, in the following cases:

(Amendment 14)  
Article 5(2)(a)

(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects;

(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects; if Member States make use of these exceptions, they shall at the same time provide, at the very least, for a claim to the payment of appropriate remuneration from persons making available for valuable consideration equipment to make such reproductions;

(Amendment 15)  
Article 5(2)(b)

(b) in respect of reproductions on audio, visual or audio-visual recording media made by a natural person for private use and for non-commercial ends;

(b) in respect of single reproductions on audio, visual or audio-visual analogue recording media made by a natural person purely for his own private use and for non-commercial ends; if Member States provide for such an exception, they shall at the same time,

at the minimum, stipulate that rightholders are entitled to payment of appropriate remuneration;

2. in respect of single reproductions on audio, visual or audio-visual digital recording media made by a natural person purely for his own private use for non-commercial ends and with no further dissemination to third parties, provided that the interests of the rightholders are protected by technical safeguards or a remuneration scheme;

(Amendment 16)  
Article 5(2)(c)

(c) in respect of specific acts of reproduction made by establishments accessible to the public, which are not for direct or indirect economic or commercial advantage;

(c) in respect of specific acts of reproduction, i.e. preservation and conservation made in or by non-profit establishments such as public and scientific libraries and archives, which are not for direct or indirect economic or commercial advantage;

(Amendment 17)  
Article 5(3)

Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

Member States may provide for exceptions to the rights referred to in Articles 2 and 3 in the following cases:

(Amendment 18)  
Article 5(3), introductory sentence

3. Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

3. Member States may provide for limitations to the rights referred to in Articles 2 and 3, with the proviso that the source and the name of the author must be acknowledged, in the following cases:

(Amendment 19)  
Article 5(3)(a)

(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(a) use of short excerpts from works lawfully made available to the public and for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(Amendment 20)  
Article 5(3)(b)

(b) for uses for the benefit of visually-impaired or hearing-impaired persons, which are directly related to the disability and of a non-commercial nature and to the extent required by the specific disability;

(b) for uses of a non-commercial nature to the benefit of persons with sensory, mental and learning disabilities, and with significant physical disabilities, which affect their ability to access and use the material in question and to the extent required by the specific disability;

(Amendment 21)  
Article 5(3)(c)

(c) use of excerpts in connection with the reporting of current events, as long as the source is indicated, and to the extent justified by the informatory purpose;

(c) use of short excerpts in connection with the reporting of current events, as long as the source is indicated, and to the extent justified by the informatory purpose;

(Amendment 22)  
Article 5(4)

4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter.

4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter. These exceptions and limitations shall not inhibit the use of technical measures by rightholders, nor prejudice the protection of such measures under Article 6.

(Amendment 23)  
Article 5(4)a (new)

4a. Member States shall take appropriate measures to ensure that broadcasting enterprises are permitted to use, or allow the use of, their own archived productions for on-line and on-demand services as well as for other forms of multimedia exploitation. 'Own production' shall mean any production produced or commissioned and financed by the broadcasting enterprise under its editorial supervision. In cases of doubt, authors and holders of related rights shall be entitled to appropriate remuneration.

(Amendment 24)  
Article 6(1)

1. 1. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices or the performance of services, which have only limited commercially significant purpose or use other than circumvention, and which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.

1. Member States shall provide adequate legal protection and effective remedies against any circumvention of effective technological measures designed to protect any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.

2. Member States shall provide adequate legal protection against any activities or measures aimed at circumvention, including:

- (a) the manufacture or distribution of any technology, device, product, component or part thereof manufactured or designed for enabling or facilitating circumvention;
- (b) the manufacture or distribution of any technology or devices which have no commercially significant purpose or use other than circumvention;
- (c) the performance of services for the purpose of circumvention;
- (d) the promotion, advertising or marketing of a technological device, product, component or part thereof for the purpose of circumvention of any effective technological measures designed to protect any copyright or any rights related to copyright as provided by law or the *sui generis*

right provided for in Chapter III of European Parliament and Council Directive 96/9/EC, or the exercise of any right thereunder.

(Amendment 25)  
Article 6(2)

2. The expression 'technological measures', as used in this Article, means any device, product or component incorporated into a process, device or product designed to prevent or inhibit the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed 'effective' where the work or other subject matter is rendered accessible to the user only through application of an access code or process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders.

2. The expression 'effective technological measures', as used in this Article, means any technology, device, product or component incorporated into a process, device or product the use of which is designed to prevent or inhibit the infringement of any copyright or any rights related to copyright as provided by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed 'effective' where access to the work or other subject matter is controlled through application of an access code or process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders.

(Amendment 26)  
Article 8(2)

2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material.

2. Member States shall ensure that parties to a dispute over rights may call upon the assistance of one or more mediators. The mediators shall be selected in such a way that their independence and impartiality are beyond reasonable doubt.

(Amendment 27)  
Article 9(4)a (new)

4a. Exercise of copyright as provided for by the Directive

When an author transfers or cedes his exclusive right of reproduction, communication to the public or distribution, he shall receive in return reasonable remuneration proportional to the revenue from the exploitation of his work. The author may not renounce this remuneration.

(Amendment 28)  
Article 12

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

The date of entry into force of the Directive on aspects of horizontal liability shall not differ excessively from that of the present Directive.