1. Introduction

Under cover of a letter dated 11 January 1989 the Commission sent the Council a proposal for a Council Directive on the legal protection of computer programs (5682/89 PI 25). This proposal is based on Article 100a of the Treaty establishing the European Economic Community.
The Working Party on Intellectual Property has met on five occasions (1) to examine the Commission proposal and has identified a number of problems which it hereby submits to the Permanent Representatives Committee in preparation for a policy debate by the Council (Internal Market) at its meeting on 23 November 1989. The latest reading of the proposal was carried out on the basis of a consolidated text drawn up by the Presidency and contained in 9304/89 P1 68.

2. Protection given

The Commission proposes that computer programs should be protected as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works (Article 1(2) in 9304/89). The Belgian, Danish, German, Irish and United Kingdom delegations support this proposal.

The Greek, Spanish and Italian delegations, however, take the view that computer programs should be protected as works within the meaning of the Berne Convention without specifying that they are literary works. The French, Netherlands and Portuguese delegations expressed a preference for the latter position, but were prepared to be flexible.

(1) On 10 July, 24 and 25 July, 14 and 15 September, 12 and 13 October and 30 and 31 October 1989.
The Permanent Representatives Committee is asked to decide whether computer programs should be protected as literary works or simply as works without the description "literary".

3. Extent of protection

The Commission proposes that it be stipulated that protection under the Directive shall not extend to the ideas, principles, logic, algorithms or programming languages underlying the program and that where the specification of interfaces constitutes ideas and principles which underlie the program, those ideas and principles are not copyrightable subject matter (Article 1(3) in the original Commission proposal; Article 1(2) in 9304/89).

All delegations wanted these stipulations deleted on the grounds that it was a general principle of copyright that ideas and principles could not be protectable.

The Permanent Representatives Committee is asked to decide whether or not the more detailed form of this provision as proposed by the Commission should be retained.
4. Programs generated by means of a computer

The Commission has proposed a provision concerning the protection of programs generated by computer (Article 1(3)(b) in 9304/89).

A large majority of delegations thought such a provision was premature at the present state of the art.

Only the Irish and United Kingdom delegations shared the Commission's view that it would be useful to include such a provision at this stage.

The Permanent Representatives Committee is asked to state whether it would be useful to include a provision of this kind in the Directive.

5. Computer programs created under a contract

The Commission proposes that where a computer program is created under the terms of a contract, the person who commissioned it shall be entitled to exercise all rights in respect of the program, unless otherwise provided by contract (Article 3(2) in 9304/89). The Italian delegation supports this proposal.

The other delegations wanted this provision deleted, arguing that this matter should be settled in the contract between the author of the program and the person who commissioned it.
The Permanent Representatives Committee is asked to state whether such a provision would be useful.

6. Beneficiaries of protection where the computer program is created by a group of persons jointly

The Commissioner proposes that where a computer program is created by a group of persons jointly, the program shall be protected in favour of all authors if at least one author is a beneficiary of such protection as a national of a State party to the Berne Convention or as a national of another State which grants reciprocal treatment to nationals of the Member State concerned (Article 3(2) in 9304/89).

All delegations were against this provision, arguing that it would be unreasonable to extend protection to all the members of a team of programmers where only one of them satisfied these conditions.

The Permanent Representatives Committee is asked to state whether such a provision would be useful.

7. Right of rental

The Commission proposes introducing by means of the Directive an author's right to control the rental of his computer program (Article 4(c) in 9304/89).
It also intends to introduce a right of rental in respect of other works covered by copyright in future proposals.

The Danish, Spanish, Irish, Italian, Portuguese and United Kingdom delegations supported the proposal to introduce such a right in the Directive.

The Belgian, German, Greek, French and Netherlands delegations, however, take the view that the question of introducing a right of rental should not be discussed in the narrow context of this Directive but should be considered in a broader framework encompassing other areas of copyright.

The Permanent Representatives Committee is asked to state whether the right to rent a computer program should be dealt with in the context of this Directive or whether it should be deferred until a broader examination is made of the question of a right of rental in general.

8. Measures to combat piracy

The Commission proposes in Article 6 of the Directive provisions to combat computer program piracy by stipulating that certain acts involving trade in illicit copies of computer programs and trade in articles intended specifically to facilitate the circumvention of technical devices installed to
protect a program shall constitute infringements of exclusive rights in the program. Several delegations were in favour of such provisions.

Other delegations were against this Article, considering that it impinged on criminal law and that such acts did not constitute infringements of copyright, and that consequently this Article should not be included in the Directive.

The Presidency emphasizes the need for a provision of this kind in order to contribute effectively to combating piracy in this field. The Permanent Representatives Committee is asked to confirm the need for such a provision.

9. Term of protection

With regard to the term of protection of literary works, Article 7 of the Berne Convention states that:

- where the author is an identified natural person, the term shall cover the lifetime of the author and fifty years after his death;

- in the case of anonymous works written under pseudonyms, that term shall expire fifty years after the work has been made legally accessible to the public;
the Member States have the option of granting a term of protection longer than those referred to above.

It is proposed in Article 7 of the Directive that the period of protection granted to computer programs shall be a term compatible with the terms provided for the protection of literary works under the Berne Convention, but shall not exceed the lifetime of the author and fifty years from the date of his death (Article 7, 3rd variant in 9304/89). The majority of delegations were in favour of this proposal.

However, the Danish, German, French and Netherlands delegations were against the stipulation that this period must not exceed the lifetime of the author and fifty years after his death. It should be pointed out that under the legislation of the Federal Republic of Germany such protection lasts for the lifetime of the author and seventy years after his death in the case of all literary works, and that the German delegation would not wish to be obliged to grant a period of protection for computer programs different from that for other literary works.

The Permanent Representatives Committee is asked to state whether the period of protection should be harmonized throughout the Community, or whether Member States might remain free to stipulate a period longer than the minimum under the Berne Convention.
10. Communication to other Member States of the provisions of national law adopted by a Member State

The Presidency proposes that this Directive should stipulate not only that each Member State shall communicate the provisions of national law which it adopts in order to transpose the Directive to the Commission but also that it shall send a copy of them to the other Member States (Article 9(2) in 9304/89); in addition the Presidency proposes that this practice be extended to other directives in future. Most delegations welcomed this proposal.

However, the Portuguese and United Kingdom delegations entered scrutiny reservations on this proposal. The Spanish delegation supported the proposal in the case of the present Directive but reserved its position on its extension to later directives.

The Permanent Representatives Committee is asked to confirm the inclusion of this obligation in the Directive and state whether such a practice should be extended.