NOTE

from : Presidency

to : Permanent Representatives Committee and Council

No. prev. doc.: 5223/90 PI 13
No. Cion prop.: 5682/89 PI 25 COM(BB) 816 final - SYN 183

Subject: Proposal for a Council Directive on the legal protection of computer programs - consolidated text

The Permanent Representatives Committee and the Council will find attached a consolidated text of the proposal for a Directive on the legal protection of computer programs, drawn up by the Presidency in the light of the proceedings of the Working Party.
**Statements**

The two following statements would serve to clarify the scope of the Directive and thus meet the concerns of certain delegations:

"The Council and the Commission confirm that the present Directive does not oblige Member States to grant to computer programs protection beyond the minimum protection granted under the Berne Convention for Literary Works."

"This Directive does not affect derogations provided for under national legislation in accordance with the Berne Convention on points not covered by this Directive."

**Article 1**

**Object of Protection**

1. Member States shall protect computer programs by copyright as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. For the purposes of this Directive, the term "computer programs" shall include their design material.

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1 Reservation by the Spanish delegation on the term "literary".
2. [Protection in accordance with this Directive shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive.]² ³ ⁴

3.(a) A computer program shall be protected if it is original in the sense that it is its author's own intellectual creation. No qualitative or aesthetic criteria shall be applied to determine its eligibility for protection.

(b) Deleted.⁵

Article 2
Ownership of rights

1. The author of a computer program shall be the natural person or group of natural persons who created the program, or the legal person designated as the author by national legislation. Where collective works are recognized by the legislation of a Member

² The Commission services reserved their position on this paragraph.
³ The Chairman proposed, subject to further consideration, that the following recital be added: "Whereas to the extent that logic, algorithms or programming languages constitute ideas and principles which underlie a computer program, they are also not protected by copyright under this Directive."
⁴ In order to avoid over-interpretation of this paragraph, the German delegation suggested ending it after the first sentence and stating in the preamble that the normal principles of copyright apply.
⁵ Reservation by the Irish and United Kingdom delegation and the Commission representative on the deletion of this sub-paragraph.
State, the natural or legal person who is considered by that legislation to have created the program shall be deemed to be the author.

2. In respect of a computer program created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

3. Deleted.  

4. Where a computer program is created by an employee in the execution of the duties entrusted to him, the employer exclusively is entitled to exercise the economic rights in respect of the program in the absence of contractual provisions to the contrary.

5. Deleted.  

Article 3

Beneficiaries of Protection

1. Protection shall be granted to all natural or legal persons eligible under national copyright legislation as applied to literary works.

2. Deleted.  

6 Reservation by the Italian delegation and the Commission representative on the deletion of this paragraph.
7 Reservation by the Irish and United Kingdom delegations and the Commission representative on the deletion of this paragraph.
8 Reservation by the Commission representative on the deletion of this paragraph.
Article 4
Restricted Acts

The exclusive rights of the author or his successor in title include the right to do or to authorize:

(a) the reproduction of a computer program by any means and in any form, in part or in whole. Insofar as they necessitate a reproduction of the program in part or in whole, loading, viewing, running, transmission or storage of the computer program shall be considered restricted acts;

(b) the translation, adaptation, arrangement and any other alteration of a program and the reproduction of the results thereof, without prejudice to the rights of the person who translates the program;  

9 Reservation by the German, Netherlands and United Kingdom delegations on this provision in connection with Articles 4(a) and 5.
(c) [the distribution to the public of the original computer program or of copies thereof. The first sale of a copy of a program by the author or with his consent shall exhaust the right of the author to control further sale of that copy but shall not exhaust the right to control its rental or its loan to the public.] 10

(d) Deleted. 11

Article 5
Exceptions to the restricted acts

1. In the absence of any contractual stipulations to the contrary, the acts referred to in Article 4(a) and (b) shall not require the authorization by the right holder where they are necessary for the use of the program in accordance with its intended purpose, or necessary as a back-up in connection with such use.

[2. Where a copy of a computer program has been sold, the exclusive right of the right holder to authorize rental of that copy shall not be exercised to prevent that copy being made available for use as reference material only, without removal from the premises, of non-profit making libraries and research institutions.] 10

10 The Working Party is still considering the issue of rental right.
11 Reservation by the Netherlands delegation on the deletion of this paragraph.
[3. Notwithstanding the provisions of Article 4(a), the lawful possessor of a copy of a program shall be entitled, without the autorisation of the right holder, to observe, study or test the functioning of the program in order to determine the ideas, principles and other elements which underlie the program and which are not protected by copyright if he does so while loading, displaying, running, transmitting or storing the program in execution of his contract.]

Article 6
Enforcement of Protection

First Variant

[1. Without prejudice to the provisions of Article 4(a), Member States shall provide, in accordance with their national legislations, appropriate remedies against a person committing the acts listed in sub-paragraphs (a), (b), (c) and (d) below:

(a) participation in any act of putting into circulation of a copy of a computer program knowing or having reason to believe that it is an infringing copy;

(b) the possession of a copy of a computer program knowing or having reason to believe that it is an infringing copy;]

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12 Proposal by the Commission services as altered in discussion in the Working Party.
(c) participation in any act of putting into circulation of articles the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of any technical means which may have been applied to protect a program;

(d) participation in any act of selling or buying of infringing copies.

2. An infringing copy of a computer program shall be liable to seizure in accordance with the national legislation of each Member State.]

Second Variant.\footnote{13}

[1. Member States should provide appropriate remedies against a person, reproducing a computer program without the consent of the right owner or who brings into circulation or distributes such copies.

2. An infringing copy of a computer program shall be liable to seizure.]
Article 7
Term of Protection

Protection shall be granted for the life of the author and fifty years after his death; where the computer program is an anonymous or pseudonymous work, the term of protection shall be fifty years from the time that the computer program is first lawfully made available to the public. 14

Article 8
Continued application of other legal provisions

1. The provisions of this Directive shall be without prejudice to other legal provisions such as patent rights, trade marks, unfair competition, trade secrets, the law of contract and protection of semi-conductor products.

2. Protection under the provisions of this Directive shall also be available in respect of works created prior to [date in Article 9], without prejudice to any acts concluded and rights acquired before that date.

14 Reservation by the German delegation which considers that Member States should have the option of granting a longer term of protection.
Article 9
Final provisions

1. Member States shall bring into force the laws, regulations or administrative provisions needed in order to transpose this Directive not later than two years after its notification.

2. Each Member State shall communicate to the Commission the provisions of national law which it adopts in order to transpose this Directive.

Article 10

This Directive is addressed to the Member States.