REPORT

from: Presidency

to: Permanent Representatives Committee

No. prev. doc.: 9713/90 PI 69
No. of amended Cion prop.: 9397/90 PI 62 COM(90) 509 final SYN 183

Subject: Amended proposal for a Council Directive on the legal protection of computer programs

1. The points which, after the Working Party's proceedings, are still subject to reservations are set out below. The text of the proposal to emerge from the Working Party's proceedings is given in 10259/90 PI 77.

2. Decompilation (Article 5a)

The majority of delegations and the Commission representative were able to accept Article 5a as set out in 10259/90 PI 77: this Article allows decompilation of a computer program without the authorization of the right holder in clearly defined circumstances, where decompilation is "indispensable to obtain the information necessary to achieve the interoperability of an independently created program with other programs".

The German and Greek delegations entered reservations on the grounds that this text covered only interoperability between one program and others:
in their view it should also cover interoperability between hardware and one or more programs.

The majority of delegations and the Commission representative opposed extending coverage, on the grounds that it was technically unnecessary and would broaden the derogation for decompilation in a way that could not be controlled.

The German delegation intended to reconsider its position so that it could support the majority.

3. Rental right (Article 4(c))

The Netherlands delegation maintained a provisional reservation on the words "with the exception of the right to control further rental of the program or a copy thereof".

4. Exceptions to the restricted acts (Article 5(1))

The Netherlands delegation maintained a reservation on the words "In the absence of specific contractual provisions" in Article 5(1), on the grounds that it should not be possible to restrict, by contract, the right of the lawful acquirer of a computer program to use the program in accordance with its intended purpose.

The other delegations and the Commission representative believed that the rightholder should indeed be entitled to do so.
5. **Nullity of certain contractual provisions**  
(Article 8(1))

The Netherlands delegation entered a scrutiny reservation on the second sentence of Article 8(1), which stipulates that all contractual provisions contrary to Article 5a or to the exceptions provided for the Article 5(3) and (5) shall be null and void. It feared this would lead to an a contrario interpretation, which would allow other provisions of the Directive to be nullified by way of contract.

6. **Protection of ideas** (Recital)

The Greek delegation entered a scrutiny reservation on the fifth recital on page 4 of 10259/90 PI 77, which is worded as follows:

"Whereas in accordance with this principle of copyright, to the extent that logic, algorithms and programming languages comprise ideas and principles, those ideas and principles are not protected under this Directive;".

It would have preferred the wording of the original Commission proposal, which does not refer explicitly to logic, algorithms and programming languages:

"Where the specification of interfaces constitutes ideas and principles which underlie the program, those ideas and principles are not copyrightable subject matter;".
7. Program created by an employee
   (Article 2(4))

When the Directive was last discussed by the Permanent Representatives
Committee, on 31 October 1990, the Belgian delegation raised the possibility
of making Article 2(4) optional. It may wish to make a unilateral statement
on the subject.