The Working Party on Intellectual Property (Computer programs) will find attached a revised version of the 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 at its meeting held on 25 January 1990.
Statements

The two statements to clarify the scope of the Directive stand as in document 9304/1/89, pending review in the light of any developments in Articles 4 and 5.

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.

2. [ To be reviewed. In the interim this clause stands as in document 9304/1/89. ]

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 [ other ] [ qualitative or aesthetic ] criteria shall be applied to determine its eligibility for protection as an original work.

(b) Deleted.²

¹---------------
Reservation by the Spanish delegation on the term "literary".

² Reservation by the Irish and United Kingdom delegations and the Commission representative on the deletion of this subparagraph.
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 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. ³

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. ⁴

³ Reservation by the Italian delegation and the Commission representative on the deletion of this paragraph.

⁴ Reservation by the Irish and United Kingdom delegations and the Commission representative on the deletion of this paragraph.

4533/90
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.5

Article 4
Restricted acts

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

(a) [stands as in document 9304/1/89 pending further consideration];

(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;6

5 Reservation by the Commission representative on the deletion of this paragraph.

6 Reservations by the German, Netherlands and United Kingdom delegations on this provision in connection with Articles 4(a) and 5.

4533/90 PI 7 mg F – 4 –
(c) [ The issue of rental right is to be discussed at other levels in the Council. In the interim the text in document 9304/1/89 stands, with the proviso that there is provisional agreement on the following wording of the first sentence: "the distribution to the public of the original computer program or of copies thereof." ]

(d) [ the communication to the public of a computer program in whole or in part. ]

Article 5
Exceptions to the restricted acts

[ This Article stands as in document 9304/1/89 pending further consideration. ]

Article 6
Infringement of rights

1. It shall be an infringement of the author's exclusive rights in the computer program to import, distribute, deal with or possess an infringing copy of the program, knowing or having reason to believe it to be an infringing copy of the work.

2. It shall be an infringement of the author's exclusive rights in the computer program to make, import, distribute, deal with or possess articles [ the sole intended purpose of

4533/90          PI 7         mg       F    -    5    -
which is to facilitate the removal or circumvention of any technical means which may have been applied to protect a program.

[ In the light of the reservations on the above text of this Article, consideration might be given to the alternative wording suggested by the French delegation:

1. Possession of or participation in the distribution of a computer program knowing or unable not to know that it is an infringing copy shall be an offence constituting liability in respect of the holder of the copyright.

2. Possession or involvement in the manufacture or distribution of means specifically intended [the sole intended purpose of which is] to facilitate the suppression or neutralization of any technical device which may have been installed to protect a program shall be an offence constituting liability in respect of the holder of the copyright.]

This Article could be supplemented by the following statement in the Council minutes:

"The Council requests that Member States adopt all necessary measures to facilitate the identification of infringements of provisions of this Directive."

7 Reservations by the Danish, German, Greek, Netherlands and Portuguese delegations on the text of this Article.
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 published anonymously or pseudonymously the term of protection shall be fifty years from the time that the computer program is first lawfully made available to the public. 8

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.

8 Reservation by the German delegation which considers that Member States should have the option of granting a longer term of protection.

4533/90

PI 7

mg

F - 7 -
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. [It shall forward a copy thereof to the other Member States.] 9

Article 10

This Directive is addressed to the Member States.

9 Reservation by the Greek, Netherlands, Portuguese and United Kingdom delegations on the second sentence, which is to be considered by the Permanent Representatives Committee.