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Delegations will find enclosed a consolidated text of the above proposal. Additions or amendments in relation to the Commission’s amended proposal are indicated by underlining.
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the harmonisation of certain aspects of copyright and related rights in the Information Society

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

(1) Whereas the Treaty provides for the establishment of an Internal Market, the removal of barriers to the free movement of goods, the freedom to provide services and the right of establishment and the institution of a system ensuring that competition in the Internal Market is not distorted; whereas harmonisation of the laws of the Member States on copyright and related rights contributes to the achievement of these objectives;

(2) Whereas the European Council, meeting at Corfu on 24 and 25 June 1994, stressed the need to create a general and flexible legal framework at Community level in order to foster the development of the Information Society in Europe; whereas this requires, inter alia, the existence of an Internal Market for new products and services; whereas important Community legislation to ensure such a regulatory framework is already in place or is well under way; whereas copyright and related rights play an important role in this context as they protect and stimulate the development and marketing of new products and services and the creation and exploitation of their creative content;

(2bis) Whereas the proposed harmonisation will help 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 - freedom of expression and the public interest; whereas such harmonisation does not affect the access to public documents as provided for in national law⁴;

⁴ See footnote 86 below.
(3) 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;

(4) Whereas technological development has multiplied and diversified the vectors for creation, production and exploitation; whereas, while no new concepts for the protection of intellectual property are needed, the current law on copyright and related rights will have to be adapted and supplemented to adequately respond to economic realities such as new forms of exploitation;

(5) Whereas, without harmonisation at Community level, legislative activities at national level which have already been initiated in a number of Member States in order to respond to the technological challenges might result in significant differences in protection and thereby in restrictions on the free movement of services and products incorporating, or based on, intellectual property, leading to a refragmentation of the Internal Market and legislative inconsistency; whereas the impact of such legislative differences and uncertainties will become more significant with the further development of the Information Society, which has already greatly increased transborder exploitation of intellectual property; whereas this development will and should further increase; whereas significant legal differences and uncertainties in protection may hinder economies of scale for new products and services containing copyright and related rights;

(6) Whereas the Community legal framework for the legal protection of copyright and related rights must, therefore, also be adapted and supplemented as far as is necessary for the smooth functioning of the Internal Market; whereas, to that end, those national provisions on copyright and related rights which vary considerably from one Member State to another or which cause legal uncertainties hindering the smooth functioning of the Internal Market and the proper development of the Information Society in Europe should be adjusted, and inconsistent national responses to the technological developments should be avoided, whilst differences not adversely affecting the functioning of the Internal Market need not be removed or prevented;

(7) Whereas the various social, societal and cultural implications of the Information Society require that account be taken of the specific features of the content of products and services;

(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;

(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, 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;

(9bis) 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 performers;

(10) Whereas adequate protection of copyright works and subject matter of related rights is also of great importance from a cultural standpoint; whereas Article 151 of the Treaty requires the Community to take cultural aspects into account in its action;

(10bis) 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 insofar as the ultimate aim of these measures is to give effect to the principles and guarantees laid down in law;

(10ter) Whereas this Directive must seek to promote learning and culture by protecting creative and artistic works while permitting exceptions for public interest for the purpose of education and teaching;

(11) Whereas the Diplomatic Conference held under the auspices of the World Intellectual Property Organisation (WIPO) in December 1996 led to the adoption of two new Treaties, the 'WIPO Copyright Treaty' and the 'WIPO Performances and Phonograms Treaty', dealing respectively with the protection of authors and the protection of performers and phonogram producers; whereas those Treaties update the international protection for copyright and related rights significantly, not least with regard to the so-called 'digital agenda', and improve the means to fight piracy world-wide; whereas the Community and a majority of Member States have already signed the Treaties and the process of making arrangements for the ratification of the Treaties by the Community and the Member States is under way; whereas this Directive also serves to implement a number of the new international obligations;

(12) 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, and will be addressed horizontally in European Parliament and Council Directive .../.../EC on certain legal aspects of electronic commerce in the internal market which clarifies and harmonises various legal issues relating to Information Society services including electronic commerce; whereas the provisions relating to liability in the context of electronic commerce should come into force within a timescale similar to that of this Directive, since they should provide a harmonised framework of principles and provisions relevant to inter alia important parts of this Directive;

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;

Whereas this Directive is without prejudice to modalities, in the Member States, of management of rights, such as extended collective licences;

Whereas the provisions of this Directive should be without prejudice to existing Community provisions in the area of copyright and related rights, unless otherwise provided in this Directive;

Whereas this Directive applies without prejudice to the legal protection of designs, which is dealt with in European Parliament and Council Directive 98/71/EC on the legal protection of designs;

Whereas this Directive should define the scope of the acts covered by the reproduction right with regard to the different beneficiaries; whereas this should be done in conformity with the acquis communautaire; whereas a broad definition of these acts is needed to ensure legal certainty within the Internal Market;

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 of counterfeited or pirated works;

Whereas this Directive should harmonise the right applicable to the communication to the public of works, where this has not yet been done by existing Community legislation; whereas this right covers any communication to the public, by wire or wireless means, including broadcasting; whereas this right also covers public communication of a work by use of a recording or by a public communication of a broadcasting; whereas it does not cover public exhibition or public live performance of a work;

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

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6 See footnote 74 below.
8 The UK delegation requested that the words "or display" be inserted, in order to make sure that display on screen of static works or text will not be considered as covered by the right of communication to the public.
9 The addition of the last two sentences of Recital 15, together with the deletion of the last clause of Recital 16, has been suggested by the Commission representative with a view to clarifying the notion of "communication to the public" as used in Article 3(1).
10 The F delegation requested that it be made clear whether or not the Directive extends to acts of transmission which are near to on-demand. The D and UK delegations and the Commission representative considered that such acts should not be included in the scope of the Directive.
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;][11]

(17) Whereas the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication[12] within the meaning of this Directive;

(18) Whereas copyright protection under this Directive includes the exclusive right to control distribution of the work incorporated in a tangible article; whereas the first sale in the Community of the original of a work or copies thereof by the rightholder or with his consent exhausts the right to control resale of that object in the Community; whereas this right should not be exhausted in respect of the original or of copies thereof sold by the rightholder or with his consent outside the Community;

(19) Whereas the question of exhaustion does not arise in the case of services and on-line services in particular; whereas this also applies with regard to a material copy of a work or other subject matter made by a user of such a service with the consent of the rightholder; whereas, unlike CD-ROM or CD-I, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorisation where the copyright or related right so provides;

(20) Whereas the rights referred to in this Directive may be transferred, assigned or subjected to the granting of contractual licences, without prejudice to the relevant national legislation on copyright and related rights;[13]

(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;

(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;

[11] This clause would be deleted as a consequence of the addition in Recital 15.
[12] The GR delegation requested that the words "to the public" be inserted. The wording of this Recital will have to be reconsidered if Article 3(4) remains in the Directive.
[13] The ES delegation requested that this provision be transferred into the main body of the Directive.
(23) Whereas the exclusive right of reproduction should be subject to an exception to allow certain acts of temporary reproduction, such as transient and incidental reproductions, 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 and which have no separate economic value on their own; whereas under these conditions this exception should include acts of caching or browsing;

(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 and 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(bis) Whereas it is in any case important for the Member States to adopt all necessary measures to facilitate access to works by persons suffering from a disability which constitutes an obstacle to the use of the works themselves, and to pay particular attention to accessible formats;

(24ter) Whereas in certain other cases of minor importance, such as use for the purpose of demonstration or repair of equipment, use in connection with public exhibitions or public auction or certain forms of humorous use, Member States may apply exceptions which already exist in their national law to the extent that such application is only in respect to analogue uses and does not affect free circulation of goods and services within the Community;

(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;

(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, accompanied by fair compensation in certain cases; 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 likely to be more widespread and have a greater economic impact; whereas a distinction should therefore be made between digital private copying and analogue private copying and whereas the conditions of application should in both cases be harmonised to a certain extent; whereas it is of particular importance, in the case of digital private copying, that all rightholders receive fair compensation;

(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 or their enforcement against circumvention;

14 This Recital would serve as guidance for the interpretation of Article 5(3)(k). Reservations on that provision also apply to this Recital.
15 Reservation by the F delegation on including these examples.
16 The F delegation requested a specific exception on parody, pastiche and caricature in the main body of the Directive instead of a reference to humorous use in this 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, therefore, specific contracts or licences should be promoted which, without creating imbalances, favour such establishments and the disseminative purposes they serve;

(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 interests 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;

(29bis) 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 rightholders;

(29ter) Whereas recourse to mediation could help users and rightholders to settle disputes; whereas the Commission, in co-operation with the Member States within the contact committee, should undertake a study to consider new legal ways of settling disputes concerning copyright and related rights;

(30) Whereas technological development will allow rightholders to make use of technological measures designed to prevent and inhibit the infringement of any copyright, rights related to copyright or sui generis rights provided by law; whereas the danger, however, exists that illegal activities might be carried out in order to enable or facilitate the circumvention of the technical protection provided by these measures; 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 activity enabling or facilitating the circumvention without authority, whether granted by the rightholders or conferred by law, of such measures;

(30bis) Whereas such a legal protection should be provided to technological measures that effectively inhibit and/or prevent the infringement of any copyright, rights related to copyright or sui generis rights provided by law, without, however, preventing the normal operation of electronic equipment and its technological development; whereas such legal protection implies no obligation to design devices, products, components or services to

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17 The F, NL, S, UK and IT delegations consider that certain elements of Recital 30bis are unrelated to the definitions contained in Article 6(3).
18 The IT delegation suggests that the words "that effectively" be replaced by "designed to".
19 The UK delegation considers that there is no link between the phrase "without … development" and the effectiveness of technological measures. Both the UK and IT delegations requested that this phrase be deleted.
correspond to technological measures\textsuperscript{20,21}; whereas such legal protection should respect proportionality and should not prohibit those devices or activities which have a commercially significant purpose or use other than to circumvent the technical protection; whereas, in particular, this protection should not hinder research into cryptography;\textsuperscript{22}

(31) Whereas such a harmonised legal protection does not affect the specific provisions of protection provided for by Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, as amended by Directive 93/98/EEC\textsuperscript{23}, whereas in particular, it shall not inhibit decompilation permitted by that Directive\textsuperscript{24};

(32) Whereas important progress has been made in the international standardisation of technical systems of identification of works and protected subject matter in digital format; whereas, in an increasingly networked environment, differences between technological measures could lead to an incompatibility of systems within the Community; whereas compatibility and interoperability of the different systems should be encouraged; whereas it would be highly desirable to encourage the development of global systems;

(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;

(34) Whereas any such rights-management information systems referred to above may, depending on their design, at the same time process personal data about the consumption patterns of protected subject matter by individuals and allow for tracing of on-line behaviour; whereas these technical means, in their technical functions, should incorporate privacy safeguards in accordance with European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data\textsuperscript{25};

\textsuperscript{20} The GR and IT delegation requested that the clause "whereas such legal...technological measures" be deleted.
\textsuperscript{21} The F delegation considers that this clause distorts the balance between rightholders and manufacturers and has requested that it be completed by the phrase “so long as such device, product, component or service does not otherwise fall under the prohibition of Article 6.”
\textsuperscript{22} The IT delegation requested that the phrase "whereas, in particular, ...cryptography" be deleted.
\textsuperscript{23} Reservation on the first part of this Recital by the DK and UK delegations, which requested that Article 6 of the draft Directive replace Article 7 of Directive 91/250/EEC. The IT delegation suggested that this part of this Recital be transferred to Recital 13.
\textsuperscript{24} The ES, IRL, UK and NL delegations stressed the need to maintain unchanged the provisions on decompilation of Directive 91/250/EEC. The IRL, GR and UK delegations suggested that this part of Recital 31 be transferred to the main body of the Directive.
\textsuperscript{25} OJ L 281, 23.11.1995, p. 31.
(35) Whereas this Directive is without prejudice to the application of European Parliament and Council Directive 98/84/EC of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access;\(^{26}\)

(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;

(37) Whereas, in order to comply with the WIPO Performers and Phonograms Treaty, Directives 92/100/EEC and 93/98/EEC should be amended;

(38) Whereas, after a period of two years following the date of implementation of this Directive, the Commission should report on its application; whereas this report should examine in particular whether the conditions set out in the Directive have resulted in ensuring a proper functioning of the Internal Market, and should propose action if necessary,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
Objective and scope

Article 1
Scope
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.\textsuperscript{27}

2. Except in the cases referred to in Article 10\textsuperscript{28}, this Directive shall leave intact and shall in no way affect specific\textsuperscript{29} existing Community provisions relating to:

   a) the legal protection of computer programs;

   b) rental right, lending right and certain rights related to copyright in the field of intellectual property;

   c) copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;

   d) the term of protection of copyright and certain related rights;

   e) the legal protection of databases.\textsuperscript{30}

\textsuperscript{27} Scrutiny reservation by the NL delegation on the terms "with particular emphasis on the Information Society".

\textsuperscript{28} The F delegation expressed the view that Articles 1 and 10 should be merged.

\textsuperscript{29} The majority of delegations would prefer to delete "specific". Scrutiny reservation by the Commission representative on this deletion.

The D delegation suggested that the terms "specific existing Community provisions" be replaced by the phrase "provisions contained in specific Community Directives".

For the sake of clarity, the F and A delegations suggested that reference be made to legal instruments rather than to categories of protected subject matter. The Commission representative expressed concerns about the legal implications of such a reference in the main body of the Directive; he indicated, however, that he was willing to consider positively such a reference in one of the Recitals.

\textsuperscript{30} The Commission representative is considering the possibility of a general "non-prejudice" clause in Chapter IV of the Directive.
CHAPTER II
Rights and exceptions

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\textsuperscript{31}:

a) for authors, 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\textsuperscript{32} of their films;
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.

\begin{itemize}
\item [\textsuperscript{31}] The A delegation requested that the phrase "in whole or in part" be deleted.
\item [\textsuperscript{32}] The DK, UK and A delegations requested that the phrase "the original and copies of" be deleted as done elsewhere in the proposed Directive. The Commission representative recalled that the same phrase appeared already in Article 7 of Directive 92/100/EC and pointed out that its deletion in Article 2(d) risked raising unnecessary questions as to the reasons behind it. It was asked to consider the possibility of addressing this point in a Recital.
\end{itemize}
**Article 3**

Right of communication to the public, including the right of making available works or other subject matter

1. 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.

2. 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:

   a) for performers, of fixations of their performances;
   b) for phonogram producers, of their phonograms;
   c) or the producers of the first fixations of films, of the original and copies of their films;
   d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

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33 The wording of the title of this Article is being reconsidered.

The GR delegation suggested that paragraphs 1 and 2 of Article 3 form two separate Articles in order to avoid terminological difficulties.

34 The Commission representative confirmed that the right of communication to the public in Article 3(1) was intended to cover broadcasting (including Internet and multi-channel broadcasting) and suggested that this be stated explicitly in a Recital (see Recital 15).

The FIN, S, A, NL, IRL, D, P, UK and DK delegations considered that even with this clarification the precise scope of the right of communication to the public remained unclear, especially as regards the making available of access to Internet in places accessible to the public, and requested that this be further clarified. Until such clarification has taken place, these delegations entered a reservation on Article 3(1).

The F delegation requested that the Recital 16a, as suggested by the European Parliament (amendment 14), be taken on board.

35 There is general agreement that the phrase "originals and copies of" will be deleted.

36 The Commission representative pointed out that this right covered the offering of works to the public as well as their transmission. The F delegation requested that this be stated clearly in a Recital.

37 The Commission representative indicated that there was no overlapping between the scopes of the exclusive right provided by Article 3(2) and the remuneration right provided by Article 8(2) of Directive 92/100/EEC.
The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public of a work and other subject matter as set out in paragraph 2, including their being made available to the public.

The mere provision of physical facilities for enabling or making a communication does not in itself amount to an act of communication to the public within the meaning of this Article.

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38 The UK, A, NL, IRL, S, DK and D delegations would prefer to have this provision transferred to the Recitals.
The Commission representative, supported by the P, IT and F delegations preferred to keep it in the main text of the Directive.
The FIN, ES and GR delegations were open on this issue.

39 The F, NL, S, DK, P, IT, D and UK delegations requested that the contents of Article 3(4) appear only in the Recitals (Recital 17) and that the text be aligned on the agreed statement concerning Article 8 of the WCT. The A delegation entered a scrutiny reservation.
The Commission representative insisted on keeping this sentence in the main body of the Directive rather than in the Recitals and pointed out that Member States were under no obligation to transpose it literally in their national law when implementing the Directive. The IRL delegation indicated that it could go along with any solution on this issue. The GR delegation considered that the provision of Article 3(4) concerned liability issues and that it should be dealt with in the context of the draft electronic commerce Directive.
Article 4

Distribution right

1. Member States shall provide authors, in respect of the original of their works or of copies thereof, with the exclusive right to any form of distribution to the public by sale or otherwise.

2. The distribution right shall not be exhausted within the Community in respect of the original of their works or of copies thereof, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.

40 The F delegation expressed the view that the term "original" in this context was irrelevant and should therefore be deleted. The ES delegation and the Commission representative were in favour of keeping it.

41 The UK, DK, NL and FIN delegations requested that "otherwise" be replaced by "other transfer of ownership", which would bring it in line with the second paragraph of the present Article and with Article 6(1) of the WIPO Copyright Treaty of 1996 and would make sure that it would not affect issues already dealt with under Directive 92/100/EEC. The ES, A, F, IT, GR, D and LUX delegations prefer the present text, as it would be broad enough to cover both those national laws which include rental and lending in the distribution right and those national laws which do not. The S delegation entered a scrutiny reservation.

42 The F delegation requested that it be clarified that exhaustion of the distribution right would not affect any other economic or moral rights of the rightholder and would respect media chronology.

43 Reservation by the DK, P, NL, FIN and S delegations, which prefer international exhaustion. The UK, IRL, A, F, ES, IT, D and GR delegations prefer exhaustion at Community level.
Article 5

Exceptions to the restricted acts set out in Articles 2, 3 and 4

1. Temporary acts of reproduction referred to in Article 2, such as transient and incidental acts of reproduction which are an integral and essential part of a technological process, including those which facilitate effective functioning of transmission systems, whose sole purpose is to enable use to be made of a work or other subject matter, and which have no independent economic

44 The UK delegation entered a general reservation on Article 5(1).
45 The D, A, IT, F, ES, DK, IRL and UK delegations expressed the view that the inclusion of the phrase "Temporary … such as" would make this exception too broad and requested that it be deleted. The S delegation questioned which temporary acts should be covered other than transient and incidental acts. The Chairman put forward the possibility of replacing “such as transient and incidental acts of reproduction” with “which are transient and incidental”. The D delegation pointed out that this last suggestion would probably exclude caching from the scope of this exception.

46 Without prejudice to its general reservation on Article 5(1), the UK delegation pointed out that Article 5(1) should be amended in order to make clear that the conditions contained therein apply to all temporary acts and not only to transient and incidental ones.
47 The IRL, S and UK delegations expressed doubts on the words "and essential". The Commission representative explained that these words were intended to cover acts which were either technically essential or economically essential. The ES, IT and A delegations questioned the compatibility between "essential" and "facilitate".

48 The IT delegation suggested the insertion of the words "and reception".
49 The A delegation suggested replacing "a work or other subject matter" by "the work or other subject matter reproduced".
significance, shall be exempted from the right set out in Article 2. [Such uses must be authorised by the rightholders or permitted by law.]

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

The S and UK delegations questioned the terms "and which have no independent economic significance".

The NL, S and UK delegations questioned the appropriateness of trying to cover in a single provision both browsing and liability of service providers in respect of caching.

Text suggested by the European Parliament and supported by the GR, ES, F and IT delegations. Without prejudice to its general reservation on Article 5(1), the UK delegation would also be prepared to support this text. These delegations feared that failure to restrict this exception to authorised use would have the effect not only of protecting service providers but also of excluding the liability of those who uploaded or downloaded unauthorised material.

The DK, P and S delegations and the Commission representative requested that this text be deleted.

The F delegation supported by the IT delegation, suggested that the following phrase be added at the end of Article 5(1) or as a Recital: "Works or subject matter put on the networks must carry markings indicating the authorisation of the rightholders". The F delegation pointed out that the presence of such markings would mean that authorisation had been given, and their absence would mean that it had been refused. The D and UK delegations expressed doubts on the need for this addition.

The DK delegation suggested the following language on paragraph 2:

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

(a) reproductions made by or on behalf of a natural person for private purposes;
(b) reproductions on paper or any similar medium for other purposes, effected by the use of any kind of photographic technique or by some other process having similar effects;
(c) reproductions for archival purposes or preservation by establishments which are not operating for direct or indirect economic or commercial advantage, such as libraries and archives."
a) in respect of reproductions 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, provided that the rightholders receive fair compensation;

b) in respect of reproductions on audio, visual or audio-visual analogue recording media made by a natural person for private and strictly personal use and for non-

55 The A, NL, UK, IRL, DK and LUX delegations entered a reservation regarding the exclusion of sheet music from the scope of the exception. The F, IT, ES and P delegations were in favour of such an exclusion. The B, FIN and S delegations entered a scrutiny reservation.

56 The IRL, LUX and UK delegations entered a general reservation on the "fair compensation" condition, in particular in respect of exceptions which were so narrow as not to harm rightholders in any way. The DK, FIN and S delegations entered a reservation in respect to this condition being applied to reprography for private and educational purposes. The B, D, ES, F, IT, A and P delegations were in favour of the fair compensation condition, although the D, F and A delegations considered that it should be referred to as "equitable remuneration" and the P delegation suggested "fair compensatory remuneration". According to the Commission representative, the term "fair" leaves Member States free to consider the particular circumstances of each case and to judge whether the compensation should take the form of remuneration or some other form which would not necessarily involve a specific payment. This could be clarified by means of a Recital. The A, F and UK delegations expressed strong doubts as regards the view that "fair" can be interpreted as meaning no compensation at all in some circumstances. In an effort to clarify the issue, the A delegation proposed that the following language be added to Article 5 as paragraph 4a: "4a. When Member States provide for limitations under Article 5(2)(a), they shall provide for equitable remuneration as far as it is necessary in order to comply with the provision set out in paragraph 4."

57 The IRL, A, S and UK delegations expressed doubts about separate provisions for analogue and digital media. The P delegation considered that it was premature to include separate provisions for digital media; that possibility could be envisaged when the Directive was revised.

58 The DK and A delegations expressed reservations on the restriction of this exception to natural persons.

59 The A, UK, DK, IRL, NL, S, P and LUX delegations requested the deletion of the words "and strictly personal" as too restrictive. The B, F and ES delegations were in favour of replacing these words by the notion of the family circle.
commercial ends, on condition that the rightholders receive fair compensation;

b bis) in respect of reproductions on audio, visual or audiovisual digital recording media made by a natural person for private and strictly personal use and for non-commercial ends, without prejudice to operational, reliable and effective technical means capable of protecting the interests of the rightholders; for all digital private copying, however, fair compensation for all rightholders must be provided;

c) in respect of specific acts of reproduction made for archiving 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;

60 The DK, IRL, S, P, D and UK delegations requested that the words "and for non-commercial ends" be deleted.

61 Positions expressed in respect of fair compensation in sub-paragraph (a) also apply to this sub-paragraph.

62 Positions expressed in respect of sub-paragraph (b) also apply in respect of sub-paragraph (ba).

63 The clause beginning "without prejudice ..." will be examined in conjunction with Article 6.

64 The A and UK delegations expressed reservations with regard to this clause. The ES and IT delegations suggested that this clause be clarified in a recital.

65 Reservation by the F delegation, for which this exception is too broad and covers acts which can be dealt with through contractual arrangements.

66 According to the Commission representative, the exception applies both to analogue and digital reproduction.

67 Reservation by the UK, D, S, ES, P, NL, IT, IRL, DK, A and FIN delegations, which requested that the phrase "for archiving or conservation purposes" be deleted as being too restrictive. According to the Commission representative, following the deletion of the phrase "accessible to the public", this phrase was necessary to maintain the balance of interests between users and rightholders. Furthermore, it was wide enough to cover acts of reproduction of copyright protected material done by libraries for security reasons or for purposes of adaptation to new software. Uses such as browsing on the Internet or reproduction for teaching purposes were already covered by other exceptions of Article 5.

The DK delegation, supported by the IT, S, and P delegations, expressed strong doubts as to whether browsing on the Internet or consultation of an Intranet within libraries were covered by the exception of Article 5(1) and requested that these be explicitly exempted under paragraph 3 of this Article.

68 The IT delegation requested that the phrase "direct or indirect economic or" be deleted and that the phrase "accessible to the public" be reintroduced.

69 In reply to the P delegation, the Commission representative indicated that Member States were free to define the terms "teaching, educational or cultural establishments".
d)\(^{70}\) in respect of ephemeral fixations made by broadcasting organisations by means of their own facilities and for their own broadcasts\(^{71}\); the preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be permitted\(^{72}\).

3.\(^{73}\) Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

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\(^{70}\) Reservation by the F delegation, which considers that such acts should be dealt with through contractual arrangements.

\(^{71}\) According to the DK delegation, a corresponding exception for on-demand broadcasting services should be provided if this provision is maintained.

\(^{72}\) The UK delegation considered that this provision should not have the effect of limiting the exception for archives under paragraph 2(c).

\(^{73}\) The DK delegation suggested the following language on paragraph 3:

"3. Member States may provide for limitations to the exclusive right of reproduction provided for in Article 2 in respect of:

(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 purpose to be achieved;

(b) use of works in connection with the reporting of current events, as long as wherever practicable the source is indicated, and to the extent justified by the informative purpose;

(c) quotations, 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 justified by the specific purpose;

(d) use for the purposes of public security or for the purposes of the proper performance or reporting of a judicial, parliamentary or administrative procedure and use to ensure the right for members of the public to have access to documents kept by public authorities;

(e) use for the purpose of communication to individual members of the public on the site in establishments referred to in (2)(c) of works and other subject matter contained in their collections;

(f) use for the benefit of people with disabilities, which are directly related to the disability and to the extent justified by the specific purpose."
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;

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

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74 The S delegation was prepared to accept this exception, provided that the phrase "such as extended collective licences" was added to the wording of Recital 12ter.

The Commission representative was prepared to consider such an addition.

75 In reply to the DK delegation, the Commission representative confirmed that the present exception covered also distance learning.

The UK, IRL, NL and A delegations entered a reservation as regards the requirement to acknowledge the source in each case. They suggested that this be rendered more flexible, by the addition of "whenever practicable" or a similar phrase.

76 The DK, UK, IRL, A and NL delegations requested that the words "non-commercial" be deleted. For the IT delegation, the "non-commercial purpose" condition should be maintained but only in respect of teaching.

The Commission representative considered that deleting this condition would be incompatible with the so-called "three step test".

77 Reservation concerning the principle of fair compensation by the DK, UK, IRL, NL and A. Similar reservation by the ES delegation, which considered that the terms "for the sole purpose of illustration" limited the scope of the exception to such a point that there was no need for a compensation requirement.

The Commission representative reiterated his views on the interpretation of the terms "fair compensation" (see above footnote 58) and the suggestion that the matter be clarified by means of a recital.

78 The DK delegation requested the deletion of the phrase "and of a non-commercial nature".

The Commission representative opposed such deletion, pointing out that this limitation counterbalanced the broadening of the exception through the phrase "the benefit of".

79 In reply to a question by the F and IT delegations, the Commission representative indicated that Member States were free to provide for fair compensation of the rightholder even where this was not explicitly provided for in the Directive.
c) use of excerpts\(^{(81)}\) in connection with the reporting of current events, as long as the source and, if possible\(^{(82)}\), the author's name is indicated, and to the extent justified by the informatory purpose and the objective of illustrating the event concerned\(^{(83)}\); 

d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject matter which had already been lawfully made available to the public, that the source and, if possible\(^{(84)}\), 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\(^{(85)}\); 

e) use for the purposes of public security or to ensure the proper performance or reporting of an administrative, parliamentary or judicial procedure\(^{(86),(87)}\); 

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81 The UK, LUX, S, NL, IRL, DK and FIN delegations requested that the words "of excerpts" be deleted.

The Commission representative, supported by the F delegation, were against the deletion of these words. Furthermore, the F delegation requested that the words "of short excerpts" be used, as suggested by the European Parliament.

82 According to the F delegation, the words "if possible" should be deleted, since it should always be possible to acknowledge the author's name.

The P delegation requested that these words be replaced by "whenever possible".

The UK delegation, supported by the IRL, DK and FIN delegations, suggested the following wording: "as long as, whenever possible, the source, including the author's name, is indicated".

The IT delegation suggested that the reference be to the rightholder's name.

83 Reservation by the NL, LUX, P, UK, S, DK, IRL and FIN delegations as regards the words "and the objective of illustrating the event concerned;".

84 The P delegation argues that in the case of quotation it should always be possible to indicate the author's name.

The IT and F delegations suggested that the word "author's" be replaced by "rightholder's".

The FIN delegation suggested that a more general clause be used.

85 The F delegation suggested the following recital: "Whereas the exception for quotation purposes concerns short excerpt from a work or other protected subject matter for the purpose of illustrating the work in which the quotation is included for critical, polemical or scientific purposes;"

86 With a view to safeguarding the right to allow free access of members of the public to copyright protected material filed with public authorities, the S delegation, supported by the IRL, P, NL and UK delegations, requested that the following phrase be added to the present provision rather than in Recital 2a: "and use to ensure access to public documents as provided for in national law".


The F delegation entered a scrutiny reservation as regards the S requests pending discussion on the Commission's Green Paper on public sector information in the Information Society.

The Commission representative expressed his strong preference for mentioning the S concern, which according to his view did not constitute an exception, in the Recitals. He entered a scrutiny reservation as regards the alternative S request.
f) use of political speeches as well as extracts of public lectures or similar works or subject matter to the extent justified by the informatory purpose and provided that the source is indicated;

g) use during religious celebrations;

h) use by public social institutions pursuing non-commercial purposes such as hospitals or prisons on condition that the rightholders receive fair compensation;

i) use of works or other subject matter located permanently in public places provided that they do not constitute the main object of the use and to the extent justified by the informatory purpose;

j) incidental use of a work or other subject matter;

The UK and IRL delegations requested that the words "or proceedings" be added.
The A delegation requested that the words "extracts of" be deleted.
The F delegation requested that the informatory purpose be related to current events.
The Commission representative indicated his willingness to consider this request.
The DK and NL delegations considered that, in line with the subsidiarity principle, it was not necessary to make specific provision for such an exception in the Directive, since it had no impact on the functioning of the internal market.

Reservation by the F delegation, which considered this exception as too broad.
The DK delegation, supported by the UK, S and FIN delegation considered that, in line with the subsidiarity principle, it was not necessary to make specific provision for such an exception in the Directive, since it had no impact on the functioning of the internal market. Alternatively, the DK and S delegations requested that the scope of the exception be limited to acts of reproduction for time-shifting purposes and that the provision be moved to paragraph 2 of Article 5.
The P, S and FIN delegations requested the deletion of the word "public". The F delegation and the Commission representative opposed this request.
The GR and P delegations and the Commission representative requested that the words "such as hospitals or prisons" be deleted.
Reservation by the GR, DK and S delegations as regards the condition of fair compensation.
The F delegation insisted that this condition be maintained.
Without questioning the need for such an exception, the DK, UK, D, IRL, P, S and NL delegations expressed the view that this could be covered by a general, catch-all provision dealing with exceptions of minor importance, such as subparagraph (k) below.
Reservation by the F delegation, which considered that such use should be dealt with by contractual arrangements.
Without questioning the need for such an exception, several delegations shared the view that this could be covered by a general, catch-all provision dealing with exceptions of minor importance, such as subparagraph (k) below.
3bis. Where the Member States may provide for an exception to the right of reproduction pursuant to paragraphs 2 and 3 of this Article, they may provide similarly for an exception to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.

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99 Text put forward by the Presidency in an effort to address the concerns of a number of Member States as regards the exhaustive character of the proposed list of exceptions under Article 5.

Exceptions which might prove to be necessary in the digital environment would have to be dealt with at Community level in the context of the revision of the Directive provided for in Article 11(2).

The IT, D, B, ES, P and F delegations were prepared to accept the Presidency text as a compromise solution, although some of them wished to see it slightly amended.

The Commission representative indicated that this text was at the limit of what the Commission could consider as a compromise.

The DK, UK, NL, S, FIN, LUX and IRL delegations indicated their preference for the alternative text put forward by the DK delegation (see following footnote) and questioned the need for the conditions contained in the Presidency text (minor importance, already exist nationally, analogue use, not affecting free movement).

100 As an alternative to this provision, the DK delegation suggested the following language as new paragraph 4 of Article 5, together with corresponding amendments to a number of the Recitals:

"4. Member States may, without prejudice to paragraphs 2, 3 and 6, provide for other exceptions to the exclusive rights set out in Article 2 and Article 3, including such exceptions which have traditionally been recognised in national law."

This proposal was endorsed by the S, IRL, NL, UK, FIN and LUX delegations.

The Commission representative, as well as the F, IT, P, B, D and ES delegations opposed this text, which in their view led to no harmonisation at Community level. Furthermore, the Commission representative drew delegations' attention to the fact that the "no prejudice" clause in the DK proposal did not apply to Article 5(1).

101 Reservation by the F delegation as regards the terms "national law", which the F delegation considers as too vague.

102 In addition to those mentioned in footnote 56, the P delegation spoke in favour of deleting the words "only concern analogue uses and".

103 The F delegation suggested that the phrase "for the specific use for which the reproduction is permitted" replace the terms "to the extent justified .........".
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 work or other subject matter.\(^{(104)}\)

\(^{(104)}\) The IT delegation having expressed a preference for the wording of Article 5(4) as suggested by the European Parliament in amendment 47, i.e. containing a reference to technical measures, it was agreed to discuss this issue under Article 6.
CHAPTER III
Protection of technological measures and rights-management information

Article 6\textsuperscript{105,106}

Obligations as to technological measures

\textsuperscript{107} Member States shall provide adequate legal protection against the circumvention without authority\textsuperscript{108} of any effective\textsuperscript{109} 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, which the person concerned carries out in the knowledge, or with reasonable grounds to know that he or she pursues that objective.

\textsuperscript{105} The UK, DK, A, P and NL delegations consider the wording of Article 6 to be unnecessarily complex. The UK delegation is considering the possibility of submitting a non paper containing a simpler and clearer draft.

\textsuperscript{106} The UK, NL and IRL delegations requested a Recital which would stipulate that Article 6 applies without prejudice to public policy and public security.

\textsuperscript{107} The A, D, DK, UK, P, S, NL, IT, GR, ES and IRL delegations endorse the Commission's approach, i.e. that the exceptions provided for in Article 5 of the draft Directive should fall outside the scope of Article 6(1) and that protection should only be granted when circumvention is carried out with the purpose of infringing a copyright or a related right, but are in favour of stating this approach more clearly.

The DK and S delegations have requested that this principle be extended also to the digital private copying exception.

The F and FIN delegations oppose the above mentioned Commission's approach. They support the approach suggested by the European Parliament, according to which the principle of legal protection would be extended to all acts of circumvention, whether covered by an exception or not; right holders, however, would be under an obligation to authorise access to and use of their works in specific circumstances.

\textsuperscript{108} The NL, UK, D, IT, DK, P, A, ES and GR delegations interpret the term "authority" in Article 6(1) as referring to the law or to the authorisation given by the right holder or his representative and consider that this should be stated more clearly in line with the 1996 WIPO Treaties. However, the UK delegation questions the need for the term "without authority".

The D, A and P delegations requested that the terms "without authority" be attached to acts of use of protected material rather than to the circumvention of technological measures as such.

\textsuperscript{109} Reservation by the UK, IT and A delegations on the use of the term "effective".

Although they share concerns about the vagueness of this term, the D, P, GR, F, ES and S delegations consider that, in the light of the 1996 WIPO Treaties, one is bound to maintain it in the Directive, subject to defining it more clearly.
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, carried out without authority, which:

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

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

c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

any effective 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...

3. The expression "technological measures", as used in this Article, means any technology, device or component that, in the normal course of its operation, is designed to prevent or inhibit the infringement of 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.

Technological measures shall be deemed "effective" where the access to or use of a protected work or other subject matter is controlled through application of an access code or any other type of protection process which achieves the protection objective in an operational and reliable manner with the authority of the rightholders. Such measures may include decryption, descrambling or other transformation of the work or other subject matter.

118 The F delegation requested that the phrase "prevent or inhibit the infringement of" be replaced by "protect" as suggested by the European Parliament in amendment 54.

119 Reservation by the A, F, S, IT, DK, UK, IRL, D, and P delegations on the need for a definition of the term "effective". The A delegation suggested that some of the elements of this second subparagraph of Article 6(3) could be included in the first subparagraph. For the GR, NL and ES delegations this term needs to be defined, but not necessarily as proposed by the Commission.

120 The A and P delegations question the appropriateness of including "access to or".

121 The IT delegation suggests rewording "an access code ...process" to read :"a protection process, such as an access code or a copy control mechanism,".

122 The F, GR, IT, UK and NL delegations expressed doubts as regards the need for the terms "in an operational and reliable manner".
Article 7\textsuperscript{123}

Obligations concerning rights-management information

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;\textsuperscript{124}

b) the distribution, importation for distribution, broadcasting, communication or making available to the public, of copies\textsuperscript{125} 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\textsuperscript{126} an infringement of any copyright or any rights related to copyright as provided by law, or of the \textit{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 \textit{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.

\textsuperscript{123} In response to comments by several delegations, the Commission representative expressed the view that it was not necessary to make specific reference in the draft Directive to the agreed statements on rights-management information made at the adoption of the WIPO Treaties.

\textsuperscript{124} The UK and A delegations requested that an additional knowledge requirement be added in order to make clear that this provision applies only when the person deliberately removes or alters electronic rights-management information.

The Commission representative, supported by the F and IRL delegations, expressed the view that the issue of unintentional removal or alteration could be resolved by contracts.

\textsuperscript{125} In response to the UK and F delegations, the Commission representative agreed that the terms "of copies" be deleted, in accordance with similar changes elsewhere in the Directive.

\textsuperscript{126} In response to the UK, IRL and F delegations, the Commission representative agreed that the term "conceal", which appears in the WIPO Treaties, be inserted into the text of Article 7(1).
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.\(^{127}\)

\(^{127}\) The IT delegation expressed doubts as to whether Article 7(2) as it stands covers rights-management information contained in databases. According to the Commission representative, such information was covered.
CHAPTER IV
Common provisions

Article 8

Sanctions and remedies

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 and act as a deterrent to further infringement.

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. Rightholders shall be in a position to apply for an injunction against service providers who carry out acts of reproduction exempted by Article 5(1) knowing or having reasonable grounds to know that their activities would entail the infringement of a copyright or related right.  

128 The F and A delegations consider that this provision should not be limited to service providers.

129 The DK delegation considers that this provision should not refer to Article 5(1). The UK, GR, DK, A, S, ES and F delegations question the possibility of providing for injunctions in respect of acts which are exempted and have scrutiny reservations on the second sentence of Article 8(2). The NL, LUX and IRL delegations indicated that the above sentence was compatible with their respective national laws.

130 Instead of the last sentence of Article 8(2), the IT delegation suggested that the following sentence be added as a third paragraph to Article 8:
"3. Each Member State shall ensure that rightholders can apply for an injunction against service providers who carry out acts of reproduction exempted by Article 5(1), even where the service providers do not know, or have no reasonable grounds to know, that their activities would entail the infringement of a copyright or related right."

The ES delegation would support this suggestion if Article 5(1) remains.

The D, NL and P delegations spoke against this suggestion.
Article 9

Application over time

1. The provisions of this Directive shall apply in respect of all works and other subject matter referred to in this Directive which are, by the date referred to in Article 11(1), protected by the Member States' legislation in the field of copyright and related rights, or which meet the criteria for protection under the provisions of this Directive or the provisions referred to in Article 1(2).

2. This Directive shall apply without prejudice to any acts of exploitation performed before the date referred to in Article 11(1).

3. This Directive shall not affect any contracts concluded or rights acquired before the date of its entry into force.

4. Notwithstanding paragraph 3, contracts concerning the exploitation of works and other subject matter which are in force on the date referred to in Article 11(1) shall be subject to this Directive as from five years after its entry into force if they have not expired before that date.\footnote{Reservation on paragraph 4 by the D, DK, F, UK, FIN, P, IRL, S and A delegations. The D delegation reserved the right to propose draft language which would take into account the particularities of German law.}

\footnote{\begin{flushleft}131 Reservation on paragraph 4 by the D, DK, F, UK, FIN, P, IRL, S and A delegations. The D delegation reserved the right to propose draft language which would take into account the particularities of German law.\end{flushleft}}
Article 10\textsuperscript{132}

Technical adaptations

1. Directive 92/100/EEC is hereby amended as follows:

   a) Article 7 is deleted\textsuperscript{133,134}.

   b) Article 10(3) is replaced by the following:

   “3. The limitations may only be applied to certain specific cases and may 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 normal exploitation of their subject matter”.

2. Article 3(2) of Directive 93/98/EEC is replaced by the following:

   “2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram is lawfully published during this period, the rights shall expire 50 years from the date of the first such publication. If no lawful publication takes place during the period mentioned in the first sentence, and if the phonogram is lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such communication to the public.”\textsuperscript{135}

\textsuperscript{132} The DK, NL, S and UK delegations requested that Article 10 be so amended as to provide for broad horizontal harmonisation, in particular as regards the rights of reproduction and distribution, any exceptions to these rights going beyond those already provided by the Community acquis and any new provisions related to technological developments. The A delegation also considered that Article 2 of this Directive should replace the provisions on the reproduction right in Directives 91/250/EEC and 96/9/EC.

\textsuperscript{133} Reservation by the F delegation as regards the deletion of Article 7 of Directive 92/100/EEC.

\textsuperscript{134} Reservation by the ES delegation as regards the deletion of Article 7(2) of Directive 92/100/EEC.

\textsuperscript{135} The UK delegation requested a statement which would ensure that this provision would not result in the revival of protection which had already expired.
**Article 11**

Final provisions

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.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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 14 of the Treaty, it shall submit proposals for amendments to this Directive.

3. Protection of rights related to copyright under this Directive shall leave intact and shall in no way affect the protection of copyright.

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136 Reservation by the S, IRL and LUX delegations, which consider the timeframe for the transposition of the proposed Directive as too short.

137 The IT delegation suggested that the provision of Article 11(3) be transferred to Article 1 in line with the Rome Convention.
4a) A Contact Committee shall be set up under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and shall meet either on the initiative of the Chairman or at the request of the delegation of a Member State.

4b) The task of the Committee shall be as follows:

– To facilitate the effective implementation of this Directive by organising regular consultation on all questions deriving from its application;

– To facilitate the exchange of information between the Member States and the Commission on the situation of and developments in regulatory activities in the field of copyright and related rights and sui generis rights, as well as on the relevant developments in the field of technology;

– to examine any developments in the sector for which consultation appears useful.

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138 Reservation by the S, FIN, DK, NL, UK, IRL, A and LUX delegations on Article 11(4a) and (4b) on the ground that they see no need to institutionalise such a Committee. Furthermore, these delegations warned against the idea of the Contact Committee becoming a substitute to Member States' freedom to adopt new (or amend their existing) exceptions to the rights to adapt to future technological developments.

139 The IT delegation considers this provision, according to which the Contact Committee would be convened obligatorily at the request of a single Member State, as too inflexible. For the IT delegation, a minimum number of Member States should be required for the Contact Committee to be convened.

The A delegation does not share this view.

140 According to the P delegation the tasks of the Contact Committee should be limited to the second indent.

141 The IT, NL and GR delegations requested that it be made clear in a Recital that any statements made by a representative of a Member State in the Contact Committee would not be used against the Member State concerned in an infringement procedure.

142 According to the D delegation the tasks referred to in the second and third indents of Article 11(4b) belonged to the remit of the Council Working Party on Intellectual Property.

143 The GR and ES delegation requested that the third indent of Article 11(4b) be reformulated more precisely.
Article 12

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

Article 13

Addressees
This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President