SUMMARY OF PROCEEDINGS

from : Working Party on Intellectual Property (Copyright)
dated : 20 and 21 October 1999
No. prev. doc.: 11435/99 PI 49 CULTURE 63 CODEC 520 + COR 1
No. Cion prop.: 8723/99 PI 29 CULTURE 36 CODEC 297

1. Discussions in the Working Party took place on the basis of a non-paper from the Presidency, which was issued later as document 12166/99 PI 55 CULTURE 71 CODEC 592.

   In presenting this non-paper, the Chairman explained that most of the changes had been based on delegations' comments made at earlier meetings and appearing in document 11435/99 PI 49 CULTURE 63 CODEC 520.

2. It was agreed that any comments made by delegations or the Commission representative at this stage on the Presidency's text would be considered as preliminary and would be subject to a general scrutiny reservation.
Article 1 (in conjunction with Recital 13)

3. Following an exchange of views, it was noted that the Working Party welcomed broadly the deletion of the word "specific" and the explicit mention of the relevant legal instruments under Recital 13 as a step towards greater clarity regarding the exact scope of the proposed Directive.

4. The UK delegation reiterated its general reservation on the approach followed under Article 1 (see footnote 132 in document 11435/99), on the grounds that it would result in undesirable inconsistencies among the different protection schemes granted within the Community to different types of works. It agreed however to address this issue when discussing Article 10 of the proposed Directive.

5. The UK delegation also requested formal confirmation that nothing in the proposed Directive would be interpreted as imposing upon Member States an obligation to prevent, under copyright law, the manufacture of articles of applied art.

Article 8bis (in conjunction with Recital 36bis)

6. As regards the list contained in Article 8bis, several delegations stressed the need that it remain non-exhaustive.

   The F delegation insisted that an explicit reference to moral rights and to the rules covering media chronology be added to that list. The UK delegation and the Commission representative expressed doubts as regards the proposed reference to moral rights, on the grounds that these did not belong to the subject matter dealt with under Article 8bis.

   The GR delegation wondered whether reference should not also be made to the provisions of the future European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market (hereinafter referred to as draft E-commerce Directive).

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1 COM(1998)586 final 98/0325 (COD)
7. As regards Recital 36bis, some delegations requested that it be explicitly mentioned that the terms "legal provisions" referred both to Community and national ones. Other delegations, however, expressed doubts on the appropriateness of such a clarification, on the grounds that this might create confusion as to the exact meaning of the terms "legal provisions" in other acquis communautaire Directives.

Article 2

8. There were no comments on this Article.

Article 3

9. The Working Party welcomed broadly the changes to both the title and the text of Article 3 as they appeared in the Presidency's non-paper.

10. Some delegations indicated that although they would prefer to see Article 3(3) transferred to the Recitals, they could live with the Presidency's proposal provided they received formal confirmation that Member States would not have to adopt a similar clause in national law when transposing the Directive.

Recital 15

11. The Commission representative observed that the definition of the right of communication to the public in the Presidency's non-paper (Recital 15) was broader than the one contained in the Commission's amended proposal, since it covered also retransmission. A number of delegations spoke in favour of such a broad definition. The A delegation observed that to include public performance within the scope of the right of communication to the public was inconsistent with the Berne Convention. While agreeing with this remark, the Chairman, supported by the Commission representative, expressed the view that nothing in the Berne Convention prevented the European Union from adopting a broader definition for the purposes of this Directive.
12. The **DK delegation** indicated that it was not clear yet whether the act of making computer terminals offering access to Internet available to the public in a cybercafé or in a library was an act of communication to the public. Until that was clarified, the DK delegation maintained its general reservation on Article 3. A number of delegations expressed the view that such acts did fall within the scope of the right of communication to the public.

**Recital 16**

13. There were no comments on Recital 16.

**Recital 17**

14. There were no comments on Recital 17.

**Article 4**

15. The **F and IRL delegations** entered a reservation on the use of the term "original" in Article 4.

16. The **F delegation** reiterated its request for a formal confirmation that the exhaustion of the distribution right would not affect any other economic or moral rights nor the arrangements in relation to media chronology.

17. The **UK and DK delegations** stressed the need for a uniform definition of the right of distribution across all sectors.
**Article 5(1)**

18. The **ES delegation** requested that the relationship between Article 5(1) of this Directive and Articles 12 to 15 of the draft E-commerce Directive be sufficiently clarified.

19. The **UK delegation** maintained its general reservation on the need for Article 5(1) and stressed that any comments it would make on the text were subject to this general reservation.

20. The **F delegation** entered a reservation on the wording of Article 5(1), as proposed by the Presidency, on the grounds that it did not strike the right balance.

21. The **vast majority of delegations** shared the view that the terms "which are" and "or" established a better balance than the Commission's text. The **ES delegation** spoke in favour of as narrow an exception under Article 5(1) as possible and suggested that the term "or" be replaced by "and".

22. The **IRL and ES delegations** expressed concerns about the potential confusion which the parallel use of the terms "temporary" and "transient" might engender. The **ES delegation** suggested therefore that "temporary" be replaced by "provisional".

23. As regards the sentence "Such uses must be authorised by rightholders or permitted by law.", the **IRL, NL, S, DK, ES, P and LUX delegations**, supported by the Commission representative, requested that this be deleted. The **UK, A, F and GR delegations** were in favour of keeping it.

**Recital 23**

24. For the majority of delegations Recital 23 was acceptable. The **D, A and ES delegations** requested that the word "certain" be inserted before "acts of caching".
Recital 33

25. As regards the last clause of the amended Recital 33, the D, A, LUX and P delegations requested that it be formally confirmed that this would not have the effect of imposing upon Member States an obligation to act. The F delegation considered that this clause should be turned into a legally binding obligation if it were to be effective.

Article 5(2)(a)² (in conjunction with Recital 24bis)

26. The ES, GR and DK delegations entered a reservation on this exception, on the grounds that it was unnecessarily broad, and requested that it be merged with the exception of Article 5(2)(b).

27. The UK delegation requested that reproduction by hand be also covered by an exception under Article 5.

28. The majority of delegations welcomed the deletion of the words "with the exception of musical works in published form". The F delegation was against this deletion. The S and B delegations indicated that they were flexible on this issue.

29. In reply to the UK delegation, the Commission representative confirmed that there was no hierarchical order among the various exceptions of paragraphs 2 and 3 of Article 5 and that it was up to the national legislator to define them in such a way that no conflicts arise.

30. As regards the concept of "fair compensation", a number of delegations requested that the terms "particular circumstances" and "some other form" be clarified, preferably by citing some concrete examples in the text of Recital 24bis.

² The UK, DK, NL, IRL and S entered a general reservation on the structure of paragraphs 2 and 3 of Article 5.
31. The **F delegation** reiterated its request that "fair compensation" be replaced by "equitable remuneration" in order to obtain more clarity.

32. The **UK, IRL, LUX, GR, S and DK delegations** expressed doubts on whether one could interpret "fair compensation" as meaning no payment at all in certain circumstances and pointed out that a general obligation for fair compensation, such as the one provided for in the Presidency's non-paper, could not be applied in legal systems which provided for narrowly defined exceptions on reprography. It was therefore requested that, if the general clause on fair compensation were to be maintained, Recital 24bis cite all those cases where no compensation at all was owed to the rightholders.