A. INTRODUCTION


The proposal, which is based on Articles 47(2), 55 and 95 of the Treaty, aims to provide a harmonised and appropriate legal framework for copyright and related rights in the Information Society. It adjusts and complements the existing framework so as to ensure the smooth functioning of the Internal Market and bring about a favourable environment which protects and stimulates creativity and innovative activities within the Community. The proposal is also intended to implement the new international obligations resulting from the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty concluded in Geneva on 20 December 1996.

2. The Economic and Social Committee delivered its Opinion on 9 September 1998\(^2\).

The European Parliament delivered its Opinion at first reading on 10 February 1999\(^3\).

3. The Commission submitted an amended proposal on 25 May 1999\(^4\).

4. The Working Party on Intellectual Property (Copyright) has examined the original proposal and the amended proposal intensively under the United Kingdom, Austrian, German and Finnish Presidencies. Although a satisfactory solution has yet to be reached on a number of questions, the Presidency considers that considerable progress has been made on most of the issues raised.

B. MATTERS ON WHICH A BROAD DEGREE OF CONSENSUS HAS BEEN REACHED

5. A broad degree of consensus has been reached on the rights covered by the proposal: the reproduction right (Article 2), the right of communication to the public of works and the right of making available to the public of other subject matter (Article 3) and the distribution right (Article 4). Final agreement on the provisions relating to these rights is closely linked to the final contents of the provisions containing the exceptions to these rights (Article 5 – see point 7 below).

6. A broad degree of consensus has also been reached on obligations concerning rights-management information (Article 7) and sanctions and remedies (Article 8), although some aspects of the provisions concerned remain to be finalised.

---


\(^3\) OJ C 150, 28.5.1999, p. 171.

C. MATTERS ON WHICH FURTHER WORK IS REQUIRED

7. The most difficult part of this proposal for a Directive concerns the exceptions (Article 5) to the rights set out in Articles 2, 3 and 4, as it is essential to the smooth development of the Information Society within the framework of the Internal Market that an appropriate balance be found between the interests of holders of copyright and related rights on the one hand, and the interests of other parties involved, such as the various users of material protected by copyright and related rights and Internet service providers, on the other hand. Agreeing on an appropriate degree of harmonisation and striking this balance remain the main concerns of the Working Party.

(a) In this context, work is continuing on a possible exception to the reproduction right for certain acts of temporary reproduction carried out in particular in the process of transmitting material protected by copyright or related rights over digital networks, or in the process of browsing in digital networks (Article 5(1)). The aim is to strike the right balance between protecting the legitimate interests of rightholders and not unduly inhibiting the smooth operation of the digital networks. The final contents of this provision, as well as those of a related provision under consideration concerning the possibility of rightholders taking action against Internet service providers whose services are being used by a third party to transmit infringing material (Article 8(3)), are also related to the contents of the provisions relating to liability in the proposed e-commerce Directive⁵.

---

(b) Discussions are also continuing on the other exceptions which Member States will be allowed to maintain or introduce (Article 5(2), (3) and (3a)). The main outstanding issues concern the structure of the relevant provisions, the degree of freedom to be left to Member States to retain or introduce exceptions not covered by those explicitly mentioned in this Article, and the question of "fair compensation" to be made to rightholders by the beneficiaries of certain exemptions.

(c) Considerable progress has been made under the German and Finnish Presidencies towards resolving the issues mentioned under (a) and (b) above, and the Presidency is optimistic that the continuing efforts will lead to appropriate solutions in the relatively near future.

8. Further work is also needed on the provisions relating to the protection to be given by Member States against the circumvention of technological measures, such as access codes or copy control mechanisms, applied by rightholders to protect their works or other subject matter against infringement (Article 6). Intensive work over recent months has made it possible to reduce the number of elements of divergence between Member States, so that efforts can now be focused primarily on resolving the question whether (and under what conditions) beneficiaries of exceptions to the rights will be allowed to circumvent these measures in order to avail themselves of the exceptions concerned.

9. While a broad degree of consensus has been reached on the provisions relating to application over time (Article 9), further consideration is being given to the possible need for transitional provisions.

10. While there is general agreement on the principle that this Directive should leave intact the provisions of previous Community Directives in the field of copyright and related rights, except in the cases specifically referred to in this Directive (Article 1), views differ on the question whether only a limited number of adaptations need to be made to earlier Directives, as proposed by the Commission and endorsed by the European Parliament (Article 10), or whether this Directive should be used to seek a maximum degree of alignment between each of the earlier Directives and this Directive, as
advocated by some delegations. Whichever solution is adopted, the final contents of Article 10 cannot be finally decided until agreement has been reached on the substantive provisions of this Directive.

11. Further consideration needs also to be given to the proposal made by the European Parliament, and taken over by the Commission in its amended proposal, to set up a Contact Committee (Article 11(4a) and (4b)). A number of Member States have doubts as to the need to make provision in the Directive for such a committee, and as to the tasks it should be given.

D. FUTURE PROSPECTS

12. In the light of the progress achieved so far and the willingness of delegations and the Commission to work constructively towards finding appropriate solutions to the outstanding issues, the Presidency considers that it should be possible to bring this proposal for a Directive to the Council for the adoption of a common position during the first half of the forthcoming Portuguese Presidency.

E. CONCLUSIONS

12. The Permanent Representatives Committee is invited to take note of this progress report and to forward it to the Council (Internal Market) for its meeting on 7 December 1999.