1. The Working Party examined Articles 6 to 13 of the Presidency consolidated text of the draft Directive, as contained in document 14238/99 PI 67 CULTURE 97 CODEC 822 (hereinafter document 14238/99). Discussions took place on the understanding that any reservations or requests appearing in the footnotes of the consolidated text would be considered as maintained if not expressly withdrawn by the delegations concerned.

2. The Working Party also took note of a proposal by the IT delegation on an additional clause under Article 5(1), which would replace the sentence "Such uses must be authorised by rightholders or permitted by law" and would read as follows:

"5(1)(a) The provision of paragraph 1 shall not affect the need for the use of the work or other subject matter to be authorised by rightholders or permitted by law."
Article 6 (Obligations as to technological measures) (plus Recitals 31bis and 30ter)

3. The UK delegation kept its general reservation on Article 6 and recalled that it had submitted its own proposal on this Article (see Annex I of document 11435/99 COR 1).

4. The NL delegation also entered a general reservation on Article 6 and reiterated its own proposals, appearing in footnotes 76 and 82 of document 14238/99.

5. The D delegation requested that it be made clear that the terms "for commercial purposes" in Article 6(2) applied to all acts mentioned therein and not only to possession. In this respect, the UK and DK delegations welcomed the new Recital 30ter, as proposed by the Finnish Presidency in the Annex to document 14238/99. The F delegation, on the other hand, entered a reservation on this Recital, on the grounds that it did not mention explicitly, as did Recital 21 of the conditional access Directive¹, that the legal protection of technological measures is without prejudice to national provisions which prohibit the private possession of devices, products or components used for the circumvention of technological measures.

6. The ES delegation considered that Article 6(2) should distinguish between the manufacture of licit and illicit circumvention devices, as does the conditional access Directive.

7. As regards the definition of "technological measures" in Article 6(3), the F delegation requested that this be aligned on the wording suggested in the European Parliament's amendment 54.

8. As regards Article 6(4), the UK and D delegations welcomed the fact that the exceptions prevailed over the legal protection provided by Article 6(1) but reserved their position on the relationship between exceptions and Article 6(2). The NL, S and DK delegations spoke in favour of granting general precedence to the exceptions over both paragraphs 1 and 2 of Article 6. The F, B and IT delegations were opposed to this suggestion as regards Article 6(2). In this context, the F delegation associated itself with the position of the D and IT delegations in footnotes 78 and 85 of document 14238/99.

9. The D delegation, with some support from the S delegation, wondered whether it would not be more appropriate to specify which of the individual exceptions would prevail over Article 6(2). The UK, IT and DK delegations could not accept establishing such a hierarchy amongst the exceptions.

10. As regards Article 6(4)(b), the UK and NL delegations questioned the appropriateness of regulating access to, or possession of, the protected works or other subject matter in this Directive, considering that such issues had no relevance to copyright law. The F delegation, with support from the B and IT delegations, reiterated its request for a provision obliging rightholders to provide beneficiaries of exceptions with means of access to works protected by technological measures. To this effect, the IT delegation suggested that Article 6(4)(b) be deleted and that a second sentence be added at the end of Article 6(4)(a), which would read as follows: "Member States shall provide the conditions for and means of enabling the beneficiaries of an exception or limitation to access a work protected by technological measures.". The UK delegation spoke in favour of a provision requiring negotiations between rightholders and the manufacturers of recording equipment in this respect.

11. The FIN delegation tabled a new proposal on Article 6(4), which is set out in the Annex. The IT delegation and the Commission representative had a reservation on this proposal. The F delegation entered a scrutiny reservation.

12. The S and D delegations indicated that they could accept the exclusion of digital private copying from the derogation contained in Article 6(4), whereas the UK, DK and NL delegations reiterated their opposition to this exclusion, considering that there was no reason to discriminate against digital private copying.

13. Finally, the UK delegation requested the Commission to confirm that the term "digital private copying" referred to the recording medium rather than to the signal itself and that it covered therefore copies of a work in analogue form made on a digital recording medium.

14. In view of the above remarks, the Chairman indicated the willingness of the Presidency to reconsider the wording of the whole Article 6.
15. The **UK delegation** welcomed the new Recital 31bis, as proposed by the Finnish Presidency in the Annex to document 14238/99, and requested that this be taken on board.

**Article 7 (Obligations concerning rights-management information)**

16. The **F delegation**, supported by the **IT delegation**, reiterated the request that the term "knowingly" be deleted. The **UK delegation** was against such a deletion, indicating that this term was closely linked to its reservation set out in footnote 91 of document 14238/99.

**Article 8 (Sanctions and remedies) (plus Recital 36bis)**

17. The Working Party noted that the **S delegation** could now lift its scrutiny reservations on paragraphs 2 and 3 of Article 8, as set out in footnotes 94 and 97 of document 14238/99.

18. The **ES and NL delegations** joined the **UK delegation** in requesting that the term "illicit" be inserted before "devices" in Article 8(2). The **Commission representative** could accept this term.

19. The **UK, NL and F delegations** wondered whether the term "intermediaries" in Article 8(3) did not need further clarification following the deletion of the reference to Article 5(1). The Commission representative expressed the view that Recital 36bis clarified the scope of the above term sufficiently.

20. The **F and IT delegations** joined the **D delegation** in requesting that it be made clear that the terms "to infringe" in Article 8(3) would not be interpreted as introducing a requirement to prove intentional behaviour.

21. Finally, the **S, NL, F and ES delegations** indicated that they preferred the new version of Recital 36bis, as set in the Annex to document 14238/99. In the event that this new version was taken on board, the **F and ES delegations** indicated that they could withdraw their
request that the reference in Article 8(3) to Article 5(1) be restored (see footnote 98 of document 14238/99), and the NL delegation indicated that it could withdraw its requests in footnote 99. The Commission representative indicated that he could also accept the new version of Recital 36bis.

**Article 8bis (Continued application of other legal provisions) (plus Recital 36ter)**

22. The UK and S delegations spoke in favour of the new version of Recital 36ter, as set out in the Annex to document 14238/99. If this Recital was taken on board, these delegations indicated that they could lift their reservations appearing in footnotes 17, 18 and 100 of the above document.


**Article 9 (Application over time)**

24. There were no specific remarks on Article 9.

**Article 10 (Technical adaptations)**

25. The UK, S, NL, FIN and DK delegations reiterated their general reservation on Article 10, considering that this Article should provide for further horizontal harmonisation, with priority being given to extending the definition of the right of reproduction, as contained in Article 2 of the present draft Directive, as well as the exception of Article 5(1), to the Software¹ and Databases² Directives.

26. The Commission representative and the F delegation reiterated their reservation as regards Article 10(0).

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27. The **B delegation** reiterated its request that Article 10 include a provision aligning Article 9(b) of the Databases Directive on Article 5(3)(a) of the present draft Directive with a view to overcoming problems in relation to distance learning.

28. Finally, the **UK delegation** requested a formal statement by the Commission making clear that Article 10(2), read in conjunction with Article 9(1), was not intended to result in the revival of protection which had already expired. The **Commission representative** agreed to consider such a statement.

**Article 11 (Final provisions)**

29. The **S delegation** joined the **NL delegation** (see footnote 105 of document 14238/99) in requesting more time for the transposition of the Directive.

30. Finally, without prejudice to the general reservation by the UK, IRL, D and DK delegations as regards the need of institutionalising the Contact Committee, the **Working Party** agreed to restore paragraph 4(b) of Article 11, using the wording suggested by the Finnish Presidency in the Annex to document 14238/99.

**Articles 12 (Entry into force) and 13 (Addressees)**

31. There were no comments on these Articles.
Non-paper from the Finnish Delegation

Article 6 (Obligations as to technological measures)

Paragraph 4.

The legal protection provided for in paragraph 1 shall apply except where a beneficiary of an exception provided for in national law in accordance with Article 5 is prevented from benefiting from that exception in cases

- where the technological measures do not permit reasonable copying opportunities, or
- where criticism, comment, news reporting, teaching, study or research are unreasonably affected,

provided that the access to, or possession of, a copy of the protected work or other subject matter by the beneficiary is authorised by the rightholder or permitted by law.

Member States may not allow circumvention under the provisions of the first subparagraph of paragraph 4, if

- copies of the work or other subject matter not subject to technological measures are reasonably available, or
- the market for or value of the work or other subject matter is unreasonably affected.

This paragraph shall not apply to digital private copying.

Note: When presenting the first draft of Article 6(4) in the Working Group the Finnish Presidency stated that the first condition introduced ("legal access") was rather embryonic and that further conditions should be considered, such as the question of availability and the effects on the market.

The draft above represents a further developed model for Article 6(4) and takes its inspiration from the provisions of Sec. 1201 of the DMCA.

The element "legal" access has been replaced by the customary expression "authorised by the rightholder or permitted by law".