COUNCIL OF THE EUROPEAN UNION

Brussels, 24 May 2000 (24.05)

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ADDENDUM TO NOTE

from: Presidency
to: Council (Internal Market)
No. prev. doc.: 6652/00 PI 14 CULTURE 11 CODEC 154
No. Cion prop.: 8723/00 PI 29 CULTURE 36 CODEC 297

- Presidency compromise text

Delegations will find attached an alternative version of Article 6(4) and Recital 31bis together with a new Recital 31ter which were circulated by the Commission in the Permanent Representatives Committee on 24 May 2000.
Article 6
Obligations as to technological measures

4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with Article 5(2)(a), 5(2)(c), 5(2)(d), 5(2)(e), 5(3)(a), 5(3)(b) or 5(3)(e) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject matter concerned.

A Member State may also take such measures in respect of a beneficiary of an exception provided for in accordance with Article 5(2)(b), unless reproduction for private use has already been made possible by rightholders to the extent necessary to benefit from the exception concerned and in accordance with the provisions of Article 5(2)(b) and (4).

The technological protection measures applied voluntarily by rightholders, including those applied in implementation of voluntary agreements, or in implementation of the measures taken by Member States enjoy the legal protection provided for in paragraph 1.

Recital 31bis:

(31bis) The legal protection of technological measures applies without prejudice to public policy, as reflected in Article 5, or public security. Member States should promote voluntary measures taken by rightholders, including the conclusion and implementation of agreements between rightholders and other parties concerned, to accommodate achieving the objectives of certain exceptions or limitations provided for in national law in accordance with this Directive. In the absence of such voluntary measures or agreements within a reasonable period of time, Member States should take appropriate measures to ensure that rightholders provide beneficiaries of such exceptions or limitations with appropriate means of benefiting from them, by modifying an implemented technological protection measure or by other means. However, in order to prevent abuse of such measures taken by rightholders, including in the framework of agreements, or taken by a Member State, any technological protection measures applied in implementation of such measures should enjoy legal protection.
Recital 31ter:

(31ter) When implementing an exception or limitation for private copying in accordance with Article 5(2)(b), Member States should likewise promote the use of voluntary measures to accommodate achieving the objectives of such exception or limitation. If, within a reasonable period of time, no such voluntary measures to make reproduction for private use possible have been taken, Member States may take measures to enable beneficiaries of the exception or limitation concerned to benefit from it. Voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, as well as measures taken by Member States, do not prevent rightholders from using technological measures, which are consistent with the exceptions or limitations on private copying in national law in accordance with Article 5(2)(b), taking account of the condition of fair compensation under Article 5(2)(b), and the possible differentiation between various conditions of use in accordance with Article 5(4), such as controlling the number of reproductions. In order to prevent abuse of such measures, any technological measures applied in their implementation should enjoy legal protection.