ADDENDUM TO "I/A" ITEM NOTE

from: General Secretariat  
to: Permanent Representatives Committee/Council  
No. prev. doc.: 9512/00 PI 38 CULTURE 41 CODEC 462 + ADD 1  
No. Cion prop.: 8723/99 PI 29 CULTURE 36 CODEC 297

           - Common position
           = Statements for the Council minutes

The Permanent Representatives Committee/Council will find attached the statements for entry in the minutes of the Council meeting at which the above common position is adopted.
STATEMENTS FOR ENTRY IN THE COUNCIL MINUTES

A. Statements by the Council and/or the Commission

1. Council and Commission statement on Recital 33 ¹:

"The Council and the Commission are of the view that the wording "provided that the intermediary does not modify the information and does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information" does not exclude proxy caching by an intermediary from being exempted under Article 5(1), if such caching meets the conditions set out in that Article."

2. Commission statement on Recital 35 ¹:

"The Commission is of the view that no obligation for payment may arise regarding certain single, temporary acts of copying a broadcast work or other subject matter which are undertaken solely for the purpose of enabling it to be viewed and/or listened to at a more convenient time ("time-shifting"), provided that the conditions set out in Article 5(5) of this Directive are met."

3. Commission statement on Recital 50 ¹:

"The Commission is of the view that Member States, when taking measures to ensure that rightholders accommodate achieving the objective of the exception for private copying provided for in Article 5(2)(b), may allow certain single temporary acts of copying a broadcast work or other protected subject matter which are undertaken solely for the purpose of enabling it to be viewed and/or listened to at a more convenient time ("time-shifting"), provided that the conditions set out in Article 5(5) of this Directive are met."

¹ In accordance with the guidelines of 24 March 1997, this statement will be forwarded to the European Parliament.
4. **Commission statement on Article 4(2)**:

"The Commission confirms that the regime on exhaustion as enshrined in Article 4(2) of this Directive corresponds to that established in the existing Directives on copyright and related rights. Any future work on this issue will take account of, and take place against the background of, reflections on this issue in the wider area of intellectual and industrial property."

5. **Commission statement on the hierarchy of exceptions**:  

"The Commission is of the view that no hierarchy exists between the exceptions and limitations contained in Article 5 and, therefore, Member States may choose among them, notwithstanding the mandatory nature of Article 5(1)."

6. **Commission statement on optional exceptions**:  

"The Commission considers that the optional exceptions regime in Article 5(2), (3) and (4) of the Directive should not create any imbalances either for rightholders or for any of the other parties concerned; if such imbalances were to arise, the Commission, in the context of Article 12(1) of the Directive, would make appropriate proposals."

7. **Council and Commission statement on rights management**:  

"The Council and the Commission confirm the need for adequate and transparent conditions for the exploitation and management of rights in the Internal Market, both with respect to individual and collective rights management, which reflect an appropriate balance between all rights and interests (in particular of users) involved. The Commission will study further the issue of management of rights, in the light of market developments with particular regard to digital technologies and will decide upon the appropriate follow-up."

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1 In accordance with the guidelines of 24 March 1997, this statement will be forwarded to the European Parliament.
8. **Commission statement on further adaptation of the existing Directives**: 

"The Commission will closely survey technological and market developments relevant to the protection of copyright and neighbouring rights in the Internal Market and consider preparing, at an early stage, adaptations and consolidations of the existing Directives adopted in this area, where appropriate to safeguard continued coherence, based on the experience gained with the application of this Directive. In this context, it will pay particular attention to the need for an exception to the reproduction right for certain acts of copying as contained in Article 5(1) of this Directive to be applied to computer programs and databases and for the legal protection of technological measures as contained in Article 6 of this Directive to be applied to computer programs."

B. **Unilateral statements**

9. **Joint statement by the Italian, Spanish and French delegations**: 

"The Italian, Spanish and French delegations consider that a harmonised legal framework for copyright and related rights which improves legal certainty and ensures a high level of protection is an essential condition for the development of the information society. Indeed, in the new digital environment, legal certainty is indispensable if European content is to be present in strength on networks.

These delegations, which have constantly supported the Commission's proposal, consider that the text which has emerged from the Council does not attain a satisfactory degree of harmonisation and contains a risk of substantial disparities between Member States with regard to the system of exceptions and remuneration of rightholders.

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1 In accordance with the guidelines of 24 March 1997, this statement will be forwarded to the European Parliament.
In this respect, these delegations will ensure, *inter alia* in the Contact Committee, that the implementation of the Directive is not to the detriment of rightholders and does not lead to rightholders being treated in an unbalanced way according to the Member State in which their works are used. They will be particularly vigilant in ensuring that the optional exceptions are interpreted strictly and that, in all cases where this is provided for in the Directive, use of works is accompanied by fair compensation.

They encourage the Commission to be most vigilant in ensuring, by means of the powers conferred upon it by the Treaty, that the legitimate interests of rightholders are protected and that the provisions of Article 5(5) are respected in all circumstances."

10. **Statement by the Luxembourg delegation:**

"The Luxembourg delegation shares the aims of the proposal for a Directive on copyright in the Information Society. It is indeed desirable to create, while ensuring appropriate protection of intellectual property, a general, flexible legal framework for encouraging the development of the information society, in order to exploit fully Europe's electronic potential. This aim was sanctioned by the Lisbon European Council.

However, in the view of the Luxembourg delegation, the proposal submitted to Council will have the effect of hampering the development of the information society. In particular, the system of a "closed list" of exceptions is likely to prevent speedy adaptation to technological changes. In general, the Luxembourg delegation considers that the text is too restrictive and introduces an imbalance in favour of rightholders at the expense of users, who run the risk of being deprived of the advantages offered by the new digital environment.

For these reasons, the Luxembourg delegation has decided to abstain."
11. **Statement by the Danish, Irish, Luxembourg, Netherlands, Finnish and Swedish delegations on Article 4(2):**

"Denmark, Ireland, Luxembourg, the Netherlands, Finland and Sweden are in favour of international exhaustion and would like to stress the need for a reconsideration of the issue of exhaustion within the field of copyright in the light of the general international development and the ongoing discussion on international exhaustion within the field of trade mark protection."

12. **Statement by the Netherlands delegation on Article 5(3)(c):**

"The Netherlands recalls that, with respect to Article 5(3)(c), Member States remain free to further define in their legislation the notion of "press"." 

13. **Statement by the Swedish delegation on Article 9:**

"Sweden recalls that the wording "legal deposit requirements" covers **inter alia** national systems under which the designated authorities may circumvent technological measures when downloading works or other subject matter from computer networks for national archiving purposes."