CONTRIBUTION BY COUNCIL LEGAL SERVICE TO THE PROCEEDINGS OF THE WORKING PARTY ON INTELLECTUAL PROPERTY OF 26 FEBRUARY 2001


- Interpretation of the European Parliament's amendments 6, 7, 8 and 9 relating to the requirement to indicate the source, including the author's name, as set out in Article 5(3)(a), (c), (d) and (f) of the Directive (Doc. 6099/01 CODEC122 PI 11 CULTURE 10)

1. At the meeting of the Working Party on Intellectual Property on 26 February 2001, the Council Legal Service was asked to give an interpretation of amendments 6, 7, 8 and 9 which concern the requirement to indicate the source, including the author's name, when the work is used, reproduced or quoted, as set out in Article 5(3)(a), (c), (d) and (f) of the Directive.

2. The thrust of the reply by the representative of the Legal Service can be summarised as follows: The requirement to indicate the source of the work "whenever possible" in the Council's Common Position means that the source has to be indicated if it is possible to do so, whereas the requirement "unless this proves impossible" in the amendment by the European Parliament means that the source of the work has to be indicated unless it is impossible to do so. With the amendment by Parliament, the author is put in a somewhat stronger position vis-à-vis the reproducer/user of his work.

3. The amendments by the European Parliament can however not be read as reversing the burden
of proof to the benefit of the author, as in both the Council's and Parliament's version the judicial authority will judge the alleged infringement of the author's rights on the basis of proof submitted by both parties to the dispute and according to national (procedural) law.