SUMMARY OF PROCEEDINGS

from: Working Party on Intellectual Property (Copyright)
on: 23 and 24 February 1999

No. prev. doc.: 11045/98 PI 49 CULTURE 46 CODEC 440
No. Cion prop.: 5562/98 PI 4 CULTURE 3 CODEC 37


Introduction

1. The Commission representative informed the Working Party that the European Parliament had completed the first reading of the above mentioned proposal and had adopted, at its plenary session of 8-12 February 1999, 55 amendments¹. The Commission:

- had accepted both the substance and the wording of 25 of these amendments (see amendments 1, 2, 4, 5, 6, 7, 8, 10, 12, 17, 18, 20, 21, 24, 29, 34, 36, 38, 41, 42, 44, 45, 51, 55 and 57);

- had broadly accepted the substance but not the exact wording of 18 of these amendments (see amendments 9, 11, 13, 82, 16, 22, 31, 33, 37, 39, 43, 46, 49, 50, 52, 53, 54 and 58);

¹ The amendments adopted by the European Parliament are set out in 5756/99 CODEC 57 PI 9 CULTURE 10.
had not accepted the remaining 12 amendments, i.e. amendments 3, 14, 15, 19, 23, 25, 26, 27, 28, 40, 47 and 48.

An amended Commission proposal along these lines was due to be adopted in early April.

**Specific remarks**

2. The Commission representative also furnished the following additional information on the Commission's views regarding a number of the above mentioned amendments:

   - **Amendment 3** had been rejected since the need to preserve the balance of interests between rightholders and users of protected works had been stated more clearly elsewhere (e.g. Recital 21) and since the further implications of the amendment were far from clear.

   - **Amendment 11** should take the form of a "no prejudice" clause.

   - **Amendment 13** should retain the words "private communication" contained in the Commission's proposal alongside the words "direct representation or performance" added by the European Parliament.

   - **Amendments 82 and 22** would be combined in the Commission's amended proposal.

   - **Amendment 16** was to be reworded in line with the corresponding Article 5(1).

   - **Amendment 24** would allow Member States considerable flexibility and would not oblige them to introduce binding rules on contractual obligations and fair compensation.

   - **Amendment 31** would have to be reworded along the lines of the Agreed Statement concerning Article 8 of the WIPO Copyright Treaty (WCT).

   - As regards **Amendment 33**, the Commission accepted the addition of "essential" and could
accept the addition of "transient and incidental" subject to redrafting. It could not accept the second sentence suggested by the European Parliament since the question of authorised use was a matter to be resolved in the context of the proposal for a Directive on certain legal aspects of electronic commerce in the Internal Market\textsuperscript{2}, and since the changes proposed by the European Parliament in respect of "economic significance" detracted from the clarity of the text.

Amendment 34 introduced the condition of "fair compensation", which should not be read as imposing a harmonised levy system across the Community, since it could also be accommodated by means of contractual arrangements.

Amendment 37 was to be reworded to ensure that the digital private copying exception no longer depends upon the non-availability of technical means aimed at safeguarding the interests of rightholders, but would be without prejudice to rightholders using such means to enforce their rights.

Amendment 39 was to be reworded along the lines of Article 11bis(3) of the Berne Convention.

Amendment 42 did not preclude the possibility of providing for fair compensation of the rightholders.

The Commission accepted Amendment 43, apart from the addition of the word "short". In its view, the last part of this amendment would not undermine the freedom of speech.

Amendment 45 was not intended to cover the question of right of access to works held by public authorities.

Amendment 46 was to be redrafted to clarify the scope of this exception.

Amendment 47 had not been accepted, since the Commission considered that the restriction proposed by the European Parliament should not necessarily apply in respect of all the exceptions contained in Article 5(1) to (3).

\textsuperscript{2} 5123/99 ECO 2 CODEC 6 (OJ C 30, 5.2.99, p. 4).
Amendment 48 was not considered to be justified.

Amendments 49 to 53: while accepting in principle the restructuring proposed by the European Parliament of Article 6(1) of the Commission proposal (Article 6(1) and (2) of the Parliament's proposal), the Commission intended to restore the knowledge test in the new paragraph 1 and make clear that the new paragraph 2 concerned activities carried out without authority.

Amendment 54 was to be realigned more closely on Article 6(2) of the Commission's proposal.

Amendment 57 had been accepted in principle, subject to ensuring that its wording was in line with corresponding clauses in earlier copyright Directives.

Amendment 58 was to be reworded to be brought in line with similar provisions in other Directives. A similar mechanism in the "Television without Frontiers" Directive\(^3\) had proved its usefulness in resolving misunderstandings between the Commission and Member States without having recourse to formal legal proceedings.

**Next steps**

3. The Chairman informed the Working Party that the next meeting had been scheduled for 29-30 March 1999. Discussions in that meeting would focus on Article 5(2) and (3) of the draft Directive. To this effect, Member States which had not yet done so were invited to transmit their desiderata in respect of these paragraphs to the General Secretariat of the Council by the end of February 1999. If time allowed, Article 5(1) would also be examined.