Proposal for a Council Directive on rental right, lending right, and on certain rights related to copyright

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(Submitted by the Commission on 13 December 1990)

(91/C 53/04)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas differences exist in the legal protection provided by the laws and practices of the Member States for copyright works and subject matter of related rights protection as regards rental and lending, and such differences are sources of barriers to trade and distortions of competition which impede the proper functioning of the internal market;

Whereas such differences in legal protection could well become greater as Member States adopt new and different legislation or as nationall jurisprudence interpreting such legislation develops differently;

Whereas such differences should therefore be eliminated by 31 December 1992 in accordance with the objective of introducing an area without internal frontiers, as set out in Article 8A of the Treaty;

Whereas rental and lending of copyright works and the subject matter of related rights protection is playing an increasingly important role in particular for creators, artists and a broad range of industries, and piracy is becoming an increasing threat;

Whereas the adequate protection of copyright works and subject matter of related rights protection by rental and lending rights as well as the protection of the subject matter of related rights protection by the fixation right, reproduction right and distribution right can accordingly be considered as being of fundamental importance for the Community's industrial and cultural development;

Whereas copyright and related rights protection must adapt to new economic developments such as new forms of exploitation;

Whereas the creative and artistic work of authors and performing artists necessitates an adequate income as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky and the possibility for securing that income and recouping that investment can only effectively be guaranteed through adequate legal protection;

Whereas without effective and harmonized protection throughout the Member States, such creative and artistic work as well as such investment might decrease or never be made;

Whereas these creative, artistic and entrepreneurial activities are, to a large extent, activities of self-employed persons, and the pursuit of such activities must be made easier by providing a uniform legal protection within the Community;

Whereas, to the extent that these activities constitute services, their provision must equally be facilitated by the establishment in the Community of a uniform legal framework;

Whereas protection by rental and lending rights and protection in the field of rights related to copyright by existing legislation, administrative practice, and court jurisprudence does not exist at all in some Member States and, where it exists, is not the same or has different characteristics;

Whereas the uncoordinated development in the Community of legal protection in these fields in the Member States could result in the creation of new disincentives to trade to the detriment of further industrial and cultural development and of the completion of the internal market;

Whereas existing differences having such effects need to be removed and new ones having a negative impact on the functioning of the common market and the development of trade in cultural goods and services need to be prevented from arising;

Whereas the legislation of the Member States should be harmonized in such a way as not to conflict with the existing international conventions on which many Member States' copyright and related rights laws are based;

Whereas the Community's legal framework on the rental and lending right and on certain rights related to copyright can be limited to establishing that Member States provide rights
with respect to rental and lending for certain groups of right owners and further to establishing the exclusive rights of fixation, reproduction and distribution for certain groups of right owners in the field of related rights protection;

Whereas the harmonized rental and lending rights and the harmonized protection in the field of rights related to copyright should not be exercised in a way which constitutes a disguised restriction on trade between Member States,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

RENTAL AND LENDING RIGHT

Article 1

Object of harmonization

1. In accordance with the provisions of this chapter, Member States shall provide a right to authorize or prohibit the rental and lending of originals and copies of copyright works, and other subject matter as set out in Article 2 (1).

2. For the purposes of this Directive, 'rental' means making available for use, for a limited period of time and for profit-making purposes, without prejudice to paragraph 3.

3. For the purposes of this Directive, 'lending' means making available for use, for a limited period of time, and not for direct profit-making purposes, if it is made through institutions which are accessible to the public, such as public libraries, research libraries, specialized libraries, school libraries, church libraries, collections of new media or of works of visual art, libraries organized or sponsored by public or private companies, and other collections of subject matter as set out in Article 2 (1).

4. The rights referred to in paragraph 1 shall not be affected by any sale, or other act of distribution, of originals and copies of works and other subject matter, as set out in Article 2 (1).

Article 2

First owner and subject matter of rental and lending right

1. The right to authorize or prohibit the rental and lending shall belong:

— to the performing artist in respect of fixations of his performance,

— to the phonogram producer in respect of his phonograms, and

— to the producer of the first fixations of cinematographic works and moving images in respect of his visual recordings, and visual and sound recordings.

2. A rental and lending right does not arise in relation to buildings and to works of applied art.


Article 3

Authorization of rental and lending

If the rightholders authorize to a third party against payment the rental or lending of a sound recording, visual recording or visual and sound recording, then each of the rightholders set out in Article 2 (1) shall retain the right to obtain an adequate part of the said payment, notwithstanding any assignment of the rental or lending right or granting of licences. This right to obtain an adequate part of the payment cannot be waived, but its administration may be assigned.

Article 4

Derogation from exclusive lending right

Member States may, for cultural or other reasons, derogate from the copyright based exclusive lending right referred to in Article 1 (1) for one or several categories of objects, provided that:

— at least authors obtain an equitable remuneration through administering bodies for such lending, and

— such derogation measures comply with Community law, in particular Article 7 of the EEC Treaty.

CHAPTER II

PROTECTION IN THE FIELD OF RIGHTS RELATED TO COPYRIGHT

Article 5

Fixation right

Member States shall provide for performing artists the right to authorize or prohibit the fixation of their performances. Likewise, they shall provide for broadcasting organizations the right to authorize or prohibit the fixation of their broadcasts.
Article 6

Reproduction right

Member States shall provide the right to authorize or prohibit the direct or indirect reproduction:

— for performing artists, of fixations of their performances,
— for phonogram producers, of their phonograms,
— for producers of the first fixations of cinematographic works or moving images, of their visual recordings, and visual and sound recordings,
— for broadcasting organizations, of fixations of their broadcasts.

Article 7

Distribution right

1. Member States shall provide:

— for performing artists in respect of fixations of their performances,
— for phonogram producers in respect of their phonograms,
— for producers of the first fixations of cinematographic works and moving images in respect of their visual recordings, and visual and sound recordings,
— for broadcasting organizations in respect of fixations of their broadcasts,

the exclusive right to make available, for an unlimited period of time, their respective subject matter to the public by sale or otherwise, without prejudice to paragraph 2.

2. If a subject matter referred to in paragraph 1 has been put into circulation within the Community by the right owner or with his consent, then its import into another Member State may not be prohibited by virtue of the right referred to in paragraph 1.

Article 8

Limitations to rights

1. Member States may provide limitations to the rights referred to in Chapter II in respect of:

(a) private use;
(b) use of short excerpts in connection with the reporting of current events;
(c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
(d) use solely for the purposes of teaching or academic research.

2. Irrespective of paragraph 1, any Member State may provide the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organizations and of producers of the first fixations of cinematographic works and moving images, as it provides in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided only to the extent that they are compatible with the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations).

3. Paragraph 1 (a) shall be without prejudice to any existing or future legislation on remuneration for reproduction for private use.

CHAPTER III

DURATION

Article 9

Duration of authors' rights

Until further harmonization, the authors' rights referred to in this Directive shall not expire before the end of the term provided by the Berne Convention for the Protection of Literary and Artistic Works; this shall be without prejudice to the particular terms of protection of authors' rights not explicitly dealt with by that Convention.

Article 10

Duration of related rights

Until further harmonization, the rights referred to in this Directive of performing artists, phonogram producers and broadcasting organizations shall not expire before the end of the respective terms provided by the Rome Convention. This shall apply mutatis mutandis to the right referred to in this Directive, of producers of the first fixations of cinematographic works and moving images.

CHAPTER IV

COMMON PROVISIONS

Article 11

Application in time

The provisions of this Directive shall apply also in respect of all copyright works, performances, phonograms, broadcasts
and first fixations of cinematographic works and moving images referred to in this Directive which are, on 1 January 1993, still protected by the national legislation in the field of authors' rights and related rights.

**Article 12**

**Final provisions**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993.

Member States shall forthwith inform the Commission thereof and communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

**Article 13**

This Directive is addressed to the Member States.