NOTE

from: Presidency

to: Working Party on Intellectual Property (Copyright)

No. prev. doc.: 5746/91 PI 24 CULTURE 16
No. Cion prop.: 4175/91 PI 4 CULTURE 4 - COM(90) 586 final - SYN 319

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

- Consolidated text

Delegations will find attached a consolidated text of the proposal for a Council Directive on rental right, lending right, and on certain rights related to copyright, drawn up by the Presidency following the Working Party’s first reading of the proposal. Changes in relation to the Commission proposal are underlined.
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 economic advantage, without prejudice to paragraph 3. This does not cover the making available for reference use (consultation sur place), or the making available for public performance.

(3) For the purposes of this Directive, "lending" means making available for use, for a limited period of time, and not for economic advantage, when it is made through establishments which are accessible to the public, such as public libraries. This does not cover the making available for reference use (consultation sur place), the making available for public performance or the making available between such establishments which are accessible to the public.

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

† Paragraph unchanged.

6360/91 prk EN - 2 -
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 author in respect of the original and copies of his work,
- 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, whether or not accompanied by sound.

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

(3) The provisions of this Directive shall be without prejudice to Article 4(c) of Council Directive No 91/250/EEC of 14 May 1991 on the Legal Protection of Computer Programs, which provides

a) that the rightholder of the copyright in a computer program shall have the exclusive right to authorize any form of distribution to the public, including the rental, of the original computer program or of copies thereof, and

b) that the first sale in the Community of a copy of a program by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program or a copy thereof.

Article 3  Authorization of Rental and Lending

(1) The rights referred to in Article 2(1) may be assigned or subject to the granting of licenses.

(2) If the rightholders authorize to a third party against payment the rental or lending of a sound recording or visual recording, whether or not accompanied by sound, then each of the rightholders set out in Article 2(1) shall retain the right to obtain an adequate part of the said payment. 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

(1) Member States shall provide for performing artists the right to authorize or prohibit the fixation of their performances.

†Article unchanged.
Article 5 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, whether or not accompanied by sound,
- for broadcasting organizations, of fixations of their broadcasts, as set out in Article 5(2).

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, whether or not accompanied by sound,
- for broadcasting organizations in respect of fixations of their broadcasts, as set out in Article 5(2).

the exclusive right to make available these objects, including copies thereof, to the public by sale or otherwise and for an unlimited period of time.
(2) This right shall not be exhausted except as mentioned hereafter. The first sale in the Community of an object as referred to in paragraph 1 by the rightholder or with his consent shall exhaust this right within the Community of that object.

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).

+ Article unchanged.
(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. The rights referred to in this Directive for producers of the first fixations of cinematographic works and moving images shall not expire before the end of a period of twenty years computed from the end of the year in which the fixation was made.

CHAPTER IV COMMON PROVISIONS

Article 11 Application in Time

(1) 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

+ Article unchanged.
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. **

(2) The provisions of this Directive shall apply without prejudice to any acts performed before 1 January 1993.

(3) Member States in which no exclusive right within the meaning of Article 1(1) existed before 1 January 1993 shall provide that the rightholders are presumed to have given their authorization to the rental or lending of an object set out in Article 2(1), which is proven to have been made available to third parties for this purpose before 1 January 1993.

** 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.

** Paragraph unchanged. **
** Article unchanged. **
Article 13

This Directive is addressed to the Member States.

For the Council
The President

Done at Brussels,