SUMMARY OF PROCEEDINGS

of: Working Party on Intellectual Property (Copyright)
on: 17 and 18 October 1991

No. prev. doc.: 8435/91 PI 55 CULTURE 38
No. Com 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

1. At its meeting on 17 and 18 October 1991 the Working
Party on Intellectual Property (Copyright) completed its
second reading of the proposal for a Council Directive on
rental right, lending right, and on certain rights related to
copyright (4175/91 PI 4 CULTURE 4) on the basis of the
consolidated text in 6360/91 PI 33 CULTURE 24.

2. The Working Party also considered the suggestion made by
the French delegation at its previous meeting that the term
"act of distribution" in Article 1(4) be replaced by the term
"act of exploitation" (see 8435/91, point 6).

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1 The summary of the Working Party's proceedings concerning the first
session of the WIPO Committee of Experts on a possible protocol to
the Berne Convention is contained in 8901/91 PI 61 CULTURE 51; the
summary of its proceedings concerning the proposal for a Council
Decision concerning the accession of the Member States to the Berne
Convention (Paris Act) and the Rome Convention is contained in
8935/91 PI 62 CULTURE 52.

2 The Luxembourg delegation was not represented at this meeting. The
Spanish delegation was not represented on 17 October.
A majority of delegations considered that "act of distribution", rather than "act of exploitation", was the correct term to be used in the context of exhaustion.

3. A new consolidated text of the proposal for a Directive has been drawn up by the Presidency following the Working Party’s second reading.

Article 4

4. Those delegations which had expressed a reservation on the inclusion of lending in the Directive at the Working Party’s previous meeting (see 8435/91, point 3) reiterated this reservation in relation to Article 4. The Belgian delegation also expressed a reservation in this respect.

The German, Netherlands and United Kingdom delegations spoke in favour of the Directive providing for a remuneration right for lending.

5. The French delegation pointed out that the terms "for cultural or other reasons" was extremely broad, and suggested that it should be possible to invoke the derogation provided for in this Article for cultural reasons only.

6. The United Kingdom delegation considered that it should be possible to invoke this derogation in respect of certain establishments, in particular those types of libraries to which public lending rules do not apply at present.

7. The Netherlands delegation questioned whether it was necessary that remuneration of authors should require the intermediary of administering bodies in all cases.
Chapter II

8. The United Kingdom delegation pointed out that a number of the rights provided for in Chapter II of this Directive were also provided for in the proposal for a Council Directive on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission (8331/91 PI 53 ETS 39 CULTURE 37), and asked whether this duplication was necessary.

The Commission representative indicated that once the rights concerned had been adopted in one of these directives, the corresponding provisions of the other proposal could be adapted accordingly.

9. The United Kingdom delegation considered that Chapter II should also contain a remuneration right for phonogram producers in respect of broadcasts of their phonograms.

The Danish delegation, which supported this suggestion, considered that provision should be made for remuneration of both phonogram producers and performers in respect of broadcasts of phonograms.

10. The Netherlands delegation considered that Chapter II should contain one or more provisions relating to the reservations provided for in Article 16 of the Rome Convention.

11. The Netherlands delegation suggested that the terminology of Articles 5, 6 and 7 be aligned to ensure that all of these Articles referred to exclusive rights.

12. Several delegations asked that the wording of Article 5(2) be made clearer.
Article 6

13. The Greek delegation expressed a reservation on this Article to the extent that it goes beyond the provisions of the Rome Convention.


The Commission representative suggested that, to avoid creating a new category of rightholders, it would be preferable to draw up a new recital which would make it clear that this indent (as well as corresponding provisions of other Articles) covers the first fixations of videograms.

15. The United Kingdom delegation drew attention to the provisional reservation made by a number of delegations at the Working Party's previous meeting in relation to the corresponding provision of Article 2 (8435/91, point 9). If the intention of these provisions was to ensure protection for film producers irrespective of whether or not their works were original under the terms of the Berne Convention, the United Kingdom delegation considered that the copyright protection given to film producers under present United Kingdom provisions was sufficient, as these provisions did not require that the works be original, and it was not necessary to provide in addition for neighbouring right protection, as was implied by the title of Chapter II.

The German delegation suggested that a recital be drawn up to make it clear that Member States would not necessarily have to use neighbouring rights to implement Chapter II, but could, where appropriate, use copyright protection.

4 Article 2(1), 4th indent, Article 7(1), 3rd indent, and Article 10, second sentence.
Article 7

16. The French delegation suggested extending the title and contents of this Article from a distribution right to a right of communication to the public.

In the light of this suggestion and of the suggestions made earlier by the United Kingdom and Danish delegations (point 9 above), the Commission representative suggested adding a new Article on communication to the public, instead of broadening Article 7, as he considered the two rights should be dealt with separately.

17. The United Kingdom delegation expressed a reservation on the need for the first indent of paragraph 1, considering that it was sufficient for producers to have a distribution right, as producers were usually diligent in combatting piracy.

The Commission representative considered that it was necessary for performers too to have a distribution right, in order to enable performers to take action where a producer failed to act to combat piracy, and in order to give a performer the means of redress in the event of a producer distributing a greater number of copies of a work than had been agreed by contract between the producer and the performer.

The French delegation agreed with the arguments put forward by the Commission representative in respect of phonograms, but had doubts whether they were valid in respect of audiovisual works.

18. The United Kingdom and Netherlands delegations considered that the terms "for an unlimited period of time" were inappropriate at the end of paragraph 1, as they could give rise to problems in relation to licences concluded for a limited period of time.
19. The Netherlands and United Kingdom delegations requested that the relationship between Article 7 and Article 1 be clarified.

20. The French delegation expressed doubts whether the wording of Article 7(2) was entirely appropriate for intellectual creations.

21. The French delegation suggested that a provision be added to this Article on the subject of ensuring that a certain period elapses between showings of a work by different means ("chronologie des media"). The German and United Kingdom delegations supported this suggestion in principle.

**Article 8**

22. In reply to a question from the French delegation, the Commission representative stated that paragraph 1(a) would not prejudice a future Commission initiative in respect of private copy.

23. The French delegation, supported by the Belgian delegation, considered that Article 8(2) should be amended to allow Member States to provide that where a rightholder assigned certain rights to another rightholder, this was to be deemed to involve the assignment of other rights too.

The Netherlands and United Kingdom delegations expressed doubts whether Article 8(2) was the right place to deal with this matter.

The Commission representative took note of this suggestion by the French delegation.

**Article 9**

24. The Netherlands and United Kingdom delegations expressed doubts on the need for the second sentence of this Article.
Article 10

25. The Netherlands delegation maintained its doubts and reservations on the second sentence of Article 10 (5746/91, points 29 and 30).

Chapter IV

26. It was agreed that the date of 1 January 1993 would be put in square brackets for the time being.

Article 11

27. The Commission representative invited any delegations which foresaw transitional problems to propose texts for resolving them.

28. The Netherlands delegation considered that a transitional provision would be necessary to take account of contracts concluded before the entry into force of the Directive.

29. The Irish delegation considered that the Directive should apply only to works created after the entry into force of the Directive.

The Commission representative was unable to accept this view.

30. The German delegation asked that paragraph 3 be adapted to cover not only objects made available for the purpose of rental or lending, but also others acquired legitimately before the date of entry into force of the Directive.