NOTE

from: Presidency

to: Working Party on Intellectual Property (Copyright)

No. prev. doc.: 8435/91 PI 55 CULTURE 38
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 second reading of the proposal.
on rental right, lending right, and on certain rights
related to copyright

- Consolidated text -
drawn up following the Working Party's second reading

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) 1st variant:
For the purposes of this Directive, "rental" means making available for use for a limited period of time, without including lending as defined in paragraph 3. This does not cover the making available for reference use (consultation sur place), or the making available for public performance.

(2) 2nd variant:
For the purposes of this Directive, "rental" means making available for use, for a limited period of time and for direct or indirect economic advantage, without prejudice to paragraph

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1 Reservations by the Belgian, Danish, Spanish, French, Irish, Italian and Portuguese delegations on the inclusion of lending in the Directive.

2 Suggestion by the Irish delegation.

3 Suggestion by the Commission representative.
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 direct or indirect 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).

Article 2  Rightholders 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.)\footnote{4}{Provisional reservation by the Danish, Irish, Netherlands and United Kingdom delegations on this indent.} \footnote{5}{A recital will be added to make clear that this indent covers the first fixations of videograms.}

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

(2a) The rights referred to in paragraph 1 may be contractually transferred, assigned or subject to the granting of licences.

(3) (Transferred to Article 2a)

**Article 2a  Rental of computer programs**


**Article 3  Inalienable right to remuneration**

(1) (Transferred to Article 2(2a)).

(2) Where authorization to rent or lend a sound recording or visual recording, whether or not accompanied by sound, has been given, then each of the rightholders set out in Article 2(1) shall retain the right to obtain an adequate part of the remuneration
due, by the party who rents out or lends, for the rental or lending. This right to obtain an adequate part of the remuneration cannot be transferred or waived. This right may be administered by a collective administration society.7

Article 4 Derogation from exclusive lending right8

Member States may, for cultural reasons, derogate from the copyright based exclusive lending right referred to in Article 1(1) for one or several categories of objects or particular establishments, 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 RIGHTSRELATED TO COPYRIGHT

Article 5 Fixation Right

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

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7 Provisional reservation by the Danish, Irish and United Kingdom delegations on this provision.

8 Reservation by the Belgian, Danish, Spanish, French, Irish, Italian and Portuguese delegations on this Article, as these delegations have reservations on the inclusion of lending in the Directive.

9 A recital will be added to make clear that Member States will not necessarily have to use neighbouring rights to implement this Chapter, but may, where appropriate, use copyright protection.

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(2) Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite. The broadcasting organization shall not have this right where it merely retransmits broadcasts of other broadcasting organizations.

Article 6 Reproduction Right

Member States shall provide the exclusive 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 6a Communication to the public

p.m. (The text of this Article will be proposed shortly).

Article 7 Distribution Right

(1) Member States shall provide

- for performing artists, in respect of fixations of their performances.

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10 See footnotes 4 and 5 above.

11 Reservation by the United Kingdom delegation on the need for the inclusion of this indent.
- 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.

(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.

(3) The distribution right provided for in the previous paragraphs shall be without prejudice to the specific rights provided for in Chapter I.

**Article 7a** Period between showings of a work by different means

This Directive shall not prevent Member States from regulating, in accordance with Community law, the period which has to elapse between showings of a work by different means.

**Article 8** Limitations to Rights

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

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\[ \text{12 See footnotes 4 and 5 above.} \]
(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 scientific research.

(2) Irrespective of paragraph 1, any Member State may provide for 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 for in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which 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.
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.13

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 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 of exploitation 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 deemed 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 or to have been acquired before 1 January 1993.

13 See footnotes 4 and 5 above with regard to the second sentence.
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.

For the Council

The President

Done at Brussels,
NOTE

from: Presidency

to: Working Party on Intellectual Property (Copyright)

No. prev. doc.: 8435/91 PI 55 CULTURE 38
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 second reading of the proposal.

on rental right, lending right, and on certain rights
related to copyright

- Consolidated text -
drawn up following the Working Party's second reading

CHAPTER I  RENTAL [AND LENDING] ¹ 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

(2) For the purposes of this Directive, "rental" means making available for use ³, for a limited period of time and for direct or indirect commercial purposes ⁴ [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 or indirect commercial purposes, when it is made

¹ Reservations by the Belgian, Danish, Spanish, French, Irish, Italian and Portuguese delegations on the inclusion of lending in the Directive.

² Reservation by the German and Netherlands delegations on an exclusive rental right and lending right; these delegations would prefer a remuneration right.

³ A recital will be added to clarify the term "making available for use".

⁴ A recital will be added to make clear that these terms cover non-profit-making associations when they operate commercially.

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through establishments which are accessible to the public, such as public libraries. This does not cover the making available for on-the-spot reference use (consultation on place), 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).

Article 2  Rightholders 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.\footnote{5} \footnote{6}

\footnote{5} Provisional reservation by the Danish, Irish and Netherlands delegations on this indent.

\footnote{6} A recital will be added to make clear that this indent covers the first fixations of videograms. The French delegation would prefer an explicit reference to videograms in this indent.
(2) A rental (and lending) right does not arise in relation to buildings and to works of applied art.

(2a) The rights referred to in paragraph 1 may be transferred, assigned or subject to the granting of contractual licences.

(3) (Transferred to Article 2a)

Article 2a Rental of computer programs


Article 3 Inalienable right to remuneration

(1) (Transferred to Article 2(2a)).

(2) Where authorization to rent (or lend) a sound recording or visual recording, whether or not accompanied by sound, has been given, then each of the rightholders set out in Article 2(1) shall retain the right to obtain an adequate part of the remuneration due, by the party who rents out (or lends), for the rental (or lending). This right to obtain an adequate part

7 Reservation by the Danish delegation, which considers that literary works, photographic works and works of art should be excluded from the scope of the Directive. Provisional reservation by the Spanish delegation on the exclusion of works of applied art. The French delegation considers that plastic art works should also be excluded from the scope of the Directive.

of the remuneration cannot be transferred or waived. This right may be administered by a collective administration society.

Article 4 Derogation from exclusive lending right

Member States may, for cultural reasons, derogate from the copyright based exclusive lending right referred to in Article 1(1) for one or several categories of objects or particular establishments, 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 exclusive right to authorize or prohibit the fixation of their performances.

Reservation by the Italian delegation on the non-transferability of this right.

Provisional reservation by the Danish, French, Irish and United Kingdom delegations on this provision.

Reservation by the Belgian, Danish, Spanish, French, Irish, Italian and Portuguese delegations on this Article, as these delegations have reservations on the inclusion of lending in the Directive.

A recital will be added to make clear that Member States will not necessarily have to use neighbouring rights to implement this Chapter, but may, where appropriate, use copyright protection.

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(2) Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite. The broadcasting organization shall not have this right where it merely retransmits broadcasts of other broadcasting organizations.

Article 6 Reproduction Right

Member States shall provide the exclusive 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 6a Communication to the public

(1) Member States shall provide for performing artists the exclusive right to authorize or prohibit the broadcasting, as set out in Article 5(2), and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

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13 See footnotes 5 and 6 above.

14 Reservation by the Commission representative on the terms "as set out in Article 5(2)" in paragraphs 1 and 3, which it considers should be replaced by the terms "by wireless means".

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(2) Member States shall provide for performing artists and phonogram producers a remuneration right so that a single equitable remuneration shall be paid by users to both where a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used directly or indirectly for broadcasting, as set out in Article 5(2), or for any communication to the public. Member States may, in the absence of agreement between performing artists and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

(3) Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the rebroadcasting of their broadcasts, as set out in Article 5(2), as well as the communication to the public of their broadcasts.

(4) The provisions of this Article shall be without prejudice to any provisions of Council Directive No ..../EEC of ............ on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission.

**Article 7 Distribution Right**

(1) Member States shall provide

- for performing artists in respect of fixations of their performances.

15 Reservation by the United Kingdom delegation on the need for the inclusion of this indent.
- 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.

(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.

(3) The distribution right provided for in the previous paragraphs shall be without prejudice to the specific rights provided for in Chapter I.

Article 7a  Period between showings of a work by different means

This Directive shall not prevent Member States from regulating, in accordance with Community law, the period which has to elapse between showings of a work by different means.

Article 8  Limitations to Rights

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

16 See footnotes 5 and 6 above.
(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 scientific research.

(2) Irrespective of paragraph 1, any Member State may provide for 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 for in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which 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.
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.17

CHAPTER IV  COMMON PROVISIONS

Article 11  Application in Time18

(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 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 of exploitation 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 deemed to have given their authorization to the rental [or lending] of an object set out in Article

17 See footnotes 5 and 6 above with regard to the second sentence.
18 Reservation by the German delegation on the provisions of this Article.
2(1), which is proven to have been made available to third parties for this purpose or to have been acquired 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.

Article 13

This Directive is addressed to the Member States.

For the Council
The President

Done at Brussels,

9031/1/91
EN
ADDENDUM

to: Consolidated text of the proposal for a Council Directive on rental right, lending right, and on certain rights related to copyright

from: Presidency

New Article 6a - Communication to the public

(1) Member States shall provide for performing artists the exclusive right to authorize or prohibit the broadcasting, as set out in Article 5(2), and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

(2) Member States shall provide for performing artists and phonogram producers a remuneration right so that a single equitable remuneration shall be paid by users to both where a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used directly or indirectly for broadcasting, as set out in Article 5(2), or for any communication to the public. Member States may, in the absence of agreement between performing artists and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

(3) Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the rebroadcasting of their broadcasts, as set out in Article 5(2), as well as the communication to the public of their broadcasts.
(4) The provisions of this Article shall be without prejudice to any provisions of Council Directive No ....../EEC of .......... on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission.
NOTE

from: Presidency

to: Working Party on Intellectual Property (Copyright)

No. prev. doc.: 10279/91 PI 83 CULTURE 68
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 - 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 outgoing Presidency at the end of 1991.
on rental right, lending right, and on certain rights
related to copyright

- Consolidated text -

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 direct or indirect commercial 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 or indirect commercial purposes, when it is made through establishments which are accessible to the public.

Reservations by the Belgian, Danish, Spanish, French, Irish, Italian and Portuguese delegations on the inclusion of lending in the Directive.

Reservation by the German and Netherlands delegations on an exclusive rental right and lending right; these delegations would prefer a remuneration right.

A recital will be added to clarify the term "making available for use".

A recital will be added to make clear that these terms cover non-profit-making associations when they operate commercially.
such as public libraries. This does not cover the making available for on-the-spot reference use (consultation sur place), 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).

Article 2 Rightholders 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.  

5 Provisional reservation by the Danish, Irish and Netherlands delegations on this indent.

6 A recital will be added to make clear that this indent covers the first fixations of videograms. The French delegation would prefer an explicit reference to videograms in this indent.
(2) A rental [and lending] right does not arise in relation to buildings and to works of applied art.7

(2a) The rights referred to in paragraph 1 may be transferred, assigned or subject to the granting of contractual licences.

(3) (Transferred to Article 2a)

Article 2a Rental of computer programs

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.8

Article 3 Inalienable right to remuneration

(1) (Transferred to Article 2(2a)).

(2) Where authorization to rent [or lend] a sound recording or visual recording, whether or not accompanied by sound, has been given, then each of the rightholders set out in Article 2(1) shall retain the right to obtain an adequate part of the remuneration due, by the party who rents out [or lends], for the rental [or lending]. This right to obtain an adequate part

7 Reservation by the Danish delegation, which considers that literary works, photographic works and works of art should be excluded from the scope of the Directive. Provisional reservation by the Spanish delegation on the exclusion of works of applied art. The French delegation considers that plastic art works should also be excluded from the scope of the Directive.

of the remuneration cannot be transferred\(^9\) or waived. This right may be administered by a collective administration society\(^10\).

**[Article 4 Derogation from exclusive lending right\(^11\)]**

Member States may, for cultural reasons, derogate from the copyright based exclusive lending right referred to in Article 1(1) for one or several categories of objects or particular establishments, 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.]

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\(^9\) Reservation by the Italian delegation on the non-transferability of this right.

\(^10\) Provisional reservation by the Danish, French, Irish and United Kingdom delegations on this provision.

\(^11\) Reservation by the Belgian, Danish, Spanish, French, Irish, Italian and Portuguese delegations on this Article, as these delegations have reservations on the inclusion of lending in the Directive. The French delegation proposes replacing this Article with the following text:

"Where authorization to lend has been given, Member States may provide for rightholders to grant special financial conditions, for cultural reasons, to certain establishments of general interest."
CHAPTER II PROTECTION IN THE FIELD OF RIGHTS RELATED TO COPYRIGHT

Article 5 Fixation Right

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

(2) Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite. The broadcasting organization shall not have this right where it merely retransmits broadcasts of other broadcasting organizations.

Article 6 Reproduction Right

Member States shall provide the exclusive 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).

12 A recital will be added to make clear that Member States will not necessarily have to use neighbouring rights to implement this Chapter, but may, where appropriate, use copyright protection.

13 See footnotes 5 and 6 above.
Article 6a  Communication to the public

(1) Member States shall provide for performing artists the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

(2) Member States shall provide for performing artists and phonogram producers a remuneration right so that a single equitable remuneration shall be paid by users to both where a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used [directly or indirectly] for broadcasting, as set out in Article 5(2), or for any communication to the public. Member States may, in the absence of agreement between performing artists and phonogram producers, lay down the conditions as to the sharing of this single remuneration between them.

(3) Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the rebroadcasting of their broadcasts by wireless means as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

(4) The provisions of this Article shall be without prejudice to any provisions of Council Directive No .../EEC of ............. on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission.

14 The United Kingdom delegation considers that this paragraph should retain the option provided for in Article 12 of the Rome Convention of payment of the remuneration to the performers, or to the producer of the phonogram, or to both.
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.

(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.

(3) The distribution right provided for in the previous paragraphs shall be without prejudice to the specific rights provided for in Chapter I.

Article 7a  - Deleted -
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 scientific research.

(2) Irrespective of paragraph 1, any Member State may provide for 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 for in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which 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.

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 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.

See footnotes 5 and 6 above with regard to the second sentence.

Reservation by the German delegation on the provisions of this Article.
(2) The provisions of this Directive shall apply without prejudice to any acts of exploitation 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 deemed 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 or to have been acquired 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.
Article 13

This Directive is addressed to the Member States.

For the Council
The President

Done at Brussels,