NOTE

from: Council Secretariat

to: Working Party on Intellectual Property (Copyright)

No. prev. doc.: 4398/93 PI 7 CULTURE 6
No. Cion prop.: 4483/93 PI 9 CULTURE 8

Subject: Amended proposal for a Council Directive harmonizing the term of protection of copyright and certain related rights - Consolidated text

Delegations will find attached a consolidated text of the above proposal, drawn up following the Working Party's meeting held on 15 January 1993.
Article 1

Duration of authors' rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for seventy years after his death, irrespective of the date when the work is lawfully made available to the public.  

2. In the case of a work of joint authorship the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. In the case of anonymous or pseudonymous works, the term of protection shall run for seventy years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

3a. In the case where a work:

- is created by several physical authors on the initiative and under the direction of a physical person or legal entity, on the understanding that it will be disclosed only by - and under the name of - that person or entity, and

- consists of contributions of several authors who are impossible to identify,

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1 Article 1 was not discussed at the meeting held on 15 January 1993. The positions indicated are those expressed by delegations at the meeting held on 2 December 1992.

2 Reservations by the Irish and Netherlands delegations and waiting reservations by the Danish, Portuguese and United Kingdom delegations on the proposed term of 70 years post mortem auctor.

3 The reservations and waiting reservations mentioned in footnote 2 also apply to this term.
the duration shall be calculated for this work as such as provided for in paragraph 3 for anonymous or pseudonymous works.

This paragraph is without prejudice to the rights of identified authors whose identifiable contributions are included in such works, for which contributions paragraph 1 or 2 shall apply.4,5

4. deleted.

5. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.6

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4 The wording of Article 1(3a) (numbered Article 1(3)(b) in previous non-papers) has been clarified since the meeting held on 2 December 1992, and the Commission services suggest that the following recitals be added:

"whereas collections are protected according to Article 2(5) of the Berne Convention when, by reason of the selection and arrangement of their content, they constitute intellectual creations; whereas those works are protected as such, without prejudice to the copyright in each of the works forming part of such collections; whereas in consequence specific terms of protection may apply to works included in collections; whereas in all cases where one or more physical persons are identified as authors the term of protection is calculated after their death; whereas the question of authorship in the whole or a part of a work is a question of fact which the national courts may have to decide;"

5 Reservations by the Belgian, French, Italian and Netherlands delegations on the approach adopted in Article 1(3a).

6 Reservation by the French delegation on this paragraph, to be reconsidered in the light of paragraph 3a.
6. In the case of works for which the term of protection is not calculated after the death of the author or authors and which have not been lawfully made available to the public within 70 years from their creation, the protection shall terminate.\(^7\)

**Article 1 bis**

*Cinematographic or audiovisual works*

1. The authors of a cinematographic or audiovisual work shall be the natural persons who made the intellectual creation of the work.

2. The principal director shall be considered as one of its authors.

3. The Member States may provide, without prejudice to Article 2(6) of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property,\(^8\) that when a contract concerning the production of a cinematographic or audiovisual work is concluded, individually or collectively, the

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\(^7\) Article 1(6) was not discussed on 2 December 1992. At previous meetings, several delegations had expressed doubts on the need for this paragraph.

\(^8\) OJ No L 346 of 27.11.1992, p. 61.
authors of the work shall be presumed, subject to contractual clauses to the contrary, to have authorized the exploitation of their work.  

**Article 2**  
**Duration of related rights**

1. The rights of performers shall expire fifty years after the first lawful publication of the fixation of the performance or if there has been no publication of the fixation, after the first lawful communication to the public of the performance. However, they shall expire fifty years after the performance if there has been no lawful publication or communication to the public during that time.  

2. The rights of producers of phonograms shall expire fifty years after the first lawful publication of the phonogram. However, they shall expire fifty years after the fixation was made if the phonogram has not been lawfully published during that time.  

3. The rights of producers of the first fixation of a film shall expire fifty years after the first lawful communication to the public. However, they shall expire fifty years after the fixation was made if the film has not been lawfully communicated during that time.  

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**Footnotes:**

9 The text given for Article 1bis was circulated at the meeting held on 15 January 1993, but not discussed at that meeting. At the meeting held on 2 December 1992, delegations gave their initial reactions to the text proposed by the European Parliament, upon which the above text is based (4398/93 PI 7 CULTURE 6, points 10 to 16). A non-paper by the United Kingdom delegation, containing an alternative solution, has been circulated under reference 4543/93 PI 6 CULTURE 5.

10 Scrutiny reservation by the Belgian and Portuguese delegations on this paragraph pending examination of an additional recital explaining the terms "first lawful publication" and "first lawful communication to the public". For the Portuguese delegation, this scrutiny reservation includes paragraph 2.
to the public during that time. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.\textsuperscript{11}

4. The rights of broadcasting organizations shall expire fifty years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.\textsuperscript{12}

[5. Where, pursuant to the provisions of this Article, the rights of performers would have a shorter term of protection than that granted to producers of phonograms, producers of films or broadcasting organizations, those rights shall be prolonged automatically until the expiry of the rights of these other rightholders.]\textsuperscript{13}

\textbf{Article 2 bis}

\textit{Protection of unpublished works}

Any person who for the first time makes lawfully available to the public a work, the copyright protection of which has expired, shall

\textsuperscript{11} Reservations by the Irish and United Kingdom delegations on this paragraph pending discussion of Article 1bis.

\textsuperscript{12} The following recital is to be added:

"whereas the rights of broadcasting organizations on their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, should not be perpetual; whereas it is therefore necessary to have the term of protection running from the first transmission of a particular broadcast only; whereas this provision is understood to avoid a new term running in cases where a broadcast is identical to a previous one;".

\textsuperscript{13} The Working Party has not yet examined Article 2(5), which has been proposed following observations made at the meeting held on 15 January 1993.
benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully made available to the public.\textsuperscript{14}

\textbf{Article 3}  
\textbf{Protection of photographs}

**Variant 1**

Protected photographs shall have the term of protection provided for in Article 1. [Member States which, on the date of adoption of the present Directive, do not protect ordinary photographs shall introduce such a protection.]\textsuperscript{15}

**Variant 2**

Photographs [which are protected as works within the meaning of Article 2 of the Berne Convention] [which are original in the sense that they are the author's own intellectual creation] shall have the

\textsuperscript{14} Reservations by the Netherlands and Portuguese delegations on the need for this provision. Reservations by the French, Irish and Greek delegations on the duration of the protection. Reservation by the French delegation on the nature of the protection. Reservation by the Italian delegation on the words "equivalent to the economic rights of the author". Reservations by the United Kingdom and Danish delegations on the absence of a time limit calculated from the expiry of copyright protection. The Belgian, French and Irish delegations advocated an additional special period of protection where the work was first lawfully made available to the public shortly before the expiry of copyright protection. The Belgian delegation reserved the right to make a proposal to this effect.

\textsuperscript{15} The Italian, Netherlands and Portuguese delegations are in favour of this variant without the sentence in square brackets. Reservation by the German, French and United Kingdom delegations on this variant if the second sentence is not included. Scrutiny reservation by the Belgian delegation on this variant since it does not distinguish between copyright protection and protection by rights related to copyright.
term of protection provided for in Article 1. Other photographs shall be protected for [50] [25] years from their creation.\textsuperscript{16}

**Article 4**

**Triggering event and protection vis-à-vis third countries\textsuperscript{17}**

1. When any of the terms referred to in Articles 1 to 3 begins to run in a Member State it shall be considered to begin to run throughout the Community.\textsuperscript{18}

2. Where the country of origin of a work, within the meaning of the Berne Convention, is a third country, and the author of the work is not a Community national, the term of protection granted by the Member States shall expire on the date of expiry of the protection granted in the country of origin of the work, but may not exceed the term laid down in Article 1.

3. The terms of protection laid down in Article 2 shall also apply in the case of rightholders who are not Community nationals, provided Member States grant them protection. However, without prejudice to the international obligations of the Member States, the term of protection granted by Member States shall expire no later than the date of expiry of the protection granted in the country of which the rightholder is a national and may not exceed the term laid down in Article 2 or 2 bis.

4. Member States which, at the date of adoption of this Directive, in particular pursuant to their international obligations, granted a longer term of protection than that which would result

\textsuperscript{16} Variant proposed by the Danish delegation and not yet examined by the other delegations.

\textsuperscript{17} Reservation by the Commission services on the position of all delegations and the Council Legal Service that Article 113 is not necessary as a legal basis.

\textsuperscript{18} Scrutiny reservations by the Danish, German, French, Irish, Netherlands and United Kingdom delegations on the need for this paragraph.
from the above mentioned provisions, may maintain this protection until the conclusion of international agreements on the term of protection by copyright or related rights.

**Article 5**

**Calculation of terms**

The terms laid down in this Directive are calculated from the first day of January of the year following the event which gives rise to them.19

**Article 6**

**Moral rights**

**Variant 1**

The moral rights granted to the author shall be maintained at least until the expiry of the economic rights of the author.20

**Variant 2**

This Directive shall not prevent Member States from providing for or maintaining terms of protection for moral rights which are longer than those provided for by this Directive.21

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19 Scrutiny reservation by the French delegation, which prefers the amendment proposed by the European Parliament.

20 Reservations by the French, Irish and United Kingdom delegations on this variant.

21 This variant could take the form of either an operative provision or a recital.
Article 6 bis

Application in time

1. This Directive shall not have the effect of shortening terms of protection which under the laws of the Member States are already running. It shall apply without prejudice to any acts of exploitation performed before 1 July 1994.

2. This Directive shall apply to all works and objects which are protected in at least one Member State, on the date of adoption of the present Directive, under the application of national provisions on copyright or related rights or meet the criteria for protection under the provisions of Council Directive 92/100/EEC.

3. Member States shall adopt the necessary provisions which need to be taken by virtue of Community law and national law in order to protect acquired rights and legitimate expectations of third parties.

4. The present Article is without prejudice to Article 13 of Council Directive 92/100/EEC.

5. Member States may determine the date from which Article 1 bis shall apply, provided that that date is no later than [1 July 1997].

22 Articles 6 bis to 11 were not discussed at the meeting held on 15 January 1993.
Article 7

Technical adaptation


Article 8

Notification procedure

Member States shall immediately notify the Commission of any plan to grant new related rights, indicating the grounds for their introduction and the term of protection envisaged.

Article 9

Deleted.

Article 10

General provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 7 of this Directive by 1 July 1994.

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.

Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

2. Member States shall apply Article 8 from the date on which this Directive takes effect.

**Article 11**

This Directive is addressed to the Member States.

Done at Brussels, For the Council

The President