1. At its meeting held on 11 and 12 March 1993, the Working Party on Intellectual Property (Copyright) examined Articles 1, 1bis, 2bis, 3, 6 and 6bis of the above proposal on the basis of the consolidated text contained in SN 1210/93. Its discussions also took into account a number of working documents submitted by various delegations.

Article 1(1)

2. The Luxembourg delegation associated itself with the reservations of the Irish and Netherlands delegations on the proposed term of 70 years post mortem auctoris (p.m.a.).

Article 1(2)

3. It was noted that, following the withdrawal by the United Kingdom delegation at the Working Party's previous meeting (5143/93, point 37) of its proposal for amendment of Article 1bis (2), this delegation's proposal for amendment of Article 1(2) (4345/93) was also withdrawn.
Article 1(3a)

4. In discussing this provision, the Working Party also took into account working documents Nos. 1/93 and 5/93 from the Netherlands delegation (SN 1207/93 and SN 1211/93) and working document No. 6/93 from the Italian delegation (SN 1212/93).

5. The Spanish, French, Italian, Netherlands and Portuguese delegations continued to express reservations on this provision, which they considered to be unclear. The Netherlands, Italian and Spanish delegations considered that it would be preferable to revert to the Commission's proposal (Article 1(3) in 4483/93). The Netherlands delegation considered that this provision as set out in the consolidated text did not take account of the situation in the Netherlands where a legal entity could be deemed to be the author of a collective work, whereas the Commission's proposal would cover this situation.

6. In addition to the delegations mentioned, the Belgian, German and United Kingdom delegations also considered that this provision as worded in the consolidated text was unclear. However, the Belgian, German and United Kingdom delegations and the Commission representative drew attention to the fact that the Commission's proposal had attracted the criticism that it was not compatible with the requirement of the Berne Convention that the term of copyright protection be calculated in relation to the death of the author, the only exceptions allowed concerning cinematographic works, anonymous or pseudonymous works, photographic works and works of applied art; it therefore would not be appropriate to revert to the Commission's proposal.

(1) Berne Convention for the Protection of Literary and Artistic Works.
With regard to the point raised by the Netherlands delegation, the Commission representative pointed out that the question of who was the first owner of copyright was not covered by this Directive.

The Netherlands, Italian, Spanish and Portuguese delegations suggested that at least the second indent of the consolidated text be deleted, as they saw a contradiction between this indent and the last sentence of this paragraph.

The Commission representative, supported by several delegations, suggested instead that this indent be reworded to read: "- consists of contributions of several authors who are not identified.". However, the Netherlands and Italian delegations considered that this rewording did not provide a satisfactory solution.

The United Kingdom delegation, supported by the German delegation suggested that the last sentence of paragraph 3a might be deleted, as they were not satisfied with its wording and considered that it did no more than repeat an obligation under the Berne Convention.

However, the Commission representative considered it important that reference should be made to this obligation under the Berne Convention, and the Italian delegation considered that deletion of this sentence would not improve the clarity of the text; it preferred that the second indent be deleted.

The Chairman concluded that this provision should be referred to the Permanent Representatives Committee.

Article 1(5)

The French delegation maintained a scrutiny reservation on this paragraph.
Article 1bis (1) and (2)

11. The Commission representative explained that this provision had been included in the proposal for a Directive for reasons of legal security and because a similar provision was contained in the draft text under discussion in GATT. He also indicated that the situation referred to in this provision would arise only rarely.

In the light of these explanations, the Working Party agreed to this provision.

12. The Irish, Netherlands, Portuguese and United Kingdom delegations considered that it was not necessary to harmonize the authorship of cinematographic and audiovisual works in this Directive; however, they were prepared to accept Article 1bis (1) and (2) as set out in the consolidated text as a compromise solution. The Irish delegation made its acceptance subject to a reservation on the term of 70 years, this reservation being linked to its reservation on Article 1(1) and (3).

13. The German delegation stated that it could accept paragraph 1 either as contained in the Commission's amended proposal, or as contained in the consolidated text; however, it considered that the consolidated text was more likely to achieve a consensus. It also considered that paragraph 2 of the consolidated text was necessary, irrespective of which version of paragraph 1 was adopted.

14. The French delegation continued to advocate paragraphs 1 and 2 of the Commission's amended proposal and to oppose paragraph 2 of the consolidated text for the reasons given at the Working Party's previous meeting (5143/93, point 38).
15. The Italian and Belgian delegations agreed with the French delegation that paragraph 1 should be limited to natural persons, as in the Commission's amended proposal; however, the Belgian delegation could accept paragraph 1 of the consolidated text as a compromise solution if it were acceptable to the majority of delegations.

16. The Chairman concluded that there was a clear majority in favour of the consolidated text of paragraphs 1 and 2, which would be presented to the Permanent Representatives Committee together with the positions of the various delegations.

Article 1bis(3)

17. The Commission representative explained that this paragraph had been drawn up in relation to paragraphs 1 and 2 of the Commission's amended proposal; however, he considered that it was still useful in relation to paragraphs 1 and 2 of the consolidated text, since these paragraphs would create new rights for the principal director in a number of Member States and in those circumstances it was useful to make clear which presumptions Member States might introduce in their national laws. The United Kingdom delegation agreed with this reasoning.

18. The Greek, Spanish, Irish, Italian and Netherlands delegations expressed scrutiny reservations on the need for a provision of this nature.

19. Several criticisms were made of the drafting of this paragraph:
(a) the French delegation was opposed to the words "individually or collectively"; the Commission representative was prepared to delete these words if paragraphs 1 and 2 of the consolidated text were to be adopted;
(b) **the German delegation** suggested that it be specified that the presumption concerned the authors covered by the contract, in alignment with Article 2(5) and (6) of Directive 92/100/EEC; the **United Kingdom delegation** could agree to this clarification;

(c) **the German delegation** suggested that it be specified that the person whom the authors were presumed to have authorized to exploit their work was the producer; the **United Kingdom and French delegations** could accept this clarification;

(d) **several delegations** considered the terms "to have authorized the exploitation of their work" inappropriate; **the French and the Netherlands delegations** considered that a reference to transfer of rights, rather than authorization of exploitation, would be preferable; a number of drafting suggestions were made for improving this wording, including "to have transferred their exploitation rights for the means of exploitation provided for in the contract", and "to have transferred their exploitation rights for the means of exploitation [existing] [usual] at the time of conclusion of the contract"; **other delegations** considered that, since this paragraph was optional, the nature of the presumption should not be delimited too closely, but should be left to national law;

(e) **the Netherlands delegation** suggested that the wording of Article 14bis(2)(b) of the Berne Convention either be taken over or be referred to in this paragraph.

20. **The Chairman** concluded that this paragraph would have to be reconsidered by the Working Party at a subsequent meeting.
Article 2bis

Delegations confirmed their positions in respect of this provision as set out in footnote 16 of the consolidated text, the Greek delegation drawing attention also to its position as set out in SN 1209/93.

The Working Party also examined the proposal by the Belgian delegation for an additional paragraph to this Article, as set out in SN 1208/93.

The French and Irish delegations supported this proposal, subject to the term of protection being 50 rather than 25 years.

The German delegation found this proposal interesting, but doubted whether it would attract sufficient support from other delegations.

The Netherlands and Portuguese delegations opposed this proposal, since they were opposed to any provision on the protection of unpublished works in this Directive.

The Danish, Greek, Italian and United Kingdom delegations and the Commission representative considered that this proposal created confusion between copyright protection and protection under neighbouring rights. They considered that the publisher of the work could not have copyright protection between the publication of the work and the expiry of the normal term of copyright protection, and expressed doubts whether a related right during this period would be compatible with the copyright protection still in force.

The Chairman concluded that there was not a sufficient majority in favour of the proposal by the Belgian delegation, which would be mentioned in the report to the Permanent Representatives Committee.
The Belgian delegation reserved the right to revise its proposal in the light of the discussion.

The Working Party also examined the proposal by the Italian delegation for an additional paragraph to this Article, as set out in SN 1212/93.

The initial reaction of the Belgian, German and French delegations to this proposal was favourable.

The Netherlands and Portuguese delegations opposed this proposal, since they were opposed to Article 2bis.

The Danish, Greek, Spanish, Irish and United Kingdom delegations and the Commission representative expressed scrutiny reservations on this proposal, several of these delegations considering that this question could be left to national law.

The Chairman concluded that there was not sufficient support at this stage for this proposal for it to be included in an overall compromise package. It would be mentioned in the report to the Permanent Representatives Committee.

Article 3

The Working Party examined the 2 variants of this Article set out in the consolidated text, each of which contained sub-variants, and the proposal made by the Netherlands delegation in SN 1211/93. Since neither sub-variant of variant 1 had attracted sufficient support, this examination concentrated on Variant 2 and the proposal by the Netherlands delegation.

The Belgian, Spanish, French and Italian delegations stated a preference for a solution based on variant 2. The Danish, Greek and Portuguese delegations were also prepared to accept a solution based on this variant.
The Belgian delegation was in favour of limiting variant 2 to the first sentence only, with the first sub-variant. The Portuguese delegation was also prepared to accept this solution.

The French delegation suggested adding to the solution advocated by the Belgian delegation "without the merit or the purpose of the work being taken into consideration".

The Italian delegation was also in favour of limiting variant 2 to the first sentence only, with a recital indicating that protection of other photographs would be left to national law.

The Spanish delegation was in favour of the second sub-variant of variant 2.

The German, Irish, Netherlands and United Kingdom delegations considered that variant 2 would achieve insufficient harmonization, since Member States interpreted Article 2 of the Berne Convention in different ways in respect of photographs.

26. The Danish, Irish, Netherlands, Portuguese and United Kingdom delegations were prepared to accept the proposal by the Netherlands delegation.

The German and French delegations and the Commission representative entered a scrutiny reservation on this proposal, with the German delegation and the Commission representative indicating favourable initial reactions.

The Irish and United Kingdom delegations gave their positive reactions to this proposal following clarifications that it would be left to Member States to determine what (if any) protection to give to photographs which did not meet the originality criterion. The Netherlands delegation also explained that in its view press photographs and fashion photographs would meet this
criterion, while photographs which did not have a human author could not.

The Irish and United Kingdom delegations considered that commercially significant photographs should be covered by this provision. However, no proposal was made to include wording to this effect in the provision, although the possibility of covering this point in the recitals was mentioned.

The Chairman concluded that, although a number of delegations were in favour of a solution based on variant 2, they were divided as to which of the sub-variants should be accepted and as to whether or not the second sentence should be included; other delegations felt that variant 2 would not provide sufficient harmonization. He added that several delegations were prepared to consider the proposal by the Netherlands delegation as a compromise solution, and noted that no delegation had actively opposed this proposal. He therefore considered that this proposal should be submitted to the Permanent Representatives Committee as the solution most likely to command a consensus.

Article 6

The majority of delegations supported a proposal by the German delegation to replace this Article by the following provision:

"This Directive shall be without prejudice to the provisions of the Member States regulating moral rights".

The Belgian, Spanish and Italian delegations were in favour of maintaining variant 1 of the consolidated text, although the Spanish and Italian delegations could accept the majority position. The Commission representative maintained a scrutiny reservation on the majority position.
Article 6bis

29. The Netherlands delegation maintained a reservation on the whole of Article 6bis.

The Belgian delegation stated that its scrutiny reservation concerned paragraph 2 in combination with paragraph 3.

Article 6bis(1)

30. The French delegation maintained its reservation on this paragraph.

Article 6bis(2)

31. The Spanish, Luxembourg, Netherlands and Portuguese delegations maintained their reservation on the principle of revival of protection which had expired in one or more Member States.

The United Kingdom delegation and the Commission representative opposed a suggestion by the Netherlands delegation that this principle be replaced by the principle that the Directive would not be applicable to existing works.

The German and United Kingdom delegations considered that the revival of rights was acceptable, provided that acquired rights were safeguarded as proposed in Article 6bis(3).

32. The Danish delegation continued to consider that the revival of protection for works which were still protected in at least one Member State would discriminate in favour of those Member States which had long terms of protection at present. It therefore proposed reverting to the text proposed by the United Kingdom Presidency in 9636/92, point 18.
The German and Italian delegations were opposed to this proposal, as they considered that there was no justification for reviving rights which had expired in all Member States.

The Chairman concluded on this point that both options would be submitted to the Permanent Representatives Committee.

33. The German delegation again proposed that the date mentioned in Article 6bis(2) should be the date of transposition of the Directive rather than the date of its adoption.

The Chairman proposed to submit both options to the Permanent Representatives Committee.

34. Following a proposal by the United Kingdom delegation, it was agreed that the beginning of this paragraph should read: "The terms of protection provided for in this Directive shall apply ...". The purpose of this amendment was to ensure that provisions such as Article 1bis(1), which did not concern the term of protection, would not have to be transposed in respect of existing works.

Article 6bis(3)

35. The Spanish delegation explained that it was not possible under the Spanish Constitution to protect legitimate expectations of third parties; only the legitimate expectations of the parties to a contract could be protected. It therefore proposed replacing Article 6bis(2) and (3) by the following sentence:

"The provisions of this Directive shall be without prejudice to acquired rights and legitimate expectations which may be protected under the law of each Member State".
After discussion, it was agreed that this concern of the Spanish delegation could be met by making the second sentence of Article 6bis(3) optional. It was also agreed that the reference to Community law and national law was not necessary. The second sentence of Article 6bis(3) should therefore read as follows:

"Member States may adopt the necessary provisions to protect acquired rights and legitimate expectations of third parties".

Article 6bis(4)

36. The Commission representative agreed to review the need for this provision in the light of changes made elsewhere in the proposal for a Directive.

Article 6bis(5)

37. It was agreed that discussions of this paragraph would be suspended pending a political decision in respect of Article 1bis.

38. The Chairman concluded that the Presidency would submit an overall compromise package covering the following issues to the Permanent Representatives Committee:

(1) The report to the Permanent Representatives Committee is set out in 5494/93 PI 18 CULTURE 17.
- the term of protection for copyright and related rights, together with provisions on application in time;
- Article 1(3a) on collective works;
- Article 1bis(1) and (2) on cinematographic and audiovisual works;
- Article 2bis on works published after the expiry of copyright protection;
- Article 3 on photographs;
- Article 6 on moral rights.