A. Introduction

1. The Council (Internal Market) held a policy debate on several aspects of the above proposal at its 1652nd session on 5 April 1993. It instructed the Permanent Representatives Committee to continue its examination of the proposal with a view to the adoption of a common position. Following this further examination, the Presidency submits an overall compromise proposal in 7233/93 PI 53 CULTURE 64. The present report outlines the main elements of this proposal, which it invites the Council to consider as an overall package.

B. Term of protection of copyright and of certain related rights
(Articles 1 and 2)

2. The majority of delegations agrees with the Commission's proposal, also approved by the European Parliament, that the term of protection of copyright be harmonized at 70 years post mortem auctoris and that the term of protection of a certain number of rights related
to copyright be harmonized at 50 years.

The Irish, Luxembourg, Netherlands and Portuguese delegations have a reservation on the harmonization of the term of copyright protection at 70 years post mortem auctoris. The Danish and United Kingdom delegations have scrutiny reservations on this term, which they would consider lifting if the final overall package were to be satisfactory to them.

The Luxembourg delegation has a reservation on the term of 50 years for rights related to copyright.

3. The Presidency recommends acceptance of harmonization of copyright at 70 years post mortem auctoris and of rights related to copyright at 50 years as part of its overall compromise proposal.

C. Cinematographic or audiovisual works (Article 1a)

4. There has been much discussion on two questions:

- whether and to what extent the authorship of cinematographic or audiovisual works should be harmonized in this Directive;

- how the term of protection of cinematographic or audiovisual works should be calculated.

A solution has emerged in the Permanent Representatives Committee covering both of these questions.

This solution would consolidate the partial harmonization achieved in Council Directive 92/100/EEC(1) as regards authorship (Article 1a(1) of this Directive) by obliging the Member States to consider the principal

director of such a work as its author or one of its authors, while leaving them free to designate other co-authors. The compromise reached on the method of calculation of the term is that it will be calculated in relation to the death of the last of 4 persons to survive, without this method of calculation prejudicing the freedom of the Member States to designate the co-authors of such works (Article 1a(2)).

This solution is still under consideration by a number of delegations and the Commission.

5. The Presidency recommends acceptance of this solution as part of its overall compromise proposal.

D. Protection of previously unpublished works (Article 2a)

6. The majority of delegations agrees with a compromise solution worked out whereby a work first published after the expiry of the term of copyright would benefit from a right related to copyright (Article 2a).

The Netherlands and Portuguese delegations have reservations on the need for harmonization in this respect(2), while the French, Irish and Greek delegations have reservations on the term of this protection being 25 years rather than the 50 years which they advocate.

The Commission is reflecting on the possibility of an alternative solution based on the principle of mutual recognition.

7. The Council is invited to consider whether the solution set out in Article 2a in 7233/93 PI 53 CULTURE 64 or a solution based on mutual recognition

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(2) Other delegations, while not being convinced of the need for such a provision, are prepared to accept it as a compromise solution.
should form part of the final overall package.

8. In connection with the discussion on the protection of previously unpublished works, The Italian delegation has proposed that a provision be included in the Directive concerning the protection of critical or scientific works.

The majority of Member States and the Commission were reluctant to introduce such a provision in this Directive without examining its implications in depth. They doubted whether a Directive concerned primarily with the harmonization of the term of protection was the appropriate instrument for imposing protection of such works at Community level. There was agreement that nothing in the Directive would prevent Member States from introducing or maintaining provisions in their national laws concerning the protection of such works. The general feeling, therefore is that this issue should not be regulated in the body of the Directive, but that a recital and a statement would clarify the situation (see footnote 9 in 7233/93 PI 53 CULTURE 64).

9. The Presidency recommends that this issue be dealt with in this way.

E. Photographs (Article 3)

10. The main problem encountered in attempting to harmonize the term of protection of photographs is the great differences existing between the laws of the Member States with regard to the substantive protection of photographs. A need was therefore felt to achieve at least a minimum of harmonization of the criteria to be applied for protecting photographs by copyright if harmonization of the term of protection was to be at all meaningful. After much discussion, delegations came to agreement in substance on the categories of photographs to be protected and various attempts were made to find
the appropriate wording for a legal instrument. Delegations are giving favourable consideration to the wording of Article 3 as set out in the Presidency's overall compromise proposal, together with the accompanying recital.

11. The Presidency recommends acceptance of this solution as part of its overall compromise proposal.

F. Application in time (Article 6a)

12. As a result of the length of the terms of protection proposed by the Directive for copyright and rights related to copyright (see section B above), the majority of delegations is prepared to accept that rights which have expired in one or more Member States be revived where the works concerned are still protected in at least one Member State (Article 6a(2)), on the double proviso that any acts of exploitation performed while the works concerned were in the public domain are not affected, and that Member States take the necessary measures to protect acquired rights and legitimate expectations of third parties (Article 6(3), together with the accompanying recital).

The Danish, Irish, Luxembourg, Netherlands and Portuguese delegations have reservations on the principle of such a revival of rights, the Netherlands delegation in particular doubting whether there would be any substantial barriers to the operation of the internal market in the absence of such revival.

The Spanish delegation has a reservation on the obligation on Member States to protect legitimate expectations, considering that such an obligation would be contrary to a ruling given by its constitutional court.
13. In the light in particular of the opinion given by the Council Legal Service in this respect (7191/93 JUR 82 PI 52), the Presidency recommends acceptance of the solution contained in Article 6a(2) and (3) and the accompanying recital as part of its overall compromise proposal.

G. CONCLUSIONS

14. The Council is invited to:

(a) adopt the recommendations made by the Presidency under points 3, 5, 9, 11 and 13 above;

(b) consider and pronounce on the option presented under point 7 above;

(c) approve the resulting overall compromise package;

(d) instruct the Permanent Representatives Committee to finalize the text with a view to the adoption by the Council of a common position.