"I/A" ITEM NOTE

from: Council Secretariat

to: Permanent Representatives Committee/Council

Subject: Adoption in the official languages of the Community of the Council's common position with a view to adoption of a Directive harmonizing the term of protection of copyright and certain related rights

1. At its 1671st meeting held in Luxembourg on 14 June 1993, the Internal Market Council signified its political agreement on a common position concerning the above Directive, an agreement to which the Irish, Luxembourg, Netherlands and Portuguese delegations were unable to subscribe.

2. The text of this common position, as finalized by the Legal/Linguistic Experts, is given in 7831/93 PI 64 CULTURE 83 PRO-COOP 35.

3. The Permanent Representatives Committee is asked to suggest that the Council:

- adopt the common position as set out in 7831/93 PI 64 CULTURE 83 PRO-COOP 35 as an "A" item on the agenda for a forthcoming meeting, and

- enter the attached statements in the minutes.
Statements for entry in the Council minutes

1. Commission statement concerning the legal basis

"Since in the Community the terms of protection of copyright and related rights held by nationals of third countries are the outcome of international negotiations which, in the view of the Commission, fall within the scope of common commercial policy as their purpose is to protect intellectual property as it relates to goods and services, the Commission in its original proposal included a provision expressly covering this point and proposed that the Directive should be based inter alia on Article 113 of the EEC Treaty. It regrets that this choice of legal basis has been rejected by all the delegations from the Member States.

The Commission notes that the text of the Directive resulting from the Council's discussions, which it finds acceptable, no longer contains any element which warrants the retention of Article 113 of the EEC Treaty as the legal basis. Without prejudice to the question of the scope of the common commercial policy, the Commission is therefore prepared to omit the reference to Article 113 EEC in its proposal. This is indeed consistent with its policy to limit the number of legal bases for a proposal as far as possible and does not involve any change to the decision-making procedure."

2. Commission statement re Article 3(3)

"The Commission considers that Article 3(3) is without prejudice to the terms of protection laid down in Article 2(2) granted to authors of cinematographic or
audiovisual works as defined by the legislation of the Member States in accordance with Article 2(1)."

3. Commission statement re Article 5

"The Commission has taken due note of the request by the Italian delegation that the introduction of a right protecting critical and scientific publications in the Community be studied in depth; the Commission undertakes to study the feasibility and desirability of such harmonization and to make appropriate proposals if necessary."

4. Council and Commission statement re Article 9

"The Council and the Commission confirm that the wording of Article 9 of this Directive has the effect that moral rights are excluded from its field of application."

5. Commission statement re Article 9

"As part of an overall compromise, the Commission is prepared to withdraw the provision on harmonization of the term of protection of moral rights. However, it remains convinced that moral rights are an essential factor in copyright and, as a number of previous cases have shown, the exercise of that right may cause barriers to trade and possibly distortions of competition. The Commission accordingly reserves the right to submit any appropriate proposal in the future.

In this connection, the Commission cannot share the view put forward during the Council proceedings that harmonizing the term of protection of moral rights requires the legal basis of Article 235 EEC."