RECOMMENDATION

of the Committee on Legal Affairs and Citizens' Rights

on the COMMON POSITION established by the Council with a view to the adoption of a directive harmonizing the term of protection of copyright and certain related rights (C3-0300/93 - SYN 0395)

Rapporteur: Mr Carlos María BRU PURON
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedural page</td>
<td>3</td>
</tr>
<tr>
<td>A. RECOMMENDATION</td>
<td>4</td>
</tr>
<tr>
<td>B. EXPLANATORY STATEMENT</td>
<td>5</td>
</tr>
</tbody>
</table>
At its sitting of 19 November 1992 the European Parliament delivered its opinion at first reading on the Commission proposal for a Council directive harmonizing the term of protection of copyright and certain related rights.

At the sitting of 17 September 1993 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Culture, Youth, Education and the Media for their opinions.

At its meeting of 22 September 1993 and 7 October 1993 the Committee on Legal Affairs and Citizens' Rights considered the common position and the draft recommendation.

At the latter meeting it adopted the following recommendation unanimously.

The following were present for the vote: Alber, chairman; Vayssade, vice-chairman; Bru Puron, rapporteur; Bontempi, Cot, García Amigo, Gollnisch, Lord Inglewood, Janssen van Raay, Malangré, Medina Ortega, Oddy and Turner (for Simpson, pursuant to Rule 111(2)).

The recommendation was tabled on 8 October 1993.

The deadline for tabling amendments to the common position or proposals to reject it will appear on the draft agenda for the part-session at which the recommendation is to be considered.
A
DRAFT RECOMMENDATION

(Cooperation procedure: second reading)

on the common position established by the Council with a view to
the adoption of a directive harmonizing the term of protection of
copyright and certain related rights
(COM(92) 00331 and COM(92) 06022)

The Committee on Legal Affairs and Citizens’ Rights,

- having regard to the common position of the Council (C3-0300/93 - SYN 0395),

Recommends that the European Parliament amend the common position as follows:

Common position of the Council

Amendments

(Amendment No. 1)
Article 1(5)

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.

(Amendment No. 2)

Article 5

Critical and scientific publications

Member States may protect critical
and scientific publications of works
which have come into the public
domain. The maximum term of
protection of such rights shall be
thirty years from the time when the
publication was first lawfully
published.

\[1\] OJ No. C 92, 11.4.1992, p. 6
\[2\] OJ No. C 27, 30.1.1993, p. 7

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PE 206.235/fin
B EXPLANATORY STATEMENT

On 22 July 1993 the Council, acting by a qualified majority, adopted the common position on harmonizing the term of protection of copyright and certain related rights.

The original Commission proposal was presented on 23 March 1992. Parliament delivered its opinion at first reading on 19 November 1992. The Commission's amended proposal included all or part of 11 of the 14 amendments which Parliament had adopted.

The common position retains the main amendments proposed by Parliament and incorporated by the Commission in its amended proposal. None of the changes has modified in a substantial way the text examined by Parliament at first reading.

Main points of the common position

(a) Harmonization of the term of protection at 70 years for copyright and 50 years for related rights (Articles 1 and 3): Parliament supported these periods in principle, basically on the grounds that only harmonization in line with the longest term of copyright existing in the Community would avoid lengthy transition periods, which would have created a serious obstacle to completion of the single market. The maintenance of these terms in the common position is therefore satisfactory.

(b) Treatment of audiovisual works (Article 2): After considerable discussion in the Council the following agreement was reached:

* as regards the designation of authors of an audiovisual work, the text reproduces the solution reached in the Directive on rental right and lending right, i.e. the principal director of the work is considered to be the author and the Member States may designate other co-authors (this allows some Member States to maintain the figure of the producer as one of the authors of an audiovisual work).

* As regards the starting date for calculating the term of protection (which as Parliament has pointed out is essential to achieve effective harmonization), this will be the death of the last of the persons in the following four categories, whether or not they are regarded as the authors of the audiovisual work: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music specially created for the film.

This solution is certainly a departure from the traditional system of copyright, since certain categories of persons who in many cases will not be granted any

5 COM(92) 0602 final - SYN 395 of 7 January 1993.
form of author's rights are taken into account to determine the period of protection. The formula has, nevertheless, obtained the necessary consensus and will ensure that the term of protection for audiovisual works throughout the Community is fully harmonized.

(c) Treatment of posthumous works and works published for the first time after the term of protection has expired (Article 4): On posthumous works the Council has followed the Commission's original position (the term of protection expires 70 years after the author's death, without taking into account the time when the work was first lawfully made available to the public). The amendment adopted by Parliament at first reading was not accepted. However, Parliament's proposed solution for works published for the first time after the expiry of the term of protection has been accepted and is incorporated in Article 4.

(d) Treatment of critical or scientific works (Article 5): The common position allows Member States to protect critical and scientific works for a maximum period of 30 years.

(e) Protection of photographs (Article 6): An acceptable compromise seems to have been reached on this point by harmonizing only the treatment of photographs considered to be original within the meaning of the Berne Convention. Member States may provide for the protection of other photographs.

(f) Application in time (Article 10): This article was originally proposed by Parliament, which considered it of vital importance in ensuring that harmonization takes immediate effect, without having to maintain transitional periods which would obstruct the free movement of goods and services.

The common position broadly speaking retains the idea put forward by Parliament: the term of protection applies to all works which are protected in at least one Member State on the date when the directive enters into force, without adversely affecting previous acts of exploitation where the work concerned was already in the public domain and while respecting acquired rights.

It is left to the Member States to adopt the necessary provisions to protect acquired rights (paragraph 3). Recitals 26 and 27 complement this provision, leaving it to the discretion of the Member States to devise a suitable system to protect acquired rights. In view of the different legal systems in the Member States the rapporteur regards this as a realistic solution. At the same time efforts would need to be made to prevent the creation of distortion in the market due to the introduction of different systems.