



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.3.2001
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COMMISSION OPINION

**pursuant to Article 251 (2) (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on the harmonisation of certain aspects of copyright and related rights in the
information society**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

1. BACKGROUND

On 10 December 1997, the Commission's proposal for a Directive was adopted.¹

On 21 January 1998, this proposal was submitted to the European Parliament, the Council and the Economic and Social Committee.

On 9 September 1998, the Economic and Social Committee delivered its Opinion.²

On 10 February 1999, the European Parliament delivered its Opinion at first reading under the co-decision procedure and adopted a legislative resolution approving the Commission's proposal subject to the amendments contained in that resolution and calling on the Commission to amend its proposal accordingly.³

On 21 May 1999, the Commission adopted its amended proposal incorporating in whole or in part many of the amendments voted for by the European Parliament in first reading, in accordance with Article 251 of the EC Treaty.⁴

On 28 September 2000, the Council adopted its common position on this proposal for a directive, in accordance with Article 251 of the EC Treaty⁵.

In its Communication of 11 September 2000, the Commission gave its opinion on the common position of the Council, pursuant to Article 251 EC Treaty. The Commission fully agreed to the Common Position of the Council.

On 14 February 2001, the European Parliament adopted, in second reading, 9 amendments to the common position of the Council.

In this opinion, the Commission sets out its view of the amendments adopted by the European Parliament, in accordance with subparagraph (c) of the second paragraph of Article 251 of the EC Treaty.

2. AIM OF THE COMMISSION PROPOSAL

The aim of the proposal is to ensure an Internal Market in copyright and related rights with particular emphasis on products and services (both on-line and on physical carriers) in the Information Society. It adjusts and complements the existing EU framework on copyright to respond to the new challenges of technology.

The proposal also implements the main provisions of the two international treaties concluded on 20 December 1996 under the auspices of the World Intellectual Property Organisation (WIPO)- the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT). Therefore, the proposal is necessary for the accession of the Community to these new WIPO Treaties (in parallel with ratification by EC Member States).

¹ OJ C 108, 7.4.1998, p. 6.

² OJ C 407, 28.12.1998, p. 30.

³ OJ C 150, 28.5.1999, p. 171.

⁴ OJ C 180, 25.6.1999, p. 6.

⁵ OJ C 344 1.12.2000, p. 1.

3. THE COMMISSION'S OPINION ON THE AMENDMENTS OF THE EUROPEAN PARLIAMENT

The Commission accepts all of the amendments of the European Parliament i.e. Amendments 3, 5, 6, 7, 8, 9, 10, 14 and 15.

3.1 Amendment 3

The Commission is of the view that Amendment 3 constitutes a useful clarification. It adds an interpretative recital, Recital 52 bis, for the purposes of delineating the scope of Article 6(4) subparagraph 4. Article 6(4) deals with the relationship between exceptions and technological measures. Subparagraph (4) disapplies subparagraphs (1) and (2) in relation to works or other subject matter made available to the public on agreed contractual terms, in such a way that members of the public may access them from a place and at a time individually chosen by them.

The purpose of the Recital is to make it clear that subparagraph 4 applies only to "interactive on demand" services made available on agreed contractual terms and not to all "on-line" delivery of services. An "interactive on-demand service" is characterised by the fact that members of the public may access it from a place and at a time individually chosen by them. Accordingly, the text of subparagraph 4 refers to the acts of making available set out in Article 3 (1) and (2) and Recital 25. Other "on-line" services remain subject to subparagraphs (1) and (2) of Article 6(4). Subparagraph (1) obliges Member States to provide for the availability of certain exceptions, in the absence of voluntary measures taken by rightholders; subparagraph (2) provides a discretion which Member States may exercise in the case of private copying to ensure the availability of that exception to beneficiaries.

3.2 Amendment 5

Amendment 5 amends the definition of Article 5(2)(b) in relation to private copying in 2 respects.

Firstly, instead of "for the private use of a natural person", the text now reads "by a natural person for private use". As with the previous formulation in the text of the Common Position, the Commission is of the view that the word "by" would also allow a copy to be made for and on behalf of a natural person for private use. This would include providing the means, technical or otherwise for the making of such copies. Secondly, it clarifies the scope of private use by providing that copying should be for "ends that are neither directly or indirectly commercial".

The Commission is of the view that the revision to the definition of private copying in Article 5(2)(b) remains, nevertheless, consistent with the scope of the exception as formulated in the text of the Common Position.

3.3 Amendments 6 -9

Amendments 6-9 deal with the attribution of source i.e. the requirement to mention the author's name in relation to 4 of the exceptions:

Amendment 6-Article 5(3)(a) (illustration for teaching or scientific research);

Amendment 7 -Article 5(3)(c) (reproduction by the press, communication to the public or making available of published articles);

Amendment 8-Article 5 (3)(d) (quotations for purposes such as criticism or review);

Amendment 9-Article 5(3)(f) use of political speeches).

In the case of Amendments 6, 7 and 8 - the requirement to mention the author has been changed from a requirement to do so "whenever possible " to a formulation which requires the source to be mentioned "unless this proves impossible". In the case of Amendment 9, the formulation is slightly different and reads "except where this proves impossible".

The Commission is of the view that these amendments are acceptable. The amendments reinforce the requirement to mention the author and thereby give greater comfort to authors. Member States will retain flexibility regarding the interpretation of this condition including whether in the circumstances of a particular case, it is considered impossible for reasons of practicality or otherwise for the author's name to be mentioned.

3.4 Amendment 10

Amendment 10 qualifies the exception in Article 5(3)(j) that applies to use for the purposes of advertising sales of works of art, the so called "catalogues exception". It excludes any other commercial use of those works other than for the purposes of advertising the sale or exhibition. In the view of the Commission, this Amendment is an acceptable qualification to the scope of the exception.

3.5 Amendment 14

Amendment 14 concerns the tasks of the Contact Committee established under Article 12. It amends that Article to add a paragraph which provides that the Committee will examine the impact of the Directive on the functioning of the Internal Market and will highlight any difficulties. The Commission considers this to be a useful addition to the tasks of the Committee.

3.6 Amendment 15

Amendment 15 shortens the transposition period from 24 months to 18 months. The Commission is of the view that such a reduction in the transposition period is to be welcomed given the chronological link between this proposal and the Directive on E-Commerce and would also assist in the timely ratification of the WIPO Treaties. This transposition period is also more in line with what is provided in the directives in the Community *acquis* on copyright and related rights.

4. Amendment by the Commission

Therefore, pursuant to paragraph 2 of Article 250 of the Treaty, the Commission amends its proposal accordingly.