COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission

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(presented by the Commission)

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PROPOSAL FOR A COUNCIL DIRECTIVE

SUMMARY

The draft proposal intends to provide a missing element in the creation of the European audiovisual area, since the directive "Television without Frontiers" has been adopted on 3 October 1989 without a chapter relating to questions of copyright.

In its communication on audiovisual policy COM(90)78 final of 21 February 1990 the Commission confirmed that the single European audiovisual area required a set of common rules in the field of copyright. The Commission observed:

"The legal framework established by the Directive (Television without Frontiers) still has to be amplified on the question of copyright. At a time when cross-frontier broadcasting has, as a result of technology, become a reality and, by legislation a free right, this exercise must be accompanied by an effective protection of copyright in all the Member States in order that the holders of such rights may benefit fully from the European dimension of broadcasting".

The Commission published a discussion paper on "Broadcasting and Copyright in the Internal Market" in November 1990 which was submitted to the professionals and formed the subject of a hearing on 5 February 1991. The present draft proposal reflects the outcome of this consultation process.

The draft proposal covers two distinct areas: satellite broadcasting and cable retransmission.

Satellite broadcasting

Satellite broadcasting by its very nature is "transnational". However, national copyright legislation in most cases is only inadequately adapted to the new technological reality. Legal insecurity as to where and when

and how satellite broadcasting involves copyright has seriously hampered satellite broadcasting to develop satisfactorily. This was detrimental not only to broadcasters wishing to transmit their programme by satellite but also to rightholders such as authors, performing artists, phonogram producers and film producers who wished to exploit their rights by way of satellite broadcasting.

The draft proposal seeks to limit this legal gap by proposing a "two-legged solution".
In the first place, the draft proposal defines at Community-level what constitutes the act of satellite broadcasting for copyright purposes and, therefore, requires authorization of the rightholders. As a consequence, the authorization to transmit protected works by satellite must be acquired in the country of establishment of the broadcaster while the remuneration should be paid according to the actual or potential audience (which might well be situated in several countries).

Yet, it has to be avoided that one "country of establishment" decides to create a copyright haven which would receive all the satellite broadcasters within the Community, leaving the creative professions without protection. The "second leg" of the draft proposal, therefore, provides a common minimum standard of protection for authors, performing artists, phonogram producers and broadcasters throughout the Community.

Cable retransmission

Legal insecurity prevailing in the field of cable retransmission of foreign television broadcasts is of a different nature than that in the field of satellite broadcasting.

Cable retransmission of television broadcasts constitutes an act subject to copyright, that is prior authorization of right-owners. However, in the case of a simultaneous, unaltered and unabridged cable retransmission it is impossible for the cable-operator to acquire the necessary rights in advance for lack of information about both content and identity of right-owners of the retransmitted programme.

The way out of this dilemma has been shown by contractual practice in the most cabled Member States such as Belgium, the Netherlands and, partly Germany. In those countries the authorization for cable retransmission is negotiated in a centralized form by the collective organizations representing the different categories of rightholders, the cable operators and the broadcasters.

The draft proposal's "umbrella model" is based on the experience gained from this conractual practice and seeks to eliminate the remaining flaws. According to the draft proposal cable retransmission rights should be exclusively negotiated under the umbrella of collective organizations that would represent the various categories of right-owners. This type of centralized negotiation between cable-operators, broadcasters and umbrella organizations should be promoted by two additional measures. In the first place, a neutral platform for negotiations in the form of a friendly non-binding mediation should be available at request of one of the parties involved in the negotiations. Furthermore, all the parties should be subject to an obligation not to refuse negotiation on unreasonable grounds. Both measures are intended to open negotiations on cable retransmission without, however, forcing the parties concerned to conclude an agreement. This will remain entirely in the contractual sphere.

EXPLANATORY MEMORANDUM

PART ONE: GENERAL

A. INTRODUCTION

1. The Commission first put forward proposals on the law governing cross-border broadcasting in the common market in its 1984 Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable.[1] The proposal that a single market should be established in broadcasting was included in the list of measures to be taken by the end of 1992 which the Commission set out in its White Paper on completing the internal market.[2]

2. On 3 October 1989 the Council adopted Directive 89/552/EEC, the "Television Without Frontiers" Directive.[3] In its final form the Directive departed from the Commission's original proposal, and from Parliament's opinion, in that it did not include a chapter on copyright. On 21 February 1990 the Commission in its Communication on audiovisual policy observed:[4]

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1 COM(84) 300 final, 14.6.1984.

2 COM(85) 310 final, 14.6.1985.

3 Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: OJ No L 298, 17.10.1989, p. 23.

4 COM(90) 78 final, 21.2.1990.

"The legal framework established by the Directive has still to be amplified on the question of copyright. At a time when cross-frontier broadcasting has, as a result of technology, become a reality and, by legislation, a free right, this exercise must be accompanied by an effective protection of copyright in all the Member States in order that the holders of such rights may benefit fully from the European dimension of broadcasting."

3. The Commission then included this task in its programme of harmonization measures,[5] it submitted a discussion paper to all interested parties setting out its thinking on the shape of a system of copyright protection in the future European audiovisual area,[6] and held a hearing on the subject on 5 February 1991.

4. Without a Community approach the European audiovisual area will be set up solely on the basis of those legal opportunities which are left open, to the detriment of artistic creation in Europe. The proposal for a Directive accordingly includes general rules for copyright which take account of the need to maintain a balance between the various interests involved and to facilitate the management of copyright and related or "neighbouring" rights on a European scale. The rules ensure that protection is as effective as possible and that authors and neighbouring right owners are fairly remunerated in all Member States. At the same time they serve to encourage investment in promoting creativity and cross-border programme transmission, and as far as possible to minimize the associated risks, to the extent that they derive from uncertainty as to the law or heterogeneous national rules.

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5 Follow-up to the Green Paper - working programme of the Commission in the field of copyright and neighbouring rights, COM(90) 584 final, 17.1.1991.

6 Broadcasting and Copyright in the Internal Market - discussion paper prepared by the Commission of the European Communities on copyright questions concerning cable and satellite broadcasts, III/F/5263/90, November 1990.

5. The Directive here proposed therefore does not try to put over ideas already rejected in the discussion of the "Television Without Frontiers" Green Paper[7] and the subsequently adopted Directive.[8] Rather, the concern is now, through the introduction of supporting measures, to safeguard and supplement the acquisition of rights to simultaneous, unaltered and unabridged retransmission of programmes via cable, which in practice has since been largely organized through collective agreements. This will promote cross-border cable retransmission and underpin the European audiovisual area.

6. Above all, the system of regulation proposed includes the primary broadcasting of programmes via satellite (the need to cover this aspect in Community law was not acknowledged in the Green Paper). The rapidly growing number of satellites used for programme transmission, the introduction of medium-power and direct broadcast satellites and improved aerial technology, which is making good quality individual reception increasingly attractive, mean that a solution which is confined simply to cable retransmission would be incomplete.

7. The arrangements adopted for the Community will, moreover, have to be consistent with the territorially wider design currently being discussed in the Council of Europe as a supplement to the European Convention on Transfrontier Television of 5 May 1989. But the objectives of the Community are different, because they aim at creating the Common Market. The proposal for a directive tries to fulfil this obligation by stepping up copyright protection, promoting cross-border transmission of programmes and, hence, creating the intended audiovisual area.

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7 Loc. cit.

8 Loc. cit.

8. The proposal for a Directive essentially falls into two parts. Both contain provisions on the law governing the cross-border transmission of television and radio programmes in the common market. Chapter I defines the terms used, and thereafter Chapter II deals with satellite broadcasting and Chapter III deals with the simultaneous, unaltered cable retransmission of terrestrial or satellite broadcast programmes.

B. THE NEED FOR ACTION ON THE PART OF THE COMMUNITY AND THE PURPOSE OF THE DIRECTIVE PROPOSED

I. The legal position in the Member States and under international law

Satellite transmission

9. Article 11^{bis} (1)(i) of the Revised Berne Convention on the protection of literary and artistic works (RBC) in the Brussels version, by which or by whose subsequent versions all Member Statesare bound, grants copyright owners the exclusive right of authorizing wireless radio-diffusion (primary transmissions). The principle applies to both terrestrial and satellite broadcasting. Under Article $11^{bis}(2)$, it is to be a matter for the countries of the Union to determine the conditions under which the right mentioned may be exercised, without prejudice to the moral right of the author or to his right to obtain equitable remuneration.

10. The application of Article $11^{bis}(1)$ RBC to the transmission of protected works via satellites raises a series of questions, however.

11. Since the notion of broadcasting presupposes that programme signals can be received by the public, a distinction has hitherto been drawn, as regards satellite programme transmission, between the broadcasting

of protected works by communications and direct satellite. While the latter operate at relatively high power over frequencies provided under international telecommunications law for reception by the public and their signals can be received by the public directly, the former transmit signals at much lower power over frequencies which the public, under telecommunications law, is not allowed to receive.[9] Although these signals were at first beamed only to the head-ends of cable networks, their individual reception has now become affordable as a result of improved aerial technology and is being allowed by national telecommunications authorities to an increasing extent.[10] Recently, medium-power satellites have appeared on the scene; these continue to use telecommunications frequencies but their signals can also be received directly without any difficulty in large parts of their footprint. Nevertheless, this direct reception of programme signals transmitted via communications satellites has hitherto not come within the scope of copyright law, and the distinction hitherto made in telecommunications law has continued to be applied for copyright purposes. Accordingly, only the broadcasting of programme signals via direct satellite is considered as a communication of a work to the public for the purposes of copyright, but not transmission via communications satellite; in the latter case, only the subsequent retransmission of the programme signals via cable networks is relevant for copyright purposes. In contrast to what happens when signals emitted by direct satellite are fed into a network, cable retransmission seems therefore to be comparable not to wireless transmission but to a primary transmission by wire, against which authors are protected by Article 11(1)(1) of the Brussels Revision, and Articles 11^{ter}(1)(ii), 14(1)(ii) and 14^{bis}(2)(b) of the Paris Revision, of the Berne Convention.

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9 See the International Telecommunications Convention and Article 1 para 37 of the Radio Regulations.

10 See Chapter 3 of the Satellite Communications Greenpaper, to be COM(90)490 final of 20 November, 1990.

12. The question whether a uniform approach to the satellite transmission of protected works is discernible for copyright purposes, covering both uplink and downlink and including any conversion on the satellite itself, or whether some of these operations require special authorization for copyright purposes has been answered on various occasions in various ways.

13. Which copyright applies to the transmission of programmes via direct satellite has not yet been clarified. Since an author, by virtue of the principle of territoriality, is in fact entitled to a bundle of territorially limited copyrights in respect of all those countries where he enjoys protection, a user of protected works must be granted a right of use for each country in which he performs a relevant act of use for copyright purposes. With conventional terrestrial broadcasting, such a relevant act of use is generally acknowledged to be carried out in the country in which the broadcast originates; the - sometimes not inconsiderable - spillover of the broadcast signals into neighbouring countries has been neglected as irrelevant for copyright purposes.

14. According to this approach the transmission of programmes via direct broadcasting satellite would only be subject to an authorization by the right owners in the broadcasting country and not by the right owners in the countries of reception. This can be justified on the ground that as regards copyright only the actof transmission is relevant and the direct satellite must simply be considered an extended aerial in space, whereas in all other countries reception is simply free of copyright.

15. A more recent view, however, is that the relevant act of use for copyright purposes in the transmission of programmes via direct satellite takes place not only in the broadcasting country but at the same time in all those countries in which the programme signals are

directly receivable. Consequently, any person intending to transmit programmes via a direct satellite would require authorization not only from right owners in the broadcasting country but from right owners in all the receiving countries. To protect authors it is sometimes proposed that the highest level of protection available at the time under the copyright system of the receiving countries should be applied, and sometimes that the law of the receiving countries should be applied only alternatively, where no, or only inadequate, protection exists in the broadcasting country.

16. For a long time this controversy was of theoretical interest only. Since the first direct satellites have started broadcasting - to be followed by a great many more in the foreseeable future - and since programmes transmitted via medium-power satellites can be received directly, the question of the relevant law has assumed central importance in the matter of the acquisition of rights.

17. Under the national copyright laws of the Member States authors generally hold the right to communicate protected works to the public not just terrestrially but via satellite, as part of their broadcasting right. The copyright laws of France and Spain contain specific provisions concerning the beaming of protected works to a communications satellite (droit d'injection);[11,12] the United Kingdom, following a legislative change made in 1988, also regards the diffusion of programme signals via communications satellites, which are "capable of being lawfully received by members of the public", as broadcasting activity.[13] In the other Member States it is at least the general rule that only the

11 Article 27(3) in conjunction with Article 45(3) of Law No 57/298 of 11 March 1957 on literary and artistic property, as amended by Law No 85-660 of 3 July 1985.

12 Article 20(2)(c) in conjunction with Article 36(2) of Law No 22/1987 of 11 November 1987 on intellectual property.

13 Section 6(1)(a) and (2) of the Copyright, Designs and Patents Act 1988.

transmission of signals via direct satellite, but not the transmission of signals to a communications satellite, constitutes an act of broadcasting under copyright law. It is also unclear at national level whether in the case of diffusion by direct satellite only copyright in the broadcasting country or the copyrights in all receiving countries are relevant.

18. For historical reasons the protection of neighbouring rights,under the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, is lessdeveloped. Denmark, Germany, France, the United Kingdom, Italy and Luxembourg have acceded to the Convention, but not Belgium, Greece, the Netherlands, Spain or Portugal.

19. Performers are protected, under Article 7(1)(a) of the Rome Convention, against the broadcasting of their live performances only. If their performance, however, has been fixed with their consent on a phonogram, videogram or video-phonogram, their consent is not required for broadcasting of the fixation. If commercial phonograms are used for the broadcast either the performer, or the producer of the phonogram, or both, are at least entitled to equitable remuneration pursuant to Article 12. Apart from the fact that in this respect the Rome Convention leaves an option for the contracting States, the right to remuneration can be annulled either in part or in full by entering an appropriate reservation (Article 16(1)(a)). Thus, Denmark and Italy essentially exclude the right to remuneration with regard to transmission for non-commercial purposes only,[14] whereas by contrast, Luxembourg has entered a reservation with regard to the whole of Article 12.[15] Broadcasting organizations are protected, under Article 13(a) and (b) against the simultaneous use of parts of their transmissions in primary satellite broadcasts by the right to authorize rebroadcasting, and from deferred use by the right to authorize fixation of their broadcasts.

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14 See Copyright 1965, p. 214 (Denmark) and Copyright 1975, p. 44 (Italy).

15 See Copyright 1976, p. 24.

20. At national level, however, there are many differences with regard to neighbouring rights. Thus, first of all, neighbouring rights have not hitherto been protected by statute in Belgium, Greece and the Netherlands, although draft laws on this subject are currently being discussed in Belgium and the Netherlands. In the meantime, the courts in the Member States have granted protection to a certain extent on non-copyright grounds. Where neighbouring rights have been protected by statute performers can prevent the broadcast of their live performances without their consent, in accordance with the international protection afforded by Article 7(1)(a) of the Rome Convention.[16] The draft laws of Belgium and the Netherlands also confer such a right on performers.[17] However, the rights which performers and/or producers of phonograms enjoy as regards direct use for the broadcasting of phonograms published for commercial purposes are regulated differently. Thus, Luxembourg and Portugal currently grant neither performers nor phonogram producers independent rights with regard to the use of phonograms for broadcasting purposes. By contrast, the United Kingdom and Ireland refuse independent rights regarding the use of phonograms for broadcasting purposes only to performers; but in both these Member States phonogram producers are

16 § 45(1)(b) of Law 158 on Copyright in literary and artistic works (Denmark); § 76(1) of the Urhebergesetz (UrhG) (Germany); Article 18(1) of Law No 85/660 (France); Section 182(1)(b) of the Copyright, Designs and Patents Act 1988 (United Kingdom); Section 5 of the Performers' Protection Act (Ireland); Article 80(1) of Law No 633 on the Protection of copyright and other rights associated with its exercise (Italy); Article 3(1)(a) of the Law on the Protection of performers, producers of phonograms and broadcasting organizations (Luxembourg); Article 178(a) of the Code on copyright and related rights (Portugal); Article 102(1) of Law 22/1987 (Spain).

17 See Article 51(1) of the draft Law on copyright, Documents du Sénat No 329-1 (1988) (Belgium), and Article 2(1)(b) of the draft Law on Neighbouring rights, Second Chamber, 1988-89, 21 244 (Netherlands).

entitled under copyright law to authorize the use of phonograms.[18] On the other hand, in Germany,[19] Denmark,[20] France,[21] Italy[22] and Spain[23] both performers and producers of phonograms have a right to a share of an additional remuneration for the broadcasting of phonograms. Comparable rules are also provided for in the draft laws of Belgium and the Netherlands.[24] However, the procedures for claiming the remuneration and the method of allocating remuneration between beneficiaries differ considerably in detail. Lastly, broadcasting organizations are protected in all Member States which have statutory neighbouring rights or grant such organizations copyright protection, against the fixation and the rebroadcasting of their broadcasts.[25]

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18 Section 16(1)(d) and 20(b) of the Copyright, Designs and Patents Acts 1988 (United Kingdom) and Section 17(1) and (4)(b) and (c) in conjunction with Section 2(3) of the Copyright Act 1963 (Ireland).

19 §§ 76(2) and 86 UrhG.

20 § 47 of Law 158 on Copyright in literary and artistic works.

21 Article 22(2) to (5) of Law No 85-660.

22 Articles 73 and 80(2) of Law No 633 on the Protection of copyright and other rights relating to its exercise.

23 Articles 103 and 109(1) of Law 22/1987.

24 See Articles 56 and 61 of the draft Law on copyright, Documents du Sénat No 329-1 (1988) (Belgium), and Article 6 of the draft Law on Neighbouring rights, Second Chamber, 1988-89, 21 244 (Netherlands).

25 See § 48(1) of Law 158 of Copyright in literary and artistic works (Denmark); § 87(1)(1) and (2) UrhG (Germany); Article 27(1) of Law No 85-660 (France); Section 16(1)(a) and (d) in conjunction with Section 17(1) and (4) and Section 20(c) of the Copyright, Designs and Patents Act 1988 (United Kingdom); Section 19(1) and (5)(a), (b) and (d) of Copyright Act 1963 (Ireland); Article 79 of Law No 633 on the Protection of copyright and other rights relating to its exercise (Italy); Article 10(a) and (b) of the Law on the Protection of performers, producers of phonograms and broadcasting organizations (Luxembourg); Article 187(a) and (b) of the Code on Copyright and related rights (Portugal); Article 116(1)(a) and (b) of Law 22/1987 (Spain).

Cable Retransmission

21. The transmission by cable of a programme broadcast either terrestrially or via direct broadcasting satellite constitutes an independant act of broadcasting in accordance with Article 11 bis (1)(ii) of the Berne Convention. This qualification is valid for both a simultaneous and unchanged transmission of a programme broadcast and a defered transmission thereof. Where the programme signals from the primary broadcast are retransmitted via cable networks in a country other than the primary broadcasting country, the national retransmission right in each individual country is affected by that retransmission. The only condition is that the signals are fed into the network by a party other than the primary broadcasting organization.

22. It has hitherto been argued that in order to qualify as a broadcast it should comply with an additional criterion, namely that cable retransmission must reach an additional audience vis-à-vis the primary broadcast. Retransmission within the national service area or even within the direct reception area of commercial broadcaster would thus be admissible without the author's renewed consent and would not give rise to an entitlement to additional remuneration. The rebroadcasting right in Article $11^{bis}(1)(ii)$ of the Berne Convention just like the primary broadcasting right in (i) is subject to the possibilities of restriction provided for in Article $11^{bis}(2)$. It can therefore be made subject to exclusively collective management or even to a statutory licence.

23. Under the Member States' copyright laws, too, cable retransmission is subject to the author's consent.[26] Denmark has introduced a statutory licence with respect to the retransmission of domestic and foreign programmes broadcast terrestrially or via direct broadcasting satellite, but not via communications satellite.[27] In the United Kingdom[28] - and similarly in Ireland[29] - the law assumes that the cable retransmission of programmes which network operators are obliged to retransmit under the legislation governing the media, as well as the retransmission of programmes within their intended reception area are classed as primary broadcasts, and as such do not need the special consent of right owners. This does not apply to the retransmission of satellite broadcasts.

24. By contrast, the Rome Convention does not deal with the retransmission of primary broadcast signals in an international context. The rules of the Convention afford protection only against rebroadcasting by wireless means (see Article 3(f) and (g)), and do not cover

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26 See §§ 15(2), 20 UrhG (Germany); Article 27 of Law No 57-298, as amended by Law No 85-660 (France); Section 16(1)(d), 20 in conjunction with Section 7, 178 of the Copyright, Designs and Patents Act 1988 (United Kingdom); Section 8(6)(e), 9(7)(d) and 18(4)(d) in conjunction with Section 2(3) Copyright Act 1963 (Ireland); Article 16 of Law No 633 on the Protection of Copyright and other rights relating to its exercise (Italy); Article 23(1)(2) of the Copyright Act of 29 March 1972 (Luxembourg); Article 68(2)(e) in conjunction with Article 153(3) of the Code on copyright and related rights (Portugal); Article 17 in conjunction with Article 20(2)(e) of Law 22/1987 (Spain).

27 See § 22(a) and § 45(2) (compulsory licence for the rebroadcasting right of broadcasting organizations) of Law No 158 on Copyright in literary and artistic works, and § 11(a) of Law No 157 on the Right to photographic images.

28 Section 73 of the Copyright, Designs and Patents Act 1988.

29 Section 52(3) and (4) of the Copyright Act 1963.

retransmission by wire. Even if a cable retransmission should be considered as "communication to the public" within the meaning of the Rome Convention, the simultaneous, unaltered cable retransmission which is the only form concerned by this Directive would not affect any of the entitlements conferred by the Rome Convention: Article 7(1)(a) of the Convention does not protect performers where what is communicated to the public is a performance that has already been broadcast; the right to remuneration for the use of phonograms provided for in Article 12 requires that the phonograms be used "direct" for broadcasting purposes; and, finally, broadcasting organizations are protected only against a retransmission of their broadcasts by wireless means (Article 13(a) in conjunction with Article 3(g)).

25. However, under Article 1(1)(b) of the 1960 European Convention on the Protection of Television Broadcasts, whose signatories include Belgium, Denmark, Germany, France, the United Kingdom and Spain, broadcasting organizations are also protected against the retransmission of their broadcasts by wire. The United Kingdom, however, has excluded such protection generally by entering a reservation; Belgium has excluded the protection only for Belgian broadcasting organizations and restricted theprotection of foreign broadcasting organizations to 50% of the weekly broadcasting time.

26. Of very minor importance in this respect is the 1974 Convention relating to the distribution of programme-carrying signals transmitted by satellite, to which of the Member States only Germany and Italy have so far acceded. The Convention provides protection only against unauthorized "tapping" of programme-carrying signals not intended for reception by the general public and hence essentially only against unauthorized reception of point-to-point broadcasts via satellite. Broadcasts which are transmitted via satellite direct to the public are specifically excluded from the protection of the Convention under Article 3.

27. By contrast, the Member States' legislation on copyright or neighbouring rights frequently grants, in this respect, a level of protection that exceeds the minimum provided for in international law. Thus, in particular, broadcasting organizations in many Member States, e.g. in Germany,[30] France,[31] the United Kingdom[32] or Spain[33] are protected not only against wireless retransmission of their broadcasts but as well, in principle, against any retransmission by wire. As regards neighbouring rights for performers the disparities are relatively large: in certain Member States, such as Germany,[34] France[35] or Spain,[36] their right also includes the right to authorize the retransmission of their performance - it is sometimes presumed that such authorization is granted when authorization is given to broadcast a performance or fix it on a videogram or audio-videogram - while in other countries, such as recently the United Kingdom,[37] rebroadcasting is specifically exempt. If a commercial phonogram is used for the primary broadcast, the laws of the Member States frequently also grant performers and/or producers

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30 § 87(1)(1) in conjunction with § 20 of UrhG.

31 Article 27(1) of Law No 85-660 in conjunction with Article 27 of Law No 57-298 as amended by Law No 85-660.

32 Sections 16(1)(d) and 20(c) of the Copyright, Designs and Patents Act 1988.

33 Article 116(1)(a) of Law 22/1987.

34 See § 76, UrhG.

35 Article 18(1) of Law No 85-660.

36 Article 101(1) of Law 22/1987.

37 See Sections 182 and 183 of the Copyright, Designs and Patents Act 1988.

of phonograms a right to remuneration for the retransmission of that broadcast[38] in addition to the minimum protection in the Rome Convention; the United Kingdom and Ireland even grant an independent right to authorize the retransmission of the broadcast.[39]

II. The need for action at Community level

28. In both fields, satellite broadcasting and cable retransmission, copyright law has been unable to keep pace in all respects with the expanding technological possibilities and commercial realities of cross-border broadcasting. In international law, and especially in the domestic laws of the Member States, therefore, there are currently certain areas of serious uncertainty as to the law; but there are also shortcomings in the protection offered which impede the objective of promoting creative work. In addition, right owners are exposed to the threat of seeing the exploitation of their rights blocked by other right-owners who hold an exclusive right in another part of that same programme.

29. For copyright purposes, however, a distinction has to be drawn between primary broadcasting and the simultaneous, unabridged retransmission of programmes by cable. In a primary broadcast, which includes the broadcast of an original programme via satellite, the broadcaster himself decides the composition of the programme. He will include only works and protected performances for which he has already secured the broadcasting rights. In cable retransmission, on the other hand,

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38 See for instance, §§ 76(2) and 86 in conjunction with § 20 UrhG (Germany) or Article 103 in conjunction with Article 20(2)(d) and (e) of Law 22/1987 (Spain).

39 Sections 16(1)(d), and 20(b) of the Copyright, Designs and Patents Act 1988 (United Kingdom) and Section 17(1), (4)(b) and (c) in conjunction with Section 2(3) of the Copyright Act 1963 (Ireland).

the cable operator cannot make up his programmes on the basis of a portfolio of rights which he has acquired beforehand. The cable operator can decide only whether he wants to retransmit the primary broadcast in full or not at all.

Satellite broadcasting

30. In considering the broadcasting of programmes via satellite there is no longer any justification from the point of view of right owners, broadcasters or viewers for excluding an activity which has to be described as broadcasting from the scope of copyright on the sole ground that it uses technology that was originally reserved under telecommunications law for closed point-to-point communication. For the purposes of copyright the decisive question is simply whether the use made of protected works and performances constitutes communication to the public.

31. Where programmes are broadcast via satellite there is legal uncertainty as to whether the rights must be acquired only in respect of the country from which the programme is transmitted, or in all countries of reception too; and once the broadcasting of programmes via a communications satellite is placed on the same footing with broadcasting via direct satellite, as the Directive proposes, this uncertainty will extend to the overwhelming majority of programmes already being broadcast via satellite in the Community.

32. Given the right owner's interest in seeing his protected work or performance exploited, the only commercially sound way of resolving this legal uncertainty is to determine that the broadcasting rights must be acquired only in respect of the country of transmission, which will have to be more precisely defined.

33. If a broadcaster were to have to acquire the rights in all receiving countries, the difficulty would immediately arise of deciding in

which countries the programme signals could in fact be received directly. A satellite footprint cannot be defined with enough precision to allow the individual countries of reception to be determined exactly. A satellite broadcast beamed at western Europe may also be receivable in eastern Europe and parts of Scandinavia, albeit with more expensive aerials. With recent satellite technology footprints are becoming more sharply defined, but the edges are still blurred. There is a margin where reception is possible but requires increasingly large and more powerful aerials. In the circumstances, it is not possible for a broadcaster to determine with sufficient certainty where the public can receive direct and where not.Finally, a failure of negotiations with any one of the right owners in any one of the Member States would now have the consequence that the entire satellite transmission would be obstructed. This would not benefit the author, who has an interest in seeing his work exploited; it would not be in the general interest either.

34. The proposal for a directive does not rule out the possibility, for a rightowner to authorize the transmission of a protected work, such as a film, exclusively by one broadcaster or exclusively for one linguistic version. These limited authorizations can still be granted in the framework of a contractual arrangement.

35. But a decision that only the law of the broadcasting country is to be relevant requires that copyright and the neighbouring rights of performers, producers of phonograms and broadcasting organizations be properly protected by means of a minimum alignment of the rules in force in the individual states. Where one Member State does not provide protection against the broadcasting of protected works by satellite, the transmission via direct satellite from that country throughout the Community would require neither the consent of right owners nor the payment of remuneration, and would render ineffective the protection that the legislation of another Member State may grant. If the law of the broadcasting country does confer protection in principle, but makes a primary broadcast via direct satellite subject to a statutory licence, right owners in the entire footprint are

prevented from deciding how their works will be exploited and simply receive remuneration that has been fixed by the competent authority in the broadcasting country. The same applies to the owners of neighbouring rights; but here the disparity between the rights protected in the different Member States is currently much wider than in the case of copyright protection, as there is still no systematic protection of neighbouring rights in a number of Member States.

36. For this reason the proposal for a Directive rules out the introduction of statutory licences for satellite broadcasts. If on the date of the proposal the legislation of a Member State allows agreements between an entitled organization of right owners and a broadcaster to be declared generally binding, this possibility may be maintained subject to certain conditions. In the field of neighbouring rights the proposal is explicitly confined to introducing a standard minimum level of protection; any additional entitlements in respect of the protection of neighbouring rights will continue to be a matter for the Member States.

Cable retransmission

37. This proposal for a directive provides regulation only for cable retransmission of broadcasts from another Member State. For the time being the Commission cannot establish the need for harmonisation, as far as cable retransmission of broadcasts from one Member State within that same Member State are concerned. The reason is that such a purely national situation does not in general affect the creation of a single European audiovisual area.

38. The rights needed for a primary broadcast can be acquired on an individual basis, but this is difficult in the case of the rights for simultaneous, unaltered cable retransmission, on account of its dependence on the primary broadcast. In Belgium, Germany and the Netherlands, at least, such rights are already being acquired on the basis of general contracts to which the cable operators and where

possible all groups of right owners are party. In France the collecting societies, representatives of film right owners and some broadcasting organizations have each concluded special contracts with individual cable operators. Contractual acquisition of rights for cable retransmission does not exist in Denmark, where the law provides for statutory licensing.

39. This type of collective acquisition of rights - in the form of a general contract in most cases - has largely managed to solve the initial problems associated with the acquisition of rights to simultaneous, unaltered cable retransmission of terrestrially broadcast programmes. Basically, though, two problems still remain, which may jeopardize the retransmission of national programmes and the cross-border retransmission of programmes from other Member States.

40. Firstly, the idea underlying general contracts at least is that the parties to them should be the owners of all rights, thus dispensing with the need for detailed proof of title. Yet network operators can never be sure that outsiders will not claim individually a right to authorize the retransmission (the "outsider problem"). Although the right owners party to a contract do undertake to indemnify network operators against claims by third parties whose rights fall within the category of rights managed or represented by them, such an arrangement gives network operators partial protection only. For one thing, the indemnity clause is limited to the amount which the outsider, had he been represented when the contract was concluded, could have claimed as his share of the total remuneration under the contract. Whether this is enough to cover the damages a network operator may have to pay, plus any legal costs, is doubtful. Indemnification protects only against damages claims, and not against injunctions preventing a retransmission or criminal sanctions. The network operator is anyway wholly unprotected against claims by those right owners whose categories of rights were not represented by any of the groups of right owners involved in the conclusion of the contract.

41. The second potential threat is that, when conducting new negotiations, the parties may not be able to agree in time to modify or continue the existing contract. This may be the result differing of opinions as to the amount and composition of the remuneration or, more recently, as to the inclusion of new, satellite-broadcast programmes. Thus, in Belgium and the Netherlands it has so far only been possible to reach agreement on a one to two-year temporary extension of the original contract. Moreover, suppliers of new satellite programmes sometimes encounter difficulties in being included in these general contracts, which are created by those who are already parties to them.

42. The proposal for a Directive seeks to deal with these problems in two ways.

Firstly, it would introduce a requirement that the right to authorize or prohibit cross-border cable retransmission be exercised only through a collecting society. The rule would not apply to broadcasters' rights in their own broadcasts, whether originally their own or assigned to them.

Secondly, it would as far as possible alleviate difficulties in the conclusion of agreements for the grant of rights to cross-border cable retransmission by requiring that the parties may call upon the assistance of impartial mediators. Furthermore, measures to prevent the abuse of negotiating positions, should be provided for, without however taking away from the exclusive character of cable retransmission rights.

Finally, the proposal for a directive seeks to stimulate the parties to transfer the rights needed for cable retransmission in a single general contract in every Member State; all right-owners and cable operators should be party to these agreements.

Summary

43. Thus the proposal for a Directive covering satellite broadcasting and cable retransmission seeks to overcome the adverse effects of the inadequate protection available where cross-border broadcasting is concerned, and so, in line with the other planned harmonization measures, to establish the legal and economic foundations for continued creative work in the European cultural sphere, which merits particular protection. The diversity of European culture, as was recently emphasized in the proposal for a Council Directive on rental right, lending right and on certain rights related to copyright,[40] is not merely deserving of protection: it must have a high level of protection in order to preserve its identity.

C. TYPE OF HARMONIZATION SOUGHT

44. Like the other plans for harmonization in the field of copyright, this proposal does not aim at a general harmonization of the protection of copyright and related rights, but seeks only to harmonize areas which are currently of foremost importance. One of these areas is the creation of a European audiovisual area, which has partly been established by the directive "Television without Frontiers" of 3 October 1989[41] leaving for harmonisation the field of copyright rules. The proposal therefore provides for harmonization only to the extent that it is absolutely necessary in order to meet the need for action at Community level.

45. The national approaches to copyright in the Member States are therefore left as far as possible untouched. Only where the purpose

40 COM(90) 586 final - SYN 319, 24.1.1991.

41 Council Directive 89/552/EEC of 3 October 1989, OJ No L 298, 17.10.1989.

of the proposed Directive requires it are Member States to be obliged to enact harmonized rules. A number of the measures proposed here, particularly regarding neighbouring rights, in any event already form part of the legislation on the protection of copyright and related rights in several Member States. The proposal for a directive mainly seeks to avoid both, the existence of "protection-free" areas and the possibility of their introduction in the future within the Community.

46. In the case of satellite broadcasting, for example, the Member States will remain free to decide how the broadcasting right which they must provide for is to be incorporated into their national systems of rights management. As regards the obligation to protect neighbouring rights, this proposal confines itself to an indispensible level of protection. The Member States remain free to lay down more far-reaching protective measures. Neither would the proposal in any way affect national rules on remuneration in respect of sound recordings, including the allocation of payments between phonogram producers and performers. The proposal for a directive provides for a protection of neighbouring rights which is mainly taken from the substance of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations which, at present, must be considered the most comprehensive standard for a protection of neighbouring rights on the international level and which has been accepted by the majority of Member States. In some areas, however, the proposal for a directive seeks to go above the standard of the Rome Convention, in particular with regard to the exclusion of the reservations. The transcription of a minimum standard of protection for the purposes of this proposal, however, does not imply that further harmonization in the field of neighbouring rights might not strive to establish a higher level of protection throughout the Community.

47. The Directive also takes account of the special mechanisms operating in particular countries, such as the possibility of declaring collective agreements generally binding in the field of satellite broadcasting, or the existence of statutory licences for cable retransmission. Lastly, the proposal would leave the Member States' existing rules on the activities of collecting societies unaffected.

48. Lastly, the proposal avoids interfering with existing agreements for the exploitation of works enjoying copyright protection and other protected matter, except where this is indispensible for the achievement of the objective pursued. The same applies to the practice of contractual acquisition of the rights needed for cable retransmission, where that practice has established itself. Similarly, the proposal will not form an obstacle to future contractual arrangements that result from the economic situation.

49. This proposal does not prejudice the harmonization proposed in other fields of copyright, in particular the proposal for a Council decision concerning the accession of the Member States to the Berne Convention for the Protection of Literary and Artistic Works, as revised by the Paris Act of 24 July 1971, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting organizations of 26 October 1961 and the proposal for a Council Directive on Rental Right, Lending Right and on certain rights related to copyright.

50. The proposal for a decision of the Council concerning the accession of Member States to the Berne Convention and to the Rome Convention seeks to introduce a basic standard for the protection of copyright and neighbouring rights. The intention of the present proposal is to establish a common level of protection for neighbouring rights insofar as such level is required to avoid the development of low-protection countries to attract satellite broadcasters. The proposal for a directive on rental right finally provides for an absolute harmonization of certain neighbouring rights within the Community. Within the comprehensive approach of the Commission in the field of copyright as laid down in the working programme of the

Commission each of the three proposals must be considered as a self-relying set of rules which reflects the three different objectives of harmonization. Partial overlaps during the proposal-stage are the consequence and will have to be eliminated in a way depending on the progress of the adoption of each of these proposals.

D. LEGAL BASIS

51. Article 2 of the EEC Treaty gives the Community the task of promoting a harmonious development of economic activities and closer relations between the states belonging to it. To this end the Treaty calls for the establishment of a common market and for the approximation of the laws of the Member States.

52. As far as the audiovisual field is concerned, a first step towards a European audiovisual area was made in the "Television without Frontiers" Directive.[42]

53. In its subsequent Communication from the Commission to the Council and Parliament on audiovisual policy the Commission confirmed that the legal framework established by that Directive had still to be amplified on the question of copyright.[43] "Failing a Community approach on this question," the Commission said, "the legislative compartmentalization and legal insecurity due to differences in the

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42 Loc. cit.

43 COM(90) 78 final, 21.2.1991.

various national protection systems will constitute a disincentive to investment in creativity, limit opportunities for the exploitation of creative works...and prove detrimental or advantageous, depending on the nature of the legal system applied, to certain of the interested parties." There was "a common interest among all the parties concerned that the question of copyright be handled within a Community context".

54. The Directive proposed here is intended to make it easier for broadcasting organizations, performers, producers of phonograms and cable operators to work in a single audiovisual area.

55. The Court of Justice has consistently held that broadcasting and the relay of broadcasts represent services rather than goods. It makes no difference here whether a broadcast is a conventional terrestrial one (Sacchi),[44] or takes place by cable (Debauve)[45] or by satellite. The technical medium used is irrelevant to the question whether a service is being provided. The exploitation of rights by the author or right owner also constitutes a service.

56. An important part of the activity of a satellite broadcaster is the broadcasting of television and radio-programmes via satellite. The prerequisite acquisition of broadcasting rights is governed by the individual copyright laws of the Member States, which vary considerably if they address satellite broadcasting at all. Only a few national legal systems expressly grant authors a satellite broadcasting right. In other countries it has still to be established whether the author's general broadcasting right includes a satellite

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44 Case 155/73 [1974] ECR 409.

45 Case 52/79 [1980] ECR 833.

broadcasting right, and whether that right is separable. Neither is it clear in the laws of most countries which of the author's rights are affected by a satellite broadcast. The present state of the law means that the acquisition of the rights for a programme to be broadcast by satellite is subject to serious uncertainties, and these have a dissuasive if not a prohibitive effect on the organization of satellite broadcasts.

57. Furthermore, the existing legal uncertainties hamper the activities of right-owners (authors, artists, producers of phongrams and broadcasting organizations themselves) because the exploitation of their rights by granting a satellite broadcasting right is encumbered by the above mentioned legal problems.

58. The proposal for a Directive seeks to coordinate the national copyright rules in this sphere so as to remove the uncertainties surrounding the acquisition of rights for satellite broadcasting.

59. The proposal for a Directive would also provide for the coordination of the rules on the related rights held by performers, broadcasting organizations and the producers of phonograms. The rules governing these related rights, like the other copyright rules on broadcasting rights, form part of the legal framework of a single European audiovisual area.

60. Performers, broadcasting organizations and the producers of phonograms are not protected against the use of their work for broadcasting purposes in all Member States. In the absence of any coordination of these rules, satellite broadcasters might establish themselves in whichever Member State provided the lowest level of protection for these related rights.

61. Given the disparities which exist it is conceivable that the Court of Justice could follow its findings in Coditel v Ciné Vog[46] and hold that there has not yet been established a single audiovisual area.

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46 Case 62/79 [1980] ECR 881, 903.

62. The second set of provisions in the proposal concerns the cable retransmission of broadcasts. The acquisition of the rights for the cable retransmission of broadcasts is an essential part of the activity of a cable operator, as retransmission requires that the necessary broadcasting rights be acquired beforehand. There is a need for a provision requiring that such rights be exercised through a collecting society, in order to ensure that cable retransmission rights can be acquired in their entirety. This would make it impossible for the retransmission of a comprehensive programme to be prevented by the refusal of a single right owner exercising a right which relates only to one component in that programme. Cable operators would be able to retransmit the whole of the programme, and at the same time the right holders with an interest in a cable retransmission would not be prevented from exploiting their rights.

63. The acquisition of cable retransmission rights, which must necessarily be on a contractual basis, is further facilitated by providing for a mediation body which can assist where right holders and cable operators have difficulty in reaching agreement. A prohibition on the abuse of negotiating positions is also included, in order to prompt the parties to engage in serious negotiation.

64. It follows from the above-mentioned that the proposal for a directive seeks to facilitate the pursuit of the activities of satellite broadcasters, cable operators as well as those of authors, performing artists and phonogram producers. To that end article 57 paragraph 2 provides for the coordination of the provisions laid down by law, regulation or administrative action in Member States.

65. In the presentation of this directive, the Commission has taken into account the requirements of Article 8c of the EEC-Treaty and has concluded that no special provisions or derogations seem warranted or justified at this stage.

PART TWO: PARTICULAR PROVISIONS

CHAPTER I - DEFINITIONS

Article 1

Definitions

1. This provision seeks to define the terms used in the Directive.

2. In view of the technical development of satellites and receiving aerials there is no longer any justification from the point of view of right owners or broadcasters for excluding from the scope of copyright an activity which has to be described as broadcasting, on the sole ground that it uses technology that was originally reserved under telecommunications law for closed point-to-point communication. The broadcasting of programme signals via a communications satellite should therefore be put on the same footing as far as copyright and related rights are concerned as broadcasting by direct satellite, provided it is comparable to the latter in terms of direct reception. This is the case when the reception of the programme bearing signals is enabled with aereals conceived for individual reception of television and radiobroadcasts.

3. Communication to the public of protected works and other protected matter by satellite is to require the prior authorization of the right holder. The purpose of this provision is to determine when the broadcasting of programmes via satellite constitutes communication to the public, and who is to be responsible for such communication.

4. Responsibility for communication to the public will arise only at the point where a single decision is taken on the content and the transmission of the signals, provided the chain of broadcasting equipment from the point where this decision is taken to the transmission of the signals from the satellite to the public is uninterrupted. Thus a decision on the content alone (such as a decision to produce a particular film, or the act of acquiring broadcasting rights, or the filming of a football match) would not constitute communication to the public. In the same way a decision to transmit, taken in isolation (such as the decision of an engineer at a satellite ground station) would not constitute communication to the public either. Lastly, there would be no act giving rise to responsibility in copyright law where a broadcasting organization planned its programmes and drew up a schedule months in advance. Such a decision is translated into action only when the programme is cleared for broadcasting in its final form, with any commercials and current programme references incorporated.

Only then is there an uninterrupted chain of broadcasting equipment from the point where the decision to act is taken to the transmission of the signal.

5. The responsibility in copyright law, so described, arises where the act requiring authorization takes place, that is to say where the decision on content and transmission is taken. As a rule this will be the headquarters of the broadcasting organization. This will still be so if the signals are first sent to a ground station in another Member State and transmitted to the satellite from there. The decisive test is that the chain of broadcasting equipment used must be uninterrupted from the place of the decision on the content and on transmission up to the point of transmission.

6. This does not mean that the question whether a broadcasting organization's transmission can be received in more than one Member State loses its importance. Even though reception as such may be irrelevant for copyright purposes, there can be no doubt that it can have commercial repercussions on any other exploitation of the work received in the country of reception. Thus the extent of reception will usually be taken into account when the remuneration to be paid is arrived at. The relationship between the transmission of a satellite programme and other forms of use or exploitation will as a rule be coordinated by contract too.

7. The proposal for a Directive says nothing of the treatment of cases in which the decision on the content and transmission of the programme-bearing signals is taken in a non-Community country. The reason for this is that Community law cannot lay down any compulsory standard of protection for copyright and related rights in a non-member country, as it can inside the Community. Member States are accordingly free to make the responsibility in copyright law for satellite broadcasts from non-member countries depend on alternative tests.

8. Furthermore, the proposal for a directive deals with questions relating to the simultaneous, unchanged and unabridged cable retransmission of broadcasts from another Member State.

9. With regard to the retransmission of broadcasts of one Member State within that same Member State Community action, at present, is not required in order to establish the European audiovisual area. Similiarly a need for Community intervention concerning copyright treatment of simultaneous, unaltered cable retransmission of the programmes of domestic broadcasters within their so-called "distribution zone" must be denied. Finally, this reasoning also applies to the question how transmitting equipment which is relevant for copyright purposes must be distinguished from mere receiving equipment which is irrelevant for copyright purposes.

10. The proposal for a directive does not make a distinction regarding the mode of transmission of the primary broadcast that is retransmitted. The rules proposed, therefore, apply irrespective of whether the primary broadcast is a satellite or a terrestrial broadcast. However, there is no cable retransmission in the sense of this proposal, if the programme is merely delivered by point-to-point communication to the cable head end without being the subject of a simultaneous primary broadcast.

11. The notion of cable-retransmission extends to multipoint micro-wave distribution systems where the latter perform the role of broadcast-retransmission in areas where the establishment of a cable network is not economically viable.

CHAPTER II - BROADCASTING BY SATELLITE

Article 2

Broadcasting right

12. Article 2 of the proposal provides that the satellite broadcasting of works which are protected under copyright law is to require the prior authorization of the right owners.

13. It is not proposed, however, that a new satellite exploitation right should be introduced. The intention is simply to make it clear that communication by satellite can constitute communication to the public in this same way as communication via a terrestrial broadcasting network. Both forms of communication are covered by the broadcasting right.

14. This will, under no circumstances limit the existing practise of contractual arrangements for the exploitation of rights. In particular, it is still possible to limit the exploitation of rights contractually to specific modes of transmission or to specific linguistic versions.

Article 3

Acquisition of broadcasting rights

15. Under the proposal the only law which would apply to the broadcast of a television or radio programme by satellite would be that of the Member State in which a single decision is taken on the content and transmission of the programme-bearing signals. If there were to be statutory licensing in that Member State, right owners would have to accept the direct reception of their works broadcast by satellite throughout the entire satellite footprint.

16. This would be too far-reaching an effect; and in order to prevent it, the Directive would not allow statutory licences to restrict the right to communicate works enjoying copyright protection by satellite to the public.

17. In line with harmonisation rules put forward by the Nordic Council Scandinavian countries allow collective agreements concluded between an entitled organization of right owners and a broadcasting organization to be extended to right owners not represented by the relevant organization.

18. Where on 31 July 1991 such a possibility exists in a Member State, and covers satellite broadcasting as well, this may be retained until 31 December 1997 provided that an extended collective agreement system is not applied to cinematographic works. Cinematographic works in this context, refers to the definition of Articles 2, paragraph 1 and 14bis of the Berne Convention on the protection of Artistic and Literary Works.

Article 4

Performers

19. The current variations in the level of protection of performers, producers of phonograms and broadcasting organizations in the Member States could be exploited by satellite broadcasters who established themselves in the Member State which granted the most limited protection to these categories. The proposal therefore provides for a harmonization of the protection of performers, producers of phonograms and broadcasting organizations in the Community to the extent required to achieve the objective of the proposal.

20. This would mean that performers would be entitled to authorize or prohibit the transmission of their live performances by satellite. To avoid this right being deprived of substance through the use of recorded performances, the Directive also provides for a fixation right and a reproduction right.

21. When an audiovisual work is produced the contract between the artist and the producer will as a rule settle the remuneration of the artist, while the later commercial exploitation of the work, including the artist's performance, will, in practise, mostly be in the producer's hands. This practice is reflected in the legislations of a number of Member States. These legislations mostly provide for a presumption of assignment according to which the artist who participates in the production of an audiovisual work and has concluded a contract with the producer is presumed to have assigned his rights to this producer. In some Member States the presumption of assignment is rebuttable. It is not the intention 4f the present proposal to interfere with the rules on the assignment of rights. Member States, therefore, can leave the assignment of performer's rights to the individual negotiation between the parties or make the assignment of performers rights subject to a system of legal presumption.

Article 5

Remuneration for the use of phonograms

22. Sound recordings are extensively used in the composition of broadcast programmes. The Rome Convention therefore provides that performers or the producers of phonograms, or both, singly or severally, are to be given a share in this form of use of a phonogram by a broadcasting organization, through the grant of a right of remuneration. It would be advisable to adopt this principle at Community level. The Member States would remain free to determine whether they wish to grant this right of remuneration to both categories of right holders, to a single category, or to one category with some participation by the other. The rules on the division of the remuneration would also be a matter for the Member States.

Article 6

Broadcasting organizations

23. In order to protect broadcasting organizations from seeing parts of their broadcasts taken over by other broadcasting organizations without authorization, the proposal provides that broadcasting organizations would have the right to authorize or to prohibit the simultaneous retransmission of their transmissions by satellite, the fixation of their transmissions and the reproduction of any fixation of their transmissions.

Article 7

Limitations on rights

24. The proposal avoids any detailed harmonization of the rules providing for limitations on related rights in the Member States; its wording is based on Article 15 of the Rome Convention. In most Member States limitations on related rights are regulated in whole or in part by means of a reference to the corresponding provisions of copyright law proper. To attempt a detailed harmonization here would run counter to this principle, and the result might be that owners of related rights would be placed in a better position than authors. This would conflict with the approach to copyright and related rights in most Member States.

25. This in no way prevents steps being taken to harmonize such limitations at Community level at a later stage.

Article 8

Minimum protection

26. Articles 4 to 7 seek to lay down a minimum level of protection for performers, producers of phonograms and broadcasting organizations in respect of satellite broadcasting. The Member States remain free, however, to provide for more far-reaching protection of these categories of right owners or other categories. In any event Member States should be bound by the definition of a communication to the public by satellite when granting rights above the minimum standard. Article 8 paragraph 1 does not preclude any further harmonization in the field of copyright and neighbouring rights.

27. The Directive provides for recognition of the rights only of nationals of Community Member States, and of companies or firms within the scope of Article 58 of the EEC Treaty, so as to prevent any discrimination against right owners from other Member States which would be incompatible with the EEC Treaty. The question whether the rules in this Directive can be applied to the nationals of non-member countries will therefore depend on the relevant bilateral and international agreements between the Member States and non-Community countries. Where those agreements provide for national treatment of nationals of non-Community countries this Directive may also apply to them.

Article 9

Transitional Provision

28. The immediate application of Chapter 2 of the Directive to works could be a source of difficulty where their exploitation is the subject of an existing agreement. This would be the case where broadcasting rights have been divided between different right holders in defined areas. Under the circumstances obtaining at the time the agreement was concluded, rights were conferred whose exploitation was not to affect the exploitation of the sister rights. In the bulk of these cases the difficulty can be resolved by reinterpreting or if necessary renegotiating the agreement. The grant of a three-year period of grace is intended to allow satisfactory agreed solutions to be found where a genuine problem arises.

CHAPTER III: CABLE RETRANSMISSION

Article 10

Cable retransmission right

29. The cable retransmission of broadcasts constitutes communication to the public of the works and other protected matter contained in the broadcast, and is protected by copyright. The cable retransmission of broadcasts therefore requires the authorization of the relevant right owners.

30. But this does not tell us which are the relevant right owners, nor does it define types of use which may be outside the scope of copyright. The Member States are consequently free to decide which categories of right owners are to be entitled to authorize or to prohibit the cable retransmission of a broadcast. It is likewise a matter for the Member States to determine the view to be taken for copyright purposes of a communal aerial, for example, or of the coverage of a domestic broadcaster.

31. Neither is the proposal intended to harmonize moral rights in relation to cable retransmission. It does not affect rules in the Member States allowing a cable retransmission to be interrupted on grounds of infringement of moral rights.

32. While the cable retransmission of broadcasts is in future to be carried out on a purely contractual basis, account has to be taken of the developed cable retransmission systems which exist in the Member States and which operate in a satisfactory way. Where on 31 July 1991 a Member State has introduced a statutory licensing system covering cable retransmission,

that possibility will remain open until 1998 too. This is equally valid for a situation where the national copyright legislation expressly provides for the possibility of the introduction of a statutory licence system by administrative regulation. However, there is no need to maintain such systems after 1998, when the contractual system envisaged by this proposal will have shown its merit of rendering a statutory licence solution superfluous.

Article 11

Exercise of the cable retransmission right

33. A cable network operator takes over a primary broadcast without alteration, and has no say in the composition of the programmes he relays. This means that he is not usually in a position to identify the owners of rights in particular parts of the programme in advance. In order to prevent rights in individual programme components from standing in the way of the cable retransmission operation as a whole, it is proposed that cable retransmission rights should be exercised centrally by one or more collecting societies. The right of each individual right owner to authorize or to prohibit cable retransmission could be exercised only through the intermediary of these collecting societies.

34. The obligation to exercise the cable retransmission right only through a collecting society would not affect the questions of ownership and transfer of ownership; the obligation to act through a collecting society would apply only to the exercise of the cable retransmission right against a cable operator.

35. Lastly, right owners as members of the collecting society would remain free to take steps through the society to protect their commercial interest in seeing their works exploited in an orderly fashion. The collecting society might for example be told to include an escape clause in agreements authorizing cable retransmission. Such a clause might provide that the society may oppose the retransmission of a work where this would result in serious and irreparable damage to the right owner.

36. Neither does the obligation to act through a collecting society mean that right owners would be required to join such a society. A right owner who has not transferred the exercise of his rights to a collecting society would have a claim for compensation on the society which manages rights of the same kind. The claim would be confined to the sum which the right owner would have received if he had transferred his rights to the society. This implies that as far as this compensation is concerned the right-owner who is not a member of the collecting society must be put on the same footing as the members of that society. Furthermore, the non-member must have the possibility to enforce his claim for equal treatment before the national courts.

Article 12

Exercise of the cable retransmission right by broadcasting organizations

37. The number of broadcasting organizations can be determined at the time a cable retransmission agreement is concluded, and every cable operator knows which programmes he is feeding into his network. It is not necessary, therefore, to extend the obligation to act through a collecting society to cover broadcasting organizations' own rights and rights assigned to them.

38. Where a right owner transfers the rights for a primary broadcast and for any associated cable retransmission to a broadcasting organization, these cable retransmission rights are to be exercised by the broadcasting organization and not by a collecting society.

Article 13

General contracts

39. Both cable operators and right owners can have an interest in regulating authorization for the cable retransmission of one or more broadcasts by one or more cable operators in a single general contract. Right owners and cable operators should therefore be encouraged to do so. The parties would conclude such general contracts freely, but any party seeking such an agreement must himself be prepared to negotiate on a collective basis.

40. This does not mean that the other side could be required to act collectively. It is conceivable, therefore, that negotiations might be individual on the one side and collective on the other. A cable operator might negotiate with all right owners together, for example, or a collecting society might negotiate with all cable operators regarding a particular category of rights.

Article 14

Mediators

41. Orderly cable retransmission requires that the parties be fundamentally available for negotiations on the acquisition of rights. To ensure that this is so the parties may have recourse to the assistance of mediators if they encounter an unwillingness to negotiate. The mediators body would help with negotiation, and if necessary could submit non-binding amicable proposals. The mediators should be impartial experts to ensure that proper account is taken of the interests involved. The details of the procedure would remain a matter for the Member States.

Article 15

Prevention of the abuse of negotiating positions

42. The willingness of the parties to negotiate is also to be promoted by a ban on the abuse of negotiating positions. In general terms, the existence of an abuse of a negotiating position should be considered if a position taken with regard to an ongoing negotiation can in no way be justified by the circumstances. There would be such abuse, for example, where one of the parties refused absolutely to enter into negotiation. The same would apply where a purported offer was in no way based on rational elements. In effect, therefore, this ban on the abuse of negotiating positions constitutes a requirement at least to enter into bona fide negotiation. But it is only an aid to negotiation, and does not force the parties to reach agreement. A proposal of an improperly high or low level of consideration would be inadmissible. But the Directive does not give a definition of what constitutes a fair proposal.

43. If no agreement is reached and there has been no abusive conduct, cable retransmission will not be possible in that particular case.

44. Member States remain free to determine the way in which they will seek to prevent such abuse. A civil-law remedy or administrative supervision would both be conceivable.

CHAPTER IV: GENERAL PROVISIONS

Article 16

Competition Rules

45. The application of the competition rules of the Community and of the Member States are not affected by the provisions of the draft directive. In particular, the measures to prevent the abuse of negotiating positions is intended only to promote the willingness to negotiate in a given situation, quite independently from the rules of conduct imposed by the competition laws in force.

Article 17

Collective administration of rights

46. Regulation of the activities of collecting societies will continue to be a matter for the Member States, which must however comply with Community law. This article does not preclude any further harmonization with regard to the collective administration of rights.

Proposal for a

COUNCIL DIRECTIVE

on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57(2) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

(1) Whereas the objectives of the Community as laid down in the Treaty include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, and ensuring the economic and social progress of the Community countries by common action to eliminate the barriers which divide Europe;

(2) Whereas to that end the Treaty provides for the establishment of a common market and an area without frontiers; whereas this is to include the abolition of obstacles to the free movement of services and the institution of a system ensuring that competition in the common market is not distorted; whereas to that end the Council may adopt directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons;

(3) Whereas broadcasts transmitted across frontiers within the Community, in particular by satellite and cable, are one of the most important ways of pursuing these Community objectives, which are at the same time political, economic, social, cultural and legal;

(4) Whereas the Council has already adopted Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities[1], which makes provision for the promotion of the distribution and production of European television programmes and for advertising and sponsorship, the protection of minors and the right of reply;

(5) Whereas, however, the achievement of these objectives in respect of cross-border satellite broadcasting and the cable retransmission of programmes from other Member States is currently still obstructed by a series of differences between national rules of copyright and some uncertainties as to the law; whereas this means that holders of rights are exposed to the threat of seeing their works exploited without payment of remuneration or that the individual holders of exclusive rights in various Member States block the exploitation of their rights; whereas the legal uncertainty in particular constitutes a direct obstacle to the free circulation of programmes within the Community;

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1 OJ No L 298, 17.10.1989, p. 23.

(6) Whereas a distinction is currently drawn for copyright purposes between broadcasting by direct satellite and broadcasting by communications satellite; whereas since individual reception is possible and nowadays affordable with both types of satellite, there is no longer any justification for this differing legal treatment;

(7) Whereas the free broadcasting of programmes is further impeded by the current legal uncertainty as to whether broadcasting by a satellite whose signals can be received directly affects the rights in the country of transmission only, or in all countries of reception together; whereas since communications satellites and direct satellites are treated alike for copyright purposes, this legal uncertainty now affects almost all programmes broadcast in the Community by satellite;

(8) Whereas, furthermore, the legal certainty, which is a prerequisite for the free movement of broadcasts within the Community, is missing where programmes transmitted across frontiers are fed into and retransmitted through cable networks;

(9) Whereas the development of the acquisition of rights on a contractual basis is already making a vigorous contribution to the creation of the desired European audiovisual area; whereas the continuation of such contractual agreements should be ensured, and their smooth application in practice should be promoted wherever possible;

(10) Whereas at present cable-operators in particular cannot be sure to have actually acquired all the programme rights covered by such an agreement;

(11) Whereas, lastly, parties in different Member States are not all similarly bound by obligations which prevent them from improperly refusing to negotiate on the acquisition of the rights necessary for cable distribution or improperly allowing such negotiations to fail;

(12) Whereas the legal framework for the creation of a single audiovisual area laid down in Directive 89/552/EEC must therefore be supplemented with reference to copyright;

(13) Whereas, therefore, an end should be put to the differences of treatment of the transmission of programmes by communications satellite which exists in the Member States, so that the vital distinction throughout the Community becomes whether protected works and other protected matter are communicated to the public; whereas this will also ensure equal treatment of the suppliers of cross-border broadcasts, regardless of whether they use a direct broadcasting satellite or communications satellite;

(14) Whereas the legal uncertainty regarding the rights to be acquired which impedes cross-border satellite broadcasting will be overcome by defining the notion of communication to the public by satellite at a Community level; whereas this definition will at the same time specify where the act of communication takes place; whereas such a definition is necessary to avoid the cumulative application of several national laws to one single act of broadcasting; whereas communication to the public occurs only when and in the Member State where a broadcasting organization takes a single decision on the content and the transmission of programme-carrying signals; whereas there is no communication if the chain of broadcasting equipment between the point where such single decision is taken and the transmission of the relevant signals from the satellite is interrupted;

(15) Whereas in arriving at the amount of the payment to be made for the rights acquired the parties should take account of the actual or potential audience throughout the area in which the broadcast can be received;

(16) Whereas a special transitional provision applicable to existing agreements should be provided for so that at the latest by 1998 these agreements will be adapted in the light of the new legal framework;

(17) Whereas programmes broadcast from non-member countries to the territory of the Community will be outside the scope of this Directive; whereas they may be treated differently in the law of the Member States from programmes transmitted from a Member State if the protection provided for by this Directive is not granted in the non-member country or only granted to a lesser extent;

(18) Whereas the arrangements made should also include provisions for the protection of holders of copyrights and neighbouring rights; whereas it is necessary to ensure that protection for specific categories is accorded in all Member States to the extent provided for by this Directive and that this protection is not subject to a statutory licence system; whereas only in this way is it possible to ensure that any difference in the level of protection within the common market will not create distortions of competition which might result in an unjustified disadvantage for programme suppliers and holders of rights in Member States with a high level of protection;

(19) Whereas the minimum protection provided for neighbouring rights is mainly taken from the substance of the Rome Convention of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations which at present must be considered to provide the most comprehensive standard of protection of neighbouring rights in the international field; whereas this standard has been accepted by the majority of Member States; whereas, however, in accordance with the aims of this Directive, it is not appropriate to allow for derogations corresponding to those provided for in the Rome Convention;

(20) Whereas the cable retransmission of programmes from other Member States is an act subject to copyright and neighbouring rights; whereas the cable operator must therefore obtain the authorization from every holder of rights in each part of the programme retransmitted; whereas, under this Directive, the authorizations should be granted contractually unless an exception is provided for in the case of existing legal licence schemes;

(21) Whereas, this Directive, through the obligation to have recourse to a collecting society, provides for the exclusive collective exercise of the authorization right to the extent that this is required by the special features of cable retransmission; whereas this Directive is thereby seeking to ensure that the smooth operation of contractual arrangements is not called into question by the intervention of outsiders holding rights in individual parts of the programme; whereas the authorization right as such remains intact and only the exercise of this right is regulated to some extent, so that the right to authorize a cable retransmission can still be assigned; whereas this Directive does not affect the exercise of moral rights;

(22) Whereas contractual agreements regarding the authorization of cable retransmission shall be promoted by additional measures; whereas, to begin with, all the rights necessary for a cable retransmission should be acquired in the form of a general contract; whereas, furthermore, any party shall be entitled, at any moment, to call upon the assistance of impartial mediators whose task it is to assist negotiations and to put forward non-binding proposals; whereas, finally, it is necessary to ensure that the negotiations are not improperly blocked or that individual holders of rights are not improperly prevented from taking part in the negotiations; whereas none of these measures for the promotion of the acquisition of rights calls into question the contractual nature of the acquisition of cable rights;

(23) Whereas, however, Community rules are not needed to deal with all of those matters whose effects, perhaps with some commercially insignificant exceptions, are felt only inside the borders of a single Member State;

(24) Whereas this Directive lays down the minimum rules needed to establish and guarantee free and uninterrupted cross-border broadcasting by satellite and simultaneous, unaltered cable retransmission of programmes broadcast from other Member States, on what is essentially a contractual basis;

(25) Whereas this Directive does not prejudice further harmonization in the field of copyright and neighbouring rights and the collective administration of such rights;

(26) Whereas it is therefore a matter for the Member States to supplement the general provisions needed to achieve the objectives of this Directive by taking legislative and administrative measures in their domestic law, provided these do not run counter to the objectives of this Directive and are compatible with Community law; whereas, in particular, Member States are accordingly free to lay down rules for the protection of rights related to copyright which go beyond those provided for in this Directive;

(27) Whereas this Directive does not affect the applicability of the competition rules in Articles 85 and 86 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I: DEFINITIONS

Article 1

For the purpose of this Directive:

a) "satellite" means any satellite operating either on frequencies which under telecommunications law allow reception by the public (a broadcasting satellite) or on frequencies which are reserved for closed, point-to-point communication (a communications satellite). In the latter case, however, the circumstances in which individual reception of the signals takes place must be comparable to those which apply in the case of broadcasting satellites;

b) "communication to the public by satellite" inside the Community means the act of taking a single decision on the content and the transmission by satellite of programme-carrying signals by the broadcaster. This act of communication to the public by satellite occurs in the Member State where the broadcaster takes the single decision on the content and the transmission by satellite of programme-carrying signals. If the programme-carrying signals are encrypted, communication to the public by satellite means the act of taking a single decision on the content and the transmission of the programme carrying signals under the condition that decoders are provided to the public by the broadcaster himself or with his approval. There is no communication to the public by satellite, however, if there is any interruption of the chain of broadcasting equipment between the point where a single decision is taken and the transmission of the relevant signals from the satellite;

c) "cable retransmission" means the simultaneous, unaltered and unabridged retransmission of a broadcast from another Member State by a cable or microwave system for reception by the public;

d) "broadcasting" means the initial transmission, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public;

e) "collecting society" means an organization whose members have appointed it to manage copyright or related rights.

CHAPTER II: BROADCASTING OF PROGRAMMES BY SATELLITE

Article 2: Broadcasting right

Member States shall provide a right for the author to authorize or to prohibit the communication to the public by satellite of copyright works, subject to the provisions set out in this Chapter.

Article 3: Acquisition of broadcasting rights

(1) Member States shall ensure that the right referred to in Article 2 may be acquired only by agreement.

(2) Where, on 31 July 1991, it is provided by a Member State that an agreement between a collecting society and a broadcasting organization may be extended to include holders of rights not represented by the collecting society, this shall continue to be possible until 31 December 1997.

(3) Paragraph 2 shall not apply to cinematographic works, including works created by a process analogous to cinematography.

Article 4: Performers

Member States shall provide that performers shall enjoy the right:

- to authorize or prohibit the communication to the public by satellite of their performance except where the performance used in the broadcasting is itself already a broadcast performance or is made from a fixation;

- to authorize or prohibit the fixation of their unfixed performances;

- to authorize or prohibit the reproduction of a fixation of their performance.

Article 5: Remuneration for the use of phonograms

Member States shall provide that if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for a communication to the public by satellite, a single equitable remuneration shall be paid to the performers, or to the producers of the phonograms, or to both.

Article 6: Broadcasting organizations

Member States shall provide that broadcasting organizations shall enjoy the right to authorize or prohibit:

- the simultaneous retransmission of their broadcasts by satellite;
- the fixation of their broadcasts;
- the reproduction of fixations of their broadcasts.

Article 7: Limitations on rights

(1) Member States may provide for limitations to the protection guaranteed by Articles 4, 5 and 6 only as regards:

- private use;

- use of short excerpts in connection with the reporting of current events;

- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;

- use solely for purposes of teaching or scientific research.

(2) Notwithstanding paragraph 1 of this Article, any Member State may provide for the same kinds of limitation with regard to the protection of performers, producers of phonograms and broadcasting organizations as it provides for in its legislation concerning the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

Article 8: Minimum protection

(1) Member States may provide for more far-reaching protection for authors, and holders of neighbouring rights under their jurisdiction than that required by Articles 2 to 6.

(2) In applying paragraph 1 Member States shall observe the definitions contained in points (a) and (b) of Article 1.

Article 9: Transitional provision

Agreements concerning the exploitation of protected works and services, in force on 1 January 1995, shall not be subject to Articles 2 to 8 until 31 December 1997 if they expire after that date.

CHAPTER III: CABLE RETRANSMISSION

Article 10: Cable retransmission right

(1) Member States shall ensure that when programmes from other Member States are retransmitted by cable in their territory the applicable copyright and neighbouring rights are observed, and that such retransmission takes place on the basis of agreements between copyright owners, holders of neighbouring rights and cable operators.

(2) Notwithstanding paragraph 1, Member States may retain until 31 December 1997 such statutory licence systems that are in operation or expressly provided for by the national law on 31 July 1991.

Article 11: Exercise of the cable retransmission right

(1) Member States shall ensure that the right of copyright owners and holders of neighbouring rights to authorize or prohibit the cable retransmission of a broadcast may be exercised only through a collecting society.

(2) A holder of a right who has not transferred the management of his rights to a collecting society shall have a claim to compensation on the collecting society which manages rights of the same category. His claim shall be confined to the sum which he would have received if he had mandated the collecting society to exercise his rights.

Article 12: Exercise of the cable retransmission right by broadcasting organizations

Article 11 shall not apply to the rights exercised by a broadcasting organization in respect of its own transmissions.

Article 13: General contracts

Member States shall ensure that a party seeking the conclusion of a general contract is for its part obliged to submit collective proposals for an agreement.

Article 14: Mediators

(1) Where no agreement is concluded regarding authorization of the cable retransmission of a broadcast, Member States shall ensure that either party may call upon the assistance of one or several mediators referred to in paragraphs 2 and 3.

(2) The mediators shall have the task of providing assistance with negotiation. They may also submit non-binding recommendations to the parties.

(3) Member States shall ensure that the mediators are so selected that their impartiality is beyond doubt.

Article 15: Prevention of the abuse of negotiating positions

Member States shall ensure that the parties do not improperly prevent negotiation regarding authorization for cable retransmission.

CHAPTER IV: GENERAL PROVISIONS

Article 16: Competition rules

This Directive shall be without prejudice to the Community competition rules.

Article 17: Collective administration of rights

The regulation of the activities of collecting societies shall be a matter for the Member States.

Article 18: Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1995. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 19

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

NOTE ON THE FINANCIAL IMPACT

The present proposal does not have budgetary consequences for the Community.

NOTE ON THE EFFECT ON COMPETITIVENESS AND EMPLOYMENT

I. What is the main justification for the measure?

- establishment of the internal market;
- definition of common rules of the game for a European audovisual area;
- strengthening of the position of European culture by the provision of remuneration to those involved in the production and dissemination of protected works;

II. Characteristics of the enterprises concerned

The proposal affects firms of all descriptions. Film producers, phonogram producers, satellite broadcasters and cable operators vary from multinationals to medium size national companies. Authors and performers normally conduct business as private individuals or as small companies.

III. What obligations are imposed directly on enterprises?

Satellite broadcasting organizations and cable operators which broadcast or retransmit protected works will have to respect the rights of authors, of performers and of producers of film works and phonograms to allow the use of their works. The participants of negotiations concerning cable retransmission rights will have to accept the

intervention of one or more mediators and may not unreasonably refuse negotiations.

IV. What obligations may be imposed indirectly on enterprises by local authorities?

None.

V. Are there any special measures for SMEs?

No.

VI. What foreseeable effects are there?

(a) on the competitiveness of enterprises?

Rightholders will benefit from the direct effect of receiving remuneration for the broadcasting by satellite or the retransmission of their works. The directive will enhance their competitiveness by establishing the country of origin principle for authorization of satellite broadcasting.

Film right owners, in particular, which have acquired the relevant rights of use in one Member State will be given legal security to be able to exploit these rights by satellite broadcasting in competition with rightholders in other Member States. This will lead to a more competitive environment favourable to the strengthening of a single European audiovisual area.

The competitiveness of broadcasters and cable-operators will be increased by the enhanced legal security with regard to the applicable rules on copyright and neighbouring rights.

(b) on employment

The establishment of common rules of the game for all economic operators implied in a satellite broadcast or a cable retransmission will promote the production and distribution of broadcast programmes and should therefore have a positive impact on employment.

VII. What consultations have there been on this proposal?

A discussion paper on "Broadcasting and Copyright in the Internal Market" on copyright questions concerning cable and satellite broadcasts was published in November 1990. All interested circles (authors, performers, broadcasters, phonogram producers, film producers, cable-operators) were invited to participate in a written consultation procedure in December 1990 and January 1991. A hearing on the discussion paper was held on 5 February 1991 in Brussels. Professionals agreed on the necessity for Community action in this field.

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