Chapter 6: Rights involving Authorship and Performance

Introduction

6-1 In the European Union, there are two parallel and similar concepts in the form of copyright, according to the English law tradition, and author's rights, according to the French tradition. In many respects the traditional differences between the two concepts have disappeared; and there has been some cross-fertilisation. So far, laws made at the European Union level have not had to make special provision for the differences between the concepts. For the purposes of this book, the word "copyright" is used for convenience, but without prejudice to the distinguishing features of "author's rights".

6-2 Partly because of the differences between the Member States' laws on copyright, some of them due to the different concepts already mentioned, and partly because of the less compact nature of copyright law generally, the approach to legislation on copyright in the European Union has been fundamentally different from the approach to trade mark law. Whereas trade mark law was treated globally, as a single field of law, in which there was an opportunity to legislate over the whole field, copyright law has been treated piecemeal. This stems from a conscious policy decision to tackle one-by-one the most pressing copyright problems; that is, from the point of view of the economic and social objectives of the Treaties. It is at least arguable that not all copyright problems affect the establishment and functioning of the common market; and, when the policy decision was made by the European Community authorities to identify the copyright questions having the most direct bearing on the interests of the Community, it was with the idea in mind that the Community was not at liberty to legislate on every aspect of copyright irrespective of its importance to the Community's narrowly defined objectives.

> Community legislation should be restricted to what is needed to carry out the tasks of the [European] Community. Many issues of copyright law do not need to be the subject of action at Community level.[1]

This policy may be slackening to some extent, inasmuch as almost any aspect of copyright may be said to have some economic importance; and any matter of economic importance to the Member States may be said to have some actual or potential importance to the Community. In practice, it is not too difficult to justify, by reference to the economic interests of the European Union, copyright measures which may at first sight appear to be no more than technical reforms of copyright law.

6-3 In suggesting that there are few areas of copyright law which have little or no economic importance, it may seem that moral rights are being overlooked. In the Berne Convention, moral rights are even described as "independent of the author's economic rights"[2]; but it would be naive to suppose that they have no importance from an economic point of view. In two respects, they undoubtedly do. In the first place, the exercise of a moral right (for example, to hold up the production of a book or film on account of a breach of one of the author's moral rights) can have severe economic consequences for the publisher or film-maker, who may even offer an economic incentive for the withdrawal of the author's non-economic claim. In the second place, it is not unreasonable to argue that competition between a publisher or film-maker in a Member

State which has limited moral rights and a publisher in a Member State where moral rights are well-developed and extensive is unfair and capable of being distorted as a result. Since it is one of the aims of the Community to ensure that competition in the internal market is not distorted, the Community clearly has an interest in the matter.

6-4 Following the definition of intellectual property in international usage, the rights relating to "performances of performing artists, phonograms and broadcasts" are included.[3] These are usually referred to collectively as "neighbouring rights"; and, both for convenience and in accordance with the practice in the European Union, they are included in the concept of copyright, unless the context indicates otherwise. For some reason, the references to neighbouring rights in various Directives are changed to references to "related rights".[4]

The Community interest in copyright

6-5 In the early days of the Community, it was far from self-evident that there was any Community interest at all in copyright matters. There had, however, been a hint in a case decided in the early 1970s that copyright might, like other forms of intellectual property, be exercised in a way which ran counter to the objectives of the Treaty, whether in respect of the free movement of goods and services or in relation to the rules on competition. It was no more than a hint, since the right concerned in the case was not strictly copyright; and the Court was non-committal about the application of the Treaty.[5] Ten years later, there was no doubt about the Court's readiness to apply the Treaty to copyright matters: during the eighteen-month period between 1 January 1980 and 30 June 1981, there were three intellectual property cases coming before the Court, of which one was partly, and the other two were exclusively, concerned with copyright.[6] One of the results of these cases was to make it clear that the Treaty rules on free movement of goods and services and on competition applied to copyright; another important result was to give the Commission the incentive to begin the process of legislating in the copyright field.[7]

6-6 In two cases, involving substantially the same facts, but the application of different Treaty provisions, the Court made an important distinction between copyright and other intellectual property or, more accurately, between copyright goods and copyright services. The facts were as follows. By an agreement of 8 July 1969, the French company, Les Films la Boetie, acting as the owner of all the proprietary rights in the film "Le Boucher", gave Cine Vog, a Belgian cinematographic film distribution company, the "exclusive right" to distribute the film in Belgium for seven years. The film was shown in cinemas in Belgium starting on 15 May 1970. However, on 5 January 1971 German television's first channel broadcast a German version of the film and this broadcast could be picked up in Belgium. Cine Vog considered that the broadcast had jeopardized the commercial future of the film in Belgium. It relied upon this ground of complaint both against Les Films la Boetie, for not having observed the exclusivity of the rights which it had transferred to it, and against the Coditel companies for having relayed the relevant broadcast over their cable networks. The three Belgian cable television companies, referred to collectively as Coditel, provided, with the authority of the Belgian

administration, a cable television service covering part of Belgium. Cine Vog brought an action for infringement of copyright against Les Films La Boetie and Coditel. The action found its way to the Court of Justice, which accepted the distinction proposed by the Commission between cases in which a material medium was at issue and cases in which it was not. In the former, the exhaustion principle would apply; in the latter, it could not with equal fairness. In recognition of the practical difficulties of obtaining separate authorizations for every broadcast, the Commission had suggested that a kind of blanket licence should be implied, giving the author the right to receive remuneration but denying him the right to prohibit performance.[8] The suggestion was accompanied by a hint that it might be a more appropriate matter for a harmonisation measure than for a decision of the Court. However, the Court decided that the exclusive assignee of the performing right in a film for the whole of a Member State might rely upon its right against cable television companies which had transmitted that film on their network having received it from a television broadcasting station established in another Member State, without thereby infringing Community law.[9] Coditel was no more successful in the subsequent case in which it claimed that the territorial limitations implicit in the contract with Cine Vog infringed the rules on competition, on the analogy of patent licensing. But again the Court emphasised the differences between products and performances and held that an exclusive right to exhibit a film for a specific period was "not, as such, subject to the prohibitions contained in Article 85 of the Treaty".[10]

6-7 Two cases in the mid-1980s clarified the relationship between copyright protection and the principle of the free movement of goods. In one, the Court of Justice respected the peculiarities of French copyright law, under which the owner of copyright in a piece of music was entitled to a royalty both on sale and on performance, to the extent that national protection was upheld, provided there was no discrimination between French and other Member States' nationals.[11] The other, and more important, case concerned a direct conflict between copyright protection and the free movement principle; and the Court came down in favour of copyright protection, in spite of the Advocate-General's opinion in favour of free movement. A Danish operator of a video rental business in Denmark bought cassettes in London of the film, "Never Say Never Again", and sought to rent them to customers. Danish law, unlike English law, protected copyright both for sale and for rental purposes. Warner Brothers, the owners of the copyright in the film, sued Christiansen under Danish law for copyright infringement; and the case found its way to the Court of Justice. There, Christiansen claimed that the sale in England had exhausted the copyright throughout the Community. The Court, however, said that the copyright in this case had two elements:

> Literary and artistic works may be the subject of commercial exploitation, whether by way of public performance or of the reproduction and marketing of the recordings made of them, and this is true in particular of cinematographic works. The two essential rights of the author, namely the exclusive right of performance and the exclusive right of reproduction, are not called in question by the rules of the Treaty.[12]

6-8 In several cases involving copyright, the basic question was that of discrimination between nationals of Member States. This was an important factor in *SACEM I*; and it

was a subsidiary factor in the *Warner Bros* case. In a leading case, watched with great interest by copyright owners, the main issue was not copyright as such but whether copyright laws were being applied by the Member States in a non-discriminatory way. Phil Collins, the singer, sought to prevent the sale in Germany of a compact disc recording of a concert he had given in 1983 in the United States, the recording having been made without his consent. Under German law non-German artists could prevent the distribution of unauthorised reproductions only if the performance had taken place in Germany. In considering the case, the Court of Justice did not need to go to the heart of copyright protection: it was enough to show, as the Court did, in detail, that copyright questions were subject to the provisions of the Treaty. All that was then necessary was to show that there had been discrimination between German nationals and nationals of other Member States, contrary to the provisions of the EC Treaty.[13]

> In prohibiting "any discrimination on the grounds of nationality", Article [6] of the [EC] Treaty requires ... that persons in a situation governed by Community law be placed on a completely equal footing with nationals of the Member State concerned.[14] In so far as that principle is applicable, it therefore precludes a Member State from making the grant of an exclusive right subject to the requirement that the person concerned be a national of that Member State.[15]

6-9 In contrast with the cases on patents and trade marks, in which the Court of Justice had been at pains to identify the "subject-matter" of the intellectual property right, the cases on copyright did not address this question fully until comparatively recently. Then the Court said, quoting the Court of First Instance:

> ... in principle, the protection of the specific subject-matter of a copyright entitled the copyright holder to reserve the exclusive right to reproduce the protected work.[16]

This falls short of the double element in the *Warner Bros* case referred to above; but it is arguable that a case involving rental rights, over and above the first right of distribution, imported an atypical element into the definition; also that the Court went unduly far in the *Warner Bros* case to define and protect copyright.[17]

6-10 Three cases illustrate the difference between the monopoly residing in a body administering copyright matters and the monopoly inherent in copyright itself. In the first, the German collecting society exercised its powers in such a way that it equalised the royalties on domestic and imported copyright materials alike, which the Court described as equivalent to allowing the establishment by a private body of a customs duty on sound carriers already moving freely in the common market: this would result in the partitioning of markets, a process which the Treaty aimed to eliminate.[18] In the second case, the Court held that:

> a national copyright-management society holding a dominant position in a substantial part of the common market imposes unfair trading conditions where the royalties which it charges to discotheques are appreciably higher than those charged in other Member States, the rates being compared on a consistent basis; but that would not be the case if the copyright-management society in question were able to justify such a difference by reference to objective and relevant

dissimilarities between copyright management in the state concerned and copyright management in the other Member States.[19]

In the third case, the Court discussed the extent to which the monopoly position inherent in copyright constituted a breach of the rules on competition.[20]

Harmonisation of copyright law

6-11 In several of the cases referred to above, as in some of the trade mark and patent cases, the question of harmonising national laws has arisen. In the *GEMA* case, for example, the Belgian and Italian governments had argued that, in the absence of harmonisation, the principle of territoriality of law on matters of copyright would always prevail over the principle of free movement of goods within the common market. But the Court firmly rejected this argument: it had never said, in relation to cases involving intellectual property, that harmonisation was a condition precedent for the application of the principle of free movement.[21] Nevertheless, it was becoming increasingly clear that there were certain areas of copyright law in which Community legislation might serve to reduce the conflict or potential conflict between the legal protection of copyright on the one hand and the maintenance, on the other hand, of the principle of free movement of goods and services and the rules on competition. Consequently, the Commission sought to identify, in the Green Paper referred to above, the priorities. These were:

- the pirating of copyright materials,
- audio-visual home copying,
- distribution right, exhaustion and rental right,
- computer programs and
- data bases.[22]

With some variants, four of these matters have become the subject of harmonisation measures, two have been added and one, for all practical purposes, dropped. Copyright in broadcasting and the term of copyright protection were added, the attempt to deal with home copying abandoned.

6-12 Seven measures have accordingly been adopted in the copyright field:

- a Regulation on Counterfeit and Pirated Goods[23],
- Directives on Computer Programs and on Topographies of Semiconductor Products[24],
- a Directive on Rental Rights[25],
- a Directive on Copyright in Broadcasting[26],
- a Directive on the Term of Copyright Protection[27],
- a Directive on the Legal Protection of Data Bases[28],
- a Directive on Copyright and Related Rights in the Information Society[29] and
- a Directive on Artists' Resale Rights.[30]

6-13 On the principle that the European Union's main interest in the prohibition of counterfeit and pirated goods lies in preventing imports of these goods into the European Union at any point of entry and to deny the goods "release for free circulation" within the Community, a measure was introduced in 1986 to provide for the seizure of counterfeit goods at customs control posts. This was directed at goods falsely bearing protected

trade marks.[31] In 1994, the measure was repealed and superseded by a Regulation covering both counterfeit and pirated goods, the latter being "goods which are or embody copies made without the consent of the holder of the copyright or neighbouring rights, or of the holder of a design right".[32] The Regulation empowers customs authorities to suspend customs operations in cases where the products are suspected of being counterfeit or pirated goods covered by the specified intellectual property rights, in respect of which "customs protection" has been requested by the right-holder. During the period of suspension, the right-holder can apply to the competent national authorities for action to be taken on the matter. The arrangements appear to be working satisfactorily[33]; and, at the time of writing, the Commission intends to propose that the Regulation should be extended to cover patented goods. The legal basis of the Regulation is the legislative power conferred under the Treaty provisions on the Common Commercial Policy.[34]

6-14 Before the adoption of the Directive on computer programs, the Member States' laws had differed widely on the method of protection, ranging from copyright protection to patent protection, from conventional protection to *sui generis* protection and from protection under a single body of law to protection under more than one body of law. The Directive provided a useful degree of harmonisation, based on the principle that, while other forms of protection should be allowed to continue[35], the Member States were required to protect computer programs by copyright as literary works within the meaning of the Berne Convention.[36] Protection applies to the expression of the program and not to the ideas and principles underlying it.[37] The program must be original in the sense that it is the author's own creation; and no other criteria must be applied to determine its eligibility for protection.[38] Further provisions of the Directive deal with:

- authorship of computer programs[39],
- beneficiaries of protection[40],
- restricted acts and exceptions thereto[41],
- "decompilation" (or "reverse engineering")[42],
- special measures of protection[43] and
- the term of protection.[44]

It is explicitly stated in the Directive[45] that its provisions are without prejudice to the competition rules under the Treaty if a dominant supplier refuses to make information available which is necessary for "interoperability".[46] This is an echo of the Community policy adopted in a specific case ten years previously.[47] The Directive had been preceded by a measure for the legal protection of the topographies of semiconductor products.[48]

6-15 Differences between the Member States' laws on rental rights, being "sources of barriers to trade and distortions of competition which impede the achievement and proper functioning of the internal market", were also a reason for introducing a measure of harmonisation in this area of copyright law.[49] The Directive has two parts. The first defines rental and lending rights, confirms and generalises the judgment of the Court in the *Warner Bros* case[50], requires the Member States to provide a right to authorise or prohibit the rental and lending of originals and copies of copyright works and lays down an "unwaivable" right to equitable remuneration. The second part of the Directive provides for fixation rights, reproduction rights and distribution rights in connection with

neighbouring or "related" rights. Implementation of the Directive should not be deferred while a Member State's general copyright law is reviewed and revised.[51]

6-16 Although, in 1989, a Directive had been adopted in the field of broadcasting, to deal with some of the cross-border problems created by, for example, the different advertising laws in the various Member States, it was another four years before a Directive was adopted harmonising[52] the rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable re-transmission. The justification for the later Directive was clearly explained in the Preamble. "The achievement of these objectives [of the EC Treaty] in respect of cross-border satellite broadcasting and the cable re-transmission of programmes from other Member States is currently still obstructed by a series of differences between national rules of copyright and some degree of legal uncertainty; 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 the various Member States block the exploitation of their rights ... [resulting in] a direct obstacle to the free circulation of programmes within the Community."[53] Essentially, the Directive requires the Member States to provide copyright protection in the country of transmission[54] and to ensure that, when programmes from other Member States are re-transmitted by cable in their territory the applicable copyright and related rights are observed.[55] The Directive does not cover every eventuality: "the question whether the reception by a hotel establishment of satellite or terrestrial television signals and their distribution by cable to the various rooms of that hotel is an 'act of communication to the public' or 'reception by the public' is not governed by [the Directive] and must consequently be decided in accordance with national law".[56]

6-17 Differences in the Member States' terms of copyright protection had long bedeviled cross-border productions of, for example, operas, in which the various elements were governed not only by a number of different periods of protection according to the character of the element but also by the different periods of protection for each of those elements in the Member States concerned: cases were reported of productions having to be abandoned altogether in some Member States because of the administrative and other problems involved in copyright clearance. However, in 1993, there was a Directive harmonising[57] the term of protection of copyright and of certain related rights. Although the Preamble to the Directive makes the point that the minimum term (the life of the author and fifty years thereafter) laid down by the Berne Convention[58] was intended to provide protection for the author and the first two generations of his descendants and that the average lifespan in the Community had grown longer, to the point where this term was no longer sufficient to cover two generations[59], another consideration is that it was easier, from a legal point of view, to extend the period of protection than to reduce it. Most Member States had a period of fifty years *post mortem auctoris*, two or three had periods of seventy years. Harmonisation was accordingly based on the longer period.[60] Other periods were prescribed for cinematographic or audio-visual works, for neighbouring rights (related rights), for previously unpublished works and for critical and scientific publications.

6-18 More recently - with an implementation date of 25 October, 1998, - there has been a Directive on the legal protection of data bases. Since it is not a foregone conclusion that the protection of data bases, including the protection of privacy, is necessarily a copyright matter, the Preamble to the Directive takes pains to explain the legal position. "Copyright protection for data bases exists in varying forms in the Member States according to legislation or case law; and, if differences in legislation in the scope and conditions of protection remain between the Member States, such unharmonised intellectual property rights can have the effect of preventing the free movement of goods or services within the Community. Copyright remains an appropriate form of exclusive right for authors who have created data bases. Nevertheless, in the absence of a harmonised system of unfair competition legislation or of case law, other measures are required in addition to prevent the unauthorised extraction and/or re-utilisation of the contents of a data base."[61] These other measures are collectively dealt with in a Chapter of the Directive concerned with non-copyright issues and are referred to as the *sui generis* right.[62] As in the cases involving the broadcasting and rental rights Directives, the Court has held that implementation of the Directive on databases should not be deferred while a Member State's general law on copyright is being reviewed and revised.[63]

6-19 Largely for the purpose of implementing, in a uniform manner, provisions of the Conventions of the World Intellectual Property Organisation, (the "WIPO Copyright Treaty" and the "WIPO Performances and Phonograms Treaty"), dealing respectively with the protection of authors and the protection of performers and phonogram producers, the Directive serves to implement a number of the new international obligations Those Treaties update the international protection for copyright and related rights significantly, not least with regard to the so-called "digital agenda", and improve the means to fight piracy world-wide. The Community and a majority of Member States have already signed the Treaties and the process of making arrangements for the ratification of the Treaties by the Community and the Member States is under way.[64]

6-20 Whether the special provisions of the Directive on Artists' Resale Rights are strictly a matter of copyright law is open to argument, though there is a provision in the Berne Convention covering the subject.[65] Essentially, the object of the Directive is to give the author of an original work of graphic or plastic art an economic interest in successive sales of the work concerned.[66]

The protection of designs

6-21 In some Member States the protection of designs is a branch of copyright law. However, in dealing with the protection of industrial designs, a recent Directive treats this as a *sui generis* matter.[67] The substantive provisions of the Regulation on "Community Designs" are aligned with the respective provisions of the Directive.[68]

Berne Convention

6-22 Member States of the European Union are all signatories to the Berne Convention for the Protection of Literary and Artistic Works, but not all to the Paris Act.[69]

[1] Green Paper on Copyright and the Challenge of Technology, Communication from the Commission, COM (88) 172 final.
[2] Article 6bis, Berne Convention for the Protection of Literary and Artistic Works, Paris Act, 1971. Paragraph 1 begins: "Independently of the author's economic rights ..."
[3] Article 2(viii), second indent, Convention establishing the World Intellectual Property Organisation, Stockholm, 1967.
[4] For example, in Council Directive (EEC) 83/93 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable re-transmission.
[5] Case 78/70, *Deutsche Grammaphongesellschaft mbH v Metro-SB-Grossmaerkte GmbH*. The Court said, "assuming that a right akin to a copyright can be covered by these provisions ..." The provisions concerned are contained in what is now Article 30, EC Treaty.
[6] Case 62/79, *Coditel SA v Cine Vog Films SA*; Joined Cases 55 and 57/80, *Musik- Vertrieb Membran GmbH and K-Tel International v GEMA*; and Case 58/80, *Dansk Supermarked AS v Imerco AS*. The first two of these cases were exclusively concerned with copyright.
[7] The Commission made known, in its answer to the European Parliament's Written Question No.380/81, its intention to publish a Green Paper on Copyright; and the Green Paper was published in 1988 (see note 1 above).
[8] This was a foretaste of the Commission's approach to the *Magill* case, *qv*. (See Annex N and the discussion of the case in this chapter and in chapter 12.)
[9] *Coditel I* (cited in note 6 above). The case was taken under what is now Article 49, EC Treaty, on the analogy of Article 30 (free movement of services and goods respectively).
[10] *Coditel II*: Case 262/81, *Coditel SA v Cine Vog Films SA*.
[11] *SACEM I*: Case 402/85, *Basset v SACEM*.
[12] Case 158/86, *Warner Bros Inc v Christiansen*.
[13] Article 12, EC Treaty (numbered Article 7 at the time of the case in question), provides that "within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited ..." The Court's discussion of the Community interest in copyright was to ensure that the condition set out in the first eight words of this provision was satisfied.
[14] At this point the Court cited Case 186/87, *Cowan v Tresor Public.*
[15] Cases C-92 and 326/92, *Phil Collins v Imtrat Handels GmbH*.
[16] Joined Cases C-241 and 242/91, *RTE and another v Commission* (the *Magill* Case: see Annex). See also paragraph 2-13 above.
[17] Compared to, say, the scope of patent protection indicated in Joined Cases C-267 and 268/95, *Merck v Primecrown.* See paragraph 3-10 above.
[18] Joined Cases 55 and 57/80, *Musik-Vertrieb Membran and K-Tel International v GEMA*.
[19] *SACEM II*: Case 395/87, *Ministere Public v Tournier.*
[20] The *Magill* case, cited in note 16 above and reproduced in full in the Annex. For a discussion of the competition aspects of the case, see Chapter 12.
[21] *GEMA*, cited in note 18.
[22] Green Paper on *Copyright and the Challenge of Technology - Copyright Issues requiring Immediate Action*: Communication from the Commission COM (88) 172 of 7 June 1988.
[23] Council Regulation EC/3295/94; see Annex.
[24] Council Directives EEC/250/91 (see Annex) and EEC/54/87.
[25] Council Directive EEC/100/92; see Annex.
[26] Council Directive EEC/83/93; see Annex.
[27] Council Directive EEC/98/93; see Annex.
[28] Council Directive EC/9/96; see Annex.
[29] Directive EC/29/01 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.
[30] Directive EC/84/01 of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art
[31] Council Regulation EEC/3842/86.

[32] Article 2(b), Council Regulation EC/3295/94.
[33] In the two years from July, 1995, to June, 1997, the customs authorities took action in 4,133 cases: Commission Statement IP/98/163.
[34] Article 133, EC Treaty.
[35] Article 9, Council Directive EEC/250/91.
[36] Ibid, Article 1(1).
[37] Ibid, Article 1(2).
[38] Ibid, Article 1(3).
[39] Ibid, Article 2.
[40] Ibid, Article 3.
[41] Ibid, Articles 4 and 5.
[42] Ibid, Article 6.
[43] Ibid, Article 7.
[44] Ibid, Article 8.
[45] Ibid, Recital 27.
[46] This is defined in Recital 12 as "the ability to exchange information and mutually to use the information which has been exchanged".
[47] The *IBM* case, which resulted in a settlement: see the XIth Report on Competition Policy.
[48] See paragraph 6-12, second indent, and the endnote thereto.
[49] Recital 1, Council Directive EEC/100/92.
[50] Ibid, Article 1(4). See paragraph 6-7 and note 11 above. Secondary legislation cannot limit or restrict Court judgments but can repeat and amplify them. For an example in this Directive of an express reservation of a Court judgment, see the reference in the last Recital to Cases 60 and 61/84 *(Societe Cineteque v FNCF).*
[51] Case C-213/98, *Commission of the European Communities v Ireland.* Case 212/98 applies *mutatis mutandis* to the Directive on Broadcasting.
[52] Since the Directive was based on Articles 57(2) and 66, EC Treaty, it was not strictly a measure for "harmonising" or even "approximating", but for "coordinating" Member States' laws; for convenience, the word "harmonising" is used in the text of this book for the reasons already explained.
[53] Recital 5, Council Directive EEC/83/93.
[54] Ibid, Articles 1(2)(b) and 2.
[55] Ibid, Article 8(1).
[56] Case C-293/98, *Entidad de Gestión de Derechos de los Productores Audiovisuales (Egeda) v Hostelería Asturiana SA (Hoasa).*
[57] Throughout the Directive, the word "harmonise" is used.
[58] Article 7(1), Berne Convention for the Protection of Literary and Artistic Works, Paris Act, 1971.
[59] Recital 5, Council Directive EEC/98/93.
[60] Ibid, Article 1(1).
[61] Recitals 4, 5 and 6, Council Directive EC/9/96.
[62] Ibid, Articles 7 to 11.
[63] Case C-348/99, *Commission of the European Communities v Grand Duchy of Luxembourg.*
[64] Recital 15, Directive EC/29/01.
[65] Article 14b, Berne Convention for the Protection of Literary and Artistic Works.
[66] Recital 1, Directive EC/84/01.
[67] Council Directive EC/71/98; see Annex. The rights may be cumulative: see Chapter 4.
[68] Recital 9, Regulation EC/6/02.
[69] The relationship between a Member State's accession to the Convention and the Member State's obligations under the Treaties has been examined in detail in the *Magill* case. Neither the European Union nor the European Community as such is a party to the Berne Convention.