C Intellectual Property Rights involving Authorship and Performance

6 Computer Programs

Council Directive EEC/250/91of 14 May 1991 on the legal protection of computer programs

The Council of the European Communities, Having regard to the Treaty establishing the European Economic Community and in particular Article 100a 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,
Whereas computer programs are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;
Whereas the development of computer programs requires the investment of considerable human, technical and financial resources while computer programs can be copied at a fraction of the cost needed to develop them independently;
Whereas computer programs are playing an increasingly important role in a broad range of industries and computer program technology can accordingly be considered as being of fundamental importance for the Community's industrial development;
Whereas certain differences in the legal protection of computer programs offered by the laws of the Member States have direct and negative effects on the functioning of the common market as regards computer programs and such differences could well become greater as Member States introduce new legislation on this subject;
Whereas existing differences having such effects need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the common market to a substantial degree need not be removed or prevented from arising;
Whereas the Community's legal framework on the protection of computer programs can accordingly in the first instance be limited to establishing that Member States should accord protection to computer programs under copyright law as literary works and, further, to establishing who and what should be protected, the exclusive rights on which protected persons should be able to rely in order to authorize or prohibit certain acts and for how long the protection should apply;
Whereas, for the purpose of this Directive, the term 'computer program` shall include programs in any form, including those which are incorporated into hardware; whereas this term also includes preparatory design work leading to the development of a computer program provided that the nature of the preparatory work is such that a computer program can result from it at a later stage;
Whereas, in respect of the criteria to be applied in determining whether or not a computer program is an original work, no tests as to the qualitative or aesthetic merits of the program should be applied;
Whereas the Community is fully committed to the promotion of international standardization;
Whereas the function of a computer program is to communicate and work together with other components of a computer system and with users and, for this purpose, a logical and, where appropriate, physical interconnection and interaction is required to permit all elements of software and hardware to work with other software and hardware and with

users in all the ways in which they are intended to function;
Whereas the parts of the program which provide for such interconnection and interaction between elements of software and hardware are generally known as 'interfaces`;
Whereas this functional interconnection and interaction is generally known as 'interoperability`; whereas such interoperability can be defined as the ability to exchange information and mutually to use the information which has been exchanged;
Whereas, for the avoidance of doubt, it has to be made clear that only the expression of a computer program is protected and that ideas and principles which underlie any element of a program, including those which underlie its interfaces, are not protected by copyright under this Directive;
Whereas, in accordance with this principle of copyright, to the extent that logic, algorithms and programming languages comprise ideas and principles, those ideas and principles are not protected under this Directive;
Whereas, in accordance with the legislation and jurisprudence of the Member States and the international copyright conventions, the expression of those ideas and principles is to be protected by copyright;
Whereas, for the purposes of this Directive, the term 'rental` means the making available for use, for a limited period of time and for profit-making purposes, of a computer program or a copy thereof; whereas this term does not include public lending, which, accordingly, remains outside the scope of this Directive;
Whereas the exclusive rights of the author to prevent the unauthorized reproduction of his work have to be subject to a limited exception in the case of a computer program to allow the reproduction technically necessary for the use of that program by the lawful acquirer;
Whereas this means that the acts of loading and running necessary for the use of a copy of a program which has been lawfully acquired, and the act of correction of its errors, may not be prohibited by contract; whereas, in the absence of specific contractual provisions, including when a copy of the program has been sold, any other act necessary for the use of the copy of a program may be performed in accordance with its intended purpose by a lawful acquirer of that copy;
Whereas a person having a right to use a computer program should not be prevented from performing acts necessary to observe, study or test the functioning of the program, provided that these acts do not infringe the copyright in the program;
Whereas the unauthorized reproduction, translation, adaptation or transformation of the form of the code in which a copy of a computer program has been made available constitutes an infringement of the exclusive rights of the author;
Whereas, nevertheless, circumstances may exist when such a reproduction of the code and translation of its form within the meaning of Article 4(a) and (b) are indispensable to obtain the necessary information to achieve the interoperability of an independently created program with other programs;
Whereas it has therefore to be considered that in these limited circumstances only, performance of the acts of reproduction and translation by or on behalf of a person having a right to use a copy of the program is legitimate and compatible with fair practice and must therefore be deemed not to require the authorization of the rightholder;
Whereas an objective of this exception is to make it possible to connect all components of a computer system, including those of different manufacturers, so that they can work together;

Whereas such an exception to the author's exclusive rights may not be used in a way which prejudices the legitimate interests of the rightholder or which conflicts with a normal exploitation of the program;
Whereas, in order to remain in accordance with the provisions of the Berne Convention for the Protection of Literary and Artistic Works, the term of protection should be the life of the author and fifty years from the first of January of the year following the year of his death or, in the case of an anonymous or pseudonymous work, 50 years from the first of January of the year following the year in which the work is first published;
Whereas protection of computer programs under copyright laws should be without prejudice to the application, in appropriate cases, of other forms of protection; whereas, however, any contractual provisions contrary to Article 6 or to the exceptions provided for in Article 5(2) and (3) should be null and void;
Whereas the provisions of this Directive are without prejudice to the application of the competition rules under Articles 85 and 86 of the Treaty if a dominant supplier refuses to make information available which is necessary for interoperability as defined in this Directive;
Whereas the provisions of this Directive should be without prejudice to specific requirements of Community law already enacted in respect of the publication of interfaces in the telecommunications sector or Council Decisions relating to standardization in the field of information technology and telecommunication;
Whereas this Directive does not affect derogations provided for under national legislation in accordance with the Berne Convention on points not covered by this Directive,
has adopted this directive:

Article 1

Object of protection

1. In accordance with the provisions of this Directive, Member States shall protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. For the purposes of this Directive, the term 'computer programs` shall include their preparatory design material.

2. Protection in accordance with this Directive shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive.

3. A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.

Article 2

Authorship of computer programs

1. The author of a computer program shall be the natural person or group of natural persons who has created the program or, where the legislation of the Member State permits, the legal person designated as the rightholder by that legislation. Where collective works are recognized by the legislation of a Member State, the person considered by the legislation of the Member State to have created the work shall be deemed to be its author.

2. In respect of a computer program created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

3. Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the program so created, unless otherwise provided by contract.

Article 3

Beneficiaries of protection

Protection shall be granted to all natural or legal persons eligible under national copyright legislation as applied to literary works.

Article 4

Restricted Acts

Subject to the provisions of Articles 5 and 6, the exclusive rights of the rightholder within the meaning of Article 2, shall include the right to do or to authorize:
(a) the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole. Insofar as loading, displaying, running, transmision or storage of the computer program necessitate such reproduction, such acts shall be subject to authorization by the rightholder;
(b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;
(c) any form of distribution to the public, including the rental, of the original computer program or of copies thereof. The first sale in the Community of a copy of a program by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program or a copy thereof.

Article 5

Exceptions to the restricted acts

1. In the absence of specific contractual provisions, the acts referred to in Article 4 (a) and (b) shall not require authorization by the rightholder where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction.

2. The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract insofar as it is necessary for that use.

3. The person having a right to use a copy of a computer program shall be entitled, without the authorization of the rightholder, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Article 6

Decompilation

1. The authorization of the rightholder shall not be required where reproduction of the code and translation of its form within the meaning of Article 4 (a) and (b) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:
(a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorized to to so;
(b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in subparagraph (a); and (c) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

2. The provisions of paragraph 1 shall not permit the information obtained through its application:
(a) to be used for goals other than to achieve the interoperability of the independently created computer program;
(b) to be given to others, except when necessary for the interoperability of the independently created computer program; or (c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

3. In accordance with the provisions of the Berne Convention for the protection of Literary and Artistic Works, the provisions of this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices

the right holder's legitimate interests or conflicts with a normal exploitation of the computer program.

Article 7

Special measures of protection

1. Without prejudice to the provisions of Articles 4, 5 and 6, Member States shall provide, in accordance with their national legislation, appropriate remedies against a person committing any of the acts listed in subparagraphs (a), (b) and (c) below:
(a) any act of putting into circulation a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
(b) the possession, for commercial purposes, of a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
(c) any act of putting into circulation, or the possession for commercial purposes of, any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of any technical device which may have been applied to protect a computer program.

2. Any infringing copy of a computer program shall be liable to seizure in accordance with the legislation of the Member State concerned.

3. Member States may provide for the seizure of any means referred to in paragraph 1 (c).

Article 8

Term of protection

1. Protection shall be granted for the life of the author and for fifty years after his death or after the death of the last surviving author; where the computer program is an anonymous or pseudonymous work, or where a legal person is designated as the author by national legislation in accordance with Article 2 (1), the term of protection shall be fifty years from the time that the computer program is first lawfully made available to the public. The term of protection shall be deemed to begin on the first of January of the year following the abovementioned events.

2. Member States which already have a term of protection longer than that provided for in paragraph 1 are allowed to maintain their present term until such time as the term of protection for copyright works is harmonized by Community law in a more general way.

Article 9

Continued application of other legal provisions

1. The provisions of this Directive shall be without prejudice to any other legal provisions such as those concerning patent rights, trade-marks, unfair competition, trade secrets,

protection of semi-conductor products or the law of contract. Any contractual provisions contrary to Article 6 or to the exceptions provided for in Article 5 (2) and (3) shall be null and void.

2. The provisions of this Directive shall apply also to programs created before 1 January 1993 without prejudice to any acts concluded and rights acquired before that date.

Article 10

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993. When Member States adopt these measures, the latter shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

Article 11

This Directive is addressed to the Member States.

7 Rental Right and Lending Right

Council Directive EEC/100/92 of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property

The Council of the European Communities,
Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2), 66 and 100a 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,
Whereas differences exist in the legal protection provided by the laws and practices of the Member States for copyright works and subject matter of related rights protection as regards rental and lending; whereas such differences are sources of barriers to trade and distortions of competition which impede the achievement and proper functioning of the internal market;
Whereas such differences in legal protection could well become greater as Member States adopt new and different legislation or as national case-law interpreting such legislation develops differently;
Whereas such differences should therefore be eliminated in accordance with the objective of introducing an area without internal frontiers as set out in Article 8a of the Treaty so as to institute, pursuant to Article 3(f) of the Treaty, a system ensuring that competition in the common market is not distorted;
Whereas rental and lending of copyright works and the subject matter of related rights protection is playing an increasingly important role in particular for authors, performers and producers of phonograms and films; whereas piracy is becoming an increasing threat;
Whereas the adequate protection of copyright works and subject matter of related rights protection by rental and lending rights as well as the protection of the subject matter of related rights protection by the fixation right, reproduction right, distribution right, right to broadcast and communication to the public can accordingly be considered as being of fundamental importance for the Community's economic and cultural development;
Whereas copyright and related rights protection must adapt to new economic developments such as new forms of exploitation;
Whereas the creative and artistic work of authors and performers necessitates an adequate income as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky; whereas the possibility for securing that income and recouping that investment can only effectively be guaranteed through adequate legal protection of the rightholders concerned;
Whereas these creative, artistic and entrepreneurial activities are, to a large extent, activites of self -employed persons; whereas the pursuit of such activities must be made easier by providing a harmonized legal protection within the Community;
Whereas, to the extent that these activities principally constitute services, their provision must equally be facilitated by the establishment in the Community of a harmonized legal framework;
Whereas the legislation of the Member States should be approximated in such a way so

as not to conflict with the international conventions on which many Member States' copyright and related rights laws are based;
Whereas the Community's legal framework on the rental right and lending right and on certain rights related to copyright can be limited to establishing that Member States provide rights with respect to rental and lending for certain groups of rightholders and further to establishing the rights of fixation, reproduction, distribution, broadcasting and communication to the public for certain groups of rightholders in the field of related rights protection;
Whereas it is necessary to define the concepts of rental and lending for the purposes of this Directive;
Whereas it is desirable, with a view to clarity, to exclude from rental and lending within the meaning of this Directive certain forms of making available, as for instance making available phonograms or films (cinematographic or audiovisual works or moving images, whether or not accompanied by sound) for the purpose of public performance or broadcasting, making available for the purpose of exhibition, or making available for on-the-spot reference use; whereas lending within the meaning of this Directive does not include making available between establishments which are accessible to the public;
Whereas, where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage within the meaning of this Directive;
Whereas it is necessary to introduce arrangements ensuring that an unwaivable equitable remuneration is obtained by authors and performers who must retain the possibility to entrust the administration of this right to collecting societies representing them;
Whereas the equitable remuneration may be paid on the basis of one or several payments an any time on or after the conclusion of the contract;
Whereas the equitable remuneration must take account of the importance of the contribution of the authors and performers concerned to the phonogram or film;
Whereas it is also necessary to protect the rights at least of authors as regards public lending by providing for specific arrangements; whereas, however, any measures based on Article 5 of this Directive have to comply with Community law, in particular with Article 7 of the Treaty;
Whereas the provisions of Chapter II do not prevent Member States from extending the presumption set out in Article 2(5) to the exclusive rights included in that chapter; whereas furthermore the provisions of Chapter II do not prevent Member States from providing for a rebuttable presumption of the authorization of exploitation in respect of the exclusive rights of performers provided for in those articles, in so far as such presumption is compatible with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter referred to as the Rome Convention);
Whereas Member States may provide for more far-reaching protection for owners of rights related to copyright than that required by Article 8 of this Directive;
Whereas the harmonized rental and lending rights and the harmonized protection in the field of rights related to copyright should not be exercised in a way which constitutes a disguised restriction on trade between Member States or in a way which is contrary to the rule of media exploitation chronology, as recognized in the Judgment handed down in

Société Cinéthèque v. FNCF,
has adopted this directive:

CHAPTER I
RENTAL AND LENDING RIGHT

Article 1

Object of harmonization

1. In accordance with the provisions of this Chapter, Member States shall provide, subject to Article 5, a right to authorize or prohibit the rental and lending of originals and copies of copyright works, and other subject matter as set out in Article 2(1).

2. For the purposes of this Directive, 'rental' means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage.

3. For the purposes of this Directive, 'lending' means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public.

4. The rights referred to in paragraph 1 shall not be exhausted by any sale or other act of distribution of originals and copies of copyright works and other subject matter as set out in Article 2(1).

Article 2

Rightholders and subject matter of rental and lending right

1. The exclusive right to authorize or prohibit rental and lending shall belong:
- to the author in respect of the original and copies of his work,
- to the performer in respect of fixations of his performance,
- to the phonogram producer in respect of his phonograms, and
- to the producer of the first fixation of a film in respect of the original and copies of his film. For the purposes of this Directive, the term 'film' shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

2. For the purposes of this Directive the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors.

3. This Directive does not cover rental and lending rights in relation to buildings and to works of applied art.

4. The rights referred to in paragraph 1 may be transferred, assigned or subjet to the granting of contractual licences.

5. Without prejudice to paragraph 7, when a contract concerning film production is concluded, individually or collectively, by performers with a film producer, the performer covered by this contract shall be presumed, subject to contractual clauses to the contrary, to have transferred his rental right, subject to Article 4.

6. Member States may provide for a similar presumption as set out in paragraph 5 with respect to authors.

7. Member States may provide that the signing of a contract concluded between a performer and a film producer concerning the production of a film has the effect of authorizing rental, provided that such contract provides for an equitable remuneration within the meaning of Article 4. Member States may also provide that this paragraph shall apply mutatis mutandis to the rights included in Chapter II.

Article 3

Rental of computer programs

This Directive shall be without prejudice to Article 4 (c) of Council Directive EEC/250/91 of 14 May 1991 on the legal protection of computer programs.

Article 4

Unwaivable right to equitable remuneration

1. Where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain an equitable remuneration for the rental.

2. The right to obtain an equitable remuneration for rental cannot be waived by authors or performers.

3. The administration of this right to obtain an equitable remuneration may be entrusted to collecting societies representing authors or performers.

4. Member States may regulate whether and to what extent administration by collecting societies of the right to obtain an equitable remuneration may be imposed, as well as the question from whom this remuneration may be claimed or collected.

Article 5

Derogation from the exclusive public lending right

1. Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain a remuneration for such

lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives.

2. When Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration.

3. Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.

4. The Commission, in cooperation with the Member States, shall draw up before 1 July 1997 a report on public lending in the Community. It shall forward this report to the European Parliament and to the Council.

CHAPTER II
RIGHTS RELATED TO COPYRIGHT

Article 6

Fixation right

1. Member States shall provide for performers the exclusive right to authorize or prohibit the fixation of their performances.

2. Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. A cable distributor shall not have the right provided for in paragraph 2 where it merely retransmits by cable the broadcasts of broadcasting organizations.

Article 7

Reproduction right

1. Member States shall provide the exclusive right to authorize or prohibit the direct or indirect reproduction:
- for performers, of fixations of their performances,
- for phonogram producers, of their phonograms,
- for producers of the first fixations of films, in respect of the original and copies of their films, and
- for broadcasting organizations, of fixations of their broadcasts, as set out in Article 6(2).

2. The reproduction right referred to in paragraph 1 may be transferred, assigned or subject to the granting of contractual licences.

Article 8

Broadcasting and communication to the public

1. Member States shall provide for performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

2. Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. Member States may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

3. Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article 9

Distribution right

1. Member States shall provide
- for performers, in respect of fixations of their performances,
- for phonogram producers, in respect of their phonograms,
- for producers of the first fixations of films, in respect of the original and copies of their films,
- for broadcasting organizations, in respect of fixations of their broadcast as set out in Article 6(2),
the exclusive right to make available these objects, including copies thereof, to the public by sale or otherwise, hereafter referred to as the 'distribution right'.

2. The distribution right shall not be exhausted within the Community in respect of an object as referred to in paragraph 1, except where the first sale in the Community of that object is made by the rightholder or with his consent.

3. The distribution right shall be without prejudice to the specific provisions of Chapter I, in particular Article 1(4).

4. The distribution right may be transferred, assigned or subject to the granting of contractual licences.

Article 10

Limitations to rights

1. Member States may provide for limitations to the rights referred to in Chapter II in respect of:
(a) private use;
(b) use of short excerpts in connection with the reporting of current events;
(c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
(d) use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1, any Member State may provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organizations and of producers of the first fixations of films, as it provides for in connection with 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.

3. Paragraph 1(a) shall be without prejudice to any existing or future legislation on remuneration for reproduction for private use.

CHAPTER III
DURATION

Article 11

Duration of authors' rights

Without prejudice to further harmonization, the authors' rights referred to in this Directive shall not expire before the end of the term provided by the Berne Convention for the Protection of Literary and Artistic Works.

Article 12

Duration of related rights

Without prejudice to further harmonization, the rights referred to in this Directive of performers, phonogram producers and broadcasting organizations shall not expire before the end of the respective terms provided by the Rome Convention. The rights referred to in this Directive for producers of the first fixations of films shall not expire before the end of a period of 20 years computed from the end of the year in which the fixation was made.

CHAPTER IV
COMMON PROVISIONS

Article 13

Application in time

1. This Directive shall apply in respect of all copyright works, performances, phonograms, broadcasts and first fixations of films referred to in this Directive which are, on 1 July 1994, still protected by the legislation of the Member States in the field of copyright and related rights or meet the criteria for protection under the provisions of this Directive on that date.

2. This Directive shall apply without prejudice to any acts of exploitation performed before 1 July 1994.

3. Member States may provide that the rightholders are deemed to have given their authorization to the rental or lending of an object referred to in Article 2(1) which is proven to have been made available to third parties for this purpose or to have been acquired before 1 July 1994. However, in particular where such an object is a digital recording, Member States may provide that rightholders shall have a right to obtain an adequate remuneration for the rental or lending of that object.

4. Member States need not apply the provisions of Article 2(2) to cinematographic or audiovisual works created before 1 July 1994.

5. Member States may determine the date as from which the Article 2(2) shall apply, provided that that date is no later than 1 July 1997.

6. This Directive shall, without prejudice to paragraph 3 and subject to paragraphs 8 and 9, not affect any contracts concluded before the date of its adoption.

7. Member States may provide, subject to the provisions of paragraphs 8 and 9, that when rightholders who acquire new rights under the national provisions adopted in implementation of this Directive have, before 1 July 1994, given their consent for exploitation, they shall be presumed to have transferred the new exclusive rights.
8. Member States may determine the date as from which the unwaivable right to an equitable remuneration referred to in Article 4 exists, provided that that date is no later than 1 July 1997.

9. For contracts concluded before 1 July 1994, the unwaivable right to an equitable remuneration provided for in Article 4 shall apply only where authors or performers or those representing them have submitted a request to that effect before 1 January 1997. In the absence of agreement between rightholders concerning the level of remuneration, Member States may fix the level of equitable remuneration.

Article 14

Relation between copyright and related rights

Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright.

Article 15

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1994. They shall forthwith inform the Commission thereof. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

Article 16

This Directive is addressed to the Member States.

8 Term of Protection

Council Directive EEC/98/93 of 29 October 1993 harmonizing the term of protection of copyright and certain related rights

The Council of the European Communities,
Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2), 66 and 100a 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 Berne Convention for the protection of literary and artistic works and the International Convention for the protection of performers, producers of phonograms and broadcasting organizations (Rome Convention) lay down only minimum terms of protection of the rights they refer to, leaving the Contracting States free to grant longer terms; whereas certain Member States have exercised this entitlement; whereas in addition certain Member States have not become party to the Rome Convention;
(2) Whereas there are consequently differences between the national laws governing the terms of protection of copyright and related rights, which are liable to impede the free movement of goods and freedom to provide services, and to distort competition in the common market; whereas therefore with a view to the smooth operation of the internal market, the laws of the Member States should be harmonized so as to make terms of protection identical throughout the Community;
(3) Whereas harmonization must cover not only the terms of protection as such, but also certain implementing arrangements such as the date from which each term of protection is calculated;
(4) Whereas the provisions of this Directive do not affect the application by the Member States of the provisions of Article 14a(2)(b), (c) and (d) and (3) of the Berne Convention;
(5) Whereas the minimum term of protection laid down by the Berne Convention, namely the life of the author and 50 years after his death, was intended to provide protection for the author and the first two generations of his descendants; whereas the average lifespan in the Community has grown longer, to the point where this term is no longer sufficient to cover two generations;
(6) Whereas certain Member States have granted a term longer than 50 years after the death of the author in order to offset the effects of the world wars on the exploitation of authors' works;
(7) Whereas for the protection of related rights certain Member States have introduced a term of 50 years after lawful publication or lawful communication to the public;
(8) Whereas under the Community position adopted for the Uruguay Round negotiations under the General Agreement on Tariffs and Trade (GATT) the term of protection for producers of phonograms should be 50 years after first publication;
(9) Whereas due regard for established rights is one of the general principles of law protected by the Community legal order; whereas, therefore, a harmonization of the terms of protection of copyright and related rights cannot have the effect of reducing the protection currently enjoyed by rightholders in the Community; whereas in order to keep the effects of transitional measures to a minimum and to allow the internal market to

operate in practice, the harmonization of the term of protection should take place on a long term basis;
(10) Whereas in its communication of 17 January 1991 'Follow-up to the Green Paper - Working programme of the Commission in the field of copyright and neighbouring rights' the Commission stresses the need to harmonize copyright and neighbouring rights at a high level of protection since these rights are fundamental to intellectual creation and stresses that their protection ensures the maintenance and development of creativity in the interest of authors, cultural industries, consumers and society as a whole;
(11) Whereas in order to establish a high level of protection which at the same time meets the requirements of the internal market and the need to establish a legal environment conducive to the harmonious development of literary and artistic creation in the Community, the term of protection for copyright should be harmonized at 70 years after the death of the author or 70 years after the work is lawfully made available to the public, and for related rights at 50 years after the event which sets the term running;
(12) Whereas collections are protected according to Article 2(5) of the Berne Convention when, by reason of the selection and arrangement of their content, they constitute intellectual creations; whereas those works are protected as such, without prejudice to the copyright in each of the works forming part of such collections, whereas in consequence specific terms of protection may apply to works included in collections;
(13) Whereas in all cases where one or more physical persons are identified as authors the term of protection should be calculated after their death; whereas the question of authorship in the whole or a part of a work is a question of fact which the national courts may have to decide;
(14) Whereas terms of protection should be calculated from the first day of January of the year following the relevant event, as they are in the Berne and Rome Conventions;
(15) Whereas Article 1 of Council Directive EEC/250/91 of 14 May 1991 on the legal protection of computer programs provides that Member States are to protect computer programs, by copyright, as literary works within the meaning of the Berne Convention; whereas this Directive harmonizes the term of protection of literary works in the Community; whereas Article 8 of Directive EEC/250/91, which merely makes provisional arrangements governing the term of protection of computer programs, should accordingly be repealed;
(16) Whereas Articles 11 and 12 of Council Directive EEC/100/92 of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property make provision for minimum terms of protection only, subject to any further harmonization; whereas this Directive provides such further harmonization; whereas these Articles should accordingly be repealed;
(17) Whereas the protection of photographs in the Member States is the subject of varying regimes; whereas in order to achieve a sufficient harmonization of the term of protection of photographic works, in particular of those which, due to their artistic or professional character, are of importance within the internal market, it is necessary to define the level of originality required in this Directive; whereas a photographic work within the meaning of the Berne Convention is to be considered original if it is the author's own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account; whereas the protection of other photographs should be left to national law;

(18) Whereas, in order to avoid differences in the term of protection as regards related rights it is necessary to provide the same starting point for the calculation of the term throughout the Community; whereas the performance, fixation, transmission, lawful publication, and lawful communication to the public, that is to say the means of making a subject of a related right perceptible in all appropriate ways to persons in general, should be taken into account for the calculation of the term of protection regardless of the country where this performance, fixation, transmission, lawful publication, or lawful communication to the public takes place;
(19) Whereas the rights of broadcasting organizations in their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, should not be perpetual; whereas it is therefore necessary to have the term of protection running from the first transmission of a particular broadcast only; whereas this provision is understood to avoid a new term running in cases where a broadcast is identical to a previous one;
(20) Whereas the Member States should remain free to maintain or introduce other rights related to copyright in particular in relation to the protection of critical and scientific publications; whereas, in order to ensure transparency at Community level, it is however necessary for Member States which introduce new related rights to notify the Commission;
(21) Whereas it is useful to make clear that the harmonization brought about by this Directive does not apply to moral rights;
(22) Whereas, for works whose country of origin within the meaning of the Berne Convention is a third country and whose author is not a Community national, comparison of terms of protection should be applied, provided that the term accorded in the Community does not exceed the term laid down in this Directive;
(23) Whereas where a rightholder who is not a Community national qualifies for protection under an international agreement the term of protection of related rights should be the same as that laid down in this Directive, except that it should not exceed that fixed in the country of which the rightholder is a national;
(24) Whereas comparison of terms should not result in Member States being brought into conflict with their international obligations;
(25) Whereas, for the smooth functioning of the internal market this Directive should be applied as from 1 July 1995;
(26) Whereas Member States should remain free to adopt provisions on the interpretation, adaptation and further execution of contracts on the exploitation of protected works and other subject matter which were concluded before the extension of the term of protection resulting from this Directive;
(27) Whereas respect of acquired rights and legitimate expectations is part of the Community legal order; whereas Member States may provide in particular that in certain circumstances the copyright and related rights which are revived pursuant to this Directive may not give rise to payments by persons who undertook in good faith the exploitation of the works at the time when such works lay within the public domain,
has adopted this directive:

Article 1

Duration of authors' rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.

2. In the case of a work of joint authorship the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. In the case of anonymous or pseudonymous works, the term of protection shall run for seventy years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

4. Where a Member State provides for particular provisions on copyright in respect of collective works or for a legal person to be designated as the rightholder, the term of protection shall be calculated according to the provisions of paragraph 3, except if the natural persons who have created the work as such are identified as such in the versions of the work which are made available to the public. This paragraph is without prejudice to the rights of identified authors whose identifiable contributions are included in such works, to which contributions paragraph 1 or 2 shall apply.

5. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.

6. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within seventy years from their creation, the protection shall terminate.

Article 2

Cinematographic or audiovisual works

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.

2. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

Article 3

Duration of related rights

1. The rights of performers shall expire 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

3. The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term 'film' shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

4. The rights of broadcasting organizations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 4

Protection of previously unpublished works

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

Article 5

Critical and scientific publications

Member States may protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.

Article 6

Protection of photographs

Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection. Member States may provide for the protection of other photographs.

Article 7

Protection vis-à-vis third countries

1. Where the country of origin of a work, within the meaning of the Berne Convention, is a third country, and the author of the work is not a Community national, the term of protection granted by the Member States shall expire on the date of expiry of the protection granted in the country of origin of the work, but may not exceed the term laid down in Article 1.

2. The terms of protection laid down in Article 3 shall also apply in the case of rightholders who are not Community nationals, provided Member States grant them protection. However, without prejudice to the international obligations of the Member States, the term of protection granted by Member States shall expire no later than the date of expiry of the protection granted in the country of which the rightholder is a national and may not exceed the term laid down in Article 3.

3. Member States which, at the date of adoption of this Directive, in particular pursuant to their international obligations, granted a longer term of protection than that which would result from the provisions, referred to in paragraphs 1 and 2 may maintain this protection until the conclusion of international agreements on the term of protection by copyright or related rights.

Article 8

Calculation of terms

The terms laid down in this Directive are calculated from the first day of January of the year following the event which gives rise to them.

Article 9

Moral rights

This Directive shall be without prejudice to the provisions of the Member States regulating moral rights.

Article 10

Application in time

1. Where a term of protection, which is longer than the corresponding term provided for by this Directive, is already running in a Member State on the date referred to in Article 13 (1), this Directive shall not have the effect of shortening that term of protection in that Member State.

2. The terms of protection provided for in this Directive shall apply to all works and subject matter which are protected in at least one Member State, on the date referred to in Article 13(1), pursuant to national provisions on copyright or related rights or which meet the criteria for protection under Directive EEC/100/92.

3. This Directive shall be without prejudice to any acts of exploitation performed before the date referred to in Article 13(1). Member States shall adopt the necessary provisions to protect in particular acquired rights of third parties.

4. Member States need not apply the provisions of Article 2(1) to cinematographic or audiovisual works created before 1 July 1994.

5. Member States may determine the date as from which Article 2(1) shall apply, provided that date is no later than 1 July 1997.

Article 11

Technical adaptation

1. Article 8 of Directive EEC/250/91 is hereby repealed.

2. Articles 11 and 12 of Directive EEC/100/92 are hereby repealed.

Article 12

Notification procedure

Member States shall immediately notify the Commission of any governmental plan to grant new related rights, including the basic reasons for their introduction and the term of protection envisaged.

Article 13

General provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 11 of this Directive before 1 July 1995.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such a reference shall be laid down by the Member States. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

2. Member States shall apply Article 12 from the date of notification of this Directive.

Article 14

This Directive is addressed to the Member States.

9 Copyright in Broadcasting

Council Directive EEC/83/93 of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

The Council of the European Communities,
Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2) and 66 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 internal frontiers; whereas measures to achieve this 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 EEC/552/89 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, 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 degree of legal uncertainty; 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 in the free circulation of programmes within the Community;
(6) Whereas a distinction is currently drawn for copyright purposes between communication to the public by direct satellite and communication to the public by communications satellite; whereas, since individual reception is possible and affordable nowadays 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 over whether broadcastsing 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, 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 by authorization 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 that they 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 refusing without valid reason to negotiate on the acquisition of the rights necessary for cable distribution or allowing such negotiations to fail;
(12) Whereas the legal framework for the creation of a single audiovisual area laid down in Directive EEC/552/89 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 exist in the Member States, so that the vital distinction throughout the Community becomes whether works and other protected subject 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 a communications satellite;
(14) Whereas the legal uncertainty regarding the rights to be acquired which impedes cross-border satellite broadcasting should be overcome by defining the notion of communication to the public by satellite at a Community level; whereas this definition should 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 by satellite occurs only when, and in the Member State where, the programme-carrying signals are introduced under the control and responsibility of the broadcasting organization into an uninterrupted chain of communication leading to the satellite and down towards the earth; whereas normal technical procedures relating to the programme-carrying signals should not be considered as interruptions to the chain of broadcasting;
(15) Whereas the acquisition on a contractual basis of exclusive broadcasting rights should comply with any legislation on copyright and rights related to copyright in the Member State in which communication to the public by satellite occurs;
(16) Whereas the principle of contractual freedom on which this Directive is based will make it possible to continue limiting the exploitation of these rights, especially as far as certain technical means of transmission or certain language versions are concerned;
(17) Whereas, in ariving at the amount of the payment to be made for the rights acquired,

the parties should take account of all aspects of the broadcast, such as the actual audience, the potential audience and the language version;
(18) Whereas the application of the country-of-origin principle contained in this Directive could pose a problem with regard to existing contracts; whereas this Directive should provide for a period of five years for existing contracts to be adapted, where necessary, in the light of the Directive; whereas the said country-of-origin principle should not, therefore, apply to existing contracts which expire before 1 January 2000; whereas if by that date parties still have an interest in the contract, the same parties should be entitled to renegotiate the conditions of the contract;
(19) Whereas existing international co-production agreements must be interpreted in the light of the economic purpose and scope envisaged by the parties upon signature; whereas in the past international co-production agreements have often not expressly and specifically addressed communication to the public by satellite within the meaning of this Directive a particular form of exploitation; whereas the underlying philosophy of many existing international co-production agreements is that the rights in the co-production are exercised separately and independently by each co-producer, by dividing the exploitation rights between them along territorial lines; whereas, as a general rule, in the situation where a communication to the public by satellite authorized by one co-producer would prejudice the value of the exploitation rights of another co-producer, the interpretation of such an existing agreement would normally suggest that the latter co-producer would have to give his consent to the authorization, by the former co-producer, of the communication to the public by satellite; whereas the language exclusivity of the latter co-producer will be prejudiced where the language version or versions of the communication to the public, including where the version is dubbed or subtitled, coincide(s) with the language or the languages widely understood in the territory allotted by the agreement to the latter co-producer; whereas the notion of exclusivity should be understood in a wider sense where the communication to the public by satellite concerns a work which consists merely of images and contains no dialogue or subtitles; whereas a clear rule is necessary in cases where the international co-production agreement does not expressly regulate the division of rights in the specific case of communication to the public by satellite within the meaning of this Directive;
(20) Whereas communications to the public by satellite from non-member countries will under certain conditions be deemed to occur within a Member State of the Community;
(21) Whereas it is necessary to ensure that protection for authors, performers, producers of phonograms and broadcasting organizations is accorded in all Member States 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;
(22) Whereas the advent of new technologies is likely to have an impact on both the quality and the quantity of the exploitation of works and other subject matter;
(23) Whereas in the light of these developments the level of protection granted pursuant to this Directive to all rightholders in the areas covered by this Directive should remain under consideration;
(24) Whereas the harmonization of legislation envisaged in this Directive entails the harmonization of the provisions ensuring a high level of protection of authors, performers, phonogram producers and broadcasting organizations; whereas this

harmonization should not allow a broadcasting organization to take advantage of differences in levels of protection by relocating activities, to the detriment of audiovisual productions;
(25) Wheres the protection provided for rights related to copyright should be aligned on that contained in Council Directive EEC/100/92 of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (5) for the purposes of communication to the public by satellite; whereas, in particular, this will ensure that peformers and phonogram producers are guaranteed an appropriate remuneration for the communication to the public by satellite of their performances or phonograms;
(26) Whereas the provisions of Article 4 do not prevent Member States from extending the presumption set out in Article 2(5) of Directive EEC/100/92 to the exclusive rights referred to in Article 4; whereas, furthermore, the provisions of Article 4 do not prevent Member States from providing for a rebuttable presumption of the authorisation of exploitation in respect of the exclusive rights of performers referred to in that Article, in so far as such presumption is compatible with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
(27) Whereas the cable retransmission of programmes from other Member States is an act subject to copyright and, as the case may be, rights related to copyright; whereas the cable operator must, therefore, obtain the authorization from every holder of rights in each part of the programme retransmitted; whereas, pursuant to this Directive, the authorizations should be granted contractually unless a temporary exception is provided for in the case of existing legal licence schemes;
(28) Whereas, in order 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, provision should be made, through the obligation to have recourse to a collecting society, for the exclusive collective exercise of the authorization right to the extent that this is required by the special features of cable retransmission; 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;
(29) Whereas the exemption provided for in Article 10 should not limit the choice of holders of rights to transfer their rights to a collecting society and thereby have a direct share in the remuneration paid by the cable distributor for cable retransmission;
(30) Whereas contractual arrangements regarding the authorization of cable retransmission should be promoted by additional measures; whereas a party seeking the conclusion of a general contract should, for its part, be obliged to submit collective proposals for an agreement; whereas, furthermore, any party shall be entitled, at any moment, to call upon the assistance of impartial mediators whose task is to assist negotiations and who may submit proposals; whereas any such proposals and any opposition thereto should be served on the parties concerned in accordance with the applicable rules concerning the service of legal documents, in particular as set out in existing international conventions; whereas, finally, it is necessary to ensure that the negotiations are not blocked without valid justification or that individual holders are not prevented without valid justification 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 retransmission rights;
(31) Whereas for a transitional period Member States should be allowed to retain existing bodies with jurisdiction in their territory over cases where the right to retransmit a programme by cable to the public has been unreasonably refused or offered on unreasonable terms by a broadcasting organization; whereas it is understood that the right of parties concerned to be heard by the body should be guaranteed and that the existence of the body should not prevent the parties concerned from having normal access to the courts;
(32) Whereas, however, Community rules are not needed to deal with all of those matters, the effects of which perhaps with some commercially insignificant exceptions, are felt only inside the borders of a single Member State;
(33) Whereas minimum rules should be laid down in order 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 an essentially contractual basis;
(34) Whereas this Directive should not prejudice further harmonization in the field of copyright and rights related to copyright and the collective administration of such rights; whereas the possibility for Member States to regulate the activities of collecting societies should not prejudice the freedom of contractual negotiation of the rights provided for in this Directive, on the understanding that such negotiation takes place within the framework of general or specific national rules with regard to competition law or the prevention of abuse of monopolies;
(35) Whereas it should, therefore, be 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 that these do not run counter to the objectives of this Directive and are compatible with Community law;
(36) 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

Definitions

1. For the purpose of this Directive, 'satellite' means any satellite operating on frequency bands which, under telecommunications law, are reserved for the broadcast of signals for reception by the public or which are reserved for closed, point-to-point communication. 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 first case.

2. (a) For the purpose of this Directive, 'communication to the public by satellite' means the act of introducing, under the control and responsibility of the broadcasting organization, the programme-carrying signals intended for reception by the public into an

uninterrupted chain of communication leading to the satellite and down towards the earth.
(b) The act of communication to the public by satellite occurs solely in the Member State where, under the control and responsibility of the broadcasting organization, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.
(c) If the programme-carrying signals are encrypted, then there is communication to the public by satellite on condition that the means for decrypting the broadcast are provided to the public by the broadcasting organization or with its consent.
(d) Where an act of communication to the public by satellite occurs in a non-Community State which does not provide the level of protection provided for under Chapter II,
(i) if the programme-carrying signals are transmitted to the satellite from an uplink situation situated in a Member State, that act of communication to the public by satellite shall be deemed to have occurred in that Member State and the rights provided for under Chapter II shall be exercisable against the person operating the uplink station; or
(ii) if there is no use of an uplink station situated in a Member State but a broadcasting organization established in a Member State has commissioned the act of communication to the public by satellite, that act shall be deemed to have occured in the Member State in which the broadcasting organization has its principal establishment in the Community and the rights provided for under Chapter II shall be exercisable against the broadcasting organization.

3. For the purposes of this Directive, 'cable retransmission' means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public.
4. For the purposes of this Directive 'collecting society' means any organization which manages or administers copyright or rights related to copyright as its sole purpose or as one of its main purposes.

5. For the purposes of this Directive, the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors.

CHAPTER II
BROADCASTING OF PROGRAMMES BY SATELLITE

Article 2

Broadcasting right Member States shall provide an exclusive right for the author to authorize 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 authorization referred to in Article 2 may be acquired only be agreement.

2. A Member State may provide that a collective agreement between a collecting society and a broadcasting organization concerning a given category of works may be extended to rightholders of the same category who are not represented by the collecting society, provided that:
- the communication to the public by satellite simulcasts a terrestrial broadcast by the same broadcaster, and
- the unrepresented rightholder shall, at any time, have the possibilty of excluding the extension of the collective agreement to his works and of exercising his rights either individually or collectively.

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

4. Where the law of a Member State provides for the extension of a collective agreement in accordance with the provisions of paragraph 2, that Member States shall inform the Commission which broadcasting organizations are entitled to avail themselves of that law. The Commission shall publish this information in the Official Journal of the European Communities (C series).

Article 4

Rights of performers, phonogram producers and broadcasting organizations

1. For the purposes of communication to the public by satellite, the rights of performers, phonogram producers and broadcasting organizations shall be protected in accordance with the provisions of Articles 6, 7, 8 and 10 of Directive EEC/100/92.

2. For the purposes of paragraph 1, 'broadcasting by wireless means' in Directive EEC/100/92 shall be understood as including communication to the public by satellite.

3. With regard to the exercise of the rights referred to in paragraph 1, Articles 2(7) and 12 of Directive EEC/100/92 shall apply.

Article 5

Relation between copyright and related rights

Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright.

Article 6

Minimum protection

1. Member States may provide for more far-reaching protection for holders of rights related to copyright than that required by Article 8 of Directive EEC/100/92.

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

Article 7

Transitional provisions

1. With regard to the application in time of the rights referred to in Article 4 (1) of this Directive, Article 13(1), (2), (6) and (7) of Directive EEC/100/92 shall apply. Article 13(4) and (5) of Directive EEC/100/92 shall apply *mutatis mutandis*.

2. Agreements concerning the exploitation of works and other protected subject matter which are in force on the date mentioned in Article 14(1) shall be subject to the provisions of Articles 1(2), 2 and 3 as from 1 January 2000 if they expire after that date.

3. When an international co-production agreement concluded before the date mentioned in Article 14(1) between a co-producer from a Member State and one or more co-producers from other Member States or third countries expressly provides for a system of division of exploitation rights between the co-producers by geographical areas for all means of communication to the public, without distinguishing the arrangement applicable to communication to the public by satellite from the provisions applicable to the other means of communication, and where communication to the public by satellite of the co-production would prejudice the exclusivity, in particular the language exclusivity, of one of the co-producers or his assignees in a given territory, the authorization by one of the co-producers or his assignees for a communication to the public by satellite shall require the prior consent of the holder of that exclusivity, whether co-producer or assignee.

CHAPTER III
CABLE RETRANSMISSION

Article 8

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 related rights are observed and that such retransmission takes place on the basis of individual or collective contractual agreements between copyright owners, holders of related rights and cable operators.

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

Article 9

Exercise of the cable retransmission right

1. Member States shall ensure that the right of copyright owners and holders or related rights to grant or refuse authorization to a cable operator for a cable retransmission may be exercised only through a collecting society.

2. Where a rightholder has not transferred the management of his rights to a collecting society, the collecting society which manages rights of the same category shall be deemed to be mandated to manage his rights. Where more than one collecting society manages rights of that category, the rightholder shall be free to choose which of those collecting societies is deemed to be mandated to manage his rights. A rightholder referred to in this paragraph shall have the same rights and obligations resulting from the agreement between the cable operator and the collecting society which is deemed to be mandated to manage his rights as the rightholders who have mandated that collecting society and he shall be able to claim those rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the cable retransmission which includes his work or other protected subject matter.

3. A Member State may provide that, when a rightholder authorizes the initial transmission within its territory of a work or other protected subject matter, he shall be deemed to have agreed not to exercise his cable retransmission rights on an individual basis but to exercise them in accordance with the provisions of this Directive.

Article 10

Exercise of the cable retransmission right by broadcasting organizations

Member States shall ensure that Article 9 does not apply to the rights exercised by a broadcasting organization in respect of its own transmission, irrespective of whether the rights concerned are its own or have been transferred to it by other copyright owners and/or holders of related rights.

Article 11

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 more mediators.

2. The task of the mediators shall be to provide assistance with negotiation. They may also submit proposals to the parties.

3. It shall be assumed that all the parties accept a proposal as referred to in paragraph 2 if none of them expresses its opposition within a period of three months. Notice of the proposal and of any opposition thereto shall be served on the parties concerned in accordance with the applicable rules concerning the service of legal documents.

4. The mediators shall be so selected that their independence and impartiality are beyond reasonable doubt.

Article 12

Prevention of the abuse of negotiating positions

1. Member States shall ensure by means of civil or administrative law, as appropriate, that the parties enter and conduct negotiations regarding authorization for cable retransmission in good faith and do not prevent or hinder negotiation without valid justification.

2. A Member State which, on the date mentioned in Article 14(1), has a body with jurisdiction in its territory over cases where the right to retransmit a programme by cable to the public in that Member State has been unreasonably refused or offered on unreasonable terms by a broadcasting organization may retain that body.

3. Paragraph 2 shall apply for a transitional period of eight years from the date mentioned in Article 14(1).

CHAPTER IV
GENERAL PROVISIONS

Article 13

Collective administration of rights

This Directive shall be without prejudice to the regulation of the activities of collecting societies by the Member States.

Article 14

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1995. They shall immediately inform the Commission thereof. When Member States adopt these measures, the latter shall contain a reference to this Directive or shall be accompanied by

such reference at the time of their official publication. The methods of making such a reference shall be laid down by the 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.

3. Not later than 1 January 2000, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the audio and audiovisual sector.

Article 15

This Directive is addressed to the Member States.

10 Databases

Directive EC/9/96 of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases

The European Parliament and the Council of the European Union,
Having regard to the Treaty establishing the European Community, and in particular Article 57(2), 66 and 100a thereof,
Having regard to the proposal from the Commission,
Having regard to the opinion of the Economic and Social Committee,
Acting in accordance with the procedure laid down in Article 189b of the Treaty,
(1) Whereas databases are at present not sufficiently protected in all Member States by existing legislation; whereas such protection, where it exists, has different attributes;
(2) Whereas such differences in the legal protection of databases offered by the legislation of the Member States have direct negative effects on the functioning of the internal market as regards databases and in particular on the freedom of natural and legal persons to provide on-line database goods and services on the basis of harmonized legal arrangements throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation in this field, which is now taking on an increasingly international dimension;
(3) Whereas existing differences distorting the functioning of the internal market need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the internal market or the development of an information market within the Community need not be removed or prevented from arising;
(4) Whereas copyright protection for databases exists in varying forms in the Member States according to legislation or case-law, and whereas, if differences in legislation in the scope and conditions of protection remain between the Member States, such unharmonized intellectual property rights can have the effect of preventing the free movement of goods or services within the Community;
(5) Whereas copyright remains an appropriate form of exclusive right for authors who have created databases;
(6) Whereas, nevertheless, in the absence of a harmonized system of unfair-competition legislation or of case-law, other measures are required in addition to prevent the unauthorized extraction and/or re-utilization of the contents of a database;
(7) Whereas the making of databases requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to design them independently;
(8) Whereas the unauthorized extraction and/or re-utilization of the contents of a database constitute acts which can have serious economic and technical consequences;
(9) Whereas databases are a vital tool in the development of an information market within the Community; whereas this tool will also be of use in many other fields;
(10) Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry calls for investment in all the Member States in advanced information processing systems;
(11) Whereas there is at present a very great imbalance in the level of investment in the

database sector both as between the Member States and between the Community and the world's largest database-producing third countries;
(12) Whereas such an investment in modern information storage and processing systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of makers of databases;
(13) Whereas this Directive protects collections, sometimes called 'compilations`, of works, data or other materials which are arranged, stored and accessed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;
(14) Whereas protection under this Directive should be extended to cover non-electronic databases;
(15) Whereas the criteria used to determine whether a database should be protected by copyright should be defined to the fact that the selection or the arrangement of the contents of the database is the author's own intellectual creation; whereas such protection should cover the structure of the database;
(16) Whereas no criterion other than originality in the sense of the author's intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;
(17) Whereas the term 'database` should be understood to include literary, artistic, musical or other collections of works or collections of other material such as texts, sound, images, numbers, facts, and data; whereas it should cover collections of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed; whereas this means that a recording or an audiovisual, cinematographic, literary or musical work as such does not fall within the scope of this Directive;
(18) Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what manner, they will allow their works to be included in a database, in particular whether or not the authorization given is exclusive; whereas the protection of databases by the sui generis right is without prejudice to existing rights over their contents, and whereas in particular where an author or the holder of a related right permits some of his works or subject matter to be included in a database pursuant to a non-exclusive agreement, a third party may make use of those works or subject matter subject to the required consent of the author or of the holder of the related right without the sui generis right of the maker of the database being invoked to prevent him doing so, on condition that those works or subject matter are neither extracted from the database nor re-utilized on the basis thereof;
(19) Whereas, as a rule, the compilation of several recordings of musical performances on a CD does not come within the scope of this Directive, both because, as a compilation, it does not meet the conditions for copyright protection and because it does not represent a substantial enough investment to be eligible under the sui generis right;
(20) Whereas protection under this Directive may also apply to the materials necessary for the operation or consultation of certain databases such as thesaurus and indexation systems;
(21) Whereas the protection provided for in this Directive relates to databases in which works, data or other materials have been arranged systematically or methodically; whereas it is not necessary for those materials to have been physically stored in an organized manner;

(22) Whereas electronic databases within the meaning of this Directive may also include devices such as CD-ROM and CD-i;
(23) Whereas the term 'database` should not be taken to extend to computer programs used in the making or operation of a database, which are protected by Council Directive EEC/250/91 of 14 May 1991 on the legal protection of computer programs;
(24) Whereas the rental and lending of databases in the field of copyright and related rights are governed exclusively by Council Directive EEC/100/92 of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
(25) Whereas the term of copyright is already governed by Council Directive EEC/98/93 of 29 October 1993 harmonizing the term of protection of copyright and certain related rights;
(26) Whereas works protected by copyright and subject matter protected by related rights, which are incorporated into a database, remain nevertheless protected by the respective exclusive rights and may not be incorporated into, or extracted from, the database without the permission of the rightholder or his successors in title;
(27) Whereas copyright in such works and related rights in subject matter thus incorporated into a database are in no way affected by the existence of a separate right in the selection or arrangement of these works and subject matter in a database;
(28) Whereas the moral rights of the natural person who created the database belong to the author and should be exercised according to the legislation of the Member States and the provisions of the Berne Convention for the Protection of Literary and Artistic Works; whereas such moral rights remain outside the scope of this Directive;
(29) Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, therefore nothing in this Directive prevents Member States from stipulating in their legislation that where a database is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the database so created, unless otherwise provided by contract;
(30) Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the distribution of his work to unauthorized persons;
(31) Whereas the copyright protection of databases includes making databases available by means other than the distribution of copies;
(32) Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;
(33) Whereas the question of exhaustion of the right of distribution does not arise in the case of on-line databases, which come within the field of provision of services; whereas this also applies with regard to a material copy of such a database made by the user of such a service with the consent of the rightholder; whereas, unlike CD-ROM or CD-i, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright so provides;
(34) Whereas, nevertheless, once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution,

that lawful user must be able to access and use the database for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;
(35) Whereas a list should be drawn up of exceptions to restricted acts, taking into account the fact that copyright as covered by this Directive applies only to the selection or arrangements of the contents of a database; whereas Member States should be given the option of providing for such exceptions in certain cases; whereas, however, this option should be exercised in accordance with the Berne Convention and to the extent that the exceptions relate to the structure of the database; whereas a distinction should be drawn between exceptions for private use and exceptions for reproduction for private purposes, which concerns provisions under national legislation of some Member States on levies on blank media or recording equipment;
(36) Whereas the term 'scientific research` within the meaning of this Directive covers both the natural sciences and the human sciences;
(37) Whereas Article 10(1) of the Berne Convention is not affected by this Directive;
(38) Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be copied and rearranged electronically, without his authorization, to produce a database of identical content which, however, does not infringe any copyright in the arrangement of his database;
(39) Whereas, in addition to aiming to protect the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment made in obtaining and collection the contents by protecting the whole or substantial parts of a database against certain acts by a user or competitor;
(40) Whereas the object of this *sui generis* right is to ensure protection of any investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist in the deployment of financial resources and/or the expending of time, effort and energy;
(41) Whereas the objective of the *sui generis* right is to give the maker of a database the option of preventing the unauthorized extraction and/or re-utilization of all or a substantial part of the contents of that database; whereas the maker of a database is the person who takes the initiative and the risk of investing; whereas this excludes subcontractors in particular from the definition of maker;
(42) Whereas the special right to prevent unauthorized extraction and/or re-utilization relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit extraction and/or re-utilization of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated qualitatively or quantitatively, to the investment;
(43) Whereas, in the case of on-line transmission, the right to prohibit re-utilization is not exhausted either as regards the database or as regards a material copy of the database or of part thereof made by the addressee of the transmission with the consent of the rightholder;
(44) Whereas, when on-screen display of the contents of a database necessitates the permanent or temporary transfer of all or a substantial part of such contents to another medium, that act should be subject to authorization by the rightholder;

(45) Whereas the right to prevent unauthorized extraction and/or re-utilization does not in any way constitute an extension of copyright protection to mere facts or data;
(46) Whereas the existence of a right to prevent the unauthorized extraction and/or re-utilization of the whole or a substantial part of works, data or materials from a database should not give rise to the creation of a new right in the works, data or materials themselves;
(47) Whereas, in the interests of competition between suppliers of information products and services, protection by the *sui generis* right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and distribution of new products and services which have an intellectual, documentary, technical, economic or commercial added value; whereas, therefore, the provisions of this Directive are without prejudice to the application of Community or national competition rules;
(48) Whereas the objective of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the maker of the database, is different from the aim of Directive EC/46/95 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, which is to guarantee free circulation of personal data on the basis of harmonized rules designed to protect fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to data protection legislation;
(49) Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or rightholder may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, that user may not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or subject matter contained in the database;
(50) Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where extraction and/or re-utilization are/is carried out in the interests of public security or for the purposes of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not be commercial;
(51) Whereas the Member States, where they avail themselves of the option to permit a lawful user of a database to extract a substantial part of the contents for the purposes of illustration for teaching or scientific research, may limit that permission to certain categories of teaching or scientific research institution;
(52) Whereas those Member States which have specific rules providing for a right comparable to the *sui generis* right provided for in this Directive should be permitted to retain, as far as the new right is concerned, the exceptions traditionally specified by such rules;
(53) Whereas the burden of proof regarding the date of completion of the making of a

database lies with the maker of the database;
(54) Whereas the burden of proof that the criteria exist for concluding that a substantial modification of the contents of a database is to be regarded as a substantial new investment lies with the maker of the database resulting from such investment;
(55) Whereas a substantial new investment involving a new term of protection may include a substantial verification of the contents of the database;
(56) Whereas the right to prevent unauthorized extraction and/or re-utilization in respect of a database should apply to databases whose makers are nationals or habitual residents of third countries or to those produced by legal persons not established in a Member State, within the meaning of the Treaty, only if such third countries offer comparable protection to databases produced by nationals of a Member State or persons who have their habitual residence in the territory of the Community;
(57) Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unauthorized extraction and/or re-utilization of the contents of a database;
(58) Whereas, in addition to the protection given under this Directive to the structure of the database by copyright, and to its contents against unauthorized extraction and/or re-utilization under the sui generis right, other legal provisions in the Member States relevant to the supply of database goods and services continue to apply;
(59) Whereas this Directive is without prejudice to the application to databases composed of audiovisual works of any rules recognized by a Member State's legislation concerning the broadcasting of audiovisual programmes;
(60) Whereas some Member States currently protect under copyright arrangements databases which do not meet the criteria for eligibility for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down in this Directive to prevent unauthorized extraction and/or re-utilization of their contents, the term of protection under that right is considerably shorter than that which they enjoy under the national arrangements currently in force; whereas harmonization of the criteria for determining whether a database is to be protected by copyright may not have the effect of reducing the term of protection currently enjoyed by the rightholders concerned; whereas a derogation should be laid down to that effect; whereas the effects of such derogation must be confined to the territories of the Member States concerned,
have adopted this directive:

CHAPTER I
SCOPE

Article 1

Scope

1. This Directive concerns the legal protection of databases in any form.

2. For the purposes of this Directive, 'database` shall mean a collection of independent

works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.

3. Protection under this Directive shall not apply to computer programs used in the making or operation of databases accessible by electronic means.

Article 2

Limitations on the scope

This Directive shall apply without prejudice to Community provisions relating to:
(a) the legal protection of computer programs;
(b) rental right, lending right and certain rights related to copyright in the field of intellectual property;
(c) the term of protection of copyright and certain related rights.

CHAPTER II
COPYRIGHT

Article 3

Object of protection

1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

Article 4

Database authorship

1. The author of a database shall be the natural person or group of natural persons who created the base or, where the legislation of the Member States so permits, the legal person designated as the rightholder by that legislation.

2. Where collective works are recognized by the legislation of a Member State, the economic rights shall be owned by the person holding the copyright.

3. In respect of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

Article 5

Restricted acts

In respect of the expression of the database which is protectable by copyright, the author of a database shall have the exclusive right to carry out or to authorize:
(a) temporary or permanent reproduction by any means and in any form, in whole or in part;
(b) translation, adaptation, arrangement and any other alteration;
(c) any form of distribution to the public of the database or of copies thereof. The first sale in the Community of a copy of the database by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;
(d) any communication, display or performance to the public;
(e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

Article 6

Exceptions to restricted acts

1. The performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 5 which is necessary for the purposes of access to the contents of the databases and normal use of the contents by the lawful user shall not require the authorization of the author of the database. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part.

2. Member States shall have the option of providing for limitations on the rights set out in Article 5 in the following cases:
(a) in the case of reproduction for private purposes of a non-electronic database;
(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
(c) where there is use for the purposes of public security of for the purposes of an administrative or judicial procedure;
(d) where other exceptions to copyright which are traditionally authorized under national law are involved, without prejudice to points (a), (b) and (c).

3. In accordance with the Berne Convention for the protection of Literary and Artistic Works, this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with normal exploitation of the database.

CHAPTER III
SUI GENERIS RIGHT

Article 7

Object of protection

1. Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

2. For the purposes of this Chapter:
(a) 'extraction` shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;
(b) 're-utilization` shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;
Public lending is not an act of extraction or re-utilization.

3. The right referred to in paragraph 1 may be transferred, assigned or granted under contractual licence.

4. The right provided for in paragraph 1 shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right provided for in paragraph 1 shall be without prejudice to rights existing in respect of their contents.

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

Article 8

Rights and obligations of lawful users

1. The maker of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or re-utilize only part of the database, this paragraph shall apply only to that part.

2. A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

3. A lawful user of a database which is made available to the public in any manner may not cause prejudice to the holder of a copyright or related right in respect of the works or subject matter contained in the database.

Article 9

Exceptions to the *sui generis* right

Member States may stipulate that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:
(a) in the case of extraction for private purposes of the contents of a non-electronic database;
(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
(c) in the case of extraction and/or re-utilization for the purposes of public security or an administrative or judicial procedure.

Article 10

Term of protection

1. The right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion.

2. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public.

3. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

Article 11

Beneficiaries of protection under the *sui generis* right

1. The right provided for in Article 7 shall apply to database whose makers or rightholders are nationals of a Member State or who have their habitual residence in the territory of the Community.

2. Paragraph 1 shall also apply to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community; however, where such a company or firm has only its registered office in the territory of the Community, its operations must be genuinely linked on an ongoing basis with the economy of a Member State.

3. Agreements extending the right provided for in Article 7 to databases made in third countries and falling outside the provisions of paragraphs 1 and 2 shall be concluded by the Council acting on a proposal from the Commission. The term of any protection extended to databases by virtue of that procedure shall not exceed that available pursuant to Article 10.

CHAPTER IV
COMMON PROVISIONS

Article 12

Remedies

Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.

Article 13

Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, and the law of contract.

Article 14

Application over time

1. Protection pursuant to this Directive as regards copyright shall also be available in

respect of databases created prior to the date referred to Article 16(1) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.

2. Notwithstanding paragraph 1, where a database protected under copyright arrangements in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 3(1), this Directive shall not result in any curtailing in that Member State of the remaining term of protection afforded under those arrangements.

3. Protection pursuant to the provisions of this Directive as regards the right provided for in Article 7 shall also be available in respect of databases the making of which was completed not more than fifteen years prior to the date referred to in Article 16(1) and which on that date fulfil the requirements laid down in Article 7.

4. The protection provided for in paragraphs 1 and 3 shall be without prejudice to any acts concluded and rights acquired before the date referred to in those paragraphs.

5. In the case of a database the making of which was completed not more than fifteen years prior to the date referred to in Article 16(1), the term of protection by the right provided for in Article 7 shall expire fifteen years from the first of January following that date.

Article 15

Binding nature of certain provisions

Any contractual provision contrary to Articles 6(1) and 8 shall be null and void.

Article 16

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1998.
When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

3. Not later than at the end of the third year after the date referred to in paragraph 1, and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, in which, inter alia, on the basis of specific information supplied by the

Member States, it shall examine in particular the application of the *sui generis* right, including Articles 8 and 9, and shall verify especially whether the application of this right has led to abuse of a dominant position or other interference with free competition which would justify appropriate measures being taken, including the establishment of non-voluntary licensing arrangements. Where necessary, it shall submit proposals for adjustment of this Directive in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.

11 Counterfeit and Pirated Goods

Commission Regulation EC/1367/95 of 16 June 1995 laying down provisions for the implementation of Council Regulation EC/3295/94 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods

The Commission of the European Communities,
Having regard to the Treaty establishing the European Community,
Having regard to Council Regulation EC/3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods, and in particular Articles 12, 13 and 14 thereof,
Whereas Regulation EC/3295/94 introduced common rules with a view to prohibiting the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods and dealing effectively with the illegal marketing of such goods without impeding the freedom of legitimate trade;
Whereas the nature of the proof of ownership of intellectual property required by the second indent of the first subparagraph of Article 3(2) of Regulation EC/3295/94 should be established;
Whereas Article 14 of Regulation EC/3295/94 provides that Member States are to communicate to the Commission all relevant information for applying that Regulation and that the Commission isto communicate that information to the other Member States; whereas the procedure for exchanging that information should be laid down;
Whereas Commission Regulation EEC/3077/87 should be repealed;
Whereas the measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,
has adopted this regulation:

Article 1

For the purposes of Article 1(2)(c) of Regulation EC/3295/94, hereinafter referred to as 'the basic Regulation` the holder of a right or any other person authorized to use the right may be represented by a natural or legal person; such a person includes a collecting society which has as its sole or principal purpose the management or administration of copyrights or neighbouring rights.

Article 2

The proof that the applicant holds one of the rights referred to in points (a) and (b) of Article 1(2) of the basic Regulation, which must be submitted when applying for action in accordance with the second indent of the first subparagraph of Article 3(2) of that Regulation, shall be as follows:
(a) where the holder of the right applies himself:
- in the case of a right that is registered or for which an application has been lodged (trademark or design right): proof of registration with the relevant office or lodging of the

application,
- in the case of a copyright, neighbouring rights or design right that is unregistered or for which an application has not been lodged: any proof of authorship or of his status as original holder;
(b) where the application is made by any other person authorized to use one of the rights referred to in points (a) and (b) of Article 1(2) of the basic Regulation in addition to the proof required under (a) hereof: the document by virtue of which the person is authorized to use the right in question;
(c) where a representative of the holder or of any other person authorized to use one of the rights referred to in points (a) and (b) of Article 1(2) of the basic Regulation applies: in addition to the proof required under (a) and (b) hereof, proof of authorization to act.

Article 3

The pertinent information referred to in the second subparagraph of Article 3(2) of the basic Regulation shall include particulars of the goods, notably their value and their packaging, plus any information that could help distinguish them from goods for which there is a protected right. under the terms of the second subparagraph of Article 3(2), this information should be as detailed as possible to enable the customs authorities, using risk analysis, to identify suspect consignments accurately and without excessive effort.

Article 4

If an application is lodged in accordance with Article 4 of the basic Regulation before expiry of the time-limit of three days, the time-limits referred to in Article 7 of the Regulation shall be counted from the day of receipt of the request for action.
If the customs authority suspends release of the goods or detains them in accordance with Article 4 of the basic Regulation, it shall forthwith inform the declarant.

Article 5

1. Each Member State shall, at the earliest opportunity, send the Commission details of:
(a) the laws, regulations or administrative provisions which it adopts in implementation of this Regulation. It shall likewise inform the Commission of any provisions of its national law which preclude informing the holder as provided for in the second subparagraph of Article 6(1) and in Article 8(3) of the basic Regulation;
(b) the competent customs department responsible for receiving and handling the holder's written application, referred to in Article 3(8) of the basic Regulation.

2. To enable the Commission to monitor the effective application of the procedure laid down by the basic Regulation and draw up, in due course, the report referred to in Article 15 thereof, each Member State shall send the Commission:
(a) at the end of each calendar year, a list of all the written applications under Article 3 (1) of the basic Regulation, together with the name and address of the holder, a brief description of the goods and, where relevant, the trademark, and the action taken in response to the application;

(b) at the end of each quarter, a list of specific cases in which goods have been detained or their release suspended. The information provided on each case must include:
- the name and address of the holder of the right and a brief description of the goods and, where relevant, the trademark, and - the customs situation, country of consignment or destination, description, quantity and declared value of the goods the release of which has been suspended or which have been detained, and the date of such suspension or detention.

3. The Commission shall, in an appropriate manner, communciate to all Member States such information as it receives pursuant to this Article. Details of cases provided for in point (b) of paragraph 2 shall be sent quarterly to the Member States by the Commission.

4. Details communicated pursuant to paragraphs 1, 2 and 3 may be used only for the purposes established by the basic Regulation.

Article 6

Regulation EEC/3077/87 is hereby repealed with effect from 1 July 1995.

Article 7

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities. It shall apply from 1 July 1995.