



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.01.1996
COM(96) 2 final - COD 393

OPINION OF THE COMMISSION
pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
on the legal protection of databases

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 189 a (2) of the EC Treaty

EXPLANATORY MEMORANDUM

By virtue of the entry into force of the Treaty on European Union on 1 November 1993, this proposal for a Directive is subject to the codecision procedure (Article 189b of the EC Treaty).

Article 189b(2)(d) provides for the Commission to deliver an opinion on the second reading amendments proposed by Parliament.

Below the Commission sets out its opinion on the 11 amendments proposed by Parliament. Pursuant to Article 189a(2) of the Treaty, it encloses an amended proposal incorporating the Parliament amendments it accepted.

1. BACKGROUND

- (a) On 13 May 1992 the Commission presented to the Council a proposal for a Directive (COM(92) 24 final - SYN 393).
- (b) On 24 November 1992 the Economic and Social Committee delivered a favourable opinion.
- (c) On 23 June 1993 Parliament adopted a resolution endorsing the Commission proposal (first reading), subject to 37 amendments.
- (d) On 4 October 1993 the Commission adopted an amended proposal for a Directive pursuant to Article 149(3) of the EEC Treaty (COM(93) 464 final) which incorporated 32 of these amendments in full or in part.
- (e) On 10 July 1995 the Council adopted a common position.
- (f) On 14 September 1995 the Commission accepted this common position and transmitted its opinion to Parliament (SEC(95) 1430 final).
- (g) During the second reading debate on 14 December 1995 Parliament discussed 11 amendments to the common position but had to vote on only 8, the remaining 3 being purely linguistic.

2. PURPOSE OF THE DIRECTIVE

The proposal for a Directive on the legal protection of databases has two main objectives:

- to harmonize copyright provisions applicable to the structure of databases in whatever form, on-line and off-line (CD-ROM, CD-i);
- to introduce a new economic right, a *sui generis* right protecting the substantial investments associated with the production of databases.

COMMISSION OPINION ON PARLIAMENT'S AMENDMENTS

After examining the amendments put forward by Parliament (second reading), the Commission can support all of them.

Three amendments out of 11, designed to ensure that certain language versions tallied more closely, were not put to the vote (Nos 4, 5 and 7).

The amendments voted through by Parliament are divided into two categories:

(a) amendments altering the wording of certain recitals:

- (i) amendment No 9 (22nd recital);
- (ii) amendment No 11 (49th recital);
- (iii) amendment No 1 (50th recital);
- (iv) amendment No 2 (52nd recital).

The amendments provide additional clarification for interpretation of the provisions concerned but do not alter the substance of the respective articles in any way.

(b) amendments altering the wording of certain articles:

- (i) Amendment No 3 (Article 6(2)). This amendment concerns exceptions to copyright and incorporates an obligation to indicate the source where there is use for the purposes of teaching or scientific research, in compliance with the Berne Convention.
- (ii) Amendment No 6 (Article 7(5)). This amendment concerns provisions on acts incompatible with the normal exploitation of databases. The initial wording has been slightly altered and improved.
- (iii) Amendment No 8 (Article 9). This amendment slightly alters the wording of provisions concerning exceptions to the *sui generis* right and does not affect the substance thereof in any way.
- (iv) Amendment No 10 (Article 11(1)). This amendment, concerning the rules determining who is covered by the *sui generis* right, substitutes the term "rightholders" for "successors in title".

CONCLUSION

In conclusion, the Commission considers that Parliament's proposed amendments to the common position improve the wording of the text and clarify certain points and that they are fully compatible with the objectives of the proposal for a Directive.

The amended proposal incorporates all of these amendments.

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the legal protection of databases

*(presented by the Commission pursuant to
Article 189a(2) of the EC Treaty)*

EXPLANATORY MEMORANDUM

By virtue of the entry into force of the Treaty on European Union on 1 November 1993, this proposal for a Directive is subject to the codecision procedure (Article 189b of the EC Treaty).

Article 189b(2)(d) of the EC Treaty provides for the Commission to deliver an opinion on the amendments proposed by Parliament to the Council common position. The Commission has accepted Parliament's amendments for the reasons set out in point 1 of the enclosed opinion.

The Commission hereby presents an amended proposal pursuant to Article 189a(2)(d) of the EC Treaty incorporating those of Parliament's amendments to the Council common position which it accepted.

Council common position

Parliament's amendments

(Amendment 9)
Recital 22

(22) Whereas electronic databases within the meaning of this Directive also include devices such as CD-ROM and CD-i;

(22) Whereas electronic databases within the meaning of this Directive may also include devices such as CD-ROM and CD-i;

(Amendment 11)
Recital 49

(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 his successor in title may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, such 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 services contained in the database;

(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, such 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 services contained in the database;

(Amendment 1)
Recital 50

(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 there is extraction and/or re-utilization for the purposes of public security or the proper performance 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;

(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;

(Amendment 2)
Recital 52

(52) Whereas those Member States which already have specific national legislation providing for a right which is similar to the sui generis right provided for in this Directive may retain the exceptions to that right traditionally permitted by that legislation;

(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 that legislation;

(Amendment 3)
Article 6(2) (b) to (d)

- (b) where there is use for the sole purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose;
- (c) where there is use for the purposes of public security or for the purposes of the proper performance of an administrative and judicial procedure;
- (d) where other exceptions to copyright which are traditionally permitted by the Member State concerned are involved, without prejudice to points (a), (b) and (c).

- (b) where there is use for the sole 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) where there is use for the purposes of public security or for the purposes of an administrative and 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).

(Amendment 6)
Article 7(5)

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

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database entailing acts inconsistent with normal exploitation of that database or causing unjustifiable damage to the legitimate interests of the maker of the database shall not be permitted.

(Amendment 8)
Article 9

Member States shall have the option to lay down 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 the proper performance of an administrative or judicial procedure.

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.

(Amendment 10)
Article 11(1)

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

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

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