



Council of the
European Union

Brussels, 9 February 2017
(OR. en)

10121/96
ADD 1 DCL 1

PI 52
CULT 82

DECLASSIFICATION

of document: 10121/96 CONFIDENTIEL

dated: 8 October 1996

new status: Public

Subject: **Preparation of the WIPO Diplomatic Conference on copyright and
neighbouring rights
- Negotiating mandates**

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

10121/96

ADD 1

CONFIDENTIEL

PI 52

CULT 82

ADDENDUM TO THE REPORT

from: Presidency

to: Permanent Representatives Committee (Part 1)

No. Cion prop.: 9425/96 PI 45 CULTURE 78 CONFIDENTIEL

Subject: **Preparation of the WIPO Diplomatic Conference on copyright and neighbouring rights**
- Negotiating mandates

Following discussions in the Permanent Representatives Committee (Part 1) on 2 October 1996, the Presidency proposes that Annexes II and III to 10121/96 be replaced by Annexes I, II and III attached hereto.

Draft Council decision authorizing the Commission to open negotiations on the participation of the Community in the Diplomatic Conference to be held in Geneva from 2 to 20 December 1996 under the auspices of the World Intellectual Property Organization and to draw up a treaty on certain questions concerning the protection of literary and artistic works

The Council decides that in the course of the preparatory work and of the Diplomatic Conference to be held under the auspices of WIPO in Geneva from 2 to 20 December 1996 with a view to drawing up a treaty on certain questions concerning the protection of literary and artistic works,⁽¹⁾ the Commission is authorized to negotiate, in consultation with the special committee appointed by the Council to assist it and in accordance with the negotiating directives appended hereto, in matters coming within the scope of Community competence as indicated by the provisions of the directives⁽²⁾ and the right of the Community to accede to the future Treaty. The Commission will ensure that the views of the Member States will be duly taken into consideration during the negotiations.

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- (1) The negotiations include the *sui generis* protection of databases, which does not come within copyright and related rights and which should be covered by a separate instrument. This is without prejudice to the decision on the instrument which will finally be selected as the vehicle for the provisions on this topic.
- (2) Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission and Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights, and Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases.

Negotiating directives

1. **Participation of the Community in the future treaty**

The negotiations will be directed to securing the incorporation in the treaty on certain questions concerning the protection of literary and artistic works envisaged by WIPO of provisions enabling the Community to become a contracting party to the treaty and, in order to exercise its voting right in matters coming within the scope of Community competence, to have a number of votes equal to the number of Member States of the Community which are parties to the treaty.

2. **Content of the future treaty**

The Commission will conduct negotiations, in consultation with the special committee appointed by the Council to assist it, to ensure that the future provisions conform with Council Directive 91/250/EEC, 92/100/EEC, 93/83/EEC, 93/98/EEC and 96/9/EC and with the commitments entered into by the Community and the Member States within the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

3. **Adaptation**

These negotiating directives may be adapted in the light of developments in the negotiations.

Draft Council decision authorizing the Commission to open negotiations on the participation of the Community in the Diplomatic Conference to be held in Geneva from 2 to 20 December 1996 under the auspices of the World Intellectual Property Organization and to draw up a treaty for the protection of the rights of performers and producers of phonograms

The Council decides that in the course of the preparatory work and the Diplomatic Conference to be held under the auspices of WIPO in Geneva from 2 to 20 December 1996 with a view to drawing up a treaty for the protection of the rights of performers and producers of phonograms, the Commission is authorized to negotiate, in consultation with the special committee appointed by the Council to assist it, and in accordance with the negotiating directives appended hereto, in matters coming within the scope of Community competence as indicated by the provisions of the directives⁽³⁾ and the right of the Community to accede to the future treaty. The Commission will ensure that the views of the Member States will be duly taken into consideration during the negotiations.

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- (3) Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission and Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights.

Negotiating directives

1. **Participation of the Community in the future treaty**

The negotiations will be directed to securing the incorporation in the treaty for the protection of the rights of performers and producers of phonograms envisaged by the WIPO of provisions enabling the Community to become a contracting party to the treaty and, in order to exercise its voting right in matters coming within the scope of Community competence, to have a number of votes equal to the number of Member States of the Community which are parties to the treaty.

2. **Content of the future treaty**

The Commission will conduct negotiations, in consultation with the special committee appointed by the Council to assist it, to ensure that the future provisions conform with Council Directive 92/100/EEC, 93/83/EEC and 93/98/EEC and with the commitments entered into by the Community and the Member States within the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

3. **Adaptation**

These negotiating directives may be adapted in the light of developments in the negotiations.

Statement by the Council, the Commission and the Member States for the Council minutes

In accordance with the obligation of cooperation between the Member States and the Community institutions laid down, inter alia, in Opinion 1/94 of the Court of Justice, the Council, the Commission and the Member States agree that, since the subject-matter of the proposed treaties falls in part within the competence of the Community and in part within that of the Member States, the Commission and the Member States will coordinate through meetings in the Council bodies, or organized on the spot if necessary, concerning the position to be adopted in the Diplomatic Conference.

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