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WORKING DOCUMENT

from: General Secretariat of the Council
to: Working Party on Intellectual Property (Copyright)

No. prev. doc. : 6634/08 PI 12 CULT 10 CODEC 205
No. Cion prop. : 12217/08 PI 35 CULT 82 CODEC 1023

Subject : Proposal for a European Parliament and Council Directive amending
Directive 2006/116/EC of the European Parliament and of the Council on the term
of protection of copyright and related rights
- Drafting suggestion by the **DELETED** delegation

Delegations will find in Annex a drafting suggestion regarding the above proposal submitted by the **DELETED** delegation.

Calculation of the Term for Combinations of Works

On the basis of the revised compromise proposal 5877/09 **DELETED** would like to make the following proposal:

1. Delete Article 1 (5) and (6).
2. Include the following new Article 1 (5):

- "(5) Article 1 (2) reads as follows:

"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. For the purposes of this Directive a work of joint authorship is a work which consists of creative contributions which cannot be separately exploited. The combination of works of different kinds - such as of a musical work with a work of language or a cinematographic work - shall not in itself constitute joint authorship."

Explanation

At least in some Member States the proposal made by the Commission would lead to legal uncertainty and additional administrative burden. It concentrates on one possible combination of certain work categories only. However, the problem of works of joint authorship is of a more general nature. We think that there should be a rule applicable to all possible combinations of different creative contributions.

Furthermore, the approach chosen by the Commission cannot give a practice-oriented answer to the question which requirements are to be met to constitute a “musical composition with words” in the meaning of the directive. The additional wording found during the negotiations in the Council Working Group suggests that there has to be an intention to create the combination. However, such an intention could be hardly perceived from the combination as such. Thus, the proof or exclusion that a combination of a musical work with a work of literature meets the requirements of the directive would cause practical difficulties.

This would not apply to the criteria of indivisibility or impossibility of separate exploitation of the creative contributions. To avoid difficulties in practice and to justify the deviation from the general rule for the calculation of the term, the collaboration between the authors concerned has to lead to a manifest result.

Thus, **DELETED** suggests the deletion of the provisions on the harmonization of the term of musical compositions with words and the adoption of a narrow approach to joint authorship based on the possibility of separate exploitation of the combined creative contributions.
