



COMMISSION OF THE EUROPEAN COMMUNITIES

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**Proposal for a decision of the Council authorising the signature, on behalf of the
European Community, of the WIPO Copyright Treaty and the WIPO
Performances and Phonograms Treaty**

(presented by the Commission)

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Performances and Phonograms Treaty**

On 20 December 1996 delegations participating in the WIPO Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions in Geneva adopted the texts of two treaties in the field of intellectual property. The first treaty, the WIPO Copyright Treaty (CT), covers copyright; the second, the WIPO Performances and Phonograms Treaty (PPT), deals with neighbouring rights.

The European Community, represented by the Commission, actively participated in the preparatory work, on the basis of the directives for negotiation decided by the Council in 1991 and 1993. A new negotiating mandate was decided by the Council in November 1996 for the Diplomatic Conference, in which the Community participated as a special delegation.

The Treaties were opened for signature the same day, and will remain open until 31 December 1997. They will come into force three months after 30 instruments of ratification or accession by Member States have been deposited with WIPO.

Content of the Treaties

The Copyright Treaty completes the Berne Convention for the protection of literary and artistic works, which was last revised in 1971, and adapts it to the digital environment. Authors will be able to benefit from legal protection for the distribution, rental, communication to the public and making available to the public (over networks?) of their works. Explicit protection is provided for computer programs and databases. In addition the Treaty contains provisions on technological measures (such as on the contravention of anti-copy devices) and on rights management information as well as provisions on the enforcement of rights.

As far as the Performances and Phonograms Treaty is concerned, this latter represents an important step forward for the protection of performers and phonogram producers. Under the new Treaty, these right holders will be able to benefit from an exclusive right of reproduction, distribution, rental, and making available to the public (over networks?) of their performances and phonograms. Moreover performers and phonogram producers will also benefit from a right of remuneration for broadcasting and all other forms of communication to the public of phonograms published for commercial purposes. Just as in the Copyright Treaty, this Treaty sets out provisions on technological measures, on rights management systems and on the enforcement of rights.

These treaties, together with the legislative actions recently proposed by the Commission in its Communication on copyright and neighbouring rights in the Information Society, will contribute to the establishment of a high level of protection

for works, while permitting access to the public to the contents which will be delivered through electronic networks. In this respect all interested parties were satisfied with the result of the negotiations, particularly in relation to the ability of the provisions to stand up to the challenges of new technology (ies), and they are now hoping for rapid adoption of the Treaties by the Community and its Member States.

The possibility of the Community becoming party to the Treaties

According to Article 17(3) of the Copyright Treaty and Article 26(3) of the Performers and Phonograms Treaty, the European Community is able to become a contracting party.

Politically speaking, the conclusion of these Treaties by the Council would demonstrate the interest which the Community has in intellectual property rights. By contributing to the creation of an environment in support of the Treaties, the Community would pave the way for wide participation, in accordance with the wishes and economic interests of Community industry and creative artists in the EU.

Moreover this would have an extremely positive effect on the likelihood of the Treaties entering into force quickly. A certain number of delegations, notably the PECO's, have already let it be understood that their accession to the Treaties depends on that of the European Community and its Member States. This means that any delay in approval of the Treaty by the Community and its Member States will lead to delay on the part of these other delegations.

Since the Community and its Member States have accepted the content of the Treaties by consensus, it would seem to be in their interest for them to give their approval as soon as possible. In this respect 7 EU Member States (Belgium, Germany, Greece, Spain, Italy, Luxembourg, UK) have already signed the Treaties. The Community has also signed the Treaties, it being understood that this signature was to be considered provisional until internal procedures within the Council and the EU had been completed.

It is therefore appropriate to propose a decision of the Council authorising signature under reserve of ratification, so allowing a formal validity to be attributed to the provisional signature. It is also appropriate to propose a recommendation of the Council addressed to Member States with the aim of having the Treaty signed by all Member States before the closing date of 31 December 1997.

Signature by Member States will demonstrate anew the will to proceed with follow-up action, and as far as national procedures are concerned, with the ratification of the Treaties. At the same time it will have the advantage of giving a strong political signal to third countries about the willingness of the Community and its Member States to approve the Treaties, without having to wait for the deposit of instruments of ratification.

Ratification of the Treaties will have to take place at a future date to be determined, taking into account the need to coordinate action between the Community and its Member States.

Conclusion

In view of the considerations set out above, it is proposed that the Council:

- (1) authorises the Commission to formally confirm signature, under reserve of ratification, of the WIPO Copyright Treaty, for the relevant areas of Community competence.
- (2) authorises the Commission to formally confirm signature under reserve of ratification, of the WIPO Performances and Phonograms Treaty, for the relevant areas of Community competence. These decisions should take the form of an entry in the Council Minutes.
- (3) recommends to Member States that those who have not yet done so proceed immediately to sign the Treaties, and in any case do so before the closing date of 31 December 1997, under reserve of ratification.

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