European Economic and Social Committee

INT/320
Intellectual property – lending right

Brussels, 26 October 2006

OPINION

of the
European Economic and Social Committee
on the
Proposal for a Directive of the European Parliament and of the Council on the term of protection of copyright and certain related rights (codified version)
COM(2006) 219 final – 2006/0071 (COD)

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On 6 June 2006, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

> *Proposal for a Directive of the European Parliament and of the Council on the term of copyright and certain related rights (codified version)*
> COM(2006) 219 final - 2006/0071 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 September 2006. The rapporteur was Mr Retureau.

Due to the renewal of the Committee, the plenary assembly decided to discuss this opinion at the October plenary session and to appoint Mr Retureau as rapporteur-general in accordance with Rule 20 of the Rules of Procedure.

At its 430th plenary session, held on 26 October 2006, the European Economic and Social Committee adopted the following opinion by 104 votes, with 1 abstention.

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1. The Commission's proposal

1.1 The proposal provides for a codification; despite some minor formal adjustments, the acts being codified do not make any change to the law as it stands.

1.2 In a "people's Europe", it is important that Community law should be both understandable and transparent. The European Parliament, Council and Commission have therefore highlighted the need to codify legislative acts that have been frequently amended, and have agreed by inter-institutional agreement that an accelerated procedure may be used. Codification may not involve any substantive changes to the acts in question.

2. General comments

2.1 The EESC notes that the Commission proposal strictly adheres to the purpose of the accelerated procedure with regard to codification.

2.2 Nevertheless it may be asked whether having the legislation on copyright and related rights in a fixed form is appropriate; the usefulness of codification is only obvious when the law in the relevant area is no longer expected to change radically.

2.3 The term of protection of copyright, originally ten years in the nineteenth century, is now seventy years after the death of the author; there is nothing to say that terms of protection will not increase still further in the future as a result of pressures from copyright holders and holders of related rights.

2.4 As it stands today the situation is heavily weighted in favour of the heirs of deceased authors (about three generations) and the holders of related rights. These terms have become disproportionate in relation to the needs of the public and the creators themselves and they should be revised. If, as seems likely, a WTO member, such as the United States, should decide to extend the original term of protection to 90 years, or even 100 years ("Disney amendment"), what will happen in Europe? Should we then revise trade agreements on intellectual property?

2.5 A very large number of works – literary, philosophical and others – are only published once, in their original language, and will not be published again during the lifetime of the author, or even of that of his/her heirs. Although these works may not have been best sellers in their time, a good number of them do nevertheless have some value, but they quickly become inaccessible to potential readers. The indefinite extension of rights would, in practice, benefit only a relatively small number of creators, whilst the protection system, because of the length of the term of protection, means that a far larger number of works become inaccessible to readers and students once the first edition is out of print.

2.6 Thus it may be asked whether having the legislation on copyright and related rights in a fixed form is appropriate; the usefulness of codification is only obvious when the law in this area is no longer expected to change radically.

2.7 Careful consideration needs to be given, in the digital era, to the diffusion of works and the public's right to be able to access creative works and universal culture. Thus the EESC feels that codification is premature, and it would have preferred a simple consolidation and a re-examination of the conditions and term of protection for copyright and related rights consistent with the Lisbon Strategy.

3. Specific comments

3.1 In addition, the Committee would like to see the introduction in Community law of adequate recognition and protection of licenses such as the LGPL (Lesser General Public License for technical documentation) or the Creative Commons License with regard to books and artistic creation; these licenses offer greater freedom to users and the GPL, for example, governs a

very large number of the software packages used in computer servers (Internet routers, administration, businesses).

3.2 These more permissive licenses help to promote the dissemination and appropriation of works by users and recipients, and are fully in line with the objectives of the rapid dissemination of knowledge and technology, which should be an essential element of the Lisbon Strategy.

3.3 The EESC would therefore ask the Commission to re-open the debate on this matter, which seems likely to become sterile with codification, and consider initiatives for bringing works within the reach of a larger number of people, through recognition of free licenses and a rebalancing of rights between holders and users in the information society.

Brussels, 26 October 2006.

The President of the European Economic and Social Committee	The Secretary-General of the European Economic and Social Committee
Dimitris Dimitriadis	Patrick Venturini