



European Economic and Social Committee

INT/319
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 rental right and lending right and on certain rights related to copyright in the field of
intellectual property (codified version)
COM(2006) 226 final – 2006/0073 (COD)

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 rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version)
COM(2006) 226 final - 2006/0073 (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.

In view of the renewal of the Committee's term of office, the plenary assembly decided to vote on this opinion at its October plenary session and appointed Mr Retureau as rapporteur-general under 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 95 votes to none, with four abstentions.

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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 Given that Community law is still evolving (for example, the pending proposals on "criminal measures") and differences between Member States in terms of transposition into national law, it is clear that the balance between, on the one hand, the rights of holders of copyright and, in particular, holders of related rights and, on the other hand, the rights of users of protected works (members of the public, the scientific and university community, etc.; i.e. "consumers of cultural services") are not being respected, since in several Member States the rights of users are being increasingly curtailed. For instance, in many cases, the right to private copying is challenged by physical or software protection using DRM (*digital rights management*) technologies; reverse engineering as a means to achieve interoperability of software is being contested for the same reasons.
- 2.4 Exacerbating these adverse developments for "consumers" is the introduction of stiffer penalties for circumvention of DRM in order to make private copies or backup copies.
- 2.5 The EESC feels that the codification measures in the field of copyright and related rights are premature, since Community law needs to be rebalanced, in particular to take into account the Lisbon Strategy. Moreover, a large number of key issues are left to subsidiarity, and differences in transposition into national legislation could constitute an obstacle to the free movement of works and "cultural services".
- 2.6 Thus, at the present stage, a simple technical consolidation by the Office for Publications would have made it possible to clarify the existing legal situation at the time of consolidation; in future, this technique could be applied whenever there is an important amendment to the applicable law, without appearing to constrain future changes to the law, as the choice of codification could presage.
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 General Public License (GPL) or the Creative Commons License with regard to books and artistic creation; these licenses offer greater freedom to users and 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 therefore asks 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 so as to strengthen competitiveness and innovation in the European Community.

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
