

European Parliament Approves Legislation for Copyright in Cyberspace

STRASBOURG, France—European Parliament deputies voted February 14, 2001 to approve European Union legislation on copyright in cyberspace, amid conflicting claims as to whether the rules would allow the United States on-line music-sharing service Napster to operate legally in Europe. [For a report on the latest developments in the long-running *Napster* case, see p.19 of this issue.]

Deputies hailed prospects of early enactment of the draft Directive on Aspects of Copyright and Related Rights in the Information Society, adding that adoption would clear the way for wider ratifications of the 1996 World Intellectual Property Organization (WIPO) treaties.

On the Napster-related controversy, Italian deputy Enrico Boselli, who brokered the compromise approved by the Parliament, insisted: “As I see it, only unauthorized use music files will be considered illegal in Europe. This is pretty much in line with the *Napster* ruling... We have to remember that in Europe there are many digital content service providers who license music from the rights owners and promote young grassroots creativity.”

Claims from the audiovisual industry that concessions in the legislation for private copying constitute a loophole for Napster-style operations were rejected by groups representing consumers, libraries, and disability groups concerned that Braille copies for the blind might be outlawed.

“The Directive will allow private copying, such as recording a TV programme to watch with one’s family at a latter date,” said Petra Wikstrom, speaking for EFPICC, an alliance of E.U. consumer and user groups. “This is very different to piracy and illegal distribution of copies which clearly fall outside the scope of what the E.U. legislation will allow.”

Machiel van der Velde, speaking for BEUC which represents Europe’s biggest consumer organizations, added: “We were concerned that certain groups were trying to hijack the debate by using the *Napster* case in order to erode the legitimate interests of E.U. citizens.”

Boselli, who was appointed by the Parliament’s Legal Affairs Committee to steer the draft legislation through its parliamentary stages, opined that European consumers “can be trusted to respect the rules we are setting today and that the European cultural industry will flourish upon the opportunities offered by Information Society technologies.”

Catching Up With the U.S

More than two years after approval of the United States Digital Millennium Copyright Act, Europe “finally has a legal basis to protect IP in the digital environment,” he said.

On the WIPO treaties, Boselli said that although the Parliament had already pronounced in favour of ratification, the procedure had been on hold pending adoption of the Directive.

Boselli recalled that the WIPO treaties have to be ratified by 30 signatories and that the European Union effectively represents 42 countries: the 15 full Member States, plus states such as Norway and Iceland linked to the E.U. through the European Economic Area and associated candidate states currently adopting E.U. legislation as a condition of their eventual accession.

As recently as late January 2001, the digital copyright draft looked prone to delay, with almost 200 suggested amendments under discussion. Ahead of the plenary vote the list of amendments was reduced to 45, most of which failed. Deputies voted instead in favour of nine consensual amendments negotiated by Boselli. The changes are acceptable to the executive European Commission.

In behind-the-scenes talks, ministers representing the 15 E.U. national governments have signalled that they too will accept the amendments.

Private Use Exemption

A much-debated clarification of the exemption for private copying will now refer to “reproductions on any medium made by a natural person for private use and for ends that are neither directly or indirectly commercial.”

Another amendment will reduce from 2 years to 18 months the period allowed to national governments to ensure that their domestic legislation complies with the Directive.

The Parliament’s vote will short-circuit legislative procedures, clearing the way for ministers to sign the draft into law without further formality. This will avoid complex “conciliation” procedures between the Parliament and the Council of Ministers which would have delayed enactment by at least six months.

A further welcome for the Parliament’s vote came from the European Telecommunications Network Operator’s Association (ETNO) representing 44 major E.U. telecoms operators.

ETNO had been concerned about the status of “cache” copies created within a network when material is transmitted across the Internet. The original draft Directive proposed an exemption, given that these copies do not represent lost sales for rightholders.

An amendment that would have cancelled that exemption was defeated in the Parliament’s vote.

“ETNO is pleased that the Parliament has avoided creating a legal basis for copyright levies on Internet services,” said ETNO Director Michael Bartholomew. “An unjustified increase in costs for European Internet users would have seriously

undermined E.U. plans to exploit development of the Information Society as an engine for growth and employment.”