$D_{mo}faco$	page
Preface Foreword	ix
Table of E.C. Treaties	xxi
Tables of E.C. Legislation	xxii
Directives	xxii
Resolutions	XX111
Commission Proposals and other Documents Table of National Legislation	XXIII
Table of International Treaties, Conventions and Agreements	xxviii
Section I: The Evolution of the Directive	
1. Background to the Proposal for a Council Directive	3
1. Initiatives by the Commission	3
2. The Green Paper of 1988	3
(a) Copyright Piracy	4
(b) Rental Rights	4
3. Follow-up and Hearing	5
4. The Proposal	6
2. Main Elements of the Proposal for a Council Directive	8
1. The Legal Basis	8
2. The Title of the Proposal	9
3. The Concept of Rental and Lending Rights	10
(a) Exclusive Rights	10
(b) Definitions of Rental and Lending	10
(c) The Rightholders	11
(d) Sharing of Payments	12
(e) Derogation from the Exclusive Lending Right	12
4. Chapter II on Related Rights	13
5. Chapter III on Duration	14
6. Common Provisions: Application in Time	15
3. Reactions and Legislative Process	16
1. The Reactions in Interested Circles	16
(a) General Reactions	16
(b) Reactions from Authors	16
(c) Reactions from Performers	16
(d) Reactions from Phonogram Producers	17
(e) Reactions from Broadcasting Organisations	17
(f) Reactions from Film Producers	18
(g) Reactions from the Users' Side	18

2. The Legislative Process	19
(a) The Economic and Social Committee	19
(b) The European Parliament	20
(c) The Commission's Amended Proposal	23
(d) The Council of Ministers	25
Table of Events	28
SECTION II: COMMENTARY ON THE ARTICLES OF THE	
DIRECTIVE	
ARTICLE 1. OBJECT OF HARMONIZATION	33
1. Article 1(1)	33
(a) Exclusive Nature of the Rental Right	33
(b) Exclusive Nature of the Lending Right	34
2. Recitals (12) to (14) and Article 1(2) and (3)	35
(a) Making Available for Use for a Limited Period of	
Time	36
(b) (Not) for Direct or Indirect Economic or Commercial	
Advantage	38
(c) "Electronic Rental or Lending"	41
(d) Establishments which are Accessible to the Public	42
3. Article 1(4)	43
ARTICLE 2. RIGHTHOLDERS AND SUBJECT MATTER OF RENTAL	
	15
AND LENDING RIGHT 1 Article 2(1) to (2)	45
1. Article 2(1) to (3)	45
(a) Rightholders	43 50
(b) Subject Matter	50 52
2. Article 2(4) 2. Project (10) and Article 2(5) (6) and (7)	53 51
3. Recital (19) and Article 2(5), (6) and (7)	54
(a) The Presumptions of Transfer in General	55
(b) Article 2(5)	3/
(c) Article 2(7)	60
(d) Article 2(6)	61
ARTICLE 3. RENTAL OF COMPUTER PROGRAMS	63
Article 3 (Rental Directive)	63
Council Directive 91/250/EEC of 14 May 1991, Recital 16	
and Article 4(c)	63
ARTICLE 4. UNWAIVABLE RIGHT TO EQUITABLE REMUNERATION	65
1. Recitals (15) to (17) and Article 4(1)	65
(a) The General Background	66
(b) Particular Issues	67
2. Article 4(2)	71
2. Article 4(2) 3. Recital (15) and Article 4(3) and (4)	71
(a) The Legislative Background	73
(b) Collecting Societies	73
INI OULICUIE DUCICUES	1)

1				
1	ON	TITT	TA TE	TC
			-	1 h
	OI.	TI	TIN	

(c)	"Representing Authors or Performers"	74
(d)	Entrusting the Administration of the Right	74
	Appropriate Ways to Implement Article 4(3) and (4)	74
ARTICLE 5. I	Derogation from the Exclusive Public Lending	
RIGHT		77
Recital (18) and Article 5	77
(a)	General	77
(b)	Particular Issues	79
CLIADTED II	of the Directive: Its Title, and the Scope of	
PROTECTION		84
IKOIECIK	JIN .	0 1
ARTICLE 6. I	FIXATION RIGHT	86
1. Artic	le 6(1)	86
2. Artic	le 6(2) and (3)	87
A 7 I	Dann on trouve Drover	0.0
	REPRODUCTION RIGHT	89
	7(1) and (2) Legislative Background	89
, ,	Rightholders and the Subject Matter Protected	90
	Reproduction	90
(0)	reproduction	70
ARTICLE 8. I	Broadcasting and Communication to the Public	92
Recital ((20)	92
1. Gene	ral Remarks on Article 8 and Recital (20)	92
	Legislative Background	92
	The Cable and Satellite Proposal	93
(c)	The Terms used and Other General Remarks	93
2. Artic		94
	Broadcasting by Wireless Means or by Wire (Cable)	94
	Live Performances	95
* *	Satellite Broadcasting	95
3. Artic		96
(a)	General	96
(b)	Phonogram published for Commercial Purposes and	0.6
	Its Reproduction	96
	Satellite and Cable Broadcasting	97
	Remuneration Right/Exclusive Right	97
(e)	Direct and Indirect Use for Broadcasting and Public	
/ C\	Circle Emitedale Decreases	97
(1)	Single Equitable Remuneration	98
***	The Sharing of the Remuneration	98
4. Artic	Broadcasting Organisations	98
(2)	DIOAGCASHIIE OTEAHISAHONS	77

(b)	Rebroadcasting	99
(c)	Communication to the Public	100
ARTICLE 9. I	DISTRIBUTION RIGHT	101
1. Articl	le 9(1) and (3)	101
(a)	Legislative Background	101
(b)	Objects	102
(c)	Rightholders and Protected Subject Matter; the	
	Exclusive Right	102
, ,	Distribution to the Public	103
	By Sale or Otherwise	103
2. Articl		104
	Legislative Background	104
, ,	Community Exhaustion	104
	International Exhaustion	105
3. Articl	le 9(4)	106
A D TT OT D 10	I TRATEONIC TO DICITE AND DECITAL (19).	
	Limitations to Rights, and Recital (19): on of Transfer	107
1. Artic		107
	Article 10(1)(a)	107
	Article 10(1)(a) Article 10(1)(b)	108
	Article 10(1)(b) Article 10(1)(c)	108
,	Article 10(1)(d) Article 10(1)(d)	109
. ,	Article 10(1)(d) Article 10(2)	109
\ /	Presumption of Transfer of Rights Addressed in	
	cital (19) (First Part)	109
	Legislative Background	109
	The Reference to Article 2(5)	110
, ,	Alternatives for Implementation	110
	Presumption of Transfer of Rights Addressed in	
	cital (19) (Second Part)	112
ARTICLE 11.	Duration of Authors' Rights	114
Article 1	. 1	114
		4 4 5
	DURATION OF RELATED RIGHTS	113
Article 1	2	115
Δ DTICI E 12	Application in Time	117
	ral Remarks	117
	The Legislative Background	117
	Protection for Existing Stock	118
, ,	Protection for Existing Contracts	118

0					
C	0	NTT	CE	NT	LC
			Г.		

*

2. Article 13(1)	119
(a) "Still Protected"	119
(b) "Meet(ing) the Criteria for Protection"	120
3. Article 13(2)	120
4. Article 13(3)	121
(a) The Scope of the Possible Exception	121
(b) Remuneration	123
5. Article 13(4) and (5)	123
(a) Article 13(4): Exception to Authorship Rule in	
Respect of Old Films	123
(b) Article 13(5): Transitional Period	124
(c) Ways of applying Article 13(4) and (5)	124
6. Article 13(6) and (7)	124
(a) The Scope of Article 13(6)	125
(b) The Scope of Article 13(7)	125
(c) The "Consent for Exploitation"	126
(d) The "New Rights"	126
	126
7. Article 13(8) and (9)	126
(a) The Scope of Article 13(8)	120
(b) The Scope of Article 13(9)	12/
ARTICLE 14. RELATION BETWEEN COPYRIGHT AND RELATED RIGHTS	130
Article 14. Relation between Copyright and Related Rights Article 14	130
Article 14	130
Approx p 15 Engra Droggerous	132
ARTICLE 15. FINAL PROVISIONS	132
Article 15	132
Further Issues Dealt with in the Context of the	
Legislative Procedure	133
1. Moral Rights	133
2. The Relation to Third Countries	133
SECTION III: THE POSITION IN THE MEMBER STATES	
1 Pri citiva	137
1. Belgium 1. The Present Local Situation	137
1. The Present Legal Situation (a) Pontal and Londing Dights	137
(a) Rental and Lending Rights (b) Programmient of Transfer and Harveineble	13/
(b) Presumptions of Transfer and Unwaivable	137
Remuneration Right	13/
(c) Rights of the Type Dealt With in Chapter II of the	120
Directive 2. The Desition Lindon the Directive	138
2. The Position Under the Directive	138
(a) Rental and Lending Rights	138
(b) Presumptions of Transfer and Unwaivable	120
Remuneration Right	139
(c) Performers', Producers' and Broadcasters' Rights in	120
the light of Chapter II of the Directive	139

2.	Denmark	140
	1. The Present Legal Situation	140
	(a) Rental and Lending Rights	140
	(b) Presumptions of Transfer and Unwaivable	
	Remuneration Right	140
	(c) Rights of the Type Dealt With in Chapter II of the	
	Directive	141
	2. The Position Under the Directive	142
	(a) Rental and Lending Rights	142
	(b) Presumptions of Transfer and Unwaivable	
	Remuneration Right	142
	(c) Performers', Producers' and Broadcasters' Rights in	
	the Light of Chapter II of the Directive	142
3.	France	144
	1. The Present Legal Situation	144
	(a) Rental and Lending Rights	144
	(b) Presumptions of Transfer and Unwaivable	
	Remuneration Right	144
	(c) Rights of the Type Dealt With in Chapter II of the	
	Directive	144
	2. The Position Under the Directive	145
	(a) Rental and Lending Rights	145
	(b) Presumptions of Transfer and Unwaivable	
	Remuneration Right	146
	(c) Performers' Rights in the Light of Chapter II of the	
	Directive	146
	(d) Producers' and Broadcasters' Rights in the Light of	
	Chapter II of the Directive	147
1	CEDATANIX	148
4.	GERMANY 1. The Dresent Legal Situation	148
	 The Present Legal Situation (a) Rental and Lending Rights 	148
	(b) Presumptions of Transfer and Unwaivable	170
	Remuneration Right	148
	(c) Rights of the Type Dealt With in Chapter II of the	170
	Directive	148
	2. The Position Under the Directive	150
	(a) Rental and Lending Rights	150
	(b) Transfer, Presumption of Transfer and Unwaivable	130
	Remuneration Right	150
	(c) Rights in the Light of Chapter II and Limitations on	100
	Performers' Rights	151
	1 CITOTHICIS TAIGHTS	
5.	Greece	153
	1. The Present Legal Situation	153
	2. The Position Under the Directive	153

1				
(AL.	TTT	TTA	CC
				1
	ON	IL		l O

6.	IRELAND		154
	1. The I	Present Legal Situation	154
	(a)	Rental and Lending Rights	154
	(b)	Author of a Film, Presumptions of Transfer and	
		Unwaivable Remuneration Right	154
	(c)	Rights of the Type Dealt With in Chapter II of the	
		Directive	154
	2. The I	Position Under the Directive	155
	(a)	Rental and Lending Rights	155
	(b)	Author of a Film, Presumptions of Transfer and	
		Unwaivable Remuneration Right	156
	(c)	Performers' Rights in the Light of Chapter II of the	
		Directive	156
	(d)	Producers' Rights in the Light of Chapter II of the	
		Directive	157
	(e)	Broadcasters' Rights in the Light of Chapter II of the	
		Directive	157
_	_		4.50
7.	ITALY	T 1 0.	158
		Present Legal Situation	158
		Rental and Lending Rights	158
	(b)	Author of a Film, Presumptions of Transfer and	1.50
	/ \	Unwaivable Remuneration Right	158
	(C)	Rights of the Type Dealt With in Chapter II of the	150
	2 771 1	Directive	158
		Position Under the Directive	159
	, ,	Rental and Lending Rights	159
	(D)	Author of a Film, Presumptions of Transfer and	150
	/ - \	Unwaivable Remuneration Right	159
	(C)	Performers' Rights in the Light of Chapter II of the	160
	(1)	Directive Dhonogen Droducore' Dichte in the Light of	100
	(a)	Phonogram Producers' Rights in the Light of	160
	(-)	Chapter II of the Directive	100
	(e)	Broadcasters' Rights in the Light of Chapter II of the Directive	160
	(f)	Film Producers' Rights in the Light of Chapter II of	100
	(1)	the Directive	161
		the Directive	101
8.	LUXEMBO	URG	162
		Present Legal Situation	162
		Rental and Lending Rights	162
	, ,	Author of a Film, Presumptions of Transfer and	
		Unwaivable Remuneration Right	162
	(c)	Rights of the Type Dealt With in Chapter II of the	
		Directive	162
	2. The 1	Position Under the Directive	163
	(a)	Rental and Lending Rights	163

	(b)	Author of a Film, Presumption of Transfer and	4
		Unwaivable Remuneration Right	163
	(c)	Performers' Rights in the Light of Chapter II of the	1 (1
	/ 1\	Directive Directive	164
	(a)	Phonogram Producers' Rights in the Light of	1/1
	/ \	Chapter II of the Directive	164
	(e)	Broadcasters' Rights in the Light of Chapter II of the	1 (5
	/ £\	Directive Eiles Desdesses' Dischasin the Light of Chanton II of	165
	(I)	Film Producers' Rights in the Light of Chapter II of	165
		the Directive	103
9 -	THE NET	HERLANDS	166
		Present Legal Situation	166
		Rental and Lending Rights	166
	A	Presumptions of Transfer and Unwaivable	
	(~)	Remuneration Right	166
	(c)	Rights of the Type Dealt With in Chapter II of the	
	(- /	Directive	167
	2. The I	Position Under the Directive	167
	(a)	Rental and Lending Rights	167
	, ,	Presumptions of Transfer and Unwaivable	
		Remuneration Right	168
	(c)	Rights in the Light of Chapter II of the Directive	169
10.	Portug	AL	170
	1. The I	Present Legal Situation	170
	(a)	Rental and Lending Rights	170
	(b)	Presumptions of Transfer and Unwaivable	
		Remuneration Right	170
	(c)	Rights of the Type Dealt With in Chapter II of the	
		Directive	170
	2. The I	Position Under the Directive	171
	, ,	Rental and Lending Rights	171
	(b)	Presumptions of Transfer and Unwaivable	
		Remuneration Right	171
	(c)	Performers' Rights in the Light of Chapter II of the	
		Directive	172
	(d)	Producers' Rights in the Light of Chapter II of the	
		Directive	172
	(e)	Broadcasters' Rights in the Light of Chapter II of the	
		Directive	173
11	CDATE		174
11.	SPAIN 1 Thal	Drocont I ogal Cituation	174 174
		Present Legal Situation Rental and Lending Rights	174 174
	, ,	Presumptions of Transfer and Unwaivable	1/4
	(D)	Remuneration Right	174
	(0)	Rights of the Type Dealt With in Chapter II of the	1/7
	(0)	Directive	174

	2. The Position Under the Directive	175
	(a) Rental and Lending Rights	175
	(b) Presumptions of Transfer and Unwaivable	
	Remuneration Right	175
	(c) Rights in the Light of Chapter II of the Directive	176
12	. United Kingdom	177
	1. The Present Legal Situation	177
	(a) Rental and Lending Rights	177
	(b) Author of Films, Presumptions of Transfer and	177
	Unwaivable Remuneration Right	177
	(c) Rights of the Type Dealt With in Chapter II of the Directive	178
	2. The Position Under the Directive	178
	(a) Rental and Lending Rights	178
	(b) Author of a Film, Presumptions of Transfer and	
	Unwaivable Remuneration Right	179
	(c) Performers' Rights in the Light of Chapter II of the	
	Directive	180
	(d) Producers' and Broadcasters' Rights in the Light of	100
	Chapter II of the Directive	180
	SECTION IV: THE POSITION IN	
	THE EFTA COUNTRIES	
IN	TRODUCTION	183
1.	Austria	184
	1. The Law in the Light of Chapter I of the Directive	184
	2. The Law in the Light of Chapter II of the Directive	185
2	Finland	186
	1. The Law in the Light of Chapter I of the Directive	186
	2. The Law in the Light of Chapter II of the Directive	186
2	Tort and	188
Э.	ICELAND 1. The Law in the Light of Chapter I of the Directive	188
	2. The Law in the Light of Chapter II of the Directive	188
	Z. The Baw in the Bigne of Chapter in the Bridge	
4.	Liechtenstein	190
	1. The Law in the Light of Chapter I of the Directive	190
	2. The Law in the Light of Chapter II of the Directive	190
5	Norway	191
	1. The Law in the Light of Chapter I of the Directive	191
	2. The Law in the Light of Chapter II of the Directive	191

6.	Sweden	193
	1. The Law in the Light of Chapter I of the Directive	193
	2. The Law in the Light of Chapter II of the Directive	194
7.	Switzerland	195
	1. The Law in the Light of Chapter I of the Directive	195
	2. The Law in the Light of Chapter II of the Directive	196
	SECTION V: THE POSITION AT	
	International Level	
1.	The Directive as Compared to International Conventions	
	1. General	199
	2. The Berne Convention	199
	(a) Membership	199
	(b) The Rental Directive and the Berne Convention	200
	3. The Rome Convention	203
	(a) Membership	203
	(b) The Rental Directive and the Rome Convention	203
2.	The Directive in the Light of International Activities	205
	1. General	205
	2. Initiatives in WIPO	205
	(a) Negotiations on a Possible Protocol to the Berne	
	Convention	205
	(b) Negotiations on a New Instrument for Neighbouring	
	Rights	206
	3. GATT/Uruguay Round: The Agreement on TRIPs	208
	(a) The Mandate and the Negotiations	208
	(b) "Copyright and Related Rights" in TRIPs	209
	4. Initiatives in the Council of Europe	210
	Appendices	
ΔΤ	PPENDIX ONE: ORIGINAL AND AMENDED PROPOSALS	
	FOR THE DIRECTIVE	213
	PPENDIX TWO: THE DIRECTIVE AS ADOPTED	226
IN	DEX	235