Legal Advisory Board (LAB) criticizes Green Paper on Copyright in the Information Society

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In IRIS 1995-8:3 we reported that the European Commission had published a Green Paper on "Copyright and Related Rights in the Information Society" (19 July 1995, COM(95) 382 final). This policy document has now been critically analysed by the Intellectual Property Task Force of DG XIII's Legal Advisory Board (LAB).

The LAB consists of independent legal experts mandated to advise the Commission in legal matters relating to the development of the European information market.

The LAB criticizes the Commission for focussing too much on the protection of the interests of information producers by reinforcing copyright protection and advises the Commission to take into account the legitimate interests of all parties playing a role in the information chain, from original creator to end user.

Futhermore, the Commission's Green Paper is criticized for the almost total absence of considerations of informational privacy and freedom of expression and information.

Another weakness of the Green Paper, according to the LAB, is the absence of economic analysis of the economic peculiarities of distributing works in a networked environment. The LAB reminds the Commission of the fact that traditionally, copyright protects only works of authorship and not all categories of (potentially valuable) information.

Given the fact that the heterogeneous categories of works, specific media and technologies "converge" into a homogeneous multimedia environment technology specific rulemaking will eventually become obsolete. The LAB reckons that copyright, broadcasting and telecommunications law may all need to be revised. In this respect, it specifically recommends the Commission to review the Software (or Computer Programmes) Directive, the Satellite and Cable Directive and the Rental and Lending Rights Directive in the light of this development.

Furthermore, the fact that the Green Paper does not deal with the assignment of ownership rights, is said to be a major shortcoming. Choices need to be made on who will benefit from the strengthening of rights protection as advocated by the Commission: authors or producers; employees or employers. The LAB calls for a

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harmonisation of national laws in this respect. In addition, the LAB calls for more transparency in rights ownership.

In regards to reproduction rights, the LAB proposes to limit the concept of reproduction in the digital environment. In this environment, information is constantly stored and forwarded and therefore, practically every act of transmitting a work over the network, as well as each downloading and screen display, could be regarded as acts of reproduction of protected works. This, according to the experts in the LAB, goes too far. They propose to use the concept of `the right of communication to the public' rather than the concept of the `right of reproduction'. The advantage would be that reproduction in private communications would be allowed, while any attempt of making protected works available to the public would be a restricted act.

In its Green Paper, the Commission proposes to classify any electronic delivery-on-demand as an act of rental within the meaning of the Rental and Lending Rights Directive. This approach is severely criticized and rejected by the LAB as being methodologically and conceptually flawed.

Finally, the LAB analyses and discusses the possible legal implications of different models for the acquisition and management of rights and technical protection systems (encryption technology). (Ad van Loon, European Audiovisual Observatory)

Legal Advisory Board, "Reply to the Green Paper on Copyright and Related Rights in the Information Society".

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