

G E S A C

GROUPEMENT
EUROPÉEN
DES SOCIÉTÉS
D'AUTEURS
ET COMPOSITEURS

Brussels, 13 June 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

COMMENTS AND PROPOSALS BY GESAC

GESAC, a European grouping of authors' and composers' societies in the European Union, Norway and Switzerland, supports the initiative proposed at the European Council in Cologne on 3 and 4 June 1999 concerning the formulation of a Charter of Fundamental Rights of the European Union. According to the actual conclusions of the Cologne and Tampere Councils, the aim of the Charter is to enshrine, on the basis of the existing Community legal framework, the exceptional importance and scope of fundamental rights in a visible manner for European Union citizens.

Copyright shares the characteristics of a fundamental right, and must be enshrined in the European Charter.

Copyright protects freedom of expression and of thought of citizens, and guarantees the creation of literary, artistic and scientific works. Emanating from the personality of its author, a work gives rise to a right which has all the attributes of a human right: it is a moral right, inalienable and indefeasible. From the moral point of view, copyright ensures the freedom of representation of the personality of its author.

Copyright is also a property right. A property of a special nature since it is intangible, but it has the same nature and must have the same fate as all other kinds of property. In terms of its pecuniary dimension, copyright guarantees the economic independence that is essential to ensure freedom of expression and of creativity. Copyright is one of the «branches» of freedom of expression and creativity which, through its fundamental and universal dimension, forms part of human rights.

The vocation of copyright is to increase the cultural heritage of the community as a whole. At a time when the wealth of content and of cultural diversity are assets for the European Union and its citizens, and when protecting and promoting them is a major challenge, notably for the harmonious development of the information society, GESAC considers that it is vital to recognise the importance and justification of copyright in a Charter of fundamental rights.

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In expressly referring to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the constitutional traditions common to the Member States, the Treaty on European Union contains the bases for such recognition:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms :

This Convention refers in its preamble to the United Nations Universal Declaration of Human Rights of December 1948, and asks the Member States to « take the first steps for the collective enforcement” of the rights set down in this Declaration.

The Universal Declaration of Human Rights explicitly mentions copyright: « Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” (Article 27). This Declaration has no binding legal force, but it indisputably has moral value, which is indirectly binding on the Union since it is one of the texts to which the Treaty refers.

- The common constitutional traditions of the Member States :

Several European Constitutions refer directly or indirectly to the need to protect the rights of artists in order to guarantee freedom of thought and expression. For instance the Constitutions of Spain (Article 20), Portugal (Article 42) and Germany (Article 5). In France the National Advisory Commission on Human Rights issued an opinion on 14 November 1996 on the Internet Charter, in which it expressly referred to the protection conferred by copyright.

GESAC proposes to the Convention that the following provision¹ be included in the text of the Charter:

Article 20: right to property

1. Everyone person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

¹ Basis: document of 11 May 2000 ref. Charter 4284/1/00 Rev.1 Convent. 28.