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## Introduction

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# Session I: Developments in EEC Copyright Law

## INTRODUCTION

Hugh C. Hansen\*

The study of European Economic Community ("EEC" or "European Community") copyright harmonization is not merely an academic exercise. What is accomplished in the European Community, of course, has dramatic effect on copyright law in the Member States. But it has dramatic effect elsewhere also. Besides the twelve Members of the Community, the members of the European Free Trade Association (except Switzerland) have signed the European Economic Area Agreement which requires them to adhere to the copyright legislation of the Community. In addition to these seventeen countries, there are the new Eastern European countries and others who want to come into the EEC and are changing their laws in advance to help them to achieve this goal. Therefore, there is a substantial market that is directly affected by the copyright directives we are going to be discussing.

Moreover, there are other countries, newly industrialized and developing, who have marginally developed copyright laws. They eventually will be looking for models for their copyright laws: what to do with computer programs; what to do with databases; what to do with moral rights, for instance. In the European Community they have a ready-made model that has been worked out by compromises among industry, the government officials of the Member States, the European Parliament, and experts in the Commission of the European Communities. They may not take everything, but I expect that they will feel that they won't go far wrong with whatever they do take.

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Additionally, the European Community, once it has agreed on an approach within the Community, has and will continue to push for that approach in multilateral and bilateral negotiations such as the General Agreement on Tariffs and Trade ("GATT") in the Draft Agreement On Trade-Related Aspects of Intellectual Property Rights ("TRIPS") and in the World Intellectual Property Organization ("WIPO"). The choices of these organizations will affect most of the world.

Finally, what about the United States? Well, EEC copyright legislation has an effect to the extent that a directive has a reciprocity provision which denies protection to our authors unless similar protection is available in the United States. That places direct pressure on Congress to change our domestic law in order to protect our authors and companies abroad and to generate the resulting increase in trade revenue.

Additionally, I think our judges, like other people, are going to look for models when they have difficult cases. I'm not sure whether it's a coincidence, but the *Sega*<sup>1</sup> case's new approach to reverse engineering under fair use came after the EEC Directive on Computer Programs, which had provided in Article 6 a very interesting and similar approach to decompilation for interoperability purposes.<sup>2</sup>

The path of EEC copyright law is important. It will not only directly affect people doing business in Europe but also indirectly affect authors and businesses throughout the world.

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1. *Sega Enters., Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992).

2. Council Directive of 14 May 1991 on the Legal Protection of Computer Programs, 91/250/EEC, O.J. L 122/42 (1991).