

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	1997/0359(COD) Procedure completed
Information society: copyright and related rights See also <a href="#">2014/2256(INI)</a> Amended by <a href="#">2016/0278(COD)</a> Amended by <a href="#">2016/0280(COD)</a>	
Subject 3.50.15 Intellectual property, copyright	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs and Internal Market	PSE <a href="#">BOSELLI Enrico</a>	23/09/1999
	Former committee responsible		
	<b>JURI</b> Legal Affairs, Citizens' Rights	PSE <a href="#">BARZANTI Roberto</a>	25/02/1998
	Former committee for opinion		
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy	PPE <a href="#">CASSIDY Bryan M.D.</a>	18/03/1998
Council of the European Union	<b>ENVI</b> Environment, Public Health and Consumer Protection	PSE <a href="#">WHITEHEAD Phillip</a>	16/04/1998
	Council configuration	Meeting	Date
	<a href="#">General Affairs</a>	<a href="#">2342</a>	09/04/2001
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2289</a>	28/09/2000
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2265</a>	25/05/2000
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2248</a>	16/03/2000
<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2193</a>	21/06/1999	
<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2079</a>	30/03/1998	

Key events			
10/12/1997	Legislative proposal published	COM(1997)0628	Summary

20/02/1998	Committee referral announced in Parliament, 1st reading		
30/03/1998	Debate in Council	<a href="#">2079</a>	
20/01/1999	Vote in committee, 1st reading		Summary
20/01/1999	Committee report tabled for plenary, 1st reading	<a href="#">A4-0026/1999</a>	
09/02/1999	Debate in Parliament		
10/02/1999	Decision by Parliament, 1st reading	T4-0094/1999	Summary
21/05/1999	Modified legislative proposal published	COM(1999)0250	Summary
21/06/1999	Debate in Council	<a href="#">2193</a>	
16/03/2000	Debate in Council	<a href="#">2248</a>	
25/05/2000	Debate in Council	<a href="#">2265</a>	Summary
28/09/2000	Council position published	<a href="#">09512/1/2000</a>	Summary
26/10/2000	Committee referral announced in Parliament, 2nd reading		
05/02/2001	Vote in committee, 2nd reading		Summary
05/02/2001	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0043/2001</a>	
13/02/2001	Debate in Parliament		
14/02/2001	Decision by Parliament, 2nd reading	<a href="#">T5-0077/2001</a>	Summary
09/04/2001	Act approved by Council, 2nd reading		
22/05/2001	Final act signed		
22/05/2001	End of procedure in Parliament		
22/06/2001	Final act published in Official Journal		

## Technical information

Procedure reference	1997/0359(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	See also <a href="#">2014/2256(INI)</a> Amended by <a href="#">2016/0278(COD)</a> Amended by <a href="#">2016/0280(COD)</a>
Legal basis	Rules of Procedure EP 050; EC Treaty (after Amsterdam) EC 055; EC Treaty (after Amsterdam) EC 047-p2; EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/13024

## Documentation gateway

Legislative proposal	<a href="#">COM(1997)0628</a> <a href="#">OJ C 108 07.04.1998, p. 0006</a>	10/12/1997	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES1122/1998</a> <a href="#">OJ C 407 28.12.1998, p. 0030</a>	09/09/1998	ESC	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0026/1999</a> <a href="#">OJ C 150 28.05.1999, p. 0004</a>	20/01/1999	EP	
Text adopted by Parliament, 1st reading/single reading	T4-0094/1999 <a href="#">OJ C 150 28.05.1999, p. 0154-0183</a>	10/02/1999	EP	Summary
Modified legislative proposal	COM(1999)0250 <a href="#">OJ C 180 25.06.1999, p. 0006</a>	21/05/1999	EC	Summary
Council position	<a href="#">09512/1/2000</a> <a href="#">OJ C 344 01.12.2000, p. 0001</a>	28/09/2000	CSL	Summary
Commission communication on Council's position	SEC(2000)1734	20/10/2000	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0043/2001</a>	05/02/2001	EP	
Text adopted by Parliament, 2nd reading	<a href="#">T5-0077/2001</a> <a href="#">OJ C 276 01.10.2001, p. 0051-0121</a>	14/02/2001	EP	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2001)0170	29/03/2001	EC	Summary
Non-legislative basic document	32005H0737 <a href="#">OJ L 276 21.10.2005, p. 0054-0057</a>	18/05/2005	EU	Summary
Follow-up document	<a href="#">SEC(2007)1556</a>	30/11/2007	EC	Summary

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Directive 2001/29](#)  
[OJ L 167 22.06.2001, p. 0010](#) Summary

## Information society: copyright and related rights

**OBJECTIVE** : adapt legislation on copyright and related rights to new technologies, in particular the information society, and implement the international obligations arising from the two treaties adopted under the auspices of the World Intellectual Property Organization (WIPO) in December 1996 at Community level. **SUBSTANCE** : the proposal for a directive covers the following aspects: 1) Reproduction right: the proposal defines the acts of reproduction covered by exclusive reproduction right, including all direct and indirect reproduction whether temporary or permanent, in any manner or form, in whole or in part; - for authors, of the originals and copies of their works; - for performers, of fixations or of their performances; - for phonogram producers, of their phonograms; - for the producers of the first fixations of films in respect of the original and copies of their films; - for broadcasting organizations, of fixation of their broadcasts. 2) Right of communication to the public: the proposal provides authors with the exclusive right to authorize or prohibit any communication to the public of originals and copies of their works, including the making available to the public of their works in such a way as members of the public may access them from a place and at a time individually chosen by them. The same applies with regard to the right to make available to the public protected works in such a way that the public may access them from a place and at a time individually chosen by them. 3) Distribution right: the proposal harmonizes the exclusive right of authors concerning any form of discrimination to the public of the original of their works or of copies thereof. The distribution right shall be exhausted where the first sale or other transfer of ownership in the Community of that object is made by the rightholder. 4) Exceptions to the right of reproduction and communication: the proposal introduces a compulsory exception to the right of reproduction in respect of certain temporary acts of reproduction which are an integral part of a technological process for the sole purpose of enabling use to be made of a work and having no independent economic significance. Member States may also provide for limitations to the exclusive right of reproduction with regard to - reproductions on paper or any similar medium effected by the use of any photographic technique or by some other process having similar effects (reprography); - reproductions on audio, visual or audio-visual recording media made by a natural person

for private use and for non-commercial ends (private copy); - reproductions by establishments accessible to the public which are not for any economic or commercial advantage; In addition, Member States may provide for limitations to the rights of reproduction and communication in the following cases: - use for the sole purpose of illustration for teaching or scientific research as long as the source is indicated and the purpose is non-commercial; - for uses for the benefit of visually-impaired or hearing-impaired persons which are directly related to the disability and of a non-commercial nature; - use of excerpts in connection with the reporting of current events as long as the source is indicated; - quotations for purposes such as criticism or review; - use for the purpose of public security or for the purposes of the proper performance of an administrative or judicial procedure. The exceptions and limitations provided for shall only be applied to certain specific cases and must not unreasonably prejudice the rightholders' legitimate interests (the economic loss test). 5) Obligations concerning rights management information: the proposal gives the Member States appropriate flexibility in implementation. It aims only at the protection of electronic rights management information and does not cover all kinds of information that could be attached to the protected material. Finally, the proposal requires the Member States to provide sanctions and remedies in respect of infringements of the provisions of the directive. ?

## Information society: copyright and related rights

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The Committee adopted by a large majority the report by Roberto BARZANTI (PES, I) on the proposal for a Parliament and Council directive to harmonise certain aspects of copyright and related rights in the information society. The committee has thus responded to the appeal to the President of the European Parliament, Mr José María GIL-ROBLES, and the Chair of the Legal Affairs Committee signed by 400 internationally renowned artists, who protested that they lose vast amounts of income every year as a result of the free use of musical and audiovisual works on the Internet. The Spice Girls, Eros Ramazzotti, Jean-Michel Jarre and others called for clear, strict laws on the use of original works and copies on the Internet. In their appeal they say "Europe has always backed its artists to the hilt by providing proper protection for intellectual property. We need to safeguard these rights more than ever today. The directive seeks to adapt existing legislation on copyright and related rights to take account of the existence of the information society and provide legal protection in areas such as rights of reproduction, communication to the public, distribution and legal protection of anti-pirating systems. The proposal stresses that it seeks to cover not only creative and performing artists but also producers of CDs and CD-ROMs and radio stations. The amendments adopted by the Legal Affairs Committee seek to strengthen support for rightholders so that they can usually receive a fair remuneration when their works are reproduced or publicly communicated. This would apply, for example, to private copies of musical or audiovisual works in the form of cassettes or CDs, for which some degree of remuneration is required for rightholders. It would also apply to Internet operators, who would have to pay if they wished to use works on the Internet.

## Information society: copyright and related rights

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At first reading under codecision procedure, the European Parliament approved the proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society, subject to amendments, notably in the following areas: - providing for a high level of protection of intellectual property; - insisting that the harmonisation of rules in the information society must not jeopardise the fundamental principles of an open and modern society; - referring to other directives, on which the proposed directive is based; - rewarding producers for the use of their work; - recognising the role of copyright protection in safeguarding the independence and dignity of artistic creators and performers; - permitting exceptions in the public interest for the purpose of education and training; - extending liability beyond copyright to other areas such as defamation, misleading advertising or infringement of trademarks; - stressing the importance of bringing provisions relating to liability as well as electronic commerce into force within a similar timescale to the proposed directive; - underlining the need to ensure that collecting societies achieve a high level of rationalisation and transparency with regard to compliance with competition rules; - specifying that the proposed directive does not apply to the legal protection of designs under directive 98/71/EC; - providing that proper support for the dissemination of culture must not compromise protection of works; - defining private communication; - stressing the need for Member States to coordinate provisions for the acknowledgement of rightholders for the use of their works; - noting that access to mediation could assist users and rightholders in resolving disputes; - rewording the proposed exception to the exclusive right of reproduction and allowing for compensation in certain cases; - highlighting the importance of facilitating access to works by persons suffering from a disability; - calling for digital private copying to be more widespread and have a greater economic impact; - stressing the urgent need for harmonisation of procedures for charging fees for private copies; - proposing the promotion of specific contracts or licenses which, without creating imbalances, favour establishments accessible to the public; - proposing a study by Member States to develop new, less cumbersome legal ways of solving disputes about infringement of authors' rights; - demanding action to protect the exploitative use of the works of indigenous communities and peoples; - underlining the importance of greater legal certainty as to the legitimate identity of a specific Internet site for consumer confidence, which will in turn boost investment in creativity and innovation and hence aid EU competitiveness and employment; - defining the meaning of the act of communication for the purposes of the proposed act; - excepting published musical works from the exception for photographic reproduction on paper or any similar medium and introducing the proviso that rightholders must be fairly compensated for this form of reproduction as well as for reproductions on audio, visual or audio-visual media and for the sole purpose of illustration for teaching or scientific research; - making a distinction between analogue and digital recording media; - exempting specific acts of reproduction by establishments for documentation or conservation purposes, regardless of whether they are accessible to the public or not; - exempting specific acts of reproduction whose sole purpose is to facilitate a legitimate broadcasting act; - exempting the use of individual works from the daily newspapers and radio for news reporting, provided the source is indicated and its use is warranted; - exempting non-commercial uses for the benefit of disabled people in general; - exempting use for the proper performance of parliamentary proceedings; - subjecting these exceptions to possible limitations by Member States and providing that they must not prejudice the protection of rightholders' rights; - providing for the remuneration of any rightholders who contributed to the production for the broadcast of own archive material by broadcasting organisations; - rewording the definition of "technological measures" and provisions concerning protection against circumvention; - proposing a Contact Commission to ensure consistency between certain articles of the proposed directive. The Parliament's rapporteur was Roberto Barzanti (PSE,IT).?

## Information society: copyright and related rights

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The Commission's amended proposal incorporates the following substantive European Parliament amendments: - the principles underlying the amendments relating to private copying (need to distinguish private analogue copying and private digital copying); - compensation for the

rightsholders in most of the cases in which the proposal for a Directive provides for a legal exception to the exclusive rights (the cases of reproduction on paper, private copying and illustration for teaching and scientific research); - the new wording of the exception to the right of reproduction relating to certain establishments (libraries, archives and other teaching, educational or cultural institutions) for acts of reproduction made for archive or conservation purposes; - the extension to all persons with disabilities of the exception previously reserved for visually impaired or hearing-impaired persons; - the introduction of a new exception concerning parliamentary procedures and reporting. Main amendments accepted subject to modifications generally of a drafting nature relate to: - establishing an exception for temporary copies which are an integral and essential part of the technological process; - certain questions relating to liability for activities in the network environment which are dealt with in the proposal for a Directive on certain legal aspects of electronic commerce; - the introduction of a new exception for broadcasters relating to so-called ephemeral reproductions; - the introduction of an exception to the right of distribution for authorised acts of reproduction; - technical protection measures; - the setting up of a Contact Committee to facilitate the effective implementation of the Directive and to facilitate the exchange of information between the Member States and the Commission on the situation of and developments in regulatory activities in the field of copyright and related rights and sui generis rights, as well as on the relevant developments in the field of technology.?

## Information society: copyright and related rights

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The Council had an in-depth debate on the proposal for a Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society. While progress was made on a number of major issues, it was generally agreed that further work was necessary before the Council could adopt a common position. The Council invited the Permanent Representatives Committee to pursue work on this proposal with a view to enabling the Council to reach agreement before the end of the Portuguese Presidency. The Council's discussions centered on the need to strike the right balance between the interests of the rightholders (holders of copyrights and related rights) on the one hand, and the interests of the other parties on the other hand (Internet service providers, consumers, equipment manufacturers, libraries, publishers, and other beneficiaries of exception to rights in the Member States), taking into account in particular the possibilities offered by new technologies.?

## Information society: copyright and related rights

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On 28 September 2000, the Council adopted its common position on the adoption of a Directive on the harmonisation of certain aspects of copyright and related rights in the information society. The Council's common position retained 37 of the European Parliament's amendments as against 44 adopted by the Commission in its amended proposal. However, in retaining these amendments, the Council partially adjusted the European Parliament's amendments. The main differences between the Commission's amended proposal (after incorporating amendments of the European Parliament) and the Council's common position are the following: - the Council further clarified the relationship between the provisions of this Directive and existing Directives in the field of copyright and related rights; - with regard to distribution rights, the Council reformulated this provision to ensure consistency; - with regard to the provision containing the only mandatory exception to the reproduction right for intermediaries and certain others in limited circumstances for particular acts of reproduction, the Council has improved this provision; - With regard to the provision relating to an exhaustive but optional list of exceptions and limitations to the reproduction right and right of communication to the public/making available, the Council has added new exceptions and limitations; - with regard to analogue and digital, the Council was not in favour of the Commission's distinction, preferring instead a reference to reproductions "on any medium"; - contrary to the Commission's view, the Council opted for an exhaustive list of the beneficiaries (e.g. accessible libraries and museums) and for more flexibility as regards the purpose of the acts of reproduction; - other new additions by the Council, as a means of broad protection, relate to the use of artistic works for different ends; - as a counterbalance to the such broad protection, the Council makes new addition in relation to rightholders.?

## Information society: copyright and related rights

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This Communication from the Commission concerns the common position of the Council on the adoption of a Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society. The common position takes on board the great majority of the amendments proposed by the European Parliament at its first reading (and which the Commission accepted in its amended proposal). The common position remains close to the Commission's amended proposal, as regards both its structure and content. Certain key revisions introduced by the European Parliament and adopted by the Commission in its amended proposal have been subsequently refined by the Council in its common position. In addition, the common position now contains further key objectives underlying certain of the European Parliament's original amendments which had not been accepted by the Commission in its amended proposal. In particular, the notion of fair compensation for certain of the exceptions, the requirement of lawful use in relation to the mandatory exception of certain technical acts of reproduction and the structure of the provision on the legal protection of technological measures as dealt with in the common position, all reflect amendments first proposed by the European Parliament. The Commission has accepted all the changes made to its amended proposal by the Council. With regard to the amendments themselves, the European Parliament adopted at first reading 56 amendments to the initial proposal of the Commission. In its amended proposal, the Commission incorporated 44 out of 56 of the European Parliament's amendments, either fully or in part. 37 amendments, accepted by the Commission in its amended proposal, have been retained by the Council, in whole, in part or in substance. The main amendments to existing exceptions and limitations by the Council relate to analogue and digital private copying, reproduction rights, broadcasting organisations and protected works. New exceptions and limitations added by the Council relate to reproductions of broadcasts, obligations as to technological measures, obligations concerning rights-management information, sanctions and remedies, continued application of other legal provisions, application over time, technical adaptations and final provisions. In conclusion, as regards the implementation deadline, the date "by 30 June 2000" referred to in the Commission's amended proposal, having passed, was no longer relevant. The Council replaced this date by an implementation period of two years and the Commission accepted this.?

## Information society: copyright and related rights

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The committee adopted the report by Enrico BOSELLI (PES, I) broadly approving the Council's common position under the codecision procedure (2nd reading) subject to a number of amendments. The latter were aimed mainly at tightening up protection of authors' and producers' rights, and hence promoting artistic creativity in the EU, while at the same time not disturbing the delicate balance between these rights and the interests of the public and industry. One amendment sought to alter the wording of the exception to the exclusive rights of rightholders concerning the reproduction of their work on any medium, by stipulating that this referred only to natural persons acting for private use and for ends that were neither "directly or indirectly commercial", whereas the Council's common position referred only to "non-commercial ends" in general. This amendment thus strengthened the protection of rightholders while at the same time allowing individuals to make copies for private use. Other amendments sought to reverse the burden of responsibility by tightening up the wording of certain exceptions so as to restrict their scope and protect authors' rights better. For example, whereas the Council's common position laid down, in four cases where reproduction was allowed (e.g. for teaching or scientific research purposes), that the source, including the author's name, should be indicated "whenever possible" (thereby leaving the door open to a broad range of violations), the committee wanted this rule to be reversed, by stipulating that the source should always be indicated "except where it proves impossible". A further amendment sought to introduce a right for broadcasting organisations to use their own archive material for new broadcasting or "on-demand" services, on condition that equitable remuneration was paid to rightholders who contributed to the production of any works used. Finally, the committee wanted to shorten the deadline for the directive's entry into force from 24 months, as proposed by Council, to 18 months. ?

## Information society: copyright and related rights

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The European Parliament approved with a number of amendments the report by Mr Enrico BOSELLI (PES, I) on the harmonisation of copyright in the information society. Parliament's amendments focus on exceptions and limitations. For example, the House wants to alter the wording of the exception to the exclusive rights of rightholders concerning the reproduction of their work on any medium, by stipulating that this refers only to natural persons acting for private use and for ends that are neither 'directly or indirectly commercial' (the Council's common position refers only to 'non commercial ends' in general). This amendment is designed to strengthen the protection of rightholders while at the same time allowing individuals to make copies for private use. Other amendments seek to reverse the burden of responsibility by tightening up the wording of certain exceptions so as to restrict their scope and protect authors' rights better. Thus, Council's common position lays down, in four cases where reproduction is allowed (e.g. for teaching or scientific research or for criticism or review purposes), that the source, including the author's name, should be indicated 'whenever possible'. This leaves the door open to a whole range of violations. Parliament wants this rule reversed, by stipulating that the source should always be indicated 'except where it proves impossible'. Lastly, Parliament wants to shorten the deadline for the Directive's entry into force from 24 months, as proposed by Council, to 18 months, so that it can come into force at the same time as the electronic commerce directive. ?

## Information society: copyright and related rights

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The Commission accepts all of the amendments of the European Parliament which relate to: - the clarification of the text and the addition of an interpretative Recital for the purposes of delineating the scope of the Article which concerns the relationship between exceptions and technological measures. In particular to works or other subject matter made available to the public on agreed contractual terms, in such a way that members of the public may access them from a place and at a time individually chosen by them; - the amendment of the definition of the Article relating to private copying; - the attribution of sources i.e. the requirement to mention the author's name in relation to 4 of the exceptions (illustration for teaching or scientific research, reproduction by the press, communication to the public or making available of published articles, quotations for purposes such as criticisms or review, the use of political speeches). The Commission is of the view that these amendments are acceptable. The amendments reinforce the requirement to mention the author and thereby give greater comfort to authors. Member States will retain flexibility regarding the interpretation of this condition including whether in the circumstances of a particular case, it is considered impossible for reasons of practicality or otherwise for the author's name to be mentioned. - qualifying the exception that applies to use for the purposes of advertising sales of works of art, the so-called "catalogues exception". It excludes any other commercial use of those works other than for the purposes of advertising the sale or exhibition. In the view of the Commission, this amendment is an acceptable qualification to the scope of the exception; - the addition of an Article to add a paragraph which provides that the committee will examine the impact of the Directive on the functioning of the Internal Market and will highlight any difficulties; - shortening the transposition period from 24 months to 18 months. The Commission is of the view that such a reduction in the transposition period is to be welcomed given the chronological link between this proposal and the Directive on E-Commerce and would also assist in the timely ratification of the WIPO Treaties. ?

## Information society: copyright and related rights

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**PURPOSE :** to create, within the internal market, a harmonised and flexible legal framework of copyright and related rights in the information society. **COMMUNITY MEASURE :** Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society. **CONTENT :** the Directive aims in particular to harmonise reproduction and communication rights, to make public and to distribute the works. The adoption of this Directive is, in addition, indispensable for the Community and its Member States to adhere to the World Intellectual Property Organization (WIPO) Copyright treaty and the WIPO Performances and Phonograms Treaty (TIEP), concluded in December 1996. The Directive is based on the principle of fair and balanced research between the interests of the rightholder (holder of author rights and other rights), on the one hand, and on the other hand, the interests of the other parties (internet suppliers, consumers, producers of equipment, libraries, publishers and other beneficiaries of exceptions to rights in the Member States taking into account the possibilities that new technologies offer. It also provides that the Member States should agree to exclusive author's rights concerning the reproduction of their work as well as the communication and distribution of those to the public. Moreover, the Directive provides for an exhaustive enumeration of exceptions and limitations to the reproduction right and the right of communication to the public. Some exceptions or limitations only apply to the reproduction right, where appropriate. The list takes due account of the different legal traditions in Member States, while at the same time, aiming to ensure a functioning internal market. Member States should arrive at a coherent application of these exceptions and limitations, which will be assessed when reviewing implementing legislation in the future. Member States should be given the option of providing for certain exceptions or limitations for such cases such as educational and scientific purposes, for the benefit of public institutions and archives, for the purpose of new reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings. Furthermore, Member States may provide for fair

compensation for rightholders also when applying the optional provisions on exceptions or limitations which do not require such compensation. The rightholders are also authorised to protect their work in an efficient way so as to prevent all illicit use. However, if the rightholders have not taken the voluntary measures so that the beneficiaries of certain exceptions have access to their protected work, the Member States shall take the appropriate measures in order to allow the users to benefit from these exceptions. Lastly, Member States shall bring into the force the laws, regulations and administrative provisions necessary to comply with this Directive before 22 December 2002. ENTRY INTO FORCE : the Directive shall enter into force 22/06/2001.?

## Information society: copyright and related rights

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This is preliminary report on the application of Directive 2001/29/EC. It is limited to assessing how Articles 5, 6 and 8 of the Directive were transposed by the Member States and how they were applied by the national courts.

### Exceptions And Limitations:

Rather than relying on exceptions and limitations, national courts have often resorted to a teleological interpretation of the reproduction right in order to exempt certain uses from copyright protection. Courts also used the notion of 'implied consent' of the right holder to reach this result. Out of the 21 exceptions, those that attract most attention (and which are most likely to have the greatest impact in the digital environment) are: the mandatory exception for temporary acts of reproduction; the private copying exception; exceptions for the benefit of libraries, educational establishments, archives and museums; the exception for the purpose of reporting of current events; the limitations for quotation, criticism and review; and the parody exception.

Transient copies: Article 5(1) of the Directive, which complements the directive on electronic commerce, exempts, for example, reproductions on Internet routers, reproductions created during web browsing or copies created in Random Access Memory (RAM) of a computer, copies stored on local caches of computer systems or copies created in proxy servers. Little case law on the application of Article 5(1) of the Directive actually exists though this report does cite the Belgian Copiepresse case.

Private copying: With the exception of Ireland and the UK, all Member States implemented the reprography exception under and the private use exception. National provisions, however, are very diverse.

Exceptions for the benefit of libraries: The Directive allows Member States to provide an exception to the reproduction right for certain reproductions made by certain non-profit organisations. All Member States have implemented these provisions. However, national revisions vary.

Reporting of current events: Exceptions that permit the reporting of current events is an exception both to the reproduction right and to the right of communication to the public. Some Member States have adopted a wide definition of entities that constitute the 'press'.

Quotations for criticism or review: Article 5(3)(d) allows quotations "for purposes such as criticism or review". Criticism and review are therefore only examples of possible justifications for quotations. The quotation must be limited to "the extent required by the specific purpose", and in accordance with "fair practice". In the Copiepresse v. Google case, the Belgian Court held that quotations must be ancillary to the work incorporating them and used in order to illustrate a given opinion. Thus the Google.News service could not rely on the quotations exception to justify displaying the tiles and opening sentences of news articles on its website.

Parodies: Article 5(3)(k) of the Directive exempts uses "for the purposes of caricature, parody or pastiche". The implementation of the parody exception in national laws varies. There is no parody exception under UK law. By contrast, other national laws expressly provide for a parody exception (for example France, Belgium), or cover parodies under the umbrella of a transformative use (Nordic countries) or of a "free use" defence (Germany and Portugal for example). However, the scope of the German "free use" rule appears rather narrow. The regional Court of Hamburg, in its "thumbnails" decision, held that the reproduction of thumbnails on the Internet did not constitute a "free use" of the original image.

### Technological Protection Measures:

To recall, the Directive implements the international obligations pursuant to Article 11 of the WIPO Copyright Treaty and Article 18 of the WIPO Performances and Phonograms Treaty. The Directive requires Member States to provide for protection against acts of circumvention of technological measures of protection and against dealings in such circumvention devices.

Connection between TPM and copyright: According to the Directive, the protection of TPM complements the protection of copyright. The Directive only requires Member States to protect TPM in respect of works or any subject matter covered by "copyright or any right related to copyright as provided by the law or the sui generis right in databases". TPM applied to protect other subject matter or works in the public domain are thus not protected under the Directive. The protection of TPM under the Directive is therefore distinct from Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access. This directive deals with the unauthorised reception of conditional access services, which may or may not contain intellectual property protected content. The report goes on to consider certain cases relating to this provision and the UK's implementation thereof.

Circumvention devices: Article 11 of the WIPO Copyright Treaty ('WCT') does not include a prohibition on circumvention devices. The Directive, by prohibiting a series of acts concerning circumvention devices, goes beyond the WCT. In the Heise Online case, a German Court held that offering circumvention software for download could be prohibited under the provision that covers importing of 'circumvention devices'. The court also held that linking to an offshore website, where the software was made available, constitutes an act of contributory infringement.

Effective TPM: Under Article 6(3), the definition of effective technological measures covers a broad range of technologies. A technological measure is deemed effective if it achieves the protection objective. Most Member States have transposed this definition literally, while Slovakia and Sweden have not transposed this requirement.

Relationship between technological measures and exceptions and limitations: Under the terms of the Directive, the benefit of certain exceptions should be safeguarded by voluntary measures on the part of right holders, including agreements between them and other parties concerned. In the absence of adequate voluntary measures, Article 6(4) requires Member States to ensure the benefit of the exceptions. This provision leaves a large margin of discretion to Member States in selecting appropriate measures to ensure the benefit of certain exceptions to users. Member States have favoured a wide range of different solutions which include: (1) no implementation at all (e.g. Austria, Czech Republic, the Netherlands who leave it up to the executive power to act whenever it becomes necessary); (2) the introduction of mediation or

arbitration proceedings e.g. Finland, Denmark, Estonia, Greece, Hungary); (3) recourse to the courts (e.g. Belgium, Germany, Spain, Ireland); (4) recourse to specific administrative proceedings with decisions enforceable by means of penalty payments and fines, in some cases leading to the setting-up of administrative bodies (France) . These decisions can be appealed before the courts.

#### Injunctive Relief Against Intermediaries:

Article 8(3) of the Directive obliges Member States to ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe copyright or related rights. In a limited number of Member States (Austria, Greece, Latvia, Belgium), Article 8(3) has been implemented in national legislation. In other Member States, Article 8(3) comes under the scope of existing legislation.