

Screening meeting
Acquis communautaire
Brussels, 6-7 February 2006

Chapter 7 : intellectual property
Directive 2001/29/EC on the harmonisation
of certain aspects of copyright and related
rights in the information society

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Main features of Directive 2001/29/EC

- Harmonization of several essential rights of authors and four groups of neighboring rightholders
- Limitations and exceptions thereto
- Protection of technological measures and of rights management information
- Notice and takedown vis-à-vis intermediaries

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Scope (Article 1):

The Directive applies to existing provisions relating to:

- the legal protection of computer programs,
- rental and lending rights and certain rights related to copyright in the field of intellectual property,
- copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission,
- the term of protection of copyright and certain related rights,
- the legal protection of databases.

The Directive deals with three main areas: reproduction right, the right of communication to the public and distribution right

Reproduction right (Article 2):

The Directive provides for the exclusive right to “authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part”:

- for authors, of the original and copies of their works,
- for performers, of fixations of their performances,
- for phonogram producers, of their phonograms,
- for the producers of the first fixation of films, in respect of the original and copies of their films,
- for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

Right of communication to the public (Article 3.1)

The Directive provides authors with the exclusive right to authorise or prohibit any communication to the public of the originals and copies of their works, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them

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Right of making available to the public other subject-matter (Article 3.2)

The Directive provides for the making available to the public of protected works in such a way that members of the public may access them from a place and at a time individually chosen by them:

- for performers, of fixations of their performances,
- for phonogram producers, of their phonograms,
- for the producers of the first fixation of films, in respect of the original and copies of their films,
- for broadcasting organisations, of fixations of their broadcasts - regardless of the method of transmission.

Distribution right (Article 4)

- The Directive harmonises for authors the exclusive right of distribution to the public of their works or copies thereof. The distribution right is exhausted where the first sale or other transfer of ownership in the Community of a copy is made by the rightholder or with his consent (“EC exhaustion”)

Exceptions and limitations (Article 5)

- The Directive lays down a number of exceptions to the right of reproduction and the right of communication to the public

Mandatory exception to the reproduction right (Article 5.1)

- A mandatory exception to the right of reproduction is introduced in respect of certain temporary acts of reproduction which are integral to a technological process, the purpose of which is to enable the lawful use or transmission in a network between third parties by an intermediary of a work or other subject-matter and which has no separate economic significance.

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Exceptions and limitations (Articles 5.2 and 5.3)

- The Directive also provides for other 21 non-mandatory exceptions to the rights of reproduction and communication to the public.
- In these cases, they are accorded at national level by the Member State concerned.

Exceptions to the rights of reproduction and communication to the public

- The exceptions and limitations relating to the rights of reproduction and communication to the public are optional and particularly concern the "public" domain. For three of these exceptions - reprography, private use and broadcasts made by social institutions - the rightholders are to receive fair compensation.
- With regard to the exceptions or limitations to the distribution right (Article 5.4), these are accorded depending on the exceptions relating to reproduction or communication.

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Legal protection of technological measures (Article 6)

- Member States must provide legal protection against the circumvention of any effective technological measures covering works or any other subject-matter.
- This legal protection also relates to "preparatory acts" such as the manufacture, import, distribution, sale or provision of services for works with limited uses.
- Nevertheless, for some exceptions and limitations, in the absence of voluntary measures taken by rightholders, Member States must ensure the implementation of an exception or limitation for those who may benefit from it.
- Member States may also take such measures with regard to the exception for private use, unless reproduction for private use has already been made possible by rightholders in accordance with the economic damage test.

Protection of rights-management information (Article 7)

- The rights management of a protected work or other subject-matter includes information relating to the work or subject-matter and the protection system.
- The Directive lays down provisions protecting the system from any unauthorised removal, alteration, distribution, communication or making available to the public.

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Penalties and redress (Article 8)

Member States are required to provide appropriate sanctions and remedies in respect of infringements of the Directive.

Application over time (Article 10)

All works and subject-matter covered must be protected by the Member States' copyright law or meet the criteria for protection laid down in Community law by 22 December 2002.

Amendments of existing measures (Article 10)

There are amendments to Directives 92/100/EEC on rental right and lending right and 93/98/EEC harmonizing the term of protection to the extent necessary in order to transpose into Community law the new international obligations in the field.

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International obligations

The adoption and the implementation of Directive 2001/29 is a prerequisite for the ratification of the 1996 WIPO Treaties:

- WIPO Copyright Treaty (WCT), which entered into force on 6 March 2002
- WIPO Performances and Phonograms Treaty (WPPT), which entered into force on 20 May 2002
- The Community signed these Treaties on 20 December 1996

International obligations

- The Community approved the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty by means of Council Decision of 16 March 2000 (2000/278/EC)
- Recital 7 of this Council Decision provides that the deposit of the instruments of conclusion of the Community should take place as far as possible simultaneously with the deposit of the instruments of ratification of the Member States
- The texts of the two Treaties are attached to the Decision