

ANALYTICAL EXAMINATION ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

CHAPTER 7: INTELLECTUAL PROPERTY

**Rental right, Lending right
and other rights related to copyright**

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Council Directive 92/100/EEC

of 19 November 1992

**on rental right and lending right
and on certain rights related to copyright
in the field of intellectual property**

(OJ L346, 27.11.1992, P. 61)

To harmonise the rights concerning:

- rental
- public lending
- fixation
- reproduction
- broadcasting and communication to the public
- distribution

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RENTAL AND LENDING RIGHTS (Chapter 1)

- **Exclusive rights** to authorise or prohibit the rental and lending of originals and copies of copyright works and other subject matter as set out in the Directive.

These rights shall not be exhausted by any sale or other act of distribution, but can be transferred, assigned or subject to the granting of contractual licences.

- **Rightholders and subject matter:**
 - the author for the original and copies of his work;
 - the performer for the fixation of his performance;
 - the phonogram producer for his phonograms;
 - the producer of the first fixation of a film for the original and copies of his film (cinematographic or audiovisual work, or moving images, whether or not accompanied by sound).

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- **Rental** = making available for use, for a limited period of time and for direct or indirect economic or commercial advantage.
- **Right to equitable remuneration** for authors and performers, in case of transfer of the rental right concerning a phonogram or a film to a producer (Art. 4).

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- **Lending** = making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public.
- **Derogation (Art. 5):**
 - Member States may derogate from the exclusive right, provided that at least authors obtain a **remuneration** for the lending of their works;
 - Member States may exempt certain categories of establishments from the payment of the remuneration.

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RIGHTS RELATED TO COPYRIGHT (Chapter 2)

- **Fixation right** (Art. 6) = the **exclusive right**
 - for performers to authorise or prohibit the fixation of their performances and
 - for broadcasting organisations to authorise or prohibit the fixation of their broadcasts.
- **Reproduction right** (Art. 7) = the **exclusive right** to authorise or prohibit the direct or indirect reproduction,
 - for performers, of fixations of their performances;
 - for phonogram producers, of their phonograms;
 - for producers of the first fixations of films, in respect of the original and copies of their films and
 - for broadcasting organisations, of fixations of their broadcasts.

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- **Broadcasting and communication to the public** (Art. 8) = the **exclusive right**
 - for performers to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances;
 - for broadcasting organisations to authorise or prohibit the rebroadcasting of their broadcasts by wireless means as well as communication to the public against payment of an entrance fee.An **equitable remuneration** is required for the relevant rightholders if a phonogram published for commercial purposes or a reproduction of this phonogram is used for broadcasting by wireless means or for any communication to the public.

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- **Distribution right** = the **exclusive right** to make available to the public certain objects, and copies thereof, by sale or otherwise,
 - for performers, in respect of their performances;
 - for phonogram producers, in respect of their phonograms;
 - for producers of the first fixations of films, in respect of the original and copies of their films and
 - for broadcasting organisations in respect of fixations of their broadcasts.This right shall be exhausted only with the first sale in the Community made by the rightholder or with his consent.

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- **Two categories** of possible limitations (Art. 10(1) and (2)):
 - a exhaustive list of cases (private use, use of short excerpts for reporting events, ephemeral fixation, for the purposes of teaching or scientific research);
 - a general conditional limitation (the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organisations and of the producers of the first fixations of films as in connection with the protection of copyright in literary and artistic works).
- **One cumulative condition** (new Art. 10(3)) : the **three step test** = « the limitations shall only be applied in certain special cases which do not conflict with a normal exploitation of the subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder ».

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THANK YOU

http://europa.eu.int/comm/internal_market/copyright/index_en.htm

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Copyright and Knowledge-based Economy

European Commission 
Internal Market & Services DG