NOTE
from: Presidency
to: Permanent Representatives Committee (Part 1)
No. prev. doc.: 5745/00 PI 9 CULTURE 7 CODEC 75
No. Cion prop. : 8723/99 PI 29 CULTURE 36 CODEC 297

Delegations will find attached a consolidated text of the above proposal as it stands following the conclusion of work at Working Party level.
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the harmonisation of certain aspects of copyright and related rights in the Information Society

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

(1) The Treaty provides for the establishment of an Internal Market, the removal of barriers to the free movement of goods, the freedom to provide services and the right of establishment and the institution of a system ensuring that competition in the Internal Market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights contributes to the achievement of these objectives;

(2) The European Council, meeting at Corfu on 24 and 25 June 1994, stressed the need to create a general and flexible legal framework at Community level in order to foster the development of the Information Society in Europe. This requires, inter alia, the existence of an Internal Market for new products and services. Important Community legislation to ensure such a regulatory framework is already in place or is well under way. Copyright and related rights play an important role in this context as they protect and stimulate the development and marketing of new products and services and the creation and exploitation of their creative content;

(2bis) The proposed harmonisation will help to implement the four freedoms of the internal market and relates to compliance with the fundamental principles of law and especially of property - including intellectual property - freedom of expression and the public interest;

(3) A harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a high level of protection of intellectual property, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors. This will safeguard employment and encourage new job creation;

(4) Technological development has multiplied and diversified the vectors for creation, production and exploitation. While no new concepts for the protection of intellectual property are needed, the current law on copyright and related rights will have to be adapted and supplemented to respond adequately to economic realities such as new forms of exploitation;

(5) Without harmonisation at Community level, legislative activities at national level which have already been initiated in a number of Member States in order to respond to the technological challenges might result in significant differences in protection and thereby in restrictions on the free movement of services and products incorporating, or based on, intellectual property, leading to a refragmentation of the Internal Market and legislative inconsistency. The impact of such legislative differences and uncertainties will become more significant with the further development of the Information Society, which has already greatly increased transborder exploitation of intellectual property. This development will and should further increase. Significant legal differences and uncertainties in protection may hinder economies of scale for new products and services containing copyright and related rights;

(6) The Community legal framework for the legal protection of copyright and related rights must, therefore, also be adapted and supplemented as far as is necessary for the smooth functioning of the Internal Market. To that end, those national provisions on copyright and related rights which vary considerably from one Member State to another or which cause legal uncertainties hindering the smooth functioning of the Internal Market and the proper development of the Information Society in Europe should be adjusted, and inconsistent national responses to the technological developments should be avoided, whilst differences not adversely affecting the functioning of the Internal Market need not be removed or prevented;

(7) The various social, societal and cultural implications of the Information Society require that account be taken of the specific features of the content of products and services;

(8) Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. Their protection helps to ensure the maintenance and development of creativity in the interests of authors, performers, producers, consumers, culture, industry and the public at large. Intellectual property has therefore been recognised as an integral part of property;

(9) If authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work, as must producers in order to be able to finance this creative work. The investment required to produce products such as phonograms, films or multimedia products, and services such as 'on-demand' services, is considerable. Adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment;

(9bis) A rigorous, effective system for the protection of copyright and related rights is one of the main ways of ensuring that European cultural production receives the necessary resources and of safeguarding the independence and dignity of artistic creators and performers;

(10) Adequate protection of copyright works and subject matter of related rights is also of great importance from a cultural standpoint. Article 151 of the Treaty requires the Community to take cultural aspects into account in its action;
(10bis) A common search for, and consistent application at European level of, technical measures to protect works and to provide the necessary information on rights are essential insofar as the ultimate aim of these measures is to give effect to the principles and guarantees laid down in law;

(10ter) This Directive must seek to promote learning and culture by protecting creative and artistic works while permitting exceptions in the public interest for the purpose of education and teaching;

(11) The Diplomatic Conference held under the auspices of the World Intellectual Property Organisation (WIPO) in December 1996 led to the adoption of two new Treaties, the 'WIPO Copyright Treaty' and the 'WIPO Performances and Phonograms Treaty', dealing respectively with the protection of authors and the protection of performers and phonogram producers. Those Treaties update the international protection for copyright and related rights significantly, not least with regard to the so-called 'digital agenda', and improve the means to fight piracy world-wide. The Community and a majority of Member States have already signed the Treaties and the process of making arrangements for the ratification of the Treaties by the Community and the Member States is under way. This Directive also serves to implement a number of the new international obligations;

(12) Liability for activities in the network environment concerns not only copyright and related rights but also other areas, such as defamation, misleading advertising, or infringement of trademarks, and will be addressed horizontally in European Parliament and Council Directive .../.../EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market ("Directive on electronic commerce")\(^4\), which clarifies and harmonises various legal issues relating to Information Society services including electronic commerce. The provisions relating to liability in the context of electronic commerce should come into force within a timescale similar to that of this Directive, since they should provide a harmonised framework of principles and provisions relevant to \textit{inter alia} important parts of this Directive. This Directive is without prejudice to provisions relating to liability in that Directive;

(12bis) Especially in the light of the requirements arising out of the digital environment, it is necessary to ensure that collecting societies achieve a higher level of rationalisation and transparency with regard to compliance with competition rules;

(12ter) This Directive is without prejudice to modalities, in the Member States, of management of rights, such as extended collective licences;

\(^4\) Council common position adopted 28 February 2000, 14263/1/99 ECO 419 CONSOM 80 CODEC 826 REV 1.

This Directive should define the scope of the acts covered by the reproduction right with regard to the different beneficiaries. This should be done in conformity with the *acquis communautaire*. A broad definition of these acts is needed to ensure legal certainty within the Internal Market;

The objective of proper support for the dissemination of culture must not be achieved by sacrificing strict protection of rights or by tolerating illegal forms of distribution of counterfeited or pirated works;

This Directive should harmonise further the author's right applicable to the communication to the public of works. This right should be understood in a broad sense covering all communication to the public not present at the place where the communication originates. This right covers any such transmission or retransmission of a work to the public by wire or wireless means, including broadcasting. This right does not cover any other acts;

The legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject matter protected by related rights over networks should be overcome by providing for harmonised protection at Community level. It should be made clear that all rightholders recognised by the Directive have an exclusive right to make available to the public copyright works or any other subject matter by way of interactive on-demand transmissions. Such interactive on-demand transmissions are characterised by the fact that members of the public may access them from a place and at a time individually chosen by them;

The mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Directive;

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(18) Copyright protection under this Directive includes the exclusive right to control distribution of the work incorporated in a tangible article. The first sale in the Community of the original of a work or copies thereof by the rightholder or with his consent exhausts the right to control resale of that object in the Community. This right should not be exhausted in respect of the original or of copies thereof sold by the rightholder or with his consent outside the Community. The rights of rental and lending for authors have been established in Directive 92/100/EEC. The distribution right provided for in this Directive is without prejudice to the provisions relating to the rental and lending rights contained in Chapter I of that Directive;

(19) The question of exhaustion does not arise in the case of services and on-line services in particular. This also applies with regard to a material copy of a work or other subject matter made by a user of such a service with the consent of the rightholder. Therefore, the same applies to rental and lending of the original and copies of works or other subject matter which are services by nature. Unlike CD-ROM or CD-I, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorisation where the copyright or related right so provides;

(20) The rights referred to in this Directive may be transferred, assigned or subject to the granting of contractual licences, without prejudice to the relevant national legislation on copyright and related rights;

(21) A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject matter must be safeguarded. The existing exceptions to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment. Existing differences in the exceptions to certain restricted acts have direct negative effects on the functioning of the Internal Market of copyright and related rights. Such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities. In order to ensure the proper functioning of the Internal Market, such exceptions should be defined more harmoniously. The degree of their harmonisation should be based on their impact on the smooth functioning of the Internal Market;

(22) This Directive provides for an exhaustive enumeration of exceptions to the reproduction right and the right of communication to the public. Some exceptions only apply to the reproduction right, where appropriate. This list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning Internal Market. It is desirable that Member States should arrive at a coherent application of these exceptions, which will be assessed when reviewing implementing legislation in the future;

(23) The exclusive right of reproduction should be subject to an exception to allow certain acts of temporary reproduction, which are transient [or] [and] incidental reproductions, forming an integral [and essential] part of a technological process carried out for the sole purpose of enabling either a transmission in a network between third parties by an intermediary, or a lawful use of a work or other subject matter to be made. The acts of reproduction concerned should have no separate economic value on their own. Under these conditions this exception should include acts which enable browsing as well as acts of caching to take place, including those which enable transmission systems to function effectively. A use should be considered lawful where it is authorised by the rightholder or not restricted by law;
(24) Member States should be given the option of providing for certain exceptions for cases such as educational and scientific purposes, for the benefit of public institutions such as libraries and archives, for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings;

(24bis) In certain cases of exceptions, rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject matter. When determining the form, modalities and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain de minimis cases, no obligation for payment may arise;

(24ter) The Member States may provide for fair compensation for rightholders also when applying the optional provisions on exceptions which do not require such compensation;

(25) Existing national schemes on reprography, where they do exist, do not create major barriers to the Internal Market. Member States should be allowed to provide for an exception in respect of reprography;

(26) Member States should be allowed to provide for an exception to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use, accompanied by fair compensation. This may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders. Although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society. Digital private copying is likely to be more widespread and have a greater economic impact. Due account should therefore be taken of the differences between digital and analogue private copying and a distinction should be made in certain respects between them;

(27) When applying the exception on private copying, Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available. Such exceptions should not inhibit the use of technological measures or their enforcement against circumvention;
(28) Member States may provide for an exception for the benefit of certain non-profit making establishments, such as publicly accessible libraries and equivalent institutions, as well as archives. However, this should be limited to certain special cases covered by the reproduction right. Such an exception should not cover uses made in the context of on-line delivery of protected works or other subject matter. This Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of 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, as amended by Directive 93/98/EEC. Therefore, specific contracts or licences should be promoted which, without creating imbalances, favour such establishments and the disseminative purposes they serve;

(28a) When applying the exception in respect of ephemeral recordings made by broadcasting organisations it is understood that a broadcaster's own facilities include those of a person acting on behalf of and under the responsibility of the broadcasting organisation;

(28bis) When applying the exception for non-commercial educational and scientific research purposes, including distance learning, the non-commercial nature of the activity in question should be determined by that activity as such. The organisational structure and the means of funding of the establishment concerned are not the decisive factors in this respect;

(28ter) It is in any case important for the Member States to adopt all necessary measures to facilitate access to works by persons suffering from a disability which constitutes an obstacle to the use of the works themselves, and to pay particular attention to accessible formats;

(28quater) In certain other cases of minor importance, such as use for the purpose of demonstration or repair of equipment, use in connection with public exhibitions or public auction or certain forms of humorous use, Member States may apply exceptions which already exist in their national law, to the extent that such application does not affect free circulation of goods and services within the Community;

(29) When applying the exceptions provided for in this Directive, they should be exercised in accordance with international obligations. Such exceptions may not be applied in a way which prejudices the legitimate interests of the rightholder or which conflicts with the normal exploitation of his work or other subject matter. The provision of such exceptions by Member States should, in particular, duly reflect the increased economic impact that such exceptions may have in the context of the new electronic environment. Therefore, the scope of certain exceptions may have to be even more limited when it comes to certain new uses of copyright works and other subject matter;

(29bis) The exceptions referred to in Article 5(2) and (3) must not, however, prevent the definition of contractual relations designed to ensure fair compensation for the rightholders;
(29ter) Recourse to mediation could help users and rightholders to settle disputes. The Commission, in co-operation with the Member States within the Contact Committee, should undertake a study to consider new legal ways of settling disputes concerning copyright and related rights;

(30) Technological development will allow rightholders to make use of technological measures designed to restrict acts not authorized by the rightholders of any copyright, rights related to copyright or the sui generis right in databases. The danger, however, exists that illegal activities might be carried out in order to enable or facilitate the circumvention of the technical protection provided by these measures. In order to avoid fragmented legal approaches that could potentially hinder the functioning of the Internal Market, there is a need to provide for harmonised legal protection against circumvention of effective technological measures and against provision of devices and products or services to this effect;

(30bis) Such a legal protection should be provided to technological measures that effectively restrict acts not authorized by the rightholders of any copyright, rights related to copyright or the sui generis right in databases without, however, preventing the normal operation of electronic equipment and its technological development. Such legal protection implies no obligation to design devices, products, components or services to correspond to technological measures, so long as such device, product, component or service does not otherwise fall under the prohibition of Article 6. Such legal protection should respect proportionality and should not prohibit those devices or activities which have a commercially significant purpose or use other than to circumvent the technical protection. In particular, this protection should not hinder research into cryptography;

(30ter) The legal protection of technological measures is without prejudice to the application of any national provisions which may allow the private possession of devices, products or components for the circumvention of technological measures;


(31bis) The legal protection of technological measures applies without prejudice to public policy or public security;

(32) Important progress has been made in the international standardisation of technical systems of identification of works and protected subject matter in digital format. In an increasingly networked environment, differences between technological measures could lead to an incompatibility of systems within the Community. Compatibility and interoperability of the different systems should be encouraged. It would be highly desirable to encourage the development of global systems;
(33) Technological development will facilitate the distribution of works, notably on networks, and this will entail the need for rightholders to identify better the work or other subject matter, the author or any other rightholder, and to provide information about the terms and conditions of use of the work or other subject matter in order to render easier the management of rights attached to them. Rightholders should be encouraged to use markings indicating, in addition to the information referred to above, inter alia their authorisation when putting works or other subject matter on networks;

(33bis) There is, however, the danger that illegal activities might be carried out in order to remove or alter the electronic copyright-management information attached to it, or otherwise to distribute, import for distribution, broadcast, communicate to the public or make available to the public works or other protected subject matter from which such information has been removed without authority. In order to avoid fragmented legal approaches that could potentially hinder the functioning of the Internal Market, there is a need to provide for harmonised legal protection against any of these activities;

(34) Any such rights-management information systems referred to above may, depending on their design, at the same time process personal data about the consumption patterns of protected subject matter by individuals and allow for tracing of on-line behaviour. These technical means, in their technical functions, should incorporate privacy safeguards in accordance with European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data;

(35) deleted – see Recital 36ter.

(36) Member States should provide for effective sanctions and remedies for infringements of rights and obligations as set out in this Directive. They should take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for should be effective, proportionate and dissuasive and should include the possibility to seek damages and/or injunctive relief and, where appropriate, to apply for seizure of infringing material;

(36bis) In particular in the digital environment, the services of intermediaries may increasingly be used by third parties for infringing activities. In many cases such intermediaries are best placed to bring an end to such infringing activities. Therefore, without prejudice to any other sanctions and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary who carries a third party's infringement of a protected work or other subject matter in a network. This possibility should be available even where the acts carried out by the intermediary are exempted under Article 5. The conditions and modalities relating to such injunctions should be left to the national law of the Member States;

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(36ter) The protection provided under this Directive should be without prejudice to national or Community legal provisions in other areas, such as industrial property, data protection, conditional access, access to public documents, and the rule of media exploitation chronology, which may affect the protection of copyright or related rights;

(37) In order to comply with the WIPO Performances and Phonograms Treaty, Directives 92/100/EEC and 93/98/EEC should be amended;

(38) After a period of two years following the date of implementation of this Directive, the Commission should report on its application. This report should examine in particular whether the conditions set out in the Directive have resulted in ensuring a proper functioning of the Internal Market, and should propose action if necessary;

(39) Deleted.

HAVE ADOPTED THIS DIRECTIVE:
CHAPTER I
Objective and scope

Article 1

Scope

1. This Directive concerns the legal protection of copyright and related rights in the framework of the Internal Market, with particular emphasis on the Information Society.

2. Except in the cases referred to in Article 10, this Directive shall leave intact and shall in no way affect existing Community provisions relating to:

a) the legal protection of computer programs;

b) rental right, lending right and certain rights related to copyright in the field of intellectual property;

c) copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;

d) the term of protection of copyright and certain related rights;

e) the legal protection of databases.
CHAPTER II

Rights and exceptions

Article 2

Reproduction right

Member States shall provide 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:

a) for authors, of their works,

b) for performers, of fixations of their performances;

c) for phonogram producers, of their phonograms;

d) for the producers of the first fixations of films, in respect of the original and copies of their films;

e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.
Article 3

Right of communication to the public of works and
right of making available to the public of other subject matter

1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, 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.

2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:
   a) for performers, of fixations of their performances;
   b) for phonogram producers, of their phonograms;
   c) for the producers of the first fixations of films, of the original and copies of their films;
   d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.

4. Deleted.
Article 4

Distribution right

1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.

2. The distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.

Article 5

Exceptions to the restricted acts set out in Articles 2, 3 and 4

1. Temporary acts of reproduction referred to in Article 2, which are transient [or] [and] incidental, which are an integral [and essential] part of a technological process, whose sole purpose is to enable
(a) a transmission in a network between third parties by an intermediary or
(b) a lawful use
of a work or other subject matter to be made, and which have no independent economic significance, shall be exempted from the right set out in Article 2.
2. Member States may provide for exceptions to the exclusive right of reproduction provided for in Article 2 in the following cases:

a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;

b) in respect of reproductions on any medium made for the private use of a natural person and for non-commercial ends, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject matter concerned;

b bis) Partially merged with b).

c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;

d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be permitted;

e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons.
3. Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

a) use for the sole purpose of illustration for teaching or scientific research, as long as, whenever possible, the source, including the author's name, is indicated and to the extent justified by the non-commercial purpose to be achieved;

b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;

c) use for informatory purposes of published articles on current topics or of broadcast works or other subject matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as, whenever possible, the source, including the author's name, is indicated;

d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject matter which has already been lawfully made available to the public, that, whenever possible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;

e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;

f) use of political speeches as well as extracts of public lectures or similar works or subject matter to the extent justified by the informatory purpose and provided that, whenever possible, the source, including the author's name, is indicated;

g) use during religious or official celebrations;

h) *replaced by Article 5(2)(e)*
i) use of works, such as works of architecture or sculpture, located permanently in public places;

j) incidental inclusion of a work or other subject matter in other material;

[1st variant:

k) use in certain other cases of minor importance where exceptions already exist under national law, provided that they do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.]

[2nd variant:

k) use in connection with the public exhibition or sale of artistic works, to the extent necessary to promote the event;

l) use for the purpose of caricature, parody or pastiche;

m) use in connection with the demonstration or repair of equipment in commercial enterprises;

n) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;

o) use, for the purpose of communication to individual members of the public on the spot in establishments referred to in paragraph 2(c) of works and other subject matter contained in their collections;
p) use in certain other cases of minor importance where exceptions already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.\(^7\)

3bis. Where the Member States may provide for an exception to the right of reproduction pursuant to paragraphs 2 and 3 of this Article, they may provide similarly for an exception to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.

4. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 3bis shall only be applied to certain special cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their work or other subject matter [in certain special cases that do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder].

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\(^7\) The second variant would entail the deletion of Recital 28 quater.
CHAPTER III
Protection of technological measures and rights-management information

Article 6

Obligations as to technological measures

1. Member States shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she pursues that objective.

2. Member States shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

   a) are promoted, advertised or marketed for the purpose of circumvention of, or

   b) have only a limited commercially significant purpose or use other than to circumvent, or

   c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

   any effective technological measures.

3. The expression "technological measures", as used in this Article, means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorized by the rightholder of any copyright or any right related to copyright as provided by law or the sui generis right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.
Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the protection objective.

4. The legal protection provided for in paragraph 1 shall not be applicable
   a) to the extent that the circumvention of a technological measure enables a beneficiary of an exception or limitation provided for in national law in accordance with Article 5 to benefit from that exception, and
   b) where that beneficiary has legal access to the protected work or other subject matter.

[1\textsuperscript{st} variant:

Member States shall take appropriate measures to ensure that, under these conditions, that beneficiary is able to obtain from the rightholder the means of benefiting from the exception or limitation in question.

This paragraph shall not apply to digital private copying.]

[2\textsuperscript{nd} variant:

5. The exception in paragraph 4 to the protection in paragraph 1 shall not apply to digital private copying provided for in Article 5(2)(b).

6. Member States shall take appropriate measures to ensure that, under the conditions set out in paragraph 4 above, that beneficiary is able to obtain from the rightholder the means of benefiting from the exception or limitation under Article 5 of which he is a beneficiary.]
Article 7

Obligations concerning rights-management information

1. Member States shall provide for adequate legal protection against any person knowingly performing without authority any of the following acts:

a) the removal or alteration of any electronic rights-management information;

b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Directive or under Chapter III of Directive 96/9/EC from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law, or of the sui generis right provided for in Chapter III of Directive 96/9/EC.

2. The expression 'rights-management information', as used in this Article, means any information provided by rightholders which identifies the work or other subject matter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive 96/9/EC, the author or any other rightholder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

The first subparagraph shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive 96/9/EC.
CHAPTER IV

Common provisions

Article 8

Sanctions and remedies

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive and act as a deterrent to further infringement.

2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material as well as of devices, products or components referred to in Article 6(2).

3. Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.
**Article 8 bis**

Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular patent rights, trade marks, design rights, utility models, topographies of semi-conductor products, type faces, conditional access, the protection of national treasures, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract and the cable retransmission of national broadcasts.

**Article 9**

Application over time

1. The provisions of this Directive shall apply in respect of all works and other subject matter referred to in this Directive which are, by the date referred to in Article 11(1), protected by the Member States' legislation in the field of copyright and related rights, or which meet the criteria for protection under the provisions of this Directive or the provisions referred to in Article 1(2).

2. This Directive shall apply without prejudice to any acts concluded and rights acquired before the date referred to in Article 11(1).

3. *Deleted.*

4. *Deleted.*
Article 10

Technical adaptations

1. Directive 92/100/EEC is hereby amended as follows:

   a) Article 7 is deleted.

   b) Article 10(3) is replaced by the following:

   "3. The limitations may only be applied to certain special cases and may not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with normal exploitation of their subject matter".

2. Article 3(2) of Directive 93/98/EEC is replaced by the following:

   "2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram is lawfully published during this period, the rights shall expire 50 years from the date of the first such publication. If no lawful publication takes place during the period mentioned in the first sentence, and if the phonogram is lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such communication to the public."

   If, however, through the expiry of the term of protection which was granted under the previous wording of Article 3(2) of Directive 93/98/EEC, a phonogram is no longer protected, this Article shall not have the effect of protecting this phonogram anew.
**Article 11**

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ...(time two years following its publication in the *Official Journal of the European Communities*). They shall immediately inform the Commission thereof and shall also communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Not later than at the end of the second year after the date referred to in paragraph 1 and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, in which, *inter alia*, on the basis of specific information supplied by the Member States, it shall examine in particular the application of Articles 5, 6 and 8 in the light of the development of the digital market. In the case of Article 6, it shall examine in particular whether that Article confers a sufficient level of protection and whether acts which are permitted by law are being adversely affected by the use of effective technological measures. Where necessary, in particular to ensure the functioning of the Internal Market pursuant to Article 14 of the Treaty, it shall submit proposals for amendments to this Directive.
3. Protection of rights related to copyright under this Directive shall leave intact and shall in no way affect the protection of copyright.

4a) A Contact Committee is hereby established. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and shall meet either on the initiative of the Chairman or at the request of the delegation of a Member State.

4b) The tasks of the Committee shall be as follows:

- to organise consultations on all questions deriving from application of the Directive;

- to facilitate the exchange of information on relevant developments in legislation and case-law, as well as relevant economic, social, cultural and technological developments.
**Article 12**

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

**Article 13**

Addressees

This Directive is addressed to the Member States.

Done at ..........., 

*For the European Parliament*  
*The President*  

*For the Council*  
*The President*