11. Copyright and related rights in the Information Society


The proposal was approved with the following amendments:

<table>
<thead>
<tr>
<th>TEXT PROPOSED BY THE COMMISSION (*)</th>
<th>AMENDMENTS BY PARLIAMENT</th>
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<tbody>
<tr>
<td>Recital 2a (new)</td>
<td>(2a) Whereas 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 — of freedom of expression and the public interest,</td>
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<tr>
<td>(1) OJ C 108, 7.4.1998, p. 6.</td>
<td>(3) Whereas 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; whereas this will safeguard employment and encourage new job creation;</td>
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(Amendment 3)

Recital 6a (new)

(6a) Whereas the harmonisation of the rules on copyright and related rights in response to technological developments in the information society must be compatible with fundamental legal principles in the Member States according to which these rights are not absolute and their protection must not be allowed to jeopardise the fundamental principles of an open and modern society, in which freedom of expression and the public interest must be fully achieved within the framework of the provisions enshrined in international conventions on intellectual property and may prevail over the restrictions arising from the enjoyment of these rights;

(Amendment 4)

Recital 8a (new)


(Amendment 5)

Recital 9

(9) Whereas if authors or performing artists are to continue their creative and artistic work they have to receive an appropriate reward for the use of their work; whereas the investment required to produce products such as phonograms, films or multimedia products, and services such as ‘on-demand’ services, is considerable; whereas 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;

(Amendment 6)

Recital 9a (new)

(9a) Whereas 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;
(Amendment 7)

Recital 10a (new)

(10a) Whereas 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;

(Amendment 8)

Recital 10b (new)

(10b) Whereas 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;

(Amendment 9)

Recital 12

(12) Whereas liability for activities in the network environment concerns not only copyright and related rights but also other areas it will be addressed horizontally in the context of a forthcoming Directive clarifying and harmonising various legal issues relating to Information Society services, including electronic commerce; whereas the latter initiative should come into force, as far as possible, within a timescale similar to that of this Directive;

(12) Whereas 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 the context of a forthcoming Directive clarifying and harmonising various legal issues relating to Information Society services, including electronic commerce; whereas the provisions relating to liability and to electronic commerce should come into force within a timescale similar to that of this Directive, since they should provide a comprehensive framework of principles and provisions for the effective implementation inter alia, of important parts of this Directive;

(Amendment 10)

Recital 12a (new)

(12a) Whereas, 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;

(Amendment 11)

Recital 13a (new)

(13a) Whereas this Directive does not apply to the legal protection of designs which is dealt with in Directive 98/71/EC (1);

Recital 14a (new)

(14a) Whereas 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 or counterfeiting of works;

Recital 16

(16) Whereas 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; whereas it should provide all rightholders recognised by the Directive with an exclusive right to make available to the public copyright works or any other subject matter by way of interactive on-demand transmissions; whereas 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; whereas this right does not cover direct representation or performance;

(16a) Whereas the fact that a transmission occurs between two individuals is not sufficient for it to be regarded as a private communication and whereas in particular a person who lawfully receives a work over a network may view or hear it within the household and in a particular place;

Recital 19a (new)

(19a) Whereas Member States should, as far as possible, co-ordinate provisions in respect of acknowledging rightholders for use of their works;

Recital 21

(21) Whereas 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; whereas 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; whereas existing differences in the limitations and exceptions where access to mediation could assist users and rightholders in resolving disputes; whereas the existing exceptions to the rights as set out by the Member States have to be reassessed in the light.
to certain restricted acts have direct negative effects on the functioning of the Internal Market of copyright and related rights; whereas such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities; whereas in order to ensure the proper functioning of the Internal Market, such exceptions should be defined more harmoniously; whereas the degree of their harmonisation should be based on their impact on the smooth functioning of the Internal Market;

(23) Whereas the exclusive right of reproduction should be subject to an exception to allow for certain acts of temporary reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling the use of protected subject matter and which have no separate economic value on their own; whereas under these conditions this exception should include acts of caching or browsing;

(24a) Whereas it is nevertheless 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 those works, and to pay special attention to accessible formats;

(26) Whereas 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; whereas this may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders; whereas, 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; whereas digital private copying is not yet widespread and its economic impact is still not fully known; whereas, therefore, it appears justifiable to refrain from further harmonisation of such exceptions at this stage; whereas the Commission will closely follow market developments in digital private copying and will consult interested parties, with a view to taking appropriate action;
Recital 26a (new)

(26a) Whereas it is becoming increasingly necessary and urgent to achieve the most precise and uniform harmonisation possible with regard to the procedures for charging fees for private copies to be established in all Member States;

Recital 27

(27) Whereas, 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; whereas such exceptions should not inhibit the use of technological measures;

Recital 28

(28) Whereas Member States may provide for an exception for the benefit of establishments accessible to the public, such as non-profit-making libraries and equivalent institutions; whereas, however, this should be limited to certain special cases covered by the reproduction right; whereas such an exception should not cover uses made in the context of on-line delivery of protected works or other subject matter; whereas 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;

Recital 28a (new)

(28a) Whereas the Member States, in cooperation with the Commission, should undertake a study to develop new legal ways of solving disputes concerning infringements of authors’ rights, given that the present proceedings in many Member States are cumbersome;
Recital 29

(29) Whereas, when applying those exceptions, they should be exercised in accordance with international obligations; whereas such exceptions may not be applied in a way which prejudices the legitimate interest of the rightholder or which conflicts with the normal exploitation of his work or other subject matter; whereas 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; whereas, 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;

Recital 29a (new)

(29a) Whereas 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 holders of copyright and related rights;

Recital 29b (new)

(29b) Whereas there is a need for increased awareness of the value of, and respect for, the cultural heritage of indigenous communities and peoples; whereas such respect should include preventing exploitative use of their works, the status of which is not yet sufficiently regulated by international agreement and law; whereas neither copyright regimes nor reasons of freedom of communication should prejudice the legitimate right to recognition of the cultural heritage of indigenous communities and peoples;

Recital 33a (new)

(33a) Whereas increased legal certainty as to the legitimate identity of a specific Internet site from which copyrighted materials may be obtained will foster greater consumer confidence;

Recital 33b (new)

(33b) Whereas greater consumer confidence will act as a catalyst for substantial investment in creativity and innovation, including network infrastructure, and lead in turn to
growth and increased competitiveness of the European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors;

(Amendment 28)

Recital 33c (new)

(33c) Whereas this in turn will safeguard employment and encourage new job creation;

(Amendment 29)

Article 2, point (a)

(a) for authors, of the original and copies of their works, (a) for authors, of their works,

(Amendment 31)

Article 3(3a) (new)

3a. The mere supply of physical equipment designed to effect a communication or make one possible does not constitute an act of communication within the meaning of this Article.

(Amendment 33)

Article 5(1)

1. Temporary acts of reproduction referred to in Article 2 which are an integral part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter, and having no independent economic significance, shall be exempted from the right set out in Article 2.

(Amendment 34)

Article 5(2)(a)

(a) in respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects;

(a) in respect of reproduction on paper or any similar medium, with the exception of musical works in published form, effected by the use of any kind of photographic technique or by some other process having similar effects, provided that the rightholders receive fair compensation;
(Amendment 36)

Article 5(2)(b)

(b) in respect of reproductions on audio, visual or audio-visual recording media made by a natural person for private use and for non-commercial ends;

(b) in respect of reproductions on audio, visual or audio-visual analogue recording media made by a natural person for private and purely personal use and for non-commercial ends, on condition that the rightholders receive fair compensation;

(Amendment 37)

Article 5(2)(ba) (new)

(ba) in respect of reproductions on audio, visual or audio-visual digital recording media made by a natural person for private and purely personal use and for non-commercial ends, in cases where there are no reliable and effective technical means capable of protecting the interests of the beneficiaries. For all digital private copying, however, fair compensation for all the rightholders must be provided;

(Amendment 38)

Article 5(2)(c)

(c) in respect of specific acts of reproduction made by establishments accessible to the public, which are not for direct or indirect economic or commercial advantage;

(c) in respect of specific acts of reproduction made for documentation or conservation purposes by establishments which are not for direct or indirect economic or commercial advantage such as, in particular, libraries and archives and other teaching, educational or cultural establishments;

(Amendment 39)

Article 5(2)(ca) (new)

(ca) in respect of specific acts of reproduction whose sole purpose is to facilitate a legitimate broadcasting act;

(Amendment 40)

Article 5(2)(cb) (new)

(cb) in respect of the analogue use of individual works from the daily newspapers and radio in connection with news reporting in daily newspapers and on the radio on current affairs, provided that the source is indicated and to the extent warranted by the informative purpose and the objective of illustrating the event concerned;
(Amendment 41)

Article 5(3)(a)

(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved; (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, on condition that the rightholders receive fair compensation;

(Amendment 42)

Article 5(3)(b)

(b) for uses for the benefit of visually-impaired or hearing-impaired persons, which are directly related to the disability and to the extent required by the specific disability; (b) for uses for the benefit of people with disabilities, which are directly related to the disability and of a non-commercial nature and to the extent required by the specific disability;

(Amendment 43)

Article 5(3)(c)

(c) use of excerpts in connection with the reporting of current events, as long as the source is indicated, and to the extent justified by the informatory purpose; (c) use of short excerpts in connection with the reporting of current events, as long as the source and if possible the author's name is indicated, and to the extent justified by the informatory purpose and the objective of illustrating the event concerned;

(Amendment 44)

Article 5(3)(d)

(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 the source is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose; (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 the source, and if possible 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;

(Amendment 45)

Article 5(3)(e)

(e) use for the purposes of public security or for the purposes of the proper performance of an administrative or judicial procedure. (e) use for the purposes of public security or for the proper performance or reporting of administrative, parliamentary or judicial proceedings;

(Amendment 46)

Article 5(3a) (new)

3a. Member States may provide for limitations to the right of distribution for specific acts of reproduction performed in accordance with the exceptions to this right provided for in paragraphs 2 and 3 of this Article and concerning the cases referred to in Articles 2a and 10a of the Berne Convention.
4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific 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 works or other subject matter.

(Amendment 48)

Article 5(4a) (new)

4a. Member States shall ensure, when necessary, by such legal means as a strictly limited non-voluntary licence or a legal presumption, that broadcasting organisations are entitled to use, or to authorise others to use, their own past archive productions produced or commissioned and financed by them under their own editorial control for new broadcasting or on-demand services. Such use shall be subject to payment by the TV or radio producer of equitable remuneration, as appropriate, to authors, performers or other rightholders who contributed to the production.

(Amendment 49)

Article 6(1)

1. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices or the performance of services, which have only limited commercially significant purpose or use other than circumvention, and which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect any copyrights or any rights 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.

(Amendment 50)

Article 6(2)

2. The expression ‘technological measures’, as used in this Article, means any device, product or component incorporated into a process, device or product designed to prevent or inhibit the infringement of any copyright or any rights related to

2. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices, products or components or the provision of services, which:
copyright as provided by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed 'effective' where the work or other subject matter is rendered accessible to the user only through application of an access code or process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders.

(Amendment 51)

Article 6(2)(a) (new)

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

(Amendment 52)

Article 6(2)(b) (new)

(b) have circumvention as their sole or principal purpose or as their commercial purpose, or

(Amendment 53)

Article 6(2)(c) (new)

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any technological measures designed to protect 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.

(Amendment 54)

Article 6(2a) (new)

2a. The expression ‘effective technological measures’, as used in this Article, means any technology, device or component that, in the ordinary course of its operation, is designed to protect any copyright or any rights related to copyright as provided by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall be deemed 'effective' where the work or other subject matter is rendered accessible to the user only through application of an access code or any other type of process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders.
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*.

(Amendment 55)

**Article 8(1)**

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 act as a deterrent to further infringement.

(Amendment 57)

**Article 11(2a) (new)**

2a. The protection by this Directive of rights related to copyright shall be without prejudice to copyright.

(Amendment 58)

**Article 11(2b) (new)**

2b. A Contact Committee, chaired by a representative of the Commission and including representatives of the Member States, shall help to ensure, by means of suitable checks carried out on a continuous basis, that there is consistency in the implementation of the provisions laid down in Article 5(2) and (3) and Article 7(1).

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(Codecision procedure: first reading)

*The European Parliament,*

− having regard to the Commission proposal to Parliament and the Council COM(97)0628 — 97/0359(COD) (**),
− having regard to Articles 189b(2), 57(2), 66 and 100a of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0079/98),
− having regard to Rule 58 of its Rules of Procedure,
− having regard to the report of the Committee on Legal Affairs and Citizens’ Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media (A4-0026/99),