

Copyright Directive

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The **Copyright Directive** (officially the **Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society**, also known as the **Information Society Directive** or the **InfoSoc Directive**), is a directive of the European Union enacted to implement the WIPO Copyright Treaty and to harmonise aspects of copyright law across Europe, such as copyright exceptions.^[1] The directive was enacted under the internal market provisions of the Treaty of Rome.

The directive was subject to unprecedented lobbying^[2] and has been cited as a success for copyright industries.^[3] The directive gives EU Member States significant freedom in certain aspects of transposition. Member States had until 22 December 2002 to implement the directive into their national laws. However, only Greece and Denmark met the deadline and the European Commission eventually initiated enforcement action against six Member States for non-implementation.

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Directive 2001/29/EC

European Union directive

Title	Directive on the harmonisation of certain aspects of copyright and related rights in the information society
Made by	European Parliament & Council
Made under	Arts. 47(2), 55 & 95
Journal reference	L167, 2001-06-22, p. 10 L6, 2002-01-10, p. 70

History

Date made	2001-05-22
Came into force	2001-06-22
Implementation date	2002-12-22

Preparative texts

Commission proposal	C108, 1998-04-07, p. 6 C180, 1999-06-25, p. 6
EESC opinion	C407, 1998-12-28, p. 30
EP opinion	C150, 1999-05-28, p. 171

Other legislation

Amends	92/100/EEC, 93/98/EEC
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Current legislation

Content

Rights

Articles 2–4 contain definitions of the exclusive rights granted to under copyright and related rights. They distinguish the "reproduction right" (Article 2) from the right of "communication to the public" or "making available to the public" (Article 3): the latter is specifically intended to cover publication and transmission on the internet. The two names for the right derive from the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (Arts. 8 & 10 respectively). The related right for authors to authorise or prohibit any form of distribution to the public by sale or otherwise is provided for in Article 4.

Exceptions and limitations

Article 5 lists the copyright exceptions which Member States may apply to copyright and related rights. The restrictive nature of the list was one source of controversy over the directive: in principle, Member States may *only* apply exceptions which are on the agreed list, although other exceptions which were already in national laws on 2001-06-22 may remain in force [Article 5(3)(o)]. The Copyright Directive makes only one exception obligatory: transient or incidental copying as part of a network transmission or legal use. Hence internet service providers are not liable for the data they transmit, even if it infringes copyright. The other limitations are optional, with Member States choosing which they give effect to in national laws.

Article 5(2) allows Member States to establish copyright exceptions to the Article 2 reproduction right in cases of:

- photographic reproductions on paper or any similar medium of works (excluding sheet music) provided that the rightholders receives fair compensation,
- reproductions on any medium made by a natural person for private use which is non-commercial provided that the rightholders receives fair compensation,
- reproduction made by libraries, educational establishments, museums or archives, which are non-commercial
- archival reproductions of broadcasts,
- reproductions of broadcasts made by "social institutions pursuing non-commercial purposes, such as hospitals or prisons" provided that the rightholders receives fair compensation.

Article 5(3) allows Member States to establish copyright exceptions to the Article 2 reproduction right and the Article 3 right of communication to the public in cases of:

- illustration for teaching or scientific research, provided the source, including the author's name, is acknowledged,
- uses for the benefit of people with a disability,
- current event reporting, provided the source, including the author's name, is acknowledged,
- quotations for purposes such as criticism or review, provided the source, including the author's name, is acknowledged,
- use necessary for the purposes of "public security" or to the proper performance or reporting of "administrative, parliamentary or judicial proceedings",

- use of political speeches and extracts of public lectures or similar works, provided the source, including the author's name, is acknowledged,
- use during religious celebrations or official celebrations "organised by a public authority",
- use of works such as architecture or sculpture located permanently in public places,
- incidental inclusion of a work in other material,
- the advertising the public exhibition or sale of artistic works
- caricature, parody or pastiche,
- for demonstration or repair of equipment,
- use of an artistic work, drawing or plan of a building for the purposes of reconstruction,
- for non-commercial research or private study

According to Article 5(5) copyright exceptions may only be "applied in certain special cases which 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", therefore the directive confirms the Berne three-step test.

Technological protection measures

Article 6 of the Copyright Directive requires that Member States must provide "adequate legal protection" against the intentional circumvention of "effective technological measures" designed to prevent or restrict acts of copying not authorised by the rightholders of any copyright, related right or the sui generis right in databases (preamble paragraph 47). Member States must also provide "adequate legal protection" against the manufacture, import, distribution, sale, rental, advertisement, or possession "for commercial purposes of devices, products or components or the provision of services which":

- are promoted, advertised or marketed for the purpose of circumvention of, or
- have only a limited commercially significant purpose or use other than to circumvent, or
- are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.

In the absence of rightholders taking voluntary measures the Directive provides that Member States must ensure that technological measures do not prevent uses permitted under Article 5 on copyright exceptions, see Article 6(4). Article 7 requires that Member States must provide "adequate legal protection" against the removal of rights management information metadata.

Unlike Section 1201 of the Digital Millennium Copyright Act, which only prohibits circumvention of access control measures, the Copyright Directive also prohibits circumvention of copy protection measures, making it potentially more restrictive. In both the DMCA and the Copyright Directive, production, distribution etc. of equipment used to circumvent both access and copy-protection is prohibited. Under the DMCA, potential users who want to avail themselves of an alleged fair use privilege to crack copy protection (which is not prohibited) would have to do it themselves since no equipment would lawfully be marketed for that purpose. Under the Copyright Directive, this possibility would not be available since circumvention of copy protection is illegal.^[4]

Implementation by member states

Member States had until 22 December 2002 to implement the Copyright Directive into their national laws. However, only Greece and Denmark met the deadline, while Italy, Austria, Germany and the UK implemented the directive in 2003. The remaining eight Member States (Belgium, Spain, France, Luxembourg, The Netherlands, Portugal, Finland and Sweden) were referred to the European Court of Justice for non-implementation. In 2004 Finland, the UK (with regards to Gibraltar), Belgium and Sweden were convicted for non-implementation.^[5]

National implementation measures include:

- Czech Republic: the amendment No. 216/2006 Coll. of the Czech Copyright Act[1] (<http://psp.cz/sqw/text/tiskt.sqw?O=4&CT=1111&CT1=0>)
- Finland: 2005 amendment to the Finnish Copyright Act and Penal Code
- France: *loi n° 2006-961 du 1^{er} août 2006 relative au droit d'auteur et aux droits voisins dans la société de l'information*, better known as "DADVSI"
- United Kingdom: Copyright and Related Rights Regulations 2003

See also

- Copyright law of the European Union
- Digital Millennium Copyright Act
- *Deckmyn v Vandersteen* (Case law regarding Parody definition)

References

1. Council Decision of 16 March 2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (2000/278/EC), *OJ* no. L089 of 2000-04-11, pp. 6–7.
2. Hugenholtz, Bernt (2000). "Why the Copyright Directive is Unimportant, and Possibly Invalid". *European Intellectual Property Review*: 501.
3. For that, and contrary views: Ginsburg, Jane C., "Can Copyright Become User-Friendly? Essay Review of Jessica Litman, *Digital Copyright*" (Prometheus Books 2001)(October 6, 2001). *Columbia-VLA Journal of Law & Arts*, Vol. 25, No. 1, 2001. Available at SSRN: <http://ssrn.com/abstract=288240> or doi:10.2139/ssrn.288240 (<https://dx.doi.org/10.2139%2Fssrn.288240>).
4. * Patricia Akester, "Technological Accommodation of Conflicts between Freedom of Expression and DRM: The First Empirical Assessment" available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1469412 (unveiling, in the context of the Copyright/Information Society Directive, through empirical lines of enquiry, (1) whether certain acts which are permitted by law are being adversely affected by the use of DRM and (2) whether technology can accommodate conflicts between freedom of expression and DRM - linking, thus, policy conclusions to empirical findings).
5. "Implementation of the directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the Information Society". Association of European Performers' Organisations. Retrieved 9 Sep 2012.

External links

- Text of the Directive (as corrected) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>)

- EUCD - Copyright extensions that harm (<http://www.fsfeurope.org/projects/eucd/eucd.en.html>) by FSFE
- EUCD materials (<http://cyber.law.harvard.edu/media/eucd>) from the Harvard Digital Media Project
- EUCD.info (<http://eucd.info/index.php?English-readers>)

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