

MBB Policy Briefing

The Malta Business Bureau is the EU-Business advisory office of the Malta Chamber of Commerce, Enterprise and Industry, and the Malta Hotels and Restaurants Association.

Reforming Copyright Law in the EU – Directive 2001/29/EC and 2014/2256(INI)

Background to Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

This directive, also known as the Information Society (InfoSoc) directive, was enacted to harmonise aspects of copyright law across the EU, such as copyright exceptions, while allowing Member States significant flexibility in transposition. The directive was considered to be a significant success for copyright industries.

Articles 2-4 requires Member States to fully provide for the authorization or prohibition of authors, performers, phonogram producers, film producers, and broadcasting organisations to making their works available to the public through distribution (including by sale) or otherwise. The exceptions to this are laid out in article 5.

Only one of the substantial list of exceptions is made obligatory to Member States; transient or incidental copyright as part of a network transmission or legal use, relieving Internet Service Providers of liability from the data they transmit, even if it infringes copyright. Other limitations are optional, leaving Member States flexible to which limitations they can effect into their national law, as long as they do not conflict with a normal exploitation of the subject matter, and do not unreasonably prejudice the legitimate interests of the right-holder. This therefore ensures that the directive conforms to the Berne three-step test.¹

Article 6 of the directive introduces anti-circumventing measures, by requiring Member States to provide adequate legal protection against the intentional circumvention of any technological protection measures designed to prevent or restrict acts of copying not authorized by the right-holder. Member States must also provide legal protection against devices/products which have limited significant purpose other than the use to circumvent technological protection.

Article 7 of the directive requires Member States to provide adequate legal protection against the removal of electronic rights-management information, as well as the distribution/communication of works from which such information has been removed/alterd without authority.

2014/2256(INI) – Implementation of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

In recent years, Directive 2001/29/EC has come under fire, due to it being, among other reasons, outdated and thus not reflecting advances in the fields of communication, particularly through the internet. The modernization of copyright law is thus one of the priorities of the Juncker Commission, particularly as the current directive is currently being seen as an obstacle to the Digital Single Market.

¹ A clause included in international agreements on intellectual property, binding signatories to standardize limitations and exceptions to exclusive rights under their respective national laws

The debate has currently been stoked by MEP Julia Reda, who submitted an own initiative report (2014/2256/INI) on the subject to the European Parliament's Legal Affairs Committee. The reasoning behind the own-initiative was the proper EU-wide harmonisation of copyright, while taking digital and technological advances over the last 14 years into consideration.

The report asks Parliament to consider the introduction of a Single European Copyright Title, which the rapporteur considers to be the best medium to achieve the goals set out in the Directive 2001/29/EC. This would restrict the flexibility that Member States have in the implementation of exceptions and limitations outlined in Article 5 of the InfoSoc directive, arguing that this will lead to a much simpler copyright regime to operate in, and opening up the single market fully for creators, thus eliminating the need of what is known as 'geo-blocking'. Geo-blocking is the practice of blocking services to countries due to either limited profitability in the domestic market, or being unable/unwilling to negotiate licenses in every Member State. The most well-known exponents of such a practice are YouTube, Netflix and Spotify.

In accordance with the rapporteur's argumentation of bringing copyright law in the EU into the digital age, the report asks that "exceptions and limitations in the digital environment should be enjoyed without any unequal treatment as compared with those granted in the analogue world". This means that exceptions and limitations which focus on analogue works, would also be applicable for digital works. The rapporteur is also advocating that the Commission proceeds to harmonise the term of protection of copyright (currently up to 70 years after the death of the author/creator) to a duration that does not exceed the current international standards set out in the Berne Convention (at least 50 years).

Furthermore, the report also calls for the existing exceptions and limitations to be expanded to include audio-visual quotation, e-lending through libraries, text and data mining, as well as the adoption of an open norm to allow for the adaptation of currently unanticipated new forms of cultural expression. The report also recommends exempting works produced by the public sector, while demanding that the exercising of exceptions and limitations should not be hindered by technological measures.

Timeline:

MEPs in the Legal Affairs Committee have already submitted a total of 556 amendments, significantly altering the substance of the report. The voting on amendments has been delayed until June. The final report that will be eventually presented to parliament is certainly eagerly awaited, and is expected in July.

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