

MinervaPlus WP4 Interim Draft Report 4.1

Title

“Inspection of the European legislation regarding Intellectual Property Rights”

The present interim report is addressed to the group of Intellectual Property Rights experts formulated by the Minerva & MinervaPlus Partners. According to the WP4 workplan the scope of the first interim report is to inspect and present an overview of the current European Legislation Framework. In that sense the group of experts that will annotate and contribute on this report should have knowledge of the legislation aspects regarding IPR issues.

The most organized and global effort towards the solution of the IPR problem inside EU was accomplished with the release of the EU Copyright Directive. The EC circulated this directive to all member states and asked them to harmonize their national laws with the directive's recommendations.

The EU Copyright Directive was released on 22 May 2001 with a 19 months deadline for the Member States to implement it. Unfortunately, only a very small number of the member states managed to make the necessary amendments on their national legislation.

This ascertainment and the reality of ten New Accessed Countries joining the European Community, makes the inspection of the current legislation a very interesting and complicated task. It is important to initially assess the harmonization progress accomplished by the old member states and investigate the situation in the New Accessed ones.

The first segment of the interim report makes a background overview of the IPR problem, states the fundamental conventions on this field and categorizes the main differences between EU & USA. The second segment is a brief description of the most important articles and recitals of the EU Copyright Directive. Main goal of this segment is to highlight the crucial aspects of the Directive and determine the options for implementation.

The information source of these segments is the report created by the **FIPR (Foundation for Information Policy Information, <http://www.fipr.org/>)** entitled **(“Implementing the EU Copyright Directive”)**. It's a report on the progress of each member state (the new accessed countries are not included) towards the harmonization of the national legislation with the directive.

The third segment is a valid description of the current situation in Greece. An overview of the laws and the actions undertaken by the corresponding Intellectual Property Organization will be presented in order to demonstrate the active legal framework in Greece. The information source of this segment is the **UNESCO (United Nations Educational Scientific and Cultural Organizations)** Collection of National Copyright Laws around the world (<http://portal.unesco.org/culture/>).

The group of experts is expected to write a similar short report describing the situation in each country. The report should contain facts indicating if there has been any progress with the national legislation harmonization and describe the activities foreseen by each member state towards the realization of the implementation options described in

the second segment of this report. Specifically, it is recommended that each national report should discuss the following points:

- National Legislation
- Legal Protection on the Internet
 - Digital Rights
 - Restrictions / Exceptions
- Technological Measures
- Rights Management Information
- Penalties-Injunction

Contents

1	Legislation - Background.....	4
1.1	Immediate public policy objectives	6
1.2	Wider public policy objectives	7
1.3	Free trade and effective markets	7
1.4	Freedom of expression.....	8
1.5	Privacy	9
2	The Copyright Directive	10
2.1	Objective and scope	10
2.2	Rights and Exceptions.....	10
2.3	Protection of Technological Measures and Rights-Management Information .	12
2.4	Common provisions	14
2.5	Options for implementation	16
3	GREECE	19
3.1	Greek Legislation.....	19
3.2	Legal Protection on the Internet.....	20
2.3.1	Digital Rights.....	20
2.3.2	Restrictions / Exceptions.....	21
3.3	Technological Measures	23
3.4	Rights Management Information	24
3.5	Penalties-Injunction	25

1 Legislation - Background

The World Intellectual Property Organization is the part of the United Nations system responsible for administering various treaties on patents, trademarks, designs – and copyright. WIPO and its forerunner organisations are 120 years old. From the Paris and Berne conventions agreed in 1883 and 1886, WIPO now administers 23 treaties on a wide range of intellectual property¹.

WIPO decided in 1989 to investigate the impact of computers and communications networks upon copyright. Annual meetings of experts were held over the next seven years, culminating in the agreement of the WIPO Copyright Treaty² and Performance and Phonogram Treaty³ in December 1996 by representatives of the 160 member states. These treaties have provided the impetus for many nations around the world to update their copyright laws. Meanwhile, the Agreement on Trade-Related Aspects of Intellectual Property Rights⁴ (TRIPS) was agreed as part of the treaties establishing the World Trade Organisation in 1994. This was the result of a strategy by United States business to move intellectual property policy development away from WIPO, where developing nation members had different views on the value to their economies, cultures, education and healthcare systems of strong intellectual property rights. The US and later the European Union put sustained pressure on other parties to the WTO treaties to accept strong private rights in TRIPS⁵.

TRIPS covers a wide range of intellectual property, from geographical indicia to integrated circuit layouts. But like the WIPO Copyright Treaty, its provisions on copyright are largely based upon the Berne Convention for the Protection of Literary and Artistic Works⁶. Its most important feature is its binding nature upon all WTO members. Breaking its provisions may lead to trade sanctions being imposed through the WTO Dispute Settlement process⁷. The United States also uses the absence of “adequate and effective” protection for intellectual property rights as one of the criteria for imposing trade sanctions under the “Special 301” procedure introduced by the Omnibus Trade and Competitiveness Act of 1988. The US used this procedure to remarkable effect in negotiating TRIPS⁹, and has since been using it to impose additional “TRIPS plus” requirements on other nations in parallel with their inclusion in bilateral free trade agreements¹⁰. Against this background, the EU embarked upon a process to update and harmonise its member states’ laws on copyright and related rights. The EU single market is the European Commission’s most cherished achievement, and the Commission is always keen to “tidy up” disparities between national laws that inhibit the functioning of this market. Differing copyright regimes were seen as a clear obstacle to European trade. The Commission therefore developed a draft Directive on the subject between 1997 and 2000. As with the development of the Digital Millennium Copyright Act in the US, rightsholder organizations saw the opportunity for a second chance to push proposals that had been rejected by the diplomatic conference that led to the WIPO treaties. In particular, they were keen to reintroduce the detailed anti-circumvention rules previously proposed by the US but rejected in favour of the simpler and more flexible language of Articles 11 and 18 of the final WIPO Copyright and Performance and Phonogram treaties¹¹. The developing nations who forced the WIPO compromise¹² were missing from this second round. Copyright user organisations were also grossly underrepresented

compared to the number of industry lobbyists in Washington DC and Brussels. Unsurprisingly therefore, both the EU and US ended up with legislation specifically outlawing acts of circumvention and circumvention devices, rather than concentrating on acts of copyright infringement.

References

- 1 "About WIPO". See http://www.wipo.org/about-wipo/en/index.html?wipo_content_frame=/about-wipo/en/gib.htm
- 2 "WIPO Copyright Treaty" (1996). Available from <http://www.wipo.int/treaties/ip/wct/index.html>
- 3 "WIP Performances and Phonograms Treaty" (1996). Available from <http://www.wipo.int/treaties/ip/wppt/index.html>
- 4 "Trade-Related Aspects of Intellectual Property Rights", Annex 1C, Marrakesh Agreement Establishing the World Trade Organization (1994). Available from http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm
- 5 Peter Drahos with John Braithwaite, "Information Feudalism", London: Earthscan Publications, pp.108—149 (2002)
- 6 "Berne Convention for the Protection of Literary and Artistic Works", as amended (1979). Available from <http://www.wipo.int/treaties/ip/berne/index.html>
- 7 "WTO Dispute Settlement Gateway". See http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm
- 8 19 U.S.C. § 2411. See section IV of the Department of Commerce commentary at <http://www.osc.doc.gov/ogc/occic/301.html> (2001)
- 9 *Supra* note 5 pp.99—107
- 10 See for example the May 9 2003 letter from US Representatives Lofgren and Boucher to the Secretary of Commerce, available at <http://www.techlawjournal.com/cong108/ftas/20030509.asp>
- 11 Jessica Litman, "Digital Copyright", Amherst: Prometheus Books (2001) pp.128—130
- 12 Pamela Samuelson and John Browning, "Confab Clips Copyright Cartel", *Wired* 5.03 (1997). Available from <http://www.wired.com/wired/archive/5.03/netizen.html>

1.1 Immediate public policy objectives

There are two important policy goals that are favoured across the EU in relation to Internet policy, and should be emphasised in implementations of the Copyright Directive. The first is the EU focus on the “**information society**” rather than the “information economy” popular in the US. If this is to mean anything, it is that economic concerns must only be one consideration in government action designed to promote the development of such a society. Other issues such as creativity and a vibrant cultural sphere must also be considered. While strong intellectual property rights are often promoted as a mechanism to encourage and reward creativity, legislation must allow the creative reuse of content that is a vital part of literature, art and other such endeavours. For the great majority of human history, such creativity has flourished without the existence or enforcement of intellectual property rights¹⁴. The second is the encouragement of **high-technology research** within the EU, particularly in the area of security. European governments and the Commission are proud of the results of their investment in this area, which has had some notable successes in the past decade – such as the selection in open competition by the US government of a European cipher (Rijndael) as the basis for its Advanced Encryption Standard. Another European competition entry (Serpent) reached the final shortlist of five. It is therefore vital that implementations do not restrict or threaten this research, which is seen as vital to the future competitiveness of EU economies.

References

¹⁴ Supra note 5 p.36

1.2 Wider public policy objectives

There are several longer-term policy objectives that must be considered when implementing the Directive. The increased security, transparency, reliability and sovereignty provided by open source software must be encouraged. Competition, free expression, cultural diversity and privacy must all be supported rather than hindered by copyright law.

1.3 Free trade and effective markets

There has long been a conflict between competition policy and intellectual property monopolies. It is ironic that a global agreement on these monopolies (TRIPS) is embedded in a free-trade body such as the World Trade Organisation¹⁷.

It is important that the copyright and related monopoly rights granted by the Copyright Directive are not allowed to be used to restrict other markets, as has already been seen in the US *Lexmark v.*

Nor should the use of technical measures to enforce differential pricing between market segments be protected under this Directive. While there is an ongoing debate over the long-run value to the consumer of price discrimination¹⁸, any such protection should be given through separate and openly debated legislation rather than by copyright law. We suspect such legislation would be extremely unpopular.

A longer-term objective must be to replace the Copyright Directive's "Community exhaustion" of copyright with "international exhaustion". This would allow the global movement of copyright works once they had been legally purchased anywhere in the world, reducing the impact of price discrimination between different national markets. National exhaustion was pushed by some countries during the TRIPS negotiations, but this proved too controversial a subject to reach agreement upon during that trade round¹⁹.

References

¹⁷ Supra note 5 pp.210—211

¹⁸ James Boyle, "Cruel, Mean or Lavish?: Economic Analysis, Price Discrimination and Digital Intellectual Property", 536 *Vanderbilt Law Review* 2007 (2000). Available from <http://www.vanderbilt.edu/Law/lawreview/vol536/boyle.pdf>

¹⁹ Supra note 5 p.37

1.4 Freedom of expression

Copyright is always to some extent in tension with freedom of expression. The former is an economic tool intended to “promote the Progress of Science and useful Arts” (in the words of Article I of the US Constitution); the latter is a fundamental human right guaranteed by instruments such as the EU Charter of Fundamental Rights²⁰ (which will be binding on all Member States under the forthcoming EU Constitution) and the European Convention on Human Rights²¹. The implementation of copyright must be carefully limited to provide those economic benefits without unduly limiting free speech. Even in the US, with the robust protection of the Constitution’s First Amendment, the DMCA has caused free speech problems, as described earlier. US courts have dismissed free speech arguments in cases against the publication of or even linking to circumvention tools²². Nor does the EU have any equivalent to US legislative precedent²³ protecting the source code of software as speech.

Member States must therefore be careful that their implementations of the Copyright Directive do not trample on the free speech rights of their citizens. Cultural diversity

Many EU States such as France are particularly concerned about “homogenisation” of culture. They have so far resisted attacks on their national quotas for films, movies and music through free trade agreements. They should also resist attempts by large global corporations to lock up content through increasingly strong intellectual property rights, dominating markets for content²⁴ and reducing the rights of European artists to build on previous works.

References

-
- 20 “The Charter of Fundamental Rights of the European Union”, OJ C 364/01 (2001). Available from http://www.europarl.eu.int/charter/default_en.htm
- 21 Council of Europe, “Convention for the Protection of Human Rights and Fundamental Freedoms” (1950). Available from <http://www.echr.coe.int/Convention/webConvenENG.pdf>
- 22 Supra note 13
- 23 93 Cal. App.4th 648, 113 Cal. Rptr.2d 338 (2001), appeal granted, 117 Cal. Rptr.2d 167, 41 P.3d 2 (2002).
- 24 Supra note 5 pp. 176—178

1.5 Privacy

Digital Rights Management (DRM) systems often allow rightsholders to monitor in great detail the use of their products by consumers. Users could therefore find that details of every access to a protected work they have made are stored by rightsholders or their agents, and used for secondary purposes such as marketing related products. This information may also be linked with other personal information on a consumer, creating a detailed profile²⁵.

Several governments have provided law enforcement and intelligence agencies with access to this type of data, and courts could order access in many different circumstances. Copyright holders have already been given expedited access to the personal details of ISP customers they allege are infringing their rights in the US under the Digital Millennium Copyright Act, and are lobbying to obtain these powers in the EU under Article 9 of the draft Directive on the enforcement of intellectual property rights²⁶.

As with freedom of expression, privacy is a right guaranteed by the European Convention on Human Rights (see Article 8) along with the EU Charter of Fundamental Rights (see Articles 7 and 8). Copyright Directive implementations must not allow rightsholders to collect large amounts of personal data on their customers under the guise of “technological protection measures”.

References

-
- 25 L.A. Bygrave, “Digital Rights Management and Privacy – Legal Aspects in the European Union”, pp.527—529, in E. Becker et al., “Digital Rights Management – Technological, Economic, Legal and Political Aspects”, Heidelberg: Springer Verlag (2003) s.4.
- 26 European Commission, “Proposal for a Directive on the enforcement of intellectual property rights”, COM (2003) 46(01). Available from http://europa.eu.int/eur-lex/en/com/pdf/2003/com2003_0046en01.pdf

2 The Copyright Directive

The Directive²⁷ is in two parts: the preamble, which sets out the background, and the Articles. The preamble is of a more explanatory nature, and sets out the context within which the Articles should be implemented by Member States. Nonetheless, it does have legal force, and contains some important principles that should be reflected in implementing legislation. The first eight Recitals of the preamble describe the reasons why the Directive was created. They concentrate on the development and proper functioning of the EU's internal market, and encouragement of creativity and competitiveness and the general development of the Information Society. More concretely, they state that copyright and related rights need updating given technical developments (such as the Internet), and that this updating should be done in a harmonised way across the EU.

Recitals 8—12 then attempt to justify the specific approach taken, and why the authors of the Directive feel that strong Intellectual Property Rights are necessary to meet the objectives described above. The remaining recitals discuss further objectives and reasoning behind the Articles.

2.1 Objective and scope

Article 1 sets out the scope of the Directive. It limits the Directive's effect on related intellectual property rights in existing EU law, most importantly the Software Directive²⁸. This should mean, for example, that technical measures protecting computer software should not be covered by Article 6 of the Copyright Directive. Articles 5(3) and 6 of the Software Directive should continue to allow the “reverse-engineering” of software for the purposes of creating compatible programs. Without this protection, free software developers could be prevented from fully accessing Application Programming Interfaces or similar features in commercial software. An ideal implementation of the Software and Copyright Directives would also allow the reverseengineering of file formats, in order to allow free software to read and write files in commercial software formats. Without this protection, commercial software companies can exploit network effects to impose monopoly prices on software markets.

2.2 Rights and Exceptions

Articles 2—4 set out the rights protected by the Directive. Article 2 provides the most fundamental “copy” right. It provides exclusive rights over the reproduction of “direct or indirect, temporary or permanent” copies of works to performers, phonogram producers, film producers, broadcasting organisations and authors. Articles 3 and 4 give “communication to the public” rights to all of these groups except authors, who are granted distribution rights. Recital 30 states that all of these rights may be assigned,

transferred or licensed. Unlike communication rights, Recital 28 states that distribution rights are “exhausted” by a first sale within the EU. This means that publishers may not prohibit the resale of books, whereas the groups given communication rights may prohibit secondary markets in those works. This prevents resale of their services, supporting the effectiveness of any differential pricing employed. Recital 29 states that rights in services, particularly those supplied on-demand, should not be exhausted by a sale within the EU.

Article 5 sets out the limitations and exceptions that may be applied to the rights provided in Articles 2—4. It is an exhaustive list, which means that any exception outside this list is not allowed, even if it currently exists in Member State law. This is justified in Recital 31 given the “new electronic environment” and the effect of exceptions on the internal market. This Recital also states that a fair balance between different types of rightholders, and with consumers, must be safeguarded in these exceptions. Recital 32 says that Member States must come to a “coherent application” of the exceptions, which will be reviewed in implementing legislation later.

The mandatory exception to the reproduction right in Article 5(1) provides for “transient and incidental” reproduction that is an “essential and integral” part of network transmission by an intermediary or allows lawful use of a work with no “independent economic significance.” Recital 27 emphasises that providing communications facilities does not by itself qualify as making a communication. This exception must be implemented in full, and prevents coercion of Internet Service Providers running services such as Web caches with no independent value for their users.

It also prevents rightholders from controlling all access to works through digital technologies, which by their very design make temporary “copies” of works as they are transferred from a medium such as a DVD to the player’s memory for processing, and then to a display or speaker. Rightholders have previously argued that they should control such reproductions: “Even the most fleeting cascade of electrons is being claimed by them as part of their income stream”²⁹.

This one mandatory exception demonstrates that the communications industry concentrated their lobbying on the provisions that directly affect their business, unlike their actions as part of a broader coalition at the WIPO negotiations. The same thing happened in the US, resulting in Title II of the DMCA, the Online Copyright Infringement Liability Limitation Act. Its s.512 contains some very similar provisions to those of the Copyright and E-Commerce Directives.

Recital 33 of the EUCD prevents proxies from altering cached data, and mandates “widely recognised and used” technology that provides information on access to data by users to rightholders. Given the minimization requirement of Article 6 of the Data Protection Directive³⁰, such technology should provide anonymised rather than personally identifiable information.

Article 5.2 sets out optional exceptions to the reproduction right. As with articles 5.3 and 5.4, which of these are implemented is entirely up to Member States. The five possible exceptions are:

(a) photocopying (except sheet music); (b) non-commercial private use, when fair compensation is paid; (c) non-commercial acts by libraries, educational establishments, museums and archives; (d) ephemeral recordings made by and for broadcasting organizations; and (e) non-commercial reproduction of broadcasts by social institutions,

provided fair compensation is paid. Recital 35 states that when fair compensation is required, the level set should take account of damage done to the rightsholder by the exception. If minimal damage is done, no payment may be required. But Recital 36 says that Member States may require payment of fair compensation even when it is not required by the Directive.

Article 5.3 sets out a longer list of exceptions to both the reproduction and communication rights.

These exceptions were valued strongly enough for those States where they exist to bargain for their inclusion in the Directive. Most important of these for general purposes are (a) teaching and scientific research; (b) use by disabled persons; (c) news reporting; (d) criticism or review; and (k) caricature, parody or pastiche. Recital 14 emphasises the necessity of exceptions for education and teaching to encourage learning and culture. Recital 43 says that “all necessary measures” should be taken to enable the use of works by disabled persons.

Article 5.4 allows any exceptions to the reproduction right contained in Articles 5.2 and 5.3 to be applied to the distribution right “to the extent justified by the purpose of the authorised act of reproduction.”

The “three-step test” from the Berne convention and TRIPS is included in Article 5.5. This limits copyright exceptions to “special cases” which do not conflict with “normal exploitation” of copyright materials or “unreasonably prejudice” legitimate rights held. Recital 44 repeats that exceptions should be “exercised in accordance with international obligations”. Rightsholders have argued that this test should be explicitly included in national legislation as a further courtinterpreted limitation on exceptions, but some States (such as the UK) have instead used it as a test of whether exceptions may properly be included in the implementing legislation.

2.3 Protection of Technological Measures and Rights-Management Information

The general purpose of this section is set out by Recitals 13 and 47. They state that common development and use of technological protection measures and rights-management information is essential, because both technologies give effect to copyright and related rights.

Article 6 is by far the most controversial part of the Directive, as are the similar provisions of s.1201 of the Digital Millennium Copyright Act in the US.

Article 6.1 requires that Member States provide “adequate legal protection” against the deliberate circumvention of technological measures – regardless of whether such an act infringed any copyright. A user must know or have reasonable grounds to know they are causing such circumvention, but the purpose for which it is done is irrelevant. Even fast-forwarding through a commercial at the start of a DVD could therefore be illegal if restricted by the rightsholder. Sanctions are expanded upon in Article 8.

Article 6.2 expands this protection by banning the manufacture, import, distribution, sale, rental or advertisement of circumvention devices or services – and also their possession for commercial purposes. This applies to any device or service that is marketed or primarily designed to circumvent technical measures, or has only limited other commercial purpose. Again, it is irrelevant whether the purpose to which such a device is put is copyright infringement. It is unclear whether open source software could be said to

have a commercial purpose. Recital 49 says that States may further ban private possession of circumvention devices.

The definition of “technological measures” and whether they are “effective” is contained in Article 6.3. Both are wide definitions. The former covers any mechanism normally used to restrict acts not authorised by a rightsholder. The latter covers any access control, protection mechanism or copycontrol mechanism, whatever its technical effectiveness. Therefore even the weakest protection measures gain legal protection against even the simplest types of circumvention. Under this definition, a marker pen – which can be used to defeat several types of CD protection mechanisms by drawing on the CD – could be classed as a circumvention device if it was advertised as such.

Recital 48 provides some limit to any further extension of protection for technical measures by Member States. Protection should not prevent “normal operation of electronic equipment and its technological development;” nor should technical measures be required in products or services. Member States should not use the Directive as a justification to introduce legislation mandating the inclusion of protection measures in electronic devices.

Senator Fritz Hollings twice introduced such legislation in the US Senate. His initial Security Systems Standards and Certification Act³¹ covered all “interactive digital devices”, while the Consumer Broadband and Digital Television Promotion Act³² was slightly more narrowly aimed at “digital media devices”. But neither made any significant progress in the Senate.

Recital 48 also states that implementations “should not prohibit those devices or activities which have a commercially significant purpose or use other than to circumvent the technical protection.” These other significant uses must include those of open source software. Such software may not be sold commercially but is commercially significant in its benefits to its users and its effects on markets that might otherwise be monopolies. Implementations should make clear that software need not be sold commercially for its purpose to qualify as commercially significant.

Finally for Recital 48, legal protection for technical measures “should not hinder research into cryptography.” Implementations should provide a strong generic exemption for such research if this is not already provided by overarching law (as it is by the German constitution, for example).

Cryptographic research involves far more than the theory of cryptologic mathematics; most cryptographic mechanisms fail for engineering reasons connected with protocol design or the implementation in hardware and/or software. Such research cannot be very productive unless it is targeted at real systems. ‘Toy’ systems developed in the laboratory are inadequate as many of the novel and interesting failures arise from the interaction of components designed by people from different disciplines, or from the scale and complexity of real systems³³. Nor should this exemption be limited to “recognised” researchers such as academic university staff; much important security research is carried out by hobbyists and students.

Article 6.4 is perhaps the most crucial part of the Directive. It specifies the procedures that should be used to reconcile the “fair dealing” exceptions in Article 5 with the ability of consumers to exercise them given technological measures protected under Article 6.

Unlike the DMCA, Article 6.4 does not give protection to certain groups (such as security

researchers) against liability for circumvention offences. In the first instance, it merely requests that rightsholders take voluntary measures to allow the exercise of certain exceptions. Recital 51 emphasises that these may include “the conclusion and implementation of agreements between rightsholders and other parties concerned.”

The measures taken must facilitate the reproduction right exceptions in Article 5.2 (except private use in 5.2(b)) and a limited subset of the reproduction and communication rights exceptions in Article 5.3 (for teaching and research, use by disabled persons and public security functions). They may also include the private use exception, but must allow rightsholders to restrict the number of private copies so made. Any technical measures used in any of these voluntary measures must also be protected by Article 6.1.

If voluntary measures are not taken, Member States must take “appropriate measures” of their own to ensure that citizens may benefit from the exceptions. However, this is not the case with works made available through on-demand services. Such services are defined very broadly – on “agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.” This definition is also included in Recitals 25 and 53.

Several of the exceptions and limitations permitted by Article 5 require fair compensation. However, Recital 35 makes clear that one of the factors that must be taken into account in setting the level of such compensation is the use of technical measures protected under Article 6. This is explicitly restated for the private copy exception in Article 5.2(b) and in Recital 52. It is likely that fair compensation levels will be reduced as the use of technical measures increases.

Article 7 gives protection to electronic Rights Management Information. This is any type of data provided by rightsholders that identifies a work, its author or the terms and conditions of access. It must be associated with a copy or communication to the public of a protected work (Article 7.2). The development and use of compatible systems is encouraged by Recital 54.

Article 7.1 and Recital 56 state that Member States must provide “adequate legal protection” against removal or alteration of such information. This protection must also be provided against the communication to the public (and related acts) of a work where rights management information has been removed, if this would encourage or conceal copyright infringement.

Recital 57 emphasises that rights-management systems should protect the privacy of users, in accordance with the Data Protection Directive. Article 7 contains several interesting differences with Article 6. It allows removal of rights management information given “authority” – hence allowing the entity that applied the information to authorise its removal, unlike an entity that has applied a technical protection measure. The restrictions in subparagraph 1(b) also require intent to infringe a right, uniquely amongst all of the Directive’s measures. Nor are there any controls on devices that remove rights management information, as Article 6 provides for circumvention devices.

2.4 Common provisions

Member States must provide “effective, proportionate and dissuasive” sanctions and remedies under **Article 8**, and take all necessary measures to ensure they are applied. Article 8.2 and Recital 58 say that rightsholders must be able to bring actions for

damages, obtain injunctive relief and apply for seizure of infringing materials and circumvention devices. Despite the mandatory exception in Article 5.1(a) for online services, Article 8.3 and Recital 59 require that rightsholders must also be able to apply for an injunction against an intermediary whose services are being used to infringe their rights. Article 12 of the E-Commerce Directive³⁴ provides a “mere conduit” defence for intermediaries, but this may be overridden by a court or administrative authority action³⁵. Recital 16 states that the Copyright Directive should be implemented without prejudice to the liability provisions of the E-Commerce Directive.

Article 9 expands on Article 1 and reaffirms that existing legal provisions in a wide range of other areas – including but by no means limited to other intellectual property rights – should not be affected by the Directive.

From a public policy perspective, the most important of these areas are privacy and competition law. Many Digital Rights Management systems track the usage of protected materials. Article 9 and Recital 57 confirm that this tracking will be subject to the requirements of the Data Protection Directive³⁶ – notably that data collected should be relevant, not excessive for purpose, and kept for the minimum time necessary in identifiable form; and that users should be notified of and consent to the collection, and be able to access data concerning them.

Nor should technological measures be allowed to override competition policy. Anti-circumvention rules must be tailored as tightly as possible to protect copyright but not accessories. Under the DMCA, they have been used to control accessory markets (such as for printer cartridges). This would directly contradict the EU’s recycling directive³⁷ as it affects printer cartridges.

Recital 17 states that the compliance of collecting societies with competition rules should also be enforced.

Recital 50 explicitly says that provisions on reverse engineering for software compatibility in the Software Directive must not be affected. Therefore, circumvention of technical measures protecting software for developing compatible software, and the development of devices that perform such circumvention, must not be prohibited in implementing Articles 6.1 and 6.2.

The administrative provisions of **Articles 10—11** and **13—15** cover timing and other implementation details. They specify the Directive’s retrospective effect; adaptations of directives 92/100/EEC³⁸ (rental and lending rights) and 93/98/EEC³⁹ (term lengths); deadline for implementation; entry into force; and the addressees (the Member States).

Article 12 sets up a procedure for a triennial review of the Directive, and a contact committee made up of representatives of the Member States and chaired by a Commission representative.

The Commission must submit a report by 22 December 2004 and then every three years on the effects of the Directive given the development of the digital market. The effects of Article 5, 6 and 8 are particularly pertinent. If necessary, this report may propose amendments to the Directive – especially to improve the functioning of the internal market. The contact committee is charged with reviewing the functioning of the internal and digital markets, organising consultations on the Directive and exchanging information on relevant developments between Member States.

2.5 Options for implementation

There are several parts of the Directive that are important for the achievement of the public policy objectives outlined earlier. Good national implementations should use the flexibility contained in the Directive in the following ways:

Article 5

Both for the benefit of their own citizens as well as best achieving the original intent of the Directive⁴⁰ – the harmonisation of copyright law across the EU – Member States should include the maximum number possible of the exceptions from Article 5 paragraphs 2, 3 and 4 in their implementing legislation. If the initial implementation is done using a legislative procedure such as that in the UK and Ireland – where only mandatory changes may be implemented in a fast-track process – the States should later use primary legislation to implement new exceptions.

To reduce legal uncertainty implementations should not explicitly include the three-step test in Article 5(5). Instead, as in several countries such as the UK, it should be applied to exceptions as they are considered for inclusion in legislation. The Directive exhaustively enumerates permissible exceptions rather than providing a more flexible court-interpreted “fair use” test as exists for example in the US. Given the balanced approach that copyright law is supposed to represent, Member States should not provide a judicial power which could operate only to further limit the available exceptions.

Article 6

The best implementation of Article 6(1) would only prohibit circumvention when it resulted in infringement of the rights in Articles 2–4. Norway provided for this in its draft implementation, and the Danish Minister of Culture claimed that the final Danish implementation also has this effect.

A remote second-best option is to provide only minor civil sanctions for circumvention acts. Italy’s draft provides for a fine of 154€, which may be reduced for minor offences. The UK draft allows for damages for loss or recovery of profit to be awarded, neither of which is relevant for non-infringing circumvention.

Even with a “fair circumvention” right such as in the Danish and draft Norwegian implementations, citizens will find it increasingly difficult to exercise such a right without the tools to do so as technological protection mechanisms improve. Definitions of circumvention devices or services should carefully exclude products intended to facilitate the exercise of exceptions by legitimate owners of a work.

The Directive suggests a voluntary approach from rightsholders to allow exceptions to be exercised by beneficiaries. We believe this will only be effective if it is backed up with “effective, proportionate and dissuasive” sanctions for rightsholders who do not provide a timely means to do so. Many rightsholders will be based outside the EU with a primary focus on other markets.

Meanwhile, for example, a visually impaired person may require immediate access to a work for educational or employment purposes.

An ideal implementation would withhold the benefits of copyright for technically protected works (and at the same time withhold protection against circumvention of the protection for them) until this requirement was met by rightsholders. This could be implemented in exactly the same way as the UK Patents Act of 1977 prevented the enforcement of a patent if a license existed anywhere that illegally tied it to other

contractual conditions (such as the supply of raw materials). There is no reason why the intellectual property rights in the Copyright Directive should not be limited in the same way.

A less ideal implementation would, in the same manner as the Data Protection Directive, allow beneficiaries to complain to a national authority who would undertake speedy and effective action on their behalf. Beneficiaries and groups representing them should also have a direct right of action through the courts against rightsholders. The Spanish Minister of Culture, for example, will be able (under the current draft) to impose 6,000€ per day fines on rightsholders who prevent the exercise of exemptions using technological prevention measures. Government bodies given this task should contain representatives from all interested parties – competition and privacy commissioners, consumer representatives as well as rightsholders.

In either case, the outcome should protect all beneficiaries of exceptions against a particular rightsholder. Rulings may also provide advice to other rightsholder in similar situations on how to remedy problems before enforcement action is taken against them.

The definitions in Article 6(3) should be transposed carefully to limit the effect of Article 6 to technological measures that are focussed on protecting copyright⁴¹. As per Articles 1 and 9 and recital 48, this protection should not interfere with the circumvention of devices that limit accessory markets, security research or consumer privacy. For example, a device that monitored consumers' use of digital media does not prevent or restrict unauthorised acts in the normal course of its operation, and hence should not be protected⁴². The personal data collected by rightsholders should be minimized as per the Data Protection Directive. And consumers should not be prevented from protecting their privacy by circumventing technological measures that report personal information back to rightsholders, or obtaining the tools necessary to do so.

As with the Danish implementation, mechanisms such as DVD region codes, which are used to release DVDs in different markets at separate times and at different prices, should be excluded.

Finally, Article 6(4)(4) attempts to remove all protections for beneficiaries when works are supplied “on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.” This is a dramatic reduction of copyright users' rights that needs urgent revision in the review of the Directive. For the time being, implementations should emphasize how unlikely this condition is to be met, given the slow progress of high-bandwidth high-quality mobile browsing devices. Content supplied to a home or office PC is obviously not accessed “from a place... individually chosen by” members of the public.

References

27 See http://europa.eu.int/comm/internal_market/en/intprop/docs/

28 Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, as amended by Directive 93/98/EEC. OJ L 122, 17/5/91, p. 42.

29 Supra note 5 p.186

30 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. OJ L 281, 23/11/95, p. 31.

31 See <http://cryptome.org/sssca.htm> (2001)

32 See <http://cryptome.org/s2048.txt> (2002)

33 “FIPR response to the UK government consultation on the implementation of the Copyright Directive” (2002). Available from <http://www.fipr.org/copyright/FIPR.html>

34 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. OJ L 178, 17/07/2000, p.1.

35 Article 12.3 *ibid.*

36 *ibid.*

37 Directive 2002/96/EC of 27 January 2003 of the European Parliament and of the Council on waste electrical and electronic equipment. OJ L 37, 13/02/2003, p.24

38 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 L 346, 27/11/92, p. 61. As amended by Directive 93/98/EEC.

39 Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights. OJ L 290, 24/11./993, p.9

40 P. Bernt Hugenholtz, “Why the Copyright Directive is Unimportant, and Possibly Invalid”, EIPR 2000-11, pp. 499—505. Available from <http://www.ivir.nl/publications/hughenholtz/opinion-EIPR.html>

41 “From the Explanatory Memorandum, however, it can be concluded that only when a measure prevents acts that the copy-right holder can prohibit on the basis of copyright law does it need to be protected.” K.J. Koelman and N. Helberger,

3 GREECE

3.1 Greek Legislation

Greek legislation harmonized its national legislative framework with the amendments of Directive 2001/29 within the article 81. L.3057/2002. It is worth mentioning that Greece was the first member state that completed the harmonization procedure before the deadline expiration (22-10-2002). In addition, it is impressive that rights and protection mechanisms recommended by the Directive 2001/29 were already part of the Greek national legislation before the harmonization.

Greece validated the two Internet Treaties with the laws that were recently voted by the Greek Parliament (L.3183/2003 ΦΕΚ Α' 227/26-9-2003 and L.3184/2003 and ΦΕΚ Α' 228/26.9.2003). However, the procedure for the verification action will not be conducted independently by Greece, but from all member states of the Community with the proper authorization that is supplied by the President of the European Union Council. According to article 2 of the council's decision on 16th of March 2000, (2000/278/EK-ΕΕΕΚ L.89/6-11-2000), the President is authorized to submit the verification action to the general supervisor of WIPO since the date that the member states will put in action the measures that are required in order for the current Community legislation to be harmonized with the obligations deriving from the Internet Treaties.

It is very interesting that Greek legislation totally confronts with the Continental/European system of intellectual property. It's based on traditional concepts like the scope theory, the press, the percentage reward, the protection of the moral right and the «principle of truth» (creator theory) according to which the initial right holder is the creator. The concept where the creator is the initial right holder is the fundamental rule of public order in the national law for intellectual property, applies on the occasion where the creation of a work is on demand and can not be overlooked regardless of whether the current legislation accepts foreigners as creators or not. It should be noted that the term "creator" was directly related with the artist around 18th century and the concept of creation is combined with human.

Still, Greek legislation recognizes as protected objects, according to the community vested status, some hybrid patterns, like computer software and databases that are protected equivalently with manuscripts. The rights violation may result in severe penalties and the last years there is a large increase on the development of the collaborative management idea with the establishment of non-profit institutions that can represent many different right holders' categories.

3.2 Legal Protection on the Internet

2.3.1 Digital Rights

The 2001/29 Directive regulates in a unity text, bilaterally for all beneficiaries, the copyright, the public demonstration / disposition right, as well as the distribution right. These rights have fundamental importance for the protection in the cyberspace and are described with the term “digital rights”. The significance derives from the fact that in a legal perspective these rights allow the right holder to control his work in all different stages of its Internet course, from the sender to the receiver including the intermediate stations. Despite the fact that similar rights were included in most national legislations, it was necessary for the provisions to be amended in order to eliminate any doubt regarding its objectives and range.

Under these circumstances the article 3 L. 2121/1993 concerning the creator’s property right was amended, as well as the articles 46, 47 and 48 of the same law that refers to the performer’s related property rights, the phonographs, audiovisual producers and radio-TV organizations (article 81 par. 3.4 and 5 L.3057/2002).

The initial amendment (article 3 N. 2121/1993), for the creator’s property right, was modified within the article 81 par.1 L. 3057/2002 in the following points:

- The copyright is fully harmonized with the corresponding right of the Directive 2001/29 and explicitly declares that the creator has the authority (right) to allow or forbid “the direct or indirect, temporary or permanent reproduction, by any means and in any form, in whole or in part”. Direct reproduction is the reproduction that occurs directly to the same or a different medium, while the indirect reproduction refers to the reproductions that occur through indirect procedures, like the radio-TV broadcast with phonographs. The temporal or permanent reproduction has the meaning that many operations in the Internet results in the reproduction of the original object without having such intention. These operations may lead to the production of a temporal copy in the computer cache memory. As a consequence, within the act of reproduction both temporal and permanent copies are included.
- The act of publication is being replaced by the right of distribution, exactly as stated in the 2001/29 Directive. According to this right the creator has the authority to allow or forbid the public distribution of his works by any means and in any form. The distribution right shall be exhausted within the Community only where the first sale or other transfer of ownership in the Community of the original or copies is made by the rightholder or with his consent.

The communication to the public right gives the creator the authority to allow or forbid the public demonstration of his works using wired or wireless means or in any other medium. It’s clear that the communication to the public right includes the disposition right and has great practical value in the framework of spreading artificial works across the Internet.

Digital disposition presumes that the members of the public can have access to the content from a place and at a time individually chosen by them, contrary to the radio-TV transmission where the content is being transmitted from a radio-TV station to a passive audience that just receives the broadcasted signal.

The conceptual definition of the word “public-audience” is left to national legislation and national courts, since in an international level there is no globally accepted valid definition. According to Greek legislation, public demonstration is the demonstration that “makes the work reachable and accessible by a greater group of people than the small group consisted of the family members and the people belonging to the narrow social environment, regardless of whether the people of the greater group exists in the same or different places” (article 3 par. 2 L. 2121/1993). The public work demonstration should be considered as a general concept that includes every actions resulting in making the work accessible to public, which according to the previous definition is a group of people with no special family or personal bonds. The concept of public demonstration definitely includes the transmission on demand. As public demonstration “in any other way” can also be considered the public exposition of artifacts derived from conjectural arts.

The legislation has already accepted the existence of copyright and the communication to the public right violation in the case of public transmission through internet and on line communication of music works without the proper authorization from the rightholder, such as the radio station that holds the contract with the collective management authority. For example, a radio station was hosting a website on the Internet and using a specialized server equipped with the appropriate software, was not only performing operations for signal insertion and processing of the radio station on the Internet, but was also creating a repository of music plays into the main computer memory. Thereafter, these signals after the intervention of the Internet Service Provider and on the radio station demand were uploaded on the Internet, so as to be accessible by the website users. The court accepted the radio station request for circumventing operations like registration, reproduction, public demonstration, public performance and transmission or retransmission through Internet that the radio station had installed to a specific electronic address.

2.3.2 Restrictions / Exceptions

Intellectual Property managed to maintain a significant impact on the digital environment, since the legislator recognizes the creator’s absolute and exclusive right to allow or forbid the exploitation of his work. It is obvious that the property right, apart from the time constrains, is subjected to additional restrictions concerning its content and range. These restrictions that usually apply in proportion to the related rights are justified by a number of reasons such as social, cultural and educational policies and aims at the protection of the public interest, the requirement for public information and general public needs. Private use is one of the property right’s basic limitations, but constitutes a significant funding source for the creator and the related rights beneficiaries with the establishment of the fair price.

It should be noted that, apart from the term “restrictions” of the property right, there is also the term “exceptions”. The term “restrictions” indicates the exploitation of the work without license but after paying the fair price, while the term “exceptions” allows

the free use of the work without charge. Nevertheless, these terms may be considered conceptual identical, since they both specify the property right limits regarding its content and range and are explicitly stated by the legislation. Moreover, these terms are used additionally or disjunctively without their actual etymological sense, since they are well known regulations that have been established in all legislations, international conventions and Community Directives.

The 2001/29 Directive contains an exhaustive catalog with “exceptions & restrictions”. The scope of this catalog is to take into account the variant legal traditions of member states. The special aspect of the catalog is that none of the member states can establish in its national legislation additional restrictions than the ones mentioned in the Directive. From this exhaustive catalog only one of the exceptions is mandatory and concerns the temporal reproduction actions, while for every other case the exceptions are optional. Thus, the member states are only encouraged and not forced, to establish or not the restrictions/exceptions that relates to the reproduction right, the communication to the public right and the distribution right to the extent that is justified by the rightful reproduction. In that sense, the restriction of the distribution right is only justified as an imperative mechanism for monitoring the exceptions of the reproduction right. Member states are also allowed to maintain the already established national legislation regulations in cases of minor importance, provided that they do not violate the products and services free distribution around the Community. Let as note, that all restrictions are compliant with the spirit of the International Berne Convention, since they are subjected to the three step test, that means that these restrictions are applied only under certain circumstances that do not contradict to the rightful exploitation of the work or any other protected object and do not violate the legitimate interests of the rightholder.

Article 81, par. 2 L. 3057/2002, which is related to the property right restrictions, amended Greek legislation in certain aspects. Greek legislation incorporated an obligatory regulation regarding the “reproduction right exception” (Article 5 par 1 Direction 2001/29). Specifically, all temporal reproduction actions that are an integral and important part of technological methods are excluded from the reproduction right. Their exclusive goal is to allow a) the network transmission between users through an internet provider or b) the rightful use of a work or any other protected object. It is the so-called “Technological Restriction” that generates from the operating procedure of Computer Networks. This regulation legalizes the imperative and inevitable work reproduction or other digital objects that are being protected during their distribution through the Internet. When a user uses the Internet to send a digital file to another user, multiple copies are being created. Specifically, one copy in the provider’s temporal memory, a copy in every intermediate station until the final destination and a copy in the receiving computer cache memory. These reproductions fall into the technological restriction as long as the aforementioned requirements are fulfilled. Therefore, actions like browsing caching and other actions necessary for the provider’s effective operation that do not alter the information are protected by the technological restriction.

For the rest of the restrictions, besides the existing regulations (articles 18-28 L.2121/1993) concerning issues like the private reproduction, the reproduction from Libraries and Archives etc, only the restriction that benefits persons with special capabilities is adopted. The reproduction of the work is allowed for the benefit of blinds

and deaf-mute, for uses which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability

The limitations provided for in Section IV of Law 2121/1993, as exists, shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other protected subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

3.3 Technological Measures

Technology created new means of protection and provided the rightholders with an additional tool against the violation of Intellectual Property Rights. The technological means are basically software based mechanisms that control access to digital works. The most usual technological means are cryptography, recognition labels and watermarking. These mechanisms constitute an important tool for controlling access, although the protection they provide is not unimpeachable mainly due to security inadequacy. For these reasons the establishment of a concrete legal protection framework against circumvention mechanisms is essential. The new article 66A for the technological means harmonizes national legislation with the corresponding provision of article 6 of the 2001/29 Directive. According to the definition, The expression "technological measures" 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 authorised by the rightholder of any copyright or any right related to copyright as well as the sui generis right of the database maker (article 66A par.1 L.2121/1994 amended with the article 81 par. 11 L.3057/2002). 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". (article 6 par. 3 of Directive 2001/29).

The amendment of the new article 66A par.2 states that it is prohibited to circumvert, without the permission of the rightholder, any effective technological measure when such act is made in the knowledge or with reasonable grounds to know that he is pursuing that objective (article 6 par. 1 of Directive 2001/29).

Furthermore, it's strongly prohibited the unauthorized manufacture, import, distribution, sell, 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.

The practice of activities in violation of the above provisions is punished by imprisonment of at least one year and a fine of 2.900-15.000 Euro and entails the civil sanctions of article 65 Law 2121/1993. The One-member First Instance Court may order injunction in accordance with the Code of Civil Procedure, the provision of article 64 Law 2121/1993 also being applicable. (article 6 par. 1 and 2 of Directive 2001/29).

Notwithstanding the legal protection provided for in par. 2 of this article, as it concerns the limitations (exceptions) provided for in Section IV of law 2121/1993, as exists, related to reproduction for private use on paper or any similar medium (article 18), reproduction for teaching purposes (article 21), reproduction by libraries and archives (article 22), reproduction for judicial or administrative purposes (article 24), as well as the use for the benefit of people with disability (article 28A), the rightholders should have the obligation to give to the beneficiaries the measures to ensure the benefit of the exception to the extent necessary and where that beneficiaries have legal access to the protected work or subject-matter concerned. If the rightholders do not take voluntary measures including agreements between rightholders and third parties benefiting from the exception, the rightholders and third parties benefiting from the exception may request the assistance of one or more mediators selected from the list of mediators drawn up by the Copyright Organization. The mediators make recommendations to the parties. If no party objects within one month from the forwarding of the recommendation, all parties are considered to have accepted the recommendation. Otherwise, the dispute is settled by the Court of Appeal of Athens trying at first and last instance. These provisions shall not apply to works or other subject-matter available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them. (article 6 par. 4 of Directive 2001/29)

3.4 Rights Management Information

The new article 66B regulates the issue of information for rights management. The expression "rights management information" means any information provided by rightholders which identifies the work or other subject-matter protected by a related right or the sui generis right of data base maker, and which identifies 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. (article 7 par. 2 of Directive 2001/29).

It is prohibited for any person knowingly performing the permission of the rightholder without 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 by a related right or the sui generis right of data base maker, 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 related right or the sui generis right of database maker. (art. 7 par. 1 of Directive 2001/29).

The violation of the above provisions is punished by imprisonment of at least one year and a fine of 2.900-15.000 Euro and entails the civil sanctions of article 65 Law 2121/1993. The One-member First Instance Court may order injunction in accordance with the Code of Civil Procedure, the provision of article 64 Law 2121/1993 also being applicable. (article 7 of Directive 2001/29)

3.5 Penalties-Injunction

The Directive 2001/29 prescribes the mandatory establishment of the appropriate penalties and legal protection means against rights violation (Article 8). These penalties must be effective, proportional and deterring. The article 64A was added after article 64 L. 2121/1993 in order to implement the Directive's recommendations.

Rightholders may apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right. It is the same for the sui generis right of data base maker. (article 8, par.3 of Directive 2001/29).

Any person who, in contravention of the provisions of this law or of the provisions of lawfully ratified multilateral international conventions on the protection of copyright, unlawfully makes a fixation of a work or of copies, reproduces them directly or indirectly, temporarily or permanently in any form, in whole or in part, translates, adapts, alters or transforms them, or distributes them to the public by sale or other means, or possesses with the intent of distributing them, rents, performs in public, broadcasts by radio or television or any other means, communicates to the public works or copies by any means, imports copies of a work illegally produced abroad without the consent of the author and, in general, exploits works, reproductions or copies being the object of copyright or acts against the moral right of the author to decide freely on the publication and the presentation of his work to the public without additions or deletions, shall be liable to imprisonment of not less than one year and to a fine from 2.900-15.000 Euro

The sanctions listed above shall be applicable to any person who, in contravention of the provisions of this law, or of the provisions of lawfully ratified multilateral international conventions on the protection of related rights, makes the following actions:

- Without the permission of the performers: a) fixes their performance, b) directly or indirectly, temporarily or permanently reproduces by any means and form, in whole or in part, the fixation of their performance c) distributes to the public the fixation of their performance or possesses them with the purpose of distribution, d) rents the fixation of their performance, e) broadcasts by radio and television by any means, the live performance, unless such broadcasting is rebroadcasting of a legitimate broadcasting, f) communicates to the public the live performance made by any means, except radio and television broadcasting, g) makes 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, the fixation of their performance.
- Without the permission of phonogram producers (producers of sound recordings): a) directly or indirectly, temporarily or permanently reproduces by any means and form, in whole or in part, their phonograms, b) distributes to the public the above recordings, or possesses them with the purpose of distribution, c) rents the said recordings, d) makes 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, their phonograms, e) imports the said recordings produced abroad without their consent.
- Without the permission of producers of audiovisual works (producers of visual or sound and visual recordings) a) directly or indirectly, temporarily or permanently reproduces by any means and form, in whole or in part, the original and the copies of their films, b) distributes to the public the above recordings, including the copies

thereof, or possesses them with the purpose of distribution, c) rents the said recordings, d) makes 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, the original and the copies of their films e) imports the said recordings produced abroad without their consent f) broadcasts by radio or television by any means including satellite transmission and cable retransmission, as well as the communication to the public.

- Without the permission of radio and television organizations: a) rebroadcasts their broadcasts by any means, b) presents their broadcasts to the public in places accessible to the public against payment of an entrance fee, c) fixes their broadcasts on sound or sound and visual recordings, regardless of whether the broadcasts are transmitted by wire or by the air, including by cable or satellite d) directly or indirectly, temporarily or permanently reproduces by any means and form, in whole or in part, the fixation of their broadcasts, e) distributes to the public the recordings containing the fixation of their broadcasts, f) rents the recordings containing the fixation of their broadcasts, g) makes 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, the fixation of their broadcasts. (article 8 par. 1 of Directive 2001/29).