



## **Key points on review of Copyrights in the Information Society Directive**

EDRi believes that while copyright is in need of fundamental reform. While aspects of this problem fall outside the competences of the EU, there is low-hanging fruit within the EU's remit that should be harvested in order to mitigate the serious damage that the current copyright regime causes to freedom of expression, access to culture and the ability to innovate in the EU.

**Harmonise the system of exceptions and limitations and make it more flexible.** If a use complies with the three-step test of the Berne Convention it should fall under an exception. All of the exceptions and limitations listed in the 2001 Directive must, by law, comply with the strict interpretation of the Berne Convention's 3-step test transposed by Article 8 of the Directive.

A failure to implement any exception or limitation means that access to culture and freedom of communication is being limited, even though this freedom would not, and legally could not, “interfere with the normal exploitation of the work” or “unreasonably prejudice the legitimate interests of the rightsholders”.

### **Prevent circumvention of legislators' decisions**

Where democratic decisions have been made to grant flexibilities to copyright, it is inappropriate for these decisions to be overturned by internet companies. However, this is exactly what happens today. Companies such as Google allow the automatic deletion of content that is perfectly legal under EU law and, indeed, would be also legal under the foreign laws that it is seeking to implement in Europe.

Democratic decision-making, and the very legitimacy of copyright law is also undermined by the imposition of “technical protection measures”. The European legislator has foreseen the possibility of a private copying exception and most national legislators have put this exception into national law.

However, after paying “compensation” to the rightsholder through levies, the consumer can be prevented from making private copies, as a result of “technical protection measures being used by rightsholders. The Directive requires that EU Member States give legal protection to such technologies which overturn the rights that have been democratically given by legislators and paid for by individuals.

*The Special Rapporteur also proposes to expand copyright exceptions and limitations to empower new creativity, enhance rewards to authors, increase educational opportunities, preserve space for non-commercial culture and promote inclusion and access to cultural works.*

**“Copyright policy and the right to science and culture”**

**UN Special Rapporteur in the field of cultural rights, Farida Shaheed**