

**EDRi comments to the DRAFT REPORT on the implementation of 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 (2014/2256(INI))**

**Committee on Legal Affairs  
Rapporteur: Julia Reda**

Original Text	EDRi proposed amendments
<p>2014/2256(INI) 14.1.2015</p> <p>DRAFT REPORT on the implementation of 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 (2014/2256(INI))</p> <p>Committee on Legal Affairs Rapporteur: Julia Reda</p> <p>MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of</p>	<p>2014/2256(INI)</p> <p>DRAFT REPORT on the implementation of 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 (2014/2256(INI))</p> <p>Committee on Legal Affairs Rapporteur: Julia Reda</p> <p>MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of</p>

copyright and related rights in the information society (2014/2256(INI))

The European Parliament,

- having regard to Articles 4, 26, 34, 114 and 118 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 11, 13, 14, 16, 17 and 52 of the Charter of Fundamental Rights of the European Union,
- having regard to 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,
- having regard to the Berne Convention for the Protection of Literary and Artistic Works,
- having regard to the World Intellectual Property Organisation (WIPO) Copyright Treaty of 20 December 1996,
- having regard to the WIPO Performances and Phonograms Treaty of 20 December 1996,
- having regard to the WIPO Treaty on Audiovisual Performances, adopted by the WIPO Diplomatic Conference on the Protection of Audiovisual Performances in Beijing, on June 24, 2012,
- having regard to Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market,
- having regard to Directive 2013/37/EU of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information, 3
- having regard to Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, 4
- having regard to Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights,
- having regard to Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission,
- having regard to Directive 92/100/EEC of 19 November 1992 on rental right and lending

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right and on certain rights related to copyright in the field of intellectual property,  
– having regard to its resolution of 27 February 2014 on private copying levies  
P7\_TA(2014)0179,  
– having regard to its resolution of 12 September 2013 on promoting the European cultural and creative sectors as sources of economic growth and jobs (P7\_TA(2013)0368,  
– having regard to the public consultation on the review of the EU copyright rules carried out by the Commission between 5 December 2013 and 5 March 2014,  
– having regard to the Commission Green Paper, Copyright in the Knowledge Economy, COM(2008)0466, – having regard to the Commission communication entitled A Single Market for Intellectual Property Rights: Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe,  
A. whereas the European legal framework on copyright and related rights is central to the promotion of creativity and innovation, and to access to knowledge and information;  
B. whereas the Directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC) aimed to adapt legislation on copyright and related rights to reflect technological developments;  
C. whereas the Charter of Fundamental Rights protects the freedom of expression, of the arts and scientific research, the right to education and the freedom to conduct a business;  
D. whereas Article 17 of the Charter of Fundamental Rights enshrines the right to property, with a distinction between the protection of possessions on the one hand (first paragraph), and the protection of intellectual property on the other hand (second paragraph);  
E. whereas decisions on technical standards can have a significant impact on human rights — including the right to freedom of expression, protection of personal data and user security — as well as on access to content;  
1. Welcomes the initiative of the Commission to conduct a consultation on copyright, which showed great interest from civil society, with more than 9 500 replies collected, of which 58.7 % came from end users;  
2. Notes with concern that the vast majority of

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2. Notes with concern that the vast majority of

end user respondents to the consultation report facing problems when trying to access online services across EU Member States, particularly when technological protection measures are used to enforce territorial restrictions;

### **Exclusive rights**

3. Acknowledges the necessity for authors and performers to be provided legal protection for their creative and artistic work; recognises the role of producers and publishers in bringing works to the market, and the need for appropriate remuneration for all categories of rightholders; calls for improvements to the contractual position of authors and performers in relation to other rightholders and intermediaries;
4. Considers the introduction of a single European Copyright Title based on Article 118 TFEU that would apply directly and uniformly across the Union, in compliance with the Commission's objective of better regulation, as a legal means to remedy the lack of harmonisation resulting from Directive 2001/29/EC;
5. Recommends that the EU legislator should further lower the barriers for re-use of public sector information by exempting works produced by the public sector - within the political, legal and administrative process - from copyright protection;
6. Calls on the Commission to safeguard public domain works, which are by definition not subject to copyright protection, and therefore should be used and re-used without technical or contractual barriers; also calls on the Commission to recognise the freedom of rightholders to voluntarily relinquish their rights and dedicate their works to the public domain;
7. Calls on the Commission to harmonise the term of protection of copyright to a duration that does not exceed the current international standards set out in the Berne Convention; Exceptions and limitations
8. Calls on the EU legislator to remain faithful to the objective stated in Directive 2001/29/EC to safeguard a fair balance between the different categories of rightholders and users of protected subject-matters, as well as between the different categories of rightholders;

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9. Notes that exceptions and limitations should be enjoyed in the digital environment without any unequal treatment compared to those granted in the analogue world;

10. Views with concern the increasing impact of differences among Member States in the implementation of exceptions, which creates legal uncertainty and has direct negative effects on the functioning of the digital single market, in view of the development of cross-border activities;

11. Calls on the Commission to make mandatory all exceptions and limitations referred to in Directive 2001/29/EC, to allow equal access to cultural diversity across borders within the internal market and to improve legal security;

12. Notes with interest the development of new forms of use of works on digital networks, notably of transformative uses;

13. Calls for the adoption of an open norm introducing flexibility in the interpretation of exceptions and limitations in certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author or rightholder;

14. Urges the European legislator to ensure

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**10. bis Calls on the Commission to expand the exceptions and limitations of Directive 2001/29/EC**

11. Calls on the Commission to make mandatory all exceptions and limitations referred to in Directive 2001/29/EC, to allow equal access to cultural diversity across borders within the internal market and to improve legal security ;

**11.2 Calls for a better clarification of the moral rights of authors versus the economic right of rightholders**

**11. ter Calls for the European legislator to strengthen the author's bargaining power through the introduction of "use it or lose it" restrictions on copyright transfers as well as limitations on the duration for which copyrights can be transferred to others and/or requirements for immediate remuneration of such transfers that reflect the investment of the author in the work valued at least at the applicable minimum wage for the time spent creating it.**

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13. Calls for the adoption of an open norm introducing flexibility in the interpretation of exceptions and limitations in certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author or rightholder;

14. Urges the European legislator to ensure technological neutrality and future-compatibility of exceptions and limitations by taking due account of the effects of media convergence; in particular, the exception for quotation should expressly include audio-visual quotations in its scope, **likewise the convergence between computer software and literary and audio-visual works should be taken into account;**

technological neutrality and future-compatibility of exceptions and limitations by taking due account of the effects of media convergence; in particular, the exception for quotation should expressly include audio-visual quotations in its scope;

15. Stresses that the ability to freely link from one resource to another is one of the fundamental building blocks of the Internet; calls on the EU legislator to clarify that reference to works by means of a hyperlink is not subject to exclusive rights, as it is does not consist in a communication to a new public;

16. Calls on the EU legislator to ensure that the use of photographs, video footage or other images of works which are permanently located in public places are permitted;

17. Emphasises that the exception for caricature, parody and pastiche should apply regardless of the purpose of the parodic use;

18. Stresses the need to enable automated analytical techniques for text and data (e.g. 'text and data mining') for all purposes, provided that the permission to read the work has been acquired;

19. Calls for a broad exception for research and education purposes, which should not only cover educational establishments, but any kind of educational and research activities, including non-formal education;

20. Calls for the adoption of a mandatory exception allowing libraries to lend books to the public in digital formats, irrespective of the place of access;

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19. Calls for a broad exception for research and education purposes, which should not only cover educational establishments, but any kind of educational and research activities, including non-formal education **as well as digitisation of cultural heritage**;

20. Calls for the adoption of a mandatory exception allowing libraries to lend books to the public in digital formats, irrespective of the place of access;

**20 bis: Calls for expanding of exceptions benefiting public interest institutions, such as libraries, museums and archives, which play a central role in allowing online access to cultural heritage, so that citizens can access their collections from any device.**

**20. ter Calls on the EU legislator to only extend the existing protections of copyright at the expense of the free flow of information in case there is:**

- **an exceptional public interest;**
- **it is done through methods that do not undermine or discriminate against the use, transformation and dissemination of knowledge, creative works and technology infrastructures, services and software;**
- **provided that such restrictions of the free flow of information not violate human and civil rights in the information society and are not otherwise inconsistent with an**

<p>21. Calls on the EU legislator to preclude Member States from introducing statutory licenses for the compensation of rightholders for the harm caused by acts made permissible by an exception;</p> <p>22. Calls for the adoption of harmonised criteria for the definition of the harm caused to rightholders in respect of reproductions made by a natural person for private use, and for harmonised transparency measures as regards the private copying levies put in place in some Member States;</p> <p>23. Stresses that the effective exercise of exceptions or limitations, and access to content that is not subject to copyright or related rights protection, should not be hindered by technological measures;</p>	<p style="text-align: center;"><b><u>effective democracy.</u></b></p> <p>21. Calls on the EU legislator to preclude Member States from introducing statutory licenses for the compensation of rightholders for the harm caused by acts made permissible by an exception;</p> <p>22. Calls for the adoption of harmonised criteria <b><u>and evidence-based studies</u></b> for the definition of the harm caused to rightholders in respect of reproductions made by a natural person for private use, and for harmonised transparency measures as regards the private copying levies put in place in some Member States;</p> <p><b><u>22 bis Notes with concern that very often studies analyzing the effects of copyright infringement are not based on evidence and that lack of a neutral and scientific approach towards the use of the data collected and calls for the production of independent research studies which show the real effect of IPR infringement in the economy;</u></b></p> <p>23. Stresses that the <b><u>applicability of exceptions or limitations should not be overridden technological measures and that the</u></b> effective exercise of exceptions or limitations, and access to content that is not subject to copyright or related rights protection, should not be hindered by <b><u>those</u></b> technological measures;</p> <p>24. Recommends making legal protection against the circumvention of any effective technological measures conditional upon the publication of the source code or the interface specification, in order to secure the integrity of devices on which technological protections are employed and to ease interoperability; in particular, when the circumvention of technological measures is allowed, technological means to achieve such authorised circumvention must be available;</p> <p>25. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the Member States.</p>
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25. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the Member States.