

Statutory Document No. 0073/13



*European Communities (Isle of Man) Act 1973*

## EUROPEAN UNION (INTELLECTUAL PROPERTY) ORDER 2013

*Draft approved by Tynwald: 21 February 2013*

*Coming into Operation: In accordance with article 2*

The Council of Ministers makes the following Order under section 2A of the European Communities (Isle of Man) Act 1973.

### **1 Title**

This Order is the European Union (Intellectual Property) Order 2013.

### **2 Commencement**

This Order comes into operation —

- (a) for the purpose of making regulations under section 2B of the European Communities (Isle of Man) Act 1973, on 22 February 2013;
- (b) for all other purposes, on 1 April 2013.

### **3 Application of EU instruments**

Subject to article 4, the following EU instruments apply to the Island as part of the law of the Island —

- (a) 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<sup>1</sup>;
- (b) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>2</sup>;
- (c) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and

<sup>1</sup> O.J. L 167, 22.6.2001, p.10

<sup>2</sup> O.J. L 195, 2.6.2004, p.16

on certain rights related to copyright in the field of intellectual property<sup>3</sup>;

- (d) Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights<sup>4</sup>;
- (e) Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs<sup>5</sup>.

#### **4 Modifications etc.**

The EU instruments referred to in article 3 apply to the Island subject to —

- (a) the modification that the Island shall be treated as a Member State; and
- (b) the further exceptions, adaptations and modifications specified in the Schedule.

#### **5 Revocation**

The Copyright (Computer Programs) Order 1993<sup>6</sup> is revoked.

**MADE 21<sup>ST</sup> FEBRUARY 2013**

**W GREENHOW**  
*Chief Secretary*

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<sup>3</sup> O.J. L 376, 27.12.2006, p.28

<sup>4</sup> O.J. L 372, 27.12.2006 p.12

<sup>5</sup> O.J L 111, 5.5.2009, p.16

<sup>6</sup> SD 437/93

## Article 4(b)

**SCHEDULE****EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS**

1. In Directive 2001/29/EC, omit Articles 11, 12(1), (3) and (4), 13, 14 and 15.
2. (1) Directive 2004/48/EC applies to the Island only so far as it relates to —
  - (a) copyright;
  - (b) database right;
  - (c) design right; and
  - (d) performers' rights.(2) In Directive 2004/48/EC, omit Articles 17 to 22.
3. (1) Chapter I of Directive 2006/115/EC does not apply to the Island so far as it relates to the lending of copyright works, fixations of performances, phonograms and films.
  - (2) In Directive 2006/115/EC —
    - (a) in Articles 1(1) and 3(1) and (2), omit "and lending";
    - (b) in Article 2(1), omit sub-paragraph (b);
    - (c) omit Articles 6, 11 and 13 to 16;
    - (d) omit Annexes I and II.
4. (1) Directive 2006/116/EC does not apply to the Island so as to protect anew any rights which, through the expiry of the term of protection granted to them by the Copyright Act 1991 or the Performers' Protection Act 1996, were no longer protected immediately before the coming into operation of this Order.
  - (2) In Directive 2006/116/EC —
    - (a) in Article 3(2), omit the words from "However" onwards;
    - (b) omit Articles 10 to 14;
    - (c) omit Annexes I and II.
5. In Directive 2009/24/EC, omit Articles 9 to 12.

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order applies to the Island five EU Directives relating to intellectual property. Their implementation will bring the law of the Island on copyright and related rights closer into line with that of the United Kingdom and other Member States of the European Union.

As required by section 2A(5) of the European Communities (Isle of Man) Act 1973, a text of the Directives applied by this Order, incorporating the exceptions, adaptations and modifications specified in it, is annexed to this Order, but does not form part of the Order.

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**Annex**

**DIRECTIVES APPLIED TO THE ISLE OF MAN BY THE EUROPEAN UNION  
(INTELLECTUAL PROPERTY) ORDER 2013**

Directive 2001/29/EC	5
Directive 2004/48/EC	16
Directive 2006/115/EC	25
Directive 2006/116/EC	30
Directive 2009/24/EC	34

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**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  
(O.J. L 167, 22.6.2001, p.10)

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the  
European Community, and in particular Articles  
47(2), 55 and 95 thereof,

Having regard to the proposal from the  
Commission,

Having regard to the opinion of the Economic  
and Social Committee,

Acting in accordance with the procedure laid  
down in Article 251 of the Treaty,

Whereas:

(1) The Treaty provides for the establishment of  
an internal market and the institution of a  
system ensuring that competition in the internal  
market is not distorted. Harmonisation of the  
laws of the Member States on copyright and  
related rights contributes to the achievement of  
these objectives.

(2) The European Council, meeting at Corfu on  
24 and 25 June 1994, stressed the need to create  
a general and flexible legal framework at  
Community level in order to foster the  
development of the information society in  
Europe. This requires, inter alia, the existence of  
an internal market for new products and  
services. Important Community legislation to  
ensure such a regulatory framework is already  
in place or its adoption is well under way.

Copyright and related rights play an important  
role in this context as they protect and stimulate  
the development and marketing of new products  
and services and the creation and exploitation of  
their creative content.

(3) The proposed harmonisation will help to  
implement the four freedoms of the internal  
market and relates to compliance with the  
fundamental principles of law and especially of  
property, including intellectual property, and  
freedom of expression and the public interest.

(4) A harmonised legal framework on copyright  
and related rights, through increased legal  
certainty and while providing for a high level of  
protection of intellectual property, will foster  
substantial investment in creativity and  
innovation, including network infrastructure,  
and lead in turn to growth and increased  
competitiveness of European industry, both in  
the area of content provision and information  
technology and more generally across a wide  
range of industrial and cultural sectors. This will  
safeguard employment and encourage new job  
creation.

(5) Technological development has multiplied  
and diversified the vectors for creation,  
production and exploitation. While no new  
concepts for the protection of intellectual  
property are needed, the current law on  
copyright and related rights should be adapted  
and supplemented to respond adequately to  
economic realities such as new forms of  
exploitation.

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(6) Without harmonisation at Community level, legislative activities at national level which have already been initiated in a number of Member States in order to respond to the technological challenges might result in significant differences in protection and thereby in restrictions on the free movement of services and products incorporating, or based on, intellectual property, leading to a refragmentation of the internal market and legislative inconsistency. The impact of such legislative differences and uncertainties will become more significant with the further development of the information society, which has already greatly increased transborder exploitation of intellectual property. This development will and should further increase. Significant legal differences and uncertainties in protection may hinder economies of scale for new products and services containing copyright and related rights.

(7) The Community legal framework for the protection of copyright and related rights must, therefore, also be adapted and supplemented as far as is necessary for the smooth functioning of the internal market. To that end, those national provisions on copyright and related rights which vary considerably from one Member State to another or which cause legal uncertainties hindering the smooth functioning of the internal market and the proper development of the information society in Europe should be adjusted, and inconsistent national responses to the technological developments should be avoided, whilst differences not adversely affecting the functioning of the internal market need not be removed or prevented.

(8) The various social, societal and cultural implications of the information society require that account be taken of the specific features of the content of products and services.

(9) Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. Their protection helps to ensure the maintenance and development of creativity in the interests of authors, performers, producers, consumers, culture, industry and the public at large. Intellectual property has therefore been recognised as an integral part of property.

(10) If authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work, as must producers in order to be able

to finance this work. The investment required to produce products such as phonograms, films or multimedia products, and services such as "on-demand" services, is considerable. Adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment.

(11) A rigorous, effective system for the protection of copyright and related rights is one of the main ways of ensuring that European cultural creativity and production receive the necessary resources and of safeguarding the independence and dignity of artistic creators and performers.

(12) Adequate protection of copyright works and subject-matter of related rights is also of great importance from a cultural standpoint. Article 151 of the Treaty requires the Community to take cultural aspects into account in its action.

(13) A common search for, and consistent application at European level of, technical measures to protect works and other subject-matter and to provide the necessary information on rights are essential insofar as the ultimate aim of these measures is to give effect to the principles and guarantees laid down in law.

(14) This Directive should seek to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for the purpose of education and teaching.

(15) The Diplomatic Conference held under the auspices of the World Intellectual Property Organisation (WIPO) in December 1996 led to the adoption of two new Treaties, the "WIPO Copyright Treaty" and the "WIPO Performances and Phonograms Treaty", dealing respectively with the protection of authors and the protection of performers and phonogram producers. Those Treaties update the international protection for copyright and related rights significantly, not least with regard to the so-called "digital agenda", and improve the means to fight piracy world-wide. The Community and a majority of Member States have already signed the Treaties and the process of making arrangements for the ratification of the Treaties by the Community and the Member States is under way. This Directive also serves to implement a number of the new international obligations.

(16) Liability for activities in the network environment concerns not only copyright and

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related rights but also other areas, such as defamation, misleading advertising, or infringement of trademarks, and is addressed horizontally in 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 ("Directive on electronic commerce"), which clarifies and harmonises various legal issues relating to information society services including electronic commerce. This Directive should be implemented within a timescale similar to that for the implementation of the Directive on electronic commerce, since that Directive provides a harmonised framework of principles and provisions relevant inter alia to important parts of this Directive. This Directive is without prejudice to provisions relating to liability in that Directive.

(17) It is necessary, especially in the light of the requirements arising out of the digital environment, to ensure that collecting societies achieve a higher level of rationalisation and transparency with regard to compliance with competition rules.

(18) This Directive is without prejudice to the arrangements in the Member States concerning the management of rights such as extended collective licences.

(19) The moral rights of rightholders should be exercised according to the legislation of the Member States and the provisions of the Berne Convention for the Protection of Literary and Artistic Works, of the WIPO Copyright Treaty and of the WIPO Performances and Phonograms Treaty. Such moral rights remain outside the scope of this Directive.

(20) This Directive is based on principles and rules already laid down in the Directives currently in force in this area, in particular Directives 91/250/EEC, 92/100/EEC, 93/83/EEC, 93/98/EEC and 96/9/EC, and it develops those principles and rules and places them in the context of the information society. The provisions of this Directive should be without prejudice to the provisions of those Directives, unless otherwise provided in this Directive.

(21) This Directive should define the scope of the acts covered by the reproduction right with regard to the different beneficiaries. This should be done in conformity with the *acquis communautaire*. A broad definition of these acts

is needed to ensure legal certainty within the internal market.

(22) The objective of proper support for the dissemination of culture must not be achieved by sacrificing strict protection of rights or by tolerating illegal forms of distribution of counterfeited or pirated works.

(23) This Directive should harmonise further the author's right of communication to the public. This right should be understood in a broad sense covering all communication to the public not present at the place where the communication originates. This right should cover any such transmission or retransmission of a work to the public by wire or wireless means, including broadcasting. This right should not cover any other acts.

(24) The right to make available to the public subject-matter referred to in Article 3(2) should be understood as covering all acts of making available such subject-matter to members of the public not present at the place where the act of making available originates, and as not covering any other acts.

(25) The legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject-matter protected by related rights over networks should be overcome by providing for harmonised protection at Community level. It should be made clear that all rightholders recognised by this Directive should have an exclusive right to make available to the public copyright works or any other subject-matter by way of interactive on-demand transmissions. Such interactive on-demand transmissions are characterised by the fact that members of the public may access them from a place and at a time individually chosen by them.

(26) With regard to the making available in on-demand services by broadcasters of their radio or television productions incorporating music from commercial phonograms as an integral part thereof, collective licensing arrangements are to be encouraged in order to facilitate the clearance of the rights concerned.

(27) The mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Directive.

(28) Copyright protection under this Directive includes the exclusive right to control distribution of the work incorporated in a

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tangible article. The first sale in the Community of the original of a work or copies thereof by the rightholder or with his consent exhausts the right to control resale of that object in the Community. This right should not be exhausted in respect of the original or of copies thereof sold by the rightholder or with his consent outside the Community. Rental and lending rights for authors have been established in Directive 92/100/EEC. The distribution right provided for in this Directive is without prejudice to the provisions relating to the rental and lending rights contained in Chapter I of that Directive.

(29) The question of exhaustion does not arise in the case of services and on-line services in particular. This also applies with regard to a material copy of a work or other subject-matter made by a user of such a service with the consent of the rightholder. Therefore, the same applies to rental and lending of the original and copies of works or other subject-matter which are services by nature. Unlike CD-ROM or CD-I, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which should be subject to authorisation where the copyright or related right so provides.

(30) The rights referred to in this Directive may be transferred, assigned or subject to the granting of contractual licences, without prejudice to the relevant national legislation on copyright and related rights.

(31) A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject-matter must be safeguarded. The existing exceptions and limitations to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment. Existing differences in the exceptions and limitations to certain restricted acts have direct negative effects on the functioning of the internal market of copyright and related rights. Such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities. In order to ensure the proper functioning of the internal market, such exceptions and limitations should be defined more harmoniously. The degree of their harmonisation should be based on their impact on the smooth functioning of the internal market.

(32) This Directive provides for an exhaustive enumeration of exceptions and limitations to the

reproduction right and the right of communication to the public. Some exceptions or limitations only apply to the reproduction right, where appropriate. This list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning internal market. Member States should arrive at a coherent application of these exceptions and limitations, which will be assessed when reviewing implementing legislation in the future.

(33) The exclusive right of reproduction should be subject to an exception to allow certain acts of temporary reproduction, which are transient or incidental reproductions, forming an integral and essential part of a technological process and carried out for the sole purpose of enabling either efficient transmission in a network between third parties by an intermediary, or a lawful use of a work or other subject-matter to be made. The acts of reproduction concerned should have no separate economic value on their own. To the extent that they meet these conditions, this exception should include acts which enable browsing as well as acts of caching to take place, including those which enable transmission systems to function efficiently, provided that the intermediary does not modify the information and does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information. A use should be considered lawful where it is authorised by the rightholder or not restricted by law.

(34) Member States should be given the option of providing for certain exceptions or limitations for cases such as educational and scientific purposes, for the benefit of public institutions such as libraries and archives, for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings.

(35) In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject-matter. When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form,

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for instance as part of a licence fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise.

(36) The Member States may provide for fair compensation for rightholders also when applying the optional provisions on exceptions or limitations which do not require such compensation.

(37) Existing national schemes on reprography, where they exist, do not create major barriers to the internal market. Member States should be allowed to provide for an exception or limitation in respect of reprography.

(38) Member States should be allowed to provide for an exception or limitation to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use, accompanied by fair compensation. This may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders. Although differences between those remuneration schemes affect the functioning of the internal market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the information society. Digital private copying is likely to be more widespread and have a greater economic impact. Due account should therefore be taken of the differences between digital and analogue private copying and a distinction should be made in certain respects between them.

(39) When applying the exception or limitation on private copying, Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available. Such exceptions or limitations should not inhibit the use of technological measures or their enforcement against circumvention.

(40) Member States may provide for an exception or limitation for the benefit of certain non-profit making establishments, such as publicly accessible libraries and equivalent institutions, as well as archives. However, this should be limited to certain special cases covered by the reproduction right. Such an exception or limitation should not cover uses

made in the context of on-line delivery of protected works or other subject-matter. This Directive should be without prejudice to the Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Directive 92/100/EEC.

Therefore, specific contracts or licences should be promoted which, without creating imbalances, favour such establishments and the disseminative purposes they serve.

(41) When applying the exception or limitation in respect of ephemeral recordings made by broadcasting organisations it is understood that a broadcaster's own facilities include those of a person acting on behalf of and under the responsibility of the broadcasting organisation.

(42) When applying the exception or limitation for non-commercial educational and scientific research purposes, including distance learning, the non-commercial nature of the activity in question should be determined by that activity as such. The organisational structure and the means of funding of the establishment concerned are not the decisive factors in this respect.

(43) It is in any case important for the Member States to adopt all necessary measures to facilitate access to works by persons suffering from a disability which constitutes an obstacle to the use of the works themselves, and to pay particular attention to accessible formats.

(44) When applying the exceptions and limitations provided for in this Directive, they should be exercised in accordance with international obligations. Such exceptions and limitations may not be applied in a way which prejudices the legitimate interests of the rightholder or which conflicts with the normal exploitation of his work or other subject-matter. The provision of such exceptions or limitations by Member States should, in particular, duly reflect the increased economic impact that such exceptions or limitations may have in the context of the new electronic environment. Therefore, the scope of certain exceptions or limitations may have to be even more limited when it comes to certain new uses of copyright works and other subject-matter.

(45) The exceptions and limitations referred to in Article 5(2), (3) and (4) should not, however, prevent the definition of contractual relations designed to ensure fair compensation for the rightholders insofar as permitted by national law.

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(46) Recourse to mediation could help users and rightholders to settle disputes. The Commission, in cooperation with the Member States within the Contact Committee, should undertake a study to consider new legal ways of settling disputes concerning copyright and related rights.

(47) Technological development will allow rightholders to make use of technological measures designed to prevent or restrict acts not authorised by the rightholders of any copyright, rights related to copyright or the sui generis right in databases. The danger, however, exists that illegal activities might be carried out in order to enable or facilitate the circumvention of the technical protection provided by these measures. In order to avoid fragmented legal approaches that could potentially hinder the functioning of the internal market, there is a need to provide for harmonised legal protection against circumvention of effective technological measures and against provision of devices and products or services to this effect.

(48) Such legal protection should be provided in respect of technological measures that effectively restrict acts not authorised by the rightholders of any copyright, rights related to copyright or the sui generis right in databases without, however, preventing the normal operation of electronic equipment and its technological development. Such legal protection implies no obligation to design devices, products, components or services to correspond to technological measures, so long as such device, product, component or service does not otherwise fall under the prohibition of Article 6. Such legal protection should respect proportionality and should not prohibit those devices or activities which have a commercially significant purpose or use other than to circumvent the technical protection. In particular, this protection should not hinder research into cryptography.

(49) The legal protection of technological measures is without prejudice to the application of any national provisions which may prohibit the private possession of devices, products or components for the circumvention of technological measures.

(50) Such a harmonised legal protection does not affect the specific provisions on protection provided for by Directive 91/250/EEC. In particular, it should not apply to the protection of technological measures used in connection with computer programs, which is exclusively addressed in that Directive. It should neither

inhibit nor prevent the development or use of any means of circumventing a technological measure that is necessary to enable acts to be undertaken in accordance with the terms of Article 5(3) or Article 6 of Directive 91/250/EEC. Articles 5 and 6 of that Directive exclusively determine exceptions to the exclusive rights applicable to computer programs.

(51) The legal protection of technological measures applies without prejudice to public policy, as reflected in Article 5, or public security. Member States should promote voluntary measures taken by rightholders, including the conclusion and implementation of agreements between rightholders and other parties concerned, to accommodate achieving the objectives of certain exceptions or limitations provided for in national law in accordance with this Directive. In the absence of such voluntary measures or agreements within a reasonable period of time, Member States should take appropriate measures to ensure that rightholders provide beneficiaries of such exceptions or limitations with appropriate means of benefiting from them, by modifying an implemented technological measure or by other means. However, in order to prevent abuse of such measures taken by rightholders, including within the framework of agreements, or taken by a Member State, any technological measures applied in implementation of such measures should enjoy legal protection.

(52) When implementing an exception or limitation for private copying in accordance with Article 5(2)(b), Member States should likewise promote the use of voluntary measures to accommodate achieving the objectives of such exception or limitation. If, within a reasonable period of time, no such voluntary measures to make reproduction for private use possible have been taken, Member States may take measures to enable beneficiaries of the exception or limitation concerned to benefit from it. Voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, as well as measures taken by Member States, do not prevent rightholders from using technological measures which are consistent with the exceptions or limitations on private copying in national law in accordance with Article 5(2)(b), taking account of the condition of fair compensation under that provision and the possible differentiation between various conditions of use in accordance with Article 5(5), such as controlling the number of reproductions. In order to prevent abuse of such

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measures, any technological measures applied in their implementation should enjoy legal protection.

(53) The protection of technological measures should ensure a secure environment for the provision of interactive on-demand services, in such a way that members of the public may access works or other subject-matter from a place and at a time individually chosen by them. Where such services are governed by contractual arrangements, the first and second subparagraphs of Article 6(4) should not apply. Non-interactive forms of online use should remain subject to those provisions.

(54) Important progress has been made in the international standardisation of technical systems of identification of works and protected subject-matter in digital format. In an increasingly networked environment, differences between technological measures could lead to an incompatibility of systems within the Community. Compatibility and interoperability of the different systems should be encouraged. It would be highly desirable to encourage the development of global systems.

(55) Technological development will facilitate the distribution of works, notably on networks, and this will entail the need for rightholders to identify better the work or other subject-matter, the author or any other rightholder, and to provide information about the terms and conditions of use of the work or other subject-matter in order to render easier the management of rights attached to them. Rightholders should be encouraged to use markings indicating, in addition to the information referred to above, *inter alia* their authorisation when putting works or other subject-matter on networks.

(56) There is, however, the danger that illegal activities might be carried out in order to remove or alter the electronic copyright-management information attached to it, or otherwise to distribute, import for distribution, broadcast, communicate to the public or make available to the public works or other protected subject-matter from which such information has been removed without authority. In order to avoid fragmented legal approaches that could potentially hinder the functioning of the internal market, there is a need to provide for harmonised legal protection against any of these activities.

(57) Any such rights-management information systems referred to above may, depending on their design, at the same time process personal

data about the consumption patterns of protected subject-matter by individuals and allow for tracing of on-line behaviour. These technical means, in their technical functions, should incorporate privacy safeguards in accordance with 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 the free movement of such data.

(58) Member States should provide for effective sanctions and remedies for infringements of rights and obligations as set out in this Directive. They should take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for should be effective, proportionate and dissuasive and should include the possibility of seeking damages and/or injunctive relief and, where appropriate, of applying for seizure of infringing material.

(59) In the digital environment, in particular, the services of intermediaries may increasingly be used by third parties for infringing activities. In many cases such intermediaries are best placed to bring such infringing activities to an end. Therefore, without prejudice to any other sanctions and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary who carries a third party's infringement of a protected work or other subject-matter in a network. This possibility should be available even where the acts carried out by the intermediary are exempted under Article 5. The conditions and modalities relating to such injunctions should be left to the national law of the Member States.

(60) The protection provided under this Directive should be without prejudice to national or Community legal provisions in other areas, such as industrial property, data protection, conditional access, access to public documents, and the rule of media exploitation chronology, which may affect the protection of copyright or related rights.

(61) In order to comply with the WIPO Performances and Phonograms Treaty, Directives 92/100/EEC and 93/98/EEC should be amended,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### OBJECTIVE AND SCOPE

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*Article 1*

**Scope**

1. This Directive concerns the legal protection of copyright and related rights in the framework of the internal market, with particular emphasis on the information society.

2. Except in the cases referred to in Article 11, this Directive shall leave intact and shall in no way affect existing Community provisions relating to:

- (a) the legal protection of computer programs;
- (b) rental right, lending right and certain rights related to copyright in the field of intellectual property;
- (c) copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;
- (d) the term of protection of copyright and certain related rights;
- (e) the legal protection of databases.

CHAPTER II

**RIGHTS AND EXCEPTIONS**

*Article 2*

**Reproduction right**

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- (a) for authors, of their works;
- (b) for performers, of fixations of their performances;
- (c) for phonogram producers, of their phonograms;
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films;
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

*Article 3*

**Right of communication to the public of works and right of making available to the public other subject-matter**

1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. Member States shall provide for the exclusive right to authorise or prohibit the making 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:

- (a) for performers, of fixations of their performances;
- (b) for phonogram producers, of their phonograms;
- (c) for the producers of the first fixations of films, of the original and copies of their films;
- (d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.

*Article 4*

**Distribution right**

1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.

2. The distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.

*Article 5*

**Exceptions and limitations**

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1. Temporary acts of reproduction referred to in Article 2, which are transient or incidental [and] an integral and essential part of a technological process and whose sole purpose is to enable:

- (a) a transmission in a network between third parties by an intermediary, or
- (b) a lawful use

of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.

2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:

- (a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;
- (b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;
- (c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;
- (d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;
- (e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.

3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

- (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;
- (b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;
- (c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;
- (d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;
- (e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;
- (f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;
- (g) use during religious celebrations or official celebrations organised by a public authority;
- (h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;
- (i) incidental inclusion of a work or other subject-matter in other material;

(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;

(k) use for the purpose of caricature, parody or pastiche;

(l) use in connection with the demonstration or repair of equipment;

(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;

(n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;

(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.

4. Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.

5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

### CHAPTER III

## PROTECTION OF TECHNOLOGICAL MEASURES AND RIGHTS-MANAGEMENT INFORMATION

### *Article 6*

#### **Obligations as to technological measures**

1. Member States shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. Member States shall provide adequate legal protection against the manufacture, import, distribution, sale, 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.

3. For the purposes of this Directive, 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 provided for by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. 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.

4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with Article 5(2)(a), (2)(c), (2)(d), (2)(e), (3)(a), (3)(b) or (3)(e) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned.

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A Member State may also take such measures in respect of a beneficiary of an exception or limitation provided for in accordance with Article 5(2)(b), unless reproduction for private use has already been made possible by rightholders to the extent necessary to benefit from the exception or limitation concerned and in accordance with the provisions of Article 5(2)(b) and (5), without preventing rightholders from adopting adequate measures regarding the number of reproductions in accordance with these provisions.

The technological measures applied voluntarily by rightholders, including those applied in implementation of voluntary agreements, and technological measures applied in implementation of the measures taken by Member States, shall enjoy the legal protection provided for in paragraph 1.

The provisions of the first and second subparagraphs shall not apply to works or other subject-matter made 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.

When this Article is applied in the context of Directives 92/100/EEC and 96/9/EC, this paragraph shall apply *mutatis mutandis*.

#### *Article 7*

#### **Obligations concerning rights-management information**

1. Member States shall provide for adequate legal protection against any person knowingly performing without authority 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 under this Directive or under Chapter III of Directive 96/9/EC 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 any rights related to copyright as provided by law, or of the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

2. For the purposes of this Directive, the expression "rights-management information" means any information provided by rightholders which identifies the work or other subject-matter referred to in this Directive or covered by the *sui generis* right provided for in Chapter III of Directive 96/9/EC, 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.

The first subparagraph shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Directive or covered by the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

### CHAPTER IV

#### **COMMON PROVISIONS**

##### *Article 8*

#### **Sanctions and remedies**

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.
2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material as well as of devices, products or components referred to in Article 6(2).
3. Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.

##### *Article 9*

#### **Continued application of other legal provisions**

This Directive shall be without prejudice to provisions concerning in particular patent rights, trade marks, design rights, utility models,

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topographies of semi-conductor products, type faces, conditional access, access to cable of broadcasting services, protection of national treasures, legal deposit requirements, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract.

[omitted]

*Article 13*  
**Implementation**

*Article 14*  
**Entry into force**

[omitted]

*Article 10*  
**Application over time**

[omitted]

[omitted]

*Article 11*  
**Technical adaptations**

[omitted]

Done at Brussels, 22 May 2001.

*Article 12*

For the European Parliament

**Final provisions**

The President

1. [omitted]

N. Fontaine

2. Protection of rights related to copyright under this Directive shall leave intact and shall in no way affect the protection of copyright.

For the Council

3. [omitted]

The President

4. [omitted]

M. Winberg

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**DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 29 April 2004**

on the enforcement of intellectual property rights

(O.J. L 195, 2.6.2004, p.16)

*NOTE: This Directive is applied to the Isle of Man only so far as it relates to copyright, database right, design right and performers' rights.*

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

WHEREAS:

Having regard to the Treaty establishing the  
European Community, and in particular Article  
95 thereof,

(1) The achievement of the Internal Market entails eliminating restrictions on freedom of movement and distortions of competition, while creating an environment conducive to innovation and investment. In this context, the protection of intellectual property is an essential element for the success of the Internal Market. The protection of intellectual property is important not only for promoting innovation and creativity, but also for developing employment and improving competitiveness.

Having regard to the proposal from the  
Commission,

Having regard to the Opinion of the European  
Economic and Social Committee,  
After consulting the Committee of the Regions,

Acting in accordance with the procedure laid  
down in Article 251 of the Treaty,

(2) The protection of intellectual property should allow the inventor or creator to derive a legitimate profit from his invention or creation.

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It should also allow the widest possible dissemination of works, ideas and new know-how. At the same time, it should not hamper freedom of expression, the free movement of information, or the protection of personal data, including on the Internet.

(3) However, without effective means of enforcing intellectual property rights, innovation creativity are discouraged and investment diminished. It is therefore necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied effectively in the Community. In this respect, the means of enforcing intellectual property rights are of paramount importance for the success of the Internal Market.

(4) At international level, all Member States, as well as the Community itself as regards matters within its competence, are bound by the Agreement on Trade-Related Aspects of Intellectual Property (the "TRIPS Agreement"), approved, as part of the multilateral negotiations of the Uruguay Round, by Council Decision 94/800/EC 1 and concluded in the framework of the World Trade Organisation.

(5) The TRIPS Agreement contains, in particular, provisions on the means of enforcing intellectual property rights, which are common standards applicable at international level and implemented in all Member States. This Directive should not affect Member States' international obligations, including those under the TRIPS Agreement.

(6) There are also international conventions to which all Member States are parties and which also contain provisions on the means of enforcing intellectual property rights. These include, in particular, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

(7) It emerges from the consultations held by the Commission on this question that, in the Member States, and despite the TRIPS Agreement, there are still major disparities as regards the means of enforcing intellectual property rights. For instance, the arrangements for applying provisional measures, which are used in particular to preserve evidence, the calculation of damages, or the arrangements for applying injunctions, vary widely from one Member State to another. In some Member

States, there are no measures, procedures and remedies such as the right of information and the recall, at the infringer's expense, of the infringing goods placed on the market.

(8) The disparities between the systems of the Member States as regards the means of enforcing intellectual property rights are prejudicial to the proper functioning of the Internal Market and make it impossible to ensure that intellectual property rights enjoy an equivalent level of protection throughout the Community. This situation does not promote free movement within the Internal Market or create an environment conducive to healthy competition.

(9) The current disparities also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the Internal Market in this field. This causes a loss of confidence in the Internal Market in business circles, with a consequent reduction in investment in innovation and creation. Infringements of intellectual property rights appear to be increasingly linked to organised crime. Increasing use of the Internet enables pirated products to be distributed instantly around the globe. Effective enforcement of the substantive law on intellectual property should be ensured by specific action at Community level. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite for the proper functioning of the Internal Market.

(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.

(11) This Directive does not aim to establish harmonised rules for judicial cooperation, jurisdiction, the recognition and enforcement of decisions in civil and commercial matters, or deal with applicable law. There are Community instruments which govern such matters in general terms and are, in principle, equally applicable to intellectual property.

(12) This Directive should not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty. The measures provided for in this Directive should not be used to restrict unduly competition in a manner contrary to the Treaty.

(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights

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covered by Community provisions in this field and/or by the national law of the Member State concerned. Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition, including parasitic copies, or similar activities.

(14) The measures provided for in Articles 6(2), 8(1) and 9(2) need to be applied only in respect of acts carried out on a commercial scale. This is without prejudice to the possibility for Member States to apply those measures also in respect of other acts. Acts carried out on a commercial scale are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts carried out by end-consumers acting in good

(15) This Directive should not affect substantive law on intellectual property, Directive 95/46/EC of 24 October 1995 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures and 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.

(16) The provisions of this Directive should be without prejudice to the particular provisions for the enforcement of rights and on exceptions in the domain of copyright and related rights set out in Community instruments and notably those found in Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs 4 or in 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

(17) The measures, procedures and remedies provided for in this Directive should be determined in each case in such a manner as to take due account of the specific characteristics of that case, including the specific features of each intellectual property right and, where appropriate, the intentional or unintentional character of the infringement.

(18) The persons entitled to request application of those measures, procedures and remedies

should be not only the rightholders but also persons who have a direct interest and legal standing in so far as permitted by and in accordance with the applicable law, which may include professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.

(19) Since copyright exists from the creation of a work and does not require formal registration, it is appropriate to adopt the rule laid down in Article 15 of the Berne Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work. A similar presumption should be applied to the owners of related rights since it is often the holder of a related right, such as a phonogram producer, who will seek to defend rights and engage in fighting acts of piracy.

(20) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property rights, it is appropriate to ensure that effective means of presenting, obtaining and preserving evidence are available. The procedures should have regard to the rights of the defence and provide the necessary guarantees, including the protection of confidential information. For infringements committed on a commercial scale it is also important that the courts may order access, where appropriate, to banking, financial or commercial documents under the control of the alleged infringer.

(21) Other measures designed to ensure a high level of protection exist in certain Member States and should be made available in all the Member States. This is the case with the right of information, which allows precise information to be obtained on the origin of the infringing goods or services, the distribution channels and the identity of any third parties involved in the infringement.

(22) It is also essential to provide for provisional measures for the immediate termination of infringements, without awaiting a decision on the substance of the case, while observing the rights of the defence, ensuring the proportionality of the provisional measures as appropriate to the characteristics of the case in question and providing the guarantees needed to cover the costs and the injury caused to the defendant by an unjustified request. Such measures are particularly justified where any delay would cause irreparable harm to the holder of an intellectual property right.

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(23) Without prejudice to any other measures, procedures and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary whose services are being used by a third party to infringe the rightholder's industrial property right.

The conditions and procedures relating to such injunctions should be left to the national law of the Member States. As far as infringements of copyright and related rights are concerned, a comprehensive level of harmonisation is already provided for in Directive 2001/29/EC. Article 8(3) of Directive 2001/29/EC should therefore not be affected by this Directive.

(24) Depending on the particular case, and if justified by the circumstances, the measures, procedures and remedies to be provided for should include prohibitory measures aimed at preventing further infringements of intellectual property rights. Moreover there should be corrective measures, where appropriate at the expense of the infringer, such as the recall and definitive removal from the channels of commerce, or destruction, of the infringing goods and, in appropriate cases, of the materials and implements principally used in the creation or manufacture of these goods. These corrective measures should take account of the interests of third parties including, in particular, consumers and private parties acting in good faith.

(25) Where an infringement is committed unintentionally and without negligence and where the corrective measures or injunctions provided for by this Directive would be disproportionate, Member States should have the option of providing for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure. However, where the commercial use of counterfeit goods or the supply of services would constitute an infringement of law other than intellectual property law or would be likely to harm consumers, such use or supply should remain prohibited.

(26) With a view to compensating for the prejudice suffered as a result of an infringement committed by an infringer who engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement, the amount of damages awarded to the rightholder should take account of all appropriate aspects, such as loss of earnings incurred by the rightholder, or unfair

profits made by the infringer and, where appropriate, any moral prejudice caused to the rightholder. As an alternative, for example where it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question. The aim is not to introduce an obligation to provide for punitive damages but to allow for compensation based on an objective criterion while taking account of the expenses incurred by the rightholder, such as the costs of identification and research.

(27) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions in intellectual property infringement

(28) In addition to the civil and administrative measures, procedures and remedies provided for under this Directive, criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights.

(29) Industry should take an active part in the fight against piracy and counterfeiting. The development of codes of conduct in the circles directly affected is a supplementary means of bolstering the regulatory framework. The Member States, in collaboration with the Commission, should encourage the development of codes of conduct in general. Monitoring of the manufacture of optical discs, particularly by means of an identification code embedded in discs produced in the Community, helps to limit infringements of intellectual property rights in this sector, which suffers from piracy on a large scale. However, these technical protection measures should not be misused to protect markets and prevent parallel imports.

(30) In order to facilitate the uniform application of this Directive, it is appropriate to provide for systems of cooperation and the exchange of information between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by the Member States and by providing regular reports assessing the application of this Directive and the effectiveness of the measures taken by the various national bodies.

(31) Since, for the reasons already described, the objective of this Directive can best be achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(32) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of that Charter,

## CHAPTER I

### Objective and scope

#### *Article 1*

#### Subject-matter

This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term "intellectual property rights" includes industrial property rights.

#### *Article 2*

#### Scope

1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.

2. This Directive shall be without prejudice to the specific provisions on the enforcement of rights and on exceptions contained in Community legislation concerning copyright and rights related to copyright, notably those found in Directive 91/250/EEC and, in particular, Article 7 thereof or in Directive 2001/29/EC and, in particular, Articles 2 to 6 and Article 8 thereof.

3. This Directive shall not affect:

(a) the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC, in general, and Articles 12 to 15 of Directive 2000/31/EC in particular;

(b) Member States' international obligations and notably the TRIPS Agreement, including those relating to criminal procedures and penalties;

(c) any national provisions in Member States relating to criminal procedures or penalties in respect of infringement of intellectual property rights.

## CHAPTER II

### Measures, procedures and remedies

#### Section 1

#### General provisions

#### *Article 3*

#### General obligation

1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

2. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

#### *Article 4*

#### Persons entitled to apply for the application of the measures, procedures and remedies

1. Member States shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Chapter:

(a) the holders of intellectual property rights, in accordance with the provisions of the applicable law,

(b) all other persons authorised to use those rights, in particular licensees, in so far as

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permitted by and in accordance with the provisions of the applicable law,

(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law,

(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

#### *Article 5*

#### **Presumption of authorship or ownership For the purposes of applying the measures, procedures and remedies provided for in this Directive,**

(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his name to appear on the work in the usual manner;

(b) the provision under (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

#### Section 2

#### Evidence

#### *Article 6*

#### **Evidence**

1. Member States shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, Member States may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.

2. Under the same conditions, in the case of an infringement committed on a commercial scale, Member States shall take such measures as are necessary to enable the competent judicial authorities to order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

#### *Article 7*

#### **Measures for preserving evidence**

1. Member States shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightholder or where there is a demonstrable risk of evidence being destroyed.

Where measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.

2. Member States shall ensure that the measures to preserve evidence may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 4.

3. Member States shall ensure that the measures to preserve evidence are revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages

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which may be claimed, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.

4. Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

5. Member States may take measures to protect witnesses' identity.

### Section 3

#### Right of information

##### *Article 8*

#### **Right of information**

1. Member States shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:

- (a) was found in possession of the infringing goods on a commercial scale;
- (b) was found to be using the infringing services on a commercial scale;
- (c) was found to be providing on a commercial scale services used in infringing activities; or
- (d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 shall, as appropriate, comprise:

- (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:

- (a) grant the rightholder rights to receive fuller information;
- (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- (c) govern responsibility for misuse of the right of information; or
- (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right; or
- (e) govern the protection of confidentiality of information sources or the processing of personal data.

### Section 4

#### Provisional and precautionary measures

##### *Article 9*

#### **Provisional and precautionary measures**

1. Member States shall ensure that the judicial authorities may, at the request of the applicant:

- (a) issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rightholder; an interlocutory injunction may also be issued, under the same conditions,

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against an intermediary whose services are being used by a third party to infringe an intellectual property right; injunctions against intermediaries whose services are used by a third party to infringe a copyright or a related right are covered by Directive 2001/29/EC;

(b) order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

2. In the case of an infringement committed on a commercial scale, the Member States shall ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. The judicial authorities shall, in respect of the measures referred to in paragraphs 1 and 2, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

4. Member States shall ensure that the provisional measures referred to in paragraphs 1 and 2 may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the rightholder. In that event, the parties shall be so informed without delay after the execution of the measures at the latest.

A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

5. Member States shall ensure that the provisional measures referred to in paragraphs 1 and 2 are revoked or otherwise cease to have effect, upon request of the defendant, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures where

the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.

6. The competent judicial authorities may make the provisional measures referred to in paragraphs 1 and 2 subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 7.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

## Section 5

Measures resulting from a decision on the merits of the case

### Article 10

#### Corrective measures

1. Without prejudice to any damages due to the rightholder by reason of the infringement, and without compensation of any sort, Member States shall ensure that the competent judicial authorities may order, at the request of the applicant, that appropriate measures be taken with regard to goods that they have found to be infringing an intellectual property right and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of those goods. Such measures shall include:

- (a) recall from the channels of commerce,
- (b) definitive removal from the channels of commerce, or
- (c) destruction.

The judicial authorities shall order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

3. In considering a request for corrective measures, the need for proportionality between

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the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

*Article 11*

**Injunctions**

Member States shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by national law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. Member States shall also ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right, without prejudice to Article 8(3) of Directive 2001/29/EC.

*Article 12*

**Alternative measures**

Member States may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in this Section, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in this Section if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Section 6

Damages and legal costs

*Article 13*

**Damages**

1. Member States shall ensure that the competent judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the rightholder damages appropriate to the actual prejudice suffered by him as a result of the infringement.

When the judicial authorities set the damages:

- (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightholder by the infringement;
- (b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, Member States may lay down that the judicial authorities may order the recovery of profits or the payment of damages, which may be pre-established.

*Article 14*

**Legal costs**

Member States shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

Section 7

Publicity measures

*Article 15*

**Publication of judicial decisions**

Member States shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. Member States may provide for other additional publicity measures which are appropriate to the particular

CHAPTER III

**Sanctions by Member States**

*Article 16*

<b>Sanctions by Member States</b>		<b>Final provisions</b>
Without prejudice to the civil and administrative measures, procedures and remedies laid down by this Directive, Member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed.	[omitted]	<i>Article 20</i>
		<b>Implementation</b>
		<i>Article 21</i>
CHAPTER IV		<b>Entry into force</b>
<b>Codes of conduct and administrative cooperation</b>	[omitted]	
<i>Article 17</i>		<i>Article 22</i>
<b>Codes of conduct</b>		<b>Addressees</b>
[omitted]	[omitted]	
<i>Article 18</i>		Done at Strasbourg, 29.4.2004.
<b>Assessment</b>		For the European Parliament
[omitted]		The President
<i>Article 19</i>		P. COX
<b>Exchange of information and correspondents</b>		For the Council
[omitted]		The President
CHAPTER V		M. McDOWELL

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**DIRECTIVE 2006/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of 12 December 2006

on rental right and lending right and on certain rights related to copyright in the field of intellectual property

(codified version)

(O.J. L 376, 27.12.2006, p.28)

*NOTE: Chapter I of this Directive is applied to the Isle of Man only so far as it relates to the rental of copyright works, fixations of performances, phonograms and films.*

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the proposal from the  
Commission,

Having regard to the Treaty establishing the  
European Community, and in particular Articles  
47(2), 55 and 95 thereof,

Having regard to the opinion of the European  
Economic and Social Committee,

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Acting in accordance with the procedure laid down in Article 251 of the Treaty ,

Whereas:

(1) 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 has been substantially amended several times . In the interests of clarity and rationality the said Directive should be codified.

(2) Rental and lending of copyright works and the subject matter of related rights protection is playing an increasingly important role in particular for authors, performers and producers of phonograms and films. Piracy is becoming an increasing threat.

(3) The adequate protection of copyright works and subject matter of related rights protection by rental and lending rights as well as the protection of the subject matter of related rights protection by the fixation right, distribution right, right to broadcast and communication to the public can accordingly be considered as being of fundamental importance for the economic and cultural development of the Community.

(4) Copyright and related rights protection must adapt to new economic developments such as new forms of exploitation.

(5) The creative and artistic work of authors and performers necessitates an adequate income as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky. The possibility of securing that income and recouping that investment can be effectively guaranteed only through adequate legal protection of the rightholders concerned.

(6) These creative, artistic and entrepreneurial activities are, to a large extent, activities of self-employed persons. The pursuit of such activities should be made easier by providing a harmonised legal protection within the Community. To the extent that these activities principally constitute services, their provision should equally be facilitated by a harmonised legal framework in the Community.

(7) The legislation of the Member States should be approximated in such a way as not to conflict with the international conventions on which the

copyright and related rights laws of many Member States are based.

(8) The legal framework of the Community on the rental right and lending right and on certain rights related to copyright can be limited to establishing that Member States provide rights with respect to rental and lending for certain groups of rightholders and further to establishing the rights of fixation, distribution, broadcasting and communication to the public for certain groups of rightholders in the field of related rights protection.

(9) It is necessary to define the concepts of rental and lending for the purposes of this Directive.

(10) It is desirable, with a view to clarity, to exclude from rental and lending within the meaning of this Directive certain forms of making available, as for instance making available phonograms or films for the purpose of public performance or broadcasting, making available for the purpose of exhibition, or making available for on-the-spot reference use. Lending within the meaning of this Directive should not include making available between establishments which are accessible to the public.

(11) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage within the meaning of this Directive.

(12) It is necessary to introduce arrangements ensuring that an unwaivable equitable remuneration is obtained by authors and performers who must remain able to entrust the administration of this right to collecting societies representing them.

(13) The equitable remuneration may be paid on the basis of one or several payments at any time on or after the conclusion of the contract. It should take account of the importance of the contribution of the authors and performers concerned to the phonogram or film.

(14) It is also necessary to protect the rights at least of authors as regards public lending by providing for specific arrangements. However, any measures taken by way of derogation from the exclusive public lending right should comply in particular with Article 12 of the Treaty.

(15) The provisions laid down in this Directive as to rights related to copyright should not prevent Member States from extending to those exclusive rights the presumption provided for in this Directive with regard to contracts concerning film production concluded individually or collectively by performers with a film producer. Furthermore, those provisions should not prevent Member States from providing for a rebuttable presumption of the authorisation of exploitation in respect of the exclusive rights of performers provided for in the relevant provisions of this Directive, in so far as such presumption is compatible with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the Rome Convention).

(16) Member States should be able to provide for more far-reaching protection for owners of rights related to copyright than that required by the provisions laid down in this Directive in respect of broadcasting and communication to the public.

(17) The harmonised rental and lending rights and the harmonised protection in the field of rights related to copyright should not be exercised in a way which constitutes a disguised restriction on trade between Member States or in a way which is contrary to the rule of media exploitation chronology, as recognised in the judgment handed down in *Société Cinéthèque v. FNCF*.

(18) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives as set out in Part B of Annex I,  
HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### RENTAL AND LENDING RIGHT

#### *Article 1*

##### **Object of harmonisation**

1. In accordance with the provisions of this Chapter, Member States shall provide, subject to Article 6, a right to authorise or prohibit the rental [omitted] of originals and copies of copyright works, and other subject matter as set out in Article 3(1).

2. The rights referred to in paragraph 1 shall not be exhausted by any sale or other act of

distribution of originals and copies of copyright works and other subject matter as set out in Article 3(1).

#### *Article 2*

##### **Definitions**

1. For the purposes of this Directive the following definitions shall apply:

(a) "rental" means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage;

(b) [omitted]

(c) "film" means a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

2. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors.

#### *Article 3*

##### **Rightholders and subject matter of rental and lending right**

1. The exclusive right to authorise or prohibit rental [omitted] shall belong to the following:

(a) the author in respect of the original and copies of his work;

(b) the performer in respect of fixations of his performance;

(c) the phonogram producer in respect of his phonograms;

(d) the producer of the first fixation of a film in respect of the original and copies of his film.

2. This Directive shall not cover rental [omitted] rights in relation to buildings and to works of applied art.

3. The rights referred to in paragraph 1 may be transferred, assigned or subject to the granting of contractual licences.

4. Without prejudice to paragraph 6, when a contract concerning film production is concluded, individually or collectively, by performers with a film producer, the performer

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covered by this contract shall be presumed, subject to contractual clauses to the contrary, to have transferred his rental right, subject to Article 5.

5. Member States may provide for a similar presumption as set out in paragraph 4 with respect to authors.

6. Member States may provide that the signing of a contract concluded between a performer and a film producer concerning the production of a film has the effect of authorising rental, provided that such contract provides for an equitable remuneration within the meaning of Article 5. Member States may also provide that this paragraph shall apply *mutatis mutandis* to the rights included in Chapter II.

*Article 4*

**Rental of computer programs**

This Directive shall be without prejudice to Article 4(c) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs.

*Article 5*

**Unwaivable right to equitable remuneration**

1. Where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain an equitable remuneration for the rental.

2. The right to obtain an equitable remuneration for rental cannot be waived by authors or performers.

3. The administration of this right to obtain an equitable remuneration may be entrusted to collecting societies representing authors or performers.

4. Member States may regulate whether and to what extent administration by collecting societies of the right to obtain an equitable remuneration may be imposed, as well as the question from whom this remuneration may be claimed or collected.

*Article 6*

**Derogation from the exclusive public lending right**

[omitted]

CHAPTER II

**RIGHTS RELATED TO COPYRIGHT**

*Article 7*

**Fixation right**

1. Member States shall provide for performers the exclusive right to authorise or prohibit the fixation of their performances.

2. Member States shall provide for broadcasting organisations the exclusive right to authorise or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. A cable distributor shall not have the right provided for in paragraph 2 where it merely retransmits by cable the broadcasts of broadcasting organisations.

*Article 8*

**Broadcasting and communication to the public**

1. Member States shall provide for performers the exclusive right to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

2. Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. Member States may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

3. Member States shall provide for broadcasting organisations the exclusive right to authorise or prohibit the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

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*Article 9*

**Distribution right**

1. Member States shall provide the exclusive right to make available to the public, by sale or otherwise, the objects indicated in points (a) to (d), including copies thereof, hereinafter "the distribution right":

- (a) for performers, in respect of fixations of their performances;
- (b) for phonogram producers, in respect of their phonograms;
- (c) for producers of the first fixations of films, in respect of the original and copies of their films;
- (d) for broadcasting organisations, in respect of fixations of their broadcasts as set out in Article 7(2).

2. The distribution right shall not be exhausted within the Community in respect of an object as referred to in paragraph 1, except where the first sale in the Community of that object is made by the rightholder or with his consent.

3. The distribution right shall be without prejudice to the specific provisions of Chapter I, in particular Article 1(2).

4. The distribution right may be transferred, assigned or subject to the granting of contractual licences.

*Article 10*

**Limitations to rights**

1. Member States may provide for limitations to the rights referred to in this Chapter in respect of:

- (a) private use;
- (b) use of short excerpts in connection with the reporting of current events;
- (c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;
- (d) use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1, any Member State may provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms,

broadcasting organisations and of producers of the first fixations of films, as it provides for in connection with the protection of copyright in literary and artistic works.

However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.

3. The limitations referred to in paragraphs 1 and 2 shall be applied only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

CHAPTER III

COMMON PROVISIONS

*Article 11*

**Application in time**

[omitted]

*Article 12*

**Relation between copyright and related rights**

Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright.

*Article 13*

**Communication**

[omitted]

*Article 14*

**Repeal**

[omitted]

*Article 15*

**Entry into force**

[omitted]

*Article 16*

**Addressees**

[omitted]

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Done at Strasbourg, 12 December 2006.

For the European Parliament

The President

J. Borrell Fontelles

For the Council

The President

M. Pekkarinen

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## **DIRECTIVE 2006/116/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of 12 December 2006

on the term of protection of copyright and certain related rights

(codified version)

(O.J. L 372, 27.12.2006 p.12)

*NOTE: This Directive is not applied to the Isle of Man so as to protect anew any rights which, through the expiry of the term of protection granted to them by the Copyright Act 1991 or the Performers' Protection Act 1996, were no longer protected immediately before the coming into operation of the Order.*

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the  
European Community, and in particular Articles  
47(2), 55 and 95 thereof,

Having regard to the proposal from the  
Commission,

Having regard to the opinion of the European  
Economic and Social Committee,

Acting in accordance with the procedure laid  
down in Article 251 of the Treaty,

Whereas:

(1) Council Directive 93/98/EEC of 29 October  
1993 harmonising the term of protection of  
copyright and certain related rights has been  
substantially amended. In the interests of clarity  
and rationality the said Directive should be  
codified.

(2) The Berne Convention for the protection of  
literary and artistic works and the International  
Convention for the protection of performers,  
producers of phonograms and broadcasting  
organisations (Rome Convention) lay down  
only minimum terms of protection of the rights  
they refer to, leaving the Contracting States free

to grant longer terms. Certain Member States  
have exercised this entitlement. In addition,  
some Member States have not yet become party  
to the Rome Convention.

(3) There are consequently differences between  
the national laws governing the terms of  
protection of copyright and related rights, which  
are liable to impede the free movement of goods  
and freedom to provide services and to distort  
competition in the common market. Therefore,  
with a view to the smooth operation of the  
internal market, the laws of the Member States  
should be harmonised so as to make terms of  
protection identical throughout the Community.

(4) It is important to lay down not only the  
terms of protection as such, but also certain  
implementing arrangements, such as the date  
from which each term of protection is  
calculated.

(5) The provisions of this Directive should not  
affect the application by the Member States of  
the provisions of Article 14 bis (2)(b), (c) and  
(d) and (3) of the Berne Convention.

(6) The minimum term of protection laid down  
by the Berne Convention, namely the life of the  
author and 50 years after his death, was  
intended to provide protection for the author  
and the first two generations of his descendants.  
The average lifespan in the Community has

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grown longer, to the point where this term is no longer sufficient to cover two generations.

(7) Certain Member States have granted a term longer than 50 years after the death of the author in order to offset the effects of the world wars on the exploitation of authors' works.

(8) For the protection of related rights certain Member States have introduced a term of 50 years after lawful publication or lawful communication to the public.

(9) The Diplomatic Conference held in December 1996, under the auspices of the World Intellectual Property Organization (WIPO), led to the adoption of the WIPO Performances and Phonograms Treaty, which deals with the protection of performers and producers of phonograms. This Treaty took the form of a substantial up-date of the international protection of related rights.

(10) Due regard for established rights is one of the general principles of law protected by the Community legal order. Therefore, the terms of protection of copyright and related rights established by Community law cannot have the effect of reducing the protection enjoyed by rightholders in the Community before the entry into force of Directive 93/98/EEC. In order to keep the effects of transitional measures to a minimum and to allow the internal market to function smoothly, those terms of protection should be applied for long periods.

(11) The level of protection of copyright and related rights should be high, since those rights are fundamental to intellectual creation. Their protection ensures the maintenance and development of creativity in the interest of authors, cultural industries, consumers and society as a whole.

(12) In order to establish a high level of protection which at the same time meets the requirements of the internal market and the need to establish a legal environment conducive to the harmonious development of literary and artistic creation in the Community, the term of protection for copyright should be harmonised at 70 years after the death of the author or 70 years after the work is lawfully made available to the public, and for related rights at 50 years after the event which sets the term running.

(13) Collections are protected according to Article 2(5) of the Berne Convention when, by reason of the selection and arrangement of their content, they constitute intellectual creations.

Those works are protected as such, without prejudice to the copyright in each of the works forming part of such collections. Consequently, specific terms of protection may apply to works included in collections.

(14) In all cases where one or more physical persons are identified as authors, the term of protection should be calculated after their death. The question of authorship of the whole or a part of a work is a question of fact which the national courts may have to decide.

(15) Terms of protection should be calculated from the first day of January of the year following the relevant event, as they are in the Berne and Rome Conventions.

(16) The protection of photographs in the Member States is the subject of varying regimes. A photographic work within the meaning of the Berne Convention is to be considered original if it is the author's own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account. The protection of other photographs should be left to national law.

(17) In order to avoid differences in the term of protection as regards related rights it is necessary to provide the same starting point for the calculation of the term throughout the Community. The performance, fixation, transmission, lawful publication, and lawful communication to the public, that is to say the means of making a subject of a related right perceptible in all appropriate ways to persons in general, should be taken into account for the calculation of the term of protection regardless of the country where this performance, fixation, transmission, lawful publication, or lawful communication to the public takes place.

(18) The rights of broadcasting organisations in their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, should not be perpetual. It is therefore necessary to have the term of protection running from the first transmission of a particular broadcast only. This provision is understood to avoid a new term running in cases where a broadcast is identical to a previous one.

(19) The Member States should remain free to maintain or introduce other rights related to copyright in particular in relation to the protection of critical and scientific publications. In order to ensure transparency at Community level, it is however necessary for Member States

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which introduce new related rights to notify the Commission.

(20) It should be made clear that this Directive does not apply to moral rights.

(21) For works whose country of origin within the meaning of the Berne Convention is a third country and whose author is not a Community national, comparison of terms of protection should be applied, provided that the term accorded in the Community does not exceed the term laid down in this Directive.

(22) Where a rightholder who is not a Community national qualifies for protection under an international agreement, the term of protection of related rights should be the same as that laid down in this Directive. However, this term should not exceed that fixed in the third country of which the rightholder is a national.

(23) Comparison of terms should not result in Member States being brought into conflict with their international obligations.

(24) Member States should remain free to adopt provisions on the interpretation, adaptation and further execution of contracts on the exploitation of protected works and other subject matter which were concluded before the extension of the term of protection resulting from this Directive.

(25) Respect of acquired rights and legitimate expectations is part of the Community legal order. Member States may provide in particular that in certain circumstances the copyright and related rights which are revived pursuant to this Directive may not give rise to payments by persons who undertook in good faith the exploitation of the works at the time when such works lay within the public domain.

(26) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives, as set out in Part B of Annex I,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

##### **Duration of authors' rights**

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death,

irrespective of the date when the work is lawfully made available to the public.

2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

4. Where a Member State provides for particular provisions on copyright in respect of collective works or for a legal person to be designated as the rightholder, the term of protection shall be calculated according to the provisions of paragraph 3, except if the natural persons who have created the work are identified as such in the versions of the work which are made available to the public. This paragraph is without prejudice to the rights of identified authors whose identifiable contributions are included in such works, to which contributions paragraph 1 or 2 shall apply.

5. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.

6. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 70 years from their creation, the protection shall terminate.

#### *Article 2*

##### **Cinematographic or audiovisual works**

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.

2. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director,

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the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

### *Article 3*

#### **Duration of related rights**

1. The rights of performers shall expire 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.

*[omitted]*

3. The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

4. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

### *Article 4*

#### **Protection of previously unpublished works**

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights

shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

### *Article 5*

#### **Critical and scientific publications**

Member States may protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.

### *Article 6*

#### **Protection of photographs**

Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection. Member States may provide for the protection of other photographs.

### *Article 7*

#### **Protection vis-à-vis third countries**

1. Where the country of origin of a work, within the meaning of the Berne Convention, is a third country, and the author of the work is not a Community national, the term of protection granted by the Member States shall expire on the date of expiry of the protection granted in the country of origin of the work, but may not exceed the term laid down in Article 1.

2. The terms of protection laid down in Article 3 shall also apply in the case of rightholders who are not Community nationals, provided Member States grant them protection. However, without prejudice to the international obligations of the Member States, the term of protection granted by Member States shall expire no later than the date of expiry of the protection granted in the country of which the rightholder is a national and may not exceed the term laid down in Article 3.

3. Member States which, on 29 October 1993, in particular pursuant to their international obligations, granted a longer term of protection than that which would result from the provisions of paragraphs 1 and 2 may maintain this protection until the conclusion of international agreements on the term of protection of copyright or related rights.

<i>Article 8</i>	<b>Repeal</b>
<b>Calculation of terms</b>	[omitted]
The terms laid down in this Directive shall be calculated from the first day of January of the year following the event which gives rise to them.	<i>Article 13</i>
<i>Article 9</i>	<b>Entry into force</b>
<b>Moral rights</b>	[omitted]
This Directive shall be without prejudice to the provisions of the Member States regulating moral rights.	<i>Article 14</i>
<i>Article 10</i>	<b>Addressees</b>
<b>Application in time</b>	[omitted]
[omitted]	Done at Strasbourg, the 12 December 2006.
<i>Article 11</i>	For the European Parliament
<b>Notification and communication</b>	The President
[omitted]	J. Borrell Fontelles
<i>Article 12</i>	For the Council
	The President
	M. Pekkarinen

**DIRECTIVE 2009/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of 23 April 2009

on the legal protection of computer programs

(codified version)

(O.J. L 111, 5.5.2009, p.16)

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the  
European Community and in particular Article  
95 thereof,

Having regard to the proposal from the  
Commission,

Having regard to the opinion of the European  
Economic and Social Committee,

Acting in accordance with the procedure laid  
down in Article 251 of the Treaty,

Whereas:

(1) The content of Council Directive  
91/250/EEC of 14 May 1991 on the legal  
protection of computer programs has been  
amended. In the interests of clarity and  
rationality the said Directive should be codified.

(2) The development of computer programs  
requires the investment of considerable human,  
technical and financial resources while

computer programs can be copied at a fraction of the cost needed to develop them independently.

(3) Computer programs are playing an increasingly important role in a broad range of industries and computer program technology can accordingly be considered as being of fundamental importance for the Community's industrial development.

(4) Certain differences in the legal protection of computer programs offered by the laws of the Member States have direct and negative effects on the functioning of the internal market as regards computer programs.

(5) Existing differences having such effects need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the internal market to a substantial degree need not be removed or prevented from arising.

(6) The Community's legal framework on the protection of computer programs can accordingly in the first instance be limited to establishing that Member States should accord protection to computer programs under copyright law as literary works and, further, to establishing who and what should be protected, the exclusive rights on which protected persons should be able to rely in order to authorise or prohibit certain acts and for how long the protection should apply.

(7) For the purpose of this Directive, the term "computer program" shall include programs in any form, including those which are incorporated into hardware. This term also includes preparatory design work leading to the development of a computer program provided that the nature of the preparatory work is such that a computer program can result from it at a later stage.

(8) In respect of the criteria to be applied in determining whether or not a computer program is an original work, no tests as to the qualitative or aesthetic merits of the program should be applied.

(9) The Community is fully committed to the promotion of international standardisation.

(10) The function of a computer program is to communicate and work together with other components of a computer system and with users and, for this purpose, a logical and, where appropriate, physical interconnection and

interaction is required to permit all elements of software and hardware to work with other software and hardware and with users in all the ways in which they are intended to function. The parts of the program which provide for such interconnection and interaction between elements of software and hardware are generally known as "interfaces". This functional interconnection and interaction is generally known as "interoperability"; such interoperability can be defined as the ability to exchange information and mutually to use the information which has been exchanged.

(11) For the avoidance of doubt, it has to be made clear that only the expression of a computer program is protected and that ideas and principles which underlie any element of a program, including those which underlie its interfaces, are not protected by copyright under this Directive. In accordance with this principle of copyright, to the extent that logic, algorithms and programming languages comprise ideas and principles, those ideas and principles are not protected under this Directive. In accordance with the legislation and case-law of the Member States and the international copyright conventions, the expression of those ideas and principles is to be protected by copyright.

(12) For the purposes of this Directive, the term "rental" means the making available for use, for a limited period of time and for profit-making purposes, of a computer program or a copy thereof. This term does not include public lending, which, accordingly, remains outside the scope of this Directive.

(13) The exclusive rights of the author to prevent the unauthorised reproduction of his work should be subject to a limited exception in the case of a computer program to allow the reproduction technically necessary for the use of that program by the lawful acquirer. This means that the acts of loading and running necessary for the use of a copy of a program which has been lawfully acquired, and the act of correction of its errors, may not be prohibited by contract. In the absence of specific contractual provisions, including when a copy of the program has been sold, any other act necessary for the use of the copy of a program may be performed in accordance with its intended purpose by a lawful acquirer of that copy.

(14) A person having a right to use a computer program should not be prevented from performing acts necessary to observe, study or test the functioning of the program, provided

that those acts do not infringe the copyright in the program.

(15) The unauthorised reproduction, translation, adaptation or transformation of the form of the code in which a copy of a computer program has been made available constitutes an infringement of the exclusive rights of the author. Nevertheless, circumstances may exist when such a reproduction of the code and translation of its form are indispensable to obtain the necessary information to achieve the interoperability of an independently created program with other programs. It has therefore to be considered that, in these limited circumstances only, performance of the acts of reproduction and translation by or on behalf of a person having a right to use a copy of the program is legitimate and compatible with fair practice and must therefore be deemed not to require the authorisation of the rightholder. An objective of this exception is to make it possible to connect all components of a computer system, including those of different manufacturers, so that they can work together. Such an exception to the author's exclusive rights may not be used in a way which prejudices the legitimate interests of the rightholder or which conflicts with a normal exploitation of the program.

(16) Protection of computer programs under copyright laws should be without prejudice to the application, in appropriate cases, of other forms of protection. However, any contractual provisions contrary to the provisions of this Directive laid down in respect of decompilation or to the exceptions provided for by this Directive with regard to the making of a back-up copy or to observation, study or testing of the functioning of a program should be null and void.

(17) The provisions of this Directive are without prejudice to the application of the competition rules under Articles 81 and 82 of the Treaty if a dominant supplier refuses to make information available which is necessary for interoperability as defined in this Directive.

(18) The provisions of this Directive should be without prejudice to specific requirements of Community law already enacted in respect of the publication of interfaces in the telecommunications sector or Council Decisions relating to standardisation in the field of information technology and telecommunication.

(19) This Directive does not affect derogations provided for under national legislation in

accordance with the Berne Convention on points not covered by this Directive.

(20) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B, HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

##### **Object of protection**

1. In accordance with the provisions of this Directive, Member States shall protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. For the purposes of this Directive, the term "computer programs" shall include their preparatory design material.

2. Protection in accordance with this Directive shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive.

3. A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.

4. The provisions of this Directive shall apply also to programs created before 1 January 1993, without prejudice to any acts concluded and rights acquired before that date.

#### *Article 2*

##### **Authorship of computer programs**

1. The author of a computer program shall be the natural person or group of natural persons who has created the program or, where the legislation of the Member State permits, the legal person designated as the rightholder by that legislation.

Where collective works are recognised by the legislation of a Member State, the person considered by the legislation of the Member State to have created the work shall be deemed to be its author.

2. In respect of a computer program created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

3. Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the program so created, unless otherwise provided by contract.

#### *Article 3*

### **Beneficiaries of protection**

Protection shall be granted to all natural or legal persons eligible under national copyright legislation as applied to literary works.

#### *Article 4*

### **Restricted acts**

1. Subject to the provisions of Articles 5 and 6, the exclusive rights of the rightholder within the meaning of Article 2 shall include the right to do or to authorise:

- (a) the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole; in so far as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction, such acts shall be subject to authorisation by the rightholder;
- (b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;
- (c) any form of distribution to the public, including the rental, of the original computer program or of copies thereof.

2. The first sale in the Community of a copy of a program by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program or a copy thereof.

#### *Article 5*

### **Exceptions to the restricted acts**

1. In the absence of specific contractual provisions, the acts referred to in points (a) and (b) of Article 4(1) shall not require authorisation by the rightholder where they are necessary for

the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction.

2. The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract in so far as it is necessary for that use.

3. The person having a right to use a copy of a computer program shall be entitled, without the authorisation of the rightholder, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

#### *Article 6*

### **Decompilation**

1. The authorisation of the rightholder shall not be required where reproduction of the code and translation of its form within the meaning of points (a) and (b) of Article 4(1) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

- (a) those acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorised to do so;
- (b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in point (a); and
- (c) those acts are confined to the parts of the original program which are necessary in order to achieve interoperability.

2. The provisions of paragraph 1 shall not permit the information obtained through its application:

- (a) to be used for goals other than to achieve the interoperability of the independently created computer program;
- (b) to be given to others, except when necessary for the interoperability of the independently created computer program; or
- (c) to be used for the development, production or marketing of a computer program

substantially similar in its expression, or for any other act which infringes copyright.

3. In accordance with the provisions of the Berne Convention for the protection of Literary and Artistic Works, the provisions of this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the computer program.

#### *Article 7*

#### **Special measures of protection**

1. Without prejudice to the provisions of Articles 4, 5 and 6, Member States shall provide, in accordance with their national legislation, appropriate remedies against a person committing any of the following acts:

(a) any act of putting into circulation a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;

(b) the possession, for commercial purposes, of a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;

(c) any act of putting into circulation, or the possession for commercial purposes of, any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of any technical device which may have been applied to protect a computer program.

2. Any infringing copy of a computer program shall be liable to seizure in accordance with the legislation of the Member State concerned.

3. Member States may provide for the seizure of any means referred to in point (c) of paragraph 1.

#### *Article 8*

#### **Continued application of other legal provisions**

The provisions of this Directive shall be without prejudice to any other legal provisions such as those concerning patent rights, trade-marks, unfair competition, trade secrets, protection of semi-conductor products or the law of contract. Any contractual provisions contrary to Article 6 or to the exceptions provided for in Article 5(2) and (3) shall be null and void.

#### *Article 9*

#### **Communication**

[omitted]

#### *Article 10*

#### **Repeal**

[omitted]

#### *Article 11*

#### **Entry into force**

[omitted]

#### *Article 12*

#### **Addressees**

[omitted]

Done at Strasbourg, 23 April 2009.

For the European Parliament

The President

H.-G. Pöttering

For the Council

The President

P. Nečas