

RESPONSE TO DRAFT REPORT ON THE IMPLEMENTATION OF DIRECTIVE 2001/29/EC

of the European Parliament and of the Council of 22 May 2001
on the harmonisation of certain aspects of copyright
and related rights in the information society

(2014/2256(INI))

Committee on Legal Affairs

Rapporteur: Julia Reda

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INTRODUCTION

The comments on this report have been compiled by the Society of Authors and the Authors' Licensing & Collecting Society who collectively represent over 85,000 UK writers.

We note the report and set out below our responses (and recommended amendments) on particular areas of interest and concern. The numbers on points used correlate with those of the Report.

The Society of Authors welcomes removal of unnecessary barriers to access to creative works. However the Society of Authors asserts the rights of creators to control access to their creative works and to receive fair remuneration when their works are used. Creators also have moral rights to be credited and to prevent derogatory treatment of their works and any reforms must not weaken these fundamental rights. Copyright is a property right and creators must not be subject to unjust interference with their property.

REPORT

EXCLUSIVE RIGHTS

3. Acknowledges the necessity for authors and performers to be provided legal protection for their creative and artistic work; recognises the role of producers and publishers in bringing works to the market, and the need for appropriate remuneration for all categories of rightholders; calls for improvements to the contractual position of authors and performers in relation to other rightholders and intermediaries;

Recommended Amendment

Add: Recommends full implementation of the recommendations for action in Study 'Contractual arrangements applicable to creators: law and practice of selected Member States' carried out by the Policy Department C: Citizens' Rights and Constitutional Affairs, at the request of the Committee on Legal Affairs ('the Study')¹.

Equitable remuneration

We are concerned at the worrying trend in removing primary licensing rights from authors and failing to provide adequate remuneration. This is particularly worrying in view of the ALCS' 2013 study into authors' earnings: What Are Words Worth Now? which showed that in 2005, 40% of authors earned their income solely from writing. By 2013, this had dropped to just 11.5%. Further, the survey found that there has been a drop in the typical income from writing of professional authors of 29% in real terms since 2005 to just £11,000.

Improvements to the contractual position of authors

The Study shows that EU creators are often subject to onerous contracts and do not receive a fair share of the reward for their creativity. The Study says:

European authors are in a difficult position as demonstrated throughout this study. This patchwork of national provisions also prejudices exploiters of copyright works due to the uncertainties they face in an industry that is becoming more and more global. the legal provisions in most Member States pay very little attention to the remuneration of the author; the weaker position of the author in the enforcement of the protective legal provisions is largely ignored once agreed upon, contracts govern a dynamic and evolving situation usually without any adaptive or corrective measures included; and the obligation of an explicit determination of the scope of transfer of rights proves inefficient in preventing an all-encompassing, and time-unlimited, assignment.

¹ http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493041/IPOL-JURI_ET%282014%29493041_EN.pdf

The Study recommends the following action with which we strongly agree:

Legislation to enforce fairer and clearer contracts including written contracts which set out the exact scope of the rights granted, proper accounting clauses, fair remuneration for all exploitation, limited licences and an obligation of exploitation for each mode of exploitation.

- Unfair Terms Legislation including a list of defined clauses which are automatically deemed to be void and a general provision that 'any contract provision that, contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the author shall be regarded as unfair'.
- Fair Remuneration through detailed contracts, fair and unwaivable remuneration for all forms of exploitation
- Future proofing copyright contracts by fair remuneration and reversion clauses.
- Stakeholder dialogue
- Collective agreements and Collective actions (or class actions)

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

Recommended Amendment

This point should be deleted.

There is not always a direct corollary between analogue and digital delivery, both actually and with the corresponding legal regimes. To suggest otherwise can lead to unhelpful skeuomorphism.

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

Recommended Amendment

This point should be deleted.

The differences among Member States may be a strength, not a weakness. The Member States have very different systems of law, languages and cultural environments and the strength of the EU is that these have been allowed to flourish.

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

Recommended Amendment

This point should be deleted.

Voluntary exceptions allow member states to create a fair balance in their own cultural environment. Current exceptions need to be robustly debated at member level not imposed from above.

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

Recommended Amendment

This point should be deleted. This would introduce uncertainty and directly conflict with the aims in 10 and 11 above.

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

Recommended Amendment

Calls for exceptions for research and education purposes which strike a fair balance between user access and fair remuneration for rightsholders.

In the context of educational use the UK system, combining wide-ranging exceptions and limitations with a flexible, licensing system, achieves a fair balance between rightsholders and users in way that is consistent with the policy aims set out in the Directive while supporting a thriving and diverse market for educational material.

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

Recommended Amendment

This point should be deleted.

The Society of Authors strongly supports libraries. However this suggestion in its present form is neither economic nor realistic. The Society of Authors may support a very limited exception if it provided for Public Lending Right (PLR) payments to authors at a sufficient level to compensate them from the loss of royalties from primary sales and had built in frictions to avoid library lending cannibalising the ebook market.

The 2013 UK Government report on elending in libraries² stated the economic problem elegantly:

The arrival of the digital book has already profoundly changed the world of publishing. In some genres and some markets, digital books can outsell their printed versions. The increasingly popular method of reading a book on a small handheld device looks likely to become the norm for future generations' reading habits. Not surprisingly there is a rapidly growing demand from the book-borrowing public to borrow digital books from the local public library. We have also heard of the less obvious benefits to E-Lending: that it is revolutionising the reading experience of the partially sighted reader who can increase font size or change lighting levels appropriately, and that innovative library services are loading up e-readers for the elderly or housebound, who as a demographic are some of the most regular library users but who can increasingly face challenges in accessing traditional lending models.

Publishers, however, have been collectively nervous of applying the same model for selling digital books as for their printed counterparts, when it comes to selling to libraries. This is because of their concerns about remote downloading, where a library member downloads a book on to a digital device via the internet, avoiding the need for a visit to the library at all. This lack of "friction"- a word often used in evidence to us- where there is no need to visit the library, means that the publishers and booksellers fear that it would be too easy to borrow a book for free. So easy in fact, that the borrower might never need to buy another book.

Early experiments of digital lending had led to further mistrust when ground rules had not been effectively established and publishers feared for the security of their digital assets. Concerns about file-sharing, and libraries' ability to delete books after a borrowing period was over, added to these difficulties. Publishers want libraries to be successful in digital lending but not so successful that they significantly inhibit the purchase of the publishers' titles.

They concluded that: 'Public libraries should offer both on-site and remote E-Lending service to their users, free at point of use.' That 'PLR should be extended to ebook loans.' And that:

² <https://www.gov.uk/government/publications/an-independent-review-of-e-lending-in-public-libraries-in-england>

The interests of publishers and booksellers must be protected by building in frictions that set 21st-century versions of the limits to supply which are inherent in the physical loans market (and where possible, opportunities for purchase should be encouraged). These frictions include the lending of each digital copy to one reader at a time, that digital books could be securely removed after lending and that digital books would deteriorate after a number of loans. The exact nature of these frictions should evolve over time to accommodate changes in technology and the market.

Pilot schemes are continuing. If these pilots do not result in fair remuneration for authors the Society of Authors would support consideration of a very limited exception if it provided for frictions and PLR payments to authors at a sufficient level to compensate them from the loss of royalties from primary sales.

ABOUT THE AUTHORS

ABOUT THE SOCIETY OF AUTHORS

The Society of Authors exists to protect the rights and further the interests of authors.

The SoA was founded in 1884 and today has over 9,000 members writing in all areas of the profession (from novelists to doctors, textbook writers to ghost writers, broadcasters to academics, illustrators to translators).



Authors are eligible to join if they have been offered a contract from an independent publisher, broadcaster or agent, or have sold over 300 copies of a self-published book or 500 copies of an ebook. The SoA offers a free contract vetting service to all authors and therefore sees many hundreds of publishing contracts each year. www.societyofauthors.org

ABOUT ALCS

ALCS collects fees on behalf of the whole spectrum of UK writers: novelists, film & TV script writers; literary prize winners; poets; freelance journalists; translators and adaptors, as well as thousands of professional and academic writers who include nurses, lawyers, teachers, scientists and college lecturers.



All writers are eligible to join ALCS: further details on membership can be found at www.alcs.co.uk. ALCS collects fees that are difficult, time-consuming or legally impossible for writers and their representatives to claim on an individual basis: money that is nonetheless due to them. Fees collected are distributed to writers twice a year. Since its inception, ALCS has distributed over £350 million to UK writers.

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