

Council of the European Union: Agreement on a Directive on Copyright in the Information Society

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On 8 June, the Council of the European Union ("Council") confirmed that a political agreement was reached on a draft for a Directive on Copyright and Related Rights in the Information Society (for a detailed description of the amended proposal, see IRIS 2000-2:15-20 and IRIS 1999-6: 4; for the original proposal, see IRIS 1998-1: 4). The Council is expected to endorse the proposal for the Directive via formal Common Position before the end of July. The proposal could then go to the European Parliament for a second reading under the co-decision procedure of Art. 251 EC Treaty (ex Art. 189 EC Treaty).

The main amendments introduced in the proposal concern the exceptions to exclusive rights including the relationship to legal protection of anti-copying devices, technical copies and fair compensation. The original exhaustive list of 9 exceptions to the reproduction right and right of communication to the public that Member States may apply is now extended to more than 20. This has already been criticized by the industry as a way of weakening the level of protection that already exists in a majority of EU countries. The proposal revises the circumstances that trigger the mandatory exceptions from the exclusive reproduction right for incidental technical copies made in the context of a transmission via a network. Such copies must be an integral and essential part of a technological process. Their sole purpose must be to enable a transmission in a network between third parties by an intermediary or a lawful use of a work or other subject matter to be made. In addition, they must have no independent economic significance. The proposal strikes a compromise between the legal protection of copying devices and the exceptions thereto. Notwithstanding the rightsholders right to control the manufacturing, distribution etc, of devices designed to circumvent their own anti-copying devices, Member States must ensure that rightsholders provide for a scope of application of the exceptions by those who shall benefit therefrom (e.g. schools, libraries in the case of teaching). Fair compensation must be granted to rightsholders for legally-made reproduction and private copying, but Member States will have great flexibility in transposing measures concerning this subject.

Draft for a Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society, to be presented to the Council of the European Union for adoption of a formal Common

Position (unofficial version).

