

European Commission: Infringement Proceedings regarding Copyright Laws

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The European Commission is pursuing infringement proceedings against a number of Member States for their failure to implement parts of EU copyright legislation.

As regards the implementation of the Directive on copyright and related rights in the Information Society (see IRIS 2003-8: 6), the Commission has now referred to the European Court of Justice the Member States which have still not notified it of national transposition measures (i.e. Belgium, Finland, France, Luxembourg, the Netherlands, Portugal, Spain, Sweden), as well as the UK because its national law does not apply to the territory of Gibraltar. While Ireland also still has to fully implement the Directive, it was not referred to the Court because its copyright law, which was adopted on the basis of an earlier draft of the Directive, substantially complies with the Directive and requires only minor adjustments.

The Commission has also now opened infringement proceedings against six Member States relating to their failure to properly implement into national law the public lending right as set out in the Directive on the Rental and Lending Right and on Certain Related Rights (92/100/EEC). The Directive provides for the granting of an exclusive right to authors and other rightsholders to prohibit or authorise the public lending of their works or other protected subject matter. It however also provides for the possibility for Member States to replace the exclusive lending right with a remuneration right (at least for authors) and to even exempt certain establishments from paying the remuneration. The Commission had already indicated in a report adopted in 2002, that the application of the right varied significantly between Member States and that some States still had to correctly implement the Directive (see IRIS 2002-9: 6). It is now taking action against Ireland, Italy, Spain and Portugal because the laws of these States exempt all lending establishments from paying remuneration to rightsholders, which results in the public lending right not being applied at all. It is also moving against Luxembourg which has failed to implement the public lending right and against France, which although it has adopted a law on the right, has not yet implemented the related implementing decrees (infringement proceedings have also already been pursued against Belgium see IRIS 2002-3: 5).

The Commission has also opened a separate infringement procedure against Portugal relating to its implementation of the commercial rental right. Portugal has added video producers to the exhaustive list of rightsholders prescribed by the Directive (which explicitly refers to "the producer of the first fixation" of films) and the Commission believes that "the Portuguese law introduces an element which is likely to interfere with the objective of harmonisation pursued by the Directive".

Finally, the Commission has asked the Court of Justice to impose a fine on Ireland for its failure to comply with the Court's judgment of 19 March 2002 requiring it to ratify the 1971 Paris Act (see IRIS 2003-8: 6).

"Internal Market: Commission acts to ensure eleven Member States implement EU laws", Press Release of the European Commission IP/03/1752 of 17 December 2003

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/03/1752&format=HTML&aged=1&language=EN&guiLanguage=en>

"Copyright: Commission opens infringement procedures against six Member States over public lending rights and commercial rental rights", Press Release of the European Commission IP/04/60 of 16 January 2004

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/60&format=HTML&aged=1&language=EN&guiLanguage=en>

