

[NO] White Paper Proposes Implementation of EC Copyright Directive

IRIS 2005-4:1/27

*Thomas Rieber-Mohn
University of Oslo*

On 11 February this year the Norwegian Ministry of Culture and Church Affairs submitted its long awaited white paper on amendments to the Norwegian Copyright Act. The purpose of this white paper is primarily to implement the changes needed, in order to bring Norwegian copyright law into line with the EU Copyright Directive (EUCD - see IRIS 2001-5: 3) and hence fulfil Norway's obligations as an EEA-state. This will at the same time make Norwegian copyright law conform with the two WIPO treaties of 1996.

The proposal includes some minor adjustments to the definitions of the copyright holder's exclusive rights, including a clarification that the reproduction right also includes temporary reproductions (see the EUCD Articles 2 and 5.1). It is also established that the mere act of rendering computer equipment at users' disposal (e.g. in Internet cafes) shall not be regarded as making available to the public the works that can be downloaded and accessed through the use of such equipment. It is further proposed that the neighbouring rights of performing artists and film and phonogram producers be amended so that the holders of such rights are given equivalent exclusive rights as copyright holders have. Also, several new extended statutory licenses are proposed, e.g. regarding the use of works contained in broadcasters' archives.

The existing freedom of the user, under Norwegian law, to make copies of works for private use purposes, is upheld. However, like in the other Nordic countries, it is made subject to one additional qualification, not expressly dealt with by the EUCD: Private-use-copying shall be allowed only where based on a so-called "lawful source of copying". This means that the copy or transmission, upon which the private use reproduction is based, must be lawful; it must have been produced or made available in accordance with permission by law or by the right holder(s) concerned. In the absence of such authorisation, for instance if a work has been illegally uploaded to the Internet or made available through a p2p-network, the source will not be "lawful" and may hence not serve as the basis for (lawful) private-use-copying.

With regard to the requirement of a "fair compensation" in the EUCD Article 5.2 (b), the Ministry proposes to finance lawful private-use-copying through the national budget. In the original (green paper) proposal, two alternative models

were introduced; one based on levies on copying devices; one based on allocations through the national budget. In the white paper, the latter has been given preference. The allocated funds shall be used to compensate right holders individually, i.e. based on the amounts of copies actually being made for private use purposes. Thus, the Ministry assumes that it will be possible to map which works are being copied for such purposes, and to what extent. It is delegated to subordinate legislation to work out in detail the system of distribution, but the Ministry presupposes that the administration be carried out by a collecting society. The proposed system of individual compensation shall complement a system of collective compensation (for private-use-copying) already provided for under Norwegian copyright law.

On the basis of Articles 6 and 7 of the EU CD, the white paper proposes a general protection of technological measures and rights-management information. However, anti-circumvention protection shall only apply to technological measures that are used to control so-called “copyright-relevant acts”. Basically, this means that only measures that control the copying or making available to the public of works are protected. Measures that merely control the private enjoyment of works, as for instance the zone-coding of DVD-movies, shall not be protected. Measures that control both “copyright-relevant acts” and private enjoyment shall still be protected. Further, measures that are easily circumvented, for instance by applying ink on a disc or by pressing the “shift” button of the computer while loading, shall not be regarded as “effective” and hence not be protected (cf. the EU CD Article 6.3).

Another innovative element, compared to the EU CD, is the proposed exception for certain acts of circumvention where technological measures also hinder playback within the private sphere: To the extent that technological measures hinder the private enjoyment of works on what is called “relevant playback-equipment”, the user shall be allowed to circumvent. Thus, if the user has purchased a CD, she may lawfully circumvent any technological measure that hinders playback of the CD on for instance her car stereo. Further, if, in such cases, it is necessary to make a copy of the work, in order to facilitate playback on “relevant playback-equipment”, also such copying shall be allowed. It is stressed by the Ministry, however, that the limits for what shall be deemed “relevant” equipment in this relation, must be drawn narrowly. While considering relevance of a given device, a central factor will be which reasonable expectations a user may have while purchasing a product: When purchasing a CD, a reasonable expectation must be that the CD can be played on any CD-player, regardless of whether the context is a living-room stereo, car stereo or a PC etc. However, according to the Norwegian Ministry, it cannot be considered a reasonable expectation of a CD-buyer, that the tracks on the CD are convertible into MP3-files. Thus, circumventing a copy control mechanism on a CD, in order to convert the music into MP3-files, shall not be allowed under this statutory exception. Naturally, this latter delimitation has already caused severe criticism (even though MP3-players of course will be

regarded as “relevant” where the purchased product is an MP3-file).

Ot.prp. nr. 46 (2004.2005) Om lov om endringer i andsverkloven m.m.

<http://www.odin.dep.no/filarkiv/237235/OTP0405046-TS.pdf>

White Paper on amendments to the Norwegian Copyright Act

<http://www.odin.dep.no/filarkiv/237235/OTP0405046-TS.pdf>

