

**ORMEE**

**Observatory on Rights Management for eLearning in Europe**

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**Analysis of implementation of EU Directive on Copyright**

Desk analysis of laws implementing the EU Directive on Copyright in the Information Society  
12/2004



**AIE - Associazione Italiana Editori, Italy  
BolognaFiere, Italy**

**FEP - Federation of European Publishers, Belgium**

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	<b>AUSTRIA</b>
<b>Implementation Status</b>	<p><b>LAW PASSED</b>, entered into force on 1 July 2003  <a href="http://bgbl.wzo.at/htmlausgabe.aspx?ID=11092">http://bgbl.wzo.at/htmlausgabe.aspx?ID=11092</a></p> <p><b>ADOPTED</b> in Parliament by the First Chamber (National rat) and by the Second Chamber (Bundesrat)</p> <p>Leading: Ministry of Justice (Dr. Auer)</p>
<b>Timeline</b>	The Copyright Amendment Act 2003 has been published and came into force on 1 <sup>st</sup> July 2003.
<b>Right of reproduction</b>	Definition includes both temporary and permanent reproduction.
<b>Right of communication to the public</b>	The author shall have the exclusive right to make the work available to the public, such that it is accessible to members of the public at places and times of its choice.
<b>Exceptions to copyright</b>	<p>§ 42 Copyright Act is amended so as to distinguish between reprography and other forms of private copying as per Article 5.2 (a)-(b) of the Directive. The text provides that it is possible to make several copies of a work.</p> <p>The text also provides for exceptions for education instructions or teaching (reproduction for own use in school).</p> <p>Also institutions accessible to the public, which collect works, may produce copies on all types of media.</p> <p>The reproduction of an entire book is not permitted.</p> <p>Includes an exception for the handicapped.</p> <p>Several existing exceptions have been amended to comply with the Copyright Directive (digital use).</p>
<b>Levies</b>	<p>The relationship between remuneration and application or non-application of technological measures is not addressed in the text.</p> <p>Levies are applied to: Photocopiers, faxes, scanners, mf machines and operators.</p>
<b>Legal protection granted to Technological Measures</b>	<p>The protection provided only applies with regard to the prevention of violations of exclusive rights, i.e. unlawful acts. The protection would hence not apply where a technological measure is circumvented in order to make use of a limitation or exception.</p> <p>The Act does not contain any provision addressing the intervention mechanisms set forth in Article 6.4 of the Directive.</p>



<b>Other provisions</b>	<p>The Austrian Parliament will examine provisions concerning contracts law at a later stage.</p> <p>The Parliament was due to publish a Report on technical measures, based on a questionnaire. It may have an impact on exceptions such as libraries, teaching and private copy. However, the new Act will not be modified in the near future.</p> <p>There is no Court action brought against private copy.</p>
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	<b>BELGIUM</b>
<b>Implementation Status</b>	<p>Leading: Ministry of Economy (Jérôme Debrulle)</p> <p><b>The Law was adopted in March 2005 and has been published on 27<sup>th</sup> May 2005.</b></p> <p><a href="http://www.juridat.be/cgi_loi/legislation.pl">http://www.juridat.be/cgi_loi/legislation.pl</a></p>
<b>Timeline</b>	<p>In May 2001, first draft to implement Directive 2001/229/EC by Sénateur Monfils (French-speaking liberal)</p> <p>The Ministry of Justice (then responsible) published a first non-official draft on 18 February 2002.</p> <p>Discussions were stopped by the elections (18 May 2003)</p> <p>A new draft was introduced the 21 January 2004.</p> <p>Adoption March 2005</p>
<b>Right of reproduction</b>	<p>Law includes the reproduction right as provided by Directive (Temporary or permanent).</p>
<b>Right of communication to the public</b>	<p>Law includes the right of <u>making available</u> in the right of communication to the public as provided by Directive.</p>
<b>Right of distribution</b>	<p>Law includes a right of distribution which only applies to physical copies. This right is exhausted after the first sale or first transfer of property, this is strictly limited to the European Union.</p>
<b>Exceptions to copyright</b>	<p>It includes several exceptions listed in the Directive.</p> <p>The exception for temporary copies as provided in the Directive (5.1).</p> <p>Reprography of books is limited to short abstracts (courts fragments) and of entire articles for strictly private use and for illustration of teaching or scientific research as long as this does not prejudice the normal exploitation of the work and that it is not done with a commercial objective.</p> <p>Digital copy can be part or whole of a work for private use (in the family circle and limited to it). It needs to be limited to short abstracts (courts fragments) of books and entire articles when it is done in the framework of illustration of teaching or scientific research.</p> <p>Concerning communication to the public in the framework of illustration of teaching and scientific research, it must be with no commercial objectives, within the intranet of the establishment and shall not prejudice the normal exploitation of the work.</p>



	<p>Exception to the communication to the public – on the spot consultation (same wording as 5.3.n)</p> <p>In Belgium, exceptions are compulsory. They will therefore enter in conflict with contractual provisions.</p> <p>Article 6.4.4 (on-demand) will be virtually impossible to accommodate.</p>
<b>Levies</b>	<p>The link between levies and technological measures is clarified by explicit reference to the application or non-application of TPMs. Only the machines '<i>manifestement utilisées</i>' (manifestly used) for private copying will be liable to levies. For the first time, publishers of literary works will receive money on digital private copy.</p> <p>Levies are applied to: Photocopiers, faxes, scanners, mf machines and operators.</p>
<b>Legal protection granted to Technological Measures</b>	<p>Technical measures shall not prevent a work being used in a way compatible with its normal conditions of utilisation.</p> <p>IF technological measures were to oversee exceptions either the Minister or users or consumers' associations could start an action on emergency interim proceeding.</p>
<b>Other Provisions</b>	<p>Mandatory nature of the exceptions, even for on-line works.</p> <p>No three-step test in the legislation although in principle of non-prejudice to the normal exploitation is specifically written in the articles dealing with reprography and digital copying in case of illustration of teaching or scientific research.</p> <p>There has been a decision in a court case concerning technical measures preventing copying of music by Tribunal de Première Instance: users don't have a statutory right to private copy.</p>



	CYPRUS
<b>Implementation Status</b>	<p>The Directive is implemented.</p> <p>The law applicable in Cyprus is the Copyright law 59/1976, as amended by Laws 63/77, 18(I)/1993, 54(I)/1999, 12(I)/2001, 128(I)2002 and 128(I)/2004</p> <p>This law is not currently available in English.</p>
<b>Timeline</b>	<p>A bill amending the copyright law to implement the Copyright Directive was approved by the Parliament on 22 April 2004. It entered into force upon publication in the Official Gazette of the Republic on 30 April 2004.</p>
<b>Right of reproduction</b>	<p>There is strange formulation of the <b>reproduction act</b> and the <b>temporary copy exception</b> (Article 2, Article 5.1 and Recital 33 of the Directive). The reproduction right includes the term temporary, there is a definition of "temporary acts of reproduction" based on 5.1 and then an exception based on Recital 33 (this Recital contains further details on the nature of the exception but are meant to be guideline).</p>
<b>Right of communication to the public</b>	<p>Implemented</p>
<b>Exceptions to copyright</b>	<p>We have read that there are a number of new exceptions but we have not been able yet to check which are applicable to publications. Article 7(2)(f), (j), (k), (m), (r), (s) and (t)</p>
<b>Levies</b>	
<b>Legal protection granted to Technological Measures</b>	<p>It is unclear whether the act of circumvention is covered by the new provisions (Art 6.1 of the Directive). Otherwise the Article 6.2 preparatory acts are all covered (i.e., manufacture, distribution etc.)</p> <p>In relation to article 6(2) of the Directive as adopted in article 14B (1), strong criminal sanctions included. Civil remedies are covered by the existing article 13, which remains broad enough to cover any copyright infringement.</p> <p>The intervention mechanism in Article 14B3 to regulate the relationship between certain exceptions and technological measures provides "[the prohibitions on preparatory acts of circumvention] do not offend the obligations of the right holders to make available to the beneficiaries of the exceptions in [Article 7(2)(f), (j), (k), (m), (r), (s) and (t)], the means of benefiting from those exceptions to the extent necessary, as long as they have access as provided by the Law to the protected work or subject matter concerned." It would appear that the private copy exception (Article 7.2o) is excluded.</p> <p>This provision appears to be a muddled implementation of elements found in the</p>



	<p>sub-paragraphs of Articles 6.4, which relate to the accommodation of exceptions, including the carve-out (i.e., where works are made available on-demand pursuant to contractual terms). Recitals on playability and no mandate are implemented.</p>
<p><b>Other provisions</b></p>	<p>Recitals on playability and no mandate are implemented.</p> <p>New law provides for a specific implementation of Article 8.3 (<b>injunctions against an ISP</b>).</p> <p><b>ENFORCEMENT:</b> Strengthened the presumption of the Copyright ownership. Increased criminal penalties:  <ul style="list-style-type: none"> <li>For 1st offence £30.000 fine or 3 years imprisonment or both.</li> <li>For 2nd offence £35.000 fine or 4 years imprisonment or both (this gives the Police broader search powers).</li> </ul> The Evidence Law has been amended to render hearsay evidence admissible in Court.</p>



	<b>CZECH REPUBLIC</b>
<b>Implementation Status</b>	<p>Directive 2001/29/EC has not been formally implemented yet, Law 121/2000, which entered into force 1 December 2000, partly transposes the Directive.</p> <p>Law No 121/2000: Law no 81/2005 Coll. entered into force 23 February 2005 (Act amending the Copyright Act)</p> <p><a href="http://portal.unesco.org/culture/fr/file_download.php/594fab77512e0ea2407b89d8edf4dd88/Copyright_Act.pdf">http://portal.unesco.org/culture/fr/file_download.php/594fab77512e0ea2407b89d8edf4dd88/Copyright_Act.pdf</a></p> <p>In July 2005 the European Commission started proceedings against the Czech Republic for non-transposition of the 2001/29/EC Directive</p>
<b>Timeline</b>	The draft amendments to the Copyright Act are currently under considerations in the Parliament. Not expected to be implemented until 2006.
<b>Right of reproduction</b>	Implemented
<b>Right of distribution</b>	Community exhaustion has been implemented by the Act No. 81/2005 Coll. (Art. 14 paragraph 2 of the Copyright Act)
<b>Right of communication to the public</b>	Implemented
<b>Exceptions to copyright</b>	<p>Private copy exceptions would need some amendment – in particular reference to whether technological measures are applied or not.</p> <p>Other exceptions</p> <p>Article 31 – quotations, excerpts of published works also for scientific, critical and teaching purposes. It covers small published works (poems, short novel ?) in their entirety.</p> <p>Article 36 – restriction of copyright to a collection. Arguably it reflects 5.3.n. but would need to be clarified!</p> <p>Article 37 – use of the work by reproduction and distribution. It covers archival copies and conservation ones.</p>
<b>Levies</b>	Levies are applied to: Photocopiers, faxes, printers and operators.



<p><b>Legal protection granted to Technological Measures</b></p>	<p>Legal protection of technological measures is inadequate. In particular, Article 6(1)-(2) of the Directive are not fully implemented. The extent of protection set out by article 43 of the Act is much narrower, in terms of the activities and devices that are prohibited. The definition of technological measures and the relationship with exceptions may need some clarification.</p>
<p><b>Other provisions</b></p>	<p>Problems have been reported regarding lending in libraries and inadequate remuneration for rights holders. (Articles 16 and 37 deals with public lending right).</p> <p>Article 8.3 (injunctions against ISPs) needs to be implemented...</p>



	DENMARK
<b>Implementation Status</b>	<p><b>ADOPTED on 11.12.02 and effective on 22.12.02</b></p> <p>Leading: Ministry of Culture</p> <p><a href="http://www.kum.dk/sw4550.asp?usepf=true">http://www.kum.dk/sw4550.asp?usepf=true</a></p>
<b>Timeline</b>	<p>New amendments were adopted in December 2003 (entered into force on 11.12.2003) limit the scope of private copying through dispositions on renting, lending, family circle and the exclusion of third parties. English translation not yet available.</p> <p>The new Information Technologies Act (mainly concerning copyright) should be adopted soon. It provides for larger penalties and criminal sanctions. No text available.</p>
<b>Right of reproduction</b>	The right of reproduction is correctly implemented
<b>Right of communication to the public</b>	The draft includes a narrow making available right (modeled on the Directive).
<b>Right of distribution</b>	In line with Community exhaustion
<b>Exceptions to copyright</b>	<p>Danish © law contained already 17 exceptions. Danish © law now has a provision on 5.1. Literally copied from the Directive.</p> <p>Legal source requirement. This means that in order to benefit from an exception, the source of the works has to be legal.</p> <p>The government has extended the principle of extended collective license. Under these licenses, public libraries will be able to make copies of articles and of <u>brief excerpts</u> of books. (Section 16, subsection 2). <b>This would cover online delivery of material.</b></p> <p>The 'on the spot exception' is in the section 21(3) 'in public libraries, published works cause made available to private individuals for their personal viewing or study on the spot by means of technical equipment'.</p> <p>The exception 'for making anthology for commercial purpose' is no longer permitted. Consequently, an exclusive right shall apply.</p> <p>Reproduction for Private Use</p>



	<p>Section 12 of the Danish Copyright Act clarifies that the acts permitted under that section cannot be undertaken for commercial purposes. This was insufficient and the said exception is over-broad, at least in the case of text-based and literary works. This provision was amended by subsequent legislation.</p> <p><i>Reproduction within Educational Activities</i>  <b>Section 13.</b>–(1) For the purpose of educational activities copies may be made of published works and copies may be made by recording of works broadcast in radio and television provided the requirements regarding extended collective license according to section 50 have been met. The copies thus made may be used only in educational activities comprised by the agreement presumed in section 50.</p> <p><i>Reproduction by Business Enterprises, etc.</i>  <b>Section 14.</b> Public or private institutions, organisations and business enterprises may for internal use for the purpose of their activities by photocopying, etc., make or have copies made of descriptive articles in newspapers, magazines and collections, of brief excerpts of other published works of a descriptive nature, of musical works and of illustrations reproduced in association with the text, provided the requirements regarding extended collective license according to section 50 have been met. Such copies may be used only for activities which are covered by the agreement presumed in section 50.</p>
<b>Levies</b>	<p>A Bill was adopted in July 2001, amending the private copying exception (introducing legal source + exception for digital copying) and extending private copying levies extends to all recording media (incl. MP3 players, but not IT equipment such as hard disks).</p> <p>Discussions on new digital levies are ongoing.</p>
<b>Legal protection granted to Technological Measures</b>	<p>No intervention for private copying, for other exceptions, a © tribunal takes a decision and then right holders have 4 weeks to implement it before it becomes a license to “hack”. And only ‘access control’ measures are protected. Copy control’ measures are left unprotected.</p>
<b>Other provisions</b>	<p>A case decided by the High Court in April 2004 left unclear the issue of whether injunctions against intermediaries are applicable.</p>



	<b>FRANCE</b>
<b>Implementation Status</b>	<p>Leading: Ministry of Culture ( Marc Hérubel in the Cabinet as well Hélène de Montluc, IP Chief and Guillaume Husson, Book Trade Chief) + Ministry of Education (Thierry-Xavier Girardot, Legal Director)</p> <p>Currently it is scheduled that French Parliament will examine the proposal on December 20, 2005 in the framework of an emergency procedure (one reading only per assembly).</p> <p><b><i>On 11 February 2004, an action against the French Republic for failing to implement the Directive in time was brought before the European Court of Justice by the Commission (Case C-59/04).</i></b></p> <p><b><i>The ECJ published its decision on the 27 February 2005 declaring that France had failed to fulfil its obligations under the Directive by not implementing Articles 6, 7 and 5(1).</i></b></p> <p><b><i>The European Commission sent France a “reasoned opinion” in July 2005 asking them to comply with the Courts Judgement.</i></b></p> <p><b>DRAFT LAW</b>  <a href="http://www.assemblee-nationale.fr/12/pdf/projets/pl1206.pdf">http://www.assemblee-nationale.fr/12/pdf/projets/pl1206.pdf</a></p>
<b>Timeline</b>	<p>The draft law of the French government passed the Conseil des ion 12 November 2003. Since then, more urgent matters, including preparation of regional elections in March 2004 and the referendum on the European constitution in May 2005, prevented the Parliament from starting its work on it.</p> <p>Some clauses on enforcement were included in the Perben II law (increase of the ceiling of penalties applicable for counterfeiting and facilitation of fight against counterfeiting); and the Enforcement directive also needs to be implemented.</p> <p>Amendments were presented by MPs in May-June 2005 but due to the change of Government, examination by the French Parliament was delayed again to December 2005</p>
<b>Right of reproduction</b>	No implementation necessary (article L.122-3 Code de la propriété intellectuelle)
<b>Right of communication to the public</b>	No implementation necessary for the making available right. (art. L.122-2 et suivants du CPI)
<b>Right of distribution</b>	No implementation necessary for the right of distribution. (art. L.131-3 du CPI)
<b>Exceptions to copyright</b>	<p>The implementation is necessary for art. 5.1.</p> <p>2 options for Article 5.2 and 3. (Literal transposition or confused re-drafting).</p> <p>No new exceptions are expected except for handicapped persons (French © law contains only 5 types of exceptions so far, none of them are dealing with education). The Ministry sent to SNE a list of uses they wished to make legal</p>



	<p>under sectorial agreements in order to avoid the educational exception (scanning of extracts of works to be posted on school intranet).</p> <p>Some amendment accepted by the legal affairs Committee in the Parliament in May 2005 proposes to create an exception for the benefit of associations helping visually impaired people by undertaking the transcription of written and audiovisual works under a format they can access: this would consist of letting them access source files of such works under a digital format.</p> <p>The most worrying amendment accepted by the Legal Affairs Committee indicates that the number of free private copies authorized for a work, a videogram, phonogram or program legally acquired should not be below 1. The rapporteur advocated that this aimed at reasserting the right for private copying, taking into account a recent case of the Paris court of Appeal which prohibited TPM on DVDs on the grounds that they prevented any private copy. This would imply that private copying, which was so far a “tolerated act” would become a right as such.</p> <p>Finally, after the rapporteur published his report in June, several MPs asked for the educational exception, the exception for libraries, and the elimination of the mention of the 3-step test.</p>
<b>Levies</b>	<p>Levies on digital private copying are now attributed also to publishers and authors of literary works.</p>
<b>Legal protection granted to Technological Measures</b>	<p>Among the amendments accepted by the Legal affairs committee in May 2005, one of them asks for a reference to the application/non-application of technological measures as required in Article 5.2b (private copy exception – levies). Besides, the amount of levies will be determined on a format by format basis. Another one conditions the use of TPMs by authors and artists’ agreement.</p>
<b>Other provisions</b>	<p>The draft © law would also contain a provision for compulsory legal deposit of <b>digital works</b> and digitalization of already collected works.</p> <p>It also contains a provision giving a preference to the State on intellectual property of their civil servants.</p> <p>A court case judged in April 2004 confirmed that technological protections preventing to make private copies of DVDs were legal, on behalf of the 3 step test.</p>



	<b>GERMANY</b>
<b>Implementation Status</b>	<p><b>ADOPTED</b> Leading: Ministry of Justice</p> <p>The law amending of the Copyright Act implementing the Copyright Directive was adopted in 2003. A second basket of legislation, dealing mainly with private copying, was necessary to implement the Directive fully. The previous Government worked on the second basket until the elections in September 2005.</p> <p>A new Government was formed in Germany eight weeks after the elections. It is formed by the Christian Democratic Party (CDU) and the Social Democratic Party (SPD) concluding a grand coalition. In the new cabinet, Mrs. Zypries, the Minister of Justice, continues to be responsible for the copyright law so it is expected that they continue to work soon on the second basket of legislation.</p> <p><b>LAW PASSED</b>, entered into force on 13 September 2003 <a href="http://217.160.60.235/BGBL/bqbl1f/bqbl103s1774.pdf">http://217.160.60.235/BGBL/bqbl1f/bqbl103s1774.pdf</a></p>
<b>Timeline</b>	So far it is not to foreseen how the second basket of the copyright legislation will be implemented under the new Government in Germany. We have to await the political development in this matter.
<b>Right of reproduction</b>	In line with the Directive
<b>Right of communication to the public</b>	In line with the Directive
<b>Right of distribution</b>	In line with the Directive
<b>Exceptions to copyright</b>	<p>Draft provides for</p> <ul style="list-style-type: none"> <li>- A right of action for individuals and associations (e.g., consumer groups) against right holders who fail to accommodate exceptions (by not providing technical means).</li> <li>- Fines for rights holders who fail to accommodate exceptions (these fines appear to be four times higher than those imposed on those who engage in certain illicit circumvention activities).</li> </ul> <p><b><u>Mandatory exception</u></b> This provision of Article 5.1 of the Directive has been fully transposed.</p> <p><b><u>Optional exceptions</u></b> <u>Private use</u> The private copy exception is too broad as it may extend to file sharing by expressly permitting the making of copies for the benefit of third parties. Amendment to the Copyright Act § 53 “Reproductions for private use”</p>



	<ul style="list-style-type: none"> <li>- Singular reproductions by a natural person for private use, on any medium, for ends that are neither directly nor indirectly commercial.</li> <li>- The reproduction can be carried out by a third party provided that it is done at no charge.</li> <li>- The private copy exception is too broad as it may extend to file sharing by expressly permitting the making of copies for the benefit of third parties.</li> <li>- Electronic Document Delivery - Section 53(1), 2nd sentence relates to document delivery: third parties are to be allowed to make digital copies, as long as this is done not for remuneration. The explanatory memorandum to the Bill explains that this could be done by libraries as part of a document delivery service and that in the case of public libraries this would be deemed to be done "not for remuneration", as the institutions are public and non-commercial.</li> </ul> <p><u>Educational and scientific purposes</u> Amendment to the Copyright Act § 46 "Collections for educational or parochial use". Works already published could be made available to students and researchers (scientists) whether digital or analogue without needing a permission of the concerned creator. If used in lessons/lectures, the use should even be unpaid.</p> <p><u>Making available of works for instruction/teaching and research</u> - The section 52a and 53 concern limitations on the making available right in relation to teaching and research. It would be permissible to make publishers' works (short excerpts of books and entire articles) available to students and researchers, in the case of students even without any remuneration. In the case of research in return for a remuneration payable to VG Wort.</p> <p><u>News reporting or quotation purposes</u></p> <ul style="list-style-type: none"> <li>- Amendment to the Copyright Act § 50 "Reporting on current events";</li> <li>- Amendment to the Copyright Act § 48 "Reproduction of the public speeches";</li> <li>- Existing provision on quotation purposes: § 51 UrhG.</li> </ul> <p><u>Use by people with disabilities</u> Amendment to the Copyright Act § 45a (new) "People with disabilities":</p> <ul style="list-style-type: none"> <li>- Reproduction for the benefit of people who cannot access the piece of art in a specific way because of a disability is allowed.</li> <li>- However, this does not apply where the piece of art is already available in an accessible way at a price which is corresponding to the non-accessible reproduction.</li> <li>- The copyright holder is entitled to an appropriate remuneration.</li> </ul>
<b>Levies</b>	<p>The government has published plans to amend this obligation under the Copyright Act to compensate right holders for the reproduction of their works by means of video and audio recording. (Section 54 and following of the Copyright Act.)</p> <ol style="list-style-type: none"> <li>1. The <u>level of remuneration</u> is intended to be increased. However the Government has not yet announced the extent of this increase.</li> <li>2. The <u>scope of these provisions</u> would be extended to cover not only video and audio recording/storage mediums, but also digital recording mediums and respective appliances, e.g. hard drives, zip-drives and MP3-Players.</li> </ol> <p>Levies are applied to: Photocopiers, faxes, scanners, CD burners, DVD burners and operators.</p>
<b>Legal protection granted to Technological Measures</b>	<p>The main issues are the provision on technical measures that goes further than article 6.4 and seems to create a subjective right for beneficiaries of exceptions by allowing them to claim the <i>technical means</i> to use their exception, possibly by intervention of a judge.</p>



	<p>Besides, the <u>circumvention of technological measures</u> for private use is not criminalized. There appear to be no express civil remedies for circumvention and preparatory acts (only criminal and administrative sanctions). This completely undercut the legal protection of technological measures as required by the Copyright Directive and the WIPO Treaties.</p> <p>Right holders have one year to find a solution to allow benefit of the exceptions (first draft it was three months).</p>
<p><b>Other provisions</b></p>	<p>The law provides that another legal instrument is needed to set out the “common rules” of payment which will serve as a standard to decide whether the remuneration is fair and reasonable. It also established that a body representing the right holders and the users recommending solutions.</p> <p>It is expected that the German government continues with the second revision of © law. This should deal with levies, the intervention’s mechanism and unknown uses.</p>



	GREECE
<b>Implementation Status</b>	<p><b>ADOPTED in October 2002</b>  Leading: Ministry of Culture (head of IP department Dyonisa Kallinikou)  English translation available</p> <p><b>LAW PASSED</b>, entered into force on 10 October 2002  <a href="http://www.culture.gr/8/84/e8401.html">http://www.culture.gr/8/84/e8401.html</a></p>
<b>Timeline</b>	First country to have implemented the Directive. It was before holding the Presidency of the European Union (first semester 2003).
<b>Right of reproduction</b>	The definition of reproduction follows verbatim the definition of the directive and covers any form of reproduction including temporary and permanent copies.
<b>Right of communication to the public</b>	The new right of making available was introduced covering all kind of works and protected subject-matters
<b>Right of distribution</b>	
<b>Exceptions to copyright</b>	<p>Article 5.1.is literally implemented.</p> <p><b>Three-step test is included (section 28c).</b>  Art. 5.5. is indeed included and its application has been extended also to exceptions allowed by the previous legislation. As such it also covers the following exceptions: Reproduction for personal usage (art. 18 of Law 2121/1993), Reproduction of parts of a work (art. 19), reproduction in schoolbooks and anthologies (art. 20), reproduction for teaching purposes (art. 21), reproduction by libraries and archives (art. 22), reproduction of cinematographic works (art. 23), reproduction for judicial or administrative purposes (art. 24), usage for information purposes (art. 25), usage of images with works in public places (art. 26), public performance in special circumstances (art. 27) and, finally, display and reproduction of artistic works (art. 28).</p> <p><b>Article 28A - Reproduction for the benefit of blinds and deaf-mute</b>  "The reproduction of the work is allowed for the benefit of blinds and deaf-mute, for uses which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability. By resolution of the Minister of Culture the conditions of application of this provision may be determined as well as the application of this provision for other categories of people with a disability".</p> <p><b>Article 28B - Exception from the reproduction right</b>  "Temporary acts of reproduction which are transient or incidental, which are 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 protected subject-matter, and which have no independent economic significance, shall be exempted from the reproduction right".</p>



	<p>Some specific exceptions provided by the Greek Copyright Act (like the exception for schoolbooks, the exception for anthologies of works of deceased authors, the exception for catalogues of museums) have remained. The exception of private copying and the respective equipment levies were not amended)</p> <p>A new exception for <b>educational purposes</b> has been adopted by virtue of article 22 of law 3328, ominously issued on April 1, 2005. The exception reads as follows:</p> <p>“It is allowed, without permission of the creator and without remuneration, to reproduce in educational books that are used as teaching material for primary and secondary education and have been approved by the Ministry of Education and Religious Affairs or any other competent Ministry according to the official course schedule, of literary works of one or more authors, lawfully published, that constitute a small part of their total production, as well as of parts of works of art or of other photographic or drawing material, if it is in necessary conjunction to the content of the educational material. The provisions of this paragraph also apply to all sorts of educational material, such as internet applications, CD-ROM, DVD as well as any other means of electronic, digital or other form of recording that may be used as an approved – by the Ministry of Education and Religious Affairs – means of teaching and distributed for free, by the terms of the official course schedule. In these means it is also allowed to reproduce parts of musical works as well as of cinematographic, sound or picture and sound material of a limited duration under the same as above terms with the additional mention, beyond the data required by paragraph 3 (there is no paragraph 3!!!) of the name of the producer of the work.”</p>
<p><b>Levies</b></p>	<ul style="list-style-type: none"> <li>- The 2% levy on PCs is abolished</li> <li>- The 4% levy on photocopying machines and paper has remained. A new 4% levy on scanners and diskettes (with storage capability under 100 Mbytes) was added, which is distributed to authors and publishers of printed material</li> <li>- It is clarified that audio and audiovisual devices and storage means &gt; 100 Mbytes (with a 6% levy) include digital devices except of those devices that are incorporated or can be incorporated in a computer.</li> <li>- All levies are computed either on import price or on sales price if the subjects are produced in Greece (and not on wholesale or retail price as provided by the previous law)</li> <li>- All claims based on the substituted par.3 of Art 18 are annulled except of those claims recognized by a final court decision issued prior to the enactment of the new law. The wording of this provision allows the interpretation that it covers all past claims even for devices that are subject to the levies according to the amended – new paragraph. OSDEL and the other collecting societies have the position that retroactive abolition of copyrights or rights to equitable remuneration is contrary to the Greek Constitution and the European Charta of Human Rights. Osdel will continue all Court cases.</li> </ul> <p>The Hellenic Federation cooperated closely on this issue with OSDEL, the Authors' and Publishers' collecting society. Together, they carried out press conferences, lobbied politicians, and advertised their position in the press. Even the “long-arm” of the Ministry of Culture (i.e. the Hellenic National Book Centre) was persuaded to join the campaign against this law and even co-sign the petitions. Powerful associations, such as E.S.I.E.A. (the journalists association) also joined the campaign. Nevertheless the law was passed, obviously under heavy pressure from the other side. OSDEL and the Hellenic Federation are prepared to challenge the retro-active abolition of the levy as unconstitutional before the courts of Greece.</p> <p>A heated debate on the issue of levies on private copy is currently taking place. The BSA has already stopped paying levies on computers.</p>



	Levies are applied to: Photocopiers, scanners, mf machines, CD burners, DVD burners, paper, diskettes, CDRs, DVDDR/WRs and operators.
<b>Legal protection granted to Technological Measures</b>	The respective provisions on protection of rights management systems and on technical measures were implemented. There is no provision for obligatory technical measures in relation to the exception of digital private copying. The text reads <i>'the righs tholders should have the obligation to give to the beneficiaries the measures to ensure the benefit of the exception to the extent necessary and where that beneficiaries have legal access to the protected work or subject-matter concerned. If the righs tholders do not take voluntary measures including agreements between rightholders and third parties benefiting from the exception, the rightholders and third parties benefiting from the exception may request the assistance of one or more mediators selected from the list of mediators drawn up by the Copyright Organization. The mediators make recommendations to the parties. If no party objects within one month from the forwarding of the recommendation, all parties are considered to have accepted the recommendation. Otherwise, the dispute is settled by the Court of Appeal of Athens trying at first and last instance. These provisions shall not apply to works or other subject-matter available to the public on agreed contractual terms in such a way that members of the public may access them from a place an at a time individually chosen by them'</i> . (Article 6 par. 4 of Directive 2001/29).
<b>Other provisions</b>	Provides for injunction against intermediaries whose services are used by a third party to infringe a copyright. Discussions about private copying levies.



	<b>HUNGARY</b>
<b>Implementation Status</b>	The Hungarian Parliament adopted, on 17 November 2003, amendments to the Copyright Act 1999, which were recently published in the Official Gazette. The new act entered into the force on 1 May 2004. (A partial translation is available).
<b>Timeline</b>	
<b>Right of reproduction</b>	
<b>Right of distribution</b>	Community exhaustion has been introduced (Article 23(5)).  Article 23(3) was modified as follows: “The possession for commercial purposes of an infringing copy shall also be regarded as an infringement of the right of distribution, if the person concerned knows, or has reasonable grounds to know, that the copy is the result of an infringement.”
<b>Right of communication to the public</b>	No mandatory collective management is applicable in the case of exclusive rights of public performance and making available for “dramatic and dramatic-musical works” – in other cases extended collective licensing may be applicable with the possibility of opting-out (see Articles 25 and 26).
<b>Exceptions to copyright</b>	Article 35(6) was modified to conform to Article 5(1) of the Directive (temporary copy exception). In general, the new law does not introduce any new exceptions. Indeed, in certain respects it narrows the scope of application of some exceptions to make them compatible with the Directive. One new exception is based on Article 5(3) (n) of the Directive (communication/making available for research/public study on dedicated, on-premises terminals where no licensing). Article 33(2) provides for the application the three-step test.
<b>Levies</b>	The levy system for private copying of phonograms and audiovisual works will be maintained; and the levy will continue to cover blank recording material (both audio and video). The Act notes that the levy is due for copying of works from broadcasts as well as those that are “released for distribution on audiovisual or audio carriers” (Article 20(1)). Film producers are now one of the categories of beneficiaries of the levy.  Article 20(2) prescribes that, when the level of the levies is fixed, the application or non-application of technological protection measures must be taken into account.  Levies are applied to: Photocopiers, printers, mf machines and operators.
<b>Legal protection granted to Technological Measures</b>	Article 95 was amended to correspond to Article 6(1)-(3) of the Copyright Directive. Under Article 95/A, an intervention mechanism extends to the following exceptions: reprographic reproduction, use of works in the form of illustrations for educational purposes, certain library uses, use for the handicapped and use as evidence in administrative and other official procedures. The intervention mechanism, however, does not extend to cases where a work or object of related rights is made available to the public on agreed contractual terms. The beneficiaries of these exceptions – having legal access to the works or objects of related rights concerned – may demand that the owners of rights make available the works in order that they may benefit from the exceptions. If a beneficiary of an



	<p>exception and an owner of rights are unable to reach agreement, any party may initiate a procedure under the new 105/A proposed in the draft law. The procedure is based on a <b>mediation panel</b> established within the Copyright Council. The procedure may be initiated also by an organization representing the relevant beneficiaries. If the parties do not accept the mediation panel's decision within 30 days, either side may initiate a court procedure within 15 days from the expiry of the 30 days.</p>
<p><b>Other provisions</b></p>	



	<b>IRELAND</b>
<b>Implementation Status</b>	<p>Ireland enacted new copyright legislation – the Copyright and Related Rights Act 2000 – on 1<sup>st</sup> January 2001. It correctly anticipated and implemented in advance all the major aspects of the Directive. Some amendments to the legislation are however needed to achieve full harmony with the Directive. Necessary amendments include the expansion of rights in some subtle respects; alterations to certain of the exceptions; and improvement of the provisions concerning the protection of technical measures. The extent of the amendment required had been under discussion by the relevant Government Department for some months, and it has been decided to implement the most fundamental necessary changes by way of secondary legislation.</p> <p>The 2001 Act was slightly modified on 19 January 2004. Minor changes were brought to implementation of Article 5(1) of the Directive.</p> <p>NO OFFICIAL DRAFT;  But the “The Copyright and Related Rights Act 2000” (<a href="http://www.irlgov.ie/bills28/acts/2000/a2800.pdf">http://www.irlgov.ie/bills28/acts/2000/a2800.pdf</a>) tried to anticipate the requirements of the Directive. The WIPO treaties from 1996 are incorporated in the Irish Copyright Act. Therefore, the European Commission has decided not to refer Ireland to the European Court of Justice for lack of implementation, because in many respects Irish Law is already compliant.</p>
<b>Timeline</b>	While they are already largely in compliance (see above), further legislative action is needed to achieve complete implementation.
<b>Right of reproduction</b>	Ireland has a right of reproduction, which largely conforms to the Directive.
<b>Right of communication to the public</b>	Ireland has a right of “making available to the public”, which largely conforms to the Directive.
<b>Right of distribution</b>	Ireland has a right of distribution, which largely conforms with the Directive.
<b>Exceptions to copyright</b>	Ireland’s exceptions fall within the range specified in the Directive, although some subtle changes are necessary for full implementation.
<b>Levies</b>	Ireland does not impose levies. Right holders negotiate contracts with users.
<b>Legal protection granted to Technological Measures</b>	Ireland grants protection to technological measures, in a form which falls slightly short of that in the Directive. There is no protection of access technical measures.

<b>Other provisions</b>	No protection of access measures, but private copying is protected.
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	ITALY
<b>Implementation Status</b>	<p>Leading: Presidency of Council, Dept. of Communitarian Policies Italian law</p> <p>The Law applicable in Italy is the Copyright Law n°633 of 1941, last modified by <u>The legislative decree no. 68 of 09/04/2003</u></p> <p><b><u>The Decree from 2003 implements Directive 2001/29/CE on copyright and related rights.</u></b> <u>It entered into force on April 29<sup>th</sup> 2003 (published on Official Journal of April 14<sup>th</sup> 2003)</u></p> <p><a href="http://www.siae.it/bg.asp?click_level=1400.0300&amp;link_page=bg_DA_Nazionale.htm&amp;level=1400.0300#doc">http://www.siae.it/bg.asp?click_level=1400.0300&amp;link_page=bg_DA_Nazionale.htm&amp;level=1400.0300#doc</a> (original document in Italian)</p> <p><a href="http://portal.unesco.org/culture/en/ev.php-URL_ID=27690&amp;URL_DO=DO_TOPIC&amp;URL_SECTION=201.html">http://portal.unesco.org/culture/en/ev.php-URL_ID=27690&amp;URL_DO=DO_TOPIC&amp;URL_SECTION=201.html</a> (non-official translation in English)</p>
<b>Timeline</b>	<p>The 'EC law (loi communautaire) for 2001' (adopted on March, 1 2002) stated that the Copyright Directive must be implemented within one year from the entry into force of the law. A draft Decree was circulated in July 2002 and described as moderately positive by Ivan Cecchini, director of AIE.</p> <p>The final text was approved by the Council of Ministers on March, 28<sup>th</sup> after the concerned parliamentary Commissions expressed their opinion on a preliminary text adopted on December, 20<sup>th</sup> 2002.</p> <p>A new Decree imposes a filtering measure on works illegally put online. This Decree has yet to be approved by Parliament.</p>
<b>Right of reproduction</b>	Follows exactly the text of the Directive
<b>Right of communication to the public</b>	The <u>making available right</u> is properly implemented, as a separate new exclusive right.
<b>Right of distribution</b>	Follows exactly the text of the Directive
<b>Exceptions to copyright</b>	The text introduces a number of new exceptions but does not modify dramatically Italian Copyright legislation and it confirms the rules on reprography introduced by Law No. 248 in 2000. Previously, there were 7 types of exceptions (including for libraries and teaching and research), and the new legislation introduces 4 new ones. They are temporary copies (5.1.), copying for the benefit of the handicapped, on-site consultation in libraries and social institutions (5.3.n) and reproductions of broadcasts made by hospitals. The rest of the decree has implemented exceptions already in place: i.e. private copy, reproduction by the press of articles on current economic, political or religious topics, reproduction of public speeches, and reproduction in the form of citation.



<b>Levies</b>	The decree has for the most part extended into the digital field the norms laid down by Law 92/1993 for private analogical reproduction of sound and video recordings (private copy). Producers or importers of recording equipment or recording discs will have to pay significant compensation (through SIAE) to authors, artists, performers and producers of sound-video recorded materials. This will be calculated on the following basis: for the equipment, as a percentage of the price charged to the retailer and, for the discs, according to their recording capacity. During the passage of the decree discussion was focussed on how to define the level of compensation and the criteria used to measure it (the recording capacity of discs and whether the equipment was destined exclusively for the reproduction of protected material or not). The decree has set out a provisional level of compensation, leaving the final definitive figure to be set by the Minister of Culture.
<b>Legal protection granted to Technological Measures</b>	The decree obliges right holders to adopt solutions which will enable the exercise of certain fixed exceptions to exclusive rights for the economic exploitation of works (for example copying for internal library and museum services, reproduction in the form of citation, copying for the benefit of the handicapped, the making of "private copies"), except when works are made available on-demand. The decree provides a non-binding mechanism for conciliation, followed by recourse to a judge if conciliation fails.
<b>Other provisions</b>	The rules on private copying in Law no.93 of 1992 are introduced in Copyright Law no.633 of 1941 as also are some rules of Law no.248 of 2000 (the "Antipiracy" Bill) in order to obtain a better harmonization.

Law 633/41

Article 68 (amended)

1. The reproduction of single works or of portions of works for the personal use of the reader, when made by hand or by a means of reproduction unsuitable for marketing or disseminating the work among the public, is permitted.

2. Photocopies may be freely made of works available in libraries which are accessible to the public, school libraries, public museums and public archives, when made by the above-mentioned institutions for their own services, without any direct or indirect economic or commercial benefit.

3. The prohibition on reproducing music scores remains; however the reproduction for personal use of works of intellectual property is permitted, through photocopying, xeroxing or similar means, within a limit of 15% of each volume or periodical issue, excluding advertising pages.

4. Those responsible for operating copy centres who use on their premises, or make available to third parties (even when free of charge), apparatus for photocopying, xeroxing or similar systems of reproduction, must pay a compensatory fee to the authors and publishers of works of intellectual property reproduced by such means for the purposes laid out in clause 3. The amount of such compensation and the methods of collection and distribution are determined according to the criteria laid out in article 181-ter of the present law. Unless an alternative arrangement is made between SIAE and the trade associations involved, the compensation for each page reproduced should not be less than the average price per page for books, as established annually by ISTAT.

5. Reproduction for personal use of works available in public libraries, and carried out within the institutions by the means outlined in clause 3, can be effected freely, within the limits set out by the same clause 3, on payment of a lump-sum compensation to right holders, as per clause 2 of article 181-ter, determined according to the second sentence of clause 1 of the same article 181-ter. This compensation is paid every



year directly by the libraries, as a proportion of the revenue raised by the service, with no additional charges made on the budget of the state or the institutions responsible for the libraries. The limits mentioned in clause 3 do not apply to works which are **both no longer in the publishers' catalogues and rare because difficult to find on the market.**

6. Sale to the public of the type of copies described in the previous clauses is prohibited, as is, in general, any use which is in competition with the rights of economic exploitation belonging to the author.

#### Article 181-ter

1. Compensatory fees for reproduction, as mentioned in the fourth and fifth clauses of article 68, are collected and distributed, net of commission, by SIAE, the Italian association of authors and publishers. In the absence of agreements between SIAE and the trade associations concerned, the amount and method of payment of compensation, as well as the level of commission payable to SIAE, are fixed through a decree from the Prime Minister's office, following consultation with the parties involved and the consultative committee, mentioned in article 190. The provisions laid out in the fourth and fifth clauses of article 68 come into force with effect from the date on which the above-mentioned agreements are drawn up or the date on which the Prime Ministerial decree takes effect.

2. The distribution of compensation among right holders for whom SIAE does not already act as intermediary (in accordance with article 180) can also take place through the leading trade associations involved, recognised by decree from the Prime Minister's office, following discussion with the consultative committee, as mentioned in Article 190, and based on specific agreements.



	<b>LITHUANIA</b>
<b>Implementation Status</b>	The Directive is <b>fully implemented</b> .
<b>Timeline</b>	New Copyright legislation entered into force on 4 August 2000 and further legislation was adopted on 5 March 2003. The latter amendments included at least partial implementation of the Copyright Directive. New Penal Code entered into force 1 May 2003 (qualifies IP crimes as only applying to works).
<b>Right of reproduction</b>	The term is clarified in Article 2 (fully corresponds to the Copyright Directive) and the right of reproduction is designed in Article 15 of the Law of the Republic of Lithuania on Copyright and Adjacent Rights.
<b>Right of communication to the public</b>	The term is clarified in Article 2 and the right of communication to the public is designed in Article 15 of the Law of the Republic of Lithuania on Copyright and Adjacent Rights.
<b>Exceptions to copyright</b>	Articles 19-33 of the Law of the Republic of Lithuania on Copyright and Adjacent Rights fully correspond to Article 5 of the Copyright Directive.
<b>Levies</b>	Levies are reflected in Article 20 of the Law of the Republic of Lithuania on Copyright and Adjacent Rights.
<b>Legal protection granted to Technological Measures</b>	Article 74 of the Law of the Republic of Lithuania on Copyright and Adjacent Rights fully corresponds to Article 6 of the Copyright Directive.
<b>Other provisions</b>	There is a long list of exceptions; however, the three-step test (Article 19 of the Law of the Republic of Lithuania on Copyright and Adjacent Rights) is incorporated into national law.  Mandatory Collective Administration for certain rights (Article 65.3 of the Law of the Republic of Lithuania on Copyright and Adjacent Rights).



	<b>LUXEMBOURG</b>
<b>Implementation Status</b>	<p>Leading: Ministry of Economy (S. Alegrezza) - Minister Henri Grethen.  The Luxembourg Copyright Act was amended (in advance of Copyright Directive implementation) on 18 April 2001 to implement, <i>inter alia</i>, the WIPO Treaties.  A new Act implementing the Directive was adopted on 18 April 2004 (available in French). And <b>entered into force on 3<sup>rd</sup> May 2004-05-11</b></p> <p>INITIAL DRAFT LAW  <a href="http://www.ael.be/action/2003/eucd/luxembourg/eucd_lux_transposition_projet.pdf">http://www.ael.be/action/2003/eucd/luxembourg/eucd_lux_transposition_projet.pdf</a></p> <p><i>On 30 January 2004, an action against the Grand Duchy of Luxembourg for failing to implement the Directive in time was brought before the European Court of Justice by the Commission (Case C-35/04).</i></p>
<b>Timeline</b>	
<b>Right of reproduction</b>	In line with the Directive: Article 3, paragraph 5 of the 18 April 2001 Act is modified to figure the exact wording of Articles 4(1) and (2) of the Directive.
<b>Right of communication to the public</b>	In line with the Directive
<b>Right of distribution</b>	In line with the Directive (it has been clarified that the regime is that of Community exhaustion).
<b>Exceptions to copyright</b>	<p>All exceptions are imperative and cannot be derogated by contract ("the author shall not prohibit"). This also applies to databases.</p> <p>1°: stricter than 5(3) d: the author's name and the title of the reproduced or quoted work shall be mentioned if they appear in the source.</p> <p>2°: exact wording of 5(3) a.</p> <p>3°: stricter than 5(3) c as it requires the extract to be a short one, that the communication be not made with a view for profit and that it complies with the requirements of good practice in the sector concerned. However, it does not specify that this communication may be done only by the press...</p> <p>4°: exact wording of 5(2) b.</p> <p>5°: exact wording of 5(1).</p> <p>6°: stricter than 5(3)k: if they satisfy the requirements of good practice in this sector and, <i>inter alias</i>, that they only use the elements strictly necessary to the caricature and do not denigrate the work.</p> <p>7°: not in the Directive; very strict exception exempting the reproduction and communication of works accessible to the public at the condition that these works are not the main subject of the said reproduction or communication.</p>

	<p>8°: not in the Directive; related to but stricter than 5(2) e (and f? – d’ailleurs tous les 2 sont repris par la suite) as it encompasses every official act by public authorities, their official translation, speeches delivered in Parliament, at public Court hearings and at political meetings. In said cases, the author is solely entitled to produce (“tirer à part”?) or compile his/her speeches.</p> <p>9°: exact wording of 5(2) d.</p> <p>10°: much stricter wording than 5(2) c: adds the condition that the reproduction be only aimed at preserving national heritage and at taking all measures necessary to the protection of the work, at the condition that it does not impair normal exploitation of said work nor damage the author’s legitimate interests. It also covers communication to the public of audiovisual works by these institutions aimed at informing the public about national cultural heritage, at the condition that this communication be analogical and done within the institution itself.</p> <p>11°: exact wording of 5(3) b.</p> <p>12°: exact wording of 5(3) e.</p> <p>13°: stricter than 5(3) f as it adds the condition that the extracts be short.</p> <p>14°: stricter than 5(3) n as it only concerns works and not the “other objects” mentioned in the Directive.</p>
<p><b>Levies</b></p>	<p>The existing law has not been modified on this particular point. As such, it still does not comply with the Directive as it does not provide for levies</p>
<p><b>Legal protection granted to Technological Measures</b></p>	<p>In line with the Directive:</p> <p>New Title 7 on “The protection of technical measures and rights management information” completes the existing law.</p> <p>Section 1 of Title 7 does not apply to technical measures used in relation with computer programmes.</p> <p>Art. 71ter: exact wording of Art. 6(3).</p> <p>Art. 71quater: details the legal protection required by Art. 6(1).</p> <p>Art. 71quinquies:</p> <p>§ 1: complies with Art. 6(4).</p> <p>§ 2: entitles the parties concerned to resort to judicial action in order to put an end to the application of technical measures barring free exercise of the said exceptions.</p> <p>§ 3: complies with Art. 6(4) al 3.</p> <p>§ 4: slightly different from 6(4)4: does not apply to “works or other projects” but to “works or services”.</p>



**Other provisions**

Article 81 of the 18 April 2001 Act gives jurisdiction to the President of the *Tribunal d'arrondissement* to order the immediate end of any copyright or related right abuse at the request of any interested party and following an interim injunction procedure. This stipulation was kept in the 2004 Act.



<b>THE NETHERLANDS</b>	
<b>Implementation Status</b>	<p>Leading: Ministry of Justice (C. van der Net, T. Heukels)            In the Autumn 2002, the draft has been presented to Parliament (starting with Legal Committee). In February 2004 the House of Representatives (Tweede Kamer) of the Parliament has adopted the draft with two amendments.</p> <p><b>In July 2004 the Senate (Eerste Kamer) has adopted the draft.</b></p>
<b>Timeline</b>	The new Copyright Act was published on July the 20 <sup>th</sup> and entered into force on the first of September 2004.
<b>Right of reproduction</b>	<p>The <u>exception for a temporary copy</u> (article 5.1) is incorporated in the definition of 'reproduction' right and not formulated as a new exception.            According to the Explanatory Memorandum it doesn't make a difference. The three step test (not incorporated in the draft law) will still be applicable.</p>
<b>Right of communication to the public</b>	The existing definition of making public ('openbaar maken') contains already the right of communication as defined in the Directive.
<b>Right of distribution</b>	'Community exhaustion' is explicitly stipulated in the draft.
<b>Exceptions to copyright</b>	<p>All the existing exceptions remain and will also be applicable for electronic use. There are six new exceptions in the Copyright Act The three step test will not be part of the Law (seen as an instruction for the state, not for the judge). <b>Most important changes:</b></p> <ul style="list-style-type: none"> <li>- '<u>Press Exception</u>' remains and is broadened out to internet: It shall not be deemed an infringement of copyright to take over news reports, miscellaneous reports or articles concerning current economic, political or religious or alternative topics that have appeared in a daily or weekly newspaper or weekly or other periodical or works of the same nature that have been broadcast in a radio or television programme, if the taking over is effected by a daily or weekly newspaper or weekly or other periodical in a radio or television broadcast or other medium that fulfils the same function; if the moral rights are observed; if the source is clearly indicated, together with the indication of the author if it appears in the source; and if the copyright is not explicitly reserved. There are important remarks in the Explanatory Memorandum. It is to the judge to decide what belongs to the press, but the exception is meant for the service of news and not for archival use. The Dutch High Court considered in 1995 that paper press clippings belong to 'the press' for reasons of efficiency and to fulfill the need for news. According to the government in the Explanatory Memorandum digital press clippings may conflict with the three step test, especially when the publishers offer or license these services themselves. For the reservation of rights (to stop the working of this exception) it is sufficient, according to the Explanatory Memorandum, to make this reservation explicitly on the therefore intended place (where normally the copyright reservations are made). The Dutch Newspaper Publishers are satisfied: the scope of the press exception is left to the judge, but the Explanatory Memorandum gives hope. Above all, the press exception can now easily be put aside with a reservation of rights.</li> </ul>



- New exception for making available works for research or private study, to individual members of the public in closed networks of public libraries. The act follows now more closely the conditions of the Directive ('by dedicated terminals' and 'which are contained in their collections'). The condition 'not subject to purchase or licensing terms' remains 'translated' wrongly in 'unless otherwise agreed'.
- The existing exception for educational use of small parts of works against a fair remuneration will be limited 'to the extent justified by the intended, non-commercial purposes'. (According to the Directive).
- Reproductions on paper affected by the use of any kind of photographic technique (reprographic reproduction) for private use remains permitted without a fair remuneration. Important limitation is that only the copying of a small part of a book is permitted, as long as the book is available on the market, or of a short article. (In the Netherlands we don't have a levy on copiers.) The Minister of Justice makes use of the 'fair compensation' concept: the state can apply a fair remuneration when the damage of right holders is serious enough and when it can be exercised. It is still possible for a natural person to order the copies to be made exclusively for himself and for non-commercial ends. *(In the Netherlands there is a separate arrangement for photocopies made by the public sector such as civil service, schools, libraries etc., and made by trade and industry. They pay a fee per copy of a copyright protected work to the Dutch Reproduction Right Organisation... Digital copying is excluded from this arrangement. This arrangement is not influenced by the draft implementation law).* The existing system remains unchanged. Right holders are now in the position to prove that a fair remuneration is needed and can be exercised (in the near future). Right holders have tried to realise an amendment to rule out the possibility to order copies at all.
- It shall not be deemed an infringement to reproduce copyright protected works for non-commercial ends on an object intended to play or show the work provided that the sole purpose of the reproduction is for personal practise, study or use of the natural person making the reproduction. The rights holder must receive a fair compensation for this reproduction. The obligation for payment of the fair compensation shall rest with the manufacturer or the importer of the objects referred to in the first paragraph. This compensation is paid to a collective rights organisation. This levy on objects is the existing system in the Netherlands for music and film. This draft proposes to introduce this system for all works, including information on cd-rom (or the electronic copy of a book) and is so a new exception for the right holders of these works! There is no limitation to parts of the work, only a most uncertain and probably not workable right for a fair compensation for publishers and authors. The Dutch Publishers Association fought for a limitation to small parts of books. Their war a small majority against this amendment.
- New exception for 'preservation': Any reproduction of a literary, scientific or artistic work by archives or by publicly accessible libraries, educational establishments or museums, which are not for economic or commercial advantage shall not be deemed an infringement of copyright, provided that the reproduction is made for the purpose of preservation of copies of the work or, in case the technology which with it can be made accessible falls into disuse, in order to make consultation of the work possible. The Dutch Publishers Association demanded more guarantees for right holders: it must be necessary, it must be works of their own collection and not subject to purchase or licensing terms. The demand that the work should be part of their own collection, is now incorporated in the new Copyright Act.



	<ul style="list-style-type: none"> <li>- New exception: <u>It shall not be deemed an infringement of copyright in a literary, scientific or artistic work to include it as an incidental component in another work.</u> In the Explanatory Memorandum is clarified that this exception is about incidental (in the meaning of accidental) use.</li> <li>- New exception: <u>It shall not be deemed an infringement of copyright in a literary, scientific or artistic work to communicate it to the public or reproduce it in the context of a caricature, parody or pastiche.</u> Right holders missed a 'legal hook' for a judge to hang on considerations about the weighting out of the interests of the maker of the caricature, parody or pastiche against the interests of the rights holder (the moral and economic rights involved). Right holders proposed something like: that the caricature, parody or pastiche is in conformity with that which may be reasonably accepted in accordance with social custom. This is now added to the exception.</li> <li>- New exception for the handicapped. Although the minister agreed with us that we have good practice with self regulation, a majority of parliament wanted to score with this sympathetic rule; 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 and with the condition of a fair remuneration for the rightholders.</li> </ul>
<b>Levies</b>	See exception on private copying on objects.
<b>Legal protection granted to Technological Measures</b>	The Copyright Act <u>follows the text of the Directive.</u>
<b>Other provisions</b>	These are the main topics for publishers in the Dutch discussion with Parliament. There were much more remarks on details of the Draft.



	<b>NORWAY</b>
<b>Implementation Status</b>	<p>Leading: Ministry of Culture and Church Affairs.</p> <p>Norway as a member of the European Economic Area, had to implement the Directive. <b>The law has been passed and it entered into force on 1 July 2005.</b></p> <p>Text available in English</p>
<b>Timeline</b>	<p>Text was first published as a Green Paper in 2003, followed by a period to introduce amendments (25<sup>th</sup> June 2003) and a public hearing.</p> <p>11 February 2005 the Ministry submitted to the Parliament its long awaited white paper on amendments to the Norwegian Copyright Act.</p> <p>The new legislation was passed on the 8 June 2005 by the Norwegian Parliament. It entered into force on 1 July 2005.</p>
<b>Right of reproduction</b>	In line with the Directive
<b>Right of communication to the public</b>	<p>In line with the Directive</p> <p>The mere act of rendering computer equipment at user's disposal is not considered as making available to the public.</p>
<b>Right of distribution</b>	In line with the Directive
<b>Exceptions to copyright</b>	<p>Some of the exceptions in the new law are:</p> <p>Section 12: Includes exception for private copy. Certain right holders will receive remuneration (paid by the national budget) for digital uses mainly for audiovisual and musical works. It is not foreseen that right holders of texts receive payment for private copies made of their works.</p> <p>Section 16: Includes exception in respect of certain acts of reproduction made by libraries, educational establishments, museums or archives. Also for the use of illustration for teaching and scientific research.</p> <p>Access to individuals of digitised material is allowed within the premises of the establishments but never for commercial uses. No remuneration is foreseen for right holders. The new law provides that the Government may make regulations to implement this provision.</p> <p>Section 16a: Use of extended collective licences which are negotiated between users and right holders. If no agreement can be reached, then the exception is not applied.</p> <p>Section 17: Exception for the benefit of the disabled</p>



<b>Levies</b>	See use of extended licenses
<b>Legal protection granted to Technological Measures</b>	<p>No definition of technical measures.</p> <p>It is illegal to circumvent technical protection measures that are used to control “copyright relevant acts” (therefore, those measures used to control the private enjoyment of the work are not protected).</p> <p>Furthermore, there is an exception which allows circumvention of TPM in certain cases when the private enjoyment of works is hindered ( on “relevant playback equipment”)</p>
<b>Other provisions</b>	



	<b>POLAND</b>
<b>Implementation Status</b>	The Act dated 1 April 2004 implements the Directive by amending the Act of 4 February 1994 on Copyrights and Related Rights. <b>This new Act entered into force on 1 May 2004.</b>
<b>Timeline</b>	Recent legislation adopted in 2000 and 2002 contains only partial implementation of the Treaties. Draft amendments prepared by the Ministry of Culture were released on 8 December 2003. The draft was sent immediately to the Parliament without prior consultation of interested parties in January 2004. It was adopted by the Council of Ministers on 10 March 2004 without discussion or modification.
<b>Right of reproduction</b>	Article 97.  Not entirely consistent with Art. 2 of the Directive, although the reference to temporary copies in the exceptions provisions (Art. 23(1)) suggests that the right of reproduction embraces temporary copies.
<b>Right of communication to the public</b>	Complies with Article 3.
<b>Exceptions to copyright</b>	The definitions of TPM and RMI are too narrow in scope.  Excessively broad definition of the private copy exception.  Three-step test should be implemented expressly.  The scope of allowed personal use is widened on computer networks, parts of the works are allowed to be accessible in Internet portals, but the authors should be remunerated by relevant collective management organization. The problem of reprography was solved in previous amendments in 1994. Now the scope of allowed use of copied work has become specified - one may use only single copies of the work.  Article 22 of the 1994 Act was modified in order to comply with Article 5(2) d of the Directive. A new Article 23-1 was created and reads exactly as Article 5(1) of the Directive.  The exception of Article 5(2) c was clarified and extended as it now allows for libraries, archives and schools to “make collections available for research purposes via IT system work stations (terminals) present in the area of these units”.  Exceptions 5(3) a, b, c, d, e, g and j are enacted. Exception 5(3) l is also enacted and covers “artistic works in the form of structures, their drawings, plans or other determinations”.
<b>Levies</b>	Article 20, 20-1, 21, 21-1  Levies are applied to: Photocopiers, scanners, mf machines, paper and operators.



<b>Legal protection granted to Technological Measures</b>	The current language of Art. 79(3) suggest that circumvention of technological measures for private use may be legal. The criminal provisions (Art. 118(1)) should be strengthened.
<b>Other provisions</b>	<p>Protection of rights management information (civil remedies) (Art. 79(4) should not be dependent of guilt of an infringing party and no criminal liability is foreseen for distribution of copies).</p> <p>Control of optical discs (CD, DVD) production: every entrepreneur must inform the Minister of Culture about the subject matter and scope of conducted activity within 30 days of the date of commencing this activity.</p>



	PORTUGAL
<b>Implementation Status</b>	<p>Law adopted.</p> <p>Leading: Ministry of Culture (Nuno Gonçalves)</p> <p>Law no. 50/2004 of 24 August transposes into the national legal order Directive 2001/29/EC. It amends for the fifth time the Code of Copyright and Related Rights and for the first time Law no. 62/98, which regulates private copy.</p> <p><b>Law in English:</b>  <a href="http://www.icp.pt/template20.jsp?categoryId=128480&amp;contentId=231726">http://www.icp.pt/template20.jsp?categoryId=128480&amp;contentId=231726</a></p>
<b>Timeline</b>	<p>The Ministry was determined to have the law adopted by the end of 2002. Yet at the end of May 2003, a decision had not been taken yet.</p> <p>A Rights Holder Coalition was set to lobby government.</p> <p>Following a public hearing on 25 February 2004, a new draft was discussed in parliamentary committees.</p> <p>24 August 2004 new law was adopted.</p>
<b>Right of reproduction</b>	<p>They have implemented the exception for temporary copies in the right of reproduction.</p>
<b>Right of communication to the public</b>	<p>The making available right has been implemented in new Article 68.2.j)</p>
<b>Right of distribution</b>	<p>The right of distribution is not expressly included but surprisingly article 75 provides exceptions to it.</p>
<b>Exceptions to copyright</b>	<p>The three step test is in the text but one of the tests is missing: special cases.</p> <p>Article 75(2)(a) of the law – private copy  It should be made clear that in the field of literary works it is not permissible to copy <u>entire works or large parts</u> of works under the heading of "reprography", in cases where such works are still in print and available through normal trade outlets. At the very least, it should be made clear in respect of literary works that it is only permissible to copy extracts, or entire works or large parts of works if the work in question is not available in the market place. Portuguese publishers report huge losses especially regarding school and university textbooks due to the practice of copying entire works or large parts thereof in copy shops. It appears that the cost of replicating entire works through photocopying is very low in Portugal. Furthermore, in Portugal, there is presently no functional and reliable collective licensing scheme for literary works and it will take several years until the existing one could possibly be working properly. Moreover, if it would become free to copy entire works, it would be impossible to get the acceptance of each one of the thousands of copy shops to accept a <i>real</i> fair compensation to the rightholders.</p> <p>Finally, fair compensation for private copy is provided in Article 76.b) and it is limited to the analogue scope for the publisher while the Directive clearly refers to rights holders without distinction.</p> <p>Article 75(2)(c) of the law  This Article in its present form will undermine the ability of publishers to licence news-clipping services. Especially in the electronic age this will present a severe harm for publishers. The law goes further than what is allowed by the directive by not specifying which topics are subject to the exception. The law also fails to say</p>

that reproduction is only allowed by the press.

#### Article 75(2)(e) of the law – Copying by libraries and scientific institutions

This article purports to implement Article 5(2) (c) of the Directive, but does so incorrectly and will cause serious harm: The implementation is incorrect for the following reasons: (i) the law extends the scope of the exception by including non-commercial centres for documentation and scientific establishments; (ii) the Portuguese law allows “reproduction in whole or in part” while the Directive limits the acts allowed to “specific act of reproduction”. This is not in compliance at all with the Directive and it would cause considerable harm to the rights holders.

#### Article 75(2)(f) of the law – Illustration for teaching

This article purports to implement Article 5(3) (a) of the Directive. The Directive makes it very clear that copying can only be for “illustration for teaching”. The article in the law envisages that reproduction is permitted for the purposes of education and teaching. “Teaching” is wider than “illustration for teaching” and therefore the Portuguese law goes once again further than what the directive allows.

#### Article 75(2)(g) of the law - Quotation

This Article purports to implement Article 5(3) (d). The purposes of permitted citation are criticism and review. The present article adds “discussion” and “teaching”. This is inadequate and not permitted by the Directive. The law also fails to comply with the EU directive by not including the requirement to “be in compliance with fair practice”

#### Article 75(2) (h) of the law- Illustration for teaching (again!)

This article implements 5(3)(a) once more by allowing the “inclusion of short pieces of works of others in works of one’s own for teaching purposes”. It clearly widens the scope of the Directive by not limiting the use to the extent justified by the non-commercial purpose. The fact that Article 76 (2) (c) provides for fair remuneration does not justify the widening of the scope. This Article could eventually allow for commercial purposes to be covered which would cause terrible damage to the rights holders and in any case conflict with the 3 step test.

#### Article 75(2)(i) of the law – Exception for the disabled.

It implements Article 75(3)(b) of the directive. This exception was already included in the Portuguese law in Article 80 which then becomes redundant.

#### Article 75(4) of the law– Three step test

This Article purports to implement Article 5(5) of the Directive. The Portuguese Law fails to do a correct implementation of this rule for the following reasons:

(i) It does not include one of the tests; “in certain special cases”. By doing so it allows mass uses in exceptions. (ii) When implementing the second test (“not conflict with the normal exploitation”) it requires a higher level of danger by saying “do not jeopardise the normal operation”. (iii) When implementing the third test (“not unreasonably prejudice to the legitimate interest of the right holders”), it only covers the “legitimate interest of the author” and leaves unprotected all other rights holders as publishers!!

#### Article 81 of the law – other uses

The Article reads:

*“The following reproduction shall be permitted:*

*(a) one copy, for purposes of exclusively scientific or humanitarian interest, of works not commercially available or impossible to obtain, for the period necessary for their use;*

*(b) for exclusive private use, provided that it does not harm normal exploitation of the work nor cause unjustified prejudice to the author's legitimate interests, and that the reproduction is not used for any purposes of public communication or commercialization whatsoever”*

This Article was already in the previous Portuguese Code on Copyright from 1991. It seems to fall foul of the requirements of the Directive and the best



	<p>solution would be to delete it since it lacks coherency with the current legislation.</p> <p>Art. 221 of the law – Technological Protection Measures  Article 221 purports to implement Article 6(4)(1) and Article 6(4)(2) of the Directive. According to Article 6(4)(1) of the Directive rightholders must accommodate beneficiaries of certain exceptions and limitations<sup>1</sup>. Art. 221 widens considerably the scope of the EU text, including more exceptions than those found in the Directive.</p> <p>This is not in line with the Directive and should be changed.</p>
<b>Levies</b>	<p>Application of levy to: Photocopiers, faxes, mf machines, diskettes, CDRs, DVDR/WRs and operators.</p> <p>The amount is specified as 3% of the selling price without VAT.</p> <p>The levy system in place to provide for fair compensation in the Portuguese legislation is very unclear. The law presents a number of problems which do not make it possible for this requirement to be effective.</p>
<b>Legal protection granted to Technological Measures</b>	
<b>Other provisions</b>	<p>They have implemented 8.3 (liability of intermediaries)</p>

<sup>1</sup> Articles 5(2)(a), 5(2)(c), 5(2)(d), 5(3)a, 5(3)(b) and 5(3)(e) of the Directive.



	<b>SLOVENIA</b>
<b>Implementation Status</b>	<b>Treaties and the Directive have been implemented.</b>
<b>Timeline</b>	<p>The New Law was adopted in April and entered into force on 1 May 2004 (EU obligations) and 11 May 2004 (for other provisions) (English translation of final version is not yet available).</p> <p>For previous legislation, see <a href="http://www.uil-sipo.si/GLAVAGB.htm">http://www.uil-sipo.si/GLAVAGB.htm</a></p>
<b>Right of reproduction</b>	Complies with Article 2 of the Directive.
<b>Right of distribution</b>	Complies with Article 4(2) of the Directive.
<b>Right of communication to the public</b>	Complies with Article 3(1) of the Directive.
<b>Exceptions to copyright</b>	<p>The Law establishes a mechanism to ensure that beneficiaries of exceptions, including the private copy exception, can benefit from the relevant exceptions (Article 166c). Right holders who use technological measures are required to “make available to the persons having legal access to the subject matter of rights, at their request and without delay, appropriate means on the basis of which they can enforce” the relevant exceptions. If the rightholder fails to do so, interested persons can request a mediation procedure. The above does not apply where agreements are in place to accommodate exceptions (e.g., a deposit agreement with a film archive) or where the work is 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 them (i.e., as per Article 6.4.4 of the Directive). Article 185 provides for administrative fines against individuals or legal entities who fail to comply with the terms of this provision (Article 166c). The relationship between these fines and the mediation procedure is not clear.</p>
<b>Levies</b>	Levies are applied to: Photocopiers, DVDDR/WRs and operators.
<b>Legal protection granted to Technological Measures</b>	<p>Under the new law, the acts of circumvention of a technological measure as well as preparatory acts of circumvention are equated to an infringement of an exclusive right. The prohibitions are defined in a manner consistent with Article 6.1 and 6.2 of the Directive. It seems that the reason for equating circumvention to infringement of an exclusive right (note there is a specific administrative sanction for circumvention/preparatory acts of circumvention in Article 184(9)(1)) is to allow for application of existing civil remedies.</p> <p>The New Law also puts in place labelling obligations for works protected by</p>



	<p>technological measures, which is clearly based on the German implementation of the Directive. Rightholders or importers are required to indicate (1) “information concerning the technological measures and its effects, and (2) his firm and address in order to ensure an effective implementation of Article 166c1 [obligation to accommodate exceptions]”. There does not appear to be any sanctions for failure to comply. However, general civil liability might apply.</p>
<b>Other provisions</b>	<p>Slovenia had already incorporated the three-step test in Article 46 of its 2001 Act (Article 5.5 of the Copyright Directive). According to a copyright adviser to the Slovenia IPO, it is actually a five-step test which should provide some protection against an overly broad application of the above intervention mechanism. Community exhaustion is incorporated into Slovenian law (Article 43). A number of new provisions relating to performers’ rights collective management are included.</p>



	SPAIN
<b>Implementation Status</b>	<p>Leading: Ministry of Culture</p> <p><b>New draft law modifying previous Law on Intellectual property law ( “Real Decreto Ley 1/1996”) published by the Spanish Government on the 22/07/2005.</b></p> <p>Draft law available in Spanish: <a href="http://www.congreso.es/">http://www.congreso.es/</a>.</p> <p><i>On 29 January 2004, an action against the Kingdom of Spain for failing to implement the Directive in time was brought before the European Court of Justice by the Commission (Case C-31/04).</i></p> <p><i>The European Court Justice issues its decision on 28 April 2005 declaring its non-implementation of the 2001 Copyright Directive.</i></p> <p><i>On 17 July 2005 the Commission sent an informal letter to Spain asking it how it intends to comply with the previous judgment of the European Court.</i></p>
<b>Timeline</b>	<p>First draft proposal ready in October 2003 and circulated in January 2003. Developments on this draft were blocked first because of the HORECA<sup>2[1]</sup> (hotels, etc) lobbying and then because of new Government in Spain (March 2004).</p> <p>New draft law published 22/07/2005.</p> <p>Amendments to the draft law are to be discussed in the Spanish Parliament (“Congreso de los diputados”) soon. Next date foreseen to vote on amendments 22/11/2005. Nevertheless, it is not expected that the text will be voted until 2006</p>
<b>Right of reproduction</b>	In line with the Directive. Article 18 draft law
<b>Right of communication to the public</b>	In line with Directive. Article 20(2).i draft law
<b>Right of distribution</b>	In line with the Directive. Article 19.1 draft law
<b>Exceptions to copyright</b>	<p>Two new exceptions have been introduced in the new draft (unofficial translation):</p> <p><i>Article 32.2 “ Authorization from authors will not be necessary by teachers of the formal educational system for the purpose of reproduction, distribution or communication to the public of small parts of works or single works of plastic ( images) or photographic nature, being excluded school and university books, provided that those acts are carried out only for the sole purpose of illustration for teaching in the class rooms and to the extent justified by the non-commercial purpose to be achieved, as long as the works have been disclosed (divulgation) that, unless this turns out to be impossible, the authors name and the source is indicated.</i></p>

	<p><i>The reproduction, distribution and communication to the public of compilations or groups of fragments of works or single works of plastic (images) or photographic nature, will not be included in the previous paragraph”</i></p> <p><i>Article 37.3 “Not necessary authorization from the author when use by communication or making available, for the purpose of research, to individual members of the public by dedicated terminals in a closed and internal network on the premises of establishments referred to in the previous paragraph, as long as the works are contained in their collections and are not subject to purchase or licensing terms”</i></p> <p>The first limitation allows the reproduction, distribution and communication to the public of small parts of the works for the purposes of illustration of teaching. The second limitation permits the communication to the public of works through networks in libraries and other cultural institutions.</p> <p>Both exceptions are alien to the Spanish legal tradition. The new limitations do not provide for compensation to right holders in contrast to other European countries with the same legal tradition, which have included this limitation into the Copyright Acts. This would prejudice the legitimate interests of the right holders and thus violates the three step test in Article 9 (2) of the Berne Convention as reiterated in Article 5(5) of Directive 2001/29.</p> <p>FEP, FGEE as well as IFRRO and CEDRO have sent letters to the Spanish Government to protest against the inclusion of these exceptions in their current wording.</p>
<p><b>Levies</b></p>	<p>Article 25 of the draft law and the only transitional provision (“disposicion transitoria unica”)</p> <p>The main provisions of this article are:</p> <ul style="list-style-type: none"> <li>-Update levies for <u>analogue devices</u> (Article 25.5.a of the draft)</li> <li>-Impose levies on <u>digital devices</u>. (Article 25. 6 of the draft law). The Ministry of Culture and the Ministry of Industry will issue a “ministerial order” which will be revised every two years to determine the amount to be paid for compensation of private copy. The revision of the text will take into account the technical developments and the evolution of the market.</li> </ul> <p>The only transitional provision includes a list of the amount of levies to be paid on digital devices until the “ministerial order” is issued. When referring to levies on digital recording medium, the draft law specifies only visual, sound and audiovisual sectors and it seems to exclude reproduction of written texts. Therefore, levies compensating for reproduction of written texts are only on the equipment to reproduce but not on the digital recording medium.</p> <p>The application or non-application of Technical Protection Measures must be taken into account when setting the levies.</p> <p>Levies are applied to: Photocopiers, scanners and mf machines.</p>
<p><b>Legal protection granted to Technological Measures</b></p>	<p>New chapter in the draft including provisions on Technical Protection Measures (Articles 160-162):</p> <p>Circumvention of technical measures is prohibited. Also, the making, distributing,</p>



	<p>selling, renting etc of material to circumvent technical measures is banned.</p> <p>Technical protection measures can not impair public policy exceptions. If legal users are not allowed to exercise the exceptions they are entitled to, they may go to the civil jurisdiction. Right holders may decide in any case to use technical measures protecting their works if they provide for a maximum number of copies allowed to be made ( minimum 3)</p>
<p><b>Other provisions</b></p>	



	<b>SWEDEN</b>
<b>Implementation Status</b>	<p>Leading: Ministry of Justice (Christine Lager, then changed to Henry Olson)</p> <p><b>Directive implemented 26 May 2005 amending Act 2005:359</b></p> <p><a href="#">Law</a> available in English</p>
<b>Timeline</b>	<p>Delay was primary caused by general elections in Sweden.</p> <p>A draft of the implementation of the Copyright Directive was presented by the Swedish ministry of justice in mid-June 2003- Ds 2003:35.</p> <p>The government's bill with proposals for implementing the directive into Swedish law was anticipated to be presented in September 2004. As regards the date for the implementing law to enter into force, the government aimed at 1 January 2005.</p> <p>Finally it was implemented in May 2005.</p>
<b>Right of reproduction</b>	Implemented in line with the Directive.
<b>Right of communication to the public</b>	Implemented in line with the Directive.
<b>Right of distribution</b>	Implemented in line with the Directive.
<b>Exceptions to copyright</b>	<p>.Some of the exceptions implemented are for private copy, making and distribution of copies within certain archives and libraries and for persons with a disability. It is specified that authors have a right to remuneration.</p> <p>A system of extended collective license is introduced in a separate chapter from the one on limitations and exceptions. The reason for was, that according to the government, collective licensing should not be regarded as limitations but rather as administration of rights. It applies to exceptions for uses in libraries and archives, people with disabilities, educational establishments as well as public authorities and enterprises.</p>
<b>Levies</b>	
<b>Legal protection granted to Technological Measures</b>	The circumvention of technological protection measures, as well as the manufacture, import, distribution and other activities of the respective circumvention devices, has been prohibited.



<b>Other provisions</b>	<p>The law includes a provision on Community exhaustion.</p> <p>In regards to the making of copies for private purposes, article 12 establishes that the making of copies of literary works will only be allowed for limited parts of the work. The Swedish law also specifies that copies made illegally (for example, P2P) will not be tolerated under the right to make private copies.</p>
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	UNITED KINGDOM
<b>Implementation Status</b>	<p><b>ADOPTED</b> and entered into force on 31<sup>st</sup> October 2003 Text available <a href="http://www.patent.gov.uk/about/consultations/eccopyright/index.htm">http://www.patent.gov.uk/about/consultations/eccopyright/index.htm</a></p> <p><b>LAW PASSED</b>, entered into force on 31 October 2003 <a href="http://www.legislation.hmso.gov.uk/si/si2003/20032498.htm">http://www.legislation.hmso.gov.uk/si/si2003/20032498.htm</a></p>
<b>Timeline</b>	
<b>Right of reproduction</b>	Already covered in UK law
<b>Right of communication to the public</b>	New right of communication to the public and making available right.
<b>Right of distribution</b>	Already covered in UK law
<b>Exceptions to copyright</b>	<p>The government implemented narrowly (copyright-friendly). There are no new exceptions, although the new exception for Visually Impaired People (private member's Bill) has been passed (permitted under the exception for disabled people in the Directive). The much-feared "on-the-spot" exception was not mentioned. Educational and library exceptions will now be subject to the "non-commercial" requirements of the Berne Convention 3-step test.</p> <p>Art. 5.1 - will be included verbatim (which is good) but can we adequately implement this without also including the essential qualifying wording of 5.5 (three-step test)? The PA has argued strongly for including 5.5, but the UK government is set against it (for not very convincing reasons).</p> <p>Art 5.3 (a) and 5.2 (b) - the government is trying to continue with its existing "research and private study" exception in s.29 of the 1988 Act by including bits from both these exceptions in the Directive. In the process, they are taking the bits they want and ignoring other bits - e.g. that research must be "scientific", that *both* parts must be non-commercial, and specifically "neither directly nor indirectly commercial" (non-commercial is too vague).</p> <p>Art 5.3(a) - instruction or examination should be limited to "illustration" only. Non-commercial *must* apply to educational establishments also – the government seems to think they are inherently non-commercial! This sort of thing is an excellent example of the kind of dispute we will be having if we don't include 5.5....</p> <p>8.3 - this was designed to give us an "effective" remedy specifically against ISPs, but unfortunately it only refers to injunctions, and a right to "apply" for one. In fact, as I explained to Reinbothe, an English court is not going to grant an injunction against an ISP who claims 5.1 as an absolute legal defence (as they all will) - so we will never get our injunctions. Injunctions can also be very expensive in the UK.</p>



<b>Levies</b>	The Copyright Directorate do not plan to introduce any levies (for support they point to Recital 35 which excuses levies where the prejudice to the right holder is minimal)
<b>Legal protection granted to Technological Measures</b>	<p>A few elements of Article 6.2 of the Directive are missing.</p> <p>Article 6.4 of the Directive (giving beneficiaries of exceptions a right to demand access, even past technical protection measures) is to be implemented by nothing more than a right to send Notice of Complaint to the Secretary of State. This is likely to be slow and bureaucratic, and will give right holders ample opportunity to counter-claim (e.g. that a voluntary scheme is available).</p> <p>The logistics of this and sanctions against circumvention of technical measures, still need to be discussed.</p>
<b>Other provisions</b>	Intervention against private copying relating to time-shifting

