

Technological Protection Measures and Copyright Exceptions in EU27: Towards the Harmonization

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Thanks to the ease and high quality of digital reproduction, the advent of the Digital Era caused an increase of copyright infringement. In order to provide a counter-measure, the European Parliament issued a new piece of legislation (Directive 2001/29/EC). The Directive aims to repress such infringement through the harmonization of copyright discipline and the safeguard of technological protection measures (usage restrictions implemented on digital copyright works). But literature on this Directive has found several weaknesses with its approach. (Dusollier 1999, 2001, 2003; Guibault 2003; Hart 1998; Hugenholtz 1997; Koelman 2000). This paper aims at investigating the extent to which the European legislator achieved its goal of harmonization. Ultimately, it seeks to identify individual dysfunctions in the normative process, weaknesses in the final legislative instrument, and alternative routes to achieve the purpose of the Directive. These are suggested by both its legal history and its national implementations. First, the paper reviews the legal history of the European regulations, focusing on protection of technological measures and on copyright exceptions. Second, it performs a comparative study of all 27 national implementations of the parts of the Directive dealing with the same topics. Preliminary findings show that both within the legal history of Article 5 EUCD and in its implementation by western European countries few exceptions "hold on" across time and space, despite successive modifications of the Directive and despite diversified national implementations. Following this finding, the article would outline normative recommendations aimed at the EU legislator, for a short list of copyright exceptions, to be evenly implemented across Europe. This will benefit the Internal Market, just as in the original intention of the Directive. Furthermore, a short and consistent list of copyright exceptions would better serve the purpose of designing technological protection measures compliant with them. N.B. An EU-commissioned report on the implementation of the Directive has recently been published (Hugenholtz et al. 2007). They share my conclusion that a compulsory list of copyright exceptions is much needed in Europe. But they propose a list based on Civil liberties and on the prospective impact on the Internal Market. My solution is more practical; possibly to be adopted in the short-medium term. Since the exceptions I found are already *iure condito* in most member states, they would be more easily accepted as compulsory. My list is also aimed at an easier compliance of technological protection measures with copyright exceptions, which I show more in detail in other research.