Kluwer Copyright Blog

Parliament adopts new directive to improve digital consumer rights

Natali Helberger (Institute for Information Law (IViR)) · Friday, July 1st, 2011

For years, consumer representatives, citizen rights groups and academics have lobbied for a better balance between the interests of rights holders and consumers in copyright law. In particular the use of technical and contractual restrictions on the ability of consumers to play, copy, share or transfer digital content to their liking has been a notorious stumbling-block, and a painful one, too. Numerous proposals of how to better integrate the interests of consumers into copyright law have been put forward, debated, and left behind. The relationship between copyright and consumer rights is a complex one, to put it diplomatically.

Last week, the European Parliament adopted a new directive that might bring some fresh wind into what threatened to become a stale discussion. This summer breeze comes from an unexpected direction: consumer law. On Thursday, 23rd of June, the European Parliament voted on the proposal for a Consumer Rights Directive. The aim of that directive is to update and consolidate parts of the European consumer law acquis, also and particularly in the light of technological changes and the increasing importance of digital markets. Note that the draft directive states explicitly that contracts for the supply of digital content, such as the download of digital music, the streaming of video or the provision of online games, fall within the scope of the directive.

Part of that draft directive is a clause saying that traders should inform consumers “about the functionality, including applicable technical protection measures, of digital content”. Moreover, consumers have a right to receive information about “any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonable (sic) be expected to have been aware of”. In other words, finally there is a binding provision saying that rights holders need to inform consumers about the use of Digital Rights Management technologies and technical protection measures, but also about other restrictive or potentially invasive technologies such as regio coding or tracking and monitoring tools. Moreover, the directive tackles the thorny issue of limited or non-existent interoperability, as a result of the use of such technologies. An interesting and relevant detail is that when informing consumers, traders need to take into account the specific information needs of e.g. minors, which are a strong but in many respects also vulnerable segment of digital content markets.

Critical minds will argue that transparency is good and nice, but what consumers really and truly need are more concrete rules saying that contractual conditions that prevent consumers from making a limited number of private copies or other “fair uses” are presumed to be unfair, that ebooks that cannot be printed or played on different devices are faulty products in the sense of

consumer sales law, etc.. There is certainly truth in this argument, but…. The draft directive is a first step into a new and potentially fruitful direction. This view is supported by the draft directive itself, which explains in one of its recitals: “The Commission should examine the need for further harmonized provisions in respect of digital content and submit, if necessary, a legislative proposal for addressing this matter.” The draft Consumers Rights Directive clearly signals the message that consumers of digital content do not solely depend upon the mercy of the (unwilling) copyright legislator. Consumer law, too, can offer solace.

Formal approval of the draft directive in the EU Council of Ministers is expected for September of this year, and member states will have to transpose its rules before the end of 2013.

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