

Kluwer Copyright Blog

The InfoSoc Directive Ten Years After

P. Bernt Hugenholtz (Institute for Information Law (IViR)) · Wednesday, December 21st, 2011



On May 22 of this year [Directive 2001/29/EC](#) was exactly 10 years old – a birthday largely gone unnoticed. The ‘Copyright Directive’ or ‘Information Society Directive’ (for experts: ‘InfoSoc Directive’) marked an important stage in the process of harmonization of copyright and related rights in the European Union. In contrast to earlier directives that dealt with distinct – mostly technology driven – issues, such as computer software, databases, satellite and cable television, this directive sought to harmonize the main rights and limitations in a largely technology-neutral way.

The main aim of the Directive, as stated in its recital no. 4, was to foster creativity and growth of the European creative industries: “A harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a high level of protection of intellectual property, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors. This will safeguard employment and encourage new job creation.”

Ten years after, it is interesting to query whether this ambitious goal has been achieved. While the European Commission has never conducted a full review of the Directive, apart from a concise ‘[Application report](#)’ in 2007, it did commission a study to evaluate its impact. [The study](#), which was carried out by Lucie Guibault and Guido Westkamp and completed in 2007, raises serious doubts as to the effectiveness of the Directive – for a number of reasons. First, the standards set by the Directive in many instances deviate from those set by the main international agreements. This is an important observation, since the Internet nowadays intricately links European markets to global markets. Second, the level of harmonization that the Directive has actually achieved is fairly limited, particularly in the realm of limitations and exceptions where Member States may pick and choose from a ‘shopping list’ of 21 categories of limitations. Third, the vague wordings of certain provisions undermine the legal security that the Directive sought to provide. Fourth, due to the technology-specific formulation of some of the Directive’s provisions, its long-term sustainability is questionable. Fifth, the Directive’s structure of mandatory rights and optional and contractually overridable exceptions do not add up to a balanced system that fairly reflects the interests of right holders and the general public, and thus promotes creativity and innovation.

Now that the Directive is going into its second decade, the time is ripe to once again evaluate its success and contemplate its future. On Friday, January 13, 2012 the [CRIDS \(Centre de Recherche Information, Droit et Société\)](#) of the University of Namur and [IViR \(Institute for Information Law\)](#) of the University of Amsterdam will jointly organize an academic conference on the past, present

and future of the Information Society Directive, to be held at the European Parliament in Brussels. Scheduled speakers include Marielle Gallo (MEP), Maria Martin-Pratt (Head of Copyright Unit, EC DG Market), Prof. Lionel Bently (Cambridge), Prof. Séverine Dusollier (CRIDS), Prof. Christophe Geiger (Strasbourg), Dr. Lucie Guibault (IViR), Prof. Bernt Hugenholtz (IViR), Prof. Justin Hughes (Cardozo Law School) and Prof. Martin Senftleben (VU Amsterdam University). Readers of this blog are kindly invited to attend.

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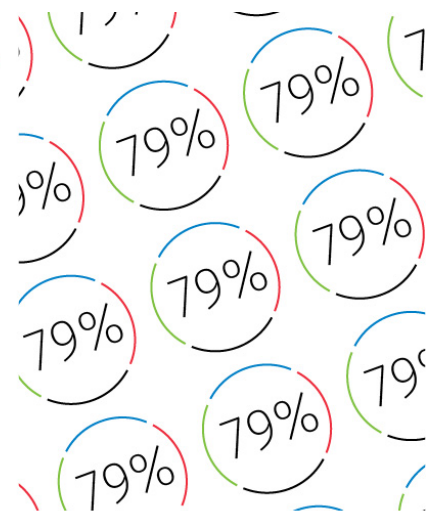
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