

Ref.: Consumers ask your support for a balanced EU copyright regime

Dear Member of the IMCO committee,

I am writing on behalf of BEUC, The European Consumer Organisation, in view of the upcoming vote of the IMCO draft opinion on the European Commission's proposal for a Directive on copyright in the Digital Single Market (MEP Catherine Stihler, rapporteur).

European copyright laws play an important role in consumers' digital activities. They define what consumers can or cannot do with copyrighted content online, what to access and under which conditions.

Unfortunately, the Commission's proposal failed to recognise the place consumers deserved in copyright. Consumers' legitimate expectations (e.g. access to effective redress and complaint mechanisms) are not safeguarded and many of consumer's daily and legitimate acts (e.g. producing and sharing content online out of pre-existing works in the form of user-generated content) can still be considered as copyright infringements.

Therefore, we ask the European Parliament to stand by its citizens and ensure that the proposal provides rights not only to rights holders but also to consumers who are the ones driving the growth of the cultural sector in Europe.

Against this background **BEUC asks you to support MEP Stihler's compromise amendments**, for the following reasons:

1. Article 13 should apply only to platforms that 'actively' make the content available to the public

In order to ensure compliance with the E-Commerce Directive and the Charter of Fundamental Rights, the obligation to take measures to ensure the functioning of license agreements should only apply to specific cases where the online platform has provided an 'active' service to the making available to the public of the users' uploaded content.

In this context, it is also important to underline that the key distinction between an 'active' and 'passive' platform should be clarified in the context of the E-Commerce Directive (e.g. by means of guidelines) and not in the context of the copyright proposal.

2. Consumers should be given the possibility to benefit from judicial redress

BEUC considers that the safeguard and redress mechanisms proposed by the European Commission are inadequate to ensure the protection of consumers' legitimate expectations.

The proposed mechanisms are based on the Terms & Conditions and algorithms of each service provider. This means that it is up to the private companies to unilaterally establish what an infringement is and to deal with consumers' complaints within the conditions of their own terms of service.

Therefore, **we strongly support the clarification in the rapporteur's compromise amendments that Member States shall ensure that consumers can benefit from judicial redress and access to court in order to uphold their right of use under an existing exception and limitation.**

3. Consumers should have rights under copyright law

The exceptions and limitations provided by the different copyright directives can be undermined by the application of technical protection measures and contractual agreements.

Additionally, because the exceptions are not considered as users' rights, they cannot be enforced by users against contractual and technological restrictions affecting the exercise of those authorized uses. This became a prominent problem in national jurisprudence. For example, in France and Belgium, consumers were denied the possibility to make private copies of a DVD (despite the fact of private copying being an exception under French and Belgian laws) because the courts estimated that an exception is not a right but a defence and therefore a user cannot ask for its application when it has been limited by a technical protection measure (See: "*Mulholland drive*" case).

The introduction of a right of use under an exception or limitation as suggested by the rapporteur will elevate the exceptions and limitations to user rights and therefore will make them enforceable against technical protection measures and contractual agreements.

This was also the approach suggested by JURI's rapporteur (MEP Therese Comodini Cachia) in her draft report for the JURI committee of the European Parliament.

4. Consumers' production and sharing of content online out of pre-existing works should not be illegal

Finally, **BEUC strongly supports the introduction of a mandatory user-generated content exception to ensure legal clarity in the current framework.**

Consumers are increasingly producing and sharing content online out of pre-existing works in the form of videos or audio recordings (e.g. remix song, mash-up video, etc.). However, under the current copyright system, it is not clear whether such content constitutes a copyright infringement.

The legal uncertainty regarding user-generated content is well reflected in a [survey](#) carried out in 2015 by BEUC and its members. When asked whether it would be legal to use a song in a family home video and share it online, copyright experts from 10 different countries were not able to agree on an answer.

In this regard, we urge you to support amendment 66 of the rapporteur's draft report and amendment 390.

Thank you very much in advance for taking into account these recommendations.

We remain at your disposal should you have any questions or wish to receive further feedback.

Yours sincerely,

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On behalf of the Digital Team

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