

Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version)

DIRECTIVE 2006/115/EC OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 12 December 2006

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related to copyright in the field of intellectual property

(codified version)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(1)</sup>,

Whereas:

- (1) Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property<sup>(2)</sup> has been substantially amended several times<sup>(3)</sup>. In the interests of clarity and rationality the said Directive should be codified.
- (2) Rental and lending of copyright works and the subject matter of related rights protection is playing an increasingly important role in particular for authors, performers and producers of phonograms and films. Piracy is becoming an increasing threat.
- (3) The adequate protection of copyright works and subject matter of related rights protection by rental and lending rights as well as the protection of the subject matter of related rights protection by the fixation right, distribution right, right to broadcast and communication to the public can accordingly be considered as being of fundamental importance for the economic and cultural development of the Community.
- (4) Copyright and related rights protection must adapt to new economic developments such as new forms of exploitation.
- (5) The creative and artistic work of authors and performers necessitates an adequate income as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky. The possibility of securing that income and recouping that investment can be effectively guaranteed only through adequate legal protection of the rightholders concerned.

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- (6) These creative, artistic and entrepreneurial activities are, to a large extent, activities of self-employed persons. The pursuit of such activities should be made easier by providing a harmonised legal protection within the Community. To the extent that these activities principally constitute services, their provision should equally be facilitated by a harmonised legal framework in the Community.
- (7) The legislation of the Member States should be approximated in such a way as not to conflict with the international conventions on which the copyright and related rights laws of many Member States are based.
- (8) The legal framework of the Community on the rental right and lending right and on certain rights related to copyright can be limited to establishing that Member States provide rights with respect to rental and lending for certain groups of rightholders and further to establishing the rights of fixation, distribution, broadcasting and communication to the public for certain groups of rightholders in the field of related rights protection.
- (9) It is necessary to define the concepts of rental and lending for the purposes of this Directive.
- (10) It is desirable, with a view to clarity, to exclude from rental and lending within the meaning of this Directive certain forms of making available, as for instance making available phonograms or films for the purpose of public performance or broadcasting, making available for the purpose of exhibition, or making available for on-the-spot reference use. Lending within the meaning of this Directive should not include making available between establishments which are accessible to the public.
- (11) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage within the meaning of this Directive.
- (12) It is necessary to introduce arrangements ensuring that an unwaivable equitable remuneration is obtained by authors and performers who must remain able to entrust the administration of this right to collecting societies representing them.
- (13) The equitable remuneration may be paid on the basis of one or several payments at any time on or after the conclusion of the contract. It should take account of the importance of the contribution of the authors and performers concerned to the phonogram or film.
- (14) It is also necessary to protect the rights at least of authors as regards public lending by providing for specific arrangements. However, any measures taken by way of derogation from the exclusive public lending right should comply in particular with Article 12 of the Treaty.
- (15) The provisions laid down in this Directive as to rights related to copyright should not prevent Member States from extending to those exclusive rights the presumption provided for in this Directive with regard to contracts concerning film production concluded individually or collectively by performers with a film producer. Furthermore, those provisions should not prevent Member States from providing for a rebuttable

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presumption of the authorisation of exploitation in respect of the exclusive rights of performers provided for in the relevant provisions of this Directive, in so far as such presumption is compatible with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the Rome Convention).

- (16) Member States should be able to provide for more far-reaching protection for owners of rights related to copyright than that required by the provisions laid down in this Directive in respect of broadcasting and communication to the public.
- (17) The harmonised rental and lending rights and the harmonised protection in the field of rights related to copyright should not be exercised in a way which constitutes a disguised restriction on trade between Member States or in a way which is contrary to the rule of media exploitation chronology, as recognised in the judgment handed down in *Société Cinéthèque v. FNCF*<sup>(4)</sup>.
- (18) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives as set out in Part B of Annex I,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) Opinion of the European Parliament delivered on 12 October 2006 (not yet published in the Official Journal).
- (2) [OJ L 346, 27.11.1992, p. 61](#). Directive as last amended by Directive 2001/29/EC of the European Parliament and of the Council ([OJ L 167, 22.6.2001, p. 10](#)).
- (3) See Annex I, Part A.
- (4) Joined Cases 60/84 and 61/84 [1985] ECR 2 605.