

Transposition note for Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ No L 167, 22.6.2001, p.10) (“the Directive”)

The Directive harmonises the basic rights relevant to uses of copyright material in the information society, namely the rights of reproduction and communication to the public (electronic transmission, including digital broadcasting and “on demand” services) and also harmonises the rights of performers in relation to fixations of their performances. It also limits the type and scope of permitted exceptions to these rights and provides legal protection for technological measures used to safeguard rights of copyright owners. The Directive was implemented into UK law by The Copyright and Related Rights Regulations 2003 (SI 2003/2498) (“the 2003 Regulations”) which amended provisions contained in the Copyright, Designs and Patents Act 1988 (“the Act”).

Article 5(2) and (3) of the Directive provide that Member States may provide for exceptions or limitations to the reproduction right, the communication to the public right and the distribution right in the cases set out in those Articles. The 2003 Regulations amended various existing exceptions to copyright contained in the Act in order to comply with the requirements contained in Article 5 of the Directive but did not provide for any new exceptions as permitted under Article 5. The UK has decided to extend the exceptions to copyright (and the related rights of performers in performances) as permitted under Article 5 and these provisions will be transposed into UK law by the following regulations:

- i. The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 (“the Private Copying Regulations”) and
- ii. The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014 (“the Quotation and Parody Regulations”)

These Regulations amend the Act as set out in the table below. The Department for Business, Innovation and Skills has lead responsibility for implementation of the Directive.

Article of the Directive	Objectives	Implementation in the Regulations	Responsibility (Secretary of State if not specified)
Article 5(2)(b)	Provides for an exception to the reproduction right in respect of reproductions on any medium made by a natural person for private use and for ends which are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work concerned.	Regulations 3(1) and 3(3) of the Private Copying Regulations, which insert section 28B and paragraph 1B of Schedule 2 into the Act.	
Article 6(4) paragraphs 2 and 4	This Article provides that notwithstanding the legal protection against the circumvention of any technological measures provided for under Article 6(1) of the Directive, member states may take appropriate measures to the extent necessary to ensure that rightholders make available to the beneficiary of an exception provided in accordance with Article 5(2)(b) the means of benefiting from the exception, without preventing rightholders from adopting adequate measures regarding the number of reproductions in accordance with those provisions. However, paragraph 4 provides that these provisions shall not apply to works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.	Regulation 3(2) of the Private Copying Regulations, which inserts section 296ZEA into the Act	

Article 5(3)(d)	This Article provides for an exception to the reproduction right and the communication to the public right in respect of quotations for purposes such as criticism and review provided they relate to a work or other subject matter which has already been lawfully made available to the public, that the source, including the author's name is indicated (unless this turns out to be impossible) and that their use is in accordance with fair practice and to the extent required by the specific purpose.	Regulations 3 and 4 of the Quotation and Parody Regulations which amend section 30 (Criticism, review and news reporting) and paragraph 2 of Schedule 2 to the Act.	
Article 5(3)(k)	This Article permits an exception to the reproduction right and the communication to the public right in the case of use for the purpose of caricature, parody or pastiche.	Regulation 5 of the Quotation and Parody Regulations, which inserts section 30A (Caricature, parody and pastiche) and paragraph 2A of Schedule 2 into the Act	