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EBLIDA response

Proposal for a Directive on the Harmonisation of certain aspects of copyright and related rights in the Information Society

Draft Recommendation for Second Reading
14 December 2000

Committee on Legal Affairs and the Internal Market

Rapporteur: Enrico Boselli

EBLIDA, European Bureau of Library, Information and Documentation Associations, was established in 1992 as a non-governmental, non-profit umbrella organisation representing libraries on a European level. Subjects on which EBLIDA concentrates are culture, copyright, Information Society related matters and information technology.

(Amendment 1)
Article 6(4) paragraph 4

The provisions of the first and second subparagraphs shall not apply to works or other subject-matter 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.

Delete

Justification:

The European Parliament should not favour, by legislation, the development of one business model over another, especially in the fast-moving on-line environment. Allowing contract law to override copyright law sets a dangerous precedent for the future development of on-line services and could block citizens from availing of their lawful exceptions in the Information Society.

Should this not prove possible, the second alternative would be to amend Recital 52a (new) as follows:

(Amendment 2)
Recital 52a (new)

Protection of technical measures should enable the securer use of works transmitted via interactive services, thus providing greater protection for authors. Protected works will be increasingly frequently made available to the public via interactive 'pay-per-view' services, such as video-on-demand, which allow users control over where and when they can enjoy the work. Pursuant to the fourth paragraph of Article 6(4), public access to such services will be regulated by contractual agreements permitting the use of copyright-protected works at the time and in the place of the user's choice. The first and second paragraphs of Article 6(4) would not apply in this case, but will continue to regulate non-interactive forms of access to protected works.

Protection of technical measures should should enable the securer use of works transmitted via interactive services, thus providing greater protection for rightholders. Protected works will be increasingly frequently made available to the public via interactive 'pay-per-view' broadcasting services, such as video-on-demand, which allow users control over where and when they can enjoy the work. Pursuant to the fourth paragraph of Article 6(4), public access to such services will be regulated by contractual agreements permitting the use of copyright-protected works at the time and in the place of the user's choice. The first and second paragraphs of Article 6(4) would not apply in this case, but will

continue to regulate non-interactive forms of access to protected works.

Justification:

The fourth paragraph of Article 6(4) is not concerned with all interactive pay-per-view services. It refers instead to specific transmissions¹, such as video-on-demand². The word 'broadcasting' provides a clarification and ensures that non-broadcast interactive pay-per-view services e.g. electronic journals, are not inadvertently included.

Rightholders covers the range of interested parties.

Should this not prove possible, the third alternative would be to amend Article 6(4) paragraph 4 as follows:

(Amendment 2)

Article 6(4) paragraph 4

The provisions of the first and second subparagraphs shall not apply to works or other subject-matter 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.

The provisions of the first and second subparagraphs shall not apply to works or other subject-matter made available to the public on negotiated and agreed contractual terms in such a way that members of the public may access and use such works from a place and at a time individually chosen by them.

Justification:

One-sided declaratory ('take it or leave it') contracts are unfair e.g. being forced to click on "I agree" in order to access a Website or a product. Users must have the opportunity to negotiate to ensure that they benefit from their lawful exceptions. Users should not only be able to gain access, but should also be able to make use of such information, for legitimate purposes.

¹ Explanatory statement, paragraph 13. Draft recommendation for second reading.

² Recital 52a (new). Draft recommendation for second reading.