

Tougher EU copyright rules come under fire

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The European Science Foundation warned last week that a proposed European Union directive, intended to ensure that copyright owners receive full legal protection when their work is distributed in digital form, could weaken the 'fair use' arrangements enjoyed by scientists.

[PARIS] A directive proposing changes to European copyright laws will be debated this week by the European Parliament. But the European Science Foundation (ESF) is not alone in claiming that, if left unchanged, this could harm the competitiveness of European research.

The "Directive on the harmonisation of certain aspects of copyright and related rights in the information society" (<http://europa.eu.int/comm/dg15/en/intprop/intprop/copyen.pdf>) was proposed in December 1997 by the European Commission. It points out that, whereas photocopying the work of information producers had limited economic effects, the ease of producing high-quality copying in the digital environment requires a reassessment of the balance between providing incentives to the creation of original work and facilitating the dissemination of such work to users.

"Exceptions and limitations must be construed in a more narrow way... in order to prevent economic damage to the market of protected works and other subject matter," the directive reads.

Amendments to the text will be voted on this week. The Council of Ministers of the member states must then reach a common position. The text will go through a second reading in parliament before being adopted by the Council of Ministers and promulgated into national laws.

Fighting for exceptions

But Sir Roger Elliott, Emeritus Professor of Physics at Oxford, and chairman of the Committee on Scientific Information at the International Council of Scientific Unions, warns that the directive could tip the balance excessively towards the interests of publishers.

Elliott complains in particular that the draft lacks "a general exception for private study and research", in spite of the fact that this is a traditional right in international copyright legislation.

One commission official argues, however, that exceptions for scientific and educational purposes already vary widely within the community. The exceptions in the draft directive apply to "illustration for teaching and research... for non-commercial ends".

The ESF, in a statement released last week,



Right to copy? The balance between the interests of publishers and scientists is a delicate one.

says it wants this changed to read "for the sole purpose of scientific research or for illustration for teaching". It also wants to include research in the arts and humanities. An amendment to be voted on this week would change the wording to "for the purposes of education, learning and research".

One senior commission official vigorously contests claims that the directive will give too much power to publishers. "I have seen claims that there are virtually no exceptions foreseen for research; this is sheer nonsense," he says. "Many of the arguments are based on lack of knowledge about this very complex field of law; the acquired rights of scientists are well established and are not in question."

The directive also allows an exception for the reproduction rights of libraries, but gives libraries no exceptions for "communicating or making material available to the public", insisting that they must make protected material available on-line via licensing agreements (see *Nature* 397, 196; 1999). This is already the case under existing legislation in several member states, including France, Germany and Belgium.

But EBLIDA, an umbrella association representing 95,000 libraries throughout Europe (<http://www.kaapeli.fi/~eblida/posharmo.htm>), warns that "by seeking to regulate the market too tightly, the commission runs the real risk of heavily restricting access

to information and information products, which is in no-one's interests." It "fears a nightmare future in which nothing can be looked at, read, used or copied without permission or additional payment".

Under the proposed directive, individual member states would also be free to interpret the research exemptions as they liked. The ESF claims this could result in research being treated differently in member states, whereas the stated aim of the directive is to nurture an internal European market in information by aligning regulations in all member states.

A commission official argues, however, that "We are simply trying to provide more legal consistency and certainty; we cannot provide uniform rules as we are not a federal state."

Elliott and the ESF also contest the restriction of exceptions to non-commercial use, pointing out that the distinction between the commercial and the non-commercial is becoming increasingly blurred in academia. The introduction of an exception based on a 'public good' definition of research is a more desirable solution, argues the ESF.

Striking a deal

A commission official admits that the non-commercial notion may be invalid, and that the commission is open to change. The exceptions are "a bargaining position", he says. "The final directive will look different."

Roberto Barzanti, an Italian socialist and rapporteur of the parliament's motion, also believes that researchers' concerns are exaggerated, and that the exceptions will protect scientific liberties. The directive, he points out, is mainly about wider issues such as ensuring that member states extend copyright protection to cover digitally distributed material, and allowing them to control distribution, for example through encryption.

Copyright in scholarly publishing is different, he says, with publishers reliant on a balance between their rights and those of scientists (see *Nature* 397, 195; 1999).

Barzanti also points out that the overall copyright legislation is only one aspect, and that much of researchers' and institutions' rights are determined by the contracts they settle with publishers.

Indeed, one of the proposed parliamentary amendments to the directive states that libraries and other "public good" bodies should negotiate contracts and licences whose terms promote their goals of disseminating information. Elliott agrees that much can be achieved within specific contracts, but nonetheless argues: "It is a different relationship if you are negotiating with the law behind you, or with the law in your face."

"One of the problems has been that while the US scientific community [has organizations that] can mount action against laws, scientists in Europe have no effective focus for dealing with Brussels," says Elliott. □