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REFORM OF COPYRIGHT LAW

Legal notice

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I. INTRODUCTION

The Federation of German Consumer Organisations (vzbv) welcomes the fact that the European Commission is seeking to reform European copyright law as part of its strategy to bring about a Digital Single Market. That is urgently necessary since the regulations currently in force date back to an age without smartphones, e-books and streaming services.

Copyright law has long become part of the everyday lives of consumers. It is therefore high time for the legitimate interests of users to be enshrined in copyright legislation. At the time of its inception, copyright law was solely designed to govern the legal relationships between artists and users.

In the digital age, it needs to be adapted to the numerous new possibilities for use, which are not restricted in place or time, and to social participation. Consumers have a great interest in a more flexible use of digital goods in particular. However, new and altered possibilities for use are not reflected in existing copyright law. That eventually needs to change.

A revision of copyright law is therefore urgently needed. The impetus to develop and harmonise copyright law has most recently solely come from judgments of the European Court of Justice (ECJ). Consumers continue to face many uncertainties and risks in relation to digital content. Here are some typical everyday situations from the perspective of a consumer, to illustrate consumers' reasonable expectations of a copyright reform.

II. SUMMARY OF OUR POSITIONS

1. Private use of digital content

New and more flexible rules on exceptions and limitations to copyright are required to reflect new and altered possibilities of use such as "sharing", "posting" and remixes.

2. Full rights over digital content

Consumers must be allowed to transfer legally acquired content permanent and independently from the device used and have the right to freely dispose of such content. It is time for the introduction of a right to resale for digital content.

3. Private copying

Private copying must be enshrined in law as a fully-fledged user right.

Copyright levies should remain in place. In return, new forms of using digital content should be allowed.

4. No blocking of online content

Portability needs to be facilitated, without any loopholes. Time limitations on the portability and use abroad are not the right approach.

Cross-border access to content from other EU Member States needs to be possible in the Single Market.

5. No complex regulations

Laws need to be drafted in such a way that they can be understood by experts at the very least. Terms of use need to be clear and comprehensible for consumers.

III. PRIVATE USE OF DIGITAL CONTENT

Tina would like to post a video from her last holiday. To capture the mood of her holiday she has used her favourite holiday track as background music. It took her just seconds to do so using her smartphone. But is it legal?

What are the issues?

Anyone who uses their smartphone to record everyday experiences on video and share such content with friends can very easily find themselves in breach of copyright law. A few seconds of music or a poster in the background of the video could be enough for Tina to infringe the copyright of protected works if she makes her video public. Even the use of minuscule snippets of music or film would require her to clear the rights. In practice, that is virtually impossible. Tina would have to get in touch with the author and discuss the use of the rights. That is far too burdensome and cannot reasonably be expected of either consumers or copyright holders.

In conjunction with the member organisations of the European Consumer Organisation (BEUC), vzbv asked 29 experts in ten Member States across Europe, including copyright collecting societies, academics, ministries, representatives of copyright holders and organisations for digital rights of users how they would judge Tina's holiday video.

- ➔ Four of the respondents deemed it "legal",
- ➔ 18 considered it "illegal"
- ➔ and seven held that the legal situation was "unclear".

Even those dealing professionally with such subject matter have different views of its legality,¹ so how can consumers like Tina be expected to know what is allowed or not?

¹ http://zap.vzbv.de/5a76db5e-edb1-4aad-9b87-86f018f9948b/BEUC_Infografik_Urheberrecht-2015.pdf

What needs to change?

Forms of communication such as “posting” or “sharing” of material including copyrighted content on social networks, video and photography websites, blogs and forums for private purposes should be laid down in copyright law as new and permissible forms of use. They are everyday activities for many internet users. Such forms of use enjoy broad social acceptance as an independent communication channel and way of social interaction, and not least as a means of exercising freedom of expression. Providing they have no commercial objectives they do not constitute unreasonable limitations of the rights of authors and copyright holders.

Modern copyright law needs to enable the use of copyrighted content for transformative and derivative purposes. A modern society can no longer be conceived without editing and linking content. These uses are highly characteristic of the internet and should be made use of.

Copyright law in force does not reflect those new forms of use or provide any solutions tailored to them.

vzbv is calling for:

New and flexible rules on exceptions and limitations to copyright to decriminalise everyday activities, reflect new and changed possibilities of use and cover future forms of use. Authors and copyright holders should be compensated by appropriate levies.

IV. FULL RIGHTS OVER DIGITAL CONTENT

Tina has accumulated an impressive collection of e-books over the years. Now she would like to give away part of the collection to friends and sell another part of it. That does not pose any problem in the “offline” world, but what about the “digital” world?

What are the issues?

Many everyday activities of the “offline” world, such as giving away or selling books, could be illegal in the “digital” world under copyright legislation, even if consumers have reasonable expectations of being allowed to use the content. Even experts lack full understanding of the actual situation in every EU Member State, despite all of them being governed by the same European legal framework. It is even more difficult for consumers to assess and understand

the situation. That turns the everyday use of copyrighted content into gambling for consumers.²

It is evident that music and film streaming services are increasingly popular. At the same time, the number of downloads is decreasing. Subscription models are increasingly catching, even in the software industry. That, however, does not change the fact that in the last few years consumers have spent vast sums on downloads and that downloads will remain a major source of revenue for providers for many years to come.³ The introduction of a right of resale is therefore more pressing than ever. The lack of clarity concerning possession and ownership of copyrighted material over such a long period of time and the deliberate perpetuation of that situation despite purchase prices amounting to many billions of euros may well be unique in the history of modern civil law.⁴

What needs to change?

Consumers must be allowed to transfer legally acquired content permanent and independently from the device used and have the right to freely dispose of such content. The current legal situation results in unequal treatment of “tangible” (e.g. books) and “intangible” digital works (e.g. e-books). To consumers however, it makes no difference whether they purchase, say, a printed book or an e-book. In both cases consumers pay to acquire the work and to freely and permanently dispose of it. That includes the possibility to have long-term access to the work, regardless of the device manufacturer or other restrictions imposed by the content provider (e.g. continuing to be registered as a user). It includes, moreover, the right to resell, lend, give away or bequeath the work. An up-to-date copyright framework needs to ensure that such possibilities and rights are granted for all kinds of digital content. Technical protection measures and/or contractual agreements should not be permitted to restrict those rights.

vzbv is calling for:

- **The exhaustion principle also needs to apply to intangible goods.**
- **The principles established in the UsedSoft judgment of the ECJ should be extended to all digital content.**

² http://zap.vzbv.de/5a76db5e-edb1-4aad-9b87-86f018f9948b/BEUC_Infografik_Urheberrecht-2015.pdf

³ Downloads still account for 66.6 percent of digital business, cf. Musikindustrie in Zahlen [The music industry in figures], p. 13, available at:

<http://www.musikindustrie.de/fileadmin/piclib/publikationen/BVMI-2014-Jahrbuch-ePaper.pdf>

⁴ Till Kreutzer, Weiterveräußerungsfähigkeit von digitalen Gütern [The ability of digital goods to be resold], p. 67f., available at: https://mlr.baden-wuerttemberg.de/fileadmin/redaktion/mlr/intern/dateien/PDFs/Verbraucherschutz/GesamteStudieDigitale_Gueter.pdf

V. PRIVATE COPYING

Tina's young daughter tends to damage her DVDs, rendering them unusable. She has therefore decided to make backup copies. Many DVDs, however, have a copying protection (DRM), which prevents her from doing so.

What are the issues?

Many consumers are not aware that when they buy, for instance, media devices or storage cards they automatically pay a levy to copyright holders. In return, consumers are granted the possibility of making private copies. The right to private copying is not about using intellectual property free of charge. Instead, legal provisions provide for fair compensation for private copying. That sounds fair, but in reality it is undermined since the possibility of private copying is often limited by a number of factors. Secondly, the possibility of making private copies is often impossible in practice by technical protection measures or contract terms.

Although Tina theoretically has the possibility of making private copies she is not allowed to circumvent the DRM. That ultimately excludes the possibility of making a private copy.

It should also be borne in mind that forms of media use are constantly changing. While the focus was previously on downloads, today content is increasingly in the cloud. Fewer copies are being made since consumers increasingly only access content from connected devices. Since the former justification for copyright levies is gradually fading, new arguments are required to sustain such a levy.

What needs to change?

The possibility of private copying should be set out in law as an inalienable, fully-fledged user right. It should be a fundamental principle of copyright law that users can make copies for private purposes. The levy paid by users needs to be matched by a legally enshrined right of use. In future, it should not be allowed to limit that right, circumvent or prevent it by means of DRM or contractual terms.

New and more flexible possibilities of using digital content for consumers provide an updated justification for copyright levies. vzbv advocates maintaining copyright levies. In return, there needs to be a new genuine and fair balance between the interests of authors and users.

vzbv is calling for:

- **Private copying to be enshrined in law as a fully-fledged user right.**
- **Copyright levies should be maintained; in return, new forms of using digital content should be allowed.**

VI. NO BLOCKING OF ONLINE CONTENT

Tina took out a paid subscription in order to be able to watch TV programmes and films legally online. While on holiday in Greece she would like to watch her favourite programme in the hotel but cannot access her content because her computer now has a Greek IP address.

What are the issues?

One in three Europeans would like to have access to audio or video content from their home country when abroad. One in five Europeans would like to have access to audio or video content from other EU Member States.⁵ To date, however, fewer than 4% of “video-on-demand services” are available across all borders within the European Union.⁶ Many consumers cannot understand why the Internal Market applies to tangible goods but borders remain when it comes to digital content.

What needs to change?

Consumers must be allowed to have access to a wide range of online services – constantly, across borders, at a reasonable price and with transparent terms of use. Recent studies show that more and more consumers are making use of legal online services for digital content such as music, films and e-books. The broad, wide-ranging and easily accessible supply of legal content is vital in order to reduce the attraction of illegal sources of supply⁷.

Existing online borders arising from content being blocked for users from certain countries need to be eliminated.

vzbv is calling for:

- Portability needs to be facilitated, without any loopholes. Time limitations on the portability and use abroad are not the right approach.
- Cross-border access to content from other EU Member States needs to be possible in the Single Market.

⁵ http://ec.europa.eu/priorities/digital-single-market/docs/dsm-factsheet_de.pdf

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015DC0192>

⁷ Cf. for example <http://www.musicbusinessworldwide.com/piracy-virtually-eliminated-norway/>

VII. NO COMPLEX REGULATIONS

Tina has received a letter from a law firm informing her that her holiday video is in breach of copyright law. The letter cites various laws and makes references to limitations, but she does not understand a word.

What are the issues?

Amendments to copyright law in the past have led to a situation that - due to the complexity and sheer volume of rules - defies even the understanding by experts. Moreover, user rights are increasingly governed by contractual terms of use. They are often lengthy and complicated resulting in many consumers accepting them without reading and understanding them.

What needs to change?

Laws and terms of use need to be clear and comprehensible. Consumers can only make well-informed decisions if their key rights are understandable at a glance.

vzbv is calling for:

- **Terms of use to be clear and comprehensible.**