

Copyright 2.0 – What about the consumers?

Position paper

of the Baden-Württemberg Ministry for Rural Affairs and Consumer Protection and the Federation of German Consumer Organisations

on the reform of copyright law

The copyright law is on trial. It mainly comes from the time of analogue media – and, in the digital world, more often reaches the limits of present-day reality of life and social acceptance. The Baden-Württemberg Ministry of Rural Affairs and Consumer Protection (MLR) and the Federation of German Consumer Organisations e. V. (vzbv) stand for the protection of intellectual property, as well as the artistic and economic interests of creative professionals. At the same time, a reorientation of copyright law in terms of a fair balance between the interests of users, creators and copyright owners is mandatory. It is important for MLR and vzbv to strengthen the often-neglected position of consumers. Against this background, the current efforts of the federal government to cap any warning notice costs for consumers are generally welcomed. But also beyond this issue, MLR and vzbv see an urgent need to reform the copyright law.

One of the major challenges is to adapt copyright law to the changed framework conditions of the digital world and thereby make use of the associated cultural and economic potentials. Here, the interests of consumers as users of modern media play a significant role. The goal must be that consumers and creative professionals meet as equals.

Many of the following suggestions require a revision of the European legal framework. Here, Germany has an important role within the European decision-making processes. MLR and vzbv expect the active commitment to an early reform of copyright law on both the national and European levels from the future federal government.

From a consumer perspective, the following aspects should be considered and taken into account during the revision of the copyright law:

1. Take into account the interests of the users

The user interests are to be anchored as a legitimate objective in the German Copyright Act. At its inception, copyright was still a special matter exclusively for the regulation of the legal relationship between artists and professional users. In the age of Web 2.0, it must be tailored to the challenges of digitalisation with its numerous new possibilities of social and cultural participation. Consumers interact daily in various ways with the content of others and often become creative themselves in the digital world.

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2. Anchor the private copy as indispensable user right

The possibility to create a private copy is to be translated into law as an indispensable, fully-fledged user right. It should be an essential basic idea of copyright that users can make a copy for personal use. This right should not be restricted, avoided or prevented in the future through the use of technical copy protection measures or terms and conditions.

3. Enable private use for communication purposes in Web 2.0

Forms of communication such as the "posting" and "sharing" of copyrighted content on participatory platforms and applications of Web 2.0 (especially social networks, video and photo sites, blogs and forums) for private purposes are to be anchored as new allowed uses of the copyright. The spreading of videos, photos or texts is a central feature of such platforms and applications. It is part of everyday life for many Internet users. As an independent form of communication and social interaction, and not least as a form of freedom of speech perception, such uses have a broad social acceptance. If they do not pursue commercial objectives, they do not contain any undue prejudice to the interests of creators and right owners.

4. Allow „Creativity of the masses“

A modern copyright law must allow design forms and cultural practices such as collages, remixes or mash-ups that use copyrighted content. Such forms of culture have an enormous cultural and economic potential that should be used in a modern society. However, the current provisions in the Copyright Act are not appropriate to regulate the phenomenon of "creativity of the masses". Rather, the current law establishes restrictions that not only stifle innovation, but are pushing such cultural forms literally to the edge of legality. Here, legal solutions are needed that give these design forms and cultural practices adequate space.

5. Ensure comprehensive rights to digital goods; allow resale

Consumers must be given the opportunity to permanently use legally obtained digital content device-independently and freely utilise it, especially to resell it. The current legal situation results in an unequal treatment of "physical" (e.g. book) and "intangible", digital works (e.g. eBook) and thus in inappropriate consequences for consumers. In the eyes of consumers, it makes no difference whether they buy a printed book or an eBook. In both cases, consumers pay for the purchase of the work and for being able to permanently and freely utilise it. This includes the possibility of long-term access to the work, regardless of the device manufacturer or other restrictions from the content provider (e.g. continuance of a user account). This also includes the right to sell the work, to lend it, give it away or hand it down. A contemporary copyright must ensure that these opportunities and rights are guaranteed to all types of digital content and cannot be limited or excluded by technical protection measures and/or contractual agreements.

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6. Make copyright law understandable

The regulatory content of laws and conditions of use must be formulated clearly and understandable for consumers. The recent amendments to the copyright law have led to a law that, in its complexity and regulation density, is barely understood not only by consumers. Laws that consumers do not understand they cannot comply with. User rights are also increasingly regulated by contractual conditions of use. These are often extensive and complicated so that many consumers accept these largely indiscriminately. Consumption decisions require that substantial rights of consumers are understandable at a glance.

7. Promote diversity of legal online services

Consumers must have access to diverse online services that are available cross-border, at any time, at a fair price and with transparent conditions of use. Recent studies show that increasingly more consumers access legal online services for digital content such as music, movies or books. A broad, diverse and easily accessible range of legal content is essential to reduce the attractiveness of illegal sources. The diversity of legal online services must be promoted by considerably facilitating the acquisition of cross-border licenses for commercial content providers.