

# Tabled amendments by MEPs<sup>1</sup> regarding technological measures

## Amendment 32

### Proposal for a directive Article 3 – paragraph 2

*Text proposed by the Commission*

2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.

*Amendment*

2. Any contractual provision or **technical protection** contrary to the exception provided for in paragraph 1 shall be unenforceable.

## Amendment 87

**Lucy Anderson, Julia Reda**

### Proposal for a directive Recital 7 a (new)

*Text proposed by the Commission*

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<sup>1</sup> Available @

<http://www.europarl.europa.eu/committees/en/imco/amendments.html?ufolderComCode=IMCO&ufolderLegId=8&ufolderId=07948&linkedDocument=true&urefProcYear=&urefProcNum=&urefProcCode=>

## *Amendment*

*(7 a) In order to ensure that technological measures do not prevent the enjoyment of the exceptions and limitations established in this Directive, in Directive 2001/29/EC, Directive 96/9/EC, Directive 2009/24/EC or Directive 2012/28/EU, Article 6(4) of Directive 2001/29/EC needs to be updated in order to take account of the fact that in the marketplace, rightsholders are often unable to make available to the beneficiary of an exception or limitation the means of benefiting from that exception or limitation, because technological protection measures are generally not applied by the rightsholders themselves, but by third party suppliers who provide the content to consumers, such as online marketplaces, some of whom enjoy a dominant market position. The inability of users to make use of their rights under copyright exceptions and limitations is not just having a negative impact on users' fundamental rights, it is also detrimental to rightsholders who often find themselves in a weaker bargaining position vis-à-vis suppliers of digital content, especially when consumers are locked into the products and services offered by that seller through the use of technological measures. It is therefore insufficient to require Member States only to place obligations upon the rightsholders, who are generally unable to remove the technological protection measures put on their works by third parties. In addition, the act of circumventing technological protection measures for the purposes of enjoying exceptions and limitations to copyright and related rights needs to be exempted from the general legal protection of effective technological measures enshrined in Article 6(1) and 6(2) of Directive 2001/29/EC. Furthermore, the definition of "technological measures" in Article 6(3) of Directive 2001/29/EC needs to be clarified so as not to include measures which are designed to restrict authorised uses under copyright exceptions and limitations*

## **Amendment 330**

**Julia Reda, Michel Reimon, Max Andersson, Brando Benifei**

### **Proposal for a directive Article 3 – paragraph 2**

*Text proposed by the Commission*

2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.

## *Amendment*

2. Any contractual provision **or legal protection of technological measures** contrary to the exception provided for in paragraph 1 shall be unenforceable.

## **Amendment 332**

**Julia Reda, Michel Reimon, Max Andersson, Brando Benifei**

### **Proposal for a directive Article 3 – paragraph 3**

*Text proposed by the Commission*

3. Rightholders shall be allowed to apply measures to ***ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.***

*Amendment*

3. Rightholders shall ***not*** be allowed to apply measures to ***technologically limit the right to exercise the exception adopted pursuant to paragraph 1.***

## **Amendment 392**

**Julia Reda**

### **Proposal for a directive Article 6 – paragraph 1**

*Text proposed by the Commission*

***Article 5(5) and*** the first, ***third*** and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.

*Amendment*

**1.** The first and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.

***1a. Any contractual provision contrary to the exceptions and limitations provided for in this Directive shall be unenforceable.***

## **Amendment 567**

**Julia Reda**

### **Proposal for a directive**

**Article 17 – paragraph 2 – point b a (new) Directive 2001/29/EC**

Article 5 – paragraph 5

*Present text*

"5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall **only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.**"

*Amendment*

**(b a) Article 5(5) is replaced by the following:**

"5. **Any contractual provision contrary to** the exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall **be unenforceable.**"

## **Amendment 568**

**Julia Reda, Lucy Anderson**

**Proposal for a directive**

**Article 17 – paragraph 2 – point c d (new) Directive 2001/29/EC**

Article 6 – paragraph 3

*Present text*

"3. For the purposes of this Directive, the expression 'technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other **subjectmatter**, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall be deemed 'effective' where the use of a protected work or other **subjectmatter** is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective."

*Amendment*

**(c d) In Article 6, paragraph 3 is replaced by the following:**

"3. For the purposes of this Directive, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other **subject-matter**, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the sui generis right provided for in Chapter III of Directive 96/9/EC, **and which are not authorised by national or Union law.** Technological measures shall be deemed "effective" where the use of a protected work or other **subject-matter** is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the

work or other subject-matter or a copy control mechanism, which achieves the protection objective."

## **Amendment 569**

**Julia Reda**

**Proposal for a directive**

**Article 17 – paragraph 2 – point c e (new) Directive 2001/29/EC**

Article 6 – paragraph 3

*Present text*

"3. For the purposes of this Directive, the expression 'technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other **subjectmatter**, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall be deemed 'effective' where the use of a protected work or other **subjectmatter** is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective."

*Amendment*

**(c e)**

***replaced by the following:***

***In Article 6, paragraph 3 is***

"3. For the purposes of this Directive, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other **subject- matter**, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the sui generis right provided for in Chapter III of Directive 96/9/EC, **and which are not authorised by national or Union law**. Technological measures shall be deemed "effective" where the use of a protected work or other **subject-matter** is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective."

## **Amendment 570**

**Julia Reda**

## **Proposal for a directive**

**Article 17 – paragraph 2 – point b d (new)** Directive 2001/29/EC

Article 6 – paragraph 4 – subparagraph 5 a

*Text proposed by the Commission*

*Amendment*

***(b d) In Article 6(4), the following subparagraph is added:***

***The protections provided for in paragraph 1 and 2 shall not apply to acts described in paragraph 1 and 2 whose sole purpose is to enable a user's right to enjoy the exceptions and limitations to copyright and related rights outlined in this Directive or in Directive 96/9/EC, Directive 2009/24/EC Directive 2012/28/EU or Directive ... [this directive], to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned;***

## **Amendment 571**

**Lucy Anderson, Julia Reda**

### **Proposal for a directive**

**Article 17 – paragraph 2 – point b b (new)** Directive 2001/29/EC

Article 6 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(b b) In Article 6(4), the following subparagraph is added:***

***The protections provided for in paragraph 1 and 2 shall not apply to acts described in paragraph 1 and 2 whose sole purpose is to enable a user's right to enjoy the exceptions and limitations to copyright and related rights outlined in this Directive or in Directive 96/9/EC, Directive 2009/24/EC Directive 2012/28/EU or Directive ... [this directive], to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned;***