
The rights in question are those of originators of copyright material to control reproduction and communication to the public by electronic transmission of their works, including by way of digital broadcasting and on-demand services (i.e. services whereby works are accessed by the public at a time and place individually chosen by them). The UK has implemented the provisions of the Directive by an amendment to the Copyright, Designs and Patents Act 1988 (as amended) (“the Act”). The Copyright Directorate (part of the Patent Office) considers that current UK law provides a sound basis to meet the challenges of new technology to copyright law, and the Regulations do not concern major new rights or extensions to protection.

In summary, the Regulations introduce exclusive rights for performers and persons having recording rights to control on-demand transmissions of recordings of their performances; amend the definition of “broadcast” in a technologically neutral way (thereby extending copyright protection to on-demand (including relevant online) exploitation of works as well as to broadcasts in the traditional sense) (the so-called “making available right”); amend the Act to comply with the regime of compulsory and permitted exceptions to copyright protection set out in the Directive; amend the Act to take account of the comprehensive nature of the legal protection required for technological measures used by holders of copyright to protect their works against unauthorised reproduction and other copyright infringements (including giving express protection to the act of circumvention itself and the introduction of criminal offences); introduce new provisions for the legal protection of electronic rights management information (“RMI”) used by holders of copyright to identify, track and assist utilisation of copyright works and against dealings with works from which such rights management information has been removed or altered without authority; and amend existing provisions in the Act relating to sanctions and remedies, by (inter alia) creating new criminal offences in relation to devices and services for the circumvention of technological protection measures, and by expressly enabling the High Court to grant injunctions against service providers where the latter have actual knowledge of a third party using their service to infringe rights.

The Regulations have been strongly supported by rights holders - particularly those in the music, television and film industries, which have suffered loss through the unauthorised file sharing of music on the internet, CD burning, and the abuse of data compression technologies and the spread of broadband access, which have led to illegal downloads of films from the internet. Some organisations have pressed for heavier sanctions to be introduced. The music industry, in particular in the UK, has indicated that it is keen to use the provisions of the Regulations to fight back against the illegal sharing and downloading of music on and from the Internet. At the same time, the Regulations have been heavily criticised by legitimate users of copyright works (including consumers) and civil liberties groups as having gone too far. In particular, critics are concerned that the new criminalisation of the circumvention of technological measures, and the tightening up of civil remedies in relation to the same and to the use of electronic RMI, is heavy-handed, and detracts from the system of “fair use” currently contained in the Act (for example, in areas such as the education, library and archive fields, or by individuals for their personal use). Although the Regulations attempt to balance the way in which copyright works may be used on a “fair use” basis against the danger of abuse of the same, and thereby the interests of the various stakeholders, it will remain to be seen how the courts will interpret these new provisions and whether the balance envisaged by the Directive and by the Copyright Directorate in its implementation of its provisions will be achieved.