

CONSUMER USE OF COPYRIGHTED MATERIAL

Right? Wrong? Unclear? How to fix

What European consumers can or cannot do with copyrighted stuff such as music, video and software is governed by copyright laws. But they differ from country to country, often leaving consumers not knowing how they can use the material.



→ **EU** copyright laws are now up for review. This is an opportunity to rebalance them more fairly for consumers and adapt them to modern uses.

BEUC members surveyed 5 types of copyright stakeholders: Copyright fee collecting societies; Academics; Government ministries; Rights holders' representatives; Users' digital rights organisations across 11 EU countries (Belgium, Denmark, France, Germany, Greece, Italy, Lithuania, Norway, Portugal, Slovenia and Spain).

We set 4 everyday scenarios and asked if, in their opinion, each act was legal, illegal or its legality unclear.

Striking responses emerged – showing the need to clarify our disparate laws. Below we describe the scenarios and conclude how the EU should progress a clear, modern and uniform copyright law.

A detailed report will be published alongside our work on copyright at:

www.beuc.eu/digital-rights/copyright

scenario#1

John wants to use his favourite band's latest song on his family Christmas celebrations video and upload it to YouTube so his family and friends can enjoy it.



Of 29 survey answers from across 10 countries:

- 4 said this was "legal"
- 18 said this was "illegal"
- 7 said it was "unclear"

What should the European Commission review do?:

- Introduce a new exception to right holders' exclusive rights enabling consumers the dissemination of user-generated content for non-commercial purposes.
- Clarify the concept of "communication to the public" in line with recent European Court of Justice cases.

scenario#2

John has bought a big e-book collection over time, but would now like to sell some on Ebay.



Of 31 survey answers from across 9 countries:

- 12 said this was "legal"
- 10 said "illegal"
- 9 said "unclear"

What should the European Commission review do?:

- Application of the 'exhaustion' principle to copyrighted digital content (e.g. eBooks, online music and audio-visual content permanently accessible from the consumer's hardware). This would allow consumers the possibility to transfer or resell legally acquired digital content.

scenario#3

John lives in Sweden and pays a monthly subscription to watch TV and movies legally online. On holiday in Greece he wants to watch his favourite show in his hotel but cannot access his content platform as the computer's Internet Protocol (IP) address is now Greek. Is it legal to use a Virtual Private Network (VPN) to circumvent this IP address blockage in order to access the legally bought content?



Of 31 survey answers from across 10 countries:

- 10 said this was "legal"
- 7 said "illegal"
- 11 said "unclear"

What should the European Commission review do?:

- Grant a right of 'portability' of legally acquired content.
- Enable access to online content available in other Member States by prohibiting certain geo-blocking techniques which currently restrict consumer choice of audio-visual content across the EU.

scenario#4

John's young kid tends to damage his DVDs, making them unwatchable. So he decides to back up his library. Many DVDs include Digital Rights Management (DRM) blocks which hinder copying, so he asks his friend to help him.



Of 29 survey answers from across 11 countries:

- 17 said this was "illegal"
- 10 said "legal"
- 2 said "unclear"

What should the European Commission review do?:

- Make exceptions and limitations mandatory (e.g. allowing private copying for various non-commercial purposes such as format-shifting or 'back-up').
- Prohibit DRMs or contractual measures limiting the exercise of an exception or limitation.

Form the survey answers it is clear that:

→ Even professional stakeholders have diverging opinions on legality, even within the same country;

→ Consumers have every reason to be confused as to what they can do with their purchases;

→ This is amplified by the lack of consistency from country to country;

→ Copyright laws can be used to make many everyday acts illegal, despite consumers' justified expectations of use;

→ European copyright law needs a major overhaul, to both modernise and harmonise.



Did you know?



Over **83 million** Europeans uploaded self-created content to a website in 2012.



Artists receive **less than €0.01** in levies per album sold.



The 2001 EU Copyright Directive allows for **2 million+** ways of implementing into national law.



Less than **4%** of 'Video On Demand' services are accessible across EU national borders.



What else for the EU to do?

- Content is now accessed and distributed in countless ways. However, we need to balance in the forthcoming reform the interests of authors and creators, right holders, businesses and consumers to make EU Copyright Law 'future-proof' for new uses and a **tool to encourage innovation and consumption of legal offers.**
- **Copyright law must balance incentives to create with access to works** – such a balance doesn't exist currently. A number of permitted uses of copyrighted material exist as exceptions to owners' exclusive rights. **These must be modernised and adapted to the digital environment.**
- We must include the question of **copyright levies** into the copyright reform and progressively phase them out. No levy should apply to works freely distributed by authors or when no or minimal harm to the rights holder occurs. Display fees on in-shop price labels, purchase receipts and websites. **Consumers have a right to know what they are paying for.**
- **Copyright exceptions should be mandatory** and not overruled by contractual terms or technical protection measures such as DRMs.
- We must apply the exhaustion principle to digital works so consumers can lend or resell. **This would create a secondary market for content and provide consumers with greater choice.**
- We must harmonise copyright exceptions and limitations for **legal clarity on what actions consumers are entitled to pursue**, including an exception for user generated content.