Best Practice Guide

Implementing the EU Copyright Directive in the Digital Age

Best Practice Guide

Implementing the EU Copyright Directive in the Digital Age

Authors:
Urs Gasser & Silke Ernst

Based on country reports by the following contributors:
Andrew Adams, Patricia Akester, Maja Bogataj, Daniel Boos, Ian Brown, Stefan Gavrilescu, Johanna Gibson, Andrea Glorioso, Teresa Hackett, Daniel Haeusermann, Janet Hawtin, Joris Van Hoboken, Iryna Kuchma, Svetozara Petkova, Achal Prabhala, Prodromos Tsiavos, Judit Rius Sanjuan, James Thurman

Project Lead:
Ian Brown & Urs Gasser

Sponsor:
Open Society Institue

INDEX

INTRODUCTION

Today, years after intense struggles and tussles, almost all EU Member States have transposed the EU-Copyright Directive (EUCD) into national law. However, the continuing controversies surrounding the EUCD itself and conflicts about the national implementations have made clear that we are far from having reached a consensus about the appropriate design of copyright law for the digital age that satisfies – or better: serves the interests of – all relevant stakeholders, including creators, artists, teachers, students, and the public at large.

At a time where the existing EU copyright framework is under review, this best practice guide seeks to provide a set of specific recommendations for accession states and candidate countries that will or may face the challenge of transposing the EUCD in the near future. It is based on a collaborative effort to take stock of national implementations of the EUCD[1] and builds upon prior studies and reports that analyze the different design choices that Member States have made[2].

Broader Context: Promises and Values

The motivation for this best practice guide derives from an open, decentralized, and ongoing discussion among the contributors to this project about the promises of digital technologies, the values that underlie new technologies, and the role of (copyright-)law that shapes today's information society. The common denominator among the project leaders, contributors, sponsors and collaborators is the belief that new information and communication technologies have the power to transform the use and the value of information, knowledge, and entertainment – including, of course, copyrighted materials – for the benefit of various stakeholders and society at large. The positive effects that might emerge in digitally networked environments are manifold, ranging from economic benefits to semiotic democracy[3]. In the context of this project, user autonomy and collaboration, diversity, and participation are among the core values that are up for discussion.

However, this vision of a shared and diverse information environment is not self-fulfilling. Policy choices must be made, and copyright legislation is among the most important areas of law with a fundamental impact on the ways in which we create, distribute, access and (re-)use information, knowledge, and entertainment. This best practice guide starts with the assumption that a copyright regime that seeks to foster the core values mentioned above must have a number of specific characteristics, both at the conceptual level and at the level of each provision within a statute.

About this Guide

Against this backdrop, this document focuses on the concrete, not the abstract. It takes a closer look at four important clusters of legal issues typically associated with EUCD-implementation. First, in a cross-sectional manner, it provides recommendations regarding the implementation of the EUCD's anti-circumvention provisions (i.e., legal protection of technological protection measures). Second, it suggests a series of principles in areas of copyright law that shape the ways in which we – as peers – can produce and distribute information. The third section deals with universal access issues, including teaching and research exceptions, exceptions for libraries, archives, and the like, and copyright exceptions for disabled people. Third, the document provides recommendations with regard to selected copyright provisions that have an impact on political and cultural participation.

In the Wiki version of this document[4], the main site includes the best practice principles (work in progress) and links to particularly well- (or, in some instances, ill-)balanced implementations by national legislators. It also includes links to pages where certain core issues are further discussed, initial experiences reported, further readings provided, etc. It should be noted that the Wiki as well as this document represent research in progress. Comments and feedback directed at ugasser AT cyber.law.harvard.edu are appreciated.

BEST PRACTICE GUIDE

Anti-Circumvention Provisions

(Art. 6 and Art. 8 EUCD)

What is it about?

The increased ability to copy and distribute information, knowledge and entertainment in the digital environment has provoked a series of responses. In order to gain back control, copyright holders have made use of so-called technological protection measures (TPM), including digital rights management schemes, among other things, aimed at regulating copying, distribution, use of and access to digital works through code ("code is law"). Since users can circumvent these technological protection measures, lawmakers both at the national and international level have enacted provisions that ban the act of circumvention of TPM on the one hand and the production and dissemination of circumvention tools on the other hand. Examples of such legislation are the WIPO Internet Treaties (Art. 11 WCT and Art. 18 WPPT), the Digital Millennium Copyright Act (DMCA Sec. 1201), and – in our context particularly relevant – Art. 6 and Art. 8 of the EUCD.

Experiences with the DMCA in the US and, most recently, the EUCD in Europe illustrate that overbroad legal protection of TPM can have a series of serious unintended consequences. As analyzed in many studies and reports, anti-circumvention laws can have a negative effect, among other things, on user autonomy and expression by inhibiting free speech, restricting fair use, and limiting access to public domain works[5]. Similarly, anti-circumvention laws raise concerns with regard to market competition. Manufacturers and vendors of goods such as toner cartridges, garage door openers, play station consoles, and video games, among others have used anti-circumvention laws to reinforce their dominant market positions by preventing interoperability of products on alternative systems. A series of cases and stories[6] illustrate how anti-circumvention provisions can have a negative impact on legitimate scientific research and, ultimately, may impede innovation.

RECOMMENDATIONS

While one might agree or disagree with the concept of technological protection of digital content as such, it is important to note that both the WIPO Internet Treaties and, to lesser extent, the EUCD leave significant leeway to Member States as to how exactly they implement the relevant anti-circumvention provisions. As discussed in several studies and reports[7], EU Member States in particular have taken different approaches, especially with regard to the definition of the scope of TPM/anti-circumvention provisions, exceptions, and sanctions. Based on the above-mentioned experiences and previous analyses, we suggest the following recommendation for countries that are considering implementing Art. 6 and Art. 8 EUCD on TPM:

- **In order to avoid unintended consequences in general and spillover effects of anti-circumvention legislation in particular, (a) define the subject matter and scope of TPM as narrow as possible; (b) choose a liberal approach to exceptions and limitations and make sure that beneficiaries of exceptions can enjoy them; and (c) take a minimalist approach to sanctions and remedies for the violation of anti-circumvention provisions.**

(a) Subject matter and scope

At the core of anti-circumvention legislation is the term "technological protection measures" or "technological measures". The definition of this term determines the scope of the respective provisions to a great extent. Looking at national implementations, three issues are key in this context: (1) Whether or not (and if yes, in what manner) a distinction is drawn between access controls and copy controls; (2) how "effectiveness" of TPM is defined (e.g.: if a widely available, simple piece of standard software can be used to circumvent, is the TPM still an effective one?); and (3) which acts of circumvention, exactly, are prohibited. Focusing on the second and third aspect, we recommend the following approaches:

- **Provide a definition of the circumstances ("minimum threshold") under which TPM are considered to be "effective".**

While several EU Member States have either avoided the problem of defining "effectiveness" by referring to the types of protected measures or have simply mimicked the language of the EUCD (see, e.g., the German and U.K. implementations), others - including the Netherlands and Hungary - have made attempts to provide more precise definitions (see Art. 29a(1) Dutch Copyright Act and Art. 95(2) Hungarian Copyright Act, respectively).

Turning to the question of which acts of circumvention to prohibit, it is important to note that the WIPO Internet Treaties do not require that all types of circumvention-related conduct be prohibited. The situation under the EUCD is not clear. The text as well as some commentators suggest that the EUCD prohibits all acts of circumvention that are not authorized by right-holders. For this reason, several Member States, for instance the Dutch legislature, have amended their legislation to create broad liability, extending it to situations where TPMs are used to prevent or restrain acts that would traditionally be exempted under the applicable copyright law. The Hungarian Copyright Act, in contrast, states that only the circumvention of "devices, products, components, procedures and methods which are designed to prevent or hinder the infringement of the copyright" are prohibited. This leads to the following recommendation:

- **To the extent possible, limit the scope of prohibited circumvention-relevant conduct to situations where circumventions would lead to actual infringement of copyright.**

The relevance of the recommendation to limit the scope of prohibited circumvention-relevant conduct is illustrated by the following case. An Italian court of first instance ruled[8] that the modification of a chip in a Sony PlayStation as a way to alter the intended use of a game console does not constitute a violation of anti-circumvention provisions. In that case a competitor had developed a chip that enabled users to reinstall certain functions of the PlayStation. According to the court of first instance, the technical device within the Sony Play Station is not protected by copyright law since it is not aimed at preventing infringing copies. An appelate court, however, overturned the decision and held that the main goal of the modified chips was to circumvent TPM, and that that the modified chips were therefore illegal unter Italy's anti-circumvention provisions.[9]

(b) Limitations and Exceptions

Among the core problems associated with anti-circumvention provisions, on both sides of the Atlantic, is the fact that anti-circumvention provisions have supplanted the carefully crafted balance between the copyright holder's interest on the one hand and the public's interest on the other hand as stipulated

by traditional copyright statutes. The EUCD does not introduce exceptions to circumvention liability in the traditional sense, but stipulates a mechanism that foresees an ultimate responsibility on the part of right-holders to accommodate certain exceptions. At the basic level, the EUCD leaves Member States with two options as far as public policy exceptions – enumerated in Art. 6.4.1 EUCD (see also recital 48 and 51) – are concerned. First, Member States can take immediate steps to ensure that the beneficiaries of copyright exceptions can benefit from them despite TPM and lack of voluntary measures on the part of right-holders. The alternative approach is a "wait-and-see" approach that saves intervention for later if the practical need for legislation becomes evident (e.g. approach taken by the Netherlands and Austria). Given the importance of the issue, we recommend adopting the first approach, i.e.:

- **Immediately establish a mechanism for the enforcement of copyright exceptions vis-à-vis TPM and in the absence of voluntary measures by right-holders. Provide for an easily accessible and effective enforcement mechanism.**

As to possible enforcement mechanisms, one might differentiate between a (relatively weak) mediation model as chosen by Greece and Lithuania, among others, a special administrative procedure as established in the U.K., or a "direct-access-to-court" model as implemented by the Irish Copyright and Related Rights Act. The choice of the most accessible and efficient mechanism, of course, depends on the characteristics of the particular national administrative and/or legal system.

While public policy exceptions in Art. 6 EUCD are mandatory, the private copying exception is not. However, as a matter of good policy, we strongly recommend that Member States follow the examples of Italy, Lithuania, Malta, and Slovenia, among others, and

- **Incorporate a private copying right vis-à-vis TPM analog to traditional private copying exceptions in order to foster access to information, knowledge, and entertainment.**

With regard to Art. 6.4.4 EUCD, best practices cannot be formulated given its apodictic nature. However, it seems unacceptable that the above-mentioned mechanisms aimed at ensuring that the beneficiaries of copyright exceptions can benefit from them despite TPM can be overridden by licensing terms. Against this backdrop, we recommend that Member States seek changes in the EUCD to ensure that permitted acts cannot be prevented by licensing terms and TPMs.

A recent French case illustrates the importance of having an explict private copying exception vis-à-vis DRM schemes. UFC, a consumer rights association, filed a lawsuit claiming that a copy protection system on a DVD (DVD Mulholland Drive) was in conflict with the provisions of the French Intellectual Property Code, which limit copyright owners' rights regarding reproductions strictly made for the copier's private use. The District Court disagreed and confirmed that such technological protection measures comply with the EUCD and French legislation. The Paris Court of Appeals, in contrast, held that the DRM system in this particular case was illegal and that the failure on the part of the producers and distributor of the DVD to inform consumers of the presence of DRM upon the DVD violated French consumer protection law. The French Cour de Cassation, however, reversed the appellate court's ruling in the landmark case UFC v. Films Alain Sadre et al. and remanded it, stating that the private copying "right" is not an absolute users' right and, therefore, the application of technological protection measures inhibiting the making of copies for private purposes is not illegal under French law.

(c) Sanctions and Remedies

Art. 8 EUCD requires Member States to provide for effective sanctions and remedies for the infringement of rights and obligations set out in the directive, but does not specify the details (however, recital 58 provides some guidance.) Consequently, surveys have shown that Art. 8 EUCD has been implemented in very different ways. The impact of the IP Enforcement Directive (EUIPD) on all these regimes remains to be seen.

A relatively restrictive approach, for instance, has been taken by Greece, which includes both criminal and civil sanctions which apply both to acts of circumvention and trafficking in circumvention devices. Illustrative for a more relaxed approach to sanctions and remedies is Denmark, where the copyright statute creates civil and criminal liability, but does not provide for imprisonment in the context of a violation of the anti-circumvention provisions. Other Member States, including Germany, do not impose criminal sanctions if the act of circumvention has been exclusively performed for, or in relation to, private use by the offender or individuals personally connected with him, including family members.

- **Use discretion with regard to sanctions and penalties and adhere to the principle of proportionality. Consider limitations on criminal and civil liability for non-profit organizations such as libraries, archives, etc., flexible sanctions for innocent infringers, and limitations on sanctions for legitimate purposes such as research and teaching.**

Peer Collaboration

(Art. 2, Art. 3, and Art. 5.2(b) EUCD in particular)

WHAT IS IT ABOUT?

Structural changes in information and communication technologies, economic organization, and social practices in the digital environment have created new opportunities with regard to the ways in which we create and distribute information, knowledge, and entertainment. These structural shifts, analyzed and assessed by scholars around the world, increase the role of collaborative, non-market, and non-proprietary forms of information production and distribution.

Copyright law (among other areas of law) obviously has a profound impact on the extent to which the promises of digital technologies can be realized, both with regard to social production (including creative re-use) of digital content on the one hand and practices of peer distribution and sharing of information on the other hand. Here, as elsewhere, law might not only have a constraining effect, but can also play an enabling or leveling role. National policy-makers, for instance, might gain a better understanding of non-market-based forms of content creation and consider the adjustments of copyright norms that are built upon the traditional incentive-rationale. Bottom-up approaches, such as creative commons, also build upon the enabling aspect of (copyright) law[10].

While the appropriate design of a copyright framework aimed at enabling various forms of (peer) production of information, knowledge, and culture raises complex strategic questions for policy-makers and may well mark the future battlefield of next-generation "copyfights", the issues concerning peer distribution of digital content and practices of online sharing are apparently much more immediate, as the tussles over peer-to-peer file-sharing illustrate. Against this backdrop, the next paragraphs focus on the latter aspect – an aspect directly affected by the EUCD (see esp. Art. 2, Art. 3, and Art. 5.2 (b)) and its transposition into national law.

RECOMMENDATIONS

The legality of various practices of online sharing of copyrighted materials - both in close-knit groups such as families or among strangers in loose-knit groups (like large P2P platforms) - is closely related to the question of whether or not, and, if so, in what form and to what extent a particular legal framework grants an exception to (or provides limitations on) exclusive rights such as the reproduction right (see, e.g., Art. 2 EUCD) or the right to communicate to the public (Art. 3 EUCD). Generally speaking, the most relevant provisions in this context are so-called private copying exceptions (a.k.a. the "right" to make a private copy). Art. 5.2 (b) EUCD, in essence, stipulates that Member States may provide for such an exception to the reproduction right (Art. 2 EUCD) with respect to copies on any medium which are made by a natural person for private use and

neither directly or indirectly intended for commercial purposes, provided that right-holders receive fair compensation.

(a) Private copying exception in general

As the wording of Art. 5.2(b) EUCD indicates, Member States have the choice whether to provide for such an exception, and they are free to determine (within the limits of Art. 5.2(b) and the 3-step test, see Art. 5.5 EUCD) the scope of such an exception. Previous reviews of national copyright frameworks suggest that not all Member States have made broad use of Art. 5.2(b) EUCD[11]. In order to protect users' informational autonomy (incl. privacy) and enable legitimate practices of sharing, we recommend the following approach:

- **Provide for a broad private copying exception that is applicable to both analog/offline and digital/online works.**

Although Switzerland is not an EU member state, the proposed amendments to the Swiss Copyright Act aimed at implementing the WIPO Internet Treaties might serve as a best practice example of a private copying exception (see Art. 19(1) Swiss Copyright Act). The relevant provision allows copying of both analog and digital works – not only parts of it, but also copies of the entire work – in the personal realm and among close-knit groups such as relatives or friends and even allows the making of copies for private purposes through third parties. The amendments also limit remuneration for private copying to cases (among others) where a copy of an entire work has been made and where the work is still available on the market. The Copyright Act of the United Kingdom, in contrast, sets forth only a very narrow exception (time shifting or private studies must be the purpose of the private copy; see e.g. section 29 Copyright Act).

The scope of the private copying exception should be defined in broad terms as the following case illustrates.The Belgium Court of Cassation recently had to decide whether four people who work together on a daily basis in an enclosed workspace accessible only to them and one other employee could be regarded as having developed a tie that could be considered „private and intimate". It ruled that ‚private communication in the family circle' should be taken to mean communication within a closed group of people related to each other, including a group with ties which are close enough to be considered equivalent to family ties. Such ties may be based on social rather than familial relations.

(b) Peer distribution/file-sharing in particular

The private copying exception has important implications not only for legitimate sharing among family members and friends, but also with regard to the use of large-scale P2P file-sharing services. With regard to the act of uploading, our tentative comparative law analysis suggests that the unauthorized uploading of copyrighted materials and making these materials available via P2P file-sharing

platforms is generally neither covered by the private copying exception nor by any other exception enlisted in the EUCD. However, national differences exist with regard to the punishment of users of P2P file-sharing platforms that upload copyrighted materials without authorization.

- **Use discretion with regard to sanctions and penalties imposed on illegal file-sharing (uploading) and adhere to the principle of proportionality. Consider limitations on criminal and civil liability for small-scale infringements.**

The act of downloading from P2P file-sharing platforms, by contrast, is more likely to qualify as making a copy for private purposes, although the national implementations – if addressing this issue specifically - vary significantly among Member States. An extensive interpretation of the private copying exception - as recommended here and proposed in Portugal and Switzerland, among others - suggests that users should have the privilege to make a private copy regardless of the lawfulness of the source and/or the lawfulness of the master copy. Such a liberal interpretation is based on the consideration that it is inappropriate to ask users to distinguish between the lawfulness of certain sources for copies within their private sphere.

- **Provide for a private copying exception that encompasses the act of downloading copyrighted material from the Internet, including from P2P file-sharing networks, regardless of the lawfulness of the master copy or the distribution platform.**

In Germany, in contrast, the copyright act explicitly requires a master copy that is „not obviously illegal" (Section 53(1) German Copyright Act). The term „obviously", however, is not defined in the statute (case law, though, suggests that file-sharing systems are likely to be considered „obvious" illegal sources). Sweden, too, has taken a very restrictive approach (see Art. 12 (3) Swedish Copyright Act). According to the relevant private copying provision, the exception „does not confer a right to make copies of a work when the copy that constitutes the real master copy has been prepared or has been made available to the public in violation of" author's rights. Similarly, the implementation of the EUCD's private copying provision in Italy excludes illegal master copies from the scope of the respective exception.

Reportedly, a Spanish judge recently ruled that the downloading of music for personal use from file-sharing platforms is not illegal under Spanish law. The decision, apparently the first of its kind in Europe, held, according to one news report, that the punishment of music downloading would „imply criminalising socially admitted and widely practised behaviour where the aim is not to gain wealth illegally but to obtain private copies." [12]

Universal Access

(esp. Art. 5.3(a); Art. 5.3(b); Art. 5.3(c) EUCD)

WHAT IS IT ABOUT?

Universal access to various forms of digital content, as mentioned above, is one of the promises of digital technology and has become one of the core policy goals of today's information society. Indeed, digital networks enable us to distribute information, knowledge, and entertainment almost instantly across the globe at marginal costs close to zero, and never before has content been accessible to such a great number of people at the same time. Universal access with its diverse issues – including aspects such as open access to knowledge, the interest in long-term availability and preservation of information, or the recognition of copyrighted works as the building blocks of future creations – interacts in various ways with copyright law, and policymakers at the international, regional, and national level were required to respond to the challenges associated with the transition from analog/offline to digital/online media. As far as the EUCD is concerned, Art. 3 can be seen as a specific response to the digital distribution phenomenon, granting the right-holders exclusive control over any communication or presentation of works to the public.

It is a hotly contested question as to what extent these new rights are in tension with or even contradictory to the vision of universal access to information and knowledge. In any event, the answer to this question depends in important respects on the interface between the exclusive rights on the one hand and exceptions on the other hand. In the context of the EUCD and its transposition into national law, respectively, three issues are of particular importance in this regard: (a) teaching conditions (Art. 5.3(a) EUCD); (b) exceptions for archives and libraries (Art. 5.2(c)), and (c) access to and use of copyrighted works for people with disabilities (Art. 5.3(b)). These topics are further explored in the next section.

RECOMMENDATIONS

(a) Teaching exceptions

According to Art. 5.3(a) EUCD Member States may provide for exceptions and limitations to the exclusive reproduction right of the author and the right to make a work available to the public for use where it is „for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved"[13].

Malta implemented this exemption almost literally (Art. 9(1)h Maltese Copyright Act). Since the copyright limitation in Art. 5.3(a) EUCD is not mandatory, the approach to implement the EUCD model exemption can be seen as a rela-

tively permissive copyright regime for research and teaching. However, Malta restricted the exemption with an additional application of the three-step test. Slovenia, in contrast, has taken a very restrictive approach. In its transposition of the EUCD, the making available of works to the public for educational purposes is not allowed (see Art. 5(3) Slovenian Copyright Act). Here as elsewhere, the exact scope of admissible exceptions depends on the interpretation of some of the key terms used in Art. 5.3(a) EUCD: The phrase "illustration for teaching", for instance, leads to the important question of the interpretation of the term "teaching activities". Germany, for instance, allows the use of copyrighted works in intranets for illustratory purposes only during classroom teaching according to section 52a (1) no. 1 Copyright Act. Against this backdrop, a best-practice oriented approach looks as follows:

- **Provide a broad teaching exception that not only covers materials for face-to-face use in the classroom of educational facilities, but also the use of works at home for studying purposes. The preparation and post-processing of courses at educational institutions should be included as well.**

TEACHING EXCEPTION: THE GERMAN EXAMPLE

According to Section 52a (1) German Copyright Act[14], it is permissible to "make available to the public small portions of published works, other short works, or individual contributions to newspapers or periodicals, exclusively for purposes of illustration for teaching, for students and other participants in instruction in schools, universities, post-secondary institutions, and noncommercial career-training institutions. Access must be restricted to a limited circle of participants."

Section 52a (1) no. 2 allows the "making available to the public to a limited circle of participants of portions of works, other short works and or individual contributions to newspapers and periodicals exclusively for purposes of own research."

According to Section 52a (3) of the German Copyright Act, the necessary reproductions for the purpose of making a work available in subsection (1) no. 1-2 are permissible as well. Section 52a (4) of the Act imposes an obligation on the users to pay a remuneration for making a copyrighted work available. The payment is collected through a collective licensing society.

Another decisive element is the phrase „to the extent justified by the non-commercial purpose to be achieved". This restriction is rather vague and does not suggest a clear demarcation line of permissible use. Rather, the formulation points towards a case-by-case analysis of exempted uses. In contrast to other parts of the EUCD where national implementations should eliminate vagueness

and uncertainty, the openness of this limiting phrase might constitute a desirable – since relatively permissive – element at the level of national transposition.

In addition, some Member States have included quantitative limitations. Art. 10 (1) 2 Luxembourg Copyright Act, for instance, further restricts uses – compared to the default set forth in Art. 5.3(a) EUCD – by stating that only short fragments of works may be used. Germany (Section 52a (1)) only allows the making available of small portions of published works, of short works, or individual contributions to newspapers or periodicals. In Denmark, an extended collective license according to Section 13 (1) and 50 Danish Copyright Act was only agreed upon for the photocopying, scanning, printing, storage, sending by e-mail, reproduction on a password-protected Intranet, and downloading of works in so-called teachers' colleges[15]. According to this license, educators and students may copy a maximum of 20% or 30 pages of a work, whichever is less[16].

- **Implementations should not (further) limit the scope of the teaching exception as stipulated in the EUCD. Instead, provide for open definitions of the limitations on exempted uses for teaching purposes.**

Art. 5.3(a) EUCD is not the only provision of the EUCD that might apply to teaching and research activities. Indeed, it can overlap with the exemption for purposes of quotation as set forth by Art. 5.3(d) EUCD.[17] In the case of teaching material such as textbooks, it is very important to enable the use of quotations.

- **Transpose the quotation exception by allowing quotations in multimedia works with an educational purpose or within instructions and textbooks for educational use.**

(b) Exceptions for archives and libraries

Libraries are central institutions of the information ecosystem and play an important role in the dissemination of information, knowledge, and entertainment. In the context of the EUCD and with regard to the transition from an analog/offline to a digital/online environment, two issues have been particularly contested: the making of (digital) copies of materials held in the library's collection and (electronic) document delivery services.

Art. 5.2(c) EUCD states that Member States may allow publicly accessible libraries, educational establishments or museums, or archives to make specific acts of reproduction, which are not for direct or indirect economic or commercial advantage. While the scope of the exception might be broader, the next paragraphs focus on copies for preservation or replacement purposes only.

Among the challenges faced by national lawmakers who decide to transpose this voluntary exception is the problem of defining the exception's beneficiaries. Some countries, in essence, have simply replicated the wording of Art. 5.2(c)

EUCD (see, e.g., Art. 9(1)d Malta, and Art. 50(3) Slovenian Copyright Act). Obviously, these implementations do not provide further guidance regarding the four - partly overlapping - types of institutions listed in Art. 5.2(c) EUCD. Similarly, an open question remains as to what extent, for instance, school libraries (being often not entirely open to the public) fall within the scope of the privilege. Other countries, in contrast, have used more precise language. Some have further specified the institutions that benefit from the exception (see, e.g., Art. 75.2 (e) Portuguese Copyright Act regarding non-commercial documentation centers), while others (unnecessarily) narrowed down the number of beneficiaries (e.g. Slovakia, where only libraries and archives are mentioned (Art. 31(1) Slovakian Copyright Act)). A third way to deal with the scoping issue is to leave the definition of the beneficiaries for governmental agencies (e.g. Art. 59 (2) Irish Copyright Act and Art. 16 Swedish Copyright Act.) Here again important questions remain. Against this backdrop, we recommend a precise, but broad definition of the privileged institutions.

- **Provide for an exception that allows publicly accessible libraries and archives as well as documentation centers to make copies of entire works for specific purposes, without respect to whether these institutions are part of an educational or scientific institution or of a museum.**

A second question relates to the types of permissible reproductions. A large majority of countries has implemented Art. 5.2(c) EUCD with respect to any kind of reproductions, including digital or analog works (e.g. Art. 122-5-8 French Intellectual Property Act , Art. 50 (3) Slovenian Copyright Act.) Only some countries restricted their implementation to analog copies, leaving the important policy issue of electronic long-term preservation of information, knowledge, and culture stored on electronic media unanswered.

- **Explicitly allow the reproduction of works on any medium in both digital and analog format.**

Generally, countries require that copies exclusively serve the purposes of preservation and replacement of works (e.g. Art. 31.1(b) Slovakian Copyright Act). In addition, some countries explicitly allow beneficiaries to provide similar institutions with copies (Art. 22 Greek Copyright Act, Art. Section 41 United Kingdom Copyright Act.) Viewed from a preservation viewpoint, the latter approach is preferable. On the other hand, in order to fulfill the three-step test, giving copies of works to other institutions should only be permitted if a copy is no longer available on the market.

- **Allow the sharing of out-of-print copies among beneficiaries if certain requirements are met (out-of-print clause).**

With regard to a second set of restrictions concerning the permissible purpose ("not for direct or indirect economic or commercial advantage"), countries have taken different approaches, too. Some countries have limited the purpose of making copies to internal use where there is no economic advantage to the beneficiary (Art. 50 (3) Slovenian Copyright Act, Art. 75(2)e Portuguese Copyright Act). However, this ignores the fact that the beneficiaries hardly use the works themselves, but by their very purpose make information accessible to patrons. Thus, the approach taken by Italy, referring to the "services of the said institutions," seems to be more appropriate. (Art. 68 (2) Italian Copyright Act).

The question of compensation should also be addressed. Several countries do not provide for compensation for copies made under their implementation of Art. 5(2)c EUCD (e.g. Greece, Lithuania, Sweden). Others require the compensation of right-holders through the distribution of levies imposed on reproduction devices and/or storage media (e.g. Art. 54, 54a German Copyright Act, Art. 76(1)b, 82(1) Portuguese Copyright Act).

In analog environments, research, private use or specific library exceptions in copyright statutes around the world have permitted so-called document delivery services, either in the form of inter-library loan services or by sending copies of documents to individual users upon request. However, lawmakers across jurisdictions have generally been reluctant to extend these traditional limitations on copyright to the digital realm. The extent to which electronic document delivery is permitted has been particularly contested. As discussed above, Art. 5.2(c) EUCD allows Member States to provide for limitations on the right of reproduction (Art. 2 EUCD). Recital 40 EUCD, however, states that Art. 5.2(c) EUCD "should not cover uses made in the context of on-line delivery of protected works or other subject matter" (assuming that electronic document delivery falls under the exclusive right of authors to communicate a work to the public, Art. 3 EUCD). On the other side, Art. 5.3(n) clearly permits the creation of an exception for document delivery to terminals located on the premises of the library or archive which serve research or private study. Yet, it has also been argued that Art. 5.3(a) EUCD might serve as a basis for both on-site as well as off-site online delivery of protected works provided that reproductions are made for research purposes. Others have argued that general private use and research exceptions may cover electronic document delivery. Given this unclear situation, we suggest considering the following recommendation:

- **Explicitly regulate the question of traditional as well as advanced forms of electronic document delivery by privileged institutions such as public libraries in the national copyright act.**

While exceptions regarding the delivery of paper copies are well established (see, e.g., law and practice based on Section 53(1) German Copyright Act), not much experience exists with regard to provisions aimed at regulating document delive-

ry in electronic form (other than Fax). Thus, it is probably too early to propose a particular approach. However, the practice in the United Kingdom might be instructive, where the electronic delivery of copies in the form of graphic files (using PDF-based formats) for the purpose of private studies or non-commercial research is permitted. Member States may also want to treat inter-library loan separately from patron on-demand delivery in order to provide explicit guidelines of how both services may be carried out and, potentially, to give different provisions regarding the use of electronic delivery in both instances.

- **Permit electronic forms of delivery (e.g. in graphic file format) of individual copies of articles in periodicals and parts of published works to patrons for private study and research for non-commercial purposes, regardless whether the relevant material is available via an on-demand service or not.**

The question of compensation should be addressed as well. So far, Member States have followed different approaches, ranging from equitable remuneration (see the proposed amendment Section 53a dealing with "Kopienversand" in Germany) to a more balanced approach where no compensation is due for privileged copies for private study and non-commercial research if certain requirements are met (see, Art. 38(2)United Kingdom Copyright Act).

Additionally, Member States should consider the increased and increasing desire on the part of right-holders to utilize DRM systems to govern the use and distribution of electronic copies. We refer to the previous section on anti-circumvention for suggestions on regulating the use and application of DRM systems, including exceptions to anti-circumvention provisions. With regard to libraries specifically, it is worth considering whether librarians and archivists - as „trusted intermediaries" - should be allowed to circumvent TPM for the purpose of making lawful copies.

(c) Exceptions for disabled people

Recital 43 EUCD emphasizes the importance of measures at the member state level aimed at facilitating access to works by persons with a disability that constitutes an obstacle to the use of works, and asks Member States to pay particular attention to accessible formats. Accordingly, Art. 5.3(b) EUCD allows Member States to provide for exceptions or limitations to the rights of reproduction and communication to the public, respectively, for the benefit of people with a disability, on the conditions that the respective uses are directly related to the disability and required by the specific disability and non-commercial in nature.

It is noteworthy that the scope of Art. 5.3(b) EUCD goes beyond the use of works for the benefit of visually impaired or hearing-impaired persons. Some countries, however, have limited the scope of the exception to these types of disabilities (see, e.g., Art. 22 Latvian Copyright Act), or grant exceptions only

for visually impaired persons (see, e.g., Art. 31A-F United Kingdom Copyright Act and Art. 24 (1)No.10 Bulgarian Copyright Act).

EXCEPTION FOR DISABLED PEOPLE: THE EXAMPLE OF LATVIA

Section 22 of the Latvian Copyright Act sets forth a right to reproduction of a work for the needs of the visually impaired and hearing impaired. The provision reads as follows:
Pursuant to the provision of Section 18, Paragraph two of this Law, organisations for the visually impaired and hearing impaired, as well as libraries which provide services to visually impaired and hearing impaired, shall be permitted to reproduce and distribute works, without remuneration, for non-commercial purposes, in a form perceivable by such impaired insofar as is necessary in the case of the relevant impairment.

Given the possibility of alternative forms of content experience (besides reading and listening) in future, vis-à-vis the increasingly important role of online distribution in the lives of people with various handicaps, and in the interest of the broadest possible dissemination of information, knowledge and culture among all members of society, we recommend not limiting the scope of the exception to particular types of disabilities.

- **Provide for a broad disability exception to both the rights to reproduction and communication to the public that might mention, but is not limited to, certain types of disabilities such as visual or hearing impairment.**

In accordance with (or as a consequence of) Recital 36 EUCD, which allows Member States to provide for fair compensation also when applying optional exceptions or limitations that do not require such compensation, Member States have gone different ways regarding the compensation for the use of works by the beneficiaries of the disability-exception. In Germany, for instance, such uses generally have to be remunerated (compensation collected via collecting societies, see Section 45a (2) German Copyright Act), except in the case of making individual copies. A similar amendment is being considered in Switzerland. In Latvia, by contrast, visually impaired and hearing-impaired people are permitted to use works, under given conditions, without remuneration (see Art. 22 Latvia Copyright Act).

- **Consider an exception or limitation for people with disabilities without requiring fair compensation.**

As to the disability exception vis-à-vis technological protection measures, see the general discussion above on the TPM and exception interface. For a mechanism aimed at ensuring that disabled people benefit from the exception in the context of DRM protected content, see the United Kingdom example.

Political & Cultural Participation

(esp. Art. 5.3(c); Art. 5.3(d); Art. 5.3(f); Art. 5.3(i), Art. 5.3(k) EUCD)

WHAT IS IT ABOUT?

Political and cultural participation - as central elements of individual autonomy and core values of a democratic society - heavily depend on the free flow of information and freedom of expression. Copyright law, on the other hand, grants a set of exclusive rights that are tailored to control the flow and subsequent use of information (in the broad sense of the term). Even limited (and, in fact, continuously expanding) monopoly rights in information can thus be in tension with the respective basic informational freedoms that are prerequisites of political and cultural discourse. Such conflicts can, for example, emerge where right-holders seek to prevent the reporting of current events–one source of information necessary for political, social, and cultural discourse. Further, individuals might want to use, to name another example, a copyrighted work in order to criticize its underlying political ideas or to review social and cultural implications. Evidentially, this sort of criticism is important for the democratic process and is a component of an efficient marketplace of ideas. A copyright framework that seeks to promote user autonomy should therefore limit exclusive rights for the purpose of giving citizens enough freedom to actively participate in the creation of cultural meaning and engage in discourse. On the international level, the quotation right as established in Art. 10 Berne Convnetion reflects this idea. Similarly, the EUCD has established a (voluntary) framework of copyright exceptions that might enable cultural and political participation if Member States decide to make use of it. In the context of the EUCD and its transposition into national law, respectively, four issues are particularly important in this respect: reporting on current events (Art. 5.3(c) EUCD); exceptions for quotation and incidental inclusion (Art. 5.3(d) and Art. 5.3(i) EUCD); exceptions for political speeches and extracts of public lectures (Art. 5.3(f) EUCD) and exceptions for caricature, parody or pastiche (Art. 5.3(k) EUCD).

RECOMMENDATIONS

(a) Reporting on current events

The reporting on current events exception as set forth, inter alia, in Art. 5.3(c) EUCD is among the tradtional limitations on copyright. It enables journalists to give comprehensive and genuine reports about important events and has proven to be essential for high-quality news coverage by the press long before the advent of digitally networked media landscape. However, the exception's importance might even increase in the digital age due to the media industry's rapid transition from an analog news environment to digital news production and dissemination over the Internet.[18] At the same time, new forms of journalism outside the context of professionally and hierarchically organized, profit-driven news corporations have emerged. The practices associated with grassroots or

citizen journalism – using blogs, podcasts, videoblogs, etc. and largely building upon preexisting copyrighted works – challenge traditional concepts that underlie copyright exceptions and pose new challenges with regard to the design of a well-balanced copyright regime.

While most countries (including, e.g., the U.K., Denmark, France, Estonia, etc.) have enacted a „current-event" copyright exception, the scope of allowable use differs from jurisdiction to jurisdiction either with regard to the beneficiaries or the distribution channels. On the one end of the spectrum are countries such as Slovenia that do not limit the exception to certain media or distribution channels. Lithuania, too, explicitly allows the making available of reports on current events and thereby grants the same privileges to new forms of news publishing as are enjoyed by traditional practices. On the other end of the spectrum are the copyright acts of Germany, Sweden, or Estonia. Section 50 of the German Copright Act, for instance, refers only to „radio communication, print media or similar means" and is too narrow to accommodate modern media necessities. The Swedish Copyright Act in Art. 25 and the Estonian Copyright Act in Art. 19.3 enumerate the admissible forms of media in the statutory exemption for reporting on current events without including the Internet.

From a normative perspective, two points are particularly important. First, Member States should make use of the exception mentioned in Art. 5.3(c) EUCD to foster the flow of information that provides the ingredients for participation in political and cultural processes on the part of their citizens. Second, reporting on current events can best serve the above-mentioned goals of political and cultural participation if the exception is relatively broad in socpe.

RIGHT TO INFORMATION

Cases, such as the Dutch Court of Appeals' ruling[19] regarding a journalists' right to quote excerpts from Scientology documents via hyperlink despite copyright claims to the contrary, have made clear that freedom of information (see Art. 10 ECHR) has a considerable influence on copyright exceptions and their interpretation. However, since the relationship remains vague at this stage, a best practice approach seeks to clarify where the interest of the public in information prevails over the exclusive rights of the authors. In this regard, a provision in the Slovenian Copyright Act represents a step in the right direction by referring to the right to information and establishing a broad scope of allowable use. Art. 48 (1) No. 1 Slovenian Copyright and Related Rights Act reads as follows:

Right to Information
In order to have free access to information of public nature it shall be free:
1) to reproduce works, which are capable of being seen or heard as part of a current event that is being reported on;

Against this backdrop, we recommend:

- **Provide for a current-event exception and prescribe the conditions under which the freedom of expression right trumps the exlusive author's rights. Do not restrict the scope of the exception to traditional media, such as newspapers, television or radio.**

The French TV station „France 2" was enjoined from showing paintings by the artist Maurice Utrillo in a 128 seconds news report. The report presented an exhibition on the painter's work in the Fleury Museum in Lodève and included 12 shots of the artist's paintings. The Cour de Cassation confirmed the conviction of „France 2" of copyright infringement. „France 2" had not obtained the necessary permission from the rightholders. According to the court, Art. 10(1) ECHR cannot justify the broadcast of the images. Rather, the conditions of Art. L. 122-5-3 CPI are restrictions on the freedom of expression as established in Art. 10(2) ECHR. Earlier, the Tribunal Grande Instance de Paris had considered the news report to be covered under Art. 10(1) ECHR.

(b) Quotation and incidental inclusion

The quotation exception has been referred to as the most important copyright exception since it serves as the common denominator of most other limitations.[20] Moving from an analog to a digital environment, the "economics" of quotation changes dramatically and the boundaries between different formats (text, video, graphic works) start to blur. At the same time, new forms of quotations emerge. Member States have to deal with both issues.

The starting point is Art. 5.3(d) EUCD, empowering Member States to provide for copyright exceptions for quotations under several conditions. First of all, the quotation must relate to a work or subject-matter which has already been lawfully made available to the public. Second, the source, including the author's name, must be indicated. Third, the quotation must be in accordance with fair practice and within the scope that is required by the specific purpose. The EUCD exemplifies in Art. 5.3(d) EUCD two purposes: criticism and review. Art. 5.3(i) EUCD provides an optional exception for incidental inclusion of a work or other subject-matter in other material.

Against this backdrop, Member States have gone different paths to respond to the changes outlined above. The German Proposal for Copyright Act Reform, for instance, implicates a multi-media quotation right in its Section 51. Other countries can accommodate multi-media quotes by broad quotation exceptions that do not restrict quotations to a certain type of work. Art. 22 Swedish Copyright Act and Art. 22 Danish Copyright Act, respectively, have been following this approach.

BROAD QUOTATION EXCEPTION: THE SWEDISH EXAMPLE
Art. 22 of the Swedish Copyright Act simply states that "[a]nyone may, in accordance with proper usage and to the extent necessary for the purpose, quote from works which have been made available to the public."

On the other end, Art. 15a Dutch Copyright Act is rather restrictive and only permits quotations from „literary, scientific or artistic work" in an „announcement, criticism or scientific treatise or publication for a comparable purpose." Art. 46 Austrian Copyright Act goes even further and only permits quotes from literary or educational figurative works.

- **The quotation right should allow diverse forms of quotations. It should encompass multimedia quotes as well as texts.**

Another feature of quotations that has been subject to case law and needs to be adressed when implementing the EUCD is the allowable scope of quotation. For instance, theoretically, certain creative purposes may require the quotation of an entire work. It therefore seems advisable to refrain from the imposition of a rigid length of permissible quotes.

In this regard, the Swedish and Danish copyright provisions represent examples of good implementation, because they do not impose quantitative restrictions. By contrast, the Lithuanian Copyright Act restricts a quote to a „relativley short passage" (Art. 21). Article 51 of the Slovenian Copyright Act,[21] to take another example, allows only „parts of works" to be used for quotations.

The Swiss Federal Supreme Court recently had to deal with the question of whether the quotation of an entire work without authorization was justified. The Court ruled that the quotation right of the Swiss Copyright Act (Art. 25) does not allow the full reprint of a published newspaper article - not even for the purpose of political (sic!) debate. Neither does freedom of speech and information confer such a right, because the quotation right reflects the result of a careful balancing act on the part of the legislature. The Court further held that the author's moral rights are not infringed by the publication of his article in a journal that does not represent his political attitude and personal ethos, at least where the author has published the article before and thereby voluntarily engaged in a political debate.

(c) Political speeches and extracts of public lectures

Art. 5.3(f) EUCD allows the use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible. In digital networks, livestreams or video files are a simple way to extend the number of listeners of

political speeches and public lectures and to bridge long distances. The French copyright exception in Art. 122-5-3(c) - an exception that existed prior to the implementation of the EUCD in 2006 - allows the „diffusion“ of entire speeches by the press and therefore is worth replicating for the sake of political participation. Poland (Art. 25(1) no. 4 Polish Copyright Act) also allows the press, radio and television to disseminate public speeches. Art. 33 (1) c Slovakian Copyright Act is even more liberal by permitting anyone to carry out reproduction or communication of such materials to the public. Section 48 German Copyright Act allows only the reproduction of public speeches in printed media or other storage devices.

- **Allow private persons to disseminate public and political speeches over the internet.**

(d) Caricature, parody or pastiche

Caricature, parody or pastiche serve various purposes, but in most instances they are a means to express social or cultural criticism or serve entertainment purposes. To accomplish its goals, a parody or a caricature exaggerates certain characteristics of a (often copyrighted) work and ridicules it. It therefore needs to be very similar to the original in order to be recognized and understood. The benefits which these forms of expression provide for political and cultural participation are their ability to inspire debate and contemplation about political and cultural issues. Accordingly Art. 5.3(k) EUCD suggests an exception for the use of copyrighted works for the purpose of caricature, parody and pastiche. Again, freedom of expression as guaranteed by Art. 10 ECHR provides a foundation for this optional copyright limitation.

In an environment of electronic networks and content in digital format this particular genre of expression flourishes. Technology enables formerly passive consumers to participate in the creation of parody and satire. This environment has permitted the emergence of new formats of caricature, parody or pastiche: these new genres are, e.g., spoofs, samplings, cut-ups, machinimes, mash-ups or fanfiction. [22]

It seems useful to make this fertile form of expression an explicit part of copyright law. Creators are especially encouraged if this form of expression is established in an unambiguous way. Therefore, the approach taken by Art. 122-5-4 of the French Intellectual Property Act, Art. 9(1)s of the Maltese Copyright Act, Art. 22 (1) No.6 of the Belgium Copyright Act and Art. 18b of Dutch Copyright Act, i.e., to implement explicit exemptions for parody, caricature and pastiche represents a best practice standard in Europe. We therefore recommend:

- **Explicitly allow creative forms of political and cultural crticism. Use caricature, parody or pastiche as exemplary forms, but do not restrict the exception to these forms.**

REFERENCES

1
The country reports as well as further materials and resources are available at http://eucd.wizards-of-os.org/index.php/Main_Page.

2
See, e.g., Ian Brown (ed.), Implementing the European Union Copyright Directive, by-country report from 2003, available at http://www.fipr.org/copyright/guide/; Urs Gasser, Michael Girsberger, Transposing the Copyright Directive: Legal Protection of Technological Measures in EU-Member States. A Genie Stuck in the Bottle?, November 2004, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=628007; Urs Gasser, Legal Frameworks and Technological Protection of Digital Content: Moving Forward Towards a Best Practice Model, Fordham Intell. Prop. Media & Ent. L.J. Vol. 17:39 (2006), available at http://law.fordham.edu/publications/articles/200flspub6876.pdf.

3
See, e.g., Yochai Benkler, The Wealth of Networks (2006); William W. Fisher III, Promises to Keep (2004); Lawrence Lessig, Free Culture (2004); Jack Balkin, Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society, 79 N.Y.U. L. Rev. 1 (2004), available at http://www.yale.edu/lawweb/jbalkin/telecom/digitalspeechanddemocraticculture.pdf.

4
See http://eucd.wizards-of-os.org/index.php/Best_Practice_Guide.

5
For an overview, see, e.g., Ian Brown, The Evolution of Anti-circumvention Law, Int'l Rev. L. Computers & Tech. (forthcoming, 2006); June M. Besek, Anti-Circumvention Laws and Copyright: A Report from the Kernochan Center for Law, Media, and the Arts, 27 Colum. J.L. & Arts 385 (2004).

6
Some are documented by the Electronic Frontier Foundation, Unintended Consequences: Seven Years under the DMCA, available at http://www.eff.org/IP/DMCA/unintended_consequences.php

7
See, e.g., Gasser & Girsberger, supra note 2.

8
Bolzano tribunal (criminal section), decision n. 20/12/2005.

9
See Andrea Glorioso, Country Report Italy, available at http://eucd.wizards-of-os.org/index.php/Italy.

10
For an overview see Urs Gasser/ Silke Ernst, From Shakespeare to DJ Danger Mouse: A Quick Look at Copyright and User Creativity in the Digital Age, Berkman Center Research Publication No. 2006-05, available at http://ssrn.com/abstract=909223.

11
For a detailed and recent overview, see European Commission Public Consultation, Overview on the Copyright levy reform, available at http://forum.europa.eu.int/Public/irc/markt/markt_consultations/library?l=/copyright_neighbouring/copyright_reform&vm=detailed&sb=Title.

12
Giles Tremlett, Spanish court rules free music downloads are legal for own use, The Guardian, November 3, 2006, available at http://www.guardian.co.uk/spain/article/0,,1938301,00.html.

13
For a detailed overview see Ernst, Silke and Haeusermann Daniel M., "Teaching Exceptions in European Copyright Law – Important Policy Questions Remain" (August 2006). Berkman Center Research Publication No. 2006-10 Available at SSRN: http://ssrn.com/abstract=925950

14
German Copyright Act from 1965 as amended by September 10, 2003.

15
License by Copy-Dan for "seminarier", available at http://www.copydan.dk/Unlisted_pages/Tekst_Node/Grundaftale_eksempel.aspx.

16
Copyright and the Educational Use of Internet Content, Working Group's Report, Annex G, Modified Proposal by the Educational Sector, online available at http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/en/rp01131e.html; Overview of the International Context, The European Union Approach, available at http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/en/rp01119e.html#3_4.

17
The formulation „for purposes such as" in 5.3(d) EUCD suggests that criticism and review do not constitute the only legitimate purposes of quotation.

18
Users with high speed internet access are increasingly referring to the internet as their primary news source, see John B. Horrigan, Online News, For many home broadband users, the internet is a primary news source, Pew Internet & American Life Project, 22 March 2006, available at http://www.pewinternet.org/pdfs/PIP_News.and.Broadband.pdf.

19
Gerechtshof´s - Gravenhage, 99/1040 (LJN: AI 5638) decision of September 4,2003 and Hoge Raad , C04/020/HR (LJN: AT2056), available at http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=AT2056&u_ljn=AT2056. Cf. also Art. 15a Dutch Copyright Act.

20
Lucie Guibault, The Nature and Scope of Limitations and Exceptions to Copyright and Neighbouring Rights with regard to General Interest Missions for the Transmission of Knowledge: Prospects for their Adaptation to the Digital Environment, e-Copyright Bulletin, October-December 2003, p. 6.

21
Copyright and Related Rights Act of March 30, 1995 as last amended on February 1, 2006, available at http://www.uil-sipo.si/GLAVAGB.htm.

22
See Urs Gasser/Silke Ernst, supra note 10.