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Exceptions abroad: Broadening the horizons of the copyright limitations

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- Copyright protection for “works”: Not only books, images etc., but also computer programs: Directives 2001/29 (InfoSoc) and 2009/24
- No big changes as of yet specifically for computer programs, but focus of exceptions amendments lies more on online, digital content. Teaching and cultural heritage exception will apply also specifically to Directive 2009/24

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From “may” to “shall”: Harmonisation for teaching purposes?

Not yet, but better



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What's old?

Restricted acts involve:

- Permanent or temporal reproduction
- Translation, adaptation, alteration
- Distribution to the public

Exceptions for

- Article 5(3)a InfoSoc Directive: Member States may provide for exceptions to the rights:
 - use 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;

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What's new?

Exceptions for

- Article 4 of the Proposal for a Directive on copyright in the DSM: Member States shall provide for an exception or limitation to the exclusive rights in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:
 - takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;
 - is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.

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What's new?

Nice and clear: Country of Origin- Principle

- Article 4(3): Students from abroad may log in to access their study material

Still two “May’s”:

- Article 4(2): Member States may provide that the exception does not apply to the extent that adequate licences authorising the acts described in paragraph 1 are easily available in the market.
- Article 4(4): Member States may provide for fair compensation.

Result:

- Broad vs. narrow interpretation of harmonized, mandatory teaching-limitation
- Boats are registered in Panama, Universities in countries with broad implementation of teaching-exception, without fair compensation obligation

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Harmonisation of preservation of
cultural heritage?

Not yet and not complete

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What's new?

Exceptions for cultural heritage institutions

- Article 5 of the Proposal for a Directive on copyright in the DSM:
Member States shall provide for an exception permitting cultural heritage institutions, to make copies of any works in their collections for the sole purpose of the preservation of such works.

Nice start:

- It doesn't get lost, but that's it. How do we get to access it on-line?

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What's new?

On-line access for out of commerce works

- Article 7: Member States shall provide the right to cultural heritage institutions to digitalize and make available to the public out of commerce works:
 - non-exclusive licence for non-commercial purposes with a CMO;
 - Rights holders may object: “My work is not out of commerce!”

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So what's really new?

- More exceptions to copyright are harmonised for good on-line, x-border use and access for purposes of education and information
- More possibilities to study on-line and obtain access to out-of-commerce, digitalised books or software
- Possibility to study abroad at the best universities?
- Pressure on rights holders to keep content available and accessible
- Still some work to do

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Thank you!

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