



USE OF COPYRIGHTED WORKS FOR RESEARCH PURPOSES

Marjut Salokannel
Helsinki, Finland
2nd October 2009



Directive 'Copyright in the Information Society' harmonized the exclusive rights but gave only a list of possible exceptions to copyright;

- the list provides the maximum but not minimum level of exceptions

Exceptions to reproduction and communication to the public rights



Member States may provide exceptions and limitations for the rights of reproduction and to the right of making available to the public

- 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;

Directive continues



(n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;

- Institutions are publicly accessible libraries, educational establishments, museums and archives (para 2c)

Directive continues



Three step test:

The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied

- 1) in certain special cases
 - 2) which do not conflict with a normal exploitation of the work or other subject-matter and
 - 3) do not unreasonably prejudice the legitimate interests of the rightholder.
- Shall be applied in a cumulative manner

Green Paper: Copyright in the Knowledge Economy



A consultation as to whether the current mode of harmonizing copyright exceptions is feasible in the on-line environment, e.g. with regard to

- the exception for the benefit of libraries and archives;
- the exception allowing dissemination of works for teaching and research purposes;

Green paper continues



- Commission acknowledges that this exception has often been implemented in a narrow sense and e.g. distance or internet-based learning is not included. The fact that it only covers making copies of excerpts of research material is problematic.
- Moreover, according to the Commission the extended collective licensing solutions adopted in the Nordic laws present the risk that no agreement or a rather restrictive agreement will be reached, thus creating legal uncertainty for educational establishments.

Green paper continues



- Differing regulations in member states create legal uncertainty with regard to what is permitted under the exception, in particular when teaching and research is carried within a transnational framework
- Should the exception be made mandatory and what should the scope of such exception be

Analysis of the current situation



- in a situation where a researcher may access materials situated in different member states from a single point of the infrastructure it is essential that this act is governed by similar legal provisions throughout the infrastructure
- currently there are huge differences btw e.g. United Kingdom (fair dealing); Germany and the Netherlands (comprehensive exception) and Finland (no exception); in Spain and Greece the exception covers only teaching and not research

A proposal



Should we consider drafting a common ESFRI proposal to the commission to harmonize these provisions?

- the exception should be mandatory and it should provide the minimum level of exemption within the EU; it should not be possible to override it contractually
- efficient functioning of a pan-European research infrastructure is virtually impossible without harmonized copyright framework

CLARIN

Common Language Resources and Technology Infrastructure



Thank you for your attention
