

Comparative Overview of Exceptions and Limitations benefiting Educational Institutions and Libraries, as well as their users

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Main Points:

- The US Copyright Act and most of the national Copyright Acts of the EU (implementing the EU Copyright Directive 29/2001) provide reasonably circumscribed exceptions and limitations.
- §52a of the German Copyright Act may serve as a useful comparator to benchmark other national copyright exceptions and limitations. This is so, because §52a is both circumscribed and over-broad at the same time: To the extent that schoolbooks are carved-out from the application of the exception, §52a preserves the main market for school book publishers. However, the exception remains applicable to tertiary institutions without restraint and is overbroad.
- Other exceptions that appear over-broad, include those introduced in Belgium and Poland. These laws are probably not in compliance with EU legal requirements.

The table below lists relevant provisions of national copyright legislation after implementation of the EU Directive 29/2001 and uses §52a of the German Copyright Act as a comparator.

EU legal requirements contained in Directive 29/2001:

- Recital (40)²
- Article 5.2. (c)³, Article 5.3. (a)⁴ Article 5.3. (n)⁵
- Article 5.5⁶

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² Member States may provide for an exception or limitation for the benefit of certain non-profit making establishments, such as publicly accessible libraries and equivalent institutions, as well as archives. However, this should be limited to certain special cases covered by the reproduction right. Such an exception or limitation should not cover uses made in the context of on-line delivery of protected works or other subject matter. This Directive should be without prejudice to the Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Directive 92/100/EEC. Therefore, specific contracts or licences should be promoted which, without creating imbalances, favour such establishments and the disseminative purposes they serve.

³ Article 2(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;

⁴ Article 3(a) 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;

⁵ Article 3(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;

⁶ Article 5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

Overview:

Country/Copyright Exception/Limitation	Field of application of exception/limitation	Comparison to §52a of the German Copyright Act		
Belgium, Art. 22	Intranet of schools for purposes of illustration	Broader than §52a, collides with main market for school book publishers		
Denmark Article 16 (2)	Articles and excerpts may be copied by libraries	Use may not take place on the whole intranet		
Article 21 (3)	„On the spot” exception for personal viewing in library	Use may not take place on the whole intranet		
France Article 122 (5) ^{e7}	Law passed, but not yet in force (1 January 2009). No application in case of „written works in digital format“ or “pedagogical works” or for research, short works	No general exception, carve-out of works electronically available and academic and research works as well as “short works”.		
Greece	Exception in favour of inclusion of short works into educational books, but no general exception for intranet use or electronic library networked use			
Great Britain	No comparable exception for intranet, electronic delivery or „on the spot“ consultation			
The Netherlands	Works that are part of library collection on dedicated terminals	No provision applying to the Intranet generally		

⁷ For the text of the law: <http://www.legalis.net/pdf/r3185.pdf>, <http://www.assemblee-nationale.fr/12/dossiers/031206.asp>. Law as per July 2008 :

Annex to STM Position entitled Digital Copyright Exceptions and Limitations for Scholarly Publications in the Education and Research Communities

Country/Copyright Exception / Limitation	Field of application of exception/ limitation	Comparison to §52a		
Italy Article 68, esp. Subsection (1), (5) and (8)	15% of a work may be copied, if no competition arises with the rights of the author as a result of such use.	No Intranet use		
Poland	Broad exception permitting the communication of the public for works for purposes of teaching and over terminals in libraries	The Polish Copyright Act goes further than §52a, the exception relating to „on the spot consultations“ is erroneously based on Article 5.2(c) of Directive 29/2001, not on article 5.3 (n.).		
Spain Article 32(2)	Exception is similar to §52a, but the carve-out relates to school books and academic books	Important carve-out in direct opposition to §52a		
Sweden Article 16. Articles 42 a-d, in particular in each case subsec. 2	Digital copies are permitted if a so-called extended collective licence permits it. Moreover, each author has an opt-out opportunity in such case.	A limitation applies only if users and rightsholders' representatives have reached an agreement and each rightsholder may opt out.		
Hungary	An on-the-spot consultation exception is provided for if no licence is available. The exception is limited to dedicated terminals and may not engulf the whole institutional network	No Intranet		
USA Article 107 Article 108 Article 110	Fair use Library exceptions „TEACH ACT“	No Intranet, only during mediated instructions, ie the equivalent of „in class“.		