

# European Workshop

## Copyright Regulation in Europe – An Enabling or Disabling Factor for Science Communication?

### Copyright and science Demands and objectives

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 HEINRICH BÖLL STIFTUNG  
The Green Political Foundation



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*Who owns knowledge?*

*Who owns information?*



„Everyone says that the **ownership and control of information** is one of the most important forms of **power** in contemporary society ... . It is intellectual property, not the regulation of cyber-smut, that provides the key to the distribution of wealth, power and access in the information society.

The intellectual property regime could make - or break - the educational, political, scientific and cultural promise of the Net.”

J. Boyle: A politics of intellectual property: Environmentalism for the net?  
(<http://www.law.duke.edu/boylesite/intprop.htm> )



## Letter from Thomas Jefferson to Isaac McPherson, Monticello 13.8.1813:

„If nature has made any one thing less susceptible than all others of exclusive property, it is the **action of the thinking power called an idea**, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it.

**He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.”**



## Universal Declaration of Human Rights

### Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.



## Charter of Fundamental Rights of the European Union

### ARTICLE 11

#### FREEDOM OF EXPRESSION AND INFORMATION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected.



„Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such”

TRIPS - Agreement on Trade-Related Aspects of Intellectual Property Rights Sect. 1 Art. 9 Abs. 2



## Who owns knowledge?

10. We recognise that **access to information and sharing and creation of knowledge** contributes significantly to strengthening **economic, social and cultural development**, thus helping all countries to reach the internationally-agreed development goals and objectives, including the **Millennium Development Goals**.

**Tunis Commitment Document WSIS-05/TUNIS/DOC/7 -E  
15.11.2005**



# Who owns knowledge?

This will lead us at the end to the concept of **knowledge as a commons** and to the concept of **common property rights** and **licence rights for private use**

thus

Knowledge is owned by anybody or everyone, respectively

but

Knowledge can only be accessed when mediately represented

How? Knowledge is represented in information products

therefore



# Who owns knowledge?

therefore

use of knowledge is only possible **through access to information**

making knowledge, **theoretically abundantly available, a scarce resource**, too – because of lack of or restriction to access to information

rather than

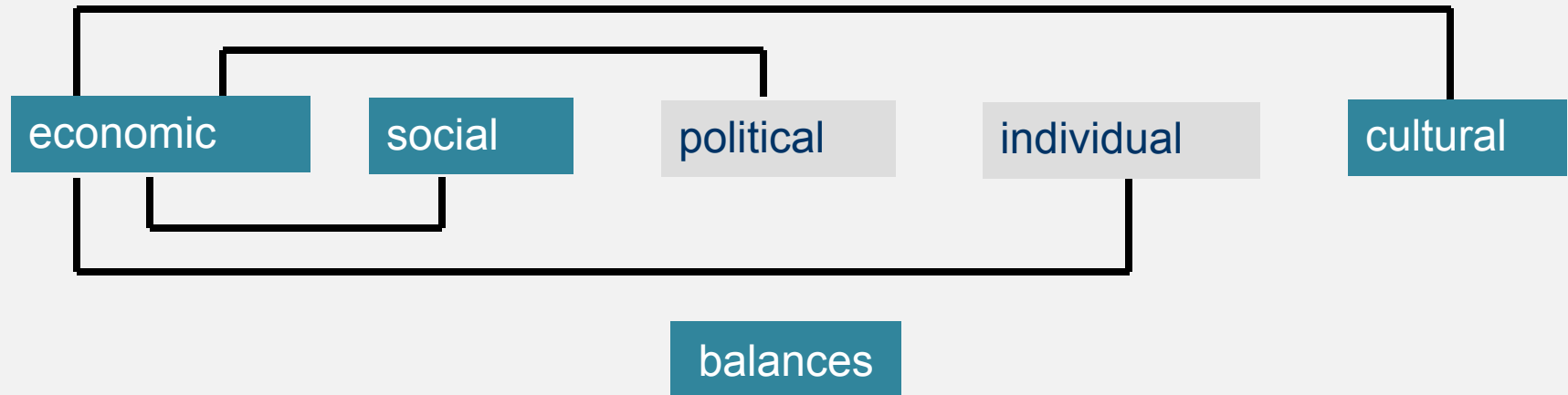
allowing knowledge and information to be a means of **individual and societal development**



# *Potentials and opportunities for development*



# Knowledge and information are potentials for development



98. To strengthen the enjoyment of **economic, social and cultural rights**, additional approaches should be examined, such as a system of indicators to measure progress in the realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.

**VIENNA DECLARATION AND PROGRAMME OF ACTION**

**WORLD CONFERENCE ON HUMAN RIGHTS**

Vienna, 14-25 June 1993

but in reality

balances for development have been drastically shifted towards the economic interest in exploitation



# *Commercialization*

*interest of the copyright  
industries*



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## COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2006 REPORT

*The U.S. copyright industries remain one of America's largest and fastest growing economic sectors.*

### Highlights of this Report:

Copyright Industries in the U.S. Economy: The 2006 Report was completed by Economists Incorporated for the International Intellectual Property Alliance (IIPA) and updates ten previous studies. This is the second IIPA report which reflects the recommended economic and statistical standards developed by the World Intellectual Property Organization (WIPO) in 2003.

Source: Copyright Industries in the U.S. Economy: The 2006 Report, by Stephen E. Siwek, Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), available at [www.iipa.com](http://www.iipa.com).

Note: The “core” industries are those copyright-related industries whose primary purpose is to produce and/or distribute copyright materials. The “total” copyright industries contain four sub-sectors called the core, partial, non-dedicated support, and interdependent sectors.

Report issued on January 30, 2007



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*The U.S. copyright industries remain one of America's largest and fastest growing economic sectors.*

Highlights of this Report:

The **core industries** are those industries whose primary purpose is to **create, produce, distribute or exhibit copyright materials**. These industries include newspapers, books and periodicals, motion pictures, recorded music, music publishing, radio and television broadcasting, and business and entertainment software.





## Highlights of this Report:

### Major Contribution to the U.S. Gross Domestic Product and Real Growth

- The U.S. “core” copyright industries accounted for an estimated **\$819.06 billion or 6.56% of the U.S. gross domestic product (GDP)** in 2005, up from 6.48% of the U.S. GDP (\$760.49 billion) in 2004.
- The U.S. “total” copyright industries accounted for an estimated \$1.38 trillion or 11.12 % of GDP in 2005, up from 11.09% of the U.S. GDP (\$1.3 trillion) in 2004.
- **The “core” copyright industries were responsible for 12.96% of the growth achieved in 2005 for the U.S. economy as a whole.** For the first time, this report includes estimates of the annual contributions made by the copyright industries to real growth experienced by the U.S. economy. This means that the growth contributed by these core industries (12.96%) was almost double their current dollar share of GDP (6.56%).

USA market approx 40% of the world copyright market (33% print; 40% optical; 50% magnetic/digital)  
\$ 2047.65 billion world-wide





## COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2006 REPORT

*The U.S. copyright industries remain one of America's largest and fastest growing economic sectors.*

Highlights of this Report:

### *Strong Employment and Wages*

- The “core” copyright industries employed **5.38 million workers in 2005** (4.03% of U.S. workers), up from 5.34 million workers in 2004 (4.07%).
- The “total” copyright industries employed 11.3 million workers in 2005 (8.49%), up from 11.2 million workers in 2004 (8.53%).
- This report, for the first time, provides data on the estimated average annual compensation for a worker in the core copyright industries: **\$69,839 in 2005** up from \$66,997 in 2004. **This represents a 40% premium over the compensation paid the average U.S. worker.**



## Foreign Sales and Exports

- **In 2005, estimated foreign sales and exports of the core copyright industries increased to at least \$110.8 billion, leading other major industry sectors.** Those sectors include: chemicals and related products (not including medicinal and pharmaceutical products) (\$97.17 billion); motor vehicles, parts and accessories (\$76.26 billion); aircraft and associated equipment (\$49.79 billion); food and live animals (\$48.29 billion); and medicinal and pharmaceutical products (\$25.95 billion).

Copyright Industries in the U.S. Economy: The 2006 Report was completed by Economists Incorporated for the International Intellectual Property Alliance (IIPA) and updates ten previous studies. This is the second IIPA report which reflects the recommended economic and statistical standards developed by the World Intellectual Property Organization (WIPO) in 2003.

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Note: The “core” industries are those copyright-related industries whose primary purpose is to produce and/or distribute copyright materials. The “total” copyright industries contain four sub-sectors called the core, partial, non-dedicated support, and interdependent sectors.

Report issued on January 30, 2007



# copyright industries – protected by national IPR laws and international laws and treaties

## assumption

**strong copyright (IPR)** necessary as incentive for **creative work**

**strong copyright (IPR)** necessary as incentive and **protection for innovation** in industry

**strong copyright (IPR)** a competitive advantage for **home/national economies**

true or false?

true or false?

true or false?

## consequences

in science:  
interest in moral rights  
not in exploitation rights

obsolete business models

obsolete (19th century) market models – not appropriate in global markets



# *copyright industries – protected by national IPR laws and international laws and treaties*

## assumption

**strong copyright (IPR)** necessary as incentives **for creative work**

**strong copyright (IPR)** necessary as incentives and **protection for innovation** in industry

**strong copyright (IPR)** a competitive advantage for **home/national economies**

protection by law for **technical protection tools**

## consequences

***one copyright for all kinds of creative work***

continuous **strengthening of copyright protection – primacy of commercial exploitation**

**use** of knowledge and information (publicly produced in science and education) **only as exceptions** to exclusive exploitation rights - not as a **common right**



also true for  
information/  
publishing  
markets

## Scientific publishing in transition

Mark Ware Consulting Ltd. Publishing and Elearning  
Consultancy:

**International Association of Scientific, Technical and  
Medical Publishers (STM)**

The **global market** for English-language STM (scientific, technical and medical) journals is **about \$5 billion**. The industry employs **90,000 people globally**, of which 40%, or 36,000 are employed in the EU. Another 20–30,000 full time employees are indirectly supported

there are about 2000 publishers, made up of learned societies, university presses and commercial publishers (though, to blur the picture somewhat, many society journals are published by commercial publishers). Their respective shares of article output are about 30%, 2% and 64% .

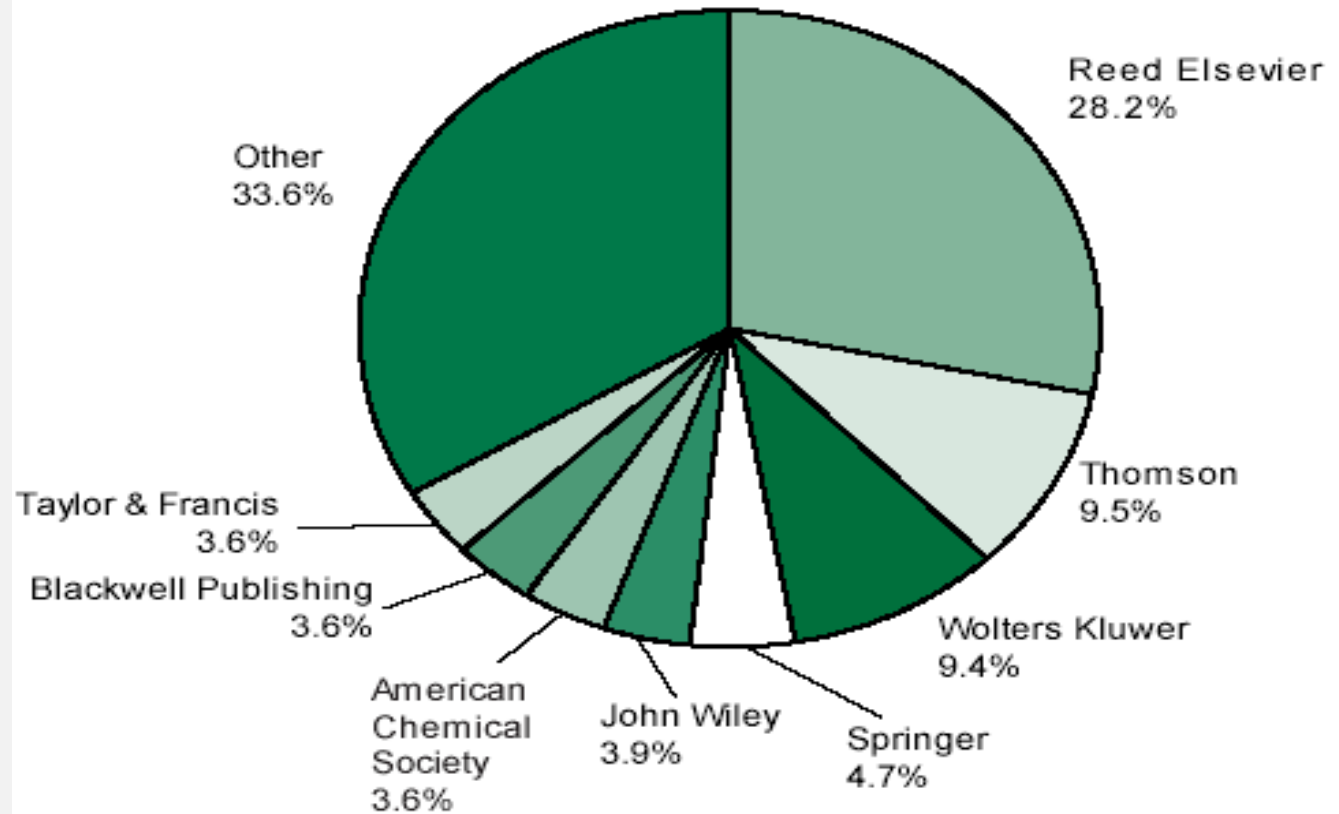


# Commercialization of knowledge – Scientific publishing

The publishing of scientific books and journals... is an activity dominated by a **handful of multinational publishers**, who in reality can dictate to libraries the terms for using the material they publish. These terms **frequently override exceptions** and user privileges granted by law, e.g. reproductions for private or personal use. (EBLIDA)

Figure 2

Global Market Shares of STM Publishers, 2003



EPS Ltd, June 2004



# Commercialization of knowledge – Scientific publishing

Knowledge markets: Science Direct – Elsevier et al.

The screenshot shows the ScienceDirect website. On the left is a navigation menu with links like 'About ScienceDirect', 'Content Coverage', and 'Librarian Services'. The main header reads 'ScienceDirect® Digital library of the future'. Below this is a search bar with a 'go' button and a 'Browse A-Z' link. A 'Subject Areas in ScienceDirect' sidebar lists categories such as 'Agricultural and Biological Sciences' and 'Arts and Humanities'. The main content area features 'Top Publications in ScienceDirect' with covers for 'Current Opinion in Plant Biology', 'Biochimica et Biophysica Acta (BBA) - Reviews on Cancer', and 'Journal of Agricultural Science'. Two dark blue text boxes are overlaid on the page: one in the center-right stating 'Primary target groups no longer intermediaries (libraries) but end-user (retail markets)' and another at the bottom stating '“Unmediated Document Delivery”'. At the bottom left of the page is a Creative Commons Attribution-ShareAlike (CC BY SA) license logo.

Primary target groups no longer intermediaries (libraries) but end-user (retail markets)

“Unmediated Document Delivery”



Knowledge markets: Science Direct – Elsevier et al.

“Unmediated Document Delivery”

The screenshot shows the ScienceDirect website interface. At the top, it reads "ScienceDirect® Digital library of the future". Below this is a navigation menu with links: "About ScienceDirect", "Content Coverage", "Librarian Services", "Guest User Info", "About Athens", "Why Register?", "User Guides", "ScienceDirect News", "Contact Us", "Check Your IP", and "More Info...". There are also promotional banners for "TOP25 Hottest Articles" and "interactive tutorials". A small image of a person looking at a screen is visible on the right side of the page.

**ScienceDirect® is the essential information resource for millions of scientists around the world.**

ScienceDirect is the world's largest electronic collection of science, technology and medicine full text and bibliographic information.

Investing in ScienceDirect means investing in an evolving solution, and you will find us a reliable partner.

Since its launch in 1997, ScienceDirect has evolved from a web database of Elsevier journals to one of the world's largest providers of scientific, technical and medical (STM) literature.

Primary target groups no longer intermediaries (libraries) but end-user (retail markets)



Knowledge markets: CrossRef

“Unmediated Document Delivery”

**crossref**

Member Area

About Crossref Publishers Libraries Affiliates Researchers

DOI FREE LOOK UP DOI OPEN URL DOI IN USE

### Quick Links

- ☑ CrossRef News: IOP Goes Live with Forward Linking
- ☑ Forward Linking Information
- ☑ Multiple Resolution Pilot
- ☑ CrossRef Search
- ☑ New Members this week: Updated May 2
- ☑ CrossRef indicators: The latest numbers from the stats department

**16004423**  
Registered DOIs

### Welcome

As technology transforms the flow of information and ideas everywhere, publishers who participate in CrossRef are pleased to offer the scholarly community a milestone for electronic publishing -- a collaborative, cross-publisher reference linking service that turns citations into hyperlinks, allowing researchers to navigate online literature at the article level. CrossRef is a wholly independent association of scholarly and professional publishers — large and small, commercial and non-profit, traditional and non-traditional — that cooperate to provide reference links into and out of their electronic content. Our primary mission is to serve as the citation linking backbone for all scholarly literature online.

### DOI Resolver

If you encounter a DOI (e.g., 10.1037/0003-066X.59.1.29) that is not hyperlinked, you can enter it in the box below:

TIP: You can turn a DOI into a URL by appending <http://dx.doi.org/> to the front of it.

Primary target groups no longer intermediaries (libraries) but end-user (retail markets)



# International regulation



„has caused a subtle reorientation of copyright away from the author towards a trade-oriented perspective“

**Berne** Convention for the Protection of Literary and artistic works (Paris Text 1971)

Agreement on Trade-Related Aspects of Intellectual Property Rights (**WTO-TRIPS**-Treaty) – 1994

**WIPO** Copyright Treaty (WCT) - 1996

**WIPO** Performances and Phonograms Treaty (WPPT) - 1996

*Digital Millennium Copyright Act* - **USA** 1998

**EU** -European Copyright Directive (“the Directive”) 2001

**First Adaptation** of the European Copyright Directive in **Germany** 2003 – **second adaptation** 2008; **third adaptation** (particularly with respect to science and education) agreed on in parliament, but still delayed.

1996  
Pérez de Cuéllar  
UNESCO-Bericht  
*Our Creative  
Diversity*

## Berne Convention for the Protection of Literary and artistic works (Paris Text 1971)

### Article 9

(1) **Authors of literary and artistic works** protected by this Convention shall have the **exclusive right** of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

*three step test*

....



## Agreement on Trade-Related Aspects of Intellectual Property Rights (**WTO-TRIPS**-Treaty) – 1994

The TRIPS Agreement is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994.

[http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm0\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm)

### **Article 13**

#### Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

....

*three step test*





*Collection of Laws for Electronic Access*

WIPO



## WIPO Copyright Treaty (WCT)\*

(adopted in Geneva on December 20, 1996)



*Collection of Laws for Electronic Access*



WIPO

## WIPO Performances and Phonograms Treaty (WPPT)\*

(adopted in Geneva on December 20, 1996)



WIPO Copyright Treaty (WCT) - 1996

WIPO Performances and Phonograms Treaty (WPPT) - 1996

Digital Millennium Copyright Act - USA 1998

EU -European Copyright Directive (“the Directive”) 2001

***they all inherited the  
threestep test and they all  
strengthen the primacy of  
private (commercial)  
property/exploitation rights***



**Is IP therefore a private right  
or a commons rights?**

The World Intellectual **Property** Organization (WIPO) has proclaimed the **universal value of IP** and has shown that IP is **native to all peoples, relevant in all times and cultures**, and that it has marked the world's evolution and historically contributed to the progress of societies. **Intellectual property is the heritage of us all.**



# International reinforcement of IPR



Extension of IPR **in time**

Extension of IPR to **living objects** and other objects in nature

Extension of IPR to **software (still controversial, at least in the EU)**

Introduction of some **sui-generis-regulation**, such as for data bases **(as in the EU)**



**Lowering the level** of originality for IPR

Extension of IPR to **business models**

Extension of **publication rights**

Extension of **technical protection** of IPR (**Digital Rights Management**) and legal protection of technical measures

**Reducing copyright exceptions** (science, private copies,...)

## Extension of IPR in time

Bono: an American record producer, singer, actor, and politician

Sonny Bono) **Copyright Term Extension Act 1998** - also: "The Mickey Mouse Protection Act"

Bono, respectively Mary Bono, his widow, wanted **copyright to last forever** – but this (“forever”) was considered a violation of the Constitution – “limited time”

Proposal **Jack Valenti** (Motion Picture Association of America): "forever less one day"



# International reinforcement

## Extension of IPR in time - +20 years

Before:

**single author's** copyright **50 years** after his death  
**corporations'** copyright **75 years** after invention

Then:

**single author's** copyright 70 years after his death (Mickey mouse – invented 1928 – to be expired 2003)

**corporations'** copyright **95 years** after invention (Mickey mouse extended till 2023)



The **enforcement of copyright regulations** (in Europe and North America in the last 20 years),  
which heavily supports the commercial exploitation of knowledge and information (not necessarily creators' rights),  
  
makes it **more and more difficult to freely access the world-wide information resources** in principle available on the world-wide information markets.

# EU-Directive 2001



# EU-Directives, Recommendations, Green Papers, ... on Copyright

RICHTLINIE 2001/29/EG DES EUROPÄISCHEN PARLAMENTS

UND DES RATES

ZUR HARMONISIERUNG BESTIMMTER ASPEKTE DES URHEBERRECHTS

UND DER VERWANDTEN SCHUTZRECHTE IN DER

INFORMATIONSGESELLSCHAFT



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
COM(2008) 466/3

GREEN PAPER

Copyright in the Knowledge Economy

Brüssel, den 22. Mai 2001

PE-CONS 3622/01

DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 29 April 2004

on the enforcement  
of intellectual property rights

COMMISSION STAFF WORKING DOCUMENT

Report to the Council, the European Parliament and the Economic and Social Committee on the application of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

Brussels, 30.11.2007

SEC(2007) 1556

i2010: Digital Libraries  
High Level Expert Group – Copyright Subgroup

Report on Digital Preservation, Orphan Works, and  
Out-of-Print Works.  
Selected Implementation Issues

(adopted by the High Level Expert Group at its third meeting on 18.4.2007)

COMMISSION RECOMMENDATION

on the management of intellectual property in knowledge transfer activities  
and Code of Practice for universities and other public research organisations

(Text with EEA relevance)

GREEN PAPER

The European Research Area: New Perspectives

(Text with EEA relevance)



COMMISSION OF THE EUROPEAN COMMUNITI

{SEC(2007) 412}

## **The Recasting of Copyright & Related Rights for the Knowledge Economy**

final report

*Institute for Information Law*  
University of Amsterdam  
The Netherlands  
November 2006

Bernt Hugenholtz, IViR  
Mireille van Eechoud, IViR  
Stef van Gompel, IViR  
Lucie Guibault, IViR  
Natali Helberger, IViR  
Mara Rossini, IViR  
Lennert Steijger, IViR  
Nicole Dufft, Berlecon Research  
Philipp Bohn, Berlecon Research

## **CONCEIVING AN INTERNATIONAL INSTRUMENT ON LIMITATIONS AND EXCEPTIONS TO COPYRIGHT<sup>†</sup>**

**FINAL REPORT** March 06, 2008

**STUDY ON THE IMPLEMENTATION AND EFFECT IN MEMBER  
STATES' LAWS OF DIRECTIVE 2001/29/EC ON THE  
HARMONISATION OF CERTAIN ASPECTS OF COPYRIGHT AND  
RELATED RIGHTS IN THE INFORMATION SOCIETY**

February 2007



# EU-Directive 2001

DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 22 May 2001

1 the harmonisation of certain aspects of copyright and related rights in the information society



# EU-Directive 2001



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.11.2007  
SEC(2007) 1556

COMMISSION STAFF WORKING DOCUMENT

Report to the Council, the European Parliament and the Economic and Social Committee on the application of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
COM(2008) 466/3

GREEN PAPER

Copyright in the Knowledge Economy



(1) The Treaty provides for the establishment of **an internal market** and the institution of a system ensuring that competition in the internal market is not distorted. **Harmonisation** of the laws of the Member States on copyright and related rights.

(3) The proposed harmonisation will help to implement the four freedoms of the internal market and relates to compliance with the fundamental principles of law and especially of property, including intellectual property, and freedom of expression and the public interest.

- The free movement of goods;
- The free movement of persons (and citizenship), including free movement of workers, and freedom of establishment;
- The free movement of services;
- The free movement of capital.

A fifth freedom:

Movement of knowledge??



(4) A harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a **high level of protection of intellectual property**, will **foster substantial investment in creativity and innovation**, including network infrastructure, and lead in turn **to growth and increased competitiveness of European industry**, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors. This will **safeguard employment and encourage new job creation**.



(31) A **fair balance of rights and interests** between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject-matter must be safeguarded.

The existing **exceptions and limitations** to the rights as set out by the Member States have to **be reassessed in the light of the new electronic environment**. Existing differences in the exceptions and limitations to certain restricted acts have direct negative effects on the functioning of the internal market of copyright and related Rights ...

In order to ensure the proper functioning of the internal market, **such exceptions and limitations should be defined more harmoniously**. ...



(32) This Directive provides for an **exhaustive enumeration of exceptions** and limitations to the reproduction right and the right of communication to the public.



# EU-Directive 2001 exceptions für educational and scientific purposes

(34) Member States should be given the **option of providing for certain exceptions or limitations for cases such as educational and scientific purposes,**  
for the benefit of public institutions such as **libraries and archives,**  
for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings.



(40) 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. ...



(42) When applying the exception or limitation for noncommercial educational and scientific research purposes, including distance learning, the non-commercial nature of the activity in question should be determined by that activity as such.

The organisational structure and the means of funding of the establishment concerned are not the decisive factors in this respect.



(47) Technological development will allow rightholders to **make use of technological measures** designed to prevent or restrict acts not authorised by the rightholders of any copyright, rights related to copyright or the *sui generis* right in databases. ...

In order to avoid fragmented legal approaches that could potentially hinder the functioning of the internal market, there is a **need to provide for harmonised legal protection against circumvention of effective technological measures** and against provision of devices and products or services to this effect.



*Article 2* **Reproduction right**

*Article 3* **Right of communication to the public of works and right of making available to the public other subject-matter**

*Article 4* **Distribution right**

*Article 5* **Exceptions and limitations**

*Article 6* **Obligations as to technological measures**

*Article 7* **Obligations concerning rights-management information**



disabling?



**English:** A barrier, restricting the acces for cars for a nature reserver

**Deutsch:** Eine Schranke, die die Einfahrt von Kraftfahrzeugen in ein Naturschutzgebiet verhindert

[http://commons.wikimedia.org/wiki/Image:Moderne\\_Schranke.jpg](http://commons.wikimedia.org/wiki/Image:Moderne_Schranke.jpg)

enabling?



[www.gristede.de/assets/images/a\\_Schranke.jpg](http://www.gristede.de/assets/images/a_Schranke.jpg)



## Exceptions or limitations to the reproduction right

(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**;



## Exceptions or limitations to the right of communication to the public (a-o)

(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;

(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;



# The EU-Directive 2001 – 5 major problems

- (1) Contrary to the main objective (**harmonisation of copyright** in the EU countries) there is **only one obligatory exception** - for the benefit of people with a disability.
- (2) The list of (non-mandatory) exceptions is **exclusive**.
- (3) **Technical protection measures (may) override legal exceptions**, even for the **use in science**
- (4) **Priority of contractual arrangements** (licence rights) (may) **eliminate the benefits of otherwise legally binding exceptions**.
- (5) There is **no general privilege for science, education, libraries and other public intermediaries**

“It is strange that the legislator could regard an exclusive list as adequate in the light of the evolving Internet technologies. “  
(EBLIDA)



***External effects of the  
commercialization of  
knowledge and information***



The increasing commercialization of knowledge and information in education and science **has a negative effect on access to information and on the availability of knowledge**, which is indispensable for education and growth of science and, consequently, for innovation in economy.



**Education and science** traditionally do not dispose of powerful enough institutional means to establish a **counterweight** against the professional lobby in the publishing and ICT industry in general.

**Therefore the influence of education and science on copyright regulations and laws has been unacceptably low.**



**IPR** no longer a means of innovation or of protection of individual rights, **but a means of exploitation and of impediment for development**



**Copyright initiative in favour of  
science and education in Germany**

**Coalition for Action „Copyright for  
Education and Science “**





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## The Göttingen Declaration on Copyright for Education and Research of 5 July 2004

Göttingen Declaration for printout: [\[PDF-file\]](#) [\[RTF-file\]](#) [\[DOC-file\]](#)

### Preliminary Remarks

The answer to the question 'How accessible are knowledge and information?' will determine the opportunities for education and development open to every citizen in the information society and the opportunities future generations will have to build on existing knowledge. The legal provisions set out in German copyright law will determine whether open, networked communications structures will continue to develop in our society in the long term. They will also affect the quality of our education system, the inventiveness of the sciences and the innovative capacity of trade and industry. In a global, competitive environment, they play a vital role in promoting social, cultural and economic development and hence in securing the future of our society.

**Next Relevant Dates**

December 11<sup>th</sup> 2008:  
**„Das Urheberrecht zwischen den nationalen Körben und dem internationalen Rahmen“**  
 Workshop des „Urheberrecht für Bildung und Wissenschaft e.V.“ in Berlin, 13 bis 18:30 Uhr.  
 Am 12.12. vormittags: **Vollversammlung des Aktionsbündnisses** ([more...](#))

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**News**

[RSS](#) [G.92](#)

October 20<sup>th</sup> 2008:  
 Bildungsgipfel ohne Informationsfreiheit nur eine Schimäre ([more...](#))

July 24<sup>th</sup> 2008:  
 Vorsichtiger Optimismus — Bewegung im europäischen Urheberrecht? Ein neues Grünbuch der EU-Kommission ([more...](#))

***In a digitised and networked information society, access to global information for the purposes of education and science must be guaranteed at all times from any place.***

### Goals

**Education and research** must be allowed unrestricted use of the new ways of disseminating and acquiring knowledge and information. However, the limitations in German copyright law (particularly sections 52a and 53) no longer set out the privileges needed by education and science in a positive, clearly understandable and practicable way. Instead, these privileges are subject to considerable restrictions which are likely to create uncertainty or even criminalise those working in education and science, instead of offering the legal certainty they require to perform work for the benefit of the general public.



# *Coalition for Action Copyright for Education and Science*

to change this unsatisfactory situation in Germany, a Coalition for a fair and just copyright in education and science was founded and the so-called Declaration of Goettingen was agreed on.



**Coalition for Action**  
**"Copyright for Education and Research"**  
Aktionsbündnis „Urheberrecht für Bildung und Wissenschaft“

The Göttingen Declaration on  
Copyright for Education and Research  
of 5 July 2004



# Coalition for Action Copyright for Education and Science

Since this Declaration was published, it has been signed by **all major Science Organizations** (for instance the Council of Science, the Max-Planck-Society, and the joint Conferences for Science and Culture), **almost 7000 individuals**, by **approx. 360 domain-specific scientific societies** and other institutions such as libraries, universities and research centers.

## Subscribers (Status 11. November 2008)

### Scientific Organisations (6):

Organisation	Akronym
Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V.	FhG
Helmholtz-Gemeinschaft Deutscher Forschungszentren e.V.	HGF
Hochschulrektorenkonferenz	HRK
Max-Planck-Gesellschaft	MPG
Wissenschaftsgemeinschaft Gottfried Wilhelm Leibniz e.V.	WGL
Wissenschaftsrat	WR



as of Nov 1th 2008

Learned Societies, Federations, Institutions (359):

Personal Subscribers (6992)

# Coalition for Action Copyright for Education and Science

## Preliminary Remarks

The answer to the question 'How accessible are knowledge and information?' will determine the opportunities for education and development open to every citizen in the information society and the opportunities future generations will have to build on existing knowledge. The legal provisions set out in German copyright law will determine whether open, networked communications structures will continue to develop in our society in the long term. They will also affect the quality of our education system, the inventiveness of the sciences and the innovative capacity of trade and industry. In a global, competitive environment, they play a vital role in promoting social, cultural and economic development and hence in securing the future of our society.

With regard to the implementation of Directive 2001/29/EC in Germany, the legislature has so far mainly addressed the concerns of rightholders regarding the commercial use of digital media and networks as additional distribution channels. The prime concern here has been to minimise the risks related to private copying rather than to encourage exploiting the opportunities afforded by the new technical media to the public at large. The latter point is particularly important for the fields of education and science, because it is here that the information society contains new potential for imparting knowledge and promoting co-operation between scientists. The way these new opportunities are used is a decisive competitive factor on the global stage.

We, the undersigned, undertake to ensure that the full potential of the digital media and communications systems remain open for use by the general public and, in particular, by science, and that these media and systems are not subject to restrictions which primarily serve the commercialisation of information by the private sector.

***In a digitised and networked information society, access to global information for the purposes of education and science must be guaranteed at all times from any place.***

But success was rather limited

because of the **EU copyright directive** and the **holy cow** of international copyright – **the threestep test**



**Problems for science and  
education caused by strong  
copyright regulation**

**The example of copyright  
(Urheberrecht in Germany)  
exceptions - limitations**

# The critical norms – exceptions for science, education, document delivery/libraries and

Tendency: many limitations for originally useful exceptions

disabling?



**English:** A barrier, restricting the access for cars for a nature reserver

**Deutsch:** Eine *Schranke*, die die Einfahrt von Kraftfahrzeugen in ein Naturschutzgebiet verhindert

[http://commons.wikimedia.org/wiki/Image:Moderne\\_Schranke.jpg](http://commons.wikimedia.org/wiki/Image:Moderne_Schranke.jpg)



enabling?



[www.gristede.de/assets/images/a\\_Schranke.jpg](http://www.gristede.de/assets/images/a_Schranke.jpg)

# *The critical norms – exceptions for science, education, document delivery/libraries and*

Tendency: many limitations for originally useful exceptions

§ 52a exception for education and science

§ 52b use of electronic material in libraries, archives and museums

§ 53a Document delivery

§ 95b protection of technical protection measures (digital rights management)

§ 31a use of unknown new publication forms

Technical measures may remove the availability and validity of exceptions – „they are themselves immune from practicable legal challenge“ (EBLIDA)



# Exceptions for science, education

Only small parts of works

Only for use in classroom

Time limit end of 2006, then 2008, now 2012

UrhG § 52a Öffentliche Zugänglichmachung für Unterricht und Forschung

§ 52a: Nicht mehr anzuwenden gem. § 137k (F 10. September 2003) mWv 1.1.2007

(1) **A reasonable fee needs to be paid to collecting societies in any case**

1. einzelne Beiträge aus Zeitungen oder Zeitschriften zur Veranschaulichung im Unterricht an Schulen, Hochschulen, nichtgewerblichen Einrichtungen der Aus- und Weiterbildung sowie an Einrichtungen der Berufsbildung ausschließlich für den bestimmt abgegrenzten Kreis von Unterrichtsteilnehmern oder

2. veröffentlichte Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften ausschließlich für einen bestimmt abgegrenzten Kreis von Personen für deren eigene wissenschaftliche Forschung

öffentlich zugänglich zu machen, soweit dies zu dem jeweiligen Zweck geboten und zur Verfolgung nicht kommerzieller Zwecke gerechtfertigt ist.

(2) Die öffentliche Zugänglichmachung eines für den Unterrichtsgebrauch an Schulen bestimmten Werkes ist stets nur mit Einwilligung des Berechtigten zulässig. Die öffentliche Zugänglichmachung eines Filmwerkes ist vor Ablauf von zwei Jahren nach Beginn der üblichen regulären Auswertung in Filmtheatern im Geltungsbereich dieses Gesetzes stets nur mit Einwilligung des Berechtigten zulässig.

For the use of defined research groups

Only for registered students in classes

without any direct or indirect commercial interest

Use of copyrighted material in schools only with special permission of rightsholders



„§ 52b

## Wiedergabe von Werken an elektronischen Leseplätzen in öffentlichen Bibliotheken, Museen und Archiven

Zulässig ist, veröffentlichte Werke ausschließlich in den Räumen öffentlich zugänglicher Bibliotheken, Museen oder Archive, die keinen unmittelbar oder mittelbar wirtschaftlichen oder Erwerbzweck verfolgen, an eigens dafür eingerichteten elektronischen Leseplätzen zur Forschung und für private Studien zugänglich zu machen, soweit dem keine vertraglichen Regelungen entgegenstehen. Für die Zugänglichmachung ist eine angemessene Vergütung zu zahlen. Der Anspruch kann nur durch eine Verwertungsgesellschaft geltend gemacht werden.“

not allowed for  
educational institutions  
in general

only from dedicated  
terminals in the library

without any **direct or  
indirect commercial  
interest**

**A reasonable fee needs to  
be paid to collecting  
societies in any case**

no campus-wide access to the  
electronic library service (even if  
protected via password) let alone  
remotely from anywhere (home)



„§ 53a

## Kopienversand auf Bestellung

on individual order only

small parts only

delivery via classic postal service or fax

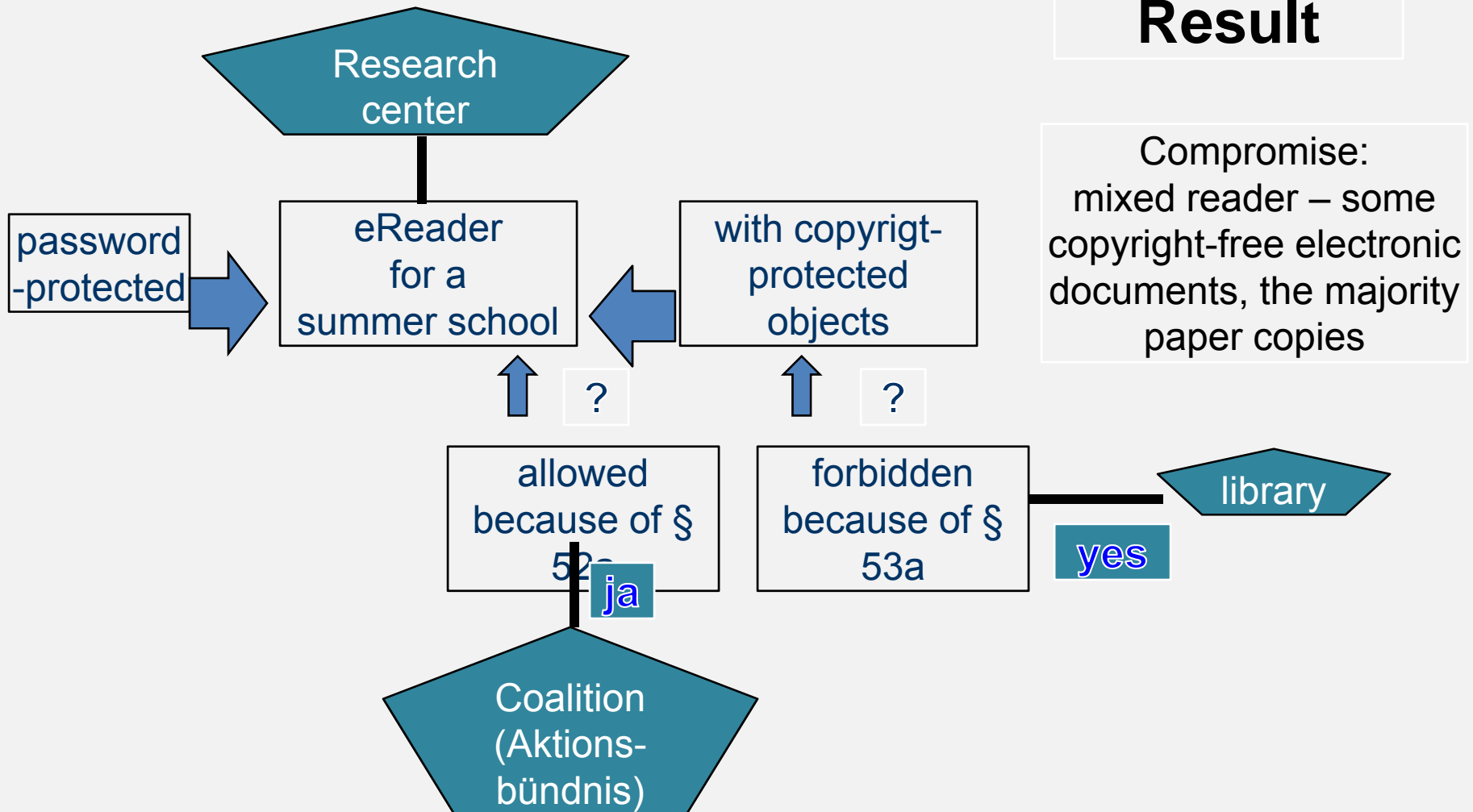
electronic delivery as graphic file (facsimile reprint) only

(1) Zulässig ist auf Einzelbestellung die Vervielfältigung und Übermittlung einzelner in Zeitungen und Zeitschriften erschienener Beiträge sowie kleiner Teile eines erschienenen Werkes im Weg des Post- oder Faxversands durch öffentliche Bibliotheken, sofern die Nutzung durch den Besteller nach § 53 zulässig ist. Die Vervielfältigung und Übermittlung in sonstiger elektronischer Form ist ausschließlich als grafische Datei und nur dann zulässig, wenn der Zugang zu den Beiträgen oder kleinen Teilen eines Werkes den Mitgliedern der Öffentlichkeit nicht von Orten und zu Zeiten ihrer Wahl mittels einer vertraglichen Vereinbarung ermöglicht wird.

Electronic delivery (of any kind) is not permitted if there is a comparable commercial retail (end-user) service available on the information markets (such as Elsevier's Science Direct) – these services must be clearly visible to the public (or to intermediaries) and the price for a single article must be reasonable/appropriate (angemessen)

# Examples for consequences of restricted exceptions

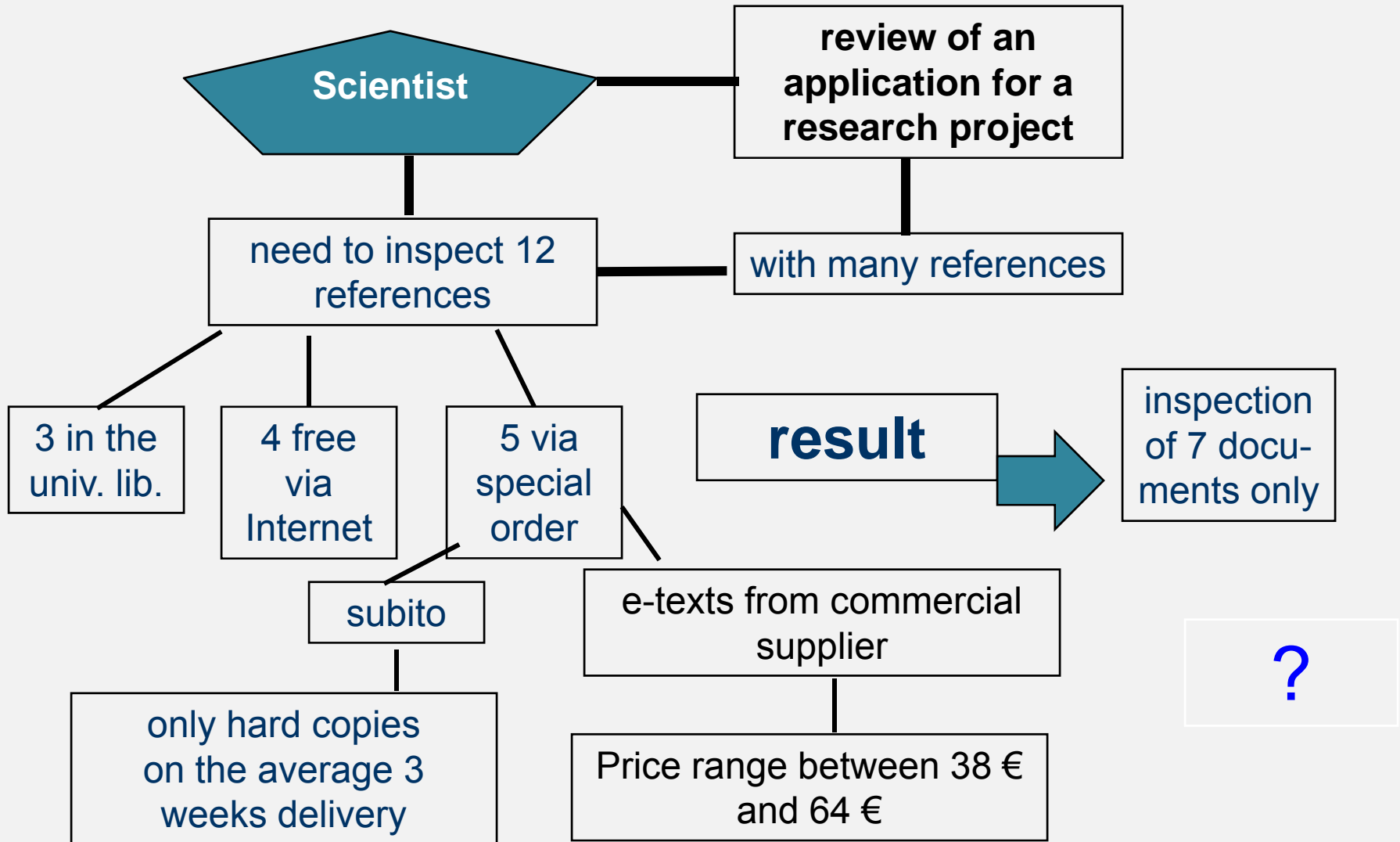
# Consequences of restricted exceptions – 1 –



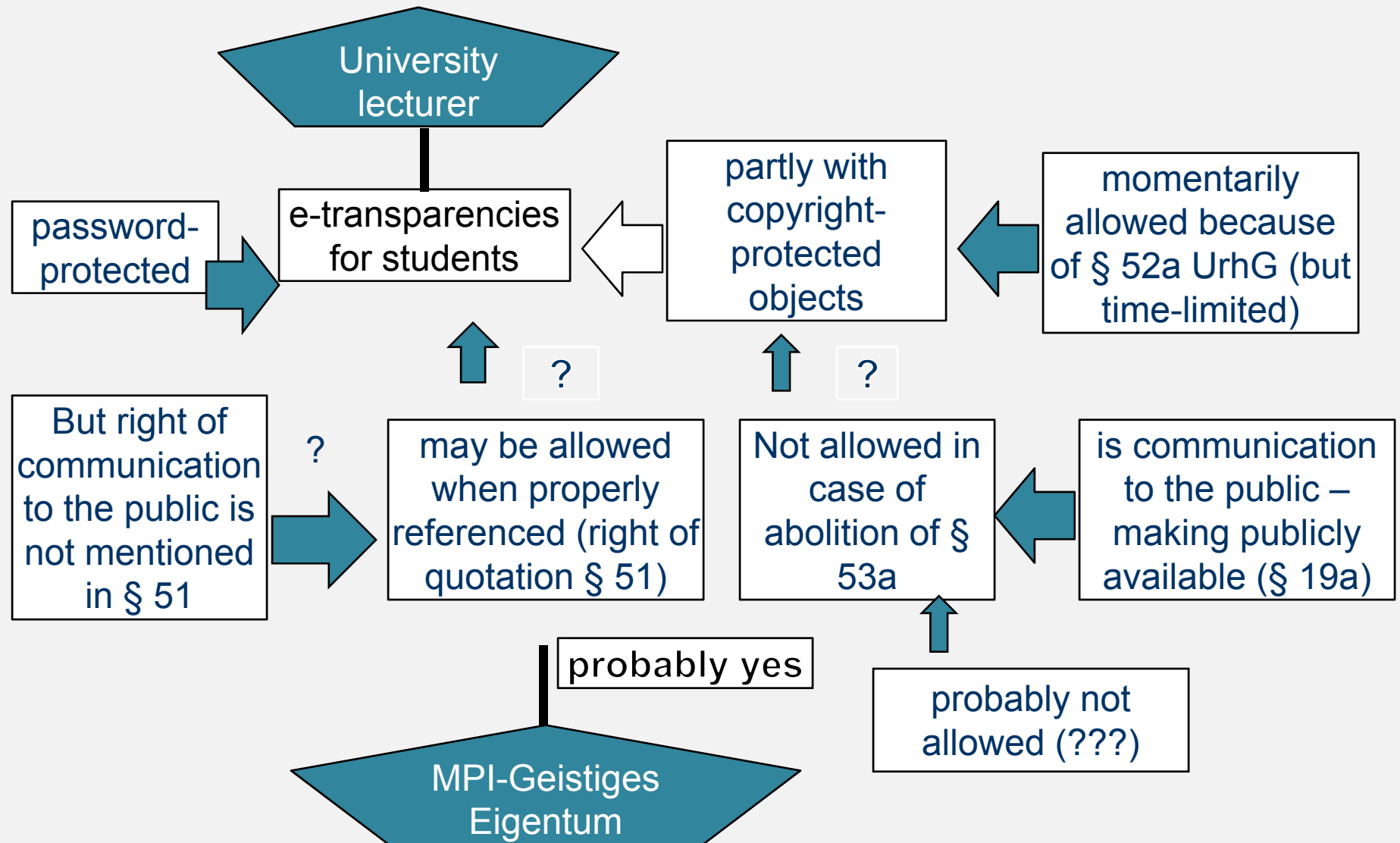
## Result

Compromise:  
mixed reader – some  
copyright-free electronic  
documents, the majority  
paper copies

# Consequences of restricted exceptions – 2 –



# Consequences of restricted exceptions – 3 –



Success of the German Coalition “Copyright for Science and Education” was rather limited

because of the **EU copyright directives**

and the **holy cow** of international copyright –  
**the threestep test**

use without permission of right holders only in special cases as exception

no damage to normal commercial exploitation

no damage to authors/creators rights



# Conclusion

## Main contradiction in contemporary societies

**K**nowledge and **I**nformation as part of the commons could be absolutely freely accessible and usable for everyone (unimaginable in the history of mankind)

In reality access to knowledge and information (as private goods) has never been so complicated and restricted and has never been distributed as unequally as is the case today.



**Currently regulation via copyright is more a disabling than an enabling factor for science and education**

As long as free access and free use are considered *annoying* exceptions from the exclusive right to exploit **knowledge and information**, there will be no free and open knowledge societies



## necessary

- to **reconsider the dominant role of the market** for making knowledge and information available to the public
- to develop principles of a „**commons-based-economy**“ where knowledge and information are common property rights not private property rights
- **Private exploitation** of publicly produced knowledge is still possible (and probably needed) but **not for free** – the producers of knowledge and the public need deserve and demand **fair compensation** for the commercial exploitation



## necessary

- Access **rights** for science and education should not be considered as mere **limitations** on or **exceptions** to exclusive exploitation rights but as genuine parts of copyright regulation.
- **making copyright a means to protect science and culture as common properties** and giving commercial exploiters license rights which will not hamper free access to knowledge.
- A reformulation of existing copyright regulation



# Conclusion - a new threestep test for k & i?

## Paradigm shift need

Knowledge societies should reformulate the old three-step-test – the iron rule of commercialized information societies

## UTOPIAN ??

## The holy cow of the threestep test

- free use of k& i only as an exception
- free use of k & i must not hamper normal commercial exploitation
- free use of k & i must not hamper unreasonably creators' rights

➤ Commercial exploitation of k & i only as an exception

➤ Commercial exploitation of k & i must not hamper free use of k & i

➤ Free use of k & i must not hamper unreasonably creators' rights



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# The questions mailed to participants

1. Are there special rights for authors in science and education in your Copyright regulation?

2. What are the exceptions and limitations in favour of science and education in your copyright regulation?

3. What are the rights and the practice of libraries and other information services in your countries in order to provide people working in science and education with the information that they need for their work?

4. To what extent are technical protection means (digital rights management) protected in your copyright regulation and which consequences do these technical protection means have for science and education?

5. Are there any norms in your copyright regulation or any suggestions or plans in your parliament or government which will support open access publishing in science and education?

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**to Remix** — to adapt the work



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