

European Framework

The logo consists of the letters 'IVR' in a large, bold, black serif font. The letters are filled with a dense, chaotic pattern of various symbols, including letters, numbers, and mathematical signs, creating a complex, multi-layered effect. The background of the entire slide is a light green color with a faint, repeating pattern of white circuit-like lines.

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Content

- General framework of limitations on copyright pursuant to Directive 2001/29/EC;
- Specific limitations for libraries, education and science;
- Possible solutions for improvement

General framework

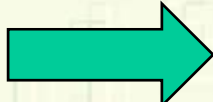
- Exhaustive list of 21 limitations;
- One mandatory limitation – rest optional;
- Broad formulation/general principles;
- Unclear contractual overridability;
- Fair compensation v. equitable remuneration + Recitals 35 & 36;
- Little attention for ‘information society’;
- Subsidiarity/Proportionality;
- Art. 5(5) (“3-step-test”)

General assessment

- All limitations subject to contractual agreement to the contrary;
- All limitations subject to the application of TPMs and compromise of art. 6(4) EUCD;
- Lack of harmonisation leads to legal uncertainty;
- Current European framework creates obstacles for cross-border projects;

Possible solution

Two-tiered system:

1. Recognize mandatory character of certain limitations;
 - Choice of mandatory limitations based on protection of fundamental rights, internal market and dissemination of information;
 - Leave other limitations to the discretion of the Member States (subsidiarity principle);
2. Accept the introduction of an open norm as safety net for new developments  get rid of exhaustivity rule;

Mandatory character?

- Mandatory character:
 - Requiring ‘uniform’ implementation across the EU;
 - Requiring to give precedence to limitations even if TPMs are applied;
 - Requiring to give precedence to limitations in case of non-negotiated contracts

Limitations and contracts

- Freedom of contract (another pillar of civil society) should rule;
- Some restrictions on freedom of contract are possible to protect public order, competition, fundamental rights etc.
- Is dissemination of knowledge a matter of public order?
- Distinction between negotiated and non-negotiated contracts?

Where is the balance?

- Is the solution to be found:
 - Within copyright law?
 - Within contract law?
- There is NO ‘one size fits all solution’
 - What is good for science and education may not be good for other copyright industry sectors
- Subsidy structure may provide avenue of solution

How to promote OA?

- Promotion of OA doesn't rest only on copyright limitations;
- It also depends on author's contracts (law):
 - No harmonised rules on author's contract law
- ... and on institution policy;
- See www.surffoundation.nl/en