



Copyright Law in the EU

Salient features of
copyright law across the
EU Member States

STUDY

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COPYRIGHT LAW IN THE EU: SALIENT FEATURES OF COPYRIGHT LAW ACROSS THE EU MEMBER STATES

Abstract

As part of the mission to provide the Members and Committees of the European Parliament with new research tools in the area of comparative law, this document presents salient features of copyright law across the EU Member States and, more in particular, the *prima facie* corresponding provisions in national law relating to the exceptions and limitations contained in Directives 2001/29/EC and 2012/28/EU.

The document will be updated regularly, especially in its electronic version, to take account of new or modified provisions of national law in relation to – mandatory or optional – exceptions and limitations deriving from existing or future EU legislation.

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STUDY

June 2018

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Summary and methodology

The rights granted to authors or creators of original works in each Member State of the European Union vary depending on its national law and legal tradition.

However, although copyright law in the European Union remains essentially national law, national rules are gradually converging by means of alignment with international treaties and Union legislation, which harmonise the various rights of authors, performers, producers and broadcasters.

In that context, this documentation aims at giving a non-exhaustive overview of the main characteristics of the national legislation regarding copyright in most of the Member States. The authors of the documentation focussed on certain aspects that they consider to be the most salient.

The approach chosen by the authors is to present side by side the various national provisions in the field and to give a succinct and objective description of the current legal situation in the area of copyright as it exists today in each of those Member States.

In order to facilitate this parallel view of the relevant national legislation, this documentation divides each individual contribution in three parts:

I. APPLICABLE NATIONAL LEGAL FRAMEWORK

The first part of this documentation, both the general law (i.e Constitutional or Civil law) and special law (on copyright) are referred to.

II. COPYRIGHT

The second part of this documentation deals with: 1. Definition and content; 2. Author; and 3. Protected works.

III. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

The third part of this documentation covers in a quantitative manner the *prima facie* correspondance between the mandatory and optional exceptions and limitations to the author's economic rights contained in Directives 2001/29/EC and 2012/28/EU and the national transposing provisions. The approach chosen for this part of the documentation was to screen the appropriate legislation for each Member State concerned and based on the provisions therein, provide the relevant information for each entry which had been previously agreed upon.

This documentation has a clearly defined scope. The authors do not examine the transposition of EU legislation in the Member States, nor do they refer to decisions of the Court of Justice of the European Union as regards the different exceptions and limitations in the above-mentioned Directives.

Introduction

SOURCES OF COPYRIGHT LAW IN THE EU

The sources of copyright law in the Member States of the European Union comprise international treaties, Union legislation and national law.

The rights granted to creators of original works in each Member State of the European Union vary depending on its national law and legal tradition.

However, although copyright law in the European Union remains essentially national law, national rules are gradually converging by means of international treaties and Union legislation, which harmonise the various rights of authors and of performers, producers and broadcasters.

INTERNATIONAL LAW

Many of the Union directives reflect Member States' obligations under the Berne Convention¹ and the Rome Convention², as well as the obligations of the Union and its Member States under the World Trade Organisation (WTO) 'TRIPS' Agreement³, the United Nations Educational, Scientific and Cultural Organization (Unesco) Paris Convention⁴ and the two 1996 World Intellectual Property Organisation (WIPO) treaties (the WIPO Copyright Treaty⁵ and the WIPO Performances and Phonograms Treaty⁶).

Over the last years, the Union has signed two other WIPO Treaties: the Beijing Treaty on Audio-visual Performances⁷ and the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled⁸.

Moreover, many provisions of Union law are reflected in free-trade agreements concluded by the Union with a large number of third countries.

UNION LAW

The main legal instrument governing copyright in the Union is the 2001 Copyright Directive, which aims to harmonise copyright rules within the Union and to adapt copyright legislation to new technological developments.

Union Directives in this field are the following:

¹ Berne Convention, of 9 September 1886, for the Protection of Literary and Artistic Works, amended on 28 September 1979 (administered by the WIPO).

² Rome Convention, of 18 May 1964, for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (administered by the WIPO).

³ Agreement on trade-related aspects of intellectual property rights (Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994).

⁴ Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the General Conference of the Unesco in Paris on 20 October 2005.

⁵ WIPO Copyright Treaty adopted in Geneva on 20 December 1996.

⁶ WIPO Performances and Phonograms Treaty adopted in Geneva on 20 December 1996.

⁷ Beijing Treaty on Audiovisual Performances, adopted by the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing, on 24 June 2012 (administered by the WIPO).

⁸ Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled, adopted in Marrakesh on 27 June 2013 (administered by the WIPO).

- Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission ("Satellite and Cable Directive");
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ("Database Directive");
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce');
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ("InfoSoc Directive");
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art ("Resale Right Directive");
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights;
- Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property ("Rental and Lending Directive");
- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights ("Term Directive");
- Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version);
- Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights;
- Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works ("Orphan Works Directive");
- Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information;
- Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

NATIONAL LAW

National copyright systems follow two different legal traditions: civil law in continental Europe and common law in the United Kingdom, Ireland, Malta and Cyprus.

The continental model is based on an authors' rights legislation. It mainly takes inspiration from the French *droit d'auteur*, which arose following the French Revolution, and is characterised by the moral and economic double nature of the rights granted to the author of a work.

In continental Europe, economic rights (rights to reproduce, distribute, rent, lend, or communicate a work to the public) are conveyable, whereas moral rights are inalienable and cannot be transferred or waived. The two main moral rights are the "right of identification" as

author and the “right of integrity” of a work. Dutch legislation is however an exception in the mainland. In the Netherlands, authors may indeed contract to partially waive their moral rights.

In the common law system, where the notion of “copyright” found its origin as a system for granting official exclusive licences to print and trade certain works for a limited period of time, economic rights prevail.

A certain harmonisation of the two systems began by means of the Berne Convention which internationally recognises the right of identification and the right of integrity as the “right to claim authorship” and the “right to object to certain modifications and other derogatory actions”. Those two main moral rights have consequently been incorporated into British and Irish law. They are however incorporated as rights that are granted and can thus be waived.

Moral rights still constitute one of the areas in which national law shows greatest divergence. The other areas in which Member States show great divergence are the categories of works excluded from protection and the acts of exploitation that, under strict circumstances, may be carried out without authorisation of the rights-holder (exceptions and limitations).

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I. BELGIUM

I.1. APPLICABLE NATIONAL LEGAL FRAMEWORK⁹

I.1.1. Constitution

The Belgian Constitution does not contain provisions on intellectual property. However, Article 16 protects private property and stipulates that: "No one can be deprived of his property except in the case of expropriation for a public purpose, in the cases and manner established by the law and in return for a fair compensation paid beforehand"^{10 11}.

I.1.2. Copyright law

Copyright law was codified by two rather recent laws, namely a law of April 10, 2014 - adopted under the bicameral procedure -, inserting the provisions regulating matters referred to in Article 77 of the Constitution in Book XI 'Intellectual Property' of the Code of Economic Law, inserting a specific provision to Book XI in Book XVII of the same Code, and amending the Judicial Code with regard to the organization of courts and tribunals in matters relating to intellectual property rights and the transparency of copyright and neighbouring rights¹² and a law of April 19, 2014 - adopted under the ordinary legislative procedure -, inserting Book XI 'Intellectual Property' into the Code of Economic Law, and specific provisions to the Book XI into Books I, XV and XVII of the same Code¹³.

Title 5 of Book XI of the Belgian Economic Code (CEL) concerns copyright and neighbouring rights ("Droit d'auteur et droits voisins" - Articles XI.164 to XI.293). Title 6 of the same Book deals with the protection of software programmes ("Programmes d'ordinateur" - Articles XI.294 to XI.304). Title 7 of the same Book covers the sui generis legal protection of databases ("Bases de données" - Articles XI.305 to XI.318) and Title 8 of the same Book handles the sui generis legal

⁹ Disclaimer: provisions of national law can be used and reproduced freely and free of charge. Source: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?imgcn.x=23&imgcn.y=8&DETAIL=2013022819%2FF&caller=list&row_id=1&numero=1&rech=1&cn=2013022819&table_name=LOI&nm=2013A11134&la=F&chercher=t&dt=CODE+DE+DROIT+ECONOMIQUE&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&sql=dt+contains++%27CODE%27%2526+%27DE%27%2526+%27DROIT%27%2526+%27ECONOMIQUE%27and+actif+%3D+%27Y%27&tri=dd+AS+RANK+&trier=promulgation.

The original texts of the Belgian Code of Economic Law (CEL) will hereinafter use the French version of the text, which is one of the three official languages of the country (alongside Dutch and German). Translations in English of the Belgian CEL can be used and reproduced freely and free of charge. Source: [no translation in English available of the consolidated text of the Belgian CEL](#). Translations in English are free adaptations after the translated text notified by the Belgian authorities to the WIPO of the Law on Copyright and Neighbouring Rights (of June 30, 1994, as amended by the Law of April 3, 1995). Consolidation by the International Bureau of WIPO. Source: http://www.wipo.int/wipolex/en/text.jsp?file_id=125254

¹⁰ Constitution belge, article 16 « *Nul ne peut être privé de sa propriété que pour cause d'utilité publique, dans les cas et de la manière établis par la loi, et moyennant une juste et préalable indemnité* ».

¹¹ Translation available on the official website of the Chamber of Representatives of Belgium: https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf.

¹² Loi du 10 avril 2014 portant insertion des dispositions réglant des matières visées à l'article 77 de la Constitution dans le livre XI "Propriété intellectuelle" du Code de droit économique, portant insertion d'une disposition spécifique au livre XI dans le livre XVII du même Code, et modifiant le Code judiciaire en ce qui concerne l'organisation des cours et tribunaux en matière d'actions relatives aux droits de propriété intellectuelle et à la transparence du droit d'auteur et des droits voisins (Moniteur belge du 12.6.2014).

¹³ Loi du 19 avril 2014 portant insertion du Livre XI "Propriété intellectuelle" dans le Code de droit économique, et portant insertion des dispositions propres au Livre XI dans les Livres I, XV et XVII du même Code (Moniteur belge du 12.6.2014).

protection of topographies of semiconductor products ("Topographies des produits semi-conducteurs" - Articles XI.319 to XI.332). Title 9 (civil aspects related to the protection of intellectual property rights) and Title 10 (judicial aspects) (Articles XI.333 to XI.343) of the same Book contain provisions with a horizontal character.

By way of a general comment, Article XI.164 CEL explicitly states that Title 5 of Book XI CEL transposes the following directives:

- Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission¹⁴,
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases¹⁵,
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society¹⁶,
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art¹⁷,
- Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property¹⁸,
- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights¹⁹,
- Directive 2012/28/UE of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works²⁰.

It needs to be underlined that this codification exercise left unchanged a substantial number of Royal Decrees ("arrêtés-royaux") implementing Book XI CEL in the field of intellectual property.

I.2. COPYRIGHT

I.2.1. Definition and content

Belgian law does not define copyright as such, but it does describe the nature of copyright. In that respect, such right is twofold as it comprises economic and moral rights:

I.2.1.1 Moral rights

According to Article XI.165(2) CEL, the author's moral rights cover the right of disclosure (le droit de divulgation), the right of authorship (le droit de paternité), and the right to the integrity

¹⁴ OJ L 248 du 6.10.1993, p. 15.

¹⁵ OJ L 77 du 27.3.1996, p. 20.

¹⁶ OJ L 167 du 22.6.2001, p. 10.

¹⁷ OJ L 272 du 13.10.2001, p. 32.

¹⁸ OJ L 376 du 27.12.2006, p. 28.

¹⁹ OJ L 372 du 27.12.2006, p. 12.

²⁰ OJ L 299 du 27.10.2012, p. 5.

of the work (le droit à l'intégrité de l'oeuvre): Moral rights are inalienable, perpetual and imprescriptible.

Art. XI.165. [...]

2. The author of a literary or artistic work shall enjoy an inalienable moral right in his work.

Overall renunciation of the future exercise of his right shall be null and void.

This right shall comprise the right to disclose the work.

Non-disclosed works may not be seized.

An author shall have the right to claim or to refuse authorship of his work.

He shall enjoy the right to respect for his work that shall permit him to oppose any alteration to that work.

Notwithstanding any renunciation, he shall maintain the right to oppose any distortion, mutilation or other alteration to his work or any other prejudicial act to the same work that may damage his honour or reputation²¹.

1.2.1.2 Economic rights

According to Article XI.165(1) CEL, the author's economic rights include:

- the right of reproduction (which includes the right to adapt or translate the protected work and the right to lend or hire the protected work),
- the right of representation or communication to the public, and
- the right of distribution to the public (by selling the protected work or otherwise).

Art. XI.165

1. The author of a literary or artistic work alone shall have the right to reproduce his work or to have it reproduced in any manner or form whatsoever, directly or indirectly, temporarily or permanently, in whole or in part.

This right shall comprise in particular the exclusive rights to authorize adaptation or translation of the work.

This right shall further comprise the exclusive rights to authorize rental or lending of the work.

The author of a literary or artistic work alone shall have the right to communicate his work to the public by any process whatsoever, including by making it available to the public in such a way that anyone may access them from a place and at a time individually chosen by him or her.

²¹ Art. XI.165 § 2. « L'auteur d'une oeuvre littéraire ou artistique jouit sur celle-ci d'un droit moral inaliénable. La renonciation globale à l'exercice futur de ce droit est nulle. Celui-ci comporte le droit de divulguer l'oeuvre. Les oeuvres non divulguées sont insaisissables. L'auteur a le droit de revendiquer ou de refuser la paternité de l'oeuvre. Il dispose du droit au respect de son oeuvre lui permettant de s'opposer à toute modification de celle-ci. Nonobstant toute renonciation, il conserve le droit de s'opposer à toute déformation, mutilation ou autre modification de cette oeuvre ou à toute autre atteinte à la même oeuvre, préjudiciables à son honneur ou à sa réputation ».

The author of a literary or artistic work alone shall have the exclusive right to authorise distribution of the original or copies of his work to the public by sale or otherwise.

*The first sale or other transfer of ownership of the original or of a copy of a literary or artistic work in the European Union by the author or with his consent exhausts the right of distribution in respect of the original or that copy of the work in the European Union*²².

The resale right ("droit de suite") can also be considered as a particular type of economic right. The resale is the inalienable right of an artist to divert to his or her own benefit a small part of the resale price (a 'royalty') of his or her original work of art, subsequent to the first transfer of that work by the author. The main provision on this right is to be found in Article XI.175 CEL.

Article XI.175

*1. In respect of all acts of resale of an original work of art involving as sellers, buyers or intermediaries art market professionals, subsequent to the first transfer of the work by the author, the author shall benefit from an inalienable resale right, which cannot be waived, even in advance, based on the resale price and payable by the seller*²³.

Article XI.167 CEL also states in its paragraph 1 that:

The economic rights shall be movable, assignable and transferable, in whole or in part, in accordance with the provisions of the Civil Code. In particular, they may be the subject of alienation or of an ordinary or exclusive license.

All contracts affecting the author shall require written form.

Contractual provisions relating to copyright and to its modes of exploitation shall be interpreted restrictively. Assignment of an article incorporating a work shall not imply assignment of the right to exploit that work; an author shall have access to his work to the extent necessary for him to exercise his economic rights.

The author's remuneration, the scope and the duration of the assignment shall be set out explicitly for each mode of exploitation.

The assignee shall be required to exploit the work in accordance with the fair practice of the profession.

²² Art. XI.165 § 1. « L'auteur d'une oeuvre littéraire ou artistique a seul le droit de la reproduire ou d'en autoriser la reproduction, de quelque manière et sous quelque forme que ce soit, qu'elle soit directe ou indirecte, provisoire ou permanente, en tout ou en partie.

Ce droit comporte notamment le droit exclusif d'en autoriser l'adaptation ou la traduction.

Ce droit comprend également le droit exclusif d'en autoriser la location ou le prêt.

L'auteur d'une oeuvre littéraire ou artistique a seul le droit de la communiquer au public par un procédé quelconque, y compris par la mise à disposition du public de manière que chacun puisse y avoir accès de l'endroit et au moment qu'il choisit individuellement.

L'auteur d'une oeuvre littéraire ou artistique a seul le droit d'autoriser la distribution au public, par la vente ou autrement, de l'original de son oeuvre ou de copies de celle-ci.

La première vente ou premier autre transfert de propriété de l'original ou d'une copie d'une oeuvre littéraire ou artistique dans l'Union européenne par l'auteur ou avec son consentement, épuise le droit de distribution de cet original ou cette copie dans l'Union européenne ».

²³ Art. XI.175 § 1er. « Pour tout acte de revente d'une oeuvre d'art originale dans lequel interviennent en tant que vendeurs, acheteurs ou intermédiaires, des professionnels du marché de l'art, après la première cession de l'oeuvre par l'auteur, il est dû à l'auteur par le vendeur un droit de suite inaliénable, auquel il ne peut être renoncé, même de façon anticipée, calculé sur le prix de revente ».

Notwithstanding any provision to the contrary, the assignment of rights in respect of as yet unknown forms of exploitation shall be null and void²⁴.

Several specific provisions are also applicable to the exploitation of certain categories of protected work.

According to Article XI.171:

After the death of the author, the rights laid down in Article XI.165(1) shall be exercised during the term of copyright protection by his heirs or legatees, unless the author has allocated them to a specific person, subject to the statutory portion of inheritance that devolves upon the heirs.

After the death of the author, the rights laid down in Article XI.165(2) shall be exercised by his heirs or legatees, unless he has designated a person to such effect.

In the event of disagreement, the procedure under Article XI.168 shall apply²⁵.

Specific provisions relating to the authors of a work of collaboration or indivisible copyright can also apply.

I.2.2. Author

According to Article XI.170 CEL:

Copyright shall belong as of origin to the natural person who has created the work.

Unless proved otherwise, the author shall be presumed to be the person shown as such on the work, on a reproduction of the work, or in relation to a communication to the public of the work, by the fact of his name being mentioned or of a sign that enables him to be identified.

The publisher of an anonymous or pseudonymous work shall be deemed to be the author of the work in respect of other parties²⁶.

²⁴ Art. XI.167 § 1er. « Les droits patrimoniaux sont mobiliers, cessibles et transmissibles, en tout ou en partie, conformément aux règles du Code civil. Ils peuvent notamment faire l'objet d'une aliénation ou d'une licence simple ou exclusive.

À l'égard de l'auteur, tous les contrats se prouvent par écrit.

Les dispositions contractuelles relatives au droit d'auteur et à ses modes d'exploitation sont de stricte interprétation. La cession de l'objet qui incorpore une oeuvre n'emporte pas le droit d'exploiter celle-ci; l'auteur aura accès à son oeuvre dans une mesure raisonnable pour l'exercice de ses droits patrimoniaux.

Pour chaque mode d'exploitation, la rémunération de l'auteur, l'étendue et la durée de la cession doivent être déterminées expressément.

Le cessionnaire est tenu d'assurer l'exploitation de l'oeuvre conformément aux usages honnêtes de la profession. Nonobstant toute disposition contraire, la cession des droits concernant des formes d'exploitation encore inconnues est nulle ».

²⁵ Art. XI.171 « Après le décès de l'auteur, les droits déterminés à l'article XI.165, § 1er, sont exercés, pendant la durée de protection du droit d'auteur, par ses héritiers ou légataires, à moins que l'auteur ne les ait attribués à une personne déterminée, compte tenu de la réserve légale qui revient aux héritiers.

Après le décès de l'auteur, les droits déterminés à l'article XI.165, § 2, sont exercés par ses héritiers ou légataires, à moins qu'il n'ait désigné une personne à cet effet.

En cas de désaccord, il est procédé comme prévu à l'article XI.168 ».

²⁶ Art. XI.170 « Le titulaire originaire du droit d'auteur est la personne physique qui a créé l'oeuvre.

Est présumé auteur, sauf preuve contraire, quiconque apparaît comme tel sur l'oeuvre, sur une reproduction de l'oeuvre, ou en relation avec une communication au public de celle-ci, du fait de la mention de son nom ou d'un

I.2.3. Protected works

Several categories of work are eligible for protection:

- literary works (Article XI.172 CEL)
Art. XI.172
1. Literary works shall mean writings of any kind, as also lessons, lectures, speeches, sermons or any other oral manifestation of thought.
Speeches made in deliberative assemblies, in public hearings of the courts or in political meetings may be freely reproduced and communicated to the public, but the author alone shall have the right to make offprints.
2. Copyright shall not subsist in official acts of the authorities²⁷.
- works of fine art (graphic or plastic art) (Title 5, Article XI.173 to XI.178);
- Sound and audiovisual work (Title 5, Articles XI.179 to XI. 185 CEL);
- Databases (Title 5, Articles XI.186 to XI.188 CEL, and Title 7, Articles XI.305 to XI.318 CEL);
- Software programmes and topographies of semiconductor products enjoy a particular protection under separate titles, respectively Title 6, (Articles XI.294 to XI.304 CEL) and Title 8 (Articles XI.319 to XI.332 CEL).

I.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Directive 2001/29/EC of the European Parliament and of the Council²⁸ contains a list of 20 optional exceptions or limitations and one mandatory exception to some of the author's exclusive economic rights. Directive 2012/28/EU of the European Parliament and of the Council²⁹ adds a further mandatory exception as regards the reproducing and making available of orphan works.

In Belgian law, such exceptions and limitations are to be found in Articles XI.189, XI.190 and XI.191 CEL (general exceptions), in Articles XI.191/1 and XI.191/2 CEL (exceptions in the context of teaching and scientific research), in Article XI.191 CEL (public lending of works) and in Article XI. 192/1 CEL (orphan works)³⁰. They relate either to the reproduction right or to the performance right, or to both.

sigle permettant de l'identifier.

L'éditeur d'un ouvrage anonyme ou pseudonyme est réputé, à l'égard des tiers, en être l'auteur ».

²⁷ Art. XI.172

« § 1 Par oeuvres littéraires, on entend les écrits de tout genre, ainsi que les leçons, conférences, discours, sermons ou toute autre manifestation orale de la pensée.

Les discours prononcés dans les assemblées délibérantes, dans les audiences publiques des juridictions ou dans les réunions politiques, peuvent être librement reproduits et communiqués au public, mais à l'auteur seul appartient le droit de les tirer à part.

§ 2. Les actes officiels de l'autorité ne donnent pas lieu au droit d'auteur ».

²⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10)

²⁹ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5)

³⁰ Article XI.217 CEL and Article XI.217/1 CEL lists the exceptions to the exercise of neighbouring rights by performing artists, producers of phonograms and first fixation of films and broadcasters. Those exceptions

According to Article XI.193 CEL, “the provisions contained in Articles XI.189, XI.190, XI.191, XI.191/1, XI.191/2, XI.192(1) and (3), and XI.192/1 are imperative”.³¹ This means that the exceptions and limitations to copyright mentioned in those provisions may not be contracted out.

Those exceptions or limitations may be used only after the work was disclosed. They are subject to strict interpretation. Besides, they have to fulfil the three-step test, which, in Belgium, is also applied by the Courts, in the sense that exceptions or limitations are allowed³² in certain special cases that do not conflict with a normal exploitation of the work and that do not unreasonably prejudice the legitimate interests of the author/rightholder.

In some cases, compensation in the form of payment of a remuneration is provided for, such as the remuneration for the private reproduction of works and performances under the conditions laid down in Articles XI.190, 9° et 17° (Article XI.229 CEL) or the remuneration for the reproduction of a work on paper or a similar medium under the conditions laid down in Articles XI.190, 5° and XI.191(1)(1°) CEL (Articles XI.235 to XI.239 CEL) or remuneration in the case of public lending of literary works under the conditions laid down in Article XI.192 CEL (Article XI.243 to 245 CEL).

Some of those exceptions are also subject to certain conditions, such as mentioning the author’s name and source (Article XI.189(1) or XI.190, 1° or XI.191/1(2) CEL).

Besides, works such as databases software programmes or topographies of semiconductor products are protected on the grounds of other directives, which have been transposed in Title 5, 6, 7 or 8 CEL (databases: Title 5, Articles XI.191 and 191/2 CEL and Title 7 CEL), software programmes (Title 6 CEL), or topographies of semiconductor products (Title 8 CEL).

The exceptions or limitations to the author’s economic rights provided for in Directive 2001/29/EC and Directive 2012/28/EU have been transposed in Belgian law as follows:

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic</p>	<p>XI.189(3): The author may not forbid temporary acts of reproduction, which are transient or incidental and which are an integral and essential part of a technological process and whose sole purpose is to enable:</p> <ul style="list-style-type: none"> - a transmission in a network between third parties by an intermediary, or - a lawful use, of a work or other subject-matter to be made, and which have no independent economic significance.³³

correspond to most of the exceptions provided for under Article XI.190 CEL for copyright.

³¹ Art. XI.193 CDE « *Les dispositions des articles XI.189, XI.190, XI.191, XI.191/1, XI.191/2, XI.192, §§ 1 et 3, et XI.192/1 sont impératives* ».

³² Berne Convention (Article 9(2)); Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (Article 13); the WIPO Copyright Treaty (WCT) (Article 10); the WIPO Performances and Phonograms Treaty (WPPT) (Article 16); Directive 2001/29/EC, Article 5(5).

³³ Art. X.189 § 3 CDE « *L’auteur ne peut pas interdire les actes de reproduction provisoires qui sont transitoires ou accessoires et constituent une partie intégrante et essentielle d’un procédé technique et dont l’unique finalité est de permettre :*

- une transmission dans un réseau entre tiers par un intermédiaire; ou

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
significance, shall be exempted from the reproduction right provided for in Article 2.	
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	XI.190 introductory wording: Once a work has been lawfully published, its author may not prohibit: ³⁴
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	XI.190 introductory wording + 5° 5° Reproduction in part or in whole of articles or works of fine art or of short fragments of other works, fixed on paper or any similar medium, with the exception of sheet music, where such reproduction is effected on paper or any similar medium, by the use of any kind of photographic technique or by some other process having similar effects, either by a legal person for internal use, or by a natural person for internal use in the context of his business activities, and provided that this does not prejudice the normal exploitation of the work; ³⁵
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	XI.190 introductory wording + 3°, 5° and 9° 3° free and private performance within the family circle; ³⁶ 5° (see point (a) above) 9° reproduction of works, with the exception of sheet music, made within the family circle and exclusively intended for that circle; ³⁷
(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	XI.190 introductory wording + 12° and 13° 12° Reproduction limited to a certain number of copies depending on, and for the purpose of, preserving the cultural and scientific heritage, made by libraries accessible to the public, museums or archives, which do not seek any direct or indirect economic or commercial advantage, provided that this does not prejudice the normal exploitation of the work

- une utilisation licite,

d'une oeuvre protégée, et qui n'ont pas de signification économique indépendante ».

³⁴ « Lorsque l'oeuvre a été publiée de manière licite, l'auteur ne peut interdire : »

³⁵ Art. IX.190, 5° CDE « la reproduction fragmentaire ou intégrale d'articles, d'oeuvres d'art plastique ou graphique ou celle de courts fragments d'autres oeuvres, fixés sur papier ou sur un support similaire, à l'exception des partitions, lorsque cette reproduction est effectuée sur papier ou sur un support similaire, au moyen de toute technique photographique ou de toute autre méthode produisant un résultat similaire, soit par une personne morale pour un usage interne, soit par une personne physique pour un usage interne dans le cadre de ses activités professionnelles] et ne porte pas préjudice à l'exploitation normale de l'oeuvre ; ».

³⁶ Art. IX.190, 3° CDE « l'exécution gratuite et privée effectuée dans le cercle de famille ».

³⁷ Art IX.190, 9° CDE « la reproduction d'oeuvres, à l'exception des partitions musicales, effectuée dans le cercle de famille et réservée à celui-ci ».

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
	<p>or unduly harm the legitimate interests of the author.</p> <p>The material thus produced shall remain the property of those institutions, which shall not engage in any commercial use or use for profit. The author may have access to the material, subject to strict respect for the preservation of the work and fair remuneration for the intervention of those institutions³⁸.</p> <p>13° communication, including making available to individual members of the public, for the purpose of research or private study, by means of dedicated terminals that are accessible on the premises of publicly accessible libraries, educational establishments, museums or archives which do not pursue any direct or indirect commercial or economic advantage, of works which are not subject to purchase or licensing terms and which are contained in their collections.³⁹</p>
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	<p>XI.190 introductory wording + 14°</p> <p>14° Ephemeral recordings of works made by broadcasting organisations for their own broadcasts and by means of their own facilities, including by means of persons acting on their behalf and under their control⁴⁰.</p>
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on	<p>XI.190 introductory wording + 17°</p> <p>17° reproduction of broadcasts made by hospitals, prisons, youth care organisations, or institutions assisting people with a disability</p>

³⁸ Art. XI.190, 12° CDE « la reproduction limitée à un nombre de copies déterminé en fonction de et justifié par le but de préservation du patrimoine culturel et scientifique, effectuée par des bibliothèques accessibles au public, des musées ou par des archives, qui ne recherchent aucun avantage commercial ou économique direct ou indirect, pour autant que cela ne porte pas atteinte à l'exploitation normale de l'oeuvre ni ne cause un préjudice injustifié aux intérêts légitimes de l'auteur.

Les matériaux ainsi produits demeurent la propriété de ces institutions qui s'interdisent tout usage commercial ou lucratif.

L'auteur pourra y avoir accès, dans le strict respect de la préservation de l'oeuvre et moyennant une juste rémunération du travail accompli par ces institutions ; »

³⁹ Art. XI. 190, 13° CDE « la communication y compris par la mise à disposition à des particuliers, à des fins de recherches ou d'études privées, d'oeuvres qui ne sont pas offertes à la vente ni soumises à des conditions en matière de licence, et qui font partie de collections des bibliothèques accessibles au public, des établissements d'enseignement et scientifiques, des musées ou des archives qui ne recherchent aucun avantage commercial ou économique direct ou indirect, au moyen de terminaux spéciaux accessibles dans les locaux de ces établissements ; »

⁴⁰ Art. XI.190, 14° CDE « les enregistrements éphémères d'oeuvres effectués par des organismes de radiodiffusion pour leurs propres émissions et par leurs propres moyens, en ce compris par les moyens de personnes qui agissent en leur nom et sous leur responsabilité ; »

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
condition that the rightholders receive fair compensation.	provided that such institutions do not pursue any commercial purposes and that such reproduction is for the exclusive use of the natural persons residing there ⁴¹
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(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;	<p>XI.191/1: 1. Once a work has been lawfully published, and without prejudice to the possible application of Articles XI.189(3), XI.190 2°, 2/1°, 10°, 12°, 13°, 15°, 16° and 17°, its author may not prohibit :</p> <p>1° quotations for the purpose of teaching or in the framework of scientific research, in accordance with fair practice and to the extent justified by the aim pursued;</p> <p>2° free performance within the framework of school activities, including the performance during a public examination. Such free performance within the framework of school activities and the performance of a work during a public examination can take place both within or outside the educational establishment;</p> <p>3° reproduction of works, with the exception of sheet music, for the purpose of illustration for teaching or scientific research provided that such use is justified by the not-for-profit purpose to be achieved and that it does not prejudice the normal exploitation of the work;</p> <p>4° the communication to the public of works for the purpose of illustration for teaching or scientific research by establishments officially recognised or organised to that end by the public authorities and provided that such communication be justified by the not-for-profit purpose to be achieved, takes place in the framework of the normal activities of the establishment, be secured by appropriate measures and does not prejudice the normal exploitation of the work;</p> <p>5° the use of literary works of dead authors compiled in an anthology intended for teaching which does not pursue any direct or indirect commercial or economic advantage, provided that the choice of the extract, its</p>

⁴¹ Art. XI.190, 17° CDE « la reproduction d'émissions, par les établissements hospitaliers, pénitentiaires, d'aide à la jeunesse ou d'aide aux personnes handicapées reconnus, pour autant que ces établissements ne poursuivent pas de but lucratif et que cette reproduction soit réservée à l'usage exclusif des personnes physiques qui y résident. »

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
	<p>presentation and its place respect the moral rights of the author and that a fair remuneration is paid as agreed between the parties or, failing that, determined by the court in accordance with fair practice.</p> <p>2. During the uses referred to in paragraph 1, the source and the name of the author shall be mentioned, unless this turns out to be impossible.⁴²</p>
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	<p>XI.190 introductory wording + 15°</p> <p>15° the reproduction and communication to the public of works for the benefit of people with a disability, which are directly related to the disability concerned and of a non-commercial nature, to the extent required by that specific disability, provided that this does not prejudice the normal exploitation of the work nor does it unduly harm the legitimate interests of the author;⁴³</p>
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases	<p>XI.190 introductory wording + 1°</p> <p>1° reproduction and communication to the public, for the purposes of information, of short fragments of works or of works of fine art as a</p>

⁴² Art. XI.191/1, § 1er CDE « Lorsque l'oeuvre a été licitement divulguée, et sans préjudice de l'application éventuelle des articles XI.189, § 3 et XI.190, 2°, 2/1°, 10°, 12°, 13° 15°, 16° et 17°, l'auteur ne peut interdire :

1° les citations effectuées dans un but d'enseignement ou dans le cadre de recherche scientifique, conformément aux usages honnêtes et dans la mesure justifiée par le but poursuivi ;

2° l'exécution gratuite effectuée dans le cadre d'activités scolaires, y compris l'exécution lors d'un examen public. Cette exécution gratuite dans le cadre d'activités scolaires et l'exécution d'une oeuvre lors d'un examen public peuvent avoir lieu aussi bien dans l'établissement d'enseignement qu'en dehors de celui-ci ;

3° la reproduction d'oeuvres, à l'exception des partitions musicales, à des fins d'illustration de l'enseignement ou de recherche scientifique, pour autant que l'utilisation soit justifiée par le but non lucratif poursuivi, et que l'utilisation ne porte pas préjudice à l'exploitation normale de l'oeuvre ;

4° la communication au public d'oeuvres à des fins d'illustration de l'enseignement ou de recherche scientifique, par des établissements reconnus ou organisés officiellement à cette fin par les pouvoirs publics et pour autant que cette communication soit justifiée par le but non lucratif poursuivi, se situe dans le cadre des activités normales de l'établissement, soit sécurisée par des mesures appropriées et ne porte pas préjudice à l'exploitation normale de l'oeuvre ;

5° l'utilisation d'oeuvres littéraires d'auteurs décédés dans une anthologie destinée à l'enseignement qui ne recherche aucun avantage commercial ou économique direct ou indirect, à condition que le choix de l'extrait, sa présentation et sa place respectent les droits moraux de l'auteur et qu'une rémunération équitable soit payée, à convenir entre parties ou, à défaut, à fixer par le juge conformément aux usages honnêtes.

§ 2. Lors des utilisations visées au paragraphe 1er, sont mentionnés la source et le nom de l'auteur, à moins que cela ne s'avère impossible. »

⁴³ Art. 190, 15° CDE « la reproduction et la communication au public d'oeuvres au bénéfice de personnes affectées d'un handicap qui sont directement liées au handicap en question et sont de nature non commerciale, dans la mesure requise par ledit handicap, pour autant que cela ne porte pas atteinte à l'exploitation normale de l'oeuvre ni ne cause un préjudice injustifié aux intérêts légitimes de l'auteur ; »

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	whole in connection with reports on current events. The reproduction and communication to the public of the work in connection with reports on current events in accordance with the previous subparagraph shall be justified by the informatory purpose pursued and the source, including the author's name, shall be mentioned, unless this turns out to be impossible; ⁴⁴
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	XI. 189(1): Quotations taken from a lawfully published work for the purpose of criticism, polemic or review in accordance with the fair practice of the profession and to the extent justified by the purpose shall not infringe copyright. The quotations referred to in the foregoing subparagraph shall mention the source and the name of the author, unless this turns out to be impossible ⁴⁵ .
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	–
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	XI.172(1): Speeches made in deliberative assemblies, in public hearings of the courts or in political meetings may be freely reproduced and communicated to the public, but the author alone shall have the right to make offprints. ⁴⁶
(g) use during religious celebrations or official celebrations organised by a public authority;	–

⁴⁴ Art. 190, 1° CDE « la reproduction et la communication au public, dans un but d'information, de courts fragments d'oeuvres ou d'oeuvres d'art plastique ou graphique dans leur intégralité à l'occasion de comptes rendus d'événements de l'actualité ;

La reproduction et la communication au public de l'oeuvre à l'occasion de comptes rendus d'événements de l'actualité conformément à l'alinéa précédent, doivent être justifiées par le but d'information poursuivi, et la source, y compris le nom de l'auteur, doit être mentionnée, à moins que cela ne s'avère impossible ».

⁴⁵ XI.189. § 1er CDE « Les citations, tirées d'une oeuvre licitement publiée, effectuées dans un but de critique, de polémique, ou de revue, conformément aux usages honnêtes de la profession et dans la mesure justifiée par le but poursuivi, ne portent pas atteinte au droit d'auteur.

Les citations visées à l'alinéa précédent devront faire mention de la source et du nom de l'auteur, à moins que cela ne s'avère impossible. »

⁴⁶ Art. XI.172 § 1er CDE « Les discours prononcés dans les assemblées délibérantes, dans les audiences publiques des juridictions ou dans les réunions politiques, peuvent être librement reproduits et communiqués au public, mais à l'auteur seul appartient le droit de les tirer à part. »

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	XI.190 introductory wording + 2° and XI.190/2, 1° XI.190 2°: reproduction and communication to the public of a work shown in a place accessible to the public where the aim of the reproduction or communication to the public is not the work itself XI.190/2 1°: Reproduction and communication to the public of works of fine art or works of architecture intended to be located permanently in public places, provided that the reproduction or communication concerns the work as it stands there and as long as this reproduction or communication does not prejudice the normal exploitation of the work nor unduly harm the legitimate interests of the author; ⁴⁷
(i) incidental inclusion of a work or other subject-matter in other material;	–
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	XI.190 introductory wording + 16° 16° reproduction and communication to the public for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event in question, excluding any other commercial use; ⁴⁸
(k) use for the purpose of caricature, parody or pastiche;	XI.190 introductory wording + 10° 10° caricature, parody or pastiche, observing fair practice ⁴⁹
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated	XI.190 introductory wording + 13° 13° communication, including making available to individual members of the public, for the

⁴⁷ Art. XI.190, 2° CDE « la reproduction et la communication au public de l'oeuvre exposée dans un lieu accessible au public, lorsque le but de la reproduction ou de la communication au public n'est pas l'oeuvre elle-même ; »

Art. XI.190/2, 1° CDE « la reproduction et la communication au public d'oeuvres d'art plastique, graphique ou architectural destinées à être placées de façon permanente dans des lieux publics, pour autant qu'il s'agisse de la reproduction ou de la communication de l'oeuvre telle qu'elle s'y trouve et que cette reproduction ou communication ne porte pas atteinte à l'exploitation normale de l'oeuvre ni ne cause un préjudice injustifié aux intérêts légitimes de l'auteur ; »

⁴⁸ Art. XI.190, 16° CDE « la reproduction et la communication au public visant à annoncer des expositions publiques ou des ventes d'oeuvres artistiques, dans la mesure nécessaire pour promouvoir l'événement en question, à l'exclusion de toute autre utilisation commerciale ; »

⁴⁹ Art. XI.190, 10° CDE « la caricature, la parodie ou la pastiche, compte tenu des usages honnêtes ; »

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
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;	purpose of research or private study, by means of dedicated terminals that are accessible on the premises of publicly accessible libraries, educational establishments, museums or archives which do not pursue any direct or indirect commercial or economic advantage, of works which are not subject to purchase or licensing terms and which are contained in their collections; ⁵⁰
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	XI.190 introductory wording + 3° 3° free and private performance within the family circle; ⁵¹
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	See e.g. above Article XI.190 or XI.191/1 or XI.191/2
5(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.	XI.190 2/1° , ... provided that ... and that this reproduction or communication does not prejudice the normal exploitation of the work nor unduly harm the legitimate interests of the author XI.190, 5°, 12° and 15° ; ... when this reproduction ... and does not prejudice the normal exploitation of the work; ... provided that this does not prejudice the normal exploitation of the work nor unduly harm the legitimate interests of the author ⁵² . XI.191(1)1° and 5° ; ... when this reproduction/the reproduction and the communication to the public ... and does/do not prejudice the normal exploitation of the work /database.

⁵⁰ Art. XI. 190, 13° CDE « la communication y compris par la mise à disposition à des particuliers, à des fins de recherches ou d'études privées, d'oeuvres qui ne sont pas offertes à la vente ni soumises à des conditions en matière de licence, et qui font partie de collections des bibliothèques accessibles au public, des établissements d'enseignement et scientifiques, des musées ou des archives qui ne recherchent aucun avantage commercial ou économique direct ou indirect, au moyen de terminaux spéciaux accessibles dans les locaux de ces établissements ; »

⁵¹ Art. XI.190, 3° CDE « l'exécution gratuite et privée effectuée dans le cercle de famille »

⁵² « pour autant que cela ne porte pas atteinte à l'exploitation normale de l'oeuvre ni ne cause un préjudice injustifié aux intérêts légitimes de l'auteur ».

Directive 2001/29/EC	Code of Economic Law (CEL)
Text	Text
	<p>XI.191/1(1) 3° and 4°, ... provided that ... and that this use/this communication does not prejudice the normal exploitation of the work</p> <p>XI.191/2(1) 1° and 2° ... provided that ... and that this use/this communication does not prejudice the normal exploitation of the database;</p>

Directive 2012/28/EU	Code of Economic Law (CEL)
Text	Text
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>XI.192/1: Publicly accessible libraries, educational establishments and museums, as well as archives, film or audio heritage institutions and public-service broadcasting organisations, established in the Member States and in the European Economic Area, in order to achieve aims related to their public-interest missions are permitted to use orphan works contained in their collections in the following ways and subject to the conditions provided for in Article XI.245/5:</p> <p>a) by making the orphan work available, within the meaning of the fourth subparagraph of Article XI.165(1);</p> <p>b) by acts of reproduction, within the meaning of the first subparagraph of Article XI.165(1), for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration⁵³.</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of</p>	<p>XI.245/5(1): The institutions and organisations referred to in Articles XI.192/1 and XI.218/1 shall use an orphan work in accordance with Articles XI.192/1 and XI.218/1 only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection.</p> <p>The institutions and organisations may raise revenues in the course of such uses, for the the</p>

⁵³ Art. XI.192/1 CDE « Les bibliothèques, les établissements d'enseignement et les musées accessibles au public, ainsi que les archives, les institutions dépositaires du patrimoine cinématographique ou sonore et les organismes de radiodiffusion de service public, établis dans les États membres de l'Union européenne et de l'Espace économique européen, en vue d'atteindre les objectifs liés à leurs missions d'intérêt public, sont autorisés à utiliser les oeuvres orphelines figurant dans leurs collections de l'une des façons suivantes et aux conditions prévues à l'article XI.245/5 :

a) la mise à disposition du public de l'oeuvre orpheline au sens de l'article XI.165, § 1er, alinéa 4 ;

b) la reproduction au sens de l'article XI.165, § 1er, alinéa 1er, à des fins de numérisation, de mise à disposition, d'indexation, de catalogage, de préservation ou de restauration ».

Directive 2012/28/EU	Code of Economic Law (CEL)
digitising orphan works and making them available to the public.	exclusive purpose of covering their costs of digitising orphan works and making them available to the public. ⁵⁴
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	XI.245/5(2): The institutions and organisations referred to in Articles XI.192/1 and XI.218/1 shall indicate the name of identified authors and other rightholders in any use of an orphan work. ⁵⁵
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	–
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	<p>XI.245/7: Authors, performers, producers and broadcasting organisations who put an end to the orphan work status [of a work of phonogram] shall be entitled to a remuneration for the use that has been made of such works or phonograms in accordance with Articles XI.192/1 et XI.218/1 by the institutions and organisations referred to in Articles XI.192/1 et XI.218/1.</p> <p>The remuneration is paid by the institutions and organisations referred to in XI.192/1 et XI.218/1.</p> <p>The detailed rules concerning the computation of the remuneration due for the use of orphan works, the perception, allocation and control of the remuneration, as well as the moment where it is due are laid down by Royal Decree.</p> <p>(...)⁵⁶</p>

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⁵⁴ Art. XI.245/5 § 1er CDE « Les institutions et organismes visés aux articles XI.192/1 et XI.218/1 n'utilisent une oeuvre orpheline conformément aux articles XI.192/1 et XI.218/1 que dans un but lié à l'accomplissement de leurs missions d'intérêt public, en particulier la préservation, la restauration des oeuvres ou phonogrammes présents dans leur collection et la fourniture d'un accès culturel et éducatif à celles-ci.

Les institutions et organismes peuvent percevoir des recettes dans le cadre de ces utilisations, dans le but exclusif de couvrir leurs frais liés à la numérisation et à la mise à disposition du public d'oeuvres orphelines ».

⁵⁵ Art. XI.245/5 § 2 CDE « Les institutions et organismes visés aux articles XI.192/1 et XI.218/1 indiquent le nom des auteurs identifiés et autres ayants droit lors de toute utilisation d'une oeuvre orpheline ».

⁵⁶ Article XI.245/7 « Lorsque les auteurs, les artistes-interprètes ou exécutants, les producteurs et les organismes de radiodiffusion mettent fin au statut d'oeuvre orpheline, ils ont droit à une rémunération pour l'utilisation que les institutions et organismes visés aux articles XI.192/1 et XI.218/1 ont fait conformément aux articles XI.192/1 et XI.218/1 de telles oeuvres ou phonogrammes.

La rémunération est payée par les institutions et les organismes visés aux articles XI.192/1 et XI.218/1.

Le Roi fixe les modalités de calcul de la rémunération pour l'utilisation d'oeuvres orphelines, les modalités de perception, de répartition et de contrôle de la rémunération, ainsi que le moment où elle est due. (...) ».

II. BULGARIA

II.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

II.1.1. Constitution

The Constitution of the Republic of Bulgaria from 1991 in its Article 54 envisages that creativity in its artistic, scientific and technological forms shall be recognized and protected by the law and all copyrights shall be protected by the State⁵⁷:

Art. 54.

(1)

(2) Artistic, scientific and technological creativity shall be recognized and guaranteed by the law.

*(3) The State shall protect all inventors' rights, copyrights and related rights.*⁵⁸

II.1.2. Copyright Law

The protection of copyright in Bulgaria is governed by the Law on Copyright and Neighbouring Rights of 29 June 1993 (the Law). It transposes several Directives.

The Law is divided into sections, dealing in particular with copyright, the related rights and their protection.

II.2. COPYRIGHT

II.2.1. Definition and content

Copyright itself is not expressly defined by the Law, but from Article 1 it can be deduced that it concerns the rights of the authors relating to the creation and distribution of literary, artistic and scientific works:

*Art. 1. This Law shall regulate the relationships related to the creation and distribution of literary, artistic and scientific works.*⁵⁹

The content of copyright under the Law includes both moral and economic rights.

II.2.1.1 Moral rights

The moral rights are set out in Article 15 of the Law in an exhaustive list:

Types of Moral Copyrights

Art. 15.

(1) The author shall have the right to:

1. decide whether the work created by him may be made available to the public and to determine the time, place and manner in which this may be done with the

⁵⁷ The text of the citations (both in EN and BG) is taken from Ciela.net.

⁵⁸ "Чл. 54.

(1)

(2) Свободата на художественото, научното и техническото творчество се признава и гарантира от закона.

(3) Изобретателските, авторските и сродните на тях права се закрилят от закона."

⁵⁹ "Чл. 1. Този закон урежда отношенията, свързани със създаването и разпространението на произведенията на литературата, изкуството и науката."

exception of the subject matter under Art. 3, para 1, items 4, 6 and 8 for which this right shall be arranged by contract;

- 2. claim authorship of the work;*
- 3. decide whether his work shall be made available to the public under pseudonym or anonymously;*
- 4. require that his name, pseudonym or other identifying mark be indicated in a suitable manner whenever his work is used;*
- 5. require that the entirety of his work is preserved and oppose to any modifications thereof as well as to any other actions that may infringe his legitimate interests or personal dignity;*
- 6. modify his work, provided that this does not infringe the rights acquired by other persons;*
- 7. access the original of the work when it is in the possession of another person and whenever such access is necessary for exercising moral or economic right provided by this Law;*
- 8. stop the use of the work due to changes in his beliefs, with exception of already implemented architectural works, providing compensation for the damages incurred by persons who have lawfully obtained the right to use the work.⁶⁰*

II.2.1.2 Economic rights

Economic rights are set out in Articles 18 and 19. According to these provisions, the author has the exclusive right to use his or her work and to give permission for the use of these works and be compensated for that, except for the cases that are explicitly mentioned in the law. A non-exhaustive list of uses is given in article 18. On the other hand, the legal theory identifies 4 economic rights for the author: 1) the right of reproduction of the work, 2) the right of distribution (which is limited to the first sale of the original or of copies of the work, Article 18a), 3) the right to let, 4) the right of public exhibition.

⁶⁰ "Видове неимуществени авторски права

Чл. 15. (1) Авторът има право:

- 1. да реши дали създаденото от него произведение може да бъде разгласено и да определи времето, мястото и начина, по който да стане това, с изключение на обектите по чл. 3, ал. 1, т. 4, 6 и 8, при които това право се уговаря по договор;*
- 2. да иска признаване на неговото авторство върху произведението;*
- 3. да реши дали произведението му да бъде разгласено под псевдоним или анонимно;*
- 4. да иска името му, псевдонима му или друг идентифициращ го авторски знак да бъдат обозначавани по съответния начин при всяко използване на произведението;*
- 5. да иска запазване на целостта на произведението и да се противопоставя на всякакви промени в него, както и на всяко друго действие, което би могло да наруши законните му интереси или личното му достойнство;*
- 6. да променя произведението си, ако с това не се нарушават права, придобити от други лица;*
- 7. на достъп до оригинала на произведението, когато то се намира във владение на друго лице и когато това е необходимо с оглед упражняване на неимуществено или имуществено право, предвидено в този закон;*
- 8. да спре използването на произведението поради промени в убежденията си, с изключение на реализираните произведения на архитектурата, като обезщети за претърпените вреди лицата, които законно са придобили правото да използват произведението."*

Types of Economic Copyrights

Art. 18.

(1) The author shall have the exclusive right to use the work created by him and to authorize its use by other persons except in the cases when this Law provides otherwise.

(2) In the sense of para 1 as use shall be considered the actions such as:

- 1. reproduction of the work;*
- 2. distribution of the original or copies of the work among unlimited number of persons;*
- 3. public presentation or performance of the work;*
- 4. broadcasting of the work;*
- 5. (amend. - SG 99/05, in force from 10.01.2006) transmission and retransmission of the work by cable;*
- 6. public exhibition of a work of fine art or a work created by photographic or analogous method;*
- 7. translation of the work into another language;*
- 8. (suppl. - SG 28/00, in force from 05.05.2000; suppl. - SG 25/11, in force from 25.03.2011) adaptation and synchronisation of the work. Adaptation shall also be the adjustment and any alteration of the work, as well as the use of the work to create a new derivative work;*
- 9. implementation of an architectural project through building or manufacturing of the object described in it;*
- 10. (new - SG 28/00, in force from 05.05.2000; amend. - SG 99/05, in force from 10.01.2006) communication by wireless means or cable, by making the work available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them.*
- 11. (new - SG 77/02, in force from 01.01.2003; suppl. - SG 25/11, in force from 25.03.2011) the import and the export to third countries of copies of the work in commercial quantities, regardless whether they have been lawfully produced or in infringement of the right referred to in item 1.*

(3) Use as referred to in para 2, items 3 through 8 shall be considered to have occurred whenever the actions described above have been performed in a manner allowing unlimited number of people to perceive the work.

(4) (revoked - SG 77/02, in force from 01.01.2003).

Exhaustion of the Right of Distribution

Art. 18a. (new - SG 77/02, in force from 01.01.2003)

(1) (amend. - SG 99/05) () The first sale or other transaction on the territory of the Member States of the European Union made by the owner of the copyright or with his consent which transfers the ownership of the original or copy of the work shall lead to exhaustion of the right of their distribution on this territory without prejudice to the right to permit their further renting.*

(2) (suppl. - SG 99/05, in force from 01.01.2006) The provision of para 1 shall not affect the right referred to in Art. 20 [Right of Compensation at Resale of Work of Art] and Art. 22a, para 2 [At lending of works or copies of carriers containing them the authors shall have the right of compensation due by the person lending them.].

(3) The provision of para 1 shall not refer to the cases of conceding originals or copies of the work in digital way, in respect to the materialised copies of the work made by the recipient with the consent of the owner of the copyright.

Right of Compensation for All Types of Use

Art. 19. The author shall have the right of compensation for all types of use of his work and for each successive use of the same type.⁶¹

⁶¹ "Видове имуществени авторски права

Чл. 18.

(1) Авторът има изключителното право да използва създаденото от него произведение и да разрешава използването му от други лица, освен в случаите, за които този закон разпорежда друго.

(2) За използване по смисъла на ал. 1 се смятат действия като:

1. възпроизвеждането на произведението;
2. разпространението сред неограничен брой лица на оригинала или екземпляри от произведението;
3. публичното представяне или изпълнение на произведението;
4. излъчването на произведението по безжичен път;
5. (изм. - ДВ, бр. 99 от 2005 г., в сила от 10.01.2006 г.) предаването и препредаването на произведението по кабел;
6. публичното показване на произведение на изобразителното изкуство и на произведение, създадено по фотографски или аналогичен на него начин;
7. превеждането на произведението на друг език;
8. (доп. - ДВ, бр. 28 от 2000 г., в сила от 05.05.2000 г., доп. - ДВ, бр. 25 от 2011 г., в сила от 25.03.2011 г.) преработката и синхронизацията на произведението. Преработка е и приспособяването и внасянето на всякакъв вид промени в произведението, както и използването на произведението за създаване на ново, производно от него произведение;
9. реализирането на архитектурен проект чрез построяване или изработване на обекта, за който той е предназначен;
10. (нова - ДВ, бр. 28 от 2000 г., в сила от 05.05.2000 г., изм. - ДВ, бр. 99 от 2005 г., в сила от 10.01.2006 г.) предлагането по безжичен път или по кабел на достъп на неограничен брой лица до произведението или до част от него по начин, позволяващ този достъп да бъде осъществен от място и по време, индивидуално избрани от всеки от тях;
11. (нова - ДВ, бр. 77 от 2002 г., в сила от 01.01.2003 г., доп. - ДВ, бр. 25 от 2011 г., в сила от 25.03.2011 г.) вносът и износът в трети държави на екземпляри от произведението в търговско количество, независимо дали са произведени законно или в нарушение на правото по т. 1.

(3) Използване по ал. 2, т. 3 до т. 8 включително е налице, когато посочените действия се извършват по начин, даващ възможност произведението да бъде възприето от неограничен брой лица.

(4) (Отм. - ДВ, бр. 77 от 2002 г., в сила от 01.01.2003 г.).

Прекратяване на правото на разпространение

Чл. 18а. (Нов - ДВ, бр. 77 от 2002 г., в сила от 01.01.2003 г.)

(1) (Изм. - ДВ, бр. 99 от 2005 г., в сила от 01.01.2007 г.) Първата продажба или друга сделка на територията на държавите - членки на Европейския съюз, с която се прехвърля собствеността върху оригинала на произведението или на екземпляр от него, извършена от носителя на авторското право или с негово съгласие, води до прекратяване на правото на разпространение върху тях на тази територия, с изключение на правото да се разрешава по-нататъшното им отдаване под наем.

II.2.2. Author

The definition of an author is laid down in Article 5:

*Author shall be the natural person whose creative endeavours have resulted in the creation of a literary, artistic or scientific work.*⁶²

The right arises from the moment of creation of a literary, artistic or scientific work - Article 2 of the Law.⁶³

The Law does not exclude that other natural persons or legal entities can be holders of copyrights, but only in the cases provided for in the law:

*Other natural or legal persons may be owners of copyright only in the cases provided by this Law.*⁶⁴

For works that were made public anonymously or under a pseudonym, the copyrights are exercised by the person who made the publicity with the agreement of the author until the personality of the author is revealed:

Art. 7.

(1) The work may be made available to the public under pseudonym or anonymously.

(2) Until revealing the identity of the author his copyright shall be exercised by the natural or legal person that has made the work available to the public for the first time with the author's consent.

*(3) The provision of paragraph 2 shall not apply if the pseudonym leaves no doubt as to the identity of the author.*⁶⁵

In addition, the Law provides rules concerning the author and his/her copyrights for the cases of joint authorship, translations and adaptations, periodicals and encyclopaedias, collections, anthologies, bibliographies and databases, works of fine art and architecture, portraits, computer programmes and databases developed in employment relationship.

(2) (Доп. - ДВ, бр. 99 от 2005 г., в сила от 10.01.2006 г.) Разпоредбата на ал. 1 не засяга правото по чл. 20 и по чл. 22а, ал. 2.

(3) Разпоредбата на ал. 1 не се отнася до случаите на предоставяне на оригинали на произведението или на екземпляри от него по цифров път, по отношение на материализираните копия от произведението, направени от получателя със съгласието на носителя на авторското право.

Право на възнаграждение за всеки вид използване

Чл. 19. Авторът има право на възнаграждение за всеки вид използване на произведението и за всяко поредно използване на същия вид."

⁶² "Автор е физическото лице, в резултат на чиято творческа дейност е създадено произведение."

⁶³ "Авторското право върху произведения на литературата, изкуството и науката възниква за автора със създаването на произведението."

⁶⁴ "Други физически или юридически лица могат да бъдат носители на авторско право само в случаите, предвидени в този закон."

⁶⁵ Чл. 7.

"(1) Произведение може да бъде разгласено под псевдоним или анонимно.

(2) До разкриване личността на автора неговото авторско право се упражнява от физическото или юридическото лице, което със съгласието на автора е разгласило за първи път произведението.

(3) Разпоредбата на ал. 2 не се прилага, когато псевдонимът не поражда съмнение относно личността на автора."

II.2.3. Protected works

Article 3 of the Law gives a broad description of the protected works including a non-exhaustive list of protected works.

Protected Subject Matter

Art. 3.

(1) Any literary, artistic and scientific work resulting from creative endeavour and expressed by any mode and in any tangible form shall be the subject matter of copyright, such as:

- 1. literary works, including works of scientific and technical literature, of publicity and computer software;*
- 2. musical works;*
- 3. performing arts works: dramatic or dramatico-musical works, entertainments in dumb show, choreographic, etc.;*
- 4. films and other audio-visual works;*
- 5. works of fine art, including works of applied art, design and national artistic crafts;*
- 6. (amend. – SG 25/11, in force from 25.03.2011) realised works of architecture and implemented spatial plans;*
- 7. photographic works and works created by a process analogous to photography;*
- 8. (amend. – SG 25/11, in force from 25.03.2011) approved architecture projects, approved spatial planning drafts, maps, schemes, plans and others related to architecture, urban planning, geography, topography, museum research and any other area of science and technology;*
- 9. graphic design of publications;*
- 10. (new - SG 29/06) cadastral maps and state topographical maps.*

(2) Subject matter of copyright shall be also:

- 1. translations and adaptations of existing works and works of folklore;*
- 2. arrangements of musical works and works of folklore;*
- 3. periodicals, encyclopaedia, collections, anthologies, bibliographies, databases and other similar subject matter including two or more works or products.*

(3) Subject matter of copyright may also be parts of the works referred to in para 1 and 2, preliminary sketches, plans, etc.⁶⁶

⁶⁶ "Закриляни обекти

Чл. 3.

(1) Обект на авторското право е всяко произведение на литературата, изкуството и науката, което е резултат на творческа дейност и е изразено по какъвто и да е начин и в каквато и да е обективна форма, като:

- 1. литературни произведения, включително произведения на научната и техническата литература, на публицистиката и компютърни програми;*
- 2. музикални произведения;*

In Article 4 of the Bulgarian Copyright Law, the exceptions to what does not constitute a protected work are listed exhaustively:

Exceptions

Art. 4. Shall not be considered subject matter of copyright:

- 1. (suppl. – SG 21/14) normative and individual acts of state government bodies, acts of the courts of justice and official translations thereof;*
- 2. ideas and concepts;*
- 3. works of folklore;*
- 4. news, facts, information and data.⁶⁷*

II.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Chapter 5 of the Law sets out the limitations to the copyright by providing for the free use of works. Free use of works means works which can be legally reproduced/used without needing the rightholder's permission. It can be with or without compensation for the author and "under the condition, that the normal use of the work is not hampered and the legitimate interests of the owner of the copyright are not impaired" (Art. 23)

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- 3. сценични произведения - драматични, музикално-драматични, пантомимични, хореографски и други;*
 - 4. филми и други аудио-визуални произведения;*
 - 5. произведения на изобразителното изкуство, включително произведения на приложното изкуство, дизайна и народните художествени занаяти;*
 - 6. (изм. - ДВ, бр. 25 от 2011 г., в сила от 25.03.2011 г.) реализирани произведения на архитектурата и приложени устройствени планове;*
 - 7. фотографски произведения и произведения, създадени по начин, аналогичен на фотографския;*
 - 8. (изм. - ДВ, бр. 25 от 2011 г., в сила от 25.03.2011 г.) одобрени архитектурни проекти, одобрени проекти по устройствено планиране, карти, схеми, планове и други, отнасящи се до архитектурата, териториалното устройство, географията, топографията, музейното дело и която и да е област на науката и техниката;*
 - 9. графично оформление на печатно издание;*
 - 10. (нова - ДВ, бр. 29 от 2006 г.) кадастрални карти и държавни топографски карти.*

(2) Обект на авторското право са също:

- 1. преводи и преработки на съществуващи произведения и фолклорни творби;*
- 2. аранжimenti на музикални произведения и на фолклорни творби;*
- 3. периодични издания, енциклопедии, сборници, антологии, библиографии, бази данни и други подобни, които включват две или повече произведения или материали.*

(3) Обект на авторското право може да бъде и част от произведение по ал. 1 и 2, както и подготвителните скици, планове и други подобни."

⁶⁷

"Исключения

Чл. 4. Не са обект на авторското право:

- 1. (доп. - ДВ, бр. 21 от 2014 г.) нормативни и индивидуални актове на държавни органи за управление, актовете на съдилищата, както и официалните им преводи;*
- 2. идеи и концепции;*
- 3. фолклорни творби;*
- 4. новини, факти, сведения и данни."*

Article 24 transposes many of the 20 optional limitations to the copyright set out in Directive 2001/29/EC of the European Parliament and of the Council, and provides for some limitations that are not included in the Directive. They relate mostly to the right of reproduction but also to the right of performance and giving access to the work without compensation for the author. Article 25 of the Law provides for two cases of reproduction right that require compensation for the author (set out in the table below).

Directive 2001/29/EC	Law on Copyright and Neighbouring Rights of 29 June 1993
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>24(1) Without consent of the owner of the copyright and without payment of compensation shall be permissible:</p> <p>1. (suppl. - SG 99/05, in force from 10.01.2006) temporary reproduction of works, having transient or incidental character, not having independent economic significance, constituting integral and essential part of the technological process and with the sole purpose to enable:</p> <p>a) a transmission in a network between third parties by an intermediary, or</p> <p>b) other permitted use of a work;⁶⁸</p>
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p> <p>(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;</p>	<p>Art. 25. (amend. - SG 77/02, in force from 01.01.2003)</p> <p>25(1) (amend. - SG 99/05, in force from 10.01.2006) Without consent of the owner of the copyright but upon payment of fair compensation shall be admissible:</p> <p>1. reproduction with non-commercial purposes of printed works, except note materials, on paper or other similar carrier by reprography or other technique, ensuring similar result;⁶⁹</p>

⁶⁸ Чл. 24. (Изм. - ДВ, бр. 77 от 2002 г., в сила от 01.01.2003 г.)

(1) Без съгласието на носителя на авторското право и без заплащане на възнаграждение е допустимо:

1. (доп. - ДВ, бр. 99 от 2005 г., в сила от 10.01.2006 г.) временното възпроизвеждане на произведения, ако то има преходен или инцидентен характер, няма самостоятелно икономическо значение, съставлява неделима и съществена част от техническия процес и се прави с единствената цел да позволи:

а) предаване в мрежа чрез посредник, или

б) друго разрешено използване на произведение;

⁶⁹ Чл. 25. (Изм. - ДВ, бр. 77 от 2002 г., в сила от 01.01.2003 г.)

(1) (Изм. - ДВ, бр. 99 от 2005 г., в сила от 10.01.2006 г.) Без съгласието на носителя на авторското право, но при заплащане на справедливо компенсационно възнаграждение е допустимо:

1. възпроизвеждането с нетърговска цел на отпечатани произведения, с изключение на нотни материали, върху хартия или друг подобен носител чрез репрографиране или друг способ,

Directive 2001/29/EC	Law on Copyright and Neighbouring Rights of 29 June 1993
Text	Text
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	25(1)2. reproduction of works, regardless of the carrier, by a natural person for personal use unless done with commercial purposes. (2) The provision of para 1, item 2 shall not refer to computer software and architectural works. For the computer software shall be applied the provisions of Art. 70 and 71. ⁷⁰
(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;	24(1)9. (amend. - SG 99/05, in force from 10.01.2006) reproduction of already published works by publicly accessible libraries, educational or other learning establishments, museums and archive institutions, with educational purposes or with the purpose of preservation of the works, unless serving for commercial purposes; ⁷¹
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	24(1)12. temporary recording of work by radio- and television organisations, to which the author has granted the right to use the work, carried out by their own technical devices and for the needs of their own programmes within the margins of the granted authorization; records of important documentary value can be preserved in official archive; ⁷²
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(a) use for the sole purpose of illustration for teaching or scientific research, as long as the	24(1)3. use of parts of published works or of not big number of works in other works in amount,

осигуряващ подобен резултат;

⁷⁰ 2. възпроизвеждането на произведения, независимо върху какъв носител, от физическо лице за негово лично използване, при условие че не се извършва с търговска цел.

(2) Разпоредбата на ал. 1, т. 2 не се отнася до компютърните програми и архитектурните произведения. За компютърните програми се прилагат разпоредбите на чл. 70 и 71.

⁷¹ 9. (изм. - ДВ, бр. 99 от 2005 г., в сила от 10.01.2006 г.) възпроизвеждането на вече публикувани произведения от общодостъпни библиотеки, учебни или други образователни заведения, музеи и архивни учреждения, с учебна цел или с цел съхраняване на произведението, ако това не служи за търговски цели;

⁷² 12. временното записване на произведение от радио- и телевизионни организации, на които авторът е отстъпил правото да използват произведението, осъществено със собствени технически средства и за нуждите на собствените им предавания в рамките на полученото разрешение; записи, които имат важна документална стойност, могат да бъдат съхранени в официален архив;

Directive 2001/29/EC	Law on Copyright and Neighbouring Rights of 29 June 1993
Text	Text
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;	necessary for analysis, commentary or other kind of scientific research; such use shall be permissible only for scientific and educational purposes, indicating the source and the name of the author, unless impossible; ⁷³
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	24(1)10 part. reproduction of works with Braille script or other analogous method already made available to the public, unless done for profit purposes; ⁷⁴
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	24(1)5 part. (amend. - SG 99/05, in force from 10.01.2006) reproduction by the mass media of articles on current economic, political and religious topics already made available to the public unless such use has been explicitly forbidden, indicating the source and the name of the author, unless impossible; ⁷⁵
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	24(1)2. use of quotations from works of other persons already made available to the public at criticism or overview, pointing out the source and the name of the author, unless impossible; the quotation must comply with the usual practice and to be in amount, justified by the purpose; ⁷⁶

⁷³ 3. използването на части от публикувани произведения или на неголям брой произведения в други произведения в обем, необходим за анализ, коментар или друг вид научно изследване; такова използване е допустимо само за научни и образователни цели при посочване на източника и името на автора, освен ако това е невъзможно;

⁷⁴ 10. възпроизвеждането на вече разгласени произведения посредством Брайлов шрифт или друг аналогичен метод, ако това не се извършва с цел печалба;

⁷⁵ 5. (изм. - ДВ, бр. 99 от 2005 г., в сила от 10.01.2006 г.) възпроизвеждането от средствата за масово осведомяване на вече разгласени статии по актуални икономически, политически или религиозни теми, в случай че такова използване не е било изрично забранено, при посочване на източника и името на автора, освен ако това е невъзможно;

⁷⁶ 2. използването на цитати от вече разгласени произведения на други лица при критика или обзор при посочване на източника и името на автора, освен ако това е невъзможно; цитирането трябва да съответства на обичайната практика и да е в обем, оправдан от целта;

Directive 2001/29/EC	Law on Copyright and Neighbouring Rights of 29 June 1993
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(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	24(1)13. use of works for the purposes of the national security, in the court- or administrative procedures or in the parliamentary practice; ⁷⁷
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	24(1)4. use as current information in periodicals and the other mass media of speeches, reports, preaches, etc. and parts thereof, presented at public meetings, as well as pleading, pronounced at court procedures, indicating the source and the name of the author, unless impossible; ⁷⁸
(g) use during religious celebrations or official celebrations organised by a public authority;	24(1)14. use of works during religious ceremonies or at official ceremonies, organised by the public authorities; ⁷⁹
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	24(1)7. use of works, permanently exhibited at streets, squares and other public places without mechanical contact copying, as well as wireless broadcasting or transmitting by cable or other technical device, if done with informatory or other non-commercial purpose; ⁸⁰
(i) incidental inclusion of a work or other subject-matter in other material;	–
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	–
(k) use for the purpose of caricature, parody or pastiche;	–
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	24(1)15. (amend. – SG 25/11, in force from 25.03.2011, amend. – SG 28/18, in force from 29.03.2018) use of a building, which is work of architecture, or of a plan of such building for

⁷⁷ 13. използването на произведения за целите на националната сигурност, в съдебно или административно производство или в парламентарната практика;

⁷⁸ 4. използването като текуща информация в периодичния печат и другите средства за масово осведомяване на речи, отчети, проповеди и други или на части от тях, произнесени на публични събрания, както и на плодотворни, произнесени в съдебни процеси, при посочване на източника и името на автора, освен ако това е невъзможно;

⁷⁹ 14. използването на произведения по време на религиозни церемонии или на официални церемонии, организирани от публичната власт;

⁸⁰ 7. използването на произведения, постоянно изложени на улици, площади и други обществени места, без механично контактно копиране, както и излъчването им по безжичен път или предаването им чрез кабел или друго техническо средство, ако това се извършва с информационна или друга нетърговска цел;

Directive 2001/29/EC	Law on Copyright and Neighbouring Rights of 29 June 1993
Text	Text
	the purpose of its reconstruction, carried out following coordination with the respective collective management organization. ⁸¹
(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;	24(1)11. granting access to individuals to works, located in collections of the organisations referred to in item 9, under the condition, that it is done with scientific purposes and has no commercial character; ⁸²
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(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.	–

Directive 2012/28	Law on Copyright and Neighbouring Rights of 29 June 1993
Text	Text
6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations	71g(1): Organizations under Art. 71b, par. 1 may without the consent of the holder of a copyright or related right and without payment of a fee, use an orphan work or sound record available in their funds, by:

⁸¹ 15. (изм. - ДВ, бр. 25 от 2011 г., в сила от 25.03.2011 г., изм. - ДВ, бр. 28 от 2018 г., в сила от 29.03.2018 г.) използването на сграда, която е произведение на архитектурата, или на план на такава сграда с цел реконструкцията ѝ, извършено след съгласуване със съответната организация за колективно управление на права.

⁸² 11. предоставянето на достъп на физически лица до произведения, намиращи се в колекциите на организации по смисъла на т. 9, при условие че се извършва за научни цели и няма търговски характер;

Directive 2012/28	Law on Copyright and Neighbouring Rights of 29 June 1993
Text	Text
referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways: (a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC; (b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.	1. providing access thereto subject to compliance with the provision of Art. 18, par. 2, item 10 [communication by wireless means or cable, by making the work available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them]; 2. copy it in order to digitalize, make it available, index, list in a catalogue, preserve or restore it. ⁸³
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	71g(2): Organizations under Art. 71b, par. 1 may use an orphan work or sound record in compliance with par. 1 only in view of achievement of objectives related to their public purpose of use, in particular to preservation, restoration and provision of access for cultural and educational purposes to works and sound records available in their funds. These organizations may collect for this use fees, however as far as this is relevant in order to cover the cost of digitalization of the orphan works and sound records and of provision of public access thereto. ⁸⁴
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	71g(3): Organizations under Art. 71b, par. 1 shall be obliged to provide for every use of orphan works and sound records indication of the names of authors and of other right holders, which are identified. ⁸⁵
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the	71g(4): The provisions of this Section do not affect the right of the organizations under Art. 71b, par. 1

⁸³ Чл. 71ж. (Нов - ДВ, бр. 14 от 2015 г.)

(1) Организацията по чл. 71б, ал. 1 могат без съгласието на носителя на авторското право или на сродно на него право и без заплащане на възнаграждение да използват осиротяло произведение или звукозапис, намиращи се в техните фондове, като:

1. предоставят достъп до него по реда на чл. 18, ал. 2, т. 10;
2. го възпроизвеждат с цел да го цифровизират, направят достъпно, индексират, каталогизират, съхранят или възстановят.

⁸⁴ (2) Организацията по чл. 71б, ал. 1 могат да използват осиротяло произведение или звукозапис в съответствие с ал. 1 само с оглед постигането на цели, свързани с тяхното обществено предназначение, в частност със запазването, възстановяването и осигуряването на достъп за културни и образователни цели до произведенията и звукозаписите, съдържащи се в техните фондове. Тези организации могат да събират при това използване такси, но само доколкото това е необходимо, за да могат да покрият разходите си по цифровизирането на осиротелите произведения и звукозаписи и по осигуряването на публичен достъп до тях.

⁸⁵ (3) Организацията по чл. 71б, ал. 1 са длъжни да осигурят при всякакво използване на осиротели произведения и звукозаписи посочване на имената на авторите и на другите правонослители, които са идентифицирани.

Directive 2012/28	Law on Copyright and Neighbouring Rights of 29 June 1993
Text	Text
pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	to conclude contracts within the scope of their activity, related to the fulfillment of their public purpose of use. ⁸⁶
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	71g(5): Bearers of rights having terminated the status of an orphan work or of another object of a copyright or of another related right, shall have the right to get a fair fee for use which has taken place according to par. 1 by organizations under Art. 71b, par. 1, with a main office in the Republic of Bulgaria. The fees under sentence one shall be payable for uses, which have taken place within the 5-year period, preceding the termination of the status of an orphan work or another object of a copyright or another related right. ⁸⁷

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⁸⁶ (4) Разпоредбите на този раздел не засягат правото на организациите по чл. 71б, ал. 1 да сключват договори в рамките на своята дейност, свързани с изпълнението на общественото им предназначение.

⁸⁷ (5) Носители на права, които са прекратили статута на осиротяло произведение или друг обект на авторско или сродно на него право, имат право да получат справедливо възнаграждение за използване, извършено съгласно ал. 1 от организации по чл. 71б, ал. 1, които имат седалище в Република България. Възнагражденията по изречение първо са дължими за използвания, осъществени в 5-годишния период, предхождащ прекратяването статута на осиротяло произведение или друг обект на авторско или сродно на него право.

III. CZECH REPUBLIC

III.1. APPLICABLE NATIONAL LEGAL FRAMEWORK⁸⁸

III.1.1. Charter of Fundamental Rights and Freedoms

The Czech Charter of Fundamental Rights and Freedoms^{89 90} in its consolidated version does contain specific provisions concerning the protection of intellectual property. Articles 15 and 34 of that Charter guarantee the rights to freedom of scientific research and freedom of artistic expression, the intellectual property rights and the right to access to cultural heritage.

Article 15

(2) Freedom of scientific research and of the arts is guaranteed.⁹¹

Article 34

(1) The rights to the results of creative intellectual activity are protected by law.⁹²

III.1.2. Copyright Law

The protection of copyright in the Czech Republic is governed by the Act No 121/2000 Coll.^{93 94} on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended.

The Copyright Act is divided into 8 parts and constitutes a comprehensive legal instrument covering all aspects of copyright, including provisions concerning i.a. the copyright protection of literary work expressed by speech or in writing, musical work, dramatic work, choreographic work, pantomimic work and computer programs, as well as legal concept of protected work in the course arising out of contract and in the course of employment, and collective rights management.

⁸⁸ The provisions of Czech national law are not protected by copyright as set out in Article 3(a) of the Copyright Act.

Article 3(a):

„Copyright protection shall not apply to:

a) an official work, such as a legal regulation, decision, public charter, publicly accessible register and collection of its documents, and also any official draft of an official work and other preparatory official documentation including the official translation of such work, Chamber of Deputies and Senate publications, a memorial chronicle of a municipality (municipal chronicles), a state symbol and symbol of a municipality, and any other such works where there is public interest in their exclusion from copyright protection.”

⁸⁹ Listina základních práv a svobod (Ústavní zákon č. 2/1993 Sb.)

⁹⁰ Translation available on the official website of the Czech Chamber of Deputies (PS ČR) <http://www.psp.cz/en/docs/laws/listina.html>.

⁹¹ Article 15 (2): *„Svoboda vědeckého bádání a umělecké tvorby je zaručena.”*

⁹² Article 34 (1): *„Práva k výsledkům tvůrčí duševní činnosti jsou chráněna zákonem.”*

⁹³ Autorský zákon (Zákon č. 121/2000 Sb.)

⁹⁴ English translation of the consolidated version of Act No. 121/2000 on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended by Act No. 81/2005, Act No. 61/2006 and Act No. 216/2006 is available on the official website of Ministry of culture of the Czech Republic: http://www.mkcr.cz/assets/autorske-pravo/vnitrostatni-pravni-predpisy/AZ_2006_-_pln_zn_n_v_anglick_m_jazyce.doc.

The translation published at the official website of Ministry of culture of the Czech Republic does not include the amendments to the original act after 2006. Those amendments are however included in this publication and are subsequently adapted for the purposes of this study.

According to Article 1 of the Copyright Act, that Act transposes the following Union legislative acts:

- a) Council Directive 93/83/EEC;
- b) Directive 96/9/EC of the European Parliament and of the Council;
- c) Directive 2001/29/EC of the European Parliament and of the Council;
- d) Directive 2001/84/EC of the European Parliament and of the Council;
- e) Directive 2004/48/EC of the European Parliament and of the Council;
- f) Directive 2006/115/EC of the European Parliament and of the Council;
- g) Directive 2006/116/EC of the European Parliament and of the Council;
- h) Directive 2009/24/EC of the European Parliament and of the Council;
- i) Directive 2011/77/EU of the European Parliament and of the Council;
- j) Directive 2012/28/EU of the European Parliament and of the Council;
- k) Directive 2014/26/EU of the European Parliament and of the Council.

III.2. COPYRIGHT

III.2.1. Definition and content

While the Copyright Act does not contain a definition of copyright as such, it describes the content of the protection granted.

The Copyright Act defines the subject of the copyright as follows:

Article 2

(1) The subject matter of copyright shall be a literary work or any other work of art or a scientific work, which is a unique outcome of the creative activity of the author and is expressed in any objectively perceivable manner including electronic form, permanent or temporary, irrespective of its scope, purpose or significance.⁹⁵

Copyright in the Czech Republic shall include exclusive moral rights (Article 11 of the Copyright Act) and exclusive economic rights (Article 12 et seq. of the Copyright Act).

III.2.1.1 Moral rights

The author's moral rights („osobnostní práva“) are described in Article 11 of the Copyright Act as the right to authorship to the work, right to decide about making his/her work public, right to be indicated as author and to decide on a manner of such indication, as well as the right to inviolability of the work.

Moral Rights

Article 11

(1) The author shall have the right to decide about making his work public.

(2) The author shall have the right to claim authorship, including the right to decide whether and in what way his authorship is to be indicated when his work is made

⁹⁵ Article 2 (1): „Předmětem práva autorského je dílo literární a jiné dílo umělecké a dílo vědecké, které je jedinečným výsledkem tvůrčí činnosti autora a je vyjádřeno v jakékoli objektivně vnímatelné podobě včetně podoby elektronické, trvale nebo dočasně, bez ohledu na jeho rozsah, účel nebo význam.“

public and further used, provided that the indication of authorship is normal in such use.

- (3) *The author shall have the right to the inviolability of his work, in particular, the right to grant consent to any alteration of, or other intervention in his work, unless otherwise stipulated herein. Where the work is used by any other person, such use may not be executed in a way that detracts from the value of the work. The author shall have the right of supervision over such other person's compliance with this obligation (author's supervision), unless the nature of the work or its use implies otherwise, or unless it is not possible to fairly require the user to enable the author to exercise his right to supervision.*
- (4) *The author may not waive his moral rights; these rights are non-transferable and shall become extinct on the death of the author. This shall be without prejudice to the provision of Paragraph (5) below.*
- (5) *After the death of the author no one may arrogate authorship of the work. The work may only be used in a way which shall not detract from its value. Unless the work is an anonymous work, the name of the author must be indicated, provided that such shall be a normal practice. Protection may be claimed even if the protection of the copyright-related economic rights expired by any of the author's kin, legal persons associating authors or the relevant collective rights manager.⁹⁶*

III.2.1.2 Economic rights

The author's economic rights („majetková práva“) are described in general terms in Article 12 et seq. of the Copyright Act (these rights in general terms are described in Articles 12, 26 and 27).

Economic Rights

Article 12

Right to Use the Work

- (1) *The author shall have the right to use his work in its initial form or in a form adapted by another person or otherwise modified, whether separately or in a collection or connection with any other work or elements, and to grant authorisation on a*

⁹⁶

Article 11

„Osobnostní práva

- (1) *Autor má právo rozhodnout o zveřejnění svého díla.*
- (2) *Autor má právo osobovat si autorství, včetně práva rozhodnout, zda a jakým způsobem má být jeho autorství uvedeno při zveřejnění a dalším užití jeho díla, je-li uvedení autorství při takovém užití obvyklé.*
- (3) *Autor má právo na nedotknutelnost svého díla, zejména právo udělit svolení k jakékoli změně nebo jinému zásahu do svého díla, nestanoví-li tento zákon jinak. Je-li dílo užíváno jinou osobou, nesmí se tak dít způsobem snižujícím hodnotu díla. Autor má právo na dohled nad plněním této povinnosti jinou osobou (autorský dohled), nevyplyvá-li z povahy díla nebo jeho užití jinak, anebo nelze-li po uživateli spravedlivě požadovat, aby autorovi výkon práva na autorský dohled umožnil.*
- (4) *Osobnostních práv se autor nemůže vzdát; tato práva jsou nepřevoditelná a smrtí autora zanikají. Ustanovení odstavce 5 tím není dotčeno.*
- (5) *Po smrti autora si nikdo nesmí osobovat jeho autorství k dílu. Dílo smí být užito jen způsobem nesnižujícím hodnotu díla. Je-li to obvyklé a nejde-li o dílo anonymní, musí být při jeho užití uveden autor. Ochrany se může domáhat i po zániku majetkových práv osoba autorovi blízká, právnická osoba sdružující autory nebo příslušný kolektivní správce.“*

contractual basis to any other person to exercise that right; the other person may use the work without such authorisation only in the cases stipulated herein.

- (2) This right of the author shall not extinct with the granting of the authorisation under Paragraph (1) above; the author only has, within the scope arising out of the contract, to suffer another person's intervention in his right to use the work.*
- (3) The author shall have the right to demand of the owner of the object through which the work is expressed to make such an object available to him where this is necessary for the exercise of copyright in accordance with this Act. This right may not be applied contrary to the legitimate interests of the owner; the owner shall not be obliged to render such an object to the author; the owner shall be obliged, however, to make a photograph or any other reproduction of the work at the request and expenses of the author and hand it over to the author.*
- (4) The right to use a work shall mean in particular:*
 - a) The right to reproduce a work (Article 13),*
 - b) The right to distribute an original or a copy of the work (Article 14),*
 - c) The right to rent an original or a copy of the work (Article 15),*
 - d) The right to lend an original or a copy of the work (Article 16),*
 - e) The right to exhibit an original or a copy of the work (Article 17),*
 - f) The right to communicate the work to the public (Article 18), including, but not limited to:*
 - 1. The right to perform the work live or from a fixation, and the right of transmitting the performance of the work (Articles 19 and 20),*
 - 2. The right to broadcast the work (Article 21),*
 - 3. The right to retransmit of the broadcast of the work (Article 22),*
 - 4. The right of performing the broadcast of the work (Article 23).⁹⁷*

⁹⁷

Article 12

„Majetková práva

Pododdíl 1

Práva dílo užít

- (1) Autor má právo své dílo užít v původní nebo jiným zpracované či jinak změněné podobě, samostatně nebo v souboru anebo ve spojení s jiným dílem či prvky a udělit jiné osobě smlouvou oprávnění k výkonu tohoto práva; jiná osoba může dílo užít bez udělení takového oprávnění pouze v případech stanovených tímto zákonem.*
- (2) Poskytnutím oprávnění podle odstavce 1 právo autorovi nezaniká; autorovi vzniká pouze povinnost strpět zásah do práva dílo užít jinou osobou v rozsahu vyplývajícím ze smlouvy.*
- (3) Autor má právo požadovat na vlastníku věci, jejímž prostřednictvím je dílo vyjádřeno, aby mu ji zpřístupnil, pokud je toho třeba k výkonu práv autorských podle tohoto zákona. Toto právo nelze uplatnit v rozporu s oprávněnými zájmy vlastníka; vlastník není povinen autorovi takovou věc vydat, je však povinen na žádost a náklady autora zhotovit fotografii nebo jinou rozmnoženinu díla a odevzdat ji autorovi.*
- (4) Právem dílo užít je zejména*
 - a) právo na rozmnožování díla (§ 13),*
 - b) právo na rozšiřování originálu nebo rozmnoženiny díla (§ 14),*

Common Provisions for Economic Rights

Article 26

- (1) *Economic rights may not be waived by the author; such rights are not transferable and are not subject to the execution of a decision; this provision shall not apply to claims arising from such economic rights.*
- (2) *Economic rights are inheritable. Where the economic rights to the work are inherited by more than one heir, their mutual relations to the work shall be governed, mutatis mutandis, by Article 8 (3) and (4). If such economic rights are inherited by the State or the economic rights escheat to the State, then such rights shall be exercised by the State Fund of Culture of the Czech Republic in its own name, and, in the case of audiovisual works or audiovisually applied works by the State Fund of the Czech Republic for Support and Development of Czech Cinematography. The incomes of the State from the exercise of the economic rights, as exercised by the mentioned state funds, shall be treated as the revenue of those state funds. State funds as referred to in third sentence shall maintain a list containing the names of the authors' economics rights inherited by them or the economics rights escheat to them, they shall update the list annually and by 31 January following the calendar year in question at the latest publish that list on its website.*
- (3) *In the event of termination of the legal existence of a legal person that inherited the economic rights to a work, and there is no successor in title, such rights shall escheat to the State. Provisions of Paragraph 2, second and third sentence, shall apply mutatis mutandis.*
- (4) *The provisions of this Act concerning the author shall also apply to his heirs, or to the state, if the inheritance escheats to it according to Paragraphs 2 and 3, unless nature of such provisions indicates otherwise.⁹⁸*

- c) *právo na pronájem originálu nebo rozmnoženiny díla (§ 15),*
- d) *právo na půjčování originálu nebo rozmnoženiny díla (§ 16),*
- e) *právo na vystavování originálu nebo rozmnoženiny díla (§ 17),*
- f) *právo na sdělování díla veřejnosti (§ 18), zejména*
 1. *právo na provozování díla živě nebo ze záznamu a právo na přenos provozování díla (§ 19 a 20),*
 2. *právo na vysílání díla rozhlasem či televizí (§ 21),*
 3. *právo na přenos rozhlasového či televizního vysílání díla (§ 22),*
 4. *právo na provozování rozhlasového či televizního vysílání díla (§ 23).“*

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Article 26

„Oddíl 4

Společná ustanovení pro majetková práva

- (1) *Majetkových práv se autor nemůže vzdát; tato práva jsou nepřevoditelná a nelze je postihnout výkonem rozhodnutí; to neplatí pro pohledávky z takových majetkových práv vzniklé.*
- (2) *Majetková práva jsou předmětem dědictví. Zdědí-li majetková práva k dílu více dědiců, použije se na jejich vzájemné vztahy k dílu ustanovení § 8 odst. 3 a 4 obdobně. Zdědí-li takto majetková práva stát nebo státu majetková práva případnou, vykonává je svým jménem Státní fond kultury České republiky, a pokud jde o díla audiovizuální a díla audiovizuálně užitá, Státní fond kinematografie. Příjmy z výkonu majetkových práv státu vykonávaných těmito státními fondy jsou příjmy těchto státních fondů. Státní fondy uvedené ve větě třetí vedou jmenný seznam autorů, jejichž majetková práva stát zdědil nebo mu připadla, aktualizují jej za každý kalendářní rok a do 31. ledna následujícího kalendářního roku jej uveřejňují na svých internetových*

Duration of Economic Rights

Article 27

- (1) Unless stipulated otherwise, economic rights shall run for the life of the author and 70 years after his death.*
- (2) If a work has been created as the work of joint authors, the period of duration of economic rights shall be calculated from the death of the last surviving author.*
- (3) Economic rights to an anonymous and pseudonymous work shall run for 70 years from the time when the work was lawfully made public. Where the real name of the author of the anonymous or pseudonymous work is commonly known, or if the author declares his identity in public [Article 7 (2)] during the course of the term pursuant to the first sentence, the duration of economic rights to such work shall be governed by Paragraph (1), and in the case of joint authors also by Paragraph (2). Provisions of this Paragraph shall also apply to a collective work (Article 59), except in cases where the authors who created such a work are indicated as authors with the work or on the work when it is made accessible to the public; in such cases the duration of the economic rights in respect of a collective work is governed by the provisions of Paragraph (1) or (2) above.*
- (4) In the case of a work where the death of the author is not decisive for the calculation of the period of duration of economic rights, and where the work has not been made public within 70 years from its creation, the economic rights shall expire at the end of this period.*
- (5) The period of duration of economic rights to an audiovisual work shall be calculated from the death of the last surviving of the following persons: the director, author of screenplay, author of the dialogues and composer of the music specifically created for use in the audiovisual work.*
- (6) The period of duration of economic rights to a musical work with a literary work, which were originally created in order to be merged, even though it does not concern the joint authors (Article 8), shall end 70 years from the death of the last surviving of the following persons: the author of the literary work and author of the musical work. Provisions of previous sentence shall apply mutatis mutandis for musical-dramatical work.*
- (7) If the publication of a work is decisive for the start of the period of duration of economic rights, and the work is being published over a certain period of time in volumes, parts, instalments, issues or episodes, the period of duration of the economic rights shall run for each such item of the work separately.*
- (8) The period of duration of economic rights shall be calculated always from the first day of the year following the year in which the event decisive for its calculation occurred.*

stránkách.

- (3) Zanikne-li právnická osoba, která zdělila majetková práva k dílu, bez právního nástupce, připadají tato majetková práva státu. Ustanovení odstavce 2 věty druhé a třetí platí obdobně.*
- (4) Ustanovení tohoto zákona o autorovi platí, pokud nevyplývá z jejich povahy jinak, i pro jeho dědice, popřípadě pro stát, připadne-li mu dědictví podle odstavců 2 a 3."*

(9) Provisions of paragraphs (1) to (8) shall apply mutatis mutandis for determination of the period of duration of economic rights to an orphan work; paragraph (3) shall apply mutatis mutandis for a work for which no author is identified.⁹⁹

III.2.2. Author

A definition of “author” is provided for in Article 5 of the Copyright Act while Article 6 of that Act establishes a presumption of authorship.

Authorship

Article 5

Author

(1) Author is the natural person who created the work.¹⁰⁰

Article 6

Legal Presumption of Authorship

Author shall be the natural person whose real name is indicated in a usual manner on the work or is indicated with the work in the register administrated by the relevant collective rights manager, unless proven otherwise; this shall not apply in cases where

⁹⁹ Article 27

„Oddíl 5

Trvání majetkových práv

- (1) Majetková práva trvají, pokud není dále stanoveno jinak, po dobu autorova života a 70 let po jeho smrti.*
- (2) Bylo-li dílo vytvořeno jako dílo spoluautorů, počítá se doba trvání majetkových práv od smrti spoluautora, který ostatní přežil.*
- (3) Majetková práva k dílu anonymnímu a pseudonymnímu trvají 70 let od oprávněného zveřejnění díla. Je-li pravé jméno autora díla anonymního nebo pseudonymního obecně známo nebo se autor takového díla veřejně prohlásí (§ 7 odst. 2) v průběhu doby podle věty první, řídí se trvání majetkových práv k takovému dílu podle odstavce 1, a jde-li o dílo spoluautorů, i podle odstavce 2. Ustanovení tohoto odstavce se použije i na kolektivní dílo (§ 59), s výjimkou případů, kdy autoři, kteří dílo jako takové vytvořili, jsou u díla nebo na díle při jeho zpřístupnění veřejnosti jako autoři označeni; v takových případech se trvání majetkových práv ke kolektivnímu dílu řídí ustanovením odstavce 1 nebo 2.*
- (4) U díla, u něhož není pro počítání doby trvání majetkových práv rozhodná smrt autora a které nebylo zveřejněno během 70 let od jeho vytvoření, majetková práva uplynutím této doby zanikají.*
- (5) Doba trvání majetkových práv k dílu audiovizuálnímu se počítá od smrti poslední přeživší z následujících osob: režisér, autor scénáře, autor dialogů a skladatel hudby zvláště vytvořené pro užití v audiovizuálním díle.*
- (6) Doba trvání majetkových práv k hudebnímu dílu s textem, byla-li obě díla vytvořena pro účely užití ve spojení, končí, i když nejde o dílo spoluautorů (§ 8), 70 let od smrti poslední přeživší z následujících osob: autor textu a autor hudebního díla. Pro dílo hudebně dramatické se použije věta první obdobně.*
- (7) Je-li pro počítání doby trvání majetkových práv rozhodné zveřejnění díla a dílo se zveřejňuje po určitou dobu ve svazcích, dílech, na pokračování nebo v řadách, počítá se doba trvání majetkových práv pro každou takovou část díla samostatně.*
- (8) Doba trvání majetkových práv se počítá vždy od prvního dne roku následujícího po roce, v němž došlo k události rozhodné pro její počítání.*
- (9) Pro určení doby trvání majetkových práv k osiřelému dílu se použijí ustanovení odstavců 1 až 8 obdobně; pro dílo, jehož autor není určen, se použije odstavec 3 obdobně.“*

¹⁰⁰ Article 5

„Autorství

Autor

- (1) Autorem je fyzická osoba, která dílo vytvořila.*

*such information is in conflict with other information so indicated. This provision shall also apply if such a name is a pseudonym, provided that the pseudonym used by the author evokes no doubt as to the author's identity.*¹⁰¹

III.2.3. Protected works and exceptions to copyright protection

The Copyright Act does provide in Article 2 for a definition of "work" which is subject to the protection (paragraph 1) as well as the definitions of such works (paragraphs 2 to 6). Works that are not protected under the Copyright Act are expressly listed in Article 3 of that Act.

Subject Matter of Copyright

Article 2

Author's work

- (1) The subject matter of copyright shall be a literary work or any other work of art or a scientific work, which is a unique outcome of the creative activity of the author and is expressed in any objectively perceivable manner including electronic form, permanent or temporary, irrespective of its scope, purpose or significance (hereinafter referred to as "work"). A work shall be, without limitation, a literary work expressed by speech or in writing, a musical work, a dramatic work or musical-dramatical work, a choreographic work and pantomimic work, a photographic work and a work produced by a process similar to photography, an audiovisual work such as a cinematographic work, a work of fine arts such as a painting, graphic or sculptural work, an work of architecture including an urban design work, a work of applied art, and a cartographic work.*
- (2) A computer program, photography and a work expressed by the method similar to photography shall also be considered a work if it is original in the sense that it is the author's own intellectual creation. A database which by the way of the selection or arrangement of its content is the author's own intellectual creation, and in which the individual parts are arranged in a systematic or methodical way and are individually accessible by electronic or other means, is a collection of works. No other criteria shall be applied to determine their eligibility for that protection. A photograph or a work produced by a process similar to photography, which are original in the sense of the first sentence, shall be protected as a photographic work.*
- (3) Copyright shall apply to the work in its entirety, to its individual developmental phases and to parts of the work, including its title and the names of its characters, if these comply with the conditions stipulated in Paragraph (1) or in Paragraph (2) above, provided that the items are subject to copyright as defined by that paragraph.*
- (4) A work which is the outcome of the creative adaptation of another work, including its translation into another language, shall also be subject to copyright. This shall be without prejudice to the rights of the author of the adapted or translated work.*

¹⁰¹

Article 6

Zákonná domněnka autorství

Autorem díla je fyzická osoba, jejíž pravé jméno je obvyklým způsobem uvedeno na díle nebo je u díla uvedeno v seznamu předmětů ochrany vedeném příslušným kolektivním správcem, není-li prokázán opak; to neplatí v případech, kdy je údaj v rozporu s jiným údajem takto uvedeným. Toto ustanovení se použije i tehdy, je-li toto jméno pseudonymem, pokud autorem přijatý pseudonym nevzbuzuje pochybnosti o autorově totožnosti."

- (5) A collection like a journal, encyclopaedia, anthology, exhibition, or any other collection of independent works or other elements that by reason of their selection and of the arrangement of the content meet the conditions set out in Paragraph 1 above, is a collection of works.
- (6) The items that are not works hereunder, shall include, but are not limited to the theme (subject) of a work as such, the news of the day and any other fact as such, an idea, procedure, principle, method, discovery, scientific theory, mathematical and similar formula, statistical diagram and similar item as such.¹⁰²

Article 3

Public Interest Exceptions in Copyright

Copyright protection shall not apply to:

- a) an official work, such as a legal regulation, decision, public charter, publicly accessible register and collection of its documents, and also any official draft of an official work and other preparatory official documentation including the official translation of such work, Chamber of Deputies and Senate publications, a memorial chronicle of a municipality (municipal chronicles), a state symbol and symbol of a municipality, and any other such works where there is public interest in their exclusion from copyright protection,

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Article 2

„Předmět práva autorského

Autorské dílo

- (1) Předmětem práva autorského je dílo literární a jiné dílo umělecké a dílo vědecké, které je jedinečným výsledkem tvůrčí činnosti autora a je vyjádřeno v jakékoli objektivně vnímatelné podobě včetně podoby elektronické, trvale nebo dočasně, bez ohledu na jeho rozsah, účel nebo význam (dále jen "dílo"). Dílem je zejména dílo slovesné vyjádřené řečí nebo písmem, dílo hudební, dílo dramatické a dílo hudebně dramatické, dílo choreografické a dílo pantomimické, dílo fotografické a dílo vyjádřené postupem podobným fotografii, dílo audiovizuální, jako je dílo kinematografické, dílo výtvarné, jako je dílo malířské, grafické a sochařské, dílo architektonické včetně díla urbanistického, dílo užitého umění a dílo kartografické.
- (2) Za dílo se považuje též počítačový program, fotografie a výtvor vyjádřený postupem podobným fotografii, které jsou původní v tom smyslu, že jsou autorovým vlastním duševním výtvozem. Databáze, která je způsobem výběru nebo uspořádáním obsahu autorovým vlastním duševním výtvozem a jejíž součástí jsou systematicky nebo metodicky uspořádány a jednotlivě zpřístupněny elektronicky či jiným způsobem, je dílem souborným. Jiná kritéria pro stanovení způsobilosti počítačového programu a databáze k ochraně se neuplatňují.
- (3) Právo autorské se vztahuje na dílo dokončené, jeho jednotlivé vývojové fáze a části, včetně názvu a jmen postav, pokud splňují podmínky podle odstavce 1 nebo podle odstavce 2, jde-li o předměty práva autorského v něm uvedené.
- (4) Předmětem práva autorského je také dílo vzniklé tvůrčím zpracováním díla jiného, včetně překladu díla do jiného jazyka. Tím není dotčeno právo autora zpracovaného nebo přeloženého díla.
- (5) Sborník, jako je časopis, encyklopedie, antologie, pásmo, výstava nebo jiný soubor nezávislých děl nebo jiných prvků, který způsobem výběru nebo uspořádáním obsahu splňuje podmínky podle odstavce 1, je dílem souborným.
- (6) Dílem podle tohoto zákona není zejména námět díla sám o sobě, denní zpráva nebo jiný údaj sám o sobě, myšlenka, postup, princip, metoda, objev, vědecká teorie, matematický a obdobný vzorec, statistický graf a podobný předmět sám o sobě."

- b) *creations of traditional folk culture, unless the real name of the author is commonly known and the works are anonymous or pseudonymous (Article 7); such works may only be used in a way that shall not detract from their value.*¹⁰³

III.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

The Copyright Act provides in Volume four for a number of exceptions and limitations to copyright, largely by way of transposition of the provisions of Directive 2001/29/EC of the European Parliament and of the Council¹⁰⁴ containing a list of 20 optional exceptions or limitations and one mandatory exception to some of the author's exclusive economic rights, and of Directive 2012/28/EU of the European Parliament and of the Council¹⁰⁵ adding a further mandatory exception as regards the reproducing and making available of orphan works.

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>38a(1): Copyright is not infringed by anybody who performs temporary acts of reproduction of works that are transient or incidental and represent an integral and essential part of a technological process which have no independent economic significance, and whose sole purpose is to enable:</p> <p>a) Transmission of the work by an intermediary between third parties through a computer network or any other similar network; or</p> <p>b) Lawful use of the work.¹⁰⁶</p>

¹⁰³ Article 3

„Výjimky z ochrany podle práva autorského ve veřejném zájmu

Ochrana podle práva autorského se nevztahuje na

- a) *úřední dílo, jímž je právní předpis, rozhodnutí, opatření obecné povahy, veřejná listina, veřejně přístupný rejstřík a sbírka jeho listin, jakož i úřední návrh úředního díla a jiná přípravná úřední dokumentace, včetně úředního překladu takového díla, sněmovní a senátní publikace, pamětní knihy obecní (obecní kroniky), státní symbol a symbol jednotky územní samosprávy a jiná taková díla, u nichž je veřejný zájem na vyloučení z ochrany,*
- b) *výtvary tradiční lidové kultury, není-li pravé jméno autora obecně známo a nejde-li o dílo anonymní nebo o dílo pseudonymní (§ 7); užít takové dílo lze jen způsobem nesnižujícím jeho hodnotu.“*

¹⁰⁴ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

¹⁰⁵ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5).

¹⁰⁶ Article 38a

„Licence pro dočasné rozmnožení

- (1) *Do práva autorského nezasahuje ten, kdo provádí dočasné úkony rozmnožování děl, které jsou pomíjivé nebo podružné, tvoří nedílnou a nezbytnou součást technologického procesu, nemají žádný samostatný hospodářský význam a jejich jediným účelem je umožnit*
- a) *přenos díla počítačovou nebo obdobnou sítí mezi třetími stranami uskutečněný zprostředkovatelem, nebo*
- b) *oprávněné užití díla.“*

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	29(1): Copyright exceptions and limitations shall only be applied in certain special cases specified herein and only if the use of a work in such special cases shall not conflict with the normal exploitation of the work and shall not unreasonably prejudice the legitimate interests of the author. ¹⁰⁷
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	30a(1) and (2) (1) Copyright is not infringed by: a) a natural person who for its own personal use, b) a legal person or a sole trader who for their own internal use, c) anybody, who upon an order, for personal use by a natural person, d) anybody, who upon an order, for a legal person's or a sole trader's own internal use makes a printed reproduction of a work on paper or other similar base by the photographic technique or by any other process with similar effects, except where a printed reproduction is made of the musical notation of a musical work or musical – dramatical work and where – in cases under Clauses (c) and (d) above – the remuneration is paid in a regular and timely manner in accordance with Article 25. (2) Provisions of Article 30 (4) to (6) shall apply mutatis mutandis. ¹⁰⁸
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or	30a(1) and (2) (1) Copyright is not infringed by: a) a natural person who for its own personal use, b) a legal person or a sole trader who for their own internal use,

¹⁰⁷ Article 29

„(1) Výjimky a omezení práva autorského lze uplatnit pouze ve zvláštních případech stanovených zákonem a pouze tehdy, pokud takové užití díla není v rozporu s běžným způsobem užití díla a ani jím nejsou nepřiměřeně dotčeny oprávněné zájmy autora.“

¹⁰⁸ Article 30a

„(1) Do práva autorského nezasahuje

a) fyzická osoba, která pro svou osobní potřebu,
b) právnická osoba nebo podnikající fyzická osoba, která pro svou vlastní vnitřní potřebu,
c) ten, kdo na objednávku pro osobní potřebu fyzické osoby,
d) ten, kdo na objednávku pro vlastní vnitřní potřebu právnické osoby nebo podnikající fyzické osoby zhotoví tiskovou rozmnoženinu díla na papír nebo podobný podklad fotografickou technikou nebo jiným postupem s podobnými účinky, s výjimkou případu, kdy jde o vydání notový záznam díla hudebního či hudebně dramatického, a v případech podle písmen c) a d) řádně a včas platí odměnu podle § 25.

(2) Ustanovení § 30 odst. 4 až 6 se použijí obdobně.“

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	<p>c) anybody, who upon order, for personal use by a natural person,</p> <p>d) anybody, who upon order, for a legal person's or a sole trader's own internal use; makes a printed reproduction of a work on paper or other similar base by the photographic technique or by any other process with similar effects, except where a printed reproduction is made of the musical notation of a musical work or musical – dramatical work and where – in cases under Clauses (c) and (d) above – the remuneration is paid in a regular and timely manner in accordance with Article 25.</p> <p>(2) Provisions of Article 30 (4) to (6) shall apply mutatis mutandis.¹⁰⁹</p>
(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;	<p>37(1)(a) in connection with the introductory part of 37(1)</p> <p>(1) Copyright is not infringed by a library, archive, museum, gallery, school, university and other non-profit school-related and educational establishment:</p> <p>a) if it makes a reproduction of a work for its own archiving and conservation purposes, in the quantities and formats needed for the permanent preservation of the work, and if such a reproduction does not serve any direct or indirect economic or commercial purpose,¹¹⁰</p>
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	<p>38a(1): Copyright is not infringed by anybody who performs temporary acts of reproduction of works that are transient or incidental and represent an integral and essential part of a technological process which have no any independent economic significance, and whose sole purpose is to enable:</p> <p>a) Transmission of the work by an intermediary between third parties through a computer network or any other similar network; or</p> <p>b) Lawful use of the work.¹¹¹</p>

¹⁰⁹ idem.

¹¹⁰ Article 37

„Knihovní licence

(1) Do práva autorského nezasahuje knihovna, archiv, muzeum, galerie, škola, vysoká škola a jiné nevýdělečné školské a vzdělávací zařízení,

a) zhotoví-li rozmnoženinu díla, která neslouží k přímému nebo nepřímému hospodářskému nebo obchodnímu účelu, pro své archivní a konzervační potřeby, a to v počtech a formátech nezbytných pro trvalé uchování díla.“

¹¹¹ Article 38a

„Licence pro dočasné rozmnožení

(1) Do práva autorského nezasahuje ten, kdo provádí dočasné úkony rozmnožování děl, které jsou pomíjivé nebo podružné, tvoří nedílnou a nezbytnou součást technologického procesu, nemají žádný samostatný

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	38e: Copyright is not infringed by a health-care or social institution that was founded or established for non-commercial purposes, particularly hospitals and prisons, which make reproductions of broadcasted works and perform such reproduced works to the persons located in such institutions to the extent adequate to the purpose of this licence. This shall be without prejudice to the right to remuneration under Article 25. ¹¹²
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	29(1): Copyright exceptions and limitations shall only be applied in certain special cases specified herein and only if the use of a work in such special cases shall not conflict with the normal exploitation of the work and shall not unreasonably prejudice the legitimate interests of the author. ¹¹³
(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;	31(1)(c) (1) Copyright is not infringed by anybody who: c) Uses the work while teaching for illustration purposes or during scientific research, without seeking to achieve direct or indirect economic or commercial advantage and without exceeding the extent adequate to the given purpose; however, if possible, the name of the author, unless the work is an anonymous work, or the name of the person under whose name the work is being introduced in public and the title of the work and source, shall always be indicated ¹¹⁴

hospodářský význam a jejich jediným účelem je umožnit

a) *přenos díla počítačovou nebo obdobnou sítí mezi třetími stranami uskutečněný zprostředkovatelem, nebo*

b) *oprávněné užití díla.“*

¹¹² Article 38e

„Licence pro sociální zařízení

Do práva autorského nezasahuje také poskytovatel zdravotních služeb nebo sociální zařízení, kteří nebyli zřízeni nebo založeni za účelem dosažení zisku, zejména nemocnice a věznice, které zhotoví záznam vysílaných děl a takto zaznamenaná díla provozuje osobám umístěným v těchto zařízeních v rozsahu odpovídajícím účelu této licence. Právo na odměnu podle § 25 není dotčeno.“

¹¹³ Article 29

„(1) Výjimky a omezení práva autorského lze uplatnit pouze ve zvláštních případech stanovených zákonem a pouze tehdy, pokud takové užití díla není v rozporu s běžným způsobem užití díla a ani jím nejsou nepřiměřeně dotčeny oprávněné zájmy autora.“

¹¹⁴ Article 31

„Citace

(1) Do práva autorského nezasahuje ten, kdo

c) *užije dílo při vyučování pro ilustrační účel nebo při vědeckém výzkumu, jejichž účelem není dosažení přímého nebo nepřímého hospodářského nebo obchodního prospěchu, a nepřesáhne rozsah odpovídající sledovanému účelu;*

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	38(1)(a) and (b) (1) Copyright is not infringed by anybody who: <ul style="list-style-type: none"> a) exclusively for the benefit of people with disability and not for the purpose of direct or indirect economic or commercial advantage, makes a reproduction or has a reproduction made of a published work to the extent required by the specific disability; a reproduction so made may also be distributed and communicated by the same person, unless this is done for the purpose of direct or indirect economic or commercial advantage; b) exclusively for the benefit of persons with vision disability and not for the purpose of direct or indirect economic or commercial advantage, provides the verbal expression of the visual component and adds it to the audio component of an audiovisual recording of an audiovisual work in order to make such work accessible for those persons; the audio component of the audiovisual recording of an audiovisual work may also be reproduced, distributed and communicated by the same person, unless this is done for the purpose of direct or indirect economic or commercial advantage.¹¹⁵
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is	34(c) in connection with the introductory part of 34 Copyright is not infringed by anybody who uses: <ul style="list-style-type: none"> c) to a justifiable extent, a work in periodical press or in broadcasting or in any other mass media providing the reporting on current political, economic or religious matters that have already

vždy je však nutno uvést, je-li to možné, jméno autora, nejde-li o dílo anonymní, nebo jméno osoby, pod jejímž jménem se dílo uvádí na veřejnost, a dále název díla a pramen.“

¹¹⁵ Article 38

„Licence pro osoby se zdravotním postižením

(1) Do práva autorského nezasahuje ten, kdo

- a) výhradně pro potřeby osob se zdravotním postižením, v rozsahu odpovídajícím jejich zdravotnímu postižení a nikoliv za účelem přímého nebo nepřímého hospodářského nebo obchodního prospěchu zhotoví nebo dá zhotovit rozmnoženinu díla; takto zhotovená rozmnoženina díla jím může být také rozšiřována a sdělována, pokud se tak neděje za účelem přímého nebo nepřímého hospodářského nebo obchodního prospěchu,*
- b) výhradně pro potřeby osob se zrakovým nebo sluchovým postižením a nikoliv za účelem přímého nebo nepřímého hospodářského nebo obchodního prospěchu opatří rozmnoženinu zvukově obrazového záznamu audiovizuálního díla slovním vyjádřením obrazové složky nebo doplněním obrazových nebo textových prostředků nezbytných ke zpřístupnění díla těmto osobám; takto doplněné audiovizuální dílo jím může být také rozmnožováno, rozšiřováno a sdělováno, neděje-li se tak za účelem přímého nebo nepřímého hospodářského nebo obchodního prospěchu.“*

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	been published via any other mass communication media – or the translation thereof; a work so borrowed or the translation thereof may also be used otherwise; however, a work may not be so borrowed or further used if such borrowing or further use is explicitly forbidden; in cases under b) to d), the name of the author (unless the work is an anonymous work) or the name of the person under whose name the work is being introduced in public, shall always be indicated; the title of the work and the source shall also be indicated, unless this is impossible in cases under b) and d). ¹¹⁶
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	31(1)(b) in connection with the introductory part of 31(1) (1) Copyright is not infringed by anybody who: b) Uses excerpts from a work, or small works in their entirety, for the purposes of critique or review related to such a work and for the purposes of scientific or technical work and such use being made to the extent complying with fair practices and required by the specific purpose; however, if possible, the name of the author, unless the work is an anonymous work, or the name of the person under whose name the work is being introduced in public and the title of the work and source, shall always be indicated. ¹¹⁷
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	34(a) in connection with the introductory part of 34 a) to a justifiable extent a work on the basis of law for purposes of public security, for court or

¹¹⁶ Article 34

„Úřední a zpravodajská licence

Do práva autorského nezasahuje ten, kdo užije

c) v odpovídající míře dílo v periodickém tisku, televizním či rozhlasovém vysílání nebo jiném hromadném sdělovacím prostředku zpřístupňujícím zpravodajství o aktuálních věcech politických, hospodářských nebo náboženských, uveřejněné již v jiném hromadném sdělovacím prostředku nebo jeho překlad; takto převzaté dílo a jeho překlad lze i jinak užít; převzetí ani jiné následné užití podle tohoto ustanovení však není přípustné, je-li zapovězeno,

v případech podle písmen b) až d) je vždy nutno uvést jméno autora, nejde-li o dílo anonymní, nebo jméno osoby, pod jejímž jménem se dílo uvádí na veřejnost, a dále název díla a pramen, ledaže je to v případech podle písmen b) a d) nemožné.“

¹¹⁷ Article 31

„b) užije výňatky z díla nebo drobná celá díla pro účely kritiky nebo recenze vztahující se k takovému dílu, vědecké či odborné tvorby a takové užití bude v souladu s poctivými zvyklostmi a v rozsahu vyžadovaném konkrétním účelem,

vždy je však nutno uvést, je-li to možné, jméno autora, nejde-li o dílo anonymní, nebo jméno osoby, pod jejímž jménem se dílo uvádí na veřejnost, a dále název díla a pramen.“

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
	administrative proceedings or for any other official purpose, or for parliamentary procedures and for taking minutes thereof; ¹¹⁸
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	34(d) in connection with the introductory part of 34 d) a political speech or passages of a public lecture or similar works, to an extent adequate to the informative purpose; this shall be without prejudice to the author's right to the use of such works in collection; in cases under b) to d), the name of the author (unless the work is an anonymous work) or the name of the person under whose name the work is being introduced in public, shall always be indicated; the title of the work and the source shall also be indicated, unless this is impossible in cases under b) and d). ¹¹⁹
(g) use during religious celebrations or official celebrations organised by a public authority;	35(1): Copyright is not infringed by anybody who uses a work during civil or religious ceremonies or during official events organised by public authorities, provided that this is not done for the purpose of any direct or indirect economic or commercial advantage. ¹²⁰
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	33(1): Copyright is not infringed by anybody who records or expresses by drawing, painting, graphic art, photography or film a work permanently located on a square, in a street, in a park, on a public route or in any other public place; copyright shall likewise not be infringed by anybody who further uses a work so expressed, rendered or recorded. If possible, the name of the author (unless the work is an anonymous work) or the name of the person under whose name the work is being introduced in public, the title of the work and its location shall be indicated. ¹²¹

¹¹⁸ Article 34

„a) v odůvodněné míře dílo na základě zákona pro účely veřejné bezpečnosti, pro soudní nebo správní řízení nebo k jinému úřednímu účelu nebo pro parlamentní jednání a pořízení zápisu o něm,“

¹¹⁹ Article 34

„d) politický projev nebo úryvky veřejné přednášky nebo podobných děl v rozsahu odpovídajícím informativnímu účelu; právo autora na užití takových děl v souboru zůstává nedotčeno;
v případech podle písmen b) až d) je vždy nutno uvést jméno autora, nejde-li o dílo anonymní, nebo jméno osoby, pod jejímž jménem se dílo uvádí na veřejnost, a dále název díla a pramen, ledaže je to v případech podle písmen b) a d) nemožné.“

¹²⁰ Article 35

„(1) Do práva autorského nezasahuje ten, kdo nikoli za účelem přímého nebo nepřímého hospodářského nebo obchodního prospěchu užije dílo při občanských či náboženských obřadech nebo při úředních akcích pořádaných orgány veřejné správy.“

¹²¹ Article 33

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
(i) incidental inclusion of a work or other subject-matter in other material;	–
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	32(1): Copyright shall not be infringed by anybody, who for the purposes of promoting an exhibition or sale of originals or reproductions of works of art, uses such works to the extent necessary for the promotion of such an event and shall not use them in any other way for direct or indirect economic or commercial advantage. If usual, the name of the author, unless the work is an anonymous work, or the name of the person under whose name the work is being introduced in public, the title of the work and source shall always be indicated. ¹²²
(k) use for the purpose of caricature, parody or pastiche;	38g: Copyright is not infringed by anybody who uses the work by means of caricature or parody. ¹²³
(l) use in connection with the demonstration or repair of equipment;	30b: Copyright is not infringed by anybody who uses a work to the necessary extent in connection with the demonstration or repair of an equipment for a customer. ¹²⁴
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(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)	37(1)(c) in connection with the introductory part of 37(1) c) if it makes available a work, including the making of a reproduction needed for such availability,

„Užití díla umístěného na veřejném prostranství

(1) *Do práva autorského nezasahuje ten, kdo kresbou, malbou nebo grafikou, fotografií nebo filmem nebo jinak zaznamenaná nebo vyjádří dílo, které je trvale umístěno na náměstí, ulici, v parku, na veřejných cestách nebo na jiném veřejném prostranství; do autorského práva nezasahuje ani ten, kdo takto vyjádřené, zachycené nebo zaznamenané dílo dále užije. Je-li to možné, je nutno uvést jméno autora, nejde-li o dílo anonymní, nebo jméno osoby, pod jejímž jménem se dílo uvádí na veřejnost, a dále název díla a umístění.“*

¹²² Article 32

„Propagace výstavy uměleckých děl a jejich prodeje

(1) *Do práva autorského nezasahuje ten, kdo za účelem propagace výstavy nebo prodeje originálů či rozmnoženin uměleckých děl taková díla užije v rozsahu nezbytném pro propagaci takové akce, s výjimkou jakéhokoliv jiného užití k přímému nebo nepřímému hospodářskému nebo obchodnímu prospěchu. Je-li to obvyklé, je nutno uvést jméno autora, nejde-li o dílo anonymní, nebo jméno osoby, pod jejímž jménem se dílo uvádí na veřejnost, a dále název díla a pramen.“*

¹²³ Article 38g

„Licence pro karikaturu a parodii

Do práva autorského nezasahuje ten, kdo užije dílo pro účely karikatury nebo parodie.“

¹²⁴ Article 30b

„Předvedení nebo oprava přístroje

Do práva autorského nezasahuje ten, kdo užije dílo v souvislosti s předvedením či opravou přístroje zákazníkovi v rozsahu k tomu nezbytném.“

Directive 2001/29/EC	National law - Act No 121/2000 Coll.
Text	Text
of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;	which constitutes a part of its collections and the use thereof is not subject to purchase or licensing terms, except the communication of the work in the way specified in Article 18 (2), to members of the public by dedicated terminals located on its premises, such a work being so made available exclusively for the purposes of research or private study of such members of the public, provided that such members of the public are prevented from making reproductions of the work; this is without prejudice to the provisions of Article 30a (1) (c) and (d); ¹²⁵
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	29(1): Copyright exceptions and limitations shall only be applied in certain special cases specified herein and only if the use of a work in such special cases shall not conflict with the normal exploitation of the work and shall not unreasonably prejudice the legitimate interests of the author. ¹²⁶
5(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.	29(1): Copyright exceptions and limitations shall only be applied in certain special cases specified herein and only if the use of a work in such special cases shall not conflict with the normal exploitation of the work and shall not unreasonably prejudice the legitimate interests of the author. ¹²⁷

¹²⁵ Article 37

„c) zpřístupňuje-li dílo, včetně zhotovení jeho rozmnoženiny nezbytné pro takové zpřístupnění, které je součástí jeho sbírek a jehož užití není předmětem prodejních nebo licenčních podmínek, s výjimkou sdělování díla způsobem uvedeným v § 18 odst. 2, jednotlivcům ze strany veřejnosti prostřednictvím k tomu určených technických zařízení umístěných v jeho objektech, a to výhradně pro účely výzkumu nebo soukromého studia takových osob, a zamezí-li takovým osobám zhotovit rozmnoženinu díla; ustanovení § 30a odst. 1 písm. c) a d) tím nejsou dotčena.“

¹²⁶ Article 29

„(1) Výjimky a omezení práva autorského lze uplatnit pouze ve zvláštních případech stanovených zákonem a pouze tehdy, pokud takové užití díla není v rozporu s běžným způsobem užití díla a ani jím nejsou nepřiměřeně dotčeny oprávněné zájmy autora.“

¹²⁷ Article 29

„(1) Výjimky a omezení práva autorského lze uplatnit pouze ve zvláštních případech stanovených zákonem a pouze tehdy, pokud takové užití díla není v rozporu s běžným způsobem užití díla a ani jím nejsou nepřiměřeně dotčeny oprávněné zájmy autora.“

Directive 2012/28/EU	Act No 121/2000 Coll.
Text	Text ¹²⁸
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>37a(1)(a)(b)</p> <p>(1) Copyright is not infringed by a person as referred to in Article 37(1) who exclusively within achieving the objectives concerning its mission and in public interest</p> <p>a) makes a copy for the purposes of its digitalization, making available in the way as set out in Article 18(2), indexing, cataloguing, preservation, or restoration of orphan work in form of a book, a journal, a newspaper, or other writings, or orphan work in form of cinematographic or audiovisual works, which are contained in their collections or its archive, or</p> <p>b) makes the work as referred to in point (a) available to the public in the way specified in Article 18 (2).¹²⁹</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>37a(1)(a),(b) and (5)</p> <p>(1) Copyright is not infringed by a person as referred to in Article 37(1) who exclusively within achieving the objectives concerning its mission and in public interest</p> <p>a) makes a copy for the purposes of its digitalization, making available in the way as set out in Article 18(2), indexing, cataloguing, preservation, or restoration of orphan work in form of a book, a journal, a newspaper, or other writings, or orphan work in form of cinematographic or audiovisual works, which are contained in their collections or its archive, or</p> <p>b) makes the work as referred to in point (a) available to the public in the way specified in Article 18 (2).¹³⁰</p>

¹²⁸ The text in the right hand column of the table constitutes non-official translation of the national act done for the purposes of this summary.

¹²⁹ Article 37a

„(1) Do práva autorského nezasahuje osoba uvedená v § 37 odst. 1, která výhradně k dosažení cílů souvisejících s jejím posláním ve veřejném zájmu

a) rozmnožuje pro účely digitalizace, zpřístupnění způsobem uvedeným v § 18 odst. 2, indexace, katalogizace, uchovávání nebo obnovy osiřelé dílo v podobě knihy, časopisu, novin nebo jiné písemnosti nebo osiřelé dílo kinematografické nebo audiovizuální a jde o dílo, které je součástí jejich sbírek nebo archivu, nebo

b) zpřístupňuje dílo podle písmene a) způsobem uvedeným v § 18 odst. 2.“

¹³⁰ Article 37a

„(1) Do práva autorského nezasahuje osoba uvedená v § 37 odst. 1, která výhradně k dosažení cílů souvisejících s jejím posláním ve veřejném zájmu

a) rozmnožuje pro účely digitalizace, zpřístupnění způsobem uvedeným v § 18 odst. 2, indexace,

Directive 2012/28/EU	Act No 121/2000 Coll.
Text	Text ¹²⁸
	(5) While using the orphan work in the way specified in Article 18 (1) or (2), revenues may be generated for the exclusive purpose of covering the costs of digitising orphan works and making them available to the public. ¹³¹
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	37a(7): In any use of an orphan work a person as referred to in paragraphs (1) or (2) shall indicate the name of its author, if he is identified. ¹³²
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	–
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	37a(10) and (11) (10) The author that put an end to the orphan work status as referred to in Article 27a(4), shall benefit from a compensation for the use that has been made by the person referred to in paragraphs (1) or (2) of such works. In determination of amount of a compensation, regard is to be had to purpose and the circumstances of use of work as well as the extent of the harm caused to the author by this use. ¹³³ (11) Right to the compensation referred to in paragraph (10) is governed by the law of the Member State in which the person who is obliged to pay that compensation is established. ¹³⁴

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katalogizace, uchovávání nebo obnovy osiřelé dílo v podobě knihy, časopisu, novin nebo jiné písemnosti nebo osiřelé dílo kinematografické nebo audiovizuální a jde o dílo, které je součástí jejich sbírek nebo archivu, nebo

b) zpřístupňuje dílo podle písmene a) způsobem uvedeným v § 18 odst. 2.“

¹³¹ Article 37a

„(5) Při užití osiřelého díla způsobem uvedeným v odstavci 1 nebo 2 lze vytvářet příjmy výlučně za účelem pokrytí nákladů, které vzniknou v souvislosti s digitalizací osiřelých děl a jejich zpřístupněním veřejnosti.“

¹³² Article 37a

„(7) Při každém užití osiřelého díla je osoba uvedená v odstavci 1 nebo 2 povinna uvádět jméno jeho autora, byl-li určen.“

¹³³ Article 37a

„(10) Autor, který ukončil status osiřelého díla podle § 27a odst. 4, má právo na odměnu vůči osobě, která dotčené dílo užila podle odstavce 1 nebo 2.

Při určení výše odměny se přihlédne k účelu a okolnostem užití díla, jakož i k rozsahu újmy způsobené autorovi tímto užitím.“

¹³⁴ Article 37a

„(11) Právo na odměnu podle odstavce 10 se řídí právním řádem státu, ve kterém je usazena osoba povinná k placení této odměny.“

IV. DENMARK

IV.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

IV.1.1. Constitution

Section 73(1) of the Danish Constitution (Act No 169 of 5 June 1953)¹³⁵:

The right of property shall be inviolable. No person shall be ordered to surrender his property except when required in the public interest. It shall be done only as provided by statute and against full compensation.^{136 137}

Property rights include intellectual property rights.

IV.1.2. Copyright Law

The main legislative act is the Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014^{138 139} as amended by Act No 321 of 5 April 2016. The Act on Copyright is originally from 1995 but has been subject to several changes over the years, including to transpose Union Legislation into Danish law. As indicated in a footnote to the Consolidated Act, as amended, the Act contains provisions to transpose the following Directives:

- Council Directive 91/250/EEC
- Council Directive 92/100/EEC
- Council Directive 93/83/EEC
- Council Directive 93/98/EEC
- Directive 96/9/EEC of the European Parliament and of the Council
- Directive 2001/29/EC of the European Parliament and of the Council
- Directive 2001/84/EC of the European Parliament and of the Council
- Directive 2004/48/EC of the European Parliament and of the Council
- Directive 2006/123/EC of the European Parliament and of the Council
- Directive 2007/65/EC of the European Parliament and of the Council
- Directive 2011/77/EU of the European Parliament and of the Council
- Directive 2012/28/EU of the European Parliament and of the Council
- Directive 2014/26/EU of the European Parliament and of the Council

¹³⁵ Grundloven (Lov nr. 169 af 5. Juni 1953).

¹³⁶ Translation published on the English language website of the Danish Parliament (Folketinget), http://www.thedanishparliament.dk/publications/~media/PDF/publikationer/English/The_constitutional_act_of_denmark_2013.pdf.ashx.

¹³⁷ "Ejendomsretten er ukrænkelig. Ingen kan tilpligtes at afstå sin ejendom, uden hvor almenvellet kræver det. Det kan kun ske ifølge lov og mod fuldstændig erstatning."

¹³⁸ Unless otherwise indicated, the translation used is the one published on the website of the Danish Ministry of Culture (Kulturministeriet), https://english.kum.dk/fileadmin/KUM/Documents/English%20website/Copyright/Act_on_Copyright_2014_Lovbekendtgørelse_nr._1144_ophavsretsloven_2014_engelsk.pdf.

¹³⁹ Lov om ophavsret (Lovbekendtgørelse nr. 1144 af 23. oktober 2014).

The Act consists of 11 chapters¹⁴⁰, being:

1. Subject Matter and Scope of Copyright (Ophavsrettens genstand og indhold);
2. Limitations on Copyright and Management of Rights in the event of Extended Collective License (Indskrænkninger i ophavsretten og forvaltning af rettigheder ved aftalelicens);
3. Assignment of Copyright (Ophavsrettens overgang til andre)
4. Duration of Copyright (Ophavsrettens gyldighedstid)
5. Other Rights (Andre rettigheder)
6. Various Provisions (Forskellige bestemmelser)
- 6a. Technical Measures, etc. (Tekniske foranstaltninger m.v.)
- 6b. Orphan Works (Forældreløse værker)
7. Enforcement of the Law (Retshåndhævelse)
8. Scope of Application of this Act (Lovens anvendelsesområde)
9. Coming into Force and Transitional Provisions (Ikrafttrædelses- og overgangsbestemmelser)

In addition, a number of regulations have been adopted to support the implementation of the Act on Copyright¹⁴¹.

IV.2. COPYRIGHT

IV.2.1. Definition and content

The Danish Act on Copyright does not define the meaning of "copyright". Rather, it sets out the works that have copyright protection under the Act. This includes literary works ("be it expressed in writing or in speech as a fictional or a descriptive representation") and artistic works ("a musical or dramatic work, cinematographic or photographic work, or a work of fine art, architecture, applied art, or expressed in some other manner").¹⁴² It is specified that literary works comprises "Maps and drawings and other works of a descriptive nature executed in graphic or plastic form" and "works in the form of computer programs".¹⁴³

¹⁴⁰ Chapters 6a and 6b in addition to chapters 1-9.

¹⁴¹ Of these, the following two deal directly with Denmark's obligations under Union or international law: Order No 218 of 9 March 2010 on the Application of the Act on Copyright in Relation to Other Countries (translation by Ministry of Culture) (Bekendtgørelse om anvendelsen af ophavsretsloven i forhold til andre lande), adopted in light of the Berne Convention, the Universal Copyright Convention, the Rome Convention, the Agreement Establishing the World Trade Organization (WTO) including TRIPS, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty; and Order No 1146 of 25 October 2014 on careful search for and registration of orphan works (own translation) (Bekendtgørelse om den omhyggelige søgning for og registrering af forældreløse værker), adopted to support the transposition into Danish law of Directive 2012/28/EC.

¹⁴² § 1, stk. 1. "*Den, som frembringer et litterært eller kunstnerisk værk, har ophavsret til værket, hvad enten dette fremtræder som en i skrift eller tale udtrykt skønlitterær eller faglitterær fremstilling, som musikværk eller sceneværk, som filmværk eller fotografisk værk, som værk af billedkunst, bygningskunst eller brugskunst, eller det er kommet til udtryk på anden måde.*"

¹⁴³ § 1, stk. 2 "*Kort samt tegninger og andre i grafisk eller plastisk form udførte værker af beskrivende art henregnes til litterære værker.*" Stk. 3. "*Værker i form af edb-programmer henregnes til litterære værker.*"

Translations, revisions and other adaptations of a work are protected with copyright in the work in the new form but the right to control it shall be subject to the copyright in the original work.¹⁴⁴ If a new and independent work has been created through the free use of another work, the copyright in the new work shall not be subject to the copyright in the original work.¹⁴⁵ A person who, by combining works or parts of works, creates a composite literary or artistic work, shall have copyright therein, but the right shall be without prejudice to the rights in the individual works.¹⁴⁶

In order to be protected, the work must be created by somebody (a work of nature cannot be protected) and it must have some degree of originality. The demand for originality is not set out in law but has been developed in consistent case law. Following decisions of the European Court of Justice, the threshold for originality is fulfilled if the work in question can be said to reflect some creative choices of the author. This means that works that are e.g. the pure result of technical skills are not covered by copyright.¹⁴⁷

Acts, administrative orders, legal decisions and similar official documents are not subject to copyright.¹⁴⁸ Semiconductor product topographies are not protected under the Act on Copyright¹⁴⁹ but rather under the Act on Protection of the Design (Topography) of Semiconductor Products.¹⁵⁰

IV.2.1.1 Moral rights

As set out in Article 3 (1) - (2), the "author of a work shall have the right to be identified by name as the author in accordance with the requirements of proper usage, on copies of the work as well as if the work is made available to the public. The work must not be altered nor made available to the public in a manner or in a context which is prejudicial to the author's literary or artistic reputation or individuality." As per paragraph 3 the moral rights "cannot be waived except in respect of a use of the work which is limited in nature and extent".¹⁵¹

In general, the moral rights cannot be transferred. As set out in Article 61, the usual provisions contained in Danish inheritance law are, however, applicable to copyright, including to the moral rights, and the author may give binding directions on the exercise of copyright in a testament.¹⁵² The limitations to copyright contained on the Chapter 2 of the Act on Copyright

¹⁴⁴ § 4, stk. 1. "Den, som oversætter, omarbejder eller på anden måde bearbejder et værk, herunder overfører det til en anden litteratur - eller kunstart, har ophavsret til værket i denne skikkelse, men kan ikke råde over det på en måde, som strider mod ophavsretten til det oprindelige værk".

¹⁴⁵ § 4, stk. 2. "Ophavsretten til et nyt og selvstændigt værk, som er frembragt gennem fri benyttelse af et andet, er ikke afhængig af ophavsretten til det oprindelige værk".

¹⁴⁶ § 5 "Den, som ved at sammenstille værker eller dele af værker frembringer et litterært eller kunstnerisk samleværk, har ophavsret til dette, men retten gør ingen indskrænkning i ophavsretten til de enkelte værker".

¹⁴⁷ See Morten Rosenmeier "Ophavsret for begyndere" (Copyright for beginners), 3. edition, 2014, p. 29-. This book (which has been made freely accessible online by *Udvalget til Beskyttelse af Videnskabeligt Arbejde* (the Committee for Protection of Scientific Work)) has been a general source background information.

¹⁴⁸ § 9, stk. 1. "Love, administrative forskrifter, retsafgørelser og lignende offentlige aktstykker er ikke genstand for ophavsret".

¹⁴⁹ § 10, stk. 2

¹⁵⁰ Lov om beskyttelse af halvlederprodukters udformning (topografi).

¹⁵¹ § 3, stk. 1. "Ophavsmanden har krav på at blive navngivet i overensstemmelse med, hvad god skik kræver, såvel på eksemplarer af værket som når dette gøres tilgængeligt for almenheden". Stk. 2. "Værket må ikke ændres eller gøres tilgængeligt for almenheden på en måde eller i en sammenhæng, der er krænkende for ophavsmandens litterære eller kunstneriske anseelse eller egenart". Stk. 3. "Sin ret efter denne paragraf kan ophavsmanden ikke frafalde, medmindre det gælder en efter art og omfang afgrænset brug af værket".

¹⁵² § 61, stk. 1. "Ved ophavsmandens død finder arvelovgivningens almindelige regler anvendelse på ophavsretten".

do not apply to the moral rights¹⁵³, apart from the right of the owners of buildings and of objects for everyday use to changes such buildings and objects without permission from author¹⁵⁴.

In general, copyright lasts for 70 years, in most cases calculated from the year of the death of the author¹⁵⁵; this also includes the moral rights¹⁵⁶.

IV.2.1.2 Economic rights

Copyright gives the "exclusive right to control the work by reproducing it and by making it available to the public, whether in the original or in an amended form, in translation, adaptation into another literary or artistic form or into another technique", cf. Article 2(1)¹⁵⁷. These material/economic rights can be transferred similar to other property rights.

IV.2.2. Author

The author is the natural person who created the work eligible for copyright.¹⁵⁸ If a work has two or more authors, without the individual contributions being separable as independent works, the copyright in the work shall be held jointly by the authors.¹⁵⁹

IV.2.3. Protected works

Works, which are eligible for copyright, are:¹⁶⁰

- (a) literary works, including maps and drawings and other works of a descriptive nature executed in graphic or plastic form and computer programs;
- (b) musical works;
- (c) dramatic works;
- (d) cinematographic works;
- (e) photographic works;
- (f) works of fine art;
- (g) architecture;
- (h) applied art; and
- (i) works expressed in some other manner.

Stk. 2. "Ved testamente kan ophavsmanden med bindende virkning også for ægtefælle og livsarvinger give forskrifter om udøvelse af ophavsretten eller overlade det til en anden at give sådanne forskrifter".

¹⁵³ § 11, stk. 1. "Bestemmelserne i dette kapitel og kapitel 6 b gør ikke indskrænkninger i ophavsmandens ret i henhold til § 3 ud over, hvad der følger af § 29".

¹⁵⁴ § 29, stk. 1. "Bygninger kan ændres af ejeren uden ophavsmandens samtykke, når det sker af tekniske grunde eller af hensyn til deres praktiske anvendelighed". Stk. 2. "Brugsgenstande kan ændres af ejeren uden ophavsmandens samtykke".

¹⁵⁵ § 63.

¹⁵⁶ Rosenmeier, p. 209.

¹⁵⁷ § 2, stk. 1. "Ophavsretten medfører, med de i denne lov angivne indskrænkninger, eneret til at råde over værket ved at fremstille eksemplarer af det og ved at gøre det tilgængeligt for almenheden i oprindelig eller ændret skikkelse, i oversættelse, omarbejdelse i anden litteratur- eller kunstart eller i anden teknik".

¹⁵⁸ § 1, stk. 1.

¹⁵⁹ § 6 "Har et værk to eller flere ophavsmænd, uden at de enkeltes bidrag kan udskilles som selvstændige værker, har de ophavsret til værket i fællesskab".

¹⁶⁰ § 1, stk. 1.

IV.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Chapter 2 of the Act on Copyright (Articles 11-52) contains provisions on limitations to copyright protection and on management of rights in the event of extended collective license. It is a general principle that when a work is used in accordance with the provisions of this chapter, the work may not be altered more extensively than is required for the permitted use and, if the work is used publicly, the source shall be indicated in accordance with the requirements of proper usage.¹⁶¹ It is also a condition that if a work is copied using one of the exceptions, the basis for the copy must be a legally obtained reproduction of the work.¹⁶²

Chapter 2 of the Act on Copyright provides for three categories of exceptions: The first category is the exceptions that give the right to use a work without paying compensation (uncompensated use); the second category is the exceptions that give the right to use a work by paying a fee (compulsory licence); the third category is the exceptions that give the right to use the work by entering into an agreement with a rights management association that acts on behalf of the authors (agreed licence).¹⁶³

It appears that the limitations under Danish law does not correspond entirely to the provisions of Directive 2001/29/EC.

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Art. 11a</p> <p>(1) It is permitted to make temporary copies</p> <p>i) which are transient or incidental;</p> <p>ii) which are an integral and essential part of a technical process;</p> <p>iii) the sole purpose of which is to enable a transmission of a work in a network between third parties by an intermediary, or a lawful use of a work; and</p> <p>iv) which have no independent economic significance.</p> <p>(2) The provision of subsection (1) shall not apply to computer programs and databases.¹⁶⁴</p>
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p>	<p>Art. 11</p> <p>(1) The provisions of this chapter and chapter 6 b do not limit the author's rights under section 3, except as provided in section 29.</p> <p>(2) Where a work is used in accordance with the provisions of this chapter and chapter 6 b, the work</p>

¹⁶¹ § 11, stk. 2. "Når et værk anvendes i henhold til dette kapitel og kapitel 6 b, må værket ikke ændres i videre udstrækning, end den tilladte brug kræver. Gengives værket offentligt, skal kilden angives i overensstemmelse med, hvad god skik kræver".

¹⁶² § 11, stk. 3.

¹⁶³ Rosenmeier, p. 91.

¹⁶⁴ § 11a, stk. 1. "Det er tilladt at fremstille midlertidige eksemplarer, som 1) er flygtige eller tilfældige, 2) udgør en integreret og væsentlig del af en teknisk proces, 3) udelukkende har til formål at muliggøre enten en mellemmands transmission af et værk i et netværk mellem tredjemænd eller en lovlig brug af et værk og 4) ikke har selvstændig økonomisk værdi". Stk. 2. "Bestemmelsen i stk. 1 gælder ikke for edb-programmer og databaser".

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
Text	Text
	<p>may not be altered more extensively than is required for the permitted use. If the work is used publicly, the source shall be indicated in accordance with the requirements of proper usage.</p> <p>(3) Where a work is used in accordance with the provisions of this chapter and chapter 6 b, copies may not be made on the basis of a reproduction of the work which is contrary to section 2 or on the basis of circumvention of a technical device which is contrary to section 75 c(1). The provision in the first sentence does not apply to the production of copies pursuant to section 16 (5).</p>
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	–
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	<p>Art. 12 and (with respect to fair compensation, 39-46)</p> <p>(1) Anyone is entitled to make or have made, for private purposes, single copies of works which have been made public if this is not done for commercial purposes. Such copies must not be used for any other purpose.</p> <p>(2) The provision of subsection (1) does not provide the right to</p> <ul style="list-style-type: none"> (i) construct a work of architecture; (ii) make a copy of a work of art by casting, by printing from an original negative or base, or in any other manner implying that the copy can be considered as an original; (iii) make copies of computer programs in digitized form; (iv) make copies in digital form of databases if the copy is made on the basis of a reproduction of the database in digital form; or (v) make single copies in digital form of other works than computer programs and databases unless this is done exclusively for the personal use of the copying person himself or his household. <p>(3) Notwithstanding the provision in subsection (2) (v), it is not permitted without the consent of the author to produce copies in digital form on the basis of a copy that has been lent or hired.</p> <p>(4) The provision of subsection (1) does not confer a right to engage another person to make copies of</p> <ul style="list-style-type: none"> (i) musical works; (ii) cinematographic works;

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
Text	Text
	<p>(iii) literary works if the other person assists for commercial purposes;</p> <p>(iv) works of applied art; or</p> <p>(v) works of art if the copying is in the form of an artistic reproduction.</p> <p>(5) The provision of subsection (1) does not entitle the user to make copies of musical works and cinematographic works by using technical equipment made ¹⁶⁵</p> <p>Art. 39-46 under the heading "Remuneration for Reproduction for Private Use" sets up a system for the payment of remuneration of a standardised fee to authors by producers and importers of "sound tapes or videotapes or other devices on to which sound or images can be recorded"; this is the fair compensation demanded by the Directive.</p>
(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;	<p>Art. 16 (1)-(6)</p> <p>(1) Public archives, public libraries and other libraries that are financed in whole or in part by the public authorities, as well as State-run museums and museums that have been approved in accordance with the Museums Act, may use and distribute copies of works in their activities in accordance with the provisions of subsections (2)-(6) if this is not done for commercial purposes. However, this does not apply for computer programs in digital form, with the exception of computer games.</p> <p>(2) The institutions may make copies for the purpose of back-up and preservation.</p> <p>(3) If a copy in an institution's collection is incomplete, the institution may make copies of the</p>

¹⁶⁵ § 12, stk. 1.) "Af et offentliggjort værk må enhver fremstille eller lade fremstille enkelte eksemplarer til sin private brug, såfremt det ikke sker i erhvervsøjemed. Sådanne eksemplarer må ikke udnyttes på anden måde". Stk. 2. "Bestemmelsen i stk. 1 giver ikke ret til at 1) opføre et bygningsværk, 2) fremstille et eksemplar af et kunstværk ved afstøbning, ved aftryk fra original plade eller stok eller på nogen anden måde, som indebærer, at eksemplaret kan opfattes som en original, 3) fremstille eksemplarer af edb-programmer i digitaliseret form, 4) fremstille eksemplarer i digital form af databaser, når eksemplar fremstillingen sker på grundlag af en gengivelse af databasen i digital form, eller 5) fremstille enkelte eksemplarer i digital form af andre værker end edb-programmer og databaser, medmindre det udelukkende sker til personlig brug for fremstilleren eller dennes husstand". Stk. 3. "Uanset bestemmelsen i stk. 2, nr. 5, er det ikke tilladt uden ophavsmandens samtykke at fremstille eksemplarer i digital form på grundlag af et eksemplar, der er lånt eller lejet". Stk. 4. "Bestemmelsen i stk. 1 giver ikke ret til at benytte fremmed medhjælp ved eksemplar fremstillingen, når der er tale om 1) musikværker, 2) filmværker, 3) litterære værker, såfremt den fremmede medhjælp medvirker i erhvervsøjemed, 4) værker af brugskunst eller 5) kunstværker, såfremt eksemplar fremstillingen har form af en kunstnerisk gengivelse". Stk. 5. "Bestemmelsen i stk. 1 giver ikke brugeren ret til ved eksemplar fremstilling af musikværker og filmværker at anvende teknisk udstyr, der er stillet til rådighed for almenheden på biblioteker, i forretningslokaler eller på andre offentligt tilgængelige steder. Det samme gælder for litterære værker, såfremt det tekniske udstyr er stillet til rådighed i erhvervsøjemed".

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
Text	Text
	<p>missing parts, unless the work can be acquired through general trade or from the publisher.</p> <p>(4) Libraries may make copies of published works that should be available in the library's collections, but which cannot be acquired through general trade or from the publisher.</p> <p>(5) The copyright does not prevent the making of copies in accordance with the provisions of the Act on Legal Deposit of Published Material.</p> <p>(6) Copies that have been made in accordance with subsections (3)-(5) or delivered pursuant to the Act on Legal Deposit of Published Material may be loaned to users. The same applies in special case to copies made in accordance with subsection (2). The provisions in the first and second sentences do not apply to recordings of moving pictures and copies made in digital form or in the form of sound recordings.¹⁶⁶</p>
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	<p>15: Hospitals, nursing homes, prisons and other 24-hour institutions within the social and welfare sector, the prison service, and similar institutions may for the brief use of the inmates and others of the institution make recordings of works broadcast on radio and television if this is not done for commercial purposes. Such recordings may be used only within the institution in question.¹⁶⁷</p>

¹⁶⁶ § 16, stk. 1. "Offentlige arkiver, offentlige biblioteker og andre biblioteker, der helt eller delvis finansieres af det offentlige, samt statslige museer og museer, der er godkendt efter museumsloven, må gengive og sprede eksemplarer af værker til brug i deres virksomhed i overensstemmelse med bestemmelserne i stk. 2-6, såfremt det ikke sker i erhvervsøjemed. Dette gælder dog ikke for edb-programmer i digital form bortset fra computerspil". Stk. 2. "Institutionerne må fremstille eksemplarer i sikkerheds- og beskyttelsesøjemed". Stk. 3. "Såfremt et eksemplar i en institutions samling er ufuldstændigt, må institutionen fremstille eksemplarer af de manglende dele, medmindre værket kan erhverves i almindelig handel eller hos udgiveren". Stk. 4. "Biblioteker må fremstille eksemplarer af udgivne værker, der bør være tilgængelige i bibliotekets samlinger, men som ikke kan erhverves i almindelig handel eller hos udgiveren". Stk. 5. "Ophavsretten er ikke til hinder for fremstilling af eksemplarer i overensstemmelse med bestemmelserne i pligtafleveringsloven". Stk. 6. "Eksemplarer, der er fremstillet efter stk. 3-5 eller afleveret i medfør af lov om pligtaflevering af offentliggjort materiale, må udlånes til brugere. Det samme gælder i særlige tilfælde eksemplarer, der er fremstillet efter stk. 2. Bestemmelserne i 1. og 2. pkt. finder ikke anvendelse på billedoptagelser og eksemplarer fremstillet i digital form eller i form af lydoptagelser".

¹⁶⁷ Art. 15 Sygehuse, plejehjem, fængsler og andre døgninstitutioner inden for social- og sundhedsområdet, kriminalforsorgen og lignende må til kortvarig brug for institutionens beboere m.fl. foretage optagelser af værker, der udsendes i radio eller fjernsyn, såfremt det ikke sker i erhvervsøjemed. Sådanne optagelser må kun udnyttes inden for den pågældende institution.

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
Text	Text
<p>5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:</p> <p>(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;</p>	<p>Art. 13(1)-(4), 18 (1)-(2) and, with respect to the source and author's name, 11(2)</p> <p>See also 21(1) (ii) below on education for larger groups</p> <p>13(1) For the purpose of educational activities copies may be made of published works and copies may be made by recording of works broadcast in radio and television provided the requirements regarding extended collective license according to section 50 have been met. The copies thus made may be used only in educational activities comprised by the agreement presumed in section 50.</p> <p>(2) The provision of subsection (1) concerning recording shall not apply to cinematographic works which are part of the general cinema repertoire of feature films except where only brief excerpts of the work are shown in the telecast.</p> <p>(3) The provision of subsection (1) concerning reproduction of published works shall not apply to computer programs in digital form.</p> <p>(4) Teachers and students may as part of educational activities make recordings of their own performances of works if this is not done for commercial purposes. Such recordings may not be used for any other purposes.¹⁶⁸</p> <p>18(1) Minor portions of literary works and musical works or such works of small proportions may be used in composite works compiling contributions by a large number of authors for use in educational activities, provided that five years have elapsed since the year when the work was published. In connection with the text also works of art and works of a descriptive nature, cf. section 1(2), may be used, provided that five years have elapsed</p>

¹⁶⁸ § 13, stk. 1. "Til brug i undervisningsvirksomhed kan der fremstilles eksemplarer af udgivne værker samt ved optagelse foretages eksemplar fremstilling af værker, som udsendes i radio eller fjernsyn, såfremt betingelserne for aftalelicens efter § 50 er opfyldt. De nævnte eksemplarer må kun udnyttes inden for undervisningsvirksomhed, som omfattes af den i § 50 forudsatte aftale". Stk. 2. "Bestemmelsen i stk. 1 om optagelse gælder ikke for filmværker, som indgår i biografernes almindelige repertoire af spillefilm, medmindre der ved udsendelsen i fjernsyn kun er benyttet mindre dele af værket". Stk. 3. "Bestemmelsen i stk. 1 om eksemplar fremstilling af udgivne værker gælder ikke for edb-programmer i digital form". Stk. 4. "Lærere og elever må som led i undervisningsvirksomhed foretage optagelser af deres egne fremførelser af værker, såfremt det ikke sker i erhvervsøjemed. Optagelserne må ikke udnyttes på anden måde".

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
Text	Text
	<p>since the year when the work was made public. The author shall be entitled to remuneration. If agreement cannot be made on the size of remuneration, each party is entitled to bring the dispute before the Copyright License Tribunal, cf. § 47.</p> <p>(2) The provision of subsection (1) does not apply to works prepared for use in educational activities or if the use is for commercial purposes.¹⁶⁹</p> <p>11 (2) Where a work is used in accordance with the provisions of this chapter, the work may not be altered more extensively than is required for the permitted use. If the work is used publicly, the source shall be indicated in accordance with the requirements of proper usage.¹⁷⁰</p>
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	<p>Art. 17</p> <p>(1) It is permitted to use and distribute copies of published works if the use and the distributed copies are specifically intended for the blind, visually impaired, the deaf and sufferers from speech impediments, as well as persons who on account of handicap are unable to read printed text. The provision of the first sentence does not apply to the use or distribution of copies for commercial purposes.</p> <p>(2) The provision of subsection (1) does not apply to sound recordings of literary works or use that consists solely of sound recordings of musical works.</p> <p>(3) Sound recordings of published literary works may be used and distributed for use by visually impaired persons and backward readers if this is not done for commercial purposes. The author is entitled to remuneration. If agreement cannot be made on the size of remuneration, each party is</p>

¹⁶⁹ § 18, stk. 1. "Mindre dele af litterære værker og musikværker eller sådanne værker af ringe omfang må til brug i undervisningsvirksomhed gengives i samleværker sammenstillet af bidrag fra et større antal ophavsmænd, når 5 år er forløbet efter det år, da værket blev udgivet. I tilslutning til teksten kan også kunstværker og værker af beskrivende art, jf. § 1, stk. 2, gengives, når 5 år er forløbet efter det år, da værket blev offentliggjort. Ophavsmanden har krav på vederlag. Kan der ikke opnås enighed om størrelsen af vederlaget, kan hver af parterne forelægge spørgsmålet for Ophavsretslicensnævnet, jf. § 47". Stk. 2. "Bestemmelsen i stk. 1 finder ikke anvendelse på værker, der er udarbejdet til brug i undervisningsvirksomhed, eller såfremt gengivelsen sker i erhvervsøjemed".

¹⁷⁰ § 11, stk. 2. "Når et værk anvendes i henhold til dette kapitel og kapitel 6 b, må værket ikke ændres i videre udstrækning, end den tilladte brug kræver. Gengives værket offentligt, skal kilden angives i overensstemmelse med, hvad god skik kræver".

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
Text	Text
	entitled to bring the dispute before the Copyright License Tribunal, cf. § 47. (4) Government or municipal institutions and other social or non-profit institutions may, for the use of visually handicapped and hearing-impaired persons, by means of sound or visual recording produce copies of works broadcast on the radio or television, provided the requirements regarding the extended collective license according to section 50 have been met. Such recording may only be used for the purpose of activities covered by the agreement presumed in section 50. ¹⁷¹
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	Art. 23(2)-(3) (2) Works of art made available to the public may be used in newspapers and periodicals in connection with the reporting of current events in accordance with proper usage and to the extent required for the purpose. The provision of the first sentence does not apply to works produced with a view to use in newspapers or periodicals. (3) Published works of art or copies of works of art that have been transferred to others by the author may be used in newspapers, periodicals, films and television if the use is of subordinate importance in the context in question. ¹⁷²
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the	Art. 22 and 23(1) 22 A person may quote from a work which has been made public in accordance with proper

¹⁷¹ § 17, stk. 1. "Det er tilladt at gengive og sprede eksemplarer af udgivne værker, når gengivelsen og de spredte eksemplarer er særligt bestemt til brug for blinde, svagtseende, døve og talelidende samt personer i øvrigt, der på grund af handicap er ude af stand til at læse trykt tekst. Bestemmelsen i 1. pkt. finder ikke anvendelse på gengivelse eller eksemplarspredning, der sker i erhvervsøjemed". Stk. 2. "Bestemmelsen i stk. 1 finder ikke anvendelse på lydoptagelser af litterære værker eller på gengivelser, der udelukkende består af lydoptagelser af musikværker". Stk. 3. "Lydoptagelser af udgivne litterære værker må gengives og spredes til brug for syns- og læsehandicappede, når det ikke sker i erhvervsøjemed. Ophavsmanden har krav på vederlag. Kan der ikke opnås enighed om størrelsen af vederlaget, kan hver af parterne forelægge spørgsmålet for Ophavsretslicensnævnet, jf. § 47". Stk. 4. "Statslige eller kommunale institutioner og andre sociale eller almennyttige institutioner kan til brug for syns- og hørehandicappede ved lyd- eller billedoptagelse fremstille eksemplarer af værker, der udsendes i radio eller fjernsyn, såfremt betingelserne for aftalelicens efter § 50 er opfyldt. Sådanne optagelser må kun udnyttes inden for virksomhed, som omfattes af den i § 50 forudsatte aftale".

¹⁷² § 23, stk. 2. "Offentliggjorte kunstværker må gengives ved omtale af dagsbegivenheder i aviser og tidsskrifter, når det sker i overensstemmelse med god skik og i det omfang, som betinges af formålet. Bestemmelsen i 1. pkt. finder ikke anvendelse på værker, der er frembragt med henblik på gengivelse i aviser eller tidsskrifter." Stk. 3. "Udgivne kunstværker eller eksemplarer af kunstværker, der af ophavsmanden er overdraget til andre, må gengives i aviser, tidsskrifter, film og fjernsyn, når gengivelsen er af underordnet betydning i den pågældende sammenhæng".

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
Text	Text
source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	usage and to the extent required for the purpose. ¹⁷³ 23(1) Works of art and works of a descriptive nature, cf. section 1(2), which have been made public may be used in critical or scientific presentations in connection with the text in accordance with proper usage and to the extent required for the purpose. Reproduction is not allowed for commercial purposes. ¹⁷⁴
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	26: Proceedings in Parliament, municipal councils and other elected public authorities, in judicial proceedings and in public meetings held to discuss general matters may be used without the author's consent. However, the author shall have the exclusive right to publish compilations of his own statements. ¹⁷⁵
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	–
(g) use during religious celebrations or official celebrations organised by a public authority;	Art. 21(1)-(2) (1) A published work, which is not a dramatic work or a cinematographic work, may be performed in public (i) on occasions when the audience is admitted free of charge where the performance is not the main feature of the event and where the event does not occur for commercial purposes; and (ii) where the performance occurs in the case of divine services or educational activities. (2) The provision of subsection (1)(ii) does not apply to performances on radio or television and to performances in educational activities which occur for commercial purposes. ¹⁷⁶

¹⁷³ § 22 "Af et offentliggjort værk er det tilladt at citere i overensstemmelse med god skik og i det omfang, som betinges af formålet".

¹⁷⁴ § 23, stk. 1. "Offentliggjorte kunstværker og værker af beskrivende art, jf. § 1, stk. 2, må gengives i kritiske eller videnskabelige fremstillinger i tilslutning til teksten, når det sker i overensstemmelse med god skik og i det omfang, som betinges af formålet. Gengivelsen må ikke ske i erhvervsøjemed".

¹⁷⁵ § 26 "Forhandlinger i Folketinget, kommunalbestyrelserne og andre valgte offentlige myndigheder, i retssager samt på offentlige møder, som afholdes til drøftelse af almene spørgsmål, må gengives uden ophavsmandens samtykke. Ophavsmanden har dog eneret til at udgive samlinger af sine egne indlæg".

¹⁷⁶ § 21, stk. 1. "Et udgivet værk, som ikke er et sceneværk eller et filmværk, må fremføres offentligt 1) ved lejligheder,

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
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(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Art. 24(2)-(3) (2) Works of art may be reproduced in pictorial form and then made available to the public if they are permanently situated in a public place or road. The provision of the first sentence shall not apply if the work of art is the chief motif and its reproduction is used for commercial purposes. (3) Buildings may be freely reproduced in pictorial form and then made available to the public. ¹⁷⁷
(i) incidental inclusion of a work or other subject-matter in other material;	
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	24(1) Works of art included in a collection, or exhibited, or offered for sale may be reproduced in catalogues of the collection. Such works of art may also be used in notices of exhibitions or sale, including in the form of communication to the public. ¹⁷⁸
(k) use for the purpose of caricature, parody or pastiche;	–
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	29(1) Buildings may be altered by the owner without the consent of the author if this is done for technical reasons or for the purpose of their practical use. ¹⁷⁹
(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;	Art. 16a (1) Published works may be made available to individuals at the institutions specified in section 16 (1) for personal viewing or study on the spot by means of technical equipment. (2) Notwithstanding the provisions of subsection (1), copies that are made or deposited pursuant to the Act on Legal Deposit may only be made

hvor tilhørerne eller tilskuere har adgang uden betaling, hvis fremførelsen ikke er det væsentlige ved den pågældende foranstaltning, og hvis denne ikke finder sted i erhvervsøjemed, og 2) når fremførelsen sker til brug ved gudstjeneste eller undervisning". Stk. 2. "Bestemmelsen i stk. 1, nr. 2, gælder ikke for fremførelse i radio eller fjernsyn samt for fremførelse i undervisningsvirksomhed, der sker i erhvervsøjemed".

¹⁷⁷ § 24, stk. 2. "Kunstværker må afbildes, når de er varigt anbragt på eller ved en for almenheden tilgængelig plads eller vej. Bestemmelsen i 1. pkt. finder ikke anvendelse, såfremt kunstværket er hovedmotivet og gengivelsen udnyttes erhvervsmæssigt". Stk. 3. "Bygninger må frit afbildes".

¹⁷⁸ § 24, stk. 1. "Kunstværker, der indgår i en samling, eller som udstilles eller udbydes til salg, må gengives i kataloger over samlingen. Sådanne kunstværker må endvidere gengives i meddelelser om udstilling eller salg, herunder i form af overføring til almenheden."

¹⁷⁹ § 29, stk. 1. "Bygninger kan ændres af ejeren uden ophavsmandens samtykke, når det sker af tekniske grunde eller af hensyn til deres praktiske anvendelighed".

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
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	<p>available at the Royal Library, the State and University Library and the Danish Film Institute for separate individual persons.</p> <p>(3) The institutions named in subsection (2) may communicate and hand over legal deposited copies of works that have been broadcast on radio and television, films and works published on electronic communication networks, for research purposes, if the work cannot be acquired through general trade. Such copies may not be used in any other way.¹⁸⁰</p>
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(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.	<p>Art. 11</p> <p>(1) The provisions of this chapter and chapter 6 b do not limit the author's rights under section 3, except as provided in section 29.</p> <p>(2) Where a work is used in accordance with the provisions of this chapter and chapter 6 b, the work may not be altered more extensively than is required for the permitted use. If the work is used publicly, the source shall be indicated in accordance with the requirements of proper usage.</p> <p>(3) Where a work is used in accordance with the provisions of this chapter and chapter 6 b, copies</p>

¹⁸⁰ § 16 a, stk. 1 "Offentliggjorte værker kan gøres tilgængelige for enkeltpersoner på de i § 16, stk. 1, nævnte institutioner til personligt gennemsyn eller studium på stedet ved hjælp af teknisk udstyr". Stk. 2. "Eksemplarer, der er fremstillet eller afleveret i medfør af pligtafleveringsloven, må uanset bestemmelsen i stk. 1 kun gøres tilgængelige på Det Kongelige Bibliotek, Statsbiblioteket og Det Danske Filminstitut for enkelte personer ad gangen". Stk. 3. "De i stk. 2 nævnte institutioner må overføre og udlevere eksemplarer af pligtafleverede værker, der er udsendt i radio og fjernsyn, filmværker og værker, der er offentliggjort i elektroniske kommunikationsnet, til forskningsformål, såfremt værket ikke kan erhverves i almindelig handel. Sådanne eksemplarer må ikke udnyttes på anden måde".

Directive 2001/29/EC	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014 as amended by Act No. 321 of 5 April 2016
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	may not be made on the basis of a reproduction of the work which is contrary to section 2 or on the basis of circumvention of a technical device which is contrary to section 75 c(1). The provision in the first sentence does not apply to the production of copies pursuant to section 16 (5). ¹⁸¹

Directive 2012/28	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014
Text	Text
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Art. 75h and 75l(1)</p> <p>75h: In order to achieve aims related to their public-interest missions the following organisations established in Denmark may use orphan works:</p> <ul style="list-style-type: none"> i) Publicly accessible libraries, educational establishments and museums; ii) Archives, film and audio heritage institutions. iii) Public-service broadcasting organisations.¹⁸² <p>75l (1): In order to achieve aims related to their public-interest missions the organisations referred to in section 75 h are permitted to</p> <ul style="list-style-type: none"> i) make the orphan work available in such a way that the public acquires access to it at an individually chosen place and time, cf. section 2(4) (i), and ii) reproduce the orphan work for the purposes of digitisation, making available to the public, cf. (i), indexing, cataloguing, preservation or restoration.¹⁸³

¹⁸¹ § 11, stk. 1. "Bestemmelserne i dette kapitel og kapitel 6 b gør ikke indskrænkninger i ophavsmandens ret i henhold til § 3 ud over, hvad der følger af § 29". Stk. 2. "Når et værk anvendes i henhold til dette kapitel og kapitel 6 b, må værket ikke ændres i videre udstrækning, end den tilladte brug kræver. Gengives værket offentligt, skal kilden angives i overensstemmelse med, hvad god skik kræver". Stk. 3. "Når et værk anvendes i henhold til dette kapitel og kapitel 6 b, er det ikke tilladt at fremstille eksemplarer på grundlag af en gengivelse af værket i strid med § 2 eller på grundlag af en omgåelse af en teknisk foranstaltning i strid med § 75 c, stk. 1. Bestemmelsen i 1. pkt. finder ikke anvendelse på fremstilling af eksemplarer i medfør af § 16, stk. 5".

¹⁸² § 75 h "For at opfylde mål knyttet til varetagelsen af deres almennyttige opgaver kan følgende organisationer, der er etableret i Danmark, anvende forældreløse værker: 1) Offentligt tilgængelige biblioteker, uddannelsesinstitutioner og museer. 2) Arkiver og film- og lydarvsinstitutioner. 3) Public service-radio- og fjernsynsforetagender".

¹⁸³ § 75 l, stk. 1. "Med henblik på at opfylde mål knyttet til varetagelsen af deres almennyttige opgaver må de i § 75 h nævnte organisationer 1) stille det forældreløse værk til rådighed på en sådan måde, at almenheden får adgang til det på et individuelt valgt sted og tidspunkt, jf. § 2, stk. 4, nr. 1, og 2) fremstille eksemplarer af det forældreløse værk med henblik på digitalisering, tilrådighedsstillelse for almenheden, jf. nr. 1, indeksering, katalogisering,

Directive 2012/28	National law - Consolidated Act on Copyright 2014, Act No 1144 of 23 October 2014
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6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	Art. 75h (above) & 75l(2) The organisations may generate revenues in the course of the use of orphan works for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public. ¹⁸⁴
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Art. 75l(3) When using an orphan work, the organisations shall indicate the name of an identified author. ¹⁸⁵
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	Art. 75m(2) If a work ceases to be an orphan work, the rightholder has a right to receive a reasonable compensation from the organisation which has used the orphan work in accordance with the provisions of this chapter. ¹⁸⁶

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bevaring eller restaurering."

¹⁸⁴ § 75 l, Stk. 2. "Organisationerne kan oppebære indtægter i forbindelse med anvendelsen af forældreløse værker, som udelukkende har til formål at dække deres omkostninger ved digitalisering og tilrådighedsstillelse for almenheden af forældreløse værker".

¹⁸⁵ § 75 l, stk. 3. "Ved anvendelse af et forældreløst værk skal navnet på en identificeret rettighedshaver angives".

¹⁸⁶ § 75 m, stk. 2. "Såfremt status som forældreløst værk bringes til ophør, har rettighedshaveren krav på at modtage en rimelig kompensation fra den organisation, som i overensstemmelse med bestemmelserne i dette kapitel har anvendt det forældreløse værk".

V. GERMANY¹⁸⁷

V.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

V.1.1. Constitution

The Constitution of the Federal Republic of Germany does not contain specific provisions concerning the protection of intellectual property. It does, however, contain a general provision concerning the protection of property. The term "property" also covers intellectual property.

Article 14

- (1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.*
- (2) Property entails obligations. Its use shall also serve the public good.*
- (3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.¹⁸⁸*

V.1.2. Copyright law

The protection of copyright in Germany is governed by the Act on Copyright and Related Rights of 9 September 1965¹⁸⁹, as subsequently amended ("the Copyright Act"). It transposes several Directives (Directive 92/28/EEC, Directive 93/83/EEC, Directive 96/9/EC, Directive 97/55/EC, Directive 2001/29/EC, Directive 2001/84/EC, Directive 2011/77/EU and Directive 2012/28/EU).

¹⁸⁷ Provisions of German law are not protected by copyright and can be used and reproduced free of charge. The translations of the provisions (Basic Law for the Federal Republic of Germany: Translation by Professor Christian Tomuschat and Professor David P. Currie; translation revised by Professor Christian Tomuschat and Professor Donald P. Kommers in cooperation with the Language Service of the German Bundestag; Act on Copyright and Related Rights: Translation by Ute Reusch) have been used after the prior consent of the Competence Centre for the Federal Legal Information System.

¹⁸⁸ Artikel 14 GG:

- (1) Das Eigentum und das Erbrecht werden gewährleistet. Inhalt und Schranken werden durch die Gesetze bestimmt.*
- (2) Eigentum verpflichtet. Sein Gebrauch soll zugleich dem Wohle der Allgemeinheit dienen.*
- (3) Eine Enteignung ist nur zum Wohle der Allgemeinheit zulässig. Sie darf nur durch Gesetz oder auf Grund eines Gesetzes erfolgen, das Art und Ausmaß der Entschädigung regelt. Die Entschädigung ist unter gerechter Abwägung der Interessen der Allgemeinheit und der Beteiligten zu bestimmen. Wegen der Höhe der Entschädigung steht im Streitfalle der Rechtsweg vor den ordentlichen Gerichten offen.*

¹⁸⁹ Copyright Act of 9 September 1965 (Federal Law Gazette Part I p. 1273), as last amended by Article 1 of the Act of 1 September 2017 (Federal Law Gazette I p. 3346); https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html; Urheberrechtsgesetz vom 9. September 1965 (BGBl. I S. 1273), das zuletzt durch Artikel 1 des Gesetzes vom 1. September 2017 (BGBl. I S. 3346) geändert worden ist; <https://www.gesetze-im-internet.de/urhg/>.

The Copyright Act is divided into 5 parts and constitutes a comprehensive legal instrument covering all aspects of copyright, including provisions concerning the copyright protection of computer programs and the protection of related rights.

V.2. COPYRIGHT

V.2.1. Definition and content

According to Section 1 of the Copyright Act, the authors of works in the literary, scientific and artistic domain enjoy protection for their works in accordance with the Copyright Act.

The authors of works in the literary, scientific and artistic domain enjoy protection for their works in accordance with this Act.¹⁹⁰

While the Copyright Act does not contain a definition of copyright, it describes the content of the protection granted.

Copyright protects the author in his intellectual and personal relationships to the work and in respect of the use of the work. It shall also serve to ensure equitable remuneration for the use of the work.¹⁹¹

As in most legal orders, copyright in Germany is comprised of two sets of rights, namely moral and economic rights.

V.2.1.1 Moral rights

The author's moral rights ("Urheberpersönlichkeitsrecht") are described in Sections 12 to 14 of the Copyright Act as the rights to publication, to recognition of authorship, and to prohibition of the distortion or any other derogatory treatment of the work.

Section 12

Right of publication

(1) The author has the right to determine whether and how his work shall be published.

(2) The author reserves the right to communicate or describe the content of his work to the public as long as neither the work nor the essential content or a description of the work has been published with his consent.

Section 13

Recognition of authorship

The author has the right to be identified as the author of the work. He may determine whether the work shall bear a designation of authorship and which designation is to be used.

Section 14

Distortion of the work

¹⁹⁰ § 1 UrhG: Die Urheber von Werken der Literatur, Wissenschaft und Kunst genießen für ihre Werke Schutz nach Maßgabe dieses Gesetzes.

¹⁹¹ § 11 UrhG: Das Urheberrecht schützt den Urheber in seinen geistigen und persönlichen Beziehungen zum Werk und in der Nutzung des Werkes. Es dient zugleich der Sicherung einer angemessenen Vergütung für die Nutzung des Werkes.

*The author has the right to prohibit the distortion or any other derogatory treatment of his work which is capable of prejudicing his legitimate intellectual or personal interests in the work.*¹⁹²

V.2.1.2 Economic rights

The author's economic rights (called "Verwertungsrechte" = "exploitation rights") are described in general terms in Section 15 of the Copyright Act. Specific provisions concerning the author's economic rights are contained in Sections 16 to 24 of the Copyright Act.

Section 15

General

(1) The author has the exclusive right to exploit his work in material form; this right shall in particular include

- 1. the right of reproduction (section 16),*
- 2. the right of distribution (section 17),*
- 3. the right of exhibition (section 18).*

(2) The author further has the exclusive right to communicate his work to the public in non-material form (right of communication to the public). The right of communication to the public shall comprise in particular

- 1. the right of recitation, performance and presentation (section 19),*
- 2. the right of making the work available to the public (section 19a),*
- 3. the right of broadcasting (section 20),*
- 4. the right of communication by video or audio recordings (section 21),*
- 5. the right of communication of broadcasts and of works made available to the public (section 22).*

*(3) The communication of a work shall be deemed public if it is intended for a plurality of members of the public. Anyone who is not connected by a personal relationship with the person exploiting the work or with the other persons to whom the work is made perceivable or made available in non-material form shall be deemed to be a member of the public.*¹⁹³

¹⁹² § 12 Veröffentlichungsrecht

(1) Der Urheber hat das Recht zu bestimmen, ob und wie sein Werk zu veröffentlichen ist.

(2) Dem Urheber ist es vorbehalten, den Inhalt seines Werkes öffentlich mitzuteilen oder zu beschreiben, solange weder das Werk noch der wesentliche Inhalt oder eine Beschreibung des Werkes mit seiner Zustimmung veröffentlicht ist.

§ 13 Anerkennung der Urheberschaft

Der Urheber hat das Recht auf Anerkennung seiner Urheberschaft am Werk. Er kann bestimmen, ob das Werk mit einer Urheberbezeichnung zu versehen und welche Bezeichnung zu verwenden ist.

§ 14 Entstellung des Werkes

Der Urheber hat das Recht, eine Entstellung oder eine andere Beeinträchtigung seines Werkes zu verbieten, die geeignet ist, seine berechtigten geistigen oder persönlichen Interessen am Werk zu gefährden.

¹⁹³ § 15 Allgemeines

(1) Der Urheber hat das ausschließliche Recht, sein Werk in körperlicher Form zu verwerten; das Recht umfaßt

V.2.2. Author

Section 7 of the Copyright Act provides for a definition of "author".

Section 7

Author

The author is the creator of the work.¹⁹⁴

V.2.3. Protected works

The Copyright Act does not provide for a definition of "work". However, the Act states in Section 1 that the protected works have to belong to the literary, scientific or artistic domain, and in Section 2 that only the author's own intellectual creations constitute works within the meaning of this Act. In addition, Section 2 contains a non-exhaustive list of protected works.

Section 2

Protected works

(1) Protected works in the literary, scientific and artistic domain include, in particular:

- 1. Literary works, such as written works, speeches and computer programs;*
- 2. Musical works;*
- 3. Pantomimic works, including works of dance;*
- 4. Artistic works, including works of architecture and of applied art and drafts of such works;*
- 5. Photographic works, including works produced by processes similar to photography;*
- 6. Cinematographic works, including works produced by processes similar to cinematography;*

insbesondere

- 1. das Vervielfältigungsrecht (§ 16),*
- 2. das Verbreitungsrecht (§ 17),*
- 3. das Ausstellungsrecht (§ 18).*
- (2) Der Urheber hat ferner das ausschließliche Recht, sein Werk in unkörperlicher Form öffentlich wiederzugeben (Recht der öffentlichen Wiedergabe). Das Recht der öffentlichen Wiedergabe umfaßt insbesondere*
 - 1. das Vortrags-, Aufführungs- und Vorführungsrecht (§ 19),*
 - 2. das Recht der öffentlichen Zugänglichmachung (§ 19a),*
 - 3. das Senderecht (§ 20),*
 - 4. das Recht der Wiedergabe durch Bild- oder Tonträger (§ 21),*
 - 5. das Recht der Wiedergabe von Funksendungen und von öffentlicher Zugänglichmachung (§ 22).*
- (3) Die Wiedergabe ist öffentlich, wenn sie für eine Mehrzahl von Mitgliedern der Öffentlichkeit bestimmt ist. Zur Öffentlichkeit gehört jeder, der nicht mit demjenigen, der das Werk verwertet, oder mit den anderen Personen, denen das Werk in unkörperlicher Form wahrnehmbar oder zugänglich gemacht wird, durch persönliche Beziehungen verbunden ist.*

¹⁹⁴

§ 7 Urheber

Urheber ist der Schöpfer des Werkes.

7. *Illustrations of a scientific or technical nature, such as drawings, plans, maps, sketches, tables and three-dimensional representations.*

(2) *Only the author's own intellectual creations constitute works within the meaning of this Act.*¹⁹⁵

Pursuant to Section 5 of the Copyright Act, official works are excluded from copyright protection:

Section 5

Official works

(1) *Acts, statutory instruments, official decrees and official notices, as well as decisions and official head notes of decisions do not enjoy copyright protection.*

(2) *The same applies to other official texts published in the official interest for general information purposes, subject to the proviso that the provisions concerning the prohibition of alteration and the indication of sources in section 62 (1) to (3) and section 63 (1) and (2) shall apply mutatis mutandis.*

(3) *Copyright in respect of private normative works shall not be affected by subsections (1) and (2) if acts, statutory instruments, decrees or official notices refer to such works without reproducing their wording. In that case the author shall be obliged to grant every publisher, on equitable conditions, a right of reproduction and distribution. Where a third party is the owner of the exclusive right of reproduction and distribution, he shall be obliged to grant the right of use pursuant to the second sentence.*¹⁹⁶

¹⁹⁵ § 2 Geschützte Werke

(1) *Zu den geschützten Werken der Literatur, Wissenschaft und Kunst gehören insbesondere:*

1. *Sprachwerke, wie Schriftwerke, Reden und Computerprogramme;*
2. *Werke der Musik;*
3. *pantomimische Werke einschließlich der Werke der Tanzkunst;*
4. *Werke der bildenden Künste einschließlich der Werke der Baukunst und der angewandten Kunst und Entwürfe solcher Werke;*
5. *Lichtbildwerke einschließlich der Werke, die ähnlich wie Lichtbildwerke geschaffen werden;*
6. *Filmwerke einschließlich der Werke, die ähnlich wie Filmwerke geschaffen werden;*
7. *Darstellungen wissenschaftlicher oder technischer Art, wie Zeichnungen, Pläne, Karten, Skizzen, Tabellen und plastische Darstellungen.*

(2) *Werke im Sinne dieses Gesetzes sind nur persönliche geistige Schöpfungen.*

¹⁹⁶ § 5 Amtliche Werke

(1) *Gesetze, Verordnungen, amtliche Erlasse und Bekanntmachungen sowie Entscheidungen und amtlich verfaßte Leitsätze zu Entscheidungen genießen keinen urheberrechtlichen Schutz.*

(2) *Das gleiche gilt für andere amtliche Werke, die im amtlichen Interesse zur allgemeinen Kenntnisnahme veröffentlicht worden sind, mit der Einschränkung, daß die Bestimmungen über Änderungsverbot und Quellenangabe in § 62 Abs. 1 bis 3 und § 63 Abs. 1 und 2 entsprechend anzuwenden sind.*

(3) *Das Urheberrecht an privaten Normwerken wird durch die Absätze 1 und 2 nicht berührt, wenn Gesetze, Verordnungen, Erlasse oder amtliche Bekanntmachungen auf sie verweisen, ohne ihren Wortlaut wiederzugeben. In diesem Fall ist der Urheber verpflichtet, jedem Verleger zu angemessenen Bedingungen ein Recht zur Vervielfältigung und Verbreitung einzuräumen. Ist ein Dritter Inhaber des ausschließlichen Rechts zur Vervielfältigung und Verbreitung, so ist dieser zur Einräumung des Nutzungsrechts nach Satz 2 verpflichtet.*

V.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

The Copyright Act provides for a number of limitations to copyright, largely by way of transposition of the provisions of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and of Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Section 44a: Temporary acts of reproduction</p> <p>Those temporary acts of reproduction shall be permissible which are transient or incidental and constitute an integral and essential part of a technical process and whose sole purpose is to enable</p> <ol style="list-style-type: none"> 1. a transmission in a network between third parties by an intermediary, or 2. a lawful use of a work or other protected subject-matter to be made and which have no independent economic significance.¹⁹⁷
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p> <p>(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;</p>	<p>Section 53: Reproduction for private and other personal uses</p> <p>(1) It shall be permissible for a natural person to make single copies of a work for private use on any medium, insofar as they neither directly nor indirectly serve commercial purposes, as long as no obviously unlawfully-produced model or a model which has been unlawfully made available to the public is used for copying. A person authorised to make copies may also cause such copies to be made by another person if no payment is received therefore, or if it involves copies on paper or a similar medium which have been effected by the use of any kind of photomechanical technique or by some other process having similar effects.</p> <p>(2) It shall be permissible to make single copies of a work or to have these made</p>

¹⁹⁷ § 44a Vorübergehende Vervielfältigungshandlungen

Zulässig sind vorübergehende Vervielfältigungshandlungen, die flüchtig oder begleitend sind und einen integralen und wesentlichen Teil eines technischen Verfahrens darstellen und deren alleiniger Zweck es ist,

1. eine Übertragung in einem Netz zwischen Dritten durch einen Vermittler oder

2. eine rechtmäßige Nutzung

eines Werkes oder sonstigen Schutzgegenstands zu ermöglichen, und die keine eigenständige wirtschaftliche Bedeutung haben.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	<p>2. for inclusion in a personal archive if and insofar as the reproduction is necessary for this purpose and one's own personal copy of the work is used as the model from which the copy is made,</p> <p>3. for one's own personal information concerning current affairs if the work was broadcasted,</p> <p>4. for other personal use</p> <p> a) in the case of small parts of a released work or individual articles being released in newspapers or periodicals,</p> <p> b) in the case of a work which has been out of print for at least two years.</p> <p>This shall apply only if in addition,</p> <p>1. the reproduction is effected on paper or any similar medium by the use of any kind of photographic technique or by some other process having similar effects, or</p> <p>2. exclusively analogue use takes place.</p> <p>(4) The reproduction of</p> <p> a) graphic recordings of musical works,</p> <p> b) a book or a periodical, in the case of an essentially complete reproduction,</p> <p>shall, insofar as this does not occur by means of manual transcription, always be permissible only with the consent of the rightholder or under the conditions in accordance with subsection (2), first sentence, number 2, or for personal use if, the work has been out of print for at least two years.</p> <p>5) Subsection (1) and (2), first sentence, numbers 2 to 4 shall not apply to database works the elements of which are individually accessible by electronic means.</p> <p>(6) The copies may neither be distributed nor communicated to the public. It shall, however, be permissible to lend lawfully produced copies of newspapers and out-of-print works, as well as those works in which no damaged or missing parts have been replaced by means of copies.</p> <p>(7) The recording of public lectures, productions or performances of a work on video or audio recording mediums, the realisation of plans and drafts of artistic works and the reconstruction of</p>

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	<p>architectural works shall always be permissible only with the consent of the rightholder.¹⁹⁸</p> <p>Section 54: Obligation to pay remuneration</p> <p>(1) Where, given the nature of a work, it is probable that the work will be reproduced, pursuant to section 53 (1) or (2) or sections 60a to 60f, the author of the work shall be entitled to payment of equitable remuneration from the manufacturer of appliances and of storage mediums, where the</p>

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§ 53 Vervielfältigungen zum privaten und sonstigen eigenen Gebrauch

(1) Zulässig sind einzelne Vervielfältigungen eines Werkes durch eine natürliche Person zum privaten Gebrauch auf beliebigen Trägern, sofern sie weder unmittelbar noch mittelbar Erwerbszwecken dienen, soweit nicht zur Vervielfältigung eine offensichtlich rechtswidrig hergestellte oder öffentlich zugänglich gemachte Vorlage verwendet wird. Der zur Vervielfältigung Befugte darf die Vervielfältigungsstücke auch durch einen anderen herstellen lassen, sofern dies unentgeltlich geschieht oder es sich um Vervielfältigungen auf Papier oder einem ähnlichen Träger mittels beliebiger photomechanischer Verfahren oder anderer Verfahren mit ähnlicher Wirkung handelt.

(2) Zulässig ist, einzelne Vervielfältigungsstücke eines Werkes herzustellen oder herstellen zu lassen

1. (weggefallen)

2. zur Aufnahme in ein eigenes Archiv, wenn und soweit die Vervielfältigung zu diesem Zweck geboten ist und als Vorlage für die Vervielfältigung ein eigenes Werkstück benutzt wird,

3. zur eigenen Unterrichtung über Tagesfragen, wenn es sich um ein durch Funk gesendetes Werk handelt,

4. zum sonstigen eigenen Gebrauch,

a) wenn es sich um kleine Teile eines erschienenen Werkes oder um einzelne Beiträge handelt, die in Zeitungen oder Zeitschriften erschienen sind,

b) wenn es sich um ein seit mindestens zwei Jahren vergriffenes Werk handelt.

Dies gilt nur, wenn zusätzlich

1. die Vervielfältigung auf Papier oder einem ähnlichen Träger mittels beliebiger photomechanischer Verfahren oder anderer Verfahren mit ähnlicher Wirkung vorgenommen wird oder

2. eine ausschließlich analoge Nutzung stattfindet.

(3) (weggefallen)

(4) Die Vervielfältigung

a) graphischer Aufzeichnungen von Werken der Musik,

b) eines Buches oder einer Zeitschrift, wenn es sich um eine im wesentlichen vollständige Vervielfältigung handelt,

ist, soweit sie nicht durch Abschreiben vorgenommen wird, stets nur mit Einwilligung des Berechtigten zulässig oder unter den Voraussetzungen des Absatzes 2 Satz 1 Nr. 2 oder zum eigenen Gebrauch, wenn es sich um ein seit mindestens zwei Jahren vergriffenes Werk handelt.

(5) Die Absätze 1 und 2 Satz 1 Nr. 2 bis 4 finden keine Anwendung auf Datenbankwerke, deren Elemente einzeln mit Hilfe elektronischer Mittel zugänglich sind.

(6) Die Vervielfältigungsstücke dürfen weder verbreitet noch zu öffentlichen Wiedergaben benutzt werden. Zulässig ist jedoch, rechtmäßig hergestellte Vervielfältigungsstücke von Zeitungen und vergriffenen Werken sowie solche Werkstücke zu verleihen, bei denen kleine beschädigte oder abhanden gekommene Teile durch Vervielfältigungsstücke ersetzt worden sind.

(7) Die Aufnahme öffentlicher Vorträge, Aufführungen oder Vorführungen eines Werkes auf Bild- oder Tonträger, die Ausführung von Plänen und Entwürfen zu Werken der bildenden Künste und der Nachbau eines Werkes der Baukunst sind stets nur mit Einwilligung des Berechtigten zulässig.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	type of appliance or storage medium is used solely or together with other appliances, storage mediums or accessories, for the making of such reproductions. (2) The claim according to subsection (1) shall not apply where in the light of the circumstances it can be expected that the appliances or storage mediums will not be used for reproductions in the territory to which this Act applies. ¹⁹⁹
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	Section 53(1) and (2): See above
(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;	Section 53(2)(2): see above Section 58: Advertising an exhibition and the public sale of works The reproduction, distribution and making available to the public of works as referred to in section 2 (1) numbers 4 to 6 which are exhibited in public or intended for public exhibition or public sale shall be permitted to the organiser for advertising purposes to the extent necessary for the promotion of the event. ²⁰⁰
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Section 55: Reproduction by broadcasting organisations (1) A broadcasting organisation which is authorised to broadcast a work shall be permitted to transfer the work, by its own means, to video or audio recording mediums in order to use them once each for the purposes of broadcasting via its transmitters or relay stations. The video or audio

¹⁹⁹ § 54 Vergütungspflicht

- (1) Lässt die Art des Werkes eine nach § 53 Absatz 1 oder 2 oder den §§ 60a bis 60f erlaubte Vervielfältigung erwarten, so hat der Urheber des Werkes gegen den Hersteller von Geräten und von Speichermedien, deren Typ allein oder in Verbindung mit anderen Geräten, Speichermedien oder Zubehör zur Vornahme solcher Vervielfältigungen benutzt wird, Anspruch auf Zahlung einer angemessenen Vergütung.⁽¹⁾
- (2) Der Anspruch nach Absatz 1 entfällt, soweit nach den Umständen erwartet werden kann, dass die Geräte oder Speichermedien im Geltungsbereich dieses Gesetzes nicht zu Vervielfältigungen benutzt werden.

²⁰⁰ § 58 Werbung für die Ausstellung und den öffentlichen Verkauf von Werken

Zulässig sind die Vervielfältigung, Verbreitung und öffentliche Zugänglichmachung von öffentlich ausgestellten oder zur öffentlichen Ausstellung oder zum öffentlichen Verkauf bestimmten Werken gemäß § 2 Absatz 1 Nummer 4 bis 6 durch den Veranstalter zur Werbung, soweit dies zur Förderung der Veranstaltung erforderlich ist.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	<p>recording mediums shall be deleted at the latest one month after the work is first broadcasted.</p> <p>(2) Video or audio recordings of an exceptional documentary value need not be deleted if they are to be included in an official archive. The author must be notified immediately of their inclusion in the archive.²⁰¹</p>
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	<p>Section 47 and 52(1)</p> <p>Section 47: School broadcasts</p> <p>(1) Schools, teacher training and further training institutions may make individual copies of works to be used as part of a school broadcast by transferring the works to video or audio recording mediums. The same shall apply to youth welfare institutions and state image archives or comparable institutions under public ownership.</p> <p>(2) The video or audio recording mediums may only be used for teaching purposes. They must be deleted at the latest at the end of the academic year following the transmission of the school broadcast, unless the author has been paid equitable remuneration.²⁰²</p> <p>Section 52: Communication to the public</p> <p>(1) It shall be permissible to communicate to the public a published work if that communication serves a non-profit-making purpose for the organiser, if participants are admitted free of charge and, in the case of a lecture or performance of a work, if none of the performers (section 73) is paid a special remuneration. Equitable remuneration shall be paid for the communication.</p>

²⁰¹ § 55 Vervielfältigung durch Sendeunternehmen

- (1) Ein Sendeunternehmen, das zur Funksendung eines Werkes berechtigt ist, darf das Werk mit eigenen Mitteln auf Bild- oder Tonträger übertragen, um diese zur Funksendung über jeden seiner Sender oder Richtstrahler je einmal zu benutzen. Die Bild- oder Tonträger sind spätestens einen Monat nach der ersten Funksendung des Werkes zu löschen.
- (2) Bild- oder Tonträger, die außergewöhnlichen dokumentarischen Wert haben, brauchen nicht gelöscht zu werden, wenn sie in ein amtliches Archiv aufgenommen werden. Von der Aufnahme in das Archiv ist der Urheber unverzüglich zu benachrichtigen.

²⁰² § 47 Schulfunksendungen

- (1) Schulen sowie Einrichtungen der Lehrerbildung und der Lehrerfortbildung dürfen einzelne Vervielfältigungsstücke von Werken, die innerhalb einer Schulfunksendung gesendet werden, durch Übertragung der Werke auf Bild- oder Tonträger herstellen. Das gleiche gilt für Heime der Jugendhilfe und die staatlichen Landesbildstellen oder vergleichbare Einrichtungen in öffentlicher Trägerschaft.
- (2) Die Bild- oder Tonträger dürfen nur für den Unterricht verwendet werden. Sie sind spätestens am Ende des auf die Übertragung der Schulfunksendung folgenden Schuljahrs zu löschen, es sei denn, daß dem Urheber eine angemessene Vergütung gezahlt wird.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	The obligation to pay remuneration shall not apply to events organised by the youth welfare service, the social welfare service, geriatric and welfare service, and the prisoners' welfare service insofar as they are only available to a specific, limited group of persons on account of their social or educational purpose. This shall not apply where the event serves the profit-making purpose of a third party; in such cases the third party shall pay the remuneration. ²⁰³
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	Section 2 and 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;	Section 53(2)(3) (private use): see above
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Section 45a: Persons with disabilities (1) The reproduction of a work for non-commercial purposes shall be permissible for, and its distribution exclusively to, persons whose access to the work, because of a disability, is not possible or is made considerably more difficult by the already available means of sensual perception, if such reproduction is necessary to facilitate access. (2) An equitable remuneration shall be paid to the author for reproduction and distribution; production solely of individual copies shall be exempted. Claims may only be asserted through a collecting society. ²⁰⁴

²⁰³ § 52 Öffentliche Wiedergabe

(1) Zulässig ist die öffentliche Wiedergabe eines veröffentlichten Werkes, wenn die Wiedergabe keinem Erwerbszweck des Veranstalters dient, die Teilnehmer ohne Entgelt zugelassen werden und im Falle des Vortrags oder der Aufführung des Werkes keiner der ausübenden Künstler (§ 73) eine besondere Vergütung erhält. Für die Wiedergabe ist eine angemessene Vergütung zu zahlen. Die Vergütungspflicht entfällt für Veranstaltungen der Jugendhilfe, der Sozialhilfe, der Alten- und Wohlfahrtspflege sowie der Gefangenenbetreuung, sofern sie nach ihrer sozialen oder erzieherischen Zweckbestimmung nur einem bestimmt abgegrenzten Kreis von Personen zugänglich sind. Dies gilt nicht, wenn die Veranstaltung dem Erwerbszweck eines Dritten dient; in diesem Fall hat der Dritte die Vergütung zu zahlen.

²⁰⁴ § 45a Behinderte Menschen

(1) Zulässig ist die nicht Erwerbszwecken dienende Vervielfältigung eines Werkes für und deren Verbreitung ausschließlich an Menschen, soweit diesen der Zugang zu dem Werk in einer bereits verfügbaren Art der sinnlichen Wahrnehmung auf Grund einer Behinderung nicht möglich oder erheblich erschwert ist, soweit es zur Ermöglichung des Zugangs erforderlich ist.
(2) Für die Vervielfältigung und Verbreitung ist dem Urheber eine angemessene Vergütung zu zahlen; ausgenommen ist die Herstellung lediglich einzelner Vervielfältigungsstücke. Der Anspruch kann nur durch eine Verwertungsgesellschaft geltend gemacht werden.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
<p>(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informative purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;</p>	<p>Section 49 and 50</p> <p>Section 49: Newspaper articles and broadcast commentaries</p> <p>(1) It shall be permissible to reproduce and distribute individual broadcast commentaries and individual articles, as well as illustrations published in connection therewith, from newspapers and other information sheets devoted solely to current affairs in other newspapers or information sheets of this kind, and it shall be permissible to communicate such commentaries, articles and illustrations to the public, if they concern current political, economic or religious issues and do not contain a statement reserving rights. The author shall be paid equitable remuneration for the reproduction, distribution and communication to the public, unless the reproduction, distribution and communication to the public is of short extracts of several commentaries or articles in the form of an overview. A claim may be asserted only through a collecting agency.</p> <p>(2) It shall be permissible without limitation to reproduce, distribute and communicate to the public miscellaneous news items of a factual nature and news of the day which has been published via the press or broadcasting; protection granted under other statutory provisions shall remain unaffected thereby.²⁰⁵</p> <p>Section 50: Reporting on current events</p> <p>For the purposes of reporting on current events by broadcasting or similar technical means in newspapers, periodicals and other printed matter or other data carriers mainly devoted to current events, as well as on film, the reproduction, distribution and communication to the public of</p>

²⁰⁵ § 49 Zeitungsartikel und Rundfunkkommentare

- (1) Zulässig ist die Vervielfältigung und Verbreitung einzelner Rundfunkkommentare und einzelner Artikel sowie mit ihnen im Zusammenhang veröffentlichter Abbildungen aus Zeitungen und anderen lediglich Tagesinteressen dienenden Informationsblättern in anderen Zeitungen und Informationsblättern dieser Art sowie die öffentliche Wiedergabe solcher Kommentare, Artikel und Abbildungen, wenn sie politische, wirtschaftliche oder religiöse Tagesfragen betreffen und nicht mit einem Vorbehalt der Rechte versehen sind. Für die Vervielfältigung, Verbreitung und öffentliche Wiedergabe ist dem Urheber eine angemessene Vergütung zu zahlen, es sei denn, daß es sich um eine Vervielfältigung, Verbreitung oder öffentliche Wiedergabe kurzer Auszüge aus mehreren Kommentaren oder Artikeln in Form einer Übersicht handelt. Der Anspruch kann nur durch eine Verwertungsgesellschaft geltend gemacht werden.
- (2) Unbeschränkt zulässig ist die Vervielfältigung, Verbreitung und öffentliche Wiedergabe von vermischten Nachrichten tatsächlichen Inhalts und von Tagesneuigkeiten, die durch Presse oder Funk veröffentlicht worden sind; ein durch andere gesetzliche Vorschriften gewährter Schutz bleibt unberührt.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	works which become perceivable in the course of these events shall be permitted to the extent justified by the purpose of the report. ²⁰⁶
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Section 51: Quotations It shall be permissible to reproduce, distribute and communicate to the public a published work for the purpose of quotation so far as such use is justified to that extent by the particular purpose. This shall be permissible in particular where <ol style="list-style-type: none"> 1. subsequent to publication individual works are included in an independent scientific work for the purpose of explaining the contents, 2. subsequent to publication passages from a work are quoted in an independent work of language, 3. individual passages from a released musical work are quoted in an independent musical work. The authorisation to quote under the first and second sentences includes the use of an illustration or other reproduction of the cited work, even if this is itself protected by copyright or a related right. ²⁰⁷
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Section 45: Administration of justice and public security (1) It shall be permissible to make individual copies of works for use in proceedings before a court, an arbitration tribunal or authority or to have such copies made.

²⁰⁶ § 50 Berichterstattung über Tagesereignisse

Zur Berichterstattung über Tagesereignisse durch Funk oder durch ähnliche technische Mittel, in Zeitungen, Zeitschriften und in anderen Druckschriften oder sonstigen Datenträgern, die im Wesentlichen Tagesinteressen Rechnung tragen, sowie im Film, ist die Vervielfältigung, Verbreitung und öffentliche Wiedergabe von Werken, die im Verlauf dieser Ereignisse wahrnehmbar werden, in einem durch den Zweck gebotenen Umfang zulässig.

²⁰⁷ § 51 Zitate

Zulässig ist die Vervielfältigung, Verbreitung und öffentliche Wiedergabe eines veröffentlichten Werkes zum Zweck des Zitats, sofern die Nutzung in ihrem Umfang durch den besonderen Zweck gerechtfertigt ist. Zulässig ist dies insbesondere, wenn

1. einzelne Werke nach der Veröffentlichung in ein selbständiges wissenschaftliches Werk zur Erläuterung des Inhalts aufgenommen werden,
2. Stellen eines Werkes nach der Veröffentlichung in einem selbständigen Sprachwerk angeführt werden,
3. einzelne Stellen eines erschienenen Werkes der Musik in einem selbständigen Werk der Musik angeführt werden.

Von der Zitierbefugnis gemäß den Sätzen 1 und 2 umfasst ist die Nutzung einer Abbildung oder sonstigen Vervielfältigung des zitierten Werkes, auch wenn diese selbst durch ein Urheberrecht oder ein verwandtes Schutzrecht geschützt ist.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	<p>(2) Courts and authorities may, for the purposes of the administration of justice and public security, make copies of portraits or to have these reproduced.</p> <p>(3) The distribution, exhibition in public and communication to the public of the works shall be permissible under the same conditions as apply to reproduction.²⁰⁸</p>
<p>(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;</p>	<p>Section 48: Public speeches</p> <p>(1) It shall be permissible</p> <ol style="list-style-type: none"> 1. to reproduce and distribute speeches relating to current affairs in newspapers, periodicals or other printed matter or other data carriers which mainly record current events, where the speeches were made at public gatherings or were published by means of communication to the public within the meaning of section 19a or section 20, and to communicate such speeches to the public, 2. to reproduce, distribute and communicate to the public a speech delivered during public negotiations before state, local authority or church organs. <p>(2) It shall, however, not be permissible to reproduce and distribute the speeches designated in subsection (1), number 2, in the form of a collection predominantly containing speeches by the same author.²⁰⁹</p>

²⁰⁸ § 45 Rechtspflege und öffentliche Sicherheit

- (1) Zulässig ist, einzelne Vervielfältigungsstücke von Werken zur Verwendung in Verfahren vor einem Gericht, einem Schiedsgericht oder einer Behörde herzustellen oder herstellen zu lassen.
- (2) Gerichte und Behörden dürfen für Zwecke der Rechtspflege und der öffentlichen Sicherheit Bildnisse vervielfältigen oder vervielfältigen lassen.
- (3) Unter den gleichen Voraussetzungen wie die Vervielfältigung ist auch die Verbreitung, öffentliche Ausstellung und öffentliche Wiedergabe der Werke zulässig.

²⁰⁹ § 48 Öffentliche Reden

- (1) Zulässig ist
 1. die Vervielfältigung und Verbreitung von Reden über Tagesfragen in Zeitungen, Zeitschriften sowie in anderen Druckschriften oder sonstigen Datenträgern, die im Wesentlichen den Tagesinteressen Rechnung tragen, wenn die Reden bei öffentlichen Versammlungen gehalten oder durch öffentliche Wiedergabe im Sinne von § 19a oder § 20 veröffentlicht worden sind, sowie die öffentliche Wiedergabe solcher Reden,
 2. die Vervielfältigung, Verbreitung und öffentliche Wiedergabe von Reden, die bei öffentlichen Verhandlungen vor staatlichen, kommunalen oder kirchlichen Organen gehalten worden sind.
- (2) Unzulässig ist jedoch die Vervielfältigung und Verbreitung der in Absatz 1 Nr. 2 bezeichneten Reden in Form einer Sammlung, die überwiegend Reden desselben Urhebers enthält.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
(g) use during religious celebrations or official celebrations organised by a public authority;	<p>Section 52: Communication to the public</p> <p>(1) It shall be permissible to communicate to the public a published work if that communication serves a non-profit-making purpose for the organiser, if participants are admitted free of charge and, in the case of a lecture or performance of a work, if none of the performers (section 73) is paid a special remuneration. Equitable remuneration shall be paid for the communication. The obligation to pay remuneration shall not apply to events organised by the youth welfare service, the social welfare service, geriatric and welfare service, the prisoners' welfare service, as well as to school events insofar as they are only available to a specific, limited group of persons on account of their social or educational purpose. This shall not apply where the event serves the profit-making purpose of a third party; in such cases the third party shall pay the remuneration.</p> <p>(2) It shall also be permissible to communicate to the public a published work in a religious service or at a religious celebration organised by a church or religious community. The organiser shall, however, pay the author equitable remuneration.</p> <p>(3) Public stage performances, making available to the public and broadcasting of a work, as well as public screenings of a cinematographic work shall always only be permissible with the consent of the rightholder.²¹⁰</p>
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	<p>Section 59: Works in public places</p> <p>(1) It shall be permissible to reproduce, distribute and make available to the public works located permanently in public roads and ways or public</p>

²¹⁰ § 52 Öffentliche Wiedergabe

- (1) Zulässig ist die öffentliche Wiedergabe eines veröffentlichten Werkes, wenn die Wiedergabe keinem Erwerbszweck des Veranstalters dient, die Teilnehmer ohne Entgelt zugelassen werden und im Falle des Vortrags oder der Aufführung des Werkes keiner der ausübenden Künstler (§ 73) eine besondere Vergütung erhält. Für die Wiedergabe ist eine angemessene Vergütung zu zahlen. Die Vergütungspflicht entfällt für Veranstaltungen der Jugendhilfe, der Sozialhilfe, der Alten- und Wohlfahrtspflege, der Gefangenenbetreuung sowie für Schulveranstaltungen, sofern sie nach ihrer sozialen oder erzieherischen Zweckbestimmung nur einem bestimmt abgegrenzten Kreis von Personen zugänglich sind. Dies gilt nicht, wenn die Veranstaltung dem Erwerbszweck eines Dritten dient; in diesem Fall hat der Dritte die Vergütung zu zahlen.
- (2) Zulässig ist die öffentliche Wiedergabe eines erschienenen Werkes auch bei einem Gottesdienst oder einer kirchlichen Feier der Kirchen oder Religionsgemeinschaften. Jedoch hat der Veranstalter dem Urheber eine angemessene Vergütung zu zahlen.
- (3) Öffentliche bühnenmäßige Darstellungen, öffentliche Zugänglichmachungen und Funksendungen eines Werkes sowie öffentliche Vorführungen eines Filmwerks sind stets nur mit Einwilligung des Berechtigten zulässig.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	open spaces. In the case of buildings, this authorisation shall only extend to the façade. (2) The reproductions may not be carried out on a building. ²¹¹
(i) incidental inclusion of a work or other subject-matter in other material;	Section 57: Incidental works It shall be permissible to reproduce, distribute and communicate to the public works if they are to be regarded as works incidental to the actual subject-matter being reproduced, distributed or communicated to the public. ²¹²
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Section 58: Advertising an exhibition and the public sale of works The reproduction, distribution and making available to the public of works as referred to in section 2 (1) numbers 4 to 6 which are exhibited in public or intended for public exhibition or public sale shall be permitted to the organiser for advertising purposes to the extent necessary for the promotion of the event. ²¹³
(k) use for the purpose of caricature, parody or pastiche;	Section 24: Free use (1) An independent work created in the free use of the work of another person may be published or exploited without the consent of the author of the work used. (2) Subsection (1) shall not apply to the use of a musical work in which a melody is recognisably taken from the work and used as the basis for a new work. ²¹⁴

²¹¹ § 59 Werke an öffentlichen Plätzen

(1) Zulässig ist, Werke, die sich bleibend an öffentlichen Wegen, Straßen oder Plätzen befinden, mit Mitteln der Malerei oder Graphik, durch Lichtbild oder durch Film zu vervielfältigen, zu verbreiten und öffentlich wiederzugeben. Bei Bauwerken erstrecken sich diese Befugnisse nur auf die äußere Ansicht.

(2) Die Vervielfältigungen dürfen nicht an einem Bauwerk vorgenommen werden.

²¹² § 57 Unwesentliches Beiwerk

Zulässig ist die Vervielfältigung, Verbreitung und öffentliche Wiedergabe von Werken, wenn sie als unwesentliches Beiwerk neben dem eigentlichen Gegenstand der Vervielfältigung, Verbreitung oder öffentlichen Wiedergabe anzusehen sind.

²¹³ § 58 Werbung für die Ausstellung und den öffentlichen Verkauf von Werken

Zulässig sind die Vervielfältigung, Verbreitung und öffentliche Zugänglichmachung von öffentlich ausgestellten oder zur öffentlichen Ausstellung oder zum öffentlichen Verkauf bestimmten Werken gemäß § 2 Absatz 1 Nummer 4 bis 6 durch den Veranstalter zur Werbung, soweit dies zur Förderung der Veranstaltung erforderlich ist.⁽¹⁾

²¹⁴ § 24 Freie Benutzung

(1) Ein selbständiges Werk, das in freier Benutzung des Werkes eines anderen geschaffen worden ist, darf ohne Zustimmung des Urhebers des benutzten Werkes veröffentlicht und verwertet werden.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
(l) use in connection with the demonstration or repair of equipment;	Section 56: Reproduction and communication to the public in commercial enterprises (1) In commercial enterprises which distribute appliances for making or communicating video or audio recordings, for the reception of broadcasts, or for electronic data processing, or which repair them, works may be transferred onto video or audio mediums, or onto data carriers, made perceivable to the public using video or audio recordings, or onto data carriers, and broadcasts may be made perceivable to the public and works may be made available to the public where it is necessary to demonstrate such appliances to customers or to repair them. (2) Video or audio recordings made or data recorded on data carriers pursuant to subsection (1) must be deleted immediately. ²¹⁵
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Section 53(7) (7) The recording of public lectures, productions or performances of a work on video or audio recording mediums, the realisation of plans and drafts of artistic works and the reconstruction of architectural works shall always be permissible only with the consent of the rightholder. ²¹⁶
(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;	–
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only	–

(2) Absatz 1 gilt nicht für die Benutzung eines Werkes der Musik, durch welche eine Melodie erkennbar dem Werk entnommen und einem neuen Werk zugrunde gelegt wird.

²¹⁵ § 56 Vervielfältigung und öffentliche Wiedergabe in Geschäftsbetrieben

(1) In Geschäftsbetrieben, in denen Geräte zur Herstellung oder zur Wiedergabe von Bild- oder Tonträgern, zum Empfang von Funksendungen oder zur elektronischen Datenverarbeitung vertrieben oder instand gesetzt werden, ist die Übertragung von Werken auf Bild-, Ton- oder Datenträger, die öffentliche Wahrnehmbarmachung von Werken mittels Bild-, Ton- oder Datenträger sowie die öffentliche Wahrnehmbarmachung von Funksendungen und öffentliche Zugänglichmachungen von Werken zulässig, soweit dies notwendig ist, um diese Geräte Kunden vorzuführen oder instand zu setzen.

(2) Nach Absatz 1 hergestellte Bild-, Ton- oder Datenträger sind unverzüglich zu löschen.

²¹⁶ (7) Die Aufnahme öffentlicher Vorträge, Aufführungen oder Vorführungen eines Werkes auf Bild- oder Tonträger, die Ausführung von Plänen und Entwürfen zu Werken der bildenden Künste und der Nachbau eines Werkes der Baukunst sind stets nur mit Einwilligung des Berechtigten zulässig.

Directive 2001/29/EC	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(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.	Section 14: Distortion of the work The author has the right to prohibit the distortion or any other derogatory treatment of his work which is capable of prejudicing his legitimate intellectual or personal interests in the work. ²¹⁷

Directive 2012/28	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways: (a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC; b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.	Section 61(1)-(4) and 61c Section 61: Orphan works (1) The reproduction and the making available to the public of orphan works shall be permissible pursuant to subsections (3) to (5). (2) Orphan works within the meaning of this Act shall be 1. works and other protected subject-matter in books, trade journals, newspapers, magazines or writings; 2. cinematographic works, as well as video media and audio and video media on which cinematographic works have been recorded; and 3. audio media in the collections (holdings) of publicly accessible libraries, educational institutions, museums, archives and institutions in the field of cinematic and audio heritage, if the holdings have already been published, the rightholder of which could

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§ 14 Entstehung des Werkes

Der Urheber hat das Recht, eine Entstehung oder eine andere Beeinträchtigung seines Werkes zu verbieten, die geeignet ist, seine berechtigten geistigen oder persönlichen Interessen am Werk zu gefährden.

Directive 2012/28	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	<p>not be established or traced despite a diligent search.</p> <p>(3) Where an item in the holdings has several rightholders, its content may also be reproduced and made available to the public if, despite a diligent search, it was not possible to establish or trace all the rightholders, but permission to use the item in the holdings has been obtained from one of the known rightholders.</p> <p>(4) Holdings which have not been published or broadcast may also be used by the institution referred to in subsection (2) if they have already been made available to the public with the permission of the rightholder and, therefore, it can be assumed in good faith that the rightholder would agree to the use in accordance with subsection (1).²¹⁸</p> <p>Section 61c: Use of orphan works by public broadcasting organisations</p> <p>The reproduction and making available to the public of</p> <ol style="list-style-type: none"> 1. cinematographic works, as well as video media and video and audio media on which cinematographic works have been recorded, and 2. audio media <p>which were produced before 1 January 2003 by public broadcasting organisations and which are</p>

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§ 61 Verwaiste Werke

- (1) Zulässig sind die Vervielfältigung und die öffentliche Zugänglichmachung verwaister Werke nach Maßgabe der Absätze 3 bis 5.
- (2) Verwaiste Werke im Sinne dieses Gesetzes sind
1. Werke und sonstige Schutzgegenstände in Büchern, Fachzeitschriften, Zeitungen, Zeitschriften oder anderen Schriften,
 2. Filmwerke sowie Bildträger und Bild- und Tonträger, auf denen Filmwerke aufgenommen sind, und
 3. Tonträger aus Sammlungen (Bestandsinhalte) von öffentlich zugänglichen Bibliotheken, Bildungseinrichtungen, Museen, Archiven sowie von Einrichtungen im Bereich des Film- oder Tonerbes, wenn diese Bestandsinhalte bereits veröffentlicht worden sind, deren Rechtsinhaber auch durch eine sorgfältige Suche nicht festgestellt oder ausfindig gemacht werden konnte.
- (3) Gibt es mehrere Rechtsinhaber eines Bestandsinhalts, kann dieser auch dann vervielfältigt und öffentlich zugänglich gemacht werden, wenn selbst nach sorgfältiger Suche nicht alle Rechtsinhaber festgestellt oder ausfindig gemacht werden konnten, aber von den bekannten Rechtsinhabern die Erlaubnis zur Nutzung eingeholt worden ist.
- (4) Bestandsinhalte, die nicht erschienen sind oder nicht gesendet wurden, dürfen durch die jeweilige in Absatz 2 genannte Institution genutzt werden, wenn die Bestandsinhalte von ihr bereits mit Erlaubnis des Rechtsinhabers der Öffentlichkeit zugänglich gemacht wurden und sofern nach Treu und Glauben anzunehmen ist, dass der Rechtsinhaber in die Nutzung nach Absatz 1 einwilligen würde.

Directive 2012/28	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	in their collection shall also be permissible by public broadcasting organisations under the conditions set out in section 61 (2) to (5). Sections 61a and 61b shall apply mutatis mutandis. ²¹⁹
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	Section 61(5) The reproduction and the making available to the public by the institutions referred to in subsection (2) shall be permissible only if the institutions are acting to fulfil their tasks which are in the public interest, in particular if they preserve and restore holdings and make them accessible in their collections, if this serves cultural and educational purposes. The institutions may charge a fee for providing access to the orphan works which covers the costs of the digitalisation and the making available to the public. ²²⁰
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Section 63: Acknowledgement of source (1) If a work or part of a work is reproduced or distributed pursuant to section 45 (1), sections 45a to 48, 50, 51, 58, 59, as well as sections 60a to 60d, 61 and 61c, the source must in all cases be clearly acknowledged. In the case of the reproduction or distribution of entire literary works or entire musical works, the publishing house which released the work shall be indicated in addition to the author and it shall also be clearly indicated whether the work has been abridged or other alterations have been made. The obligation to indicate the source shall not apply where the source is neither named on the copy of the work nor is named when the work used is communicated nor is otherwise known to the person authorised to make the reproduction or distribution, or in the case of section 60a or of

²¹⁹ § 61c Nutzung verwaister Werke durch öffentlich-rechtliche Rundfunkanstalten
Zulässig sind die Vervielfältigung und die öffentliche Zugänglichmachung von

1. Filmwerken sowie Bildträgern und Bild- und Tonträgern, auf denen Filmwerke aufgenommen sind, und
2. Tonträgern,

die vor dem 1. Januar 2003 von öffentlich-rechtlichen Rundfunkanstalten hergestellt wurden und sich in deren Sammlung befinden, unter den Voraussetzungen des § 61 Absatz 2 bis 5 auch durch öffentlich-rechtliche Rundfunkanstalten. Die §§ 61a und 61b gelten entsprechend.

²²⁰ (5) Die Vervielfältigung und die öffentliche Zugänglichmachung durch die in Absatz 2 genannten Institutionen sind nur zulässig, wenn die Institutionen zur Erfüllung ihrer im Gemeinwohl liegenden Aufgaben handeln, insbesondere wenn sie Bestandsinhalte bewahren und restaurieren und den Zugang zu ihren Sammlungen eröffnen, sofern dies kulturellen und bildungspolitischen Zwecken dient. Die Institutionen dürfen für den Zugang zu den genutzten verwaisten Werken ein Entgelt verlangen, das die Kosten der Digitalisierung und der öffentlichen Zugänglichmachung deckt.

Directive 2012/28	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
	<p>section 60b the examination purposes necessitate dispensing with quoting the source.</p> <p>(2) Where according to the provisions of this section it is permissible to communicate a work to the public, the source shall be clearly indicated if and insofar as this is required by customary practice. In cases of communication to the public pursuant to sections 46, 48, 51, 60a to 60d, 61 and 61c, the source, including the name of the author, must in all cases be acknowledged unless this is not possible.²²¹</p> <p>(3) [...]</p>
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	(see sections 29 to 40a for contractually granting the right of use)
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the	<p>Section 61b and 61c</p> <p>Section 61b: Termination of use and obligation to pay remuneration</p> <p>Where a rightholder of an item in the holdings is subsequently established or traced, the institution using the item in the holdings shall without delay cease the acts of use as soon as it learns thereof. The rightholder shall be entitled to payment of equitable remuneration for the use already made of the item in the holdings against the institution using it.²²²</p>

²²¹ § 63 Quellenangabe

- (1) Wenn ein Werk oder ein Teil eines Werkes in den Fällen des § 45 Abs. 1, der §§ 45a bis 48, 50, 51, 58, 59, sowie der §§ 60a bis 60d, 61 und 61c vervielfältigt oder verbreitet wird, ist stets die Quelle deutlich anzugeben. Bei der Vervielfältigung oder Verbreitung ganzer Sprachwerke oder ganzer Werke der Musik ist neben dem Urheber auch der Verlag anzugeben, in dem das Werk erschienen ist, und außerdem kenntlich zu machen, ob an dem Werk Kürzungen oder andere Änderungen vorgenommen worden sind. Die Verpflichtung zur Quellenangabe entfällt, wenn die Quelle weder auf dem benutzten Werkstück oder bei der benutzten Werkwiedergabe genannt noch dem zur Vervielfältigung oder Verbreitung Befugten anderweit bekannt ist oder im Fall des § 60a oder des § 60b Prüfungszwecke einen Verzicht auf die Quellenangabe erfordern.
- (2) Soweit nach den Bestimmungen dieses Abschnitts die öffentliche Wiedergabe eines Werkes zulässig ist, ist die Quelle deutlich anzugeben, wenn und soweit die Verkehrssitte es erfordert. In den Fällen der öffentlichen Wiedergabe nach den §§ 46, 48, 51, 60a bis 60d, 61 und 61c ist die Quelle einschließlich des Namens des Urhebers stets anzugeben, es sei denn, dass dies nicht möglich ist.

²²² § 61b Beendigung der Nutzung und Vergütungspflicht der nutzenden Institution

Wird ein Rechtsinhaber eines Bestandsinhalts nachträglich festgestellt oder ausfindig gemacht, hat die nutzende Institution die Nutzungshandlungen unverzüglich zu unterlassen, sobald sie hiervon Kenntnis erlangt. Der Rechtsinhaber hat gegen die nutzende Institution Anspruch auf Zahlung einer angemessenen Vergütung für die erfolgte Nutzung.

Directive 2012/28	National law - Copyright Act (Urhebergesetz (UrhG))
Text	Text
organisation which uses the orphan work in question is established.	Section 61c: Use of orphan works by public broadcasting organisations The reproduction and making available to the public of <ol style="list-style-type: none">1. cinematographic works, as well as video media and video and audio media on which cinematographic works have been recorded, and2. audio media which were produced before 1 January 2003 by public broadcasting organisations and which are in their collection shall also be permissible by public broadcasting organisations under the conditions set out in section 61 (2) to (5). Sections 61a and 61b shall apply mutatis mutandis. ²²³

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²²³ § 61c Nutzung verwaister Werke durch öffentlich-rechtliche Rundfunkanstalten
Zulässig sind die Vervielfältigung und die öffentliche Zugänglichmachung von

1. Filmwerken sowie Bildträgern und Bild- und Tonträgern, auf denen Filmwerke aufgenommen sind, und
2. Tonträgern,

die vor dem 1. Januar 2003 von öffentlich-rechtlichen Rundfunkanstalten hergestellt wurden und sich in deren Sammlung befinden, unter den Voraussetzungen des § 61 Absatz 2 bis 5 auch durch öffentlich-rechtliche Rundfunkanstalten. Die §§ 61a und 61b gelten entsprechend.

VI. ESTONIA

VI.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

VI.1.1. Constitution²²⁴

The Constitution of the Republic of Estonia sets out the rights of the author under Chapter II “Fundamental Rights, Freedoms and Duties” in § 39:

*§ 39. The rights of an author in respect of his or her work are inalienable. The national government protects authors’ rights.*²²⁵

Furthermore, in accordance with § 9 of Chapter II, the rights of the author extend to “citizens of foreign states and stateless persons in Estonia.”

§ 9. The rights, freedoms and duties of all persons and of everyone, as set out in the Constitution, apply equally to citizens of Estonia and to citizens of foreign states and stateless persons in Estonia.

*The rights, freedoms and duties set out in the Constitution extend to legal persons in so far as this is in accordance with the purpose of legal personality and with the nature of such rights, freedoms and duties.*²²⁶

According to the commentary of the Estonian Constitution,²²⁷ § 39 should be read together with § 32 of the Constitution, meaning that certain forms of intellectual property that are not afforded protection under § 39, are guaranteed by § 32.

§ 32. The property of every person is inviolable and equally protected. Property may be taken from the owner without his or her consent only in the public interest, in the cases and pursuant to a procedure provided by law, and for fair and immediate compensation. Everyone whose property has been taken from him or her without his or her consent has the right to bring an action in the courts to contest the taking of the property, the compensation, or the amount of the compensation.

Everyone has the right to freedom from interference in possessing or using his or her property or making dispositions regarding the same. Limitations of this right are provided by law. Property may not be used in a manner that contravenes the public interest.

On public interest grounds, the law may provide classes of property which may be acquired in Estonia only by citizens of Estonia, by certain categories of legal persons, by local authorities, or by the Estonian government.

²²⁴ Provisions of national law and their translations are not protected by the Copyright Act of Estonia and can be used and reproduced free of charge. English translation of the Constitution of the Republic of Estonia: <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.

²²⁵ *§ 39. Autoril on võõrandamatu õigus oma loomingule. Riik kaitseb autori õigusi.*

²²⁶ *§ 9. Põhiseaduses loetletud kõigi ja igaühe õigused, vabadused ja kohustused on võrdselt nii Eesti kodanikel kui ka Eestis viibivatel välisriikide kodanikel ja kodakondsuseta isikutel.*

Põhiseaduses loetletud õigused, vabadused ja kohustused laienevad juriidilistele isikutele niivõrd, kui see on kooskõlas juriidiliste isikute üldiste eesmärkide ja selliste õiguste, vabaduste ja kohustuste olemusega.

²²⁷ Põhiseaduse kommenteeritud väljaanne. Kirjastus Juura, 2017. Available at: <http://www.pohiseadus.ee>.

*Succession of property is guaranteed.*²²⁸

VI.1.2. Copyright Law

The Copyright Act²²⁹ is the law regulating copyright in Estonia. In its 12 chapters it sets out which works are protected, rights arising upon creation of works, limitations on exercise of economic rights of authors, persons to whom copyright belongs, the duration of copyright, use of works, rights related to copyright (e.g. of performers, database makers etc) and the collective exercise of rights.

The Act transposes the following EU legislative acts:

- a) Council Directive 91/250/EEC on the legal protection of computer programs (OJ L 122, 17.5.1991, p. 114);
- b) Council Directive 92/100/EEC on the rental right and lending right and certain rights related in copyright in the field of intellectual property (OJ L 346, 27.11.1992, p. 120);
- c) Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993, p. 134);
- d) Council Directive 93/98/EEC harmonizing the term of protection of copyright and certain related rights (OJ L 290, 24.11.1993, p. 141);
- e) European Parliament and Council Directive 96/9/EC on the legal protection of databases (OJ L 77, 27.3.1996, p. 459);
- f) Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 230);
- g) Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art (OJ L 272, 13.10.2001, p. 240);
- h) Directive 2001/116/EC of the European Parliament and of the Council on the term of protection of copyright and certain related rights (OJ L 372, 27.12.2006, p. 12), amended by Directive 2011/77/EU (OJ L 265, 11.10.2011, p 1);
- i) Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights (OJ L 265, 11.10.2011, p. 1–5);
- j) Directive No 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on Certain Permitted Uses of Orphan Works (OJ L 299, 27.10.2012, p. 5–12);

²²⁸ § 32. Igaühe omand on puutumatu ja võrdselt kaitstud. Omandit võib omaniku nõusolekuta võõrandada ainult seaduses sätestatud juhtudel ja korras üldistes huvides õiglase ja kohese hüvituse eest. Igaühel, kelle vara on tema nõusolekuta võõrandatud, on õigus pöörduda kohtusse ning vaidlustada vara võõrandamine, hüvitus või selle suurus.

Igaühel on õigus enda omandit vabalt vallata, kasutada ja käsutada. Kitsendused sätestab seadus. Omandit ei tohi kasutada üldiste huvide vastaselt.

Seadus võib üldistes huvides sätestada vara liigid, mida tohivad Eestis omandada ainult Eesti kodanikud, mõnda liiki juriidilised isikud, kohalikud omavalitsused või Eesti riik.

Pärimisõigus on tagatud.

²²⁹ Autoriõiguse seadus, passed at 11.11.1992, last amended at 31.05.2017 (RT I 1992, 49, 615). Available at: <https://www.riigiteataja.ee/akt/116062017008>.

- k) Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72–98).

[RT I, 14.06.2013, 3 - entry into force 01.11.2013]

VI.2. COPYRIGHT

VI.2.1. Definition and content

The Estonian Copyright Act does not explicitly define “copyright”, but describes the content of the protection provided.

The content of copyright is set out in § 11 of the Copyright Act:

§ 11. Content of copyright

- (1) Copyright in a work arises upon the creation of the work by the author of the work. Moral rights and economic rights constitute the content of copyright.*
- (2) The moral rights of an author are inseparable from the author’s person and non-transferable.*
- (3) The economic rights of an author are transferable as single rights or a set of rights for a charge or free of charge.*
- (4) The moral and economic rights of an author may be limited only in the cases prescribed in this Act.²³⁰*

Copyright comprises of moral and economic rights, which are set out in paragraphs 12 and 13, respectively.

- a) Moral rights are set out in § 12 of the Copyright Act:

§ 12 Moral rights

- (1) The author of a work has the right to:*
 - 1) appear in public as the creator of the work and claim recognition of the fact of creation of the work by way of relating the authorship of the work to the author’s person and name upon any use of the work (right of authorship);*
 - 2) decide in which manner the author’s name shall be designated upon use of the work – as the real name of the author, identifying mark of the author, a fictitious name (pseudonym) or without a name (anonymously) (right of author’s name);*
 - 3) make or permit other persons to make any changes to the work, its title (name) or designation of the author’s name and the right to contest any changes made without the author’s consent (right of integrity of the work);*

²³⁰ § 11. Autoriõiguse sisu

- (1) Teose autoril tekib teose loomisega autoriõigus sellele teosele. Autoriõiguse sisu moodustavad isiklikud õigused ja varalised õigused.*
- (2) Autori isiklikud õigused on autori isikust lahutamatud ning ei ole üleantavad.*
- (3) Autori varalised õigused on üleantavad kas üksikute õigustena või õiguste kogumina, kas tasu eest või tasuta.*
- (4) Autori isiklike ja varaliste õiguste piiramine võib toimuda ainult käesolevas seaduses ettenähtud juhtudel.*

- 4) *permit the addition of other authors' works to the author's work (illustrations, forewords, epilogues, comments, explanations, additional parts, etc.) (right of additions to the work);*
 - 5) *contest any misrepresentations of and other inaccuracies in the work, its title or the designation of the author's name and any assessments of the work which are prejudicial to the author's honour and reputation (right of protection of author's honour and reputation);*
 - 6) *decide when the work is ready to be performed in public (right of disclosure of the work);*
 - 7) *supplement and improve the author's work which is made public (right of supplementation of the work);*
 - 8) *request that the use of the work be terminated (right to withdraw the work);*
 - 9) *request that the author's name be removed from the work which is being used.*
- (2) *The rights specified in clauses (1) 7), 8) and 9) of this section shall be exercised at the expense of the author and the author is required to compensate for damage caused to the person who used the work.*²³¹

§ 16 (2) and (3) of the Copyright Act specify further the content and the limits of the moral rights:

- (2) *In order to make a copy of a work of visual art, the author of the work has the right to request access to the original of the work which is in the ownership or lawful possession of another person.*

²³¹ § 12. Isiklikud õigused

(1) Teose autoril on õigus:

- 1) *esineda üldsuse ees teose loojana ja nõuda teose loomise fakti tunnustamist teose autorsuse seostamise teel tema isiku ja nimega teose mis tahes kasutamisel (õigus autorsusele);*
 - 2) *otsustada, millisel viisil peab olema tähistatud autori nimi teose kasutamisel – kas autori kodanikunimega, autorimärgiga, varjunimega (pseudonüümiga) või ilma nimeta (anonüümsetl) (õigus autorinimele);*
 - 3) *teha ise või lubada teha teistel isikutel teoses endas, tema pealkirjas (nimetuses) või autorinime tähistuses mis tahes muudatusi ning õigus vaidlustada ilma autori nõusolekuta tehtud muudatusi (õigus teose puutumatusel);*
 - 4) *lubada lisada oma teosele teiste autorite teoseid (illustratsioonid, eessõnasid, järelsõnasid, kommentaare, selgitusi, uusi osasid jms) (õigus teose lisadele);*
 - 5) *vaidlustada mis tahes moonutusi ja teisi ebatäpsusi teoses endas, selle pealkirjas või autorinime tähistamises ning autorile või tema teosele antud hinnanguid, mis kahjustavad autori au ja vääriskust (õigus autori au ja vääriskuse kaitsele);*
 - 6) *otsustada, millal teos on valmis üldsusele esitamiseks (õigus teose avalikustamisele);*
 - 7) *oma avalikustatud teost täiendada ja parandada (õigus teose täiendamisele);*
 - 8) *nõuda teose kasutamise lõpetamist (õigus teos tagasi võtta);*
 - 9) *nõuda oma autorinime kõrvaldamist kasutatavalt teoselt.*
- (2) *Käesoleva paragrahvi 1. lõike punktides 7, 8 ja 9 fikseeritud õiguste teostamine toimub autori kulul ning autor on kohustatud hüvitama kahju, mis tekib isikul, kes teost kasutas.*

(3) *An author may, with the owner's consent, improve, supplement or process in any other manner the author's work of visual art, architecture, applied art, design, etc.*²³²

b) Economic rights are set out in § 13 of the Copyright Act:

§ 13 Economic rights

(1) *An author shall enjoy the exclusive right to use the author's work in any manner, to authorise or prohibit the use of the work in a similar manner by other persons and to receive income from such use of the author's work except in the cases prescribed in Chapter IV of this Act. The author's rights shall include the right to authorise or prohibit:*

- 1) reproduction of the author's work (right of reproduction of the work). "Reproduction" means the making one or several temporary or permanent copies of the work or a part thereof directly or indirectly in any form or by any means;*
- 2) distribution of the author's work or copies thereof (distribution right). "Distribution" means the transfer of the right of ownership in a work or copies thereof or any other form of distribution to the public, including the rental and lending, except for the rental and lending of works of architecture and works of applied art. The first sale or transfer in some other manner of the right of ownership of a copy of a work by the author or with his or her consent in a Member State of the EU or a state which is a contracting party to the EEA Agreement shall exhaust the right specified in this clause and copies of the work may be further distributed in the Member States of the EU or the states which are contracting parties to the EEA Agreement without the consent of the author. An author shall enjoy the exclusive right to authorise or prohibit the rental or lending of copies of his or her works to the public even in the case where the distribution right has been exhausted, except in the cases provided for in § 13³ of this Act;*
- 3) [Repealed]*
- 4) translation of the author's work (right of translation of the work);*
- 5) making adaptations, modifications (arrangements) and other alterations of the work (right of alteration of the work);*
- 6) compilation and publication of collections of the author's works and systematisation of the author's works (right of collections of works);*
- 7) public performance of the work as a live performance or a technically mediated performance (right of public performance);*
- 8) displaying the work to the public (right of exhibition of the work). "Exhibition of a work" means presentation of the work or a copy thereof either directly or by means of film, slides, television or any other technical device or process;*

²³² (2) *Kujutava kunsti teose autoril on õigus nõuda oma teosest koopia valmistamiseks juurdepääsu teose originaalile, mis on teise isiku omanduses või tiitlipärases valduses.*

(3) *Omaniku nõusolekul võib autor parandada, täiendada või muul viisil ümber töötada oma kujutava kunsti teost, arhitektuuri-, tarbekunsti-, disaini- jms teost.*

- 9) *communication of the work by radio, television or satellite, and retransmission thereof by cable network, or direction of the work at the public by other technical devices, except in the manner specified in clause 91 of this section (right of communication of the work);*
 - 9¹) *making the work available to the public in such a way that persons may access the work from a place and at a time individually chosen by them (right of making the work available to the public);*
 - 10) *carrying out the author's architectural project pursuant to the procedure prescribed by law;*
 - 11) *carrying out the author's project of a work of design or a work of applied arts, etc.*
- (2) *[Repealed]*
- (3) *For the purposes of this Act, "rental" means making a work, copies thereof or any other results specified in this Act available for use, for a limited period of time and for direct or indirect economic or commercial advantage.*
- (4) *For the purposes of this Act, "lending" means making a work, copies thereof or any other results specified in this Act available for use through establishments which are accessible to the public, for a limited period of time and not for direct or indirect economic or commercial advantage.*
- (5) *The first sale of a copy of a database shall exhaust the right to control resale of the copy of the database.*²³³

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§ 13. Varalised õigused

- (1) *Autorile kuulub ainuõigus igal moel ise oma teost kasutada, lubada ja keelata oma teose samaviisilist kasutamist teiste isikute poolt ja saada tulu oma teose sellisest kasutamisest, välja arvatud käesoleva seaduse IV peatükis ettenähtud juhud. Sealhulgas kuulub autorile õigus lubada ja keelata:*
 - 1) *reprodutseerida oma teost (õigus teose reprodutseerimisele). Reprodutseerimiseks loetakse teosest või teose osast ühe või mitme ajutise või alalise koopia otsest või kaudset tegemist mis tahes vormis või mis tahes viisil;*
 - 2) *levitada oma teost või selle koopiaid (õigus teose levitamisele). Levitamiseks loetakse teose või selle koopia omandiõiguse üleandmist või üldsusele kasutada andmist mis tahes viisil, sealhulgas rentimist ja laenutamist, välja arvatud arhitektuuriteose ja tarbekunstiteose rentimine ja laenutamine. Pärast autori poolt või tema loal teose koopia esmamüüki või omandiõiguse muul viisil üleandmist Euroopa Liidu liikmesriigis või Euroopa Majanduspiirkonna lepinguga ühinenud riigis lõpeb käesolevas punktis nimetatud õigus ja teose koopiaid võib Euroopa Liidu liikmesriigis või Euroopa Majanduspiirkonna lepinguga ühinenud riigis edasi levitada autori nõusolekuta. Autorile kuulub ainuõigus lubada või keelata oma teose koopia rentimist ja laenutamist üldsusele ka juhul, kui õigus teose levitamisele on lõppenud, välja arvatud käesoleva seaduse §-s 133 sätestatud juhud;*
 - 4) *tõlkida oma teos (õigus teose tõlkimisele);*
 - 5) *teha teosest kohandusi (adaptsioone), töötlusi (arranžeringuid) ja teisi töötlusi (õigus teose töötlemisele);*
 - 6) *koostada ja välja anda oma teoste kogumikke ja süstematiseerida oma teoseid (õigus teoste kogumikele);*
 - 7) *teost avalikult esitada kas elavas või tehniliselt vahendatud ettekandes (õigus avalikule esitamisele);*
 - 8) *teost üldsusele näidata (õigus teose eksponeerimisele). Teose eksponeerimine tähendab teose või tema koopia näitamist kas vahetult või filmi, slaidi, televisiooni või mis tahes muu tehnilise vahendi või protsessi abil;*
 - 9) *edastada teos raadio, televisiooni ja satelliidi kaudu ning taasedastada kaabellevivõrgu kaudu, samuti*

§ 16(1) of the Copyright Act specifies further how the author can exercise his or her economic rights:

- 1) *Copyright in a work shall belong to the author or his or her successor regardless of who has the right of ownership in the economic object in which the work is expressed. The manner in which the economic rights of the author or his or her successor are exercised shall be determined by an agreement between the author or his or her successor and the owner.*²³⁴

VI.2.2. Author

According to § 28 of the Copyright Act, the author of a work is “the natural person or persons who created the work”. A legal person can be an author only when prescribed by the Copyright Act (see § 28(3) of the Copyright Act). In reality, this seems to be possible only in the event of collective works (§ 31(1) and (2)), and where the authorship has been acquired through succession.

§ 31. Copyright in collective works

- (1) *A collective work is a work which consists of contributions of different authors which are united into an integral whole by a natural or a legal person on the initiative and under the management of this person and which is published under the name of this natural or legal person (works of reference, collections of scientific works, newspapers, journals and other periodicals or serials, etc.).*
- (2) *Copyright in a collective work shall belong to the person on whose initiative and under whose management the work was created and under whose name it was published unless otherwise prescribed by contract.*²³⁵

[...]

suunata teos üldsusele muude tehnikavahendite vahendusel, välja arvatud käesoleva paragrahvi punktis 91 nimetatud viisil (õigus teose edastamisele);

9¹) teha teos üldsusele kättesaadavaks sellisel viisil, et isikud saavad teoseid kasutada nende poolt individuaalselt valitud kohas ja ajal (õigus teose üldsusele kättesaadavaks tegemisele);

10) teostada oma arhitektuurne projekt seaduses ettenähtud korras;

11) teostada oma disaini-, tarbekunstiteose jms projekt.

(3) *Rentimine käesoleva seaduse tähenduses on teose, selle koopia või käesolevas seaduses nimetatud muu resultaadi andmine ajutiseks kasutamiseks otsese või kaudse varalise või ärilise kasu saamise eesmärgil.*

(4) *Laenutamine käesoleva seaduse tähenduses on teose, selle koopia või käesolevas seaduses nimetatud muu resultaadi andmine ajutiseks kasutamiseks üldsusele avatud asutuse kaudu otsese või kaudse varalise või ärilise kasu saamise eesmärgita.*

(5) *Andmebaasi koopia esmane müük lõpetab õiguse kontrollida selle andmebaasi koopia edasist müüki.*

²³⁴ (1) *Autoriõigus teosele kuulub autorile või tema pärijale sõltumata sellest, kellel on omandiõigus sellele materiaalsele objektile, milles teos on väljendatud. Autori või tema pärija varaliste õiguste teostamise viis määratakse kindlaks autori või tema pärija ja omaniku vahelise kokkuleppega.*

²³⁵ § 31. *Autoriõigus kollektiivsele teosele*

(1) *Kollektiivseks teoseks loetakse teost, mis koosneb erinevate autorite kaastöödest, mis on ühendatud ühtseks tervikuks füüsilise või juriidilise isiku poolt tema initsiatiivil ja juhtimisel ning mis antakse välja selle füüsilise või juriidilise isiku nime või nimetuse all (teatmeteosed, teaduslik kogumik, ajaleht, ajakiri ja teised perioodilised või jätkuväljaanded jms).*

(2) *Autoriõigus kollektiivsele teosele kuulub isikule, kelle initsiatiivil ja juhtimisel selline teos loodi ja kelle nime või nimetuse all see välja anti, kui lepinguga pole ette nähtud teisiti.*

However, § 1(2) establishes that the rights of “the persons who may acquire rights to literary, artistic or scientific works created by an author; the rights of performers, producers of phonograms and broadcasting service providers (related rights); the rights of makers of databases; the related rights of producers of first recordings of films and of other persons specified in [the Copyright] Act” are also protected under the Act.

It is clear from the wording of § 3(1) that foreign authors are also protected.

§ 3 Validity of Copyright Act

(1) The Copyright Act applies to works:

- 1) the author of which is a citizen or a permanent resident of the Republic of Estonia;*
 - 2) first published in the territory of the Republic of Estonia or not published but located in the territory of the Republic of Estonia, regardless of the citizenship or the permanent residence of the creator of the works;*
 - 3) which must be protected in accordance with an international agreement of the Republic of Estonia.*
- (2) This Act applies to works first made available to the public in a foreign state or not made available to the public but located in the territory of a foreign state, the author of which is a person whose permanent residence or registered office is in the foreign state and to which clause (1) 3) of this section does not apply, only if this state guarantees similar protection for works of the authors of the Republic of Estonia and for works first published in the Republic of Estonia.²³⁶*

VI.2.3. Protected works

§ 4 of the Copyright Act establishes the list of works protected under the Estonian copyright law. It provides the following non-exclusive list:

§ 4. Works in which copyright subsists

- (1) Copyright subsists in literary, artistic and scientific works.*
- (2) For the purposes of this Act, “works” means any original results in the literary, artistic or scientific domain which are expressed in an objective form and can be perceived and reproduced in this form either directly or by means of technical devices. A work is original if it is the author’s own intellectual creation.*
- (3) Works in which copyright subsists are:*
 - 1) written works in the fields of fiction, non-fiction, politics, education, etc.;*

²³⁶

§ 3. Autoriõiguse seaduse kehtivus

(1) Autoriõiguse seadust kohaldatakse teostele:

- 1) mille autoriks on Eesti Vabariigi kodanik või Eesti Vabariigis alaliselt elav isik;*
- 2) mis on esmakordselt avaldatud Eesti Vabariigi territooriumil või mis on avaldamata, kuid asuvad Eesti Vabariigi territooriumil, sõltumata teoste looja kodakondsusest või alalisest elukohast;*
- 3) mida tuleb kaitsta vastavalt Eesti Vabariigi välislepingule.*

(2) Teostele, mis on esmakordselt avalikustatud välisriigis või mis on avalikustamata, kuid asuvad välisriigi territooriumil ja mille autoriks on isik, kelle alaline elukoht või asukoht on välisriigi territooriumil, ning millele ei laiene käesoleva paragrahvi 1. lõike punkt 3, kohaldatakse käesolevat seadust ainult juhul, kui see riik garanteerib samasuguse kaitse Eesti Vabariigi autorite teostele ja teostele, mis on esmakordselt avaldatud Eesti Vabariigis.

- 2) *scientific works or works of popular science, either written or three-dimensional (monographs, articles, reports on scientific research, plans, schemes, models, tests, etc.);*
- 3) *computer programs that shall be protected as literary works. Protection applies to the expression in any form of a computer program;*
- 4) *speeches, lectures, addresses, sermons and other works which consist of words and which are expressed orally (oral works);*
- 5) *scripts and script outlines, librettos;*
- 6) *dramatic and dramatico-musical works;*
- 7) *musical compositions with or without words;*
- 8) *choreographic works and entertainments in dumb show;*
- 9) *audiovisual works (§ 33);*
- 10) *[repealed – RT I 1999, 97, 859 – entry into force 06.01.2000];*
- 11) *works of painting, graphic arts, typography, drawings, illustrations;*
- 12) *productions and works of set design;*
- 13) *works of sculpture;*
- 14) *architectural graphics (drawings, drafts, schemes, figures, plans, projects, etc.), letters of explanation explaining the contents of a project, additional texts and programs, architectural works of plastic art (models, etc.), works of architecture and landscape architecture (buildings, constructions, parks, green areas, etc.), urban developmental ensembles and complexes;*
- 15) *works of applied art;*
- 16) *works of design and fashion design;*
- 17) *photographic works and works expressed by a process analogous to photography, slides and slide films;*
- 18) *cartographic works (topographic, geographic, geological, etc. maps, atlases, models);*
- 19) *draft legislation;*
- 19') *standards and draft standards;*
- 20) *opinions, reviews, expert opinions, etc.;*
- 21) *derivative works, i.e. translations, adaptations of original works, modifications (arrangements) and other alterations of works;*
- 22) *collections of works and information (including databases). For the purposes of this Act, "database" means a collection of independent works, data or other economics arranged in a systematic or methodical way and individually accessible by electronic or other means. The definition of database does not cover computer programs used in the making or operation thereof. In accordance with this Act, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright and no other criteria are applied;*

23) other works²³⁷.

VI.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Copyright Act does not apply to certain other intellectual activities. These are set out in § 5 of the Copyright Act.

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§ 4. Teosed, millele tekib autoriõigus

- (1) Autoriõigus tekib kirjandus-, kunsti- ja teadusteostele.
- (2) Teoseks käesoleva seaduse tähenduses loetakse mis tahes originaalset tulemust kirjanduse, kunsti või teaduse valdkonnas, mis on väljendatud mingisuguses objektiivses vormis ja on selle vormi kaudu tajutav ning reprodutseeritav kas vahetult või mingi tehnilise vahendi abil. Teos on originaalne, kui see on autori enda intellektuaalse loominguga tulemus.
- (3) Teosed, millele tekib autoriõigus, on:
 - 1) ilukirjandus-, publitsistika-, poliitika-, haridusalased jms kirjalikud teosed;
 - 2) teaduslikud ja populaarteaduslikud kirjalikud ja kolmemõõtmelised teosed (monograafiad, artiklid, teadusliku töö aruanded, plaanid, skeemid, maketid, mudelid, testid jms);
 - 3) arvutiprogrammid, mida kaitstakse nagu kirjandusteoseid. Kaitse laieneb arvutiprogrammi mis tahes väljendusvormile;
 - 4) kõned, loengud, ettekanded, jutlused jt teosed, mis koosnevad sõnadest ja on väljendatud suuliselt (suulised teosed);
 - 5) stsenaariumid ja stsenaariumi plaanid, libretod;
 - 6) draama- ja muusikalised draamateosed;
 - 7) muusikateosed tekstiga ja ilma tekstita;
 - 8) koreograafiateosed ja pantomiimid;
 - 9) audiovisuaalsed teosed (§ 33);
 - 10) [kehtetu - RT I 1999, 97, 859 - jõust. 06.01.2000]
 - 11) maalikunstiteosed, graafikateosed, trükikunstiteosed, joonistused, illustratsioonid;
 - 12) lavastused ja lavakujunduslikud teosed;
 - 13) skulptuuriteosed;
 - 14) arhitektuurne graafika (joonistused, eskiisid, skeemid, joonised, plaanid, projektid jm), projekti sisu lahtimõtestavad seletuskirjad, tekstilisad, programmid, arhitektuursed plastikateosed (mudelid, maketid jm), arhitektuuri- ja maastikuarhitektuuriteosed (hooned, rajatised, pargid, haljasalad jm), linnaehitusansamblid ja kompleksid;
 - 15) tarbekunstiteosed;
 - 16) disaini- ja moekunstiteosed;
 - 17) fotograafiateosed ja fotograafiaga analoogilisel viisil saadud teosed, slaidid ja slaidifilmid;
 - 18) kartograafiateosed (topograafilised, geograafilised, geoloogilised jt kaardid, atlased, maketid);
 - 19) õigusaktide projektid;
 - 19¹) standardid ja standardite kavandid;
 - 20) arvamused, retsensioonid, eksperthinnangud jms;
 - 21) tuletatud teosed, see on teose tõlge, algse teose kohandus (adaptsioon), töötlus (arranžeerimine) ja teose muu töötlus;
 - 22) teoste kogumikud ja informatsiooni kogumikud (sealhulgas andmebaasid). Andmebaas käesoleva seaduse tähenduses on süstemaatiliselt või meetoodiliselt korraldatud iseseisvate teoste, andmete või muu materjali kogu, mis on individuaalselt kättesaadav elektrooniliste või muude vahendite abil. Andmebaasi mõiste ei hõlma selle tegemiseks ega käivitamiseks vajaminevat arvutiprogrammi. Käesoleva seaduse alusel kaitstakse autoriõigusega andmebaasi, mis oma sisu valiku ja korralduse tõttu on autori enda intellektuaalse loominguga tulemus, ning ei kohaldata mingit muud kriteeriumi;
 - 23) muud teosed.

§ 5. Results of intellectual activities to which this Act does not apply

This Act does not apply to:

- 1) *ideas, images, notions, theories, processes, systems, methods, concepts, principles, discoveries, inventions, and other results of intellectual activities which are described, explained or expressed in any other manner in a work;*
- 2) *works of folklore;*
- 3) *legislation and administrative documents (acts, decrees, regulations, statutes, instructions, directives) and official translations thereof;*
- 4) *court decisions and official translations thereof;*
- 5) *official symbols of the state and insignia of organisations (flags, coats of arms, orders, medals, badges, etc.);*
- 6) *news of the day;*
- 7) *facts and data;*
- 8) *ideas and principles which underlie any element of a computer program, including those which underlie its user interface.*²³⁸

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<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic</p>	<p>§ 18¹(1)</p> <p>Without the authorisation of the author and without payment of the remuneration, a temporary or casual reproduction of the work which occurs as an integral and essential part of a technical process and the purpose of which is to mediate the communication of the work in the network between third parties or to make possible the lawful use of the work or an object of related rights and which has no independent commercial purpose is permitted.²³⁹</p>

²³⁸ § 5. Intellektuaalse tegevuse tulemused, millele käesolevat seadust ei kohaldata

Käesolevat seadust ei kohaldata:

- 1) *ideedele, kujunditele, mõistetele, teooriatele, protsessidele, süsteemidele, meetoditele, kontseptsioonidele, printsiipidele, avastistele, leiutistele jms intellektuaalse tegevuse resultaatidele, mis on kirjeldatud, selgitatud või muul viisil väljendatud teoses;*
- 2) *rahvaloominguteostele;*
- 3) *õigusaktidele ja haldusdokumentidele (seadused, seadlused, määrused, põhimäärused, juhendid, käskkirjad) ning nende ametlikele tõlgetele;*
- 4) *kohtulahenditele ning nende ametlikele tõlgetele;*
- 5) *riigi ametlikele sümbolitele ja organisatsioonide sümboolikale (lipud, vapid, ordenid, medalid, märgid jne);*
- 6) *päevauudistele;*
- 7) *faktidele ja andmetele;*
- 8) *ideedele ja põhimõtetele, millele rajanevad arvutiprogrammi elemendid, kaasa arvatud programmi kasutajaliidese aluseks olevad ideed ja põhimõtted.*

²³⁹ Ilma autori nõusolekuta ja tasu maksmata on lubatud teoste ajutine või juhuslik reprodutseerimine, mis toimub tehnilise protsessi lahutamatu ja olulise osana ning mille eesmärk on vahendada teose edastamist võrgus

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significance, shall be exempted from the reproduction right provided for in Article 2.	
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	§ 17 Notwithstanding §§ 13 – 15 of this Act, but provided that this does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, it is permitted to use a work without the authorisation of its author and without payment of remuneration only in the cases directly prescribed in §§ 18 – 25 of this Act. ²⁴⁰
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	–
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	§ 18(1) A lawfully published work may be reproduced and translated by a natural person for the purposes of personal use without the authorisation of its author and without payment of remuneration on the condition that such activities are not carried out for commercial purposes. ²⁴¹
(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;	§ 20(1) A public archive, museum or library has the right to reproduce a work included in the collection thereof without the authorisation of its author and without payment of remuneration, in order to: 1) replace a work which has been lost, destroyed or rendered unusable; 2) make a copy to ensure the preservation of the work; 3) replace a work which belonged to the permanent collection of another library, archives or museum if the work is lost, destroyed or rendered unusable; 4) digitise a collection for the purposes of preservation;

kolmandate isikute vahel või teha võimalikuks teose või autoriõigusega kaasnevate õiguste objekti seaduspärane kasutamine ning millel puudub iseseisev majanduslik eesmärk.

²⁴⁰ *Erandina käesoleva seaduse §-dest 13–15, kuid tingimusel, et see ei ole vastuolus teose tavapärase kasutamisega ega kahjusta põhjendamatult autori seaduslikke huve, on lubatud teose kasutamine autori nõusolekuta ja autoritasu maksmiseta ainult käesoleva seaduse §-des 18–25 otseselt ettenähtud juhtudel.*

²⁴¹ *Autori nõusolekuta ja autoritasu maksmiseta on lubatud õiguspäraselt avaldatud teost füüsilisel isikul reprodutseerida ja tõlkida isikliku kasutamise eesmärkidel tingimusel, et selline tegevus ei taotle ärilisi eesmärke.*

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	5) make a copy for a natural person for the purposes specified in § 18 of this Act; 6) make a copy on the order of a court or a state agency for the purposes prescribed in clause 19 6) of this Act. ²⁴²
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	§ 23(1) A broadcaster may make, without the authorisation of the author and without payment of remuneration, ephemeral recordings of works which it has the right to broadcast on the condition that such recordings are made by means of its own facilities and used for its own broadcasts. ²⁴³
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	§ 19 The following is permitted without the authorisation of the author and without payment of remuneration if mention is made of the name of the author of the work, if it appears thereon, the name of the work and the source publication: ²⁴⁴
(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;	§ 19 point 2 the use of a lawfully published work for the purpose of illustration for teaching and scientific research to the extent justified by the purpose and on the condition that such use is not carried out for commercial purposes; ²⁴⁵
(b) uses, for the benefit of people with a disability, which are directly related to the disability and	§ 19 point 6

²⁴² Autori nõusolekuta ja autoritasu maksmiseta on avalikul arhiivil, muuseumil või raamatukogul õigus oma kogusse kuuluvat teost reprodutseerida, selleks et:

- 1) asendada kadunud, hävinud või kasutamiskõlbmatuks muutunud teos;
- 2) teha koopia teose säilimise tagamiseks;
- 3) asendada mõne teise avaliku arhiivi, muuseumi või raamatukogu püsikollektsiooni kuulunud teos juhul, kui see on kadunud, hävinud või muutunud kasutamiskõlbmatuks;
- 4) digiteerida kogu säilitamise eesmärgil;
- 5) teha koopia füüsilise isiku jaoks käesoleva seaduse §-s 18 nimetatud eesmärgil;
- 6) teha koopia kohtu- või riigiasutuse tellimisel käesoleva seaduse § 19 punktis 6 nimetatud eesmärgil.

²⁴³ Autori nõusolekuta ja täiendava autoritasu maksmiseta on raadiol ja televisioonil lubatud teha ajutine salvestis teosest, millele tal on eetrisseandmise õigus, tingimusel, et selline salvestis tehakse raadio ja televisiooni oma tehniliste vahenditega ja enda poolt kasutamiseks.

²⁴⁴ Autori nõusolekuta ja autoritasu maksmiseta, kuid kasutatud teose autori nime, kui see on teosel näidatud, teose nimetuse ning avaldamisallika kohustusliku äranäitamiseega on lubatud:

²⁴⁵ õiguspäraselt avaldatud teose kasutamine illustreeriva materjalina õppe- ja teaduslikel eesmärkidel motiveeritud mahu ja tingimusel, et selline kasutamine ei taotle ärilisi eesmärke;

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of a non-commercial nature, to the extent required by the specific disability;	the reproduction, distribution and communication to the public of a lawfully published work in the interests of disabled persons in a manner which is directly related to their disability on the condition that such use is not carried out for commercial purposes. Works created especially for disabled persons may not be reproduced, distributed and made available without the authorisation of the author; ²⁴⁶
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informative purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	§ 19 point 4 for the purpose of reporting current events, the reproduction in the press and communicating to the public of works seen or heard in the course of an event, to the extent justified by the purpose, in the form and to the extent required by the purpose of reporting current events ²⁴⁷
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	§ 19 point 1 making summaries of and quotations from a work which has already been lawfully made available to the public, provided that its extent does not exceed that justified by the purpose and the idea of the work as a whole which is being summarised or quoted is conveyed correctly; ²⁴⁸
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	§ 19 point 5 reproduction of a work for the purposes of a judicial procedure or insurance of public security and to the extent justified by the purposes of a judicial procedure or insurance of public security ²⁴⁹

²⁴⁶ õiguspäraselt avaldatud teose reprodutseerimine, levitamine ja üldsusele suunamine puuetega inimeste huvides viisil, mis on otseselt seotud nende puudega, tingimusel et selline kasutamine ei taotle ärilisi eesmäärke. Autori nõusolekuta ei ole lubatud reprodutseerida, levitada ja kättesaadavaks teha teost, mis on spetsiaalselt loodud puuetega inimeste jaoks;

²⁴⁷ päevasündmuste kajastamisel sündmuste käigus nähtud või kuulnud teose ajakirjanduses reprodutseerimine ja üldsusele suunamine motiveeritud mahus, vormis ja ulatuses, mis vastab päevasündmuste kajastamise vajadusele;

²⁴⁸ õiguspäraselt avaldatud teose tsiteerimine ja refereerimine motiveeritud mahus, järgides refereeritava või tsiteeritava teose kui terviku mõtte õige edasiandmise kohustust;

²⁴⁹ teose reprodutseerimine õigusemõistmise või avaliku julgeoleku tagamise eesmärgil ulatuses, mis vastab õigusemõistmise või avaliku julgeoleku tagamise eesmärkidele;

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(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	§ 19 point 1 The following is permitted without the authorisation of the author and without payment of remuneration if mention is made of the name of the author of the work, if it appears thereon, the name of the work and the source publication: 1) making summaries of and quotations from a work which has already been lawfully made available to the public, provided that its extent does not exceed that justified by the purpose and the idea of the work as a whole which is being summarised or quoted is conveyed correctly. ²⁵⁰
(g) use during religious celebrations or official celebrations organised by a public authority;	–
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	§ 20¹ It is permitted to reproduce works of architecture, works of visual art, works of applied art or photographic works which are permanently located in places open to the public, without the authorisation of the author and without payment of remuneration, by any means except for mechanical contact copying, and to communicate such reproductions of works to the public except if the work is the main subject of the reproduction and it is intended to be used for direct commercial purposes. If the work specified in this section carries the name of its author, it shall be indicated in communicating the reproduction to the public. ²⁵¹
(i) incidental inclusion of a work or other subject-matter in other material;	§ 18(1) A lawfully published work may be reproduced and translated by a natural person for the purposes of personal use without the authorisation of its author and without payment of remuneration on the condition that such activities are not carried out for commercial purposes. ²⁵²

²⁵⁰ Autori nõusolekuta ja autoritasu maksmiseta, kuid kasutatud teose autori nime, kui see on teosel näidatud, teose nimetuse ning avaldamisallika kohustusliku äranäitamisega on lubatud:

1) õiguspäraselt avaldatud teose tsiteerimine ja refereerimine motiveeritud mahus, järgides refereeritava või tsiteeritava teose kui terviku mõtte õige edasiandmise kohustust;

²⁵¹ Autori nõusolekuta ja autoritasu maksmiseta on lubatud üldsusele külastamiseks avatud kohtades alaliselt asuva arhitektuuriteose, kujutava kunsti teose, tarbekunstiteose ja fotograafiateose reprodutseerimine ükskõik millisel viisil peale mehaanilise kontaktkopeerimise ja selle teose kujutise üldsusele suunamine, välja arvatud juhul, kui selline teos moodustab kujutise põhimotiivi ja seda kavatsetakse kasutada otsesel ärilisel eesmärgil. Kui käesolevas lõikes sätestatud teosel on nimetatud autori nimi, tuleb see lisada kujutise üldsusele suunamisel.

²⁵² Autori nõusolekuta ja autoritasu maksmiseta on lubatud õiguspäraselt avaldatud teost füüsilisel isikul reprodutseerida ja tõlkida isikliku kasutamise eesmärkidel tingimusel, et selline tegevus ei taotle ärilisi eesmärke.

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(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	§ 20(3) A public archive, museum or library has the right to use a work included in the collection thereof without the authorisation of its author and without payment of remuneration for the purposes of an exhibition or the promotion of the collection to the extent justified by the purpose. ²⁵³
(k) use for the purpose of caricature, parody or pastiche;	§ 19 point 7 the use of a lawfully published work in a caricature, parody or pastiche to the extent justified by such purpose. ²⁵⁴
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(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;	§ 20(4) A public archive, museum or library has the right, without the authorisation of the author and without payment of remuneration, on order from a natural person: 1) to make available works in its collections on the spot through special equipment; 2) to lend works in its collections for individual on-the-spot use. ²⁵⁵
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	§ 19 point 3 the reproduction of a lawfully published work for the purpose of teaching or scientific research to the extent justified by the purpose in educational and research institutions whose activities are not carried out for commercial purposes; ²⁵⁶ § 19 point 3¹ processing of an object of rights for the purposes of text and data mining and provided that such use does not have a commercial objective ²⁵⁷

²⁵³ Autori nõusolekuta ja autoritasu maksmiseta on avalikul arhiivil, muuseumil või raamatukogul õigus oma kogusse kuuluvat teost kasutada motiveeritud mahus näituse ja kogu tutvustamise eesmärgil.

²⁵⁴ õiguspäraselt avaldatud teose kasutamine karikatuuris, paroodias ja pastišis sel eesmärgil motiveeritud mahus.

²⁵⁵ Autori nõusolekuta ja selle eest tasu maksmiseta on avalikul arhiivil, muuseumil või raamatukogul õigus kogus olevat teost füüsilise isiku tellimusel:

- 1) eriseadmete kaudu kohapeal kättesaadavaks teha;
- 2) individuaalseks kohapeal kasutamiseks laenutada.

²⁵⁶ õiguspäraselt avaldatud teose reprodutseerimine õppe- ja teaduslikel eesmärkidel motiveeritud mahus haridus- ja teadusasutustes, mille tegevus ei taotle ärilisi eesmärke

²⁵⁷ 3¹) õiguste objekti töötlemine teksti- ja andmekaeve eesmärkidel ning tingimusel, et selline kasutamine ei taotle ärilisi eesmärke;

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	<p>§ 24(1)</p> <p>Unless otherwise prescribed by contract, the lawful user of a computer program may, without the authorisation of the author of the program and without payment of additional remuneration, reproduce, translate, adapt and transform the computer program in any other manner and reproduce the results obtained if this is necessary for:</p> <ol style="list-style-type: none"> 1) the use of the program on the device or devices, to the extent and for the purposes for which the program was obtained; 2) the correction of errors present in the program.²⁵⁸
	<p>§ 25¹</p> <p>The lawful user of a database or of a copy thereof is entitled, without the authorisation of the author and without payment of additional remuneration, to perform any acts which are necessary for the purposes of access to the contents of the database and normal use of its contents. If the lawful user is authorised to use only part of the database, this provision shall only apply to the corresponding part of the database or of a copy thereof. Any contractual provisions which prejudice the exercise of the right are void.²⁵⁹</p>
<p>5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.</p>	<p>§ 13³</p> <p>(1) A library has the right to lend out a work and a sound recording of a work without the consent of the author, performer or producer of phonograms, but they are entitled to receive remuneration for such lending out.</p> <p>Lending out an audiovisual work is permitted only in case the producer of the first fixation of a film has granted a respective authorisation.</p> <p>(2) The lending out of a sound recording of a work is permitted in case four months have passed since the start of the distribution of such sound</p>

²⁵⁸ Kui lepinguga ei ole ette nähtud teisiti, on arvutiprogrammi õiguspärasel kasutajal õigus ilma programmi autori nõusolekuta ja täiendava autoritasu maksmiseta programmi reprodutseerida, tõlkida, kohandada (adaptsioon) ning muul viisil ümber töötada ja saadud tulemusi reprodutseerida tingimusel, et see on vajalik:

- 1) programmi kasutamiseks seadmel või seadmetel, ulatuses ja eesmärkidel, milleks programm omandati;
- 2) programmis esinevate vigade parandamiseks.

²⁵⁹ Andmebaasi või selle koopia õiguspärasel kasutajal on õigus ilma autori nõusolekuta ja täiendavat autoritasu maksmata teostada kõiki tegusid, mis on vajalikud juurdepääsuks andmebaasi sisule ja selle sisu tavapäraseks kasutamiseks. Kui nimetatud isik on õigustatud kasutama andmebaasi ainult osaliselt, kohaldatakse käesolevas paragrahvis sätestatud ainult andmebaasi või selle koopia vastava osa suhtes. Lepingu tingimus, mis piirab nimetatud õiguse teostamist, on tühine.

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	<p>recording in Estonia. The said time-limit can be shortened with the consent of the holder of related rights which is in written format or in a format which can be reproduced in writing.</p> <p>(3) A library providing services to an educational institution operating in a field of study of audiovisual arts or music is entitled to lend out an audiovisual work and a sound recording of a work for teaching and scientific research without the consent of all holders of related rights and without the time-limit set out in subsection (2) of this section.²⁶⁰</p> <p>§ 67(2) point 6</p> <p>The following is permitted only with the consent of the performer:</p> <p style="padding-left: 40px;">the distribution of recordings to the public;²⁶¹</p> <p>§ 70(1) point 3</p> <p>A producer of phonograms has the exclusive right to authorise or prohibit:</p> <p style="padding-left: 40px;">the distribution of phonograms to the public;²⁶²</p> <p>§ 73(1) point 5</p> <p>Broadcasting service providers have the exclusive right to authorise or prohibit:</p> <p style="padding-left: 40px;">distribution of recordings of their broadcasts to the public.²⁶³</p> <p>§ 73¹(1) point 2</p> <p>Producers of first fixations of films have the exclusive right to authorise or prohibit:</p> <p style="padding-left: 40px;">distribution of the originals or copies of their films to the public;²⁶⁴</p> <p>§ 75⁴(2) point 2</p>

²⁶⁰ (1) Raamatukogul on õigus autori, esitaja ja fonogrammitootja nõusolekuta koju laenutada teost ja teose helisalvestist, kuid nimetatud isikutel on õigus saada kojulaenutamise eest tasu. Audiovisuaalse teose kojulaenutamine on lubatud vaid juhul, kui filmi esmasalvestuse tootja on andnud selleks loa.

(2) Teose helisalvestise kojulaenutamine on lubatud juhul, kui helisalvestise Eestis levitamise algusest on möödunud neli kuud. Autoriõigusega kaasnevate õiguste omaja nõusolekul, mis on kirjalikus või kirjalikku taasesitamist võimaldavas vormis, võib nimetatud tähtaega lühendada.

(3) Audiovisuaalse või helikunsti õppesuunal tegutsevat õppeasutust teenindaval raamatukogul on õigus audiovisuaalset teost ning teose helisalvestist õppe- ja teaduslikul eesmärgil koju laenutada kõigi kaasnevate õiguste omajate nõusolekuta ning käesoleva paragrahvi 2. lõikes nimetatud ajalise piiranguta.

²⁶¹ Vaid teose esitaja nõusolekul on lubatud: salvestise levitamine üldsusele;

²⁶² Fonogrammitootjal on ainuõigus lubada ja keelata: fonogrammi levitamine üldsusele;

²⁶³ Televisiooni- ja raadioteenuse osutajal on ainuõigus lubada ja keelata: saate salvestise levitamine üldsusele.

²⁶⁴ Filmi esmasalvestuse tootjal on ainuõigus lubada ja keelata: filmi originaali või selle koopia levitamine üldsusele.

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	The following is permitted only with the authorisation of the maker of a database: re-utilisation of the database or a substantial part thereof. "Re-utilisation" means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. ²⁶⁵
5(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.	§ 17 Notwithstanding §§ 13 – 15 of this Act, but provided that this does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, it is permitted to use a work without the authorisation of its author and without payment of remuneration only in the cases directly prescribed in §§ 18 – 25 of this Act. ²⁶⁶

Directive 2012/28	National law - Copyright Act of 1992
Text	Text
6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways: (a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC; (b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available,	§ 27⁶(1) Public memory institutions and Estonian Public Broadcasting are permitted to use a work or phonogram contained in their collections which has been considered an orphan work and forwarded to the orphan works database, only in public interests and provided that the names of all identified rightholders are indicated in the following cases: 1) making available to the public for cultural and educational purposes; 2) reproduction for the purpose of digitising, making available to the public, indexation, cataloguing, preservation or restoration. ²⁶⁷

²⁶⁵ Ainult andmebaasi tegija nõusolekul on lubatud: andmebaasi või selle olulise osa taaskasutamine. Taaskasutamiseks loetakse andmebaasi kogu sisu või selle olulise osa avalikustamine üldsusele kas koopiote levitamise, rentimise, sidusliini kaudu edastamise või muul viisil ülekandmise teel.

²⁶⁶ Erandina käesoleva seaduse §-dest 13–15, kuid tingimusel, et see ei ole vastuolus teose tavapärase kasutamisega ega kahjusta põhjendamatult autori seaduslikke huve, on lubatud teose kasutamine autori nõusolekuta ja autoritasu maksmiseta ainult käesoleva seaduse §-des 18–25 otseselt ettenähtud juhtudel.

²⁶⁷ Avalikul mäluasutusel ja Eesti Rahvusringhäälingul on lubatud kasutada orbesteoks tunnistatud ning orbesteoste andmebaasi edastatud oma kogusse kuuluvat teost või fonogrammi üksnes avalikes huvides ja kõigi tuvastatud õiguste omajate nimede näitamise korral järgnevatel juhtudel:

- 1) üldsusele kättesaadavaks tegemine kultuurilistel ja hariduslikel eesmärkidel;
- 2) reprodutseerimine digiteerimise, üldsusele kättesaadavaks tegemise, indekseerimise, kataloogimise, säilitamise või taastamise eesmärgil.

Directive 2012/28	National law - Copyright Act of 1992
Text	Text
indexing, cataloguing, preservation or restoration.	
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	§ 27⁶(2) The institutions specified in subsection (1) of this section are permitted to generate revenues in the course of the permitted free use only for the purpose of covering the costs of digitising orphan works and making them available to the public. ²⁶⁸
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	§ 27⁶(1) Public memory institutions and Estonian Public Broadcasting are permitted to use a work or phonogram contained in their collections which has been considered an orphan work and forwarded to the orphan works database, only in public interests and provided that the names of all identified rightholders are indicated in the following cases: 1) making available to the public for cultural and educational purposes; 2) reproduction for the purpose of digitising, making available to the public, indexation, cataloguing, preservation or restoration. ²⁶⁹
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	–
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the	§ 27⁷ (1) Rightholders in orphan works may at any time address the institution that considered the work or phonogram as an orphan work, and claim invalidation of the orphan work status to the extent of their copyright or related rights. (2) For the purpose of partial or full invalidation of orphan work status, the rightholders shall provide the institution that considered the work or phonogram as an orphan work with sufficient evidence to show the existence and extent of their copyright or related rights.

²⁶⁸ Käesoleva paragrahvi 1. lõikes nimetatud asutus võib lubatud vaba kasutamise käigus teenida tulu vaid orpteose digiteerimise ning üldsusele kättesaadavaks tegemise kulude katmise eesmärgil.

²⁶⁹ See footnote 274.

Directive 2012/28	National law - Copyright Act of 1992
Text	Text
organisation which uses the orphan work in question is established.	<p>(3) If the holding of copyright or related rights in a work or phonogram considered as orphan work has been confirmed on the basis of the evidence submitted pursuant to subsection (2) of this section, the institution that considered the work or phonogram as an orphan work shall immediately forward the information regarding partial or full invalidation of the orphan work status to the Ministry of Justice.</p> <p>(4) The Ministry of Justice shall immediately forward the information regarding partial or full invalidation of the orphan work status to the orphan works database.</p> <p>(5) The Ministry of Justice shall gather the information received during a calendar year on the basis of subsection (3) of this section and shall forward it to the committee established pursuant to subsection 278(2) of this Act by 15 January of the subsequent calendar year.²⁷⁰</p> <p>§ 27⁸</p> <p>(1) If the orphan work status of a work or phonogram has been partially or fully invalidated, the rightholder is entitled to receive remuneration for the use of the work or phonogram.</p> <p>(2) A committee, consisting of representatives of organisations representing authors, performers, producers of phonograms and producers of audiovisual works, representatives of the Ministry of Culture and of the Ministry of Justice, shall be established to determine the amount of the remuneration payable to the author or producer of a phonogram.</p> <p>(3) The committee shall be established by a directive of the minister responsible for the area and directing the ministry which function,</p>

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- (1) Orbteosele õigusi omav isik võib igal ajal pöörduda teose või fonogrammi orbteoseks tunnistanud asutuse poole ning nõuda oma autoriõiguste või autoriõigusega kaasnevate õiguste ulatuses orbteose staatuse tühistamist.
- (2) Orbteose staatuse osaliseks või täielikuks tühistamiseks peab õiguste omaja esitama teose või fonogrammi orbteoseks tunnistanud asutusele piisavad tõendid, mis kinnitavad talle kuuluvate autoriõiguste või autoriõigusega kaasnevate õiguste olemasolu ja ulatust.
- (3) Kui käesoleva paragrahvi 2. lõike kohaselt esitatud tõenditele tuginedes on orbteoseks tunnistatud teose või fonogrammi autoriõiguste või autoriõigusega kaasnevate õiguste kuuluvus leidnud kinnitust, edastab teose või fonogrammi orbteoseks tunnistanud asutus teabe orbteose staatuse osalise või täieliku tühistamise kohta viivitamata Justiitsministeeriumile.
- (4) Justiitsministeerium edastab teabe orbteose staatuse osalise või täieliku tühistamise kohta viivitamata orbteose andmebaasi.
- (5) Justiitsministeerium kogub kalendriaasta jooksul käesoleva paragrahvi 3. lõike alusel laekunud teabe ning edastab selle käesoleva seaduse § 278 2. lõike alusel moodustatavale komisjonile järgneva kalendriaasta 15. jaanuariks.

Directive 2012/28	National law - Copyright Act of 1992
Text	Text
	<p>pursuant to its statutes, is to pay remuneration for the use of the work or phonogram considered as an orphan work.</p> <p>(4) The committee specified in subsection (2) of this section shall decide on the amount of remuneration payable to the rightholder in the work with a partially or fully invalidated orphan work status, taking into account the damage caused to the rightholder as well as the purposes and nature of use of the orphan work so far.</p> <p>5) The minister specified in subsection (3) of this section shall approve the amounts of payable remuneration, broken down by rightholders, on the basis of the decision of the committee established pursuant to subsection (2) of this section, not later than three months after the end of a financial year.</p> <p>(6) The ministry specified in subsection (3) of this section shall pay the remuneration approved for the rightholders pursuant to this section not later than nine months after the end of a financial year. The total amount of remuneration payable per financial year shall not exceed 2000 euros.²⁷¹</p>

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²⁷¹

- (1) Kui orbeoseks tunnistatud teose või fonogrammi staatus on osaliselt või täielikult tühistatud, on õiguste omajal õigus saada tasu teose või fonogrammi kasutamise eest.
- (2) Autorile või fonogrammitootjale väljamakstava tasu suuruse määramiseks kinnitatakse kolmeaastaseks perioodiks komisjon, kuhu kuuluvad autoreid, esitajaid, fonogrammitootjaid ja audiovisuaalsete teoste produtsente esindavate organisatsioonide, Kultuuriministeeriumi ning Justiitsministeeriumi esindajad.
- (3) Komisjon kinnitatakse valdkonna eest vastutava ministri käskkirjaga, kelle juhitava ministeeriumi ülesandeks põhimääruse kohaselt on tasu maksmine orbeoseks tunnistatud teose või fonogrammi kasutamise eest.
- (4) Käesoleva paragrahvi 2. lõikes nimetatud komisjon otsustab osaliselt või täielikult tühistatud staatusega orbeose õiguste omajale makstava tasu suuruse, võttes arvesse nii õiguse omajale tekkinud kahju kui ka orbeose senise kasutamise eesmärgi ja olemust.
- (5) Käesoleva paragrahvi 3. lõikes nimetatud minister kinnitab käskkirjaga hiljemalt kolm kuud pärast eelarveaasta lõppu käesoleva paragrahvi 2. lõike alusel moodustatud komisjoni otsuse põhjal makstavate tasude suuruse õiguste omajate kaupa.
- (6) Õiguste omajale käesoleva paragrahvi alusel määratud tasu maksab välja käesoleva paragrahvi 3. lõikes nimetatud ministeerium hiljemalt üheksa kuud pärast eelarveaasta lõppu. Makstavate tasude kogusumma eelarveaastas ei ületa 2000 eurot.

VII. IRELAND

Pro memoria

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VIII. GREECE

VIII.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

VIII.1.1. Constitution²⁷²

Intellectual property rights (IP rights) are protected by the Greek Constitution, which provides that property is protected by the state (Article 17). Moreover, IP Rights fall into the scope of Articles 2, 5(1) and (2), 14(1) and 16(1) of the Constitution. In particular:

Article 17 reads:

1. *Property is under the protection of the State; rights deriving therefrom, however, may not be exercised contrary to the public interest.*
2. *No one shall be deprived of his property except for public benefit which must be duly proven [...]*²⁷³

Article 2 reads:

1. *Respect and protection of the value of the human being constitute the primary obligations of the State.*
2. *Greece, adhering to the generally recognised rules of international law, pursues the strengthening of peace and of justice, and the fostering of friendly relations between peoples and States.*²⁷⁴

Article 5(1) and (2) reads:

1. *All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages.*
2. *All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law.*

*The extradition of aliens prosecuted for their action as freedom-fighters shall be prohibited.*²⁷⁵

²⁷² All translations regarding the Greek Constitution are adaptations based on the official translation provided by the Hellenic Parliament on its website (<https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>).

²⁷³ Άρθρο 17:

«1. Η ιδιοκτησία τελεί υπό την προστασία του Κράτους, τα δικαιώματα όμως που απορρέουν από αυτή δεν μπορούν να ασκούνται σε βάρος του γενικού συμφέροντος.
2. Κανένας δεν στερείται την ιδιοκτησία του, παρά μόνο για δημόσια ωφέλεια που έχει αποδειχθεί με τον προσήκοντα τρόπο [...]

²⁷⁴ Άρθρο 2:

«1. Ο σεβασμός και η προστασία της αξίας του ανθρώπου αποτελούν την πρωταρχική υποχρέωση της Πολιτείας.
2. Η Ελλάδα, ακολουθώντας τους γενικά αναγνωρισμένους κανόνες του διεθνούς δικαίου, επιδιώκει την εμπέδωση της ειρήνης, της δικαιοσύνης, καθώς και την ανάπτυξη των φιλικών σχέσεων μεταξύ των λαών και των κρατών.»

²⁷⁵ Άρθρο 5 παρ. 1 και 2:

Article 14(1) reads:

1. *Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State.*²⁷⁶

Article 16(1) reads:

1. *Art and science, research and teaching shall be free and their development and promotion shall be an obligation of the State. Academic freedom and freedom of teaching shall not exempt anyone from his duty of allegiance to the Constitution.*²⁷⁷

VIII.1.2. Copyright Law

The main legislative act governing copyright and related rights is Law 2121/1993 (as amended and now in force) on Copyright, Related Rights and Cultural Matters.²⁷⁸

The Greek Law covers the whole field of copyright and related rights. Further acts brought amendments including implementation of the European Community Directives on copyright and related rights. According to article 71²⁷⁹, Law 2121/1993 transposes the following EU legislative acts:

- a) Council Directive 91/250/EEC;
- b) Council Directive 92/100/EEC;
- c) Council Directive 93/83/EEC;
- d) Council Directive 93/98/EEC;
- e) Directive 96/9/EC of the European Parliament and of the Council;
- f) Directive 2001/29/EC of the European Parliament and of the Council;
- g) Directive 2001/84/EC of the European Parliament and of the Council;
- h) Directive 2004/48/EC of the European Parliament and of the Council;
- i) Directive 2011/77/EU of the European Parliament and of the Council;
- j) Directive 2012/28/EU of the European Parliament and of the Council.

«1. Καθένας έχει δικαίωμα να αναπτύσσει ελεύθερα την προσωπικότητά του και να συμμετέχει στην κοινωνική, οικονομική και πολιτική ζωή της Χώρας, εφόσον δεν προσβάλλει τα δικαιώματα των άλλων και δεν παραβιάζει το Σύνταγμα ή τα χρηστά ήθη.

2. Όλοι όσοι βρίσκονται στην Ελληνική Επικράτεια απολαμβάνουν την απόλυτη προστασία της ζωής, της τιμής και της ελευθερίας τους, χωρίς διάκριση εθνικότητας, φυλής, γλώσσας και θρησκευτικών ή πολιτικών πεποιθήσεων. Εξαιρέσεις επιτρέπονται στις περιπτώσεις που προβλέπει το διεθνές δίκαιο».

²⁷⁶ Άρθρο 14 παρ. 1: «1. Καθένας μπορεί να εκφράζει και να διαδίδει προφορικά, γραπτά και δια του τύπου τους στοχασμούς του τηρώντας τους νόμους του Κράτους.»

²⁷⁷ Άρθρο 16 παρ. 1: «1. Η τέχνη και η επιστήμη, η έρευνα και η διδασκαλία είναι ελεύθερες η ανάπτυξη και η προαγωγή τους αποτελεί υποχρέωση του Κράτους. Η ακαδημαϊκή ελευθερία και η ελευθερία της διδασκαλίας δεν απαλλάσσουν από το καθήκον της υπακοής στο Σύνταγμα.»

²⁷⁸ Ν. 2121/1993 (<http://www.opi.gr/index.php/vivliothiki/2121-1993#a71>).

²⁷⁹ Άρθρο 71 του Ν. 2121/1993: Εφαρμογή Κοινοτικών Οδηγιών.

VIII.2. COPYRIGHT²⁸⁰

VIII.2.1. Definition and content

According to paragraphs (1) and (2) of Article 1 of Law 2121/1993:

1. *Authors shall have, with the creation of the work, the right of copyright in that work, which includes, as exclusive and absolute rights, the right to exploit the work (economic right) and the right to protect their personal connection with the work (moral right).*
2. *The above-mentioned rights shall include the powers to authorize that are provided in Articles 3 and 4 of this Law.*²⁸¹

In the context of the Greek copyright legislation, any original intellectual creation that is expressed in any form is protected. The prevailing criteria are the protection of the form and the originality.

VIII.2.1.1 Moral rights

Article 4 of Law 2121/1993 lays down an exhaustive list of such moral rights and provides that these rights shall be independent from the economic rights and shall remain with the author even after the transfer of the economic rights. In particular, Article 4 reads:

1. *The moral rights shall confer upon the author notably the following rights:*
 - a) *to decide on the time, place and manner in which the work shall be made accessible to the public (publication)*
 - b) *to demand that his status as the author of the work be acknowledged and, in particular, to the extent that it is possible, that his name be indicated on the copies of his work and noted whenever his work is used publicly, or, on the contrary, if he so wishes, that his work be presented anonymously or under a pseudonym*
 - c) *to prohibit any distortion, mutilation or other modification of his work and any offence to the author due to the circumstances of the presentation of the work in public*
 - d) *to have access to his work, even when the economic right in the work or the physical embodiment of the work belongs to another person; in those latter cases, the access shall be effected with minimum possible nuisance to the right holder*
 - e) *in the case of a literary or scientific work, to rescind a contract transferring the economic right or an exploitation contract or license of which his work is the object, subject to payment of material damages to the other contracting party, for the pecuniary loss he has sustained, when the author considers such action*

²⁸⁰ All translations regarding Law 2121/93 are adaptations based on the official translation provided by the Hellenic Copyright Organization (OPI) on its website, in its version of 2013.

²⁸¹ Άρθρο 1:

«(1) Οι πνευματικοί δημιουργοί, με τη δημιουργία του έργου, αποκτούν πάνω σ' αυτό πνευματική ιδιοκτησία, που περιλαμβάνει, ως αποκλειστικά και απόλυτα δικαιώματα, το δικαίωμα της εκμετάλλευσης του έργου (περιουσιακό δικαίωμα) και το δικαίωμα της προστασίας του προσωπικού τους δεσμού προς αυτό (ηθικό δικαίωμα).

(2) Τα δικαιώματα αυτά περιλαμβάνουν τις εξουσίες, που προβλέπονται στα άρθρα 3 και 4 του παρόντος νόμου.».

to be necessary for the protection of his personality because of changes in his beliefs or in the circumstances.

2. *With reference to the last case of the preceding paragraph, the rescission takes effect after the payment of the damages. If, after the rescission, the author again decides to transfer the economic right, or to permit exploitation of the work or of a like work, he must give, in priority, the former other contracting party the opportunity to reconstitute the old contract with the same terms or with terms similar to those which were in force at the time of the rescission.*
3. *The moral rights shall be independent from the economic rights and shall remain with the author even after the transfer of the economic rights.*²⁸²

VIII.2.1.2 Economic rights

The pecuniary rights of a copyright holder are defined in Article 3 of Law 2121/1993, as follows:

Economic Rights:

- (1) *The economic rights shall confer upon the authors notably the right to authorize or prohibit:*
 - a) *the fixation and direct or indirect, temporary or permanent reproduction of their works by any means and in any form, in whole or in part*
 - b) *the translation of their works*
 - c) *the arrangement, adaptation or other alteration of their works*
 - d) *concerning the original or copies of their works, the distribution to the public in any form by sale or otherwise. The distribution right shall be exhausted within the Community only where the first sale or other transfer of ownership in the Community of the original or copies is made by the rightholder or with his consent*

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Άρθρο 4: «Το ηθικό δικαίωμα- (1) Το ηθικό δικαίωμα δίνει στο δημιουργό ιδίως τις εξουσίες;

- a) της απόφασης για το χρόνο, τον τόπο και τον τρόπο κατά τους οποίους το έργο θα γίνει προσιτό στο κοινό (δημοσίευση),
 - β) της αναγνώρισης της πατρότητάς του πάνω στο έργο και ειδικότερα την εξουσία να απαιτεί, στο μέτρο του δυνατού, τη μνεία του ονόματός του στα αντίτυπα του έργου του και σε κάθε δημόσια χρήση του έργου του ή, αντίθετα, να κρατάει την ανωνυμία του ή να χρησιμοποιεί ψευδώνυμο,
 - γ) της απαγόρευσης κάθε παραμόρφωσης, περικοπής ή άλλης τροποποίησης του έργου του, καθώς και κάθε προσβολής του δημιουργού οφειλομένης στις συνθήκες παρουσίασης του έργου στο κοινό,
 - δ) της προσέλασης στο έργο του, έστω και αν το περιουσιακό δικαίωμα στο έργο ή η κυριότητα στον υλικό φορέα του έργου ανήκει σε άλλον, οπότε η προσέλαση πρέπει να πραγματοποιείται κατά τρόπο που προκαλεί τη μικρότερη δυνατή ενόχληση στο δικαιούχο,
 - ε) προκειμένου περί έργων λόγου ή επιστήμης, της υπαναχώρησης από συμβάσεις μεταβίβασης του περιουσιακού δικαιώματος ή εκμετάλλευσής του ή άδειας εκμετάλλευσής του εφόσον αυτό είναι αναγκαίο για την προστασία της προσωπικότητάς του εξαιτίας μεταβολής στις πεποιθήσεις του ή στις περιστάσεις και με καταβολή αποζημίωσης στον αντισυμβαλλόμενο για τη θετική του ζημία.
2. Στην τελευταία περίπτωση της προηγούμενης παραγράφου, η υπαναχώρηση ενεργεί μετά την καταβολή της αποζημίωσης. Αν, μετά την υπαναχώρηση, ο δημιουργός αποφασίσει και πάλι να προβεί σε μεταβίβαση ή εκμετάλλευση του έργου ή έργου παραπλήσιου, οφείλει κατά προτεραιότητα να προσφέρει στον παλαιό αντισυμβαλλόμενο του τη δυνατότητα να ανακαταρτίσει την παλαιά σύμβαση με όρους όμοιους ή ανάλογους προς εκείνους που ίσχυαν κατά το χρόνο της υπαναχώρησης.
 3. Το ηθικό δικαίωμα είναι ανεξάρτητο από το περιουσιακό δικαίωμα και παραμένει στο δημιουργό ακόμα και μετά τη μεταβίβαση του περιουσιακού δικαιώματος.».

- e) *the rental or public lending concerning the original or copies of their works. Such rights are not exhausted by any sale or other act of distribution of the original or copies. Such rights are not applicable to architectural works and works of applied arts. The rental and public lending have the meaning provided by the Council Directive 92/100 of 19 November 1992 (Official Journal of the European Communities No L 346/61-27.11.1992).*
 - f) *the public performance of their works*
 - g) *the broadcasting or rebroadcasting of their works to the public by radio and television, by wireless means or by cable or by any kind of wire or by any other means, in parallel to the surface of the earth or by satellite*
 - h) *the communication to the public of their works, by wire or wireless means or by any other means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. These rights shall not be exhausted by any act of communication to the public as set out in this provision*
 - i) *the import of copies of their works produced abroad without the creator's consent or the import of copies from a country outside the European Community, when the right over such import in Greece had been retained by the author through contract.*
- (2) *The use, performance or presentation of the work shall be deemed to be public when the work thereby becomes accessible to a circle of persons wider than the narrow circle of the family and the immediate social circle of the author, regardless of whether the persons of this wider circle are at the same or at different locations.*
- (3) *The author of a database shall have the exclusive right to carry out or to authorize:*
a) *temporary or permanent reproduction by any means and in any form, in whole or in part, b) translation, adaptation, arrangement and any other alteration, c) any form of distribution to the public of the database or of copies thereof. The first sale in the Community of a copy of the database by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community, d) any communication, display or performance to the public, e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b). The performance by the lawful user of a database or of a copy thereof of any of the acts listed above which is necessary for the purposes of access to the contents of the databases and normal use of the contents by the lawful user shall not require the authorization of the author of the database. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part. Any agreement contrary to the provisions of the previous two sentences shall be null and void.*
- (4) *Reproduction of electronic database for private use is not permitted.*²⁸³

²⁸³

«Το περιουσιακό δικαίωμα-

(1) Το περιουσιακό δικαίωμα δίνει στους δημιουργούς ιδίως την εξουσία (δικαίωμα) να επιτρέπουν ή να απαγορεύουν:

α) Την εγγραφή και την άμεση ή έμμεση, προσωρινή ή μόνιμη αναπαραγωγή των έργων τους με

VIII.2.2. Author

The definition of the author is set out in Article 6 of Law 2121/1993, which reads:

The initial rightholder:

- (1) *The initial holder of the economic right and the moral right in a work shall be author of that work.*
- (2) *The above-mentioned rights shall be vested in the author of a work without resort to any formality.*²⁸⁴

οποιοδήποτε μέσο και μορφή, εν όλω ή εν μέρει.

- β) Τη μετάφραση των έργων τους.
 - γ) Τη διασκευή, την προσαρμογή ή άλλες μετατροπές των έργων τους.
 - δ) Όσον αφορά το πρωτότυπο ή τα αντίτυπα (αντίγραφα) των έργων τους, τη διανομή τους στο κοινό με οποιαδήποτε μορφή μέσω πώλησης ή με άλλους τρόπους. Το δικαίωμα διανομής εντός της Κοινότητας αναλώνεται μόνο εάν η πρώτη πώληση ή η με οποιονδήποτε άλλο τρόπο πρώτη μεταβίβαση της κυριότητας του πρωτοτύπου ή των αντιτύπων εντός της Κοινότητας πραγματοποιείται από τον δικαιούχο ή με τη συγκατάθεσή του.
 - ε) Την εκμίσθωση και το δημόσιο δανεισμό, όσον αφορά το πρωτότυπο ή τα αντίτυπα των έργων τους. Τα δικαιώματα αυτά δεν αναλώνονται από οποιαδήποτε πώληση ή άλλη πράξη διανομής του πρωτοτύπου ή των αντιτύπων. Τα δικαιώματα αυτά δεν εφαρμόζονται σε σχέση με τα έργα αρχιτεκτονικής και τα έργα των εφαρμοσμένων τεχνών. Η εκμίσθωση και ο δημόσιος δανεισμός νοούνται σύμφωνα με τα οριζόμενα στην οδηγία 92/100 του Συμβουλίου της 19ης Νοεμβρίου 1992 (ΕΕΕΚ αριθμ. L 346/61 - 27.11.1992).
 - στ) Τη δημόσια εκτέλεση των έργων τους.
 - ζ) Τη μετάδοση ή αναμετάδοση των έργων τους στο κοινό με τη ραδιοφωνία και την τηλεόραση, με ηλεκτρομαγνητικά κύματα ή με καλώδια ή με άλλους υλικούς αγωγούς ή με οποιονδήποτε άλλο τρόπο, παραλλήλως προς την επιφάνεια της γης ή μέσω δορυφόρων.
 - η) Την παρουσίαση στο κοινό των έργων τους, ενσυρμάτως ή ασυρμάτως ή με οποιονδήποτε άλλο τρόπο, καθώς και να καθιστούν προσιτά τα έργα τους στο κοινό κατά τρόπο ώστε οποιοσδήποτε να έχει πρόσβαση στα έργα αυτά, όπου και όταν επιλέγει ο ίδιος. Τα δικαιώματα αυτά δεν αναλώνονται με οποιαδήποτε πράξη παρουσίασης στο κοινό με την έννοια της παρούσας ρύθμισης.
 - θ) Την εισαγωγή αντιτύπων των έργων τους που παρήχθησαν στο εξωτερικό χωρίς τη συναίνεση του δημιουργού ή, εφόσον πρόκειται για εισαγωγή από χώρες εκτός της Ευρωπαϊκής Κοινότητας, αν το δικαίωμα της εισαγωγής αντιτύπων στην Ελλάδα είχε συμβατικά διατηρηθεί από τον δημιουργό (άρθρα 2, 3 παρ. 1 και 3, 4 Οδηγίας 2001/29 ΕΕΕΚ αριθμ. L. 167/10 - 22.6.2001).
- (2) Δημόσια θεωρείται κάθε χρήση ή εκτέλεση ή παρουσίαση του έργου, που κάνει το έργο προσιτό σε κύκλο προσώπων ευρύτερο από το στενό κύκλο της οικογένειας και το άμεσο κοινωνικό περιβάλλον, ανεξαρτήτως από το αν τα πρόσωπα αυτού του ευρύτερου κύκλου βρίσκονται στον ίδιο ή σε διαφορετικούς χώρους.
- (3) Ο δημιουργός βάσης δεδομένων έχει το αποκλειστικό δικαίωμα να επιτρέπει ή να απαγορεύει: α) την προσωρινή ή διαρκή αναπαραγωγή της βάσης δεδομένων με κάθε μέσο και μορφή, εν όλω ή εν μέρει, β) τη μετάφραση, προσαρμογή, διευθέτηση και οποιαδήποτε άλλη μετατροπή της βάσης δεδομένων, γ) οποιαδήποτε μορφή διανομής της βάσης δεδομένων ή αντιγράφων της στο κοινό. Η πρώτη πώληση αντιγράφου της βάσης δεδομένων στην Κοινότητα από το δικαιούχο, ή με τη συγκατάθεσή του, συνεπάγεται ανάλωση του δικαιώματος μεταπώλησης του εν λόγω αντιγράφου στην Κοινότητα, δ) οποιαδήποτε ανακοίνωση, επίδειξη ή παρουσίαση της βάσης δεδομένων στο κοινό, ε) οποιαδήποτε αναπαραγωγή, διανομή, ανακοίνωση, επίδειξη ή παρουσίαση στο κοινό των αποτελεσμάτων των πράξεων που αναφέρονται στο στοιχείο β". Ο νόμιμος χρήστης βάσης δεδομένων ή αντιγράφων της μπορεί να εκτελέσει χωρίς άδεια του δημιουργού, οποιαδήποτε από τις παραπάνω πράξεις οι οποίες είναι αναγκαίες για την πρόσβαση στο περιεχόμενο της βάσης δεδομένων και την κανονική χρησιμοποίησή της. Στο μέτρο που ο νόμιμος χρήστης δικαιούται να χρησιμοποιεί τμήμα μόνο της βάσης δεδομένων, η προηγούμενη διάταξη εφαρμόζεται μόνο για το τμήμα αυτό. Συμφωνίες αντίθετες προς τις ρυθμίσεις των δύο αμέσως προηγούμενων εδαφίων είναι άκυρες (άρθρα 5, 6 παρ. 1 και 15 Οδηγίας 96/9).
- (4) Αναπαραγωγή ηλεκτρονικής βάσης δεδομένων για ιδιωτικούς σκοπούς δεν επιτρέπεται.».

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Άρθρο 6: «Αρχικός δικαιούχος-

VIII.2.3. Protected works

The object of copyright is set out in Article 2 of Law 2121/1993. More specifically, according to Article 2:

- (1) *The term work shall designate any original intellectual literary, artistic or scientific creation, expressed in any form, notably written or oral texts, musical compositions with or without words, theatrical works accompanied or unaccompanied by music, choreographies and pantomimes, audiovisual works, works of fine art, including drawings, works of painting and sculpture, engravings and lithographs, works of architecture and photographs, works of applied art, illustrations, maps and three-dimensional works relative to geography, topography, architecture or science.*
- (2) *The term work shall, in addition, designate translations, adaptations, arrangements and other alterations of works or of expressions of folklore, as well as collections of works or collections of expressions of folklore or of simple facts and data, such as encyclopaedias and anthologies, provided the selection or the arrangement of their contents is original. Protection afforded to the works listed in this paragraph shall in no way prejudice rights in the pre-existing works, which were used as the object of the alterations or the collections.*
- (2a) *Databases which, by reason of the selection or arrangement of their contents, constitute the author's intellectual creation, shall be protected as such by copyright. The copyright protection shall not extend to the contents of databases and shall be without prejudice any rights subsisting in those contents themselves. Database is a collection of independent works, data or other, materials arranged in a systematic or methodical way and individually accessible by electronic or other means.*
- (3) *Without prejudice to the provisions of Section VII of this Law, computer programs and their preparatory design material shall be deemed to be literary works within the meaning of the provisions on copyright protection. Protection in accordance with this Law shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected under this Law. A computer program shall be protected if it is original in the sense that it is the author's personal intellectual creation.*
- (4) *The protection afforded under this Law shall apply regardless of the value of the work and its destination and regardless of the fact that the work is possibly protected under other provisions.*
- (5) *The protection afforded under this Law shall not apply to official texts expressive of the authority of the State, notably to legislative, administrative or judicial texts, nor shall it apply to expressions of folklore, news information or simple facts and data.*²⁸⁵

(1) Ο δημιουργός ενός έργου είναι ο αρχικός δικαιούχος του περιουσιακού και του ηθικού δικαιώματος επί του έργου.

(2) Τα δικαιώματα αποκτώνται πρωτογενώς χωρίς διατυπώσεις.».

²⁸⁵ Άρθρο 2: «Αντικείμενο του δικαιώματος-

(1) Ως έργο νοείται κάθε πρωτότυπο πνευματικό δημιούργημα λόγου, τέχνης ή επιστήμης, που εκφράζεται με οποιαδήποτε μορφή, ιδίως τα γραπτά ή προφορικά κείμενα, οι μουσικές συνθέσεις, με κείμενο ή χωρίς, τα

VIII.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Under the Greek copyright legislation, the exercise of the economic rights is subject to limitations.

Those limitations are set out in Articles 18 to 28C of Law No 2121/1993 and are justified on grounds of social policy, research or education and have as their purpose the protection of the society as a whole.

Directive 2001/29/EC	National law - Law No 2121/1993
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Art. 28B</p> <p>Temporary acts of reproduction which are transient or incidental, which are an integral and essential part of a technological process and whose sole purpose is to enable:</p> <p>a) a transmission in a network between third parties by an intermediary or</p> <p>b) a lawful use of a work or other protected subject-matter, and which have no independent economic significance,</p> <p>shall be exempted from the reproduction right.²⁸⁶</p>

θεατρικά έργα, με μουσική ή χωρίς, οι χορογραφίες και οι παντομίμες, τα οπτικοακουστικά έργα, τα έργα των εικαστικών τεχνών, στα οποία περιλαμβάνονται τα σχέδια, τα έργα ζωγραφικής και γλυπτικής, τα χαρακτηριστικά έργα και οι λιθογραφίες, τα αρχιτεκτονικά έργα, οι φωτογραφίες, τα έργα των εφαρμοσμένων τεχνών, οι εικονογραφήσεις, οι χάρτες, τα τρισδιάστατα έργα που αναφέρονται στη γεωγραφία, την τοπογραφία, την αρχιτεκτονική ή την επιστήμη.

- (2) Νοούνται επίσης ως έργα οι μεταφράσεις, οι διασκευές, οι προσαρμογές και οι άλλες μετατροπές έργων ή εκφράσεων της λαϊκής παράδοσης, καθώς και οι συλλογές έργων ή συλλογές εκφράσεων της λαϊκής παράδοσης ή απλών γεγονότων και στοιχείων, όπως οι εγκυκλοπαίδειες και οι ανθολογίες (παραλείπονται λέξεις) εφόσον η επιλογή ή η διευθέτηση του περιεχομένου τους είναι πρωτότυπη. Η προστασία των έργων της παρούσας παραγράφου γίνεται με την επιφύλαξη των δικαιωμάτων στα προϋπάρχοντα έργα, που χρησιμοποιήθηκαν ως αντικείμενο των μετατροπών ή των συλλογών.
- (2α) Αντικείμενο προστασίας είναι και οι βάσεις δεδομένων οι οποίες λόγω της επιλογής ή διευθέτησης του περιεχομένου τους αποτελούν πνευματικά δημιουργήματα. Η προστασία αυτή δεν εκτείνεται στο περιεχόμενο των βάσεων δεδομένων και δεν θίγει κανένα από τα δικαιώματα που υφίστανται στο περιεχόμενο αυτό. Ως βάση δεδομένων νοείται η συλλογή έργων, δεδομένων ή άλλων ανεξάρτητων στοιχείων, διευθετημένων κατά συστηματικό ή μεθοδικό τρόπο και ατομικώς προσιτών με ηλεκτρονικά μέσα ή με άλλο τρόπο (άρθρα 3 και 1 παρ. 2 Οδηγίας 96/9).
- (3) Με την επιφύλαξη των διατάξεων του κεφαλαίου 7 του παρόντος νόμου, θεωρούνται ως έργα λόγου προστατευόμενα κατά τις διατάξεις περί πνευματικής ιδιοκτησίας τα προγράμματα ηλεκτρονικών υπολογιστών και το προπαρασκευαστικό υλικό του σχεδιασμού τους. Η προστασία παρέχεται σε κάθε μορφή έκφρασης ενός προγράμματος ηλεκτρονικού υπολογιστή. Οι ιδέες και οι αρχές στις οποίες βασίζεται οποιοδήποτε στοιχείο προγράμματος ηλεκτρονικού υπολογιστή, περιλαμβανομένων και εκείνων στις οποίες βασίζονται τα συστήματα διασύνδεσής του, δεν προστατεύονται κατά τον παρόντα νόμο. Ένα πρόγραμμα ηλεκτρονικού υπολογιστή θεωρείται πρωτότυπο εφόσον είναι προσωπικό πνευματικό δημιούργημα του δημιουργού του.
- (4) Η προστασία του παρόντος νόμου είναι ανεξάρτητη από την αξία και τον προορισμό του έργου, καθώς και από το γεγονός ότι το έργο προστατεύεται ενδεχομένως και από άλλες διατάξεις.
- (5) Η προστασία του παρόντος νόμου δεν εκτείνεται σε επίσημα κείμενα με τα οποία εκφράζεται η άσκηση πολιτειακής αρμοδιότητας και ιδίως σε νομοθετικά, διοικητικά ή δικαστικά κείμενα, καθώς και στις εκφράσεις της λαϊκής παράδοσης, στις ειδήσεις και στα απλά γεγονότα ή στοιχεία.»

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Άρθρο 28B: «Εξαιρούνται από το δικαίωμα αναπαραγωγής οι προσωρινές πράξεις αναπαραγωγής, οι οποίες είναι

Directive 2001/29/EC	National law - Law No 2121/1993
Text	Text
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	Art. 18(2) The freedom to make a reproduction for private use shall not apply when the act of reproduction is likely to conflict with normal exploitation of the work or to prejudice the author's legitimate interests, and notably: a) when the reproduction is an architectural work in the form of a building or similar construction b) when technical means are used to reproduce a fine art work which circulates in a restricted number of copies, or when the reproduction is a graphical representation of a musical work. ²⁸⁷
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	Art. 18(3) If, for the free reproduction of the work, use is made of technical media, such as (as amended with article 46 Law 3905/2010) recording equipment for sound or image or sound and image, equipment or parts incorporated or not in the main computer unit operating in conjunction therewith, used solely for digital reproduction or digital transcription to or from analogue media (with the exception of printers), magnetic tapes or other devices for the reproduction of sound or image or sound and image, including digital reproduction devices - such as CD-RW, CD-R, portable optical magnetic discs with a capacity of more than 100 million digits (over 100 Mbytes), storage media/disquettes of less than 100 million digits (less than 100 Mbytes) - photocopy machines, photocopy paper, equitable remuneration is due to the creator of the work and the beneficiaries of related rights under this provision, with the exception of assets to be exported. ²⁸⁸

μεταβατικές ή παρεπόμενες και οι οποίες αποτελούν αναπόσπαστο και ουσιώδες τμήμα μιας τεχνολογικής μεθόδου, έχουν δε ως αποκλειστικό σκοπό να επιτρέψουν: α) την εντός δικτύου μετάδοση μεταξύ τρίτων μέσω διαμεσολαβητή ή β) τη νόμιμη χρήση, ενός έργου ή άλλου προστατευόμενου αντικειμένου, και οι οποίες δεν έχουν καμία ανεξάρτητη οικονομική σημασία».

²⁸⁷ Άρθρο 18 παρ.2: «Η ελευθερία της αναπαραγωγής για ιδιωτική χρήση δεν ισχύει όταν με την αναπαραγωγή εμποδίζεται η κανονική εκμετάλλευση του έργου ή βλάπτονται τα νόμιμα συμφέροντα των δημιουργών και ιδίως: α) όταν αναπαράγεται αρχιτεκτονικό έργο σε μορφή κτιρίου ή άλλης παρεμφερούς κατασκευής, β) όταν αναπαράγεται, με τεχνικά μέσα, έργο των εικαστικών τεχνών, που κυκλοφορεί σε περιορισμένο αριθμό ή η γραφική παράσταση μουσικού έργου.»

²⁸⁸ Άρθρο 18 παρ.3: «Εάν για την ελεύθερη αναπαραγωγή του έργου για ιδιωτική χρήση χρησιμοποιούνται τεχνικά μέσα, όπως συσκευές εγγραφής ήχου ή εικόνας ή ήχου και εικόνας, μαγνητικές ταινίες ή άλλοι υλικοί φορείς πρόσφοροι για την αναπαραγωγή ήχου ή εικόνας ή ήχου και εικόνας, στα οποία συμπεριλαμβάνονται οι υλικοί φορείς ψηφιακής αντιγραφής -ιδίως CD-RW, CD-R, DVD και άλλα αποθηκευτικά μέσα χωρητικότητας κάτω του ενός (1) TByte ή ίσο και άνω του ενός (1) TByte-, ηλεκτρονικοί υπολογιστές στους οποίους συμπεριλαμβάνονται και οι δικτυωμένες φορητές συσκευές (tablets) και τα έξυπνα κινητά τηλέφωνα (smartphones) με μέγεθος

Directive 2001/29/EC	National law - Law No 2121/1993
Text	Text
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	
(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;	<p>Art. 20(1), 21, 22(1)</p> <p>20(1) The reproduction of lawfully published literary works of one or more writers in educational textbooks approved for use in primary and secondary education by the Ministry of National Education and Religions or another competent ministry, according to the official detailed syllabus, shall be permissible without the consent of the authors and without payment. The reproduction shall encompass only a small part of the total output of each of the writers. The provision is applicable only as it concerns the reproduction by means of printing.</p> <p>21. It shall be permissible, without the consent of the author and without payment, to reproduce articles lawfully published in a newspaper or periodical, short extracts of a work or parts of a short work or a lawfully published work of fine art work exclusively for teaching or examination purposes at an educational establishment, in such measure as is compatible with the aforementioned purpose, provided that the reproduction is effected in accordance with fair practice and does not conflict with the normal exploitation. The reproduction must be accompanied by an indication of the source and of the names of the author and the publisher, provided that the said names appear on the source.</p> <p>22. It shall be permissible, without the consent of the author and without payment, for a non profit-making library or archive to reproduce one additional copy from a copy of the work already in their permanent collection, for the purpose of retaining that additional copy or of transferring it to another non profit-making library or archive. The reproduction shall be permissible only if an</p>

εσωτερικής μνήμης τυχαίας προσπέλασης (RAM) άνω των 4 GB, συσκευές ή εξαρτήματα ανεξάρτητα εάν λειτουργούν σε συνάρτηση ή μη με ηλεκτρονικούς υπολογιστές και χρησιμοποιούνται για την ψηφιακή αντιγραφή, μετεγγραφή ή με άλλο τρόπο αναπαραγωγή, φωτοτυπικές συσκευές και χαρτί κατάλληλο για φωτοτυπίες, σαρωτές και εκτυπωτές, οφείλεται εύλογη αμοιβή στο δημιουργό του έργου και στους κατά την παρούσα διάταξη δικαιούχους συγγενικών δικαιωμάτων, με εξαίρεση τα προς εξαγωγή είδη.».

Directive 2001/29/EC	National law - Law No 2121/1993
Text	Text
	additional copy cannot be obtained in the market promptly, and on reasonable terms. ²⁸⁹
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	–
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(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;	Art. 21 It shall be permissible, without the consent of the author and without payment, to reproduce articles lawfully published in a newspaper or periodical, short extracts of a work or parts of a short work or a lawfully published work of fine art work exclusively for teaching or examination purposes at an educational establishment, in such measure as is compatible with the aforementioned purpose, provided that the reproduction is effected in accordance with fair practice and does not conflict with the normal exploitation. The reproduction must be accompanied by an indication of the source and of the names of the

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Άρθρο 20 παρ. 1: «Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η αναπαραγωγή σε εκπαιδευτικά βιβλία, που χρησιμοποιούνται ως βιβλία διδασκαλίας για την πρωτοβάθμια και δευτεροβάθμια εκπαίδευση εγκεκριμένα από το Υπουργείο Εθνικής Παιδείας και Θρησκευμάτων ή από άλλο αρμόδιο υπουργείο κατά το επίσημο αναλυτικό πρόγραμμα, έργων του λόγου ενός ή περισσότερων συγγραφέων νομίμως δημοσιευμένων, που αποτελούν μικρό τμήμα της συνολικής δημιουργίας του καθενός από αυτούς. Η ρύθμιση αυτή αφορά μόνο την έντυπη αναπαραγωγή.».

Άρθρο 21: «Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η αναπαραγωγή άρθρων νομίμως δημοσιευμένων σε εφημερίδα ή σε περιοδικό, σύντομων αποσπασμάτων έργου ή τμημάτων σύντομου έργου ή έργου των εικαστικών τεχνών νομίμως δημοσιευμένου, εφόσον γίνεται αποκλειστικά για τη διδασκαλία ή τις εξετάσεις σε εκπαιδευτικό ίδρυμα, στο μέτρο που δικαιολογείται από τον επιδιωκόμενο σκοπό, είναι σύμφωνη με τα χρηστά ήθη και δεν εμποδίζει την κανονική εκμετάλλευση. Η αναπαραγωγή πρέπει να συνοδεύεται από την ένδειξη της πηγής και των ονομάτων του δημιουργού και του εκδότη, εφόσον τα ονόματα αυτά εμφανίζονται στην πηγή.».

Άρθρο 22 παρ.1: «Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η αναπαραγωγή ενός πρόσθετου αντιτύπου από μη κερδοσκοπικές βιβλιοθήκες ή αρχεία, που έχουν αντίτυπο του έργου στην μόνιμη συλλογή τους, προκειμένου να διατηρήσουν το αντίτυπο αυτό ή να το μεταβιβάσουν σε άλλη, μη κερδοσκοπική, βιβλιοθήκη ή αρχείο. Η αναπαραγωγή επιτρέπεται μόνο αν είναι αδύνατη η προμήθεια ενός τέτοιου αντιτύπου από την αγορά σε σύντομο χρόνο και με εύλογους όρους.».

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	author and the publisher, provided that the said names appear on the source. ²⁹⁰
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Art. 28A The reproduction of the work is allowed for the benefit of blinds and deaf-mute, for uses which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability. By resolution of the Minister of Culture the conditions of application of this provision may be determined as well as the application of this provision for other categories of people with a disability. ²⁹¹
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	Art. 25(1)a For the purpose of reporting current events by the mass media, the reproduction and communication to the public of works seen or heard in the course of the event. ²⁹²
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance	Art. 19 Quotation of short extracts of a lawfully published work by an author for the purpose of providing support for a case advanced by the person making the quotation or a critique of the position of the author shall be permissible without the consent of the author and without payment, provided that

²⁹⁰ Άρθρο 21: «Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η αναπαραγωγή άρθρων νομίμως δημοσιευμένων σε εφημερίδα ή σε περιοδικό, σύντομων αποσπασμάτων έργου ή τμημάτων σύντομου έργου ή έργου των εικαστικών τεχνών νομίμως δημοσιευμένου, εφόσον γίνεται αποκλειστικά για τη διδασκαλία ή τις εξετάσεις σε εκπαιδευτικό ίδρυμα, στο μέτρο που δικαιολογείται από τον επιδιωκόμενο σκοπό, είναι σύμφωνη με τα χρηστά ήθη και δεν εμποδίζει την κανονική εκμετάλλευση. Η αναπαραγωγή πρέπει να συνοδεύεται από την ένδειξη της πηγής και των ονομάτων του δημιουργού και του εκδότη, εφόσον τα ονόματα αυτά εμφανίζονται στην πηγή.».

²⁹¹ Άρθρο 28Α: «Επιτρέπεται η αναπαραγωγή του έργου προς όφελος τυφλών και κωφαλάλων προσώπων, για χρήσεις που συνδέονται άμεσα με την αναπηρία και δεν έχουν εμπορικό χαρακτήρα, στο βαθμό που απαιτείται λόγω της συγκεκριμένης αναπηρίας. Με απόφαση του Υπουργού Πολιτισμού μπορούν να καθορισθούν οι όροι εφαρμογής της ρύθμισης, καθώς και η εφαρμογή της σε άλλες κατηγορίες προσώπων με αναπηρίες (άρθρο 5 παρ. 3 περίπτωση β" Οδηγίας 2001/29).».

²⁹² Άρθρο 25 παρ.1 εδ.α): «Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή στο μέτρο που δικαιολογείται από τον επιδιωκόμενο σκοπό: α) η αναπαραγωγή και η διάδοση στο κοινό, για λόγους περιγραφής επίκαιρων γεγονότων με μέσα μαζικής επικοινωνίας έργων, που βλέπονται ή ακούγονται κατά τη διάρκεια ενός τέτοιου γεγονότος».

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with fair practice, and to the extent required by the specific purpose;	the quotation is compatible with fair practice and that the extent of the extracts does not exceed that justified by the purpose. The quotation of the extract must be accompanied by an indication of the source of the extract and of the names of the author and of the publisher, provided that the said names appear in the source. ²⁹³
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Art. 24 To the extent justified for a particular purpose, the reproduction of a work for use in judicial or administrative procedures shall be permitted without the consent of the author and without payment. ²⁹⁴
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Art. 25(1)b For the purpose of giving information on current events, the reproduction and communication to the public by the mass media of political speeches, addresses, sermons, legal speeches or other works of the same nature, as well as of summaries or extracts of lectures, provided the said works are delivered in public. ²⁹⁵
(g) use during religious celebrations or official celebrations organised by a public authority;	Art. 27 The public performance or presentation of a work shall be permissible, without the consent of the author and without payment on the following occasions: a) at official ceremonies, to the extent compatible with the nature of the ceremonies b) within the framework of staff and pupil or student activities at an educational establishment, provided that the audience is composed exclusively of the aforementioned persons, the parents of the pupils or students, persons responsible for the care of the pupils or

²⁹³ Άρθρο 19: «Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η παράθεση σύντομων αποσπασμάτων από έργο άλλου νομίμως δημοσιευμένου για την υποστήριξη της γνώμης εκείνου που παραθέτει ή την κριτική της γνώμης του άλλου, εφόσον η παράθεση των αποσπασμάτων αυτών είναι σύμφωνη προς τα χρηστά ήθη και η έκταση των αποσπασμάτων δικαιολογείται από τον επιδιωκόμενο σκοπό. Η παράθεση του αποσπάσματος πρέπει να συνοδεύεται από την ένδειξη της πηγής και των ονομάτων του δημιουργού και του εκδότη, εφόσον τα ονόματα αυτά εμφανίζονται στην πηγή.»

²⁹⁴ Άρθρο 24: «Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η αναπαραγωγή έργου για να χρησιμοποιηθεί σε δικαστική ή διοικητική διαδικασία, στο μέτρο που δικαιολογείται από τον επιδιωκόμενο σκοπό.»

²⁹⁵ Άρθρο 25 παρ. 1 εδ. β: «η αναπαραγωγή και η διάδοση στο κοινό με μέσα μαζικής επικοινωνίας προς το σκοπό της ενημέρωσης επί επίκαιρων γεγονότων πολιτικών λόγων, προσφωνήσεων, κηρυγμάτων, δικανικών αγορεύσεων ή άλλων έργων παρόμοιας φύσης, καθώς και περιλήψεων ή αποσπασμάτων από διαλέξεις, εφόσον τα έργα αυτά παρουσιάζονται δημόσια.»

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	students, or persons directly involved in the activities of the establishment. ²⁹⁶
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Art. 26 The occasional reproduction and communication by the mass media of images of architectural works, fine art works, photographs or works of applied art, which are sited permanently in a public place, shall be permissible, without the consent of the author and without payment. ²⁹⁷
(i) incidental inclusion of a work or other subject-matter in other material;	
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Art. 28(1)(2) 1. Museums which own the physical carriers into which works of fine art have been incorporated shall be entitled, without the consent of the author and without payment, to exhibit those works to the public on the museum premises, or during exhibitions organized in museums. 2. The presentation of a fine art work to the public, and its reproduction in catalogues to the extent necessary to promote its sale, shall be permissible, without the consent of the author and without payment. ²⁹⁸
(k) use for the purpose of caricature, parody or pastiche;	–
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated	–

²⁹⁶ Άρθρο 27: «Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η δημόσια παράσταση ή εκτέλεση έργου: α) σε περίπτωση επισήμων τελετών, στο μέτρο που δικαιολογείται από τη φύση αυτών των τελετών, β) στο πλαίσιο της δραστηριότητας εκπαιδευτικών ιδρυμάτων από το προσωπικό και τους μαθητές ή σπουδαστές του ιδρύματος εφόσον το κοινό απαρτίζεται αποκλειστικά από αυτούς ή από τους γονείς των μαθητών ή σπουδαστών ή όσους έχουν την επιμέλεια αυτών ή όσους συνδέονται άμεσα με τις δραστηριότητες του ιδρύματος.»

²⁹⁷ Άρθρο 26: «Επιτρέπεται, χωρίς άδεια του δημιουργού και χωρίς αμοιβή, η περιστασιακή αναπαραγωγή και διάδοση με μέσα μαζικής επικοινωνίας εικόνων με έργα αρχιτεκτονικής, εικαστικών τεχνών, φωτογραφίας ή εφαρμοσμένων τεχνών, που βρίσκονται μόνιμως σε δημόσιο χώρο.»

²⁹⁸ Άρθρο 28 παρ. 1 και 2:

«1. Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η παρουσίαση στο κοινό έργων των εικαστικών τεχνών μέσα σε μουσεία, που έχουν την κυριότητα του υλικού φορέα όπου έχει ενσωματωθεί το έργο, ή στο πλαίσιο εκθέσεων, που οργανώνονται σε μουσεία.
2. Επιτρέπεται, χωρίς την άδεια του δημιουργού και χωρίς αμοιβή, η παρουσίαση στο κοινό και η αναπαραγωγή σε καταλόγους έργου των εικαστικών τεχνών στο μέτρο που αυτό είναι αναγκαίο για την διευκόλυνση της πώλησης του έργου.»

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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;	
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(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.	Art. 28C The limitations provided for in Section IV of Law 2121/1993, as exists, shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other protected subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder. ²⁹⁹

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6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways: (a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC; (b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the	Art. 27A(1) 1. It is permitted to be made accessible to the public within the meaning of article 3 (1) (h) and to be reproduced for the purposes of digitization, making available to the public, indexing, cataloguing, preservation or restoration (permitted uses) by publicly accessible libraries, educational establishments or museums, archives or film or audio heritage institutions, as well as from public-service broadcasting organisations established in a Member State of the European Union (beneficiaries of orphan works), works in their collections, for which no right holder has

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Άρθρο 28Γ: «Οι περιορισμοί που προβλέπονται στο τέταρτο κεφάλαιο του Ν. 2121/1993, όπως ισχύει, εφαρμόζονται μόνο σε ορισμένες ειδικές περιπτώσεις, οι οποίες δεν αντίκεινται στην κανονική εκμετάλλευση του έργου ή άλλου προστατευόμενου αντικείμενου και δεν θίγουν αδικαιολόγητα τα έννομα συμφέροντα του δικαιούχου (άρθρο 5 παρ. 5 Οδηγίας 2001/29).».

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purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.	been identified or even if is identified, none has been located despite a diligent search carried out by the beneficiaries of orphan works, according to the terms of this article (orphan works). ³⁰⁰
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	Art. 27A(4) The use of orphan works is permitted to the beneficiaries of orphan works only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collections. The beneficiaries of orphan works may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public. ³⁰¹
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Art. 27A(5) The beneficiaries of orphan works indicate the name of identified authors and other rightholders in any use of an orphan work with the following labelling: "Orphan work: [...] [no of entry in the Single Online Database of the Office for Harmonization in the Internal Market]". ³⁰²
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	Art. 27A(3) Where there is more than one rightholder in a work or phonogram, and not all of them have been identified or, even if identified, located after a diligent search has been carried out and recorded in accordance with paragraphs 6 and 7, the work or phonogram may be used in accordance with the paragraphs hereinabove provided that the

³⁰⁰ Άρθρο 27Α παρ. 1: «Επιτρέπεται να καθίστανται προσιτά στο κοινό με την έννοια της περίπτωσης η' της παραγράφου 1 του άρθρου 3 και να αναπαράγονται για σκοπούς ψηφιοποίησης, διάθεσης στο κοινό, ευρετηρίασης, καταλογογράφησης, συντήρησης ή αποκατάστασης (επιτρεπόμενες χρήσεις) από προσιτές στο κοινό βιβλιοθήκες, εκπαιδευτικά ιδρύματα ή μουσεία, αρχεία ή ιδρύματα κινηματογραφικής ή ακουστικής κληρονομιάς, καθώς και από δημόσιους ραδιοτηλεοπτικούς οργανισμούς που είναι εγκατεστημένοι σε κράτος-μέλος της Ευρωπαϊκής Ένωσης (φορείς χρήσης ορφανών έργων) έργα που περιλαμβάνονται στις συλλογές τους, στα οποία κανένας δικαιούχος δικαιωμάτων δεν έχει ταυτοποιηθεί ή ακόμα και αν έχει ταυτοποιηθεί, δεν έχει εντοπιστεί παρά τη διενέργεια επιμελούς αναζήτησης από τους φορείς χρήσης ορφανών έργων, σύμφωνα με τους όρους του παρόντος άρθρου (ορφανά έργα).».

³⁰¹ Άρθρο 27Α παρ. 4: «Η χρήση των ορφανών έργων είναι επιτρεπτή από τους φορείς χρήσης ορφανών έργων για την επίτευξη και μόνο στόχων που σχετίζονται με τη δημοσίευση συμφέροντος αποστολή τους και ειδικότερα τη συντήρηση, την αποκατάσταση και την παροχή πολιτιστικής και εκπαιδευτικής πρόσβασης στα έργα και τα φωνογραφήματα που περιλαμβάνονται στις συλλογές τους. Οι φορείς χρήσης ορφανών έργων μπορούν να παράγουν έσοδα στο πλαίσιο των επιτρεπόμενων χρήσεων με αποκλειστικό σκοπό να καλύπτουν τις δαπάνες τους για την ψηφιοποίηση και τη διάθεση στο κοινό ορφανών έργων.».

³⁰² Άρθρο 27Α παρ. 5: «Οι φορείς χρήσης ορφανών έργων αναφέρουν σε κάθε χρήση του ορφανού έργου το όνομα των ταυτοποιημένων δημιουργών και δικαιούχων και την εξής επισήμανση: «Ορφανό έργο: [...] [αριθμός καταχώρισης στην Ενιαία Ηλεκτρονική Βάση Δεδομένων του Γραφείου Εναρμόνισης της Εσωτερικής Αγοράς]».

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	rightholders that have been identified and located have, in relation to the rights they hold, authorised the beneficiaries of orphan works to carry out the permitted uses in relation to their rights. ³⁰³
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	Art. 27A(9) If the rightholder of a work or phonogram or other protected subject-matter that has been recorded as an orphan comes forward, then he has the right to put an end to the orphan work status of the work in so far as his rights are concerned and ask for the end of use of the work by the beneficiary of orphan works, as well as for the payment of compensation for the use of the work that has been made by the beneficiary of orphan works. The beneficiary of orphan works that makes use of the work is liable for the end of orphan work status of a work. The beneficiary of orphan works will have to decide within twenty (20) working days, calculated from the day following the date the application is filled by the person appearing as the rightholder, if the application and the submitted evidence by the appearing as rightholder is sufficient to establish a right on the specific orphan work, and it either characterises the work as “non-orphan” or rejects the application. If the beneficiary of orphan works does not decide on the application within the above mentioned period or if, despite having approved the application, continues to make use of the work, then the provisions of articles 63A to 66D shall apply. If a work is rendered “non-orphan” according to the Single Online Database of the Office for Harmonization in the Internal Market the beneficiary of orphan works is obliged to end its use within ten (10) working days from the reception of the relevant notice from the above mentioned Office. The compensation shall amount to half of the remuneration that is, usually or according to law, paid for the kind of use that has been made by the beneficiary of orphan works and the payment of such compensation shall be made within two (2) months from the end of orphan work status of a work. If the parties do not reach an

³⁰³ Άρθρο 27Α παρ. 3: «Αν ένα έργο ή ένα φωνογράφημα έχει περισσότερους από έναν δικαιούχους και δεν έχουν όλοι ταυτοποιηθεί ή, ακόμα και αν έχουν ταυτοποιηθεί, δεν έχουν εντοπιστεί όλοι μετά τη διενέργεια και καταγραφή επιμελούς αναζήτησης, σύμφωνα με αυτά που ορίζονται στις παραγράφους 6 και 7, το έργο ή το φωνογράφημα μπορεί να χρησιμοποιηθεί σύμφωνα με τις προηγούμενες παραγράφους υπό την προϋπόθεση ότι οι κάτοχοι των δικαιωμάτων που έχουν ταυτοποιηθεί και εντοπιστεί έχουν, όσον αφορά τα δικαιώματα που κατέχουν, εξουσιοδοτήσει τους φορείς χρήσης ορφανών έργων να προβούν στις επιτρεπόμενες χρήσεις σε σχέση με τα δικαιώματά τους.».

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	agreement, the terms, the period, and the level of compensation shall be determined by the Court of First Instance of Athens by interim measures. ³⁰⁴

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Άρθρο 27Α παρ. 9: «Αν εμφανιστεί δικαιούχος έργου ή φωνογραφήματος ή άλλου προστατευόμενου αντικειμένου που έχει καταχωριστεί ως ορφανό, δικαιούται να θέσει τέλος στο καθεστώς του έργου ως ορφανού αναφορικά με τα δικαιώματά του και να ζητήσει τη διακοπή της χρήσης του έργου από τον φορέα χρήσης ορφανών έργων, καθώς και την καταβολή αποζημίωσης για τη χρήση του έργου του που έχει πραγματοποιήσει ο φορέας. Η λήξη του καθεστώτος ενός έργου ως ορφανού συνιστά ευθύνη του φορέα χρήσης ορφανών έργων που το χρησιμοποιεί. Ο φορέας χρήσης ορφανών έργων κρίνει εντός είκοσι (20) εργάσιμων ημερών, υπολογιζόμενων από την επομένη της κατάθεσης της αίτησης του εμφανιζόμενου ως δικαιούχου, αν η αίτηση και τα προσκομισθέντα από αυτόν στοιχεία επαρκούν για να θεμελιώσουν δικαίωμά του επί του συγκεκριμένου ορφανού έργου και είτε προβαίνει στο χαρακτηρισμό του ως «μη ορφανού» είτε απορρίπτει την αίτηση. Αν ο φορέας χρήσης ορφανών έργων, δεν αποφανθεί επί της αίτησης εντός της ως άνω προθεσμίας ή αν παρόλο που έχει κάνει δεκτή την αίτηση, συνεχίζει να χρησιμοποιεί το έργο, εφαρμόζονται οι διατάξεις των άρθρων 63Α έως και 66Δ. Αν ένα έργο καθίσταται «μη ορφανό», σύμφωνα με την Ενιαία Ηλεκτρονική Βάση Δεδομένων του Γραφείου Εναρμόνισης της Εσωτερικής Αγοράς, ο φορέας χρήσης ορφανών έργων υποχρεούται σε διακοπή της χρήσης του εντός δέκα (10) εργάσιμων ημερών από τη λήψη της σχετικής ειδοποίησης από το ως άνω Γραφείο. Η αποζημίωση ανέρχεται στο ήμισυ της αμοιβής που συνήθως ή κατά νόμο καταβάλλεται για το είδος της χρήσης που πραγματοποίησε ο φορέας χρήσης ορφανών έργων και αποδίδεται εντός δύο (2) μηνών από τη λήξη του καθεστώτος ενός έργου ως ορφανού. Αν δεν συμφωνήσουν τα μέρη, οι όροι, η προθεσμία και το ύψος της αποζημίωσης καθορίζονται από το Μονομελές Πρωτοδικείο Αθηνών με τη διαδικασία των ασφαλιστικών μέτρων.».

IX. SPAIN³⁰⁵

IX.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

IX.1.1. Constitution

The Spanish Constitution of 1978³⁰⁶ sets out the right to freedom of expression and creation in its article 20(1), which in particular recognises and protects the right to literary, artistic, scientific and technical production and creation, thereby covering intellectual property rights. Article 149(1), point 9, establishes that the State has exclusive competence over legislation on copyright and industrial property.

Article 20

1. *The following rights are recognised and protected:*
 - a) *the right to freely express and disseminate thoughts, ideas and opinions through words, in writing or by any other means of communication.*
 - b) *the right to literary, artistic, scientific and technical production and creation.*
 - c) *the right to academic freedom.*
 - d) *the right to freely communicate or receive accurate information by any means of dissemination whatsoever. The law shall regulate the right to invoke personal conscience and professional secrecy in the exercise of these freedoms.*³⁰⁷

Article 149

1. *The State holds exclusive competence over the following matters:*
 - (...)
 - ix) *legislation on intellectual and industrial property.*³⁰⁸

³⁰⁵ DISCLAIMER: Provisions of national law are not protected by copyright and can be used and reproduced free of charge. The following translations are provided by the International Bureau of the World Intellectual Property Organization (WIPO). Users should be aware that only the official texts in the national languages have legal force and that the translations are strictly for reference only. Spanish Constitution: <http://www.wipo.int/wipolex/es/details.jsp?id=16338>; Spanish Civil Code: http://www.wipo.int/wipolex/en/text.jsp?file_id=221319; Royal Legislative Decree 1/1996: http://www.internet-law.ru/law/int/nation_cleo/spain/es054en.pdf. No translation available of the consolidated text of the Law on Intellectual Property, as amended up to Royal Decree-Law No 2/2018 of 13 April 2018. Between square brackets: Version with Automatic Translation Tool for amendments introduced after 1996.

³⁰⁶ Translation available on Official State Gazette website (Agencia Estatal Boletín Oficial del Estado) at: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>.

³⁰⁷ Artículo 20

1. *Se reconocen y protegen los derechos:*
 - a) *A expresar y difundir libremente los pensamientos, ideas y opiniones mediante la palabra, el escrito o cualquier otro medio de reproducción.*
 - b) *A la producción y creación literaria, artística, científica y técnica.*
 - c) *A la libertad de cátedra.*
 - d) *A comunicar o recibir libremente información veraz por cualquier medio de difusión. La ley regulará el derecho a la cláusula de conciencia y al secreto profesional en el ejercicio de estas libertades.*

³⁰⁸ Artículo 149

Source: https://www.boe.es/diario_boe/txt.php?id=BOE-A-1978-31229

IX.1.2. Copyright law

Spanish Civil Law does not include incorporeal or immaterial things as an object of the right of property in the narrow sense. Nevertheless, the “rights over immaterial goods” are considered a form of special property, which is governed by a *lex specialis* and, only to the extent in which it is not opposed to it and by supplementing it, by the legal provisions contained in the Civil Code.

Article 333

*All things which are or may be subject to appropriation are considered movable or immovable property.*³⁰⁹

Article 348

Ownership is the right to enjoy and dispose of a thing, without greater limitations than those set forth in the laws.

*The owner shall have an action against the holder and the possessor of the property to claim it.*³¹⁰

Article 428

*The owner of a literary, scientific or artistic work shall be entitled to exploit it and dispose of it at will.*³¹¹

Article 429

*The intellectual property law sets forth the persons to whom this right belongs, the manner of its exercise and its duration. In cases not provided or resolved by such specific statute, the general rules provided in this Code relating to property shall apply.*³¹²

Source: <https://www.boe.es/legislacion/codigos/codigo.php?id=34&modo=1¬a=0>

The *lex specialis* governing copyright is the recast text of the ‘Law on Intellectual Property, regularising, clarifying and harmonising the legal provisions in force on the matter’ (‘Law on

1. El Estado tiene competencia exclusiva sobre las siguientes materias:

[...]

9.^a Legislación sobre propiedad intelectual e industrial.

³⁰⁹ Artículo 333

Todas las cosas que son o pueden ser objeto de apropiación se consideran como bienes muebles o inmuebles.

³¹⁰ Artículo 348

La propiedad es el derecho de gozar y disponer de una cosa, sin más limitaciones que las establecidas en las leyes. El propietario tiene acción contra el tenedor y el poseedor de la cosa para reivindicarla.

³¹¹ Artículo 428

El autor de una obra literaria, científica o artística, tiene el derecho de explotarla y disponer de ella a su voluntad.

³¹² Artículo 429

La Ley sobre Propiedad Intelectual determina las personas a quienes pertenece ese derecho, la forma de su ejercicio y el tiempo de su duración. En casos no previstos ni resueltos por dicha ley especial se aplicarán las reglas generales establecidas en este Código sobre la propiedad.

Intellectual Property') approved by means of the Royal Legislative Decree 1/1996, of 12 April 1996³¹³.

This law repealed the previous 'Law 22/1987 on Intellectual Property' as well as previous acts transposing Community Directives in this area. Hence, from 1996, the recast text of the Law on Intellectual Property assembles in Spain the legal provisions relating to copyright. Following the adoption of that recast text, new acts in this area, including provisions transposing new Directives, are mainly adopted as acts amending the Law on Intellectual Property³¹⁴.

This Law is considered complementary to the Spanish Civil Code, and as such, it is included in the 'consolidated electronic code' available on-line, edited by the Boletín Oficial del Estado (State Official Journal).

The Law on Intellectual Property underwent a deep legislative reform in 2014, aimed at enhancing the protection of intellectual property in the digital environment. It mainly included three types of measures: the review of the system of fair compensation for private copying, the establishment of effective mechanisms for monitoring copyright management entities and the strengthening of persecution mechanisms and penalties in the event of infringing activities.

Subsequent acts amending the Law on Intellectual Property include Royal Decree-Law 12/2017, which aligned the previous system of fair compensation for private copying to EU Law, following the judgment of the Court of 9 June 2016 in case C-470/14 - EGEDA, and Others, as well as Royal Decree-Law No. 2/2018, which transposed into Spanish Law Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, and Directive (EU) 2017/1564 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled.

IX.2. COPYRIGHT

IX.2.1. Definition and content

The Spanish Law on intellectual property points out that **intellectual property** comprises rights both of personal and economic character, and then specifies, firstly, the content of the "moral right" and, thereafter, that of the "exploitations rights".

Article 1 - Originating fact

*The intellectual property in a literary, artistic or scientific work shall belong to the author thereof by virtue of the sole fact of its creation.*³¹⁵

Article 2 - Content

³¹³ Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia. BOE núm. 97, de 22 de abril de 1996. Referencia: BOE-A-1996-8930.

³¹⁴ A consolidated text of the Law including all its modifications is available on the BOE website: <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>.

³¹⁵ Artículo 1 - Hecho generador

La propiedad intelectual de una obra literaria, artística o científica corresponde al autor por el solo hecho de su creación.

*Intellectual property shall comprise rights of personal and economic character which shall confer on the author full control over and the exclusive right to the exploitation of the work, without any limitations other than those specified in the Law.*³¹⁶

Article 3 - Characteristics

Authors' rights shall be independent, compatible and susceptible of combination with:

- 1° the ownership of and other rights pertaining to the physical object in which the intellectual creation is embodied.*
- 2° any industrial property rights that may exist in relation to the work.*
- 3° the other intellectual property rights recognized in Part II of this Law.*³¹⁷

Source: <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>

IX.2.1.1 Moral rights

Article 14 - Content and characteristics of Moral Rights

The author is invested with the following unrenounceable and inalienable rights:

- 1° The right to decide whether his work is to be disclosed, and if so in what form.*
- 2° The right to determine whether such disclosure should be effected in his name, under a pseudonym or sign or anonymously.*
- 3° The right to demand recognition of his authorship of the work.*
- 4° The right to demand respect for the integrity of the work and to object to any distortion, modification or alteration of it or any act in relation to it that is liable to prejudice his legitimate interests or threaten his reputation.*
- 5° The right to alter the work subject to respect for the acquired rights of third parties and the protection requirements of goods of cultural interest.*
- 6° The right to withdraw the work from circulation for reasons of changed intellectual or moral convictions, after indemnification of the holders of exploitation rights for damages and prejudice.*

If the author later decides to resume exploitation of his work, he shall give preference, when offering the corresponding rights, to the previous holder thereof, and shall offer terms reasonably similar to the original terms.

³¹⁶ Artículo 2 - Contenido

La propiedad intelectual está integrada por derechos de carácter personal y patrimonial, que atribuyen al autor la plena disposición y el derecho exclusivo a la explotación de la obra, sin más limitaciones que las establecidas en la Ley.

³¹⁷ Artículo 3 - Características

Los derechos de autor son independientes, compatibles y acumulables con:

- 1.º La propiedad y otros derechos que tengan por objeto la cosa material a la que está incorporada la creación intelectual.*
- 2.º Los derechos de propiedad industrial que puedan existir sobre la obra.*
- 3.º Los otros derechos de propiedad intelectual reconocidos en el Libro II de la presente Ley.*

7º *The right of access to the sole or a rare copy of the work, when it is in another person's possession, for the purpose of the exercise of the right of disclosure or any other applicable right.*

*The aforesaid right shall not allow the author to demand the moving of the work, and access to it shall be had in the place and manner that cause the least inconvenience to the possessor, who shall be indemnified where appropriate for any damages and prejudice caused him.*³¹⁸

Source: <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>

IX.2.1.2 Economic rights

Article 17 - Exclusive Rights of Exploitation and Forms of Exploitation

*The author is invested with the exclusive exercise of the rights pertaining to the exploitation of his work in whatever form and especially the rights of reproduction, distribution, communication to the public and alteration, which may not be exercised without his authorization, except where this Law so provides.*³¹⁹

Article 18 - Reproduction

*Reproduction means the incorporation of the work in a medium that enables it to be communicated and copies of all or part of it to be made.*³²⁰

Article 19 - Distribution

(1) Distribution means the making available to the public of the original or of copies of the work by means of sale, rental or lending or in any other manner.

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Artículo 14 - Contenido y características del derecho moral

Corresponden al autor los siguientes derechos irrenunciables e inalienables:

- 1.º Decidir si su obra ha de ser divulgada y en qué forma.*
 - 2.º Determinar si tal divulgación ha de hacerse con su nombre, bajo seudónimo o signo, o anónimamente.*
 - 3.º Exigir el reconocimiento de su condición de autor de la obra.*
 - 4.º Exigir el respeto a la integridad de la obra e impedir cualquier deformación, modificación, alteración o atentado contra ella que suponga perjuicio a sus legítimos intereses o menoscabo a su reputación.*
 - 5.º Modificar la obra respetando los derechos adquiridos por terceros y las exigencias de protección de bienes de interés cultural.*
 - 6.º Retirar la obra del comercio, por cambio de sus convicciones intelectuales o morales, previa indemnización de daños y perjuicios a los titulares de derechos de explotación.*
- Si, posteriormente, el autor decide reemprender la explotación de su obra deberá ofrecer preferentemente los correspondientes derechos al anterior titular de los mismos y en condiciones razonablemente similares a las originarias.*
- 7.º Acceder al ejemplar único o raro de la obra, cuando se halle en poder de otro, a fin de ejercitar el derecho de divulgación o cualquier otro que le corresponda.*

Este derecho no permitirá exigir el desplazamiento de la obra y el acceso a la misma se llevará a efecto en el lugar y forma que ocasionen menos incomodidades al poseedor, al que se indemnizará, en su caso, por los daños y perjuicios que se le irroguen.

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Artículo 17 - Derecho exclusivo de explotación y sus modalidades

Corresponde al autor el ejercicio exclusivo de los derechos de explotación de su obra en cualquier forma y, en especial, los derechos de reproducción, distribución, comunicación pública y transformación, que no podrán ser realizadas sin su autorización, salvo en los casos previstos en la presente Ley.

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Artículo 18 - Reproducción

Se entiende por reproducción la fijación directa o indirecta, provisional o permanente, por cualquier medio y en cualquier forma, de toda la obra o de parte de ella, que permita su comunicación o la obtención de copias.

(2) *Where distribution is effected by means of sale within the area of the European Union, the rights shall lapse on the first such sale, but only in relation to successive sales effected within the said area by the owner of the rights or with his consent.*

(3) *Rental means the making available of the originals and copies of a work with a view to use for a limited time for direct or indirect economic or commercial benefit.*

Making available for the purposes of display, communication to the public by means of phonograms or audiovisual recordings, including fragments of either, and making available for consultation on the spot, are excluded from the concept of rental.

(4) *Lending means the making available of the originals and copies of a work with a view to use for a limited time for neither direct nor indirect economic or commercial benefit, providing that such lending is effected through establishments accessible to the public.*

It shall be understood that there is no direct or indirect economic or commercial benefit when lending carried out by an establishment accessible to the public gives rise to the payment of a charge not exceeding that necessary to cover its operating costs. [This amount may not include all or part of the amount of the remuneration right that must be paid to the holders of intellectual property rights in accordance with the provisions of article 37(2)].

The operations mentioned in the second paragraph of paragraph (3) above, and those that take place between establishments accessible to the public, are excluded from the concept of lending.

(5) *The provisions of this Article relating to rental and lending shall not apply to buildings or to works of applied art.*³²¹

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Artículo 19 - Distribución

1. *Se entiende por distribución la puesta a disposición del público del original o de las copias de la obra, en un soporte tangible, mediante su venta, alquiler, préstamo o de cualquier otra forma.*
2. *Cuando la distribución se efectúe mediante venta u otro título de transmisión de la propiedad, en el ámbito de la Unión Europea, por el propio titular del derecho o con su consentimiento, este derecho se agotará con la primera, si bien sólo para las ventas y transmisiones de propiedad sucesivas que se realicen en dicho ámbito territorial.*
3. *Se entiende por alquiler la puesta a disposición de los originales y copias de una obra para su uso por tiempo limitado y con un beneficio económico o comercial directo o indirecto.*

Quedan excluidas del concepto de alquiler la puesta a disposición con fines de exposición, de comunicación pública a partir de fonogramas o de grabaciones audiovisuales, incluso de fragmentos de unos y otras, y la que se realice para consulta in situ.

4. *Se entiende por préstamo la puesta a disposición de originales y copias de una obra para su uso por tiempo limitado sin beneficio económico o comercial directo ni indirecto, siempre que dicho préstamo se lleve a cabo a través de establecimientos accesibles al público.*

Se entenderá que no existe beneficio económico o comercial directo ni indirecto cuando el préstamo efectuado por un establecimiento accesible al público dé lugar al pago de una cantidad que no exceda de lo necesario para cubrir los gastos de funcionamiento. Esta cantidad no podrá incluir total o parcialmente el importe del derecho de remuneración que deba satisfacerse a los titulares de derechos de propiedad intelectual conforme a lo dispuesto en el artículo 37.2.

Quedan excluidas del concepto de préstamo las operaciones mencionadas en el párrafo segundo del apartado 3 y las que se efectúen entre establecimientos accesibles al público.

5. *Lo dispuesto en este artículo en cuanto al alquiler y al préstamo no se aplicará a los edificios ni a las obras de artes aplicadas.*

Article 20 - Communication to the public

- (1) *Communication to the public means any act whereby two or more persons are afforded access to the work without prior distribution of copies to each of them.*

Communication shall not be considered public where it takes place in a strictly domestic environment that is not an integral part of or connected to a dissemination network of any kind.

- (2) *The following in particular shall be considered acts of communication to the public:*

- (a) Stage performances, recitations, dissertations and public performances of dramatic, dramatico-musical, literary and musical works by any means or process.*
- (b) The public projection or showing of cinematographic and other audiovisual works.*
- (c) The transmission of any works by radio or any other means serving for the wireless dissemination of signs, sounds or images. The concept of transmission shall include the production of program-carrying signals destined for a satellite where the reception thereof by the public is not possible otherwise than through an entity different from the original one.*
- (d) The broadcasting or communication to the public by satellite of any works, that is, the act of emitting, subject to the control and responsibility of the broadcasting organization, program-carrying signals intended for reception by the public in an unbroken chain of communication towards the satellite and from it to the ground. The normal technical processes relating to program-carrying signals shall not be considered breaks in the chain of communication.*

Where the program-carrying signals are emitted in coded form, there shall be communication to the public by satellite whenever decoding devices are made available to the public by the broadcasting organization or with its consent.

For the purposes of the provisions of the foregoing two paragraphs, satellite means any satellite that operates on frequency bands reserved by telecommunications legislation for the distribution of signals for reception by the public or for non-public individual communication, provided in the latter case that the circumstances in which individual reception of the signals takes place are comparable to those applicable in the first case.

- (e) The transmission of any works to the public by wire, cable, optic fiber or other comparable process, whether on subscription or not.*
- (f) The retransmission of the broadcast work by any of the media mentioned in the foregoing subparagraphs, and by a transmitting body different from the original one, of the broadcast work.*

Retransmission by cable means the simultaneous, unaltered and integral retransmission, by cable or microwaves, of the original broadcasts or transmissions, including those effected by satellite, of broadcast or televised programs intended for reception by the public.

- (g) The emission or transmission of the broadcast work, by means of any appropriate instrument, in a place accessible to the public.*
- (h) The public exhibition of works of art or reproductions thereof.*

- (i) Public access to computer databases by means of telecommunication, where such databases incorporate or constitute protected works.*
- [(j) Public access in any form to works incorporated into a database, even though this database is not protected by the provisions of Book I of this Law.]*
- (k) The performance of any of the previous acts, with respect to a database protected by Book I of this Law.]*
- (3) Communication to the public by satellite on the territory of the European Union shall be governed by the following provisions:*
 - (a) Communication to the public by satellite shall occur only in the Member State of the European Union in which, subject to the control and responsibility of the broadcasting organization, the program-carrying signals are incorporated in the unbroken chain of communication referred to in subparagraph (d) of paragraph (2) of this Article.*
 - (b) Where communication to the public by satellite occurs on the territory of a State not belonging to the European Union in which there is not the level of protection specified in this paragraph (3) for such a system of communication, the following shall be taken into account:*
 - 1° If the program-carrying signal is sent to the satellite from an uplink signal station located in a Member State, the communication to the public by satellite shall be regarded as having occurred in that Member State. In such a case the rights established in relation to the satellite broadcast may be asserted against the person who operates the station that emits the upward signal.*
 - 2° If an uplink signal station located in a Member State is not used, but a broadcasting organization established in a Member State has commissioned the satellite broadcast, the said act shall be regarded as having occurred in the Member State in which the broadcasting organization has its principal establishment; in such a case the rights established in relation to the satellite broadcast may be asserted against the broadcasting organization.*
- (4) The retransmission by cable defined in the second subparagraph of paragraph (2)(f) of this Article within the territory of the European Union shall be governed by the following provisions:*
 - (a) The retransmission on Spanish territory of emissions, broadcasts by satellite or initial transmissions of programs initiated in other Member States of the European Union shall take place, as far as the copyright is concerned, in accordance with the provisions of this Law and pursuant to the terms of contractual agreements, whether individual or collective, signed between the owners of rights and cable distribution companies.*
 - (b) The right belonging to the owners of copyright to authorize cable distribution shall be exercised exclusively through an entity for the administration of intellectual property rights.*
 - (c) In the case of owners who have not entrusted the management of their rights to an entity for the administration of intellectual property rights, those rights*

shall be asserted through the entity that administers rights in the same category.

When there are two or more administration entities for the rights in the category concerned, the owners may entrust the management of those rights to any of the said entities.

[The owners referred to in this letter c) shall enjoy the rights and shall be subject to the obligations derived from the agreement concluded between the cable retransmission company and the entity in which it is considered to have delegated the management of their rights, in equality of conditions with the holders of rights that have entrusted the management of the same to such an entity. Likewise, they may claim from the management entity referred to in the preceding paragraphs of this letter c), their rights under the terms of Article 177.]

(d) When the owner of rights authorizes the initial emission, satellite broadcast or transmission on Spanish territory of a protected work, it shall be presumed that he consents not to exercise his rights individually, where applicable, in relation to the cable distribution of the said work, but to assert them in accordance with the provisions of the present paragraph (4).

(e) The provisions of subparagraphs (b), (c) and (d) of the present paragraph (4) shall not apply to the rights exercised by broadcasting organizations in relation to their own emissions, satellite broadcasts or transmissions, regardless of whether the said rights are theirs or have been transferred to them by other owners of copyright.

(f) Where, for want of agreement between the parties, it is not possible to enter into a contract for the authorization of cable distribution, the parties may apply to the Intellectual Property Mediation and Arbitration Board for mediation.

The provisions of Article 193 and the Royal Decree on the development of said provision shall be applicable to the mediation contemplated in the preceding paragraph.]

(g) Where either of the parties abuses his negotiating position to prevent the initiation or prosecution in good faith of negotiations for the authorization of cable distribution, or without valid justification obstructs the negotiations or mediation referred to in the foregoing subparagraph, the provisions of Part I, Chapter I, of Law 16 of July 17, 1989, on the Defense of Competition shall apply.³²²

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Artículo 20 - Comunicación pública

1. Se entenderá por comunicación pública todo acto por el cual una pluralidad de personas pueda tener acceso a la obra sin previa distribución de ejemplares a cada una de ellas.

No se considerará pública la comunicación cuando se celebre dentro de un ámbito estrictamente doméstico que no esté integrado o conectado a una red de difusión de cualquier tipo.

2. Especialmente, son actos de comunicación pública:

a) Las representaciones escénicas, recitaciones, disertaciones y ejecuciones públicas de las obras dramáticas, dramático-musicales, literarias y musicales mediante cualquier medio o procedimiento.

b) La proyección o exhibición pública de las obras cinematográficas y de las demás audiovisuales.

c) La emisión de cualesquiera obras por radiodifusión o por cualquier otro medio que sirva para la difusión inalámbrica de signos, sonidos o imágenes. El concepto de emisión comprende la producción de señales

portadoras de programas hacia un satélite, cuando la recepción de las mismas por el público no es posible sino a través de entidad distinta de la de origen.

- d) La radiodifusión o comunicación al público vía satélite de cualesquiera obras, es decir, el acto de introducir, bajo el control y la responsabilidad de la entidad radiodifusora, las señales portadoras de programas, destinadas a la recepción por el público en una cadena ininterrumpida de comunicación que vaya al satélite y desde éste a la tierra. Los procesos técnicos normales relativos a las señales portadoras de programas no se consideran interrupciones de la cadena de comunicación.

Cuando las señales portadoras de programas se emitan de manera codificada existirá comunicación al público vía satélite siempre que se pongan a disposición del público por la entidad radiodifusora, o con su consentimiento, medios de descodificación.

A efectos de lo dispuesto en los dos párrafos anteriores, se entenderá por satélite cualquiera que opere en bandas de frecuencia reservadas por la legislación de telecomunicaciones a la difusión de señales para la recepción por el público o para la comunicación individual no pública, siempre que, en este último caso, las circunstancias en las que se lleve a efecto la recepción individual de las señales sean comparables a las que se aplican en el primer caso.

- e) La transmisión de cualesquiera obras al público por hilo, cable, fibra óptica u otro procedimiento análogo, sea o no mediante abono.
- f) La retransmisión, por cualquiera de los medios citados en los apartados anteriores y por entidad distinta de la de origen, de la obra radiodifundida.
- Se entiende por retransmisión por cable la retransmisión simultánea, inalterada e íntegra, por medio de cable o microondas de emisiones o transmisiones iniciales, incluidas las realizadas por satélite, de programas radiodifundidos o televisados destinados a ser recibidos por el público.
- g) La emisión o transmisión, en lugar accesible al público, mediante cualquier instrumento idóneo, de la obra radiodifundida.
- h) La exposición pública de obras de arte o sus reproducciones.
- i) La puesta a disposición del público de obras, por procedimientos alámbricos o inalámbricos, de tal forma que cualquier persona pueda acceder a ellas desde el lugar y en el momento que elija.
- j) El acceso público en cualquier forma a las obras incorporadas a una base de datos, aunque dicha base de datos no esté protegida por las disposiciones del Libro I de la presente Ley.
- k) La realización de cualquiera de los actos anteriores, respecto a una base de datos protegida por el Libro I de la presente Ley.

3. La comunicación al público vía satélite en el territorio de la Unión Europea se regirá por las siguientes disposiciones:

- a) La comunicación al público vía satélite se producirá únicamente en el Estado miembro de la Unión Europea en que, bajo el control y responsabilidad de la entidad radiodifusora, las señales portadoras de programas se introduzcan en la cadena ininterrumpida de comunicación a la que se refiere el párrafo d) del apartado 2 de este artículo.

- b) Cuando la comunicación al público vía satélite se produzca en el territorio de un Estado no perteneciente a la Unión Europea donde no exista el nivel de protección que para dicho sistema de comunicación al público establece este apartado 3, se tendrá en cuenta lo siguiente:

1.º Si la señal portadora del programa se envía al satélite desde una estación de señal ascendente situada en un Estado miembro se considerará que la comunicación al público vía satélite se ha producido en dicho Estado miembro. En tal caso, los derechos que se establecen relativos a la radiodifusión vía satélite podrán ejercitarse frente a la persona que opere la estación que emite la señal ascendente.

2.º Si no se utiliza una estación de señal ascendente situada en un Estado miembro pero una entidad de radiodifusión establecida en un Estado miembro ha encargado la emisión vía satélite, se considerará que dicho acto se ha producido en el Estado miembro en el que la entidad de radiodifusión tenga su establecimiento principal. En tal caso, los derechos que se establecen relativos a la radiodifusión vía satélite podrán ejercitarse frente a la entidad de radiodifusión.

4. La retransmisión por cable definida en el párrafo segundo del apartado 2.f) de este artículo, dentro del territorio de la Unión Europea, se regirá por las siguientes disposiciones:

- a) La retransmisión en territorio español de emisiones, radiodifusiones vía satélite o transmisiones iniciales de programas procedentes de otros Estados miembros de la Unión Europea se realizará, en lo relativo a

Article 21 - Transformation

- (1) *The transformation of the work shall include its translation or adaptation and any other alteration of its form from which a different work is derived.*

[In the case of a database referred to in article 12 of this Law, its reordering shall also be considered as a transformation.]

- (2) *The intellectual property rights resulting from such transformation shall vest in the author of the latter, without prejudice to the rights of the author of the preexisting work [to authorise, during the entire period of protection of their rights over it, the exploitation of these results in any form and especially through their reproduction, distribution, public communication or new transformation.]*³²³

los derechos de autor, de acuerdo con lo dispuesto en la presente Ley y con arreglo a lo establecido en los acuerdos contractuales, individuales o colectivos, firmados entre los titulares de derechos y las empresas de retransmisión por cable.

- b) *El derecho que asiste a los titulares de derechos de autor de autorizar la retransmisión por cable se ejercerá, exclusivamente, a través de una entidad de gestión de derechos de propiedad intelectual.*
- c) *En el caso de titulares que no hubieran encomendado la gestión de sus derechos a una entidad de gestión de derechos de propiedad intelectual, los mismos se harán efectivos a través de la entidad que gestione derechos de la misma categoría.*

Cuando existiere más de una entidad de gestión de los derechos de la referida categoría, sus titulares podrán encomendar la gestión de los mismos a cualquiera de las entidades.

Los titulares a que se refiere esta letra c) gozarán de los derechos y quedarán sujetos a las obligaciones derivadas del acuerdo celebrado entre la empresa de retransmisión por cable y la entidad en la que se considere hayan delegado la gestión de sus derechos, en igualdad de condiciones con los titulares de derechos que hayan encomendado la gestión de los mismos a tal entidad. Asimismo, podrán reclamar a la entidad de gestión a la que se refieren los párrafos anteriores de esta letra c), sus derechos en los términos del artículo 177.

- d) *Cuando el titular de derechos autorice la emisión, radiodifusión vía satélite o transmisión inicial en territorio español de una obra protegida, se presumirá que consiente en no ejercitar, a título individual, sus derechos para, en su caso, la retransmisión por cable de la misma, sino a ejercitarlos con arreglo a lo dispuesto en este apartado 4.*
- e) *Lo dispuesto en los párrafos b), c) y d) de este apartado 4 no se aplicará a los derechos ejercidos por las entidades de radiodifusión respecto de sus propias emisiones, radiodifusiones vía satélite o transmisiones, con independencia de que los referidos derechos sean suyos o les hayan sido transferidos por otros titulares de derechos de autor.*
- f) *Cuando, por falta de acuerdo entre las partes, no se llegue a celebrar un contrato para la autorización de la retransmisión por cable, las partes podrán acceder, por vía de mediación, a la Comisión Mediadora y Arbitral de la Propiedad Intelectual.*

Será aplicable a la mediación contemplada en el párrafo anterior lo previsto en el artículo 193 y en el real decreto de desarrollo de dicha disposición.

- g) *Cuando alguna de las partes, en abuso de su posición negociadora, impida la iniciación o prosecución de buena fe de las negociaciones para la autorización de la retransmisión por cable, u obstaculice, sin justificación válida, las negociaciones o la mediación a que se refiere el párrafo anterior, se aplicará lo dispuesto en el Título I, capítulo I, de la Ley 16/1989, de 17 de julio, de Defensa de la Competencia.*

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Artículo 21 - Transformación

1. *La transformación de una obra comprende su traducción, adaptación y cualquier otra modificación en su forma de la que se derive una obra diferente.*

Cuando se trate de una base de datos a la que hace referencia el artículo 12 de la presente Ley se considerará también transformación, la reordenación de la misma.

2. *Los derechos de propiedad intelectual de la obra resultado de la transformación corresponderán al autor de esta última, sin perjuicio del derecho del autor de la obra preexistente de autorizar, durante todo el plazo de*

Article 22 - Selection of complete works

*The licensing of the exploitation of his works shall not prevent the author from publishing them together in a selection or complete collection.*³²⁴

Article 23 - Independence of rights

*The exploitation rights provided for in this Section shall be independent of each other.*³²⁵

Source: <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>

In the Law on Intellectual Property, the third section on “Other rights” includes Article 25 on the right to remuneration for the private copying exception (see exceptions below). This provision and its successive modifications have had a broad impact on the copyright system in Spain. The purpose of this provision is to fairly compensate authors for the private copying exception, since copying of works by natural persons acting in a private capacity without the author’s authorisation is regarded as an act likely to cause harm to that author.

IX.2.2. Author

The Spanish Law on intellectual property covers in its First Book the ‘author’s rights’ whereas its Second Book deals with ‘other intellectual property rights’ which include the rights of performers, the rights of phonogram producers, the rights of producers of audiovisual recordings and the rights of broadcasting organisations. These ‘other intellectual property rights’ are known in Union Law as ‘related rights’ (*derechos afines a los derechos de autor*).

Article 5 - Authors and other beneficiaries

- (1) The natural person who creates any literary, artistic or scientific work shall be considered the author thereof.*
- (2) Nevertheless, the protection that this Law confers on the author may be enjoyed by legal entities under the circumstances expressly provided for therein.*³²⁶

Article 6 - Presumption of Authorship, Anonymous or Pseudonymous Works

- (1) In the absence of proof to the contrary, that person shall be presumed the author who is identified as such on the work by the inclusion of his name, signature or identification mark.*
- (2) Where the work is disclosed anonymously or under a pseudonym or sign, the exercise of the intellectual property rights shall accrue to the person, whether*

protección de sus derechos sobre ésta, la explotación de esos resultados en cualquier forma y en especial mediante su reproducción, distribución, comunicación pública o nueva transformación.

³²⁴ Artículo 22 - Colecciones escogidas u obras completas.

La cesión de los derechos de explotación sobre sus obras no impedirá al autor publicarlas reunidas en colección escogida o completa.

³²⁵ Artículo 23 - Independencia de derechos

Los derechos de explotación regulados en esta sección son independientes entre sí.

³²⁶ Artículo 5 - Autores y otros beneficiarios

- 1. Se considera autor a la persona natural que crea alguna obra literaria, artística o científica.*
- 2. No obstante, de la protección que esta Ley concede al autor se podrán beneficiar personas jurídicas en los casos expresamente previstos en ella*

*natural person or legal entity, who reveals it with the author's consent for as long as the latter does not reveal his identity.*³²⁷

Article 9 - Composite Works and Independent Works

- (1) A new work that incorporates a pre-existing work without the collaboration of the author of the latter shall be considered a composite work, subject to the rights accruing to that author and subject also to the requirement of his authorization.*
- (2) A work that constitutes an autonomous creation, even if published in conjunction with other works, shall be considered an independent work.*³²⁸

Source: <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>

IX.2.3. Protected works

Article 10 - Original works and titles

- (1) The subject matter of intellectual property shall be all original literary, artistic or scientific creations expressed in any manner or medium, whether tangible or intangible, that is known at present or may be invented in the future, including the following:*
 - (a) books, pamphlets, printed matter, correspondence, writings, speeches and addresses, lectures, court pleadings, academic treatises and any other works of the same nature;*
 - (b) musical compositions with or without lyrics;*
 - (c) dramatic and dramatico-musical works, choreographic and mimed works and theatrical works in general;*
 - (d) cinematographic works and any other audiovisual works;*
 - (e) sculptures and works of painting, drawing, engraving or lithography, picture stories, cartoons or comics, including drafts or sketches therefor, and other works of three-dimensional art, whether applied or not;*
 - (f) projects, plans, models and drawings of architectural works and works of engineering;*
 - (g) graphs, maps and figures relating to topography; geography and science in general;*

³²⁷ Artículo 6 - Presunción de autoría, obras anónimas o seudónimas

1. Se presumirá autor, salvo prueba en contrario, a quien aparezca como tal en la obra, mediante su nombre, firma o signo que lo identifique.
2. Cuando la obra se divulgue en forma anónima o bajo seudónimo o signo, el ejercicio de los derechos de propiedad intelectual corresponderá a la persona natural o jurídica que la saque a la luz con el consentimiento del autor, mientras éste no revele su identidad.

³²⁸ Artículo 9 - Obra compuesta e independiente

1. Se considerará obra compuesta la obra nueva que incorpore una obra preexistente sin la colaboración del autor de esta última, sin perjuicio de los derechos que a éste correspondan y de su necesaria autorización.
2. La obra que constituya creación autónoma se considerará independiente, aunque se publique conjuntamente con otras.

(h) photographic works and works expressed by a process analogous to photography;

(i) computer programs;

(2) The title of a work shall be protected as part of the work when it is original.³²⁹

Article 11 - Derived works

The following shall also be the subject of intellectual property, without prejudice to the copyright in the original work:

1° translations and adaptations;

2° revisions, updated editions and annotations;

3° compendia, summaries and extracts;

4° musical arrangements;

5° all kinds of transformation of a literary, artistic or scientific work.³³⁰

Article 12 - Collections. Databases

Collections of the works of other people, like anthologies, and of other elements or data which by the selection or arrangement of their contents constitute intellectual creations, shall also be the subject of intellectual property within the meaning of this Law, without prejudice to any rights of the authors of the original works.

³²⁹ Artículo 10 - Obras y títulos originales

1. Son objeto de propiedad intelectual todas las creaciones originales literarias, artísticas o científicas expresadas por cualquier medio o soporte, tangible o intangible, actualmente conocido o que se invente en el futuro, comprendiéndose entre ellas:

- a) Los libros, folletos, impresos, epistolarios, escritos, discursos y alocuciones, conferencias, informes forenses, explicaciones de cátedra y cualesquiera otras obras de la misma naturaleza.
- b) Las composiciones musicales, con o sin letra.
- c) Las obras dramáticas y dramático-musicales, las coreografías, las pantomimas y, en general, las obras teatrales.
- d) Las obras cinematográficas y cualesquiera otras obras audiovisuales.
- e) Las esculturas y las obras de pintura, dibujo, grabado, litografía y las historietas gráficas, tebeos o comics, así como sus ensayos o bocetos y las demás obras plásticas, sean o no aplicadas.
- f) Los proyectos, planos, maquetas y diseños de obras arquitectónicas y de ingeniería.
- g) Los gráficos, mapas y diseños relativos a la topografía, la geografía y, en general, a la ciencia.
- h) Las obras fotográficas y las expresadas por procedimiento análogo a la fotografía.
- i) Los programas de ordenador.

2. El título de una obra, cuando sea original, quedará protegido como parte de ella.

³³⁰ Artículo 11 - Obras derivadas

Sin perjuicio de los derechos de autor sobre la obra original, también son objeto de propiedad intelectual:

1.º Las traducciones y adaptaciones.

2.º Las revisiones, actualizaciones y anotaciones.

3.º Los compendios, resúmenes y extractos.

4.º Los arreglos musicales.

5.º Cualesquiera transformaciones de una obra literaria, artística o científica.

[The protection recognised in this article to these collections refers only to its structure as a form of expression of the selection or arrangement of its contents, not being extensive to them.

2. *For the purposes of this Law, and without prejudice to the provisions of the previous paragraph, databases are considered collections of works, data, or other independent elements arranged in a systematic or methodical manner and accessible individually by electronic means or in another way.*
3. *The recognised protection of databases under this article shall not apply to computer programmes used in the manufacture or operation of databases accessible by electronic means.*³³¹

Article 13 - Exclusions

*Legal or regulatory provisions and the drafts thereof, judgments of jurisdictional bodies and acts, agreements, deliberations and rulings of public bodies, and official translations of all such texts, shall not be the subject of intellectual property.*³³²

Source: <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>

IX.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Article 5 of Directive 2001/29/EC (InfoSoc Directive) contains a list of 20 optional exceptions or limitation and one harmonised exception. Spain has not implemented 4 of those 20 optional exceptions: reproduction of broadcasts by social institutions; use for advertising the exhibition or sale of works of art; use for the purpose of reconstructing a building; and use for the demonstration or repair of equipment.

Moreover, Directive 96/9/EC (Database Directive), Directive 2012/28/EU (Orphan Works Directive) and Directive (EU) 2017/1564 (Directive implementing the Marrakech Treaty in the EU) contain each a mandatory exception in the EU. Directive 2006/115/EC (Rental and Lending Directive) contains an optional exception which has been implemented by Spain.

In Spain, the exceptions and limitations to copyright are to be found in Chapter II of the Law of Intellectual Property (Articles 31 to 40). In 2014, a further exception was added to those which

³³¹ Artículo 12 - Colecciones. Bases de datos

1. *También son objeto de propiedad intelectual, en los términos del Libro I de la presente Ley, las colecciones de obras ajenas, de datos o de otros elementos independientes como las antologías y las bases de datos que por la selección o disposición de sus contenidos constituyan creaciones intelectuales, sin perjuicio, en su caso, de los derechos que pudieran subsistir sobre dichos contenidos.*
La protección reconocida en el presente artículo a estas colecciones se refiere únicamente a su estructura en cuanto forma de expresión de la selección o disposición de sus contenidos, no siendo extensiva a éstos.
2. *A efectos de la presente Ley, y sin perjuicio de lo dispuesto en el apartado anterior, se consideran bases de datos las colecciones de obras, de datos, o de otros elementos independientes dispuestos de manera sistemática o metódica y accesibles individualmente por medios electrónicos o de otra forma.*
3. *La protección reconocida a las bases de datos en virtud del presente artículo no se aplicará a los programas de ordenador utilizados en la fabricación o en el funcionamiento de bases de datos accesibles por medios electrónicos.*

³³² Artículo 13 - Exclusiones

No son objeto de propiedad intelectual las disposiciones legales o reglamentarias y sus correspondientes proyectos, las resoluciones de los órganos jurisdiccionales y los actos, acuerdos, deliberaciones y dictámenes de los organismos públicos, así como las traducciones oficiales de todos los textos anteriores.

result from the transposition of EU Directives concerning the publishing of non-significant fragments by news aggregation services.

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Art. 31(1)</p> <p>Article 31. [Provisional reproductions and private copy]</p> <p>[1. The acts of provisional reproduction referred to in article 18 which, in addition to lacking independent economic significance, are transitory or accessory and form an integral and essential part of a technological process and whose only purpose is to facilitate either a network transmission between third parties by an intermediary, or a lawful use, understood as authorised by the author or by law, shall not require authorisation by the author.]³³³</p>
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p>	
<p>(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;</p>	<p>[Not implemented (no specific reprography clause); partly covered by the implementation of point b and article 32(4)]</p> <p>Article 32. [Quotations and reviews and illustration for educational or scientific research purposes.]</p> <p>4. [Nor shall the acts of partial reproduction, distribution and public communication of works or publications, printed or susceptible to be printed, require the authorisation of the author or publisher when the following conditions concur simultaneously:</p> <p>a) Those acts are carried out only to illustrate for educational and scientific research purposes.</p> <p>b) Those acts are limited to a chapter of a book, article of a magazine or equivalent extension regarding an assimilated publication, or extension equivalent to 10 percent of the total of the work, being indifferent to these effects that the copy is carried out through one or several acts of reproduction.</p> <p>c) Those acts are carried out in universities or public research centres, by their personnel and with their own means and instruments.</p> <p>At least one of the following conditions is met:</p>

³³³ Artículo 31. *Reproducciones provisionales y copia privada.*

1. *No requerirán autorización del autor los actos de reproducción provisional a los que se refiere el artículo 18 que, además de carecer por sí mismos de una significación económica independiente, sean transitorios o accesorios y formen parte integrante y esencial de un proceso tecnológico y cuya única finalidad consista en facilitar bien una transmisión en red entre terceras partes por un intermediario, bien una utilización lícita, entendiéndose por tal la autorizada por el autor o por la ley.*

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	<ol style="list-style-type: none"> 1. The distribution of the partial copies is made exclusively among the students and teaching or research staff of the same centre in which the reproduction takes place. 2. Only the students and the teaching or research staff of the centre in which the partial reproduction of the work is made can access it through the acts of public communication authorised in this paragraph, and the making available takes place through internal and closed networks which only those beneficiaries can access or within the framework of a distance education programme offered by the said centre.]
<p>(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;</p>	<p>Art. 31(2) and 25 (Claim for compensation)</p> <p>Article 31. [Provisional reproductions and private copy]</p> <p>[2. Without prejudice to the fair compensation provided in article 25, the author does not need the author's permission to reproduce, in any medium, without the assistance of third parties, works already disclosed, when the following circumstances concur, constituting the legal limit of private copying :</p> <ol style="list-style-type: none"> a) The reproduction is carried out by a physical person exclusively for private, non-professional or business use, and without direct or indirect commercial purposes. b) The reproduction is made from a legal source and the conditions of access to the work or benefit are not violated. c) The copy obtained is not subject to collective or profit-making use, nor to distribution by price. <p>3. Are excluded from the provisions of the previous paragraph:</p> <ol style="list-style-type: none"> a) reproductions of works that have been made available to the public in accordance with article 20.2.i), so that any person can access them from the place and time they choose, authorising the reproduction of the work, in accordance with the terms of the contract and, where relevant, by means of payment of price. b) Electronic databases. c) Computer programs, in application of point a) of article 99.]³³⁴

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Artículo 31. *Reproducciones provisionales y copia privada.*

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	Article 25. Fair compensation for private copying [Not translated. Original version in the footnote] ³³⁵

2. Sin perjuicio de la compensación equitativa prevista en el artículo 25, no necesita autorización del autor la reproducción, en cualquier soporte, sin asistencia de terceros, de obras ya divulgadas, cuando concurren simultáneamente las siguientes circunstancias, constitutivas del límite legal de copia privada:
 - a) Que se lleve a cabo por una persona física exclusivamente para su uso privado, no profesional ni empresarial, y sin fines directa ni indirectamente comerciales.
 - b) Que la reproducción se realice a partir de una fuente lícita y que no se vulneren las condiciones de acceso a la obra o prestación.
 - c) Que la copia obtenida no sea objeto de una utilización colectiva ni lucrativa, ni de distribución mediante precio.
3. Quedan excluidas de lo dispuesto en el anterior apartado:
 - a) Las reproducciones de obras que se hayan puesto a disposición del público conforme al artículo 20.2.i), de tal forma que cualquier persona pueda acceder a ellas desde el lugar y momento que elija, autorizándose, con arreglo a lo convenido por contrato, y, en su caso, mediante pago de precio, la reproducción de la obra.
 - b) Las bases de datos electrónicas.
 - c) Los programas de ordenador, en aplicación de la letra a) del artículo 99.

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Artículo 25. Compensación equitativa por copia privada.

1. La reproducción de obras divulgadas en forma de libros o publicaciones que a estos efectos se asimilen mediante real decreto, así como de fonogramas, videogramas o de otros soportes sonoros, visuales o audiovisuales, realizada mediante aparatos o instrumentos técnicos no tipográficos, exclusivamente para uso privado, no profesional ni empresarial, sin fines directa ni indirectamente comerciales, de conformidad con el artículo 31, apartados 2 y 3, originará una compensación equitativa y única para cada una de las tres modalidades de reproducción mencionadas dirigida a compensar adecuadamente el perjuicio causado a los sujetos acreedores como consecuencia de las reproducciones realizadas al amparo del límite legal de copia privada. Dicha compensación se determinará para cada modalidad en función de los equipos, aparatos y soportes materiales idóneos para realizar dicha reproducción, fabricados en territorio español o adquiridos fuera de este para su distribución comercial o utilización dentro de dicho territorio.
2. Serán sujetos acreedores de esta compensación equitativa y única los autores de las obras señaladas en el apartado anterior, explotadas públicamente en alguna de las formas mencionadas en dicho apartado, conjuntamente y, en los casos y modalidades de reproducción en que corresponda, con los editores, los productores de fonogramas y videogramas y los artistas intérpretes o ejecutantes cuyas actuaciones hayan sido fijadas en dichos fonogramas y videogramas. Este derecho será irrenunciable para los autores y los artistas intérpretes o ejecutantes.
3. Serán sujetos deudores del pago de la citada compensación los fabricantes en España, en tanto actúen como distribuidores comerciales, así como los adquirentes fuera del territorio español, para su distribución comercial o utilización dentro de este, de equipos, aparatos y soportes materiales previstos en el apartado 1. Asimismo, serán responsables solidarios del pago de la compensación los distribuidores, mayoristas y minoristas, que sean sucesivos adquirentes de los mencionados equipos, aparatos y soportes materiales, con respecto de los deudores que se los hubieran suministrado, salvo que acrediten haber satisfecho efectivamente a estos la compensación.
Los distribuidores, mayoristas y minoristas que sean sucesivos adquirentes de los mencionados equipos, aparatos y soportes materiales podrán solicitar a las entidades de gestión, conforme al procedimiento para hacer efectiva la compensación equitativa que se desarrollará por real decreto, la devolución de aquella en lo que corresponda a las ventas de equipos, aparatos y soportes materiales de reproducción a sujetos exceptuados según el apartado 7.
4. La determinación de los equipos, aparatos y soportes materiales sujetos al pago de la compensación equitativa, las cantidades que los deudores deberán abonar por este concepto a los acreedores y la distribución de dicha compensación entre las distintas modalidades de reproducción se fijarán por Orden del Ministerio de la Presidencia y para las Administraciones Territoriales, a propuesta de los Ministerios de

Educación, Cultura y Deporte y de Energía, Turismo y Agenda Digital, previo informe a la Comisión Delegada del Gobierno para Asuntos Económicos.

Con carácter previo a su aprobación será consultado el Consejo de Consumidores y Usuarios y emitirá informe preceptivo la Sección Primera de la Comisión de Propiedad Intelectual.

Durante el procedimiento de elaboración de dicha Orden se dará audiencia a las entidades de gestión de derechos de propiedad intelectual, a los interesados y a las asociaciones mayoritarias que representen a los sujetos deudores, de acuerdo con lo que determine el Ministerio de Energía, Turismo y Agenda Digital, debiendo aportar, todos estos, una propuesta motivada respecto a su ámbito de interés, que irá acompañada de un informe justificativo.

Por parte del Centro directivo promotor de la Orden se prestará primordial atención a las alegaciones de cada parte interesada directamente relacionadas con sus respectivos derechos legítimos específicos.

La Orden podrá ser revisada en cualquier momento en función de la evolución tecnológica y de las condiciones del mercado. En cualquier caso, deberá ser revisada, al menos, con una periodicidad de tres años.

5. *A los efectos previstos en el apartado anterior, se tendrá en cuenta lo siguiente:*
 - a) *La determinación de la cuantía de la compensación equitativa se calculará sobre la base del perjuicio causado a los sujetos acreedores como consecuencia de las reproducciones realizadas al amparo del límite al derecho de reproducción previsto en el artículo 31, apartados 2 y 3. Para ello se tendrán en cuenta, al menos, los siguientes criterios objetivos:*
 - 1.º *La intensidad de uso de los equipos, aparatos y soportes materiales, para lo que se tendrá en cuenta la estimación del número de copias realizadas al amparo del límite legal de copia privada.*
 - 2.º *La capacidad de almacenamiento de los equipos, aparatos y soportes materiales, así como la importancia de la función de reproducción respecto al resto de funciones de aquellos.*
 - 3.º *El impacto del límite legal de copia privada sobre la venta de ejemplares de las obras, teniendo en cuenta el grado de sustitución real de estos por las copias privadas realizadas y el efecto que supone que el adquirente de un ejemplar o copia original tenga la posibilidad de realizar copias privadas.*
 - 4.º *El precio de la unidad de cada modalidad reproducida.*
 - 5.º *El carácter digital o analógico de las reproducciones efectuadas al amparo del límite legal de copia privada, o la calidad y el tiempo de conservación de las reproducciones.*
 - 6.º *La disponibilidad, grado de aplicación y efectividad de las medidas tecnológicas a las que se refiere el artículo 160.3 del texto refundido de la Ley de Propiedad Intelectual y su impacto en las reproducciones realizadas al amparo del límite legal de copia privada.*
 - 7.º *Las cuantías de la compensación equitativa por copia privada que resulte de aplicación en otros Estados miembros de la Unión Europea siempre que existan bases homogéneas de comparación.*
 - b) *No darán origen a una obligación de compensación aquellas situaciones en las que el perjuicio causado al titular del derecho de reproducción haya sido mínimo, que se determinarán mediante real decreto.*
 - c) *No tendrán la consideración de reproducciones para uso privado las siguientes:*
 - 1.º *Las efectuadas en establecimientos dedicados a la realización de reproducciones para el público, o que tengan a disposición del público los equipos, aparatos y materiales para su realización.*
 - 2.º *Las realizadas mediante equipos, aparatos y soportes de reproducción digital que no se hayan puesto a disposición de derecho o de hecho usuarios privados y que estén manifiestamente reservados a usos distintos a la realización de copias privadas.*
 - d) *Los equipos, aparatos y soportes materiales de reproducción concebidos manifiestamente para uso profesional y que no se hayan puesto de derecho o de hecho a disposición de usuarios privados para la realización de copias privadas, no estarán sujetos al pago de la compensación equitativa por copia privada.*
6. *La obligación de pago de la compensación prevista en el apartado 1 de este artículo nacerá en los siguientes supuestos:*
 - a) *Para los fabricantes en tanto actúen como distribuidores y para los adquirentes de equipos, aparatos y soportes materiales fuera del territorio español con destino a su distribución comercial en este, en el momento en que se produzca por parte del deudor la transmisión de la propiedad o, en su caso, la cesión del uso o disfrute de cualquiera de aquellos.*

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- b) *Para los adquirentes de equipos, aparatos y soportes materiales fuera del territorio español con destino a su utilización dentro de dicho territorio, desde el momento de su adquisición.*
7. *Quedarán exceptuadas del pago de la compensación, las siguientes adquisiciones de equipos, aparatos y soportes materiales de reproducción:*
- a) *Las realizadas por las entidades que integran el sector público según se establezca en el texto refundido de la Ley de Contratos del Sector Público, aprobado por Real Decreto Legislativo 3/2011, de 14 de noviembre, así como por el Congreso de los Diputados, el Senado, el Consejo General del Poder Judicial, el Tribunal de Cuentas, el Defensor del Pueblo, las Asambleas legislativas de las Comunidades Autónomas y las instituciones autonómicas análogas al Tribunal de Cuentas y al Defensor del Pueblo. Esta excepción se podrá acreditar a los deudores y, en su caso, a los responsables solidarios:*
- 1.º *Mediante una certificación emitida por el órgano competente de la Administración General del Estado, de las Administraciones de las Comunidades Autónomas, de las Entidades que integran la Administración Local, de las entidades gestoras y los servicios comunes de la Seguridad Social, de las Universidades Públicas así como del Congreso de los Diputados, el Senado, el Consejo General del Poder Judicial, el Consejo de Estado, el Tribunal de Cuentas, el Defensor del Pueblo, las Asambleas legislativas de las Comunidades Autónomas y las instituciones autonómicas análogas al Consejo de Estado, Tribunal de Cuentas y al Defensor del Pueblo.*
- 2.º *Mediante una certificación emitida por el órgano de dirección y tutela respecto de las mutuas colaboradoras con la Seguridad Social.*
- 3.º *Mediante una certificación emitida por la administración territorial de la que dependan o a la que estén vinculados el resto de entes que conforman el sector público.*
- b) *Las realizadas por personas jurídicas o físicas que actúen como consumidores finales, que justifiquen el destino exclusivamente profesional de los equipos, aparatos o soportes materiales adquiridos y siempre que estos no se hayan puesto, de derecho o de hecho, a disposición de usuarios privados y que estén manifiestamente reservados a usos distintos a la realización de copias privadas, lo que deberán acreditar a los deudores y, en su caso, a los responsables solidarios mediante una certificación emitida por la persona jurídica prevista en el apartado 10.*
- c) *Las realizadas por quienes cuenten con la preceptiva autorización para llevar a efecto la correspondiente reproducción de obras, prestaciones artísticas, fonogramas o videogramas, según proceda, en el ejercicio de su actividad, lo que deberán acreditar a los deudores y, en su caso, a sus responsables solidarios, mediante una certificación emitida por la persona jurídica prevista en el apartado 10.*
- d) *Las realizadas por personas físicas para uso privado fuera del territorio español en régimen de viajeros. En defecto de certificación, los sujetos beneficiarios de la excepción podrán solicitar el reembolso de la compensación.*
8. *Aquellas personas jurídicas o físicas no exceptuadas del pago de la compensación podrán solicitar el reembolso de esta cuando:*
- a) *Actúen como consumidores finales, justificando el destino exclusivamente profesional del equipo, aparato o soporte material de reproducción adquirido, y siempre que estos no se hayan puesto, de derecho o de hecho, a disposición de usuarios privados y que estén manifiestamente reservados a usos distintos a la realización de copias privadas.*
- b) *Los equipos, aparatos o soportes materiales de reproducción adquiridos se hayan destinado a la exportación o entrega intracomunitaria.*
- No se admitirán solicitudes de reembolso por importe inferior a veinticinco euros. No obstante, si la solicitud de reembolso acumula la compensación equitativa abonada por la adquisición de equipos, aparatos y soportes materiales realizada en un ejercicio anual, se admitirán aun cuando no alcancen los veinticinco euros.*
- El plazo para ejercer la acción de reembolso será de un año a computar desde la fecha consignada en la factura de la adquisición del equipo, aparato o soporte material que dio lugar al pago de compensación equitativa. En el caso de facturas anuales acumuladas por importe inferior a veinticinco euros, el plazo se computará a partir de la última factura.*
9. *La compensación equitativa se hará efectiva a través de las entidades de gestión de derechos de propiedad intelectual conforme al procedimiento que se determine a tal efecto por real decreto, debiendo las mismas garantizar a los deudores y a los responsables solidarios una comunicación unificada de la facturación que a estos les corresponda abonar.*

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
(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;	Art. 37(1) Article 37. [Reproduction, loan and consultation of works through specialised terminals in certain establishments.] [1. The holders of copyright may not oppose reproductions of the works, when they are performed for non-profit purposes by museums, libraries, phonograms, film archives, newspaper archives or publicly owned archives or integrated in institutions of a cultural nature or scientific and reproduction is done exclusively for research or conservation purposes.]
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the	[Not implemented; indirectly covered by Article 36(3)] Article 36. [Cable, satellite and technical recordings] [3. The transfer of the right of public communication of a work, when this is done

10. Las entidades de gestión de derechos de propiedad intelectual participarán en la constitución, conforme a la legalidad vigente, gestión y financiación de una persona jurídica que ejercerá, en representación de todas ellas, las siguientes funciones:

- a) La gestión de las excepciones del pago y de los reembolsos.
 - b) La recepción y posterior remisión a las entidades de gestión de las relaciones periódicas de equipos, aparatos y soportes de reproducción respecto de los que haya nacido la obligación de pago de la compensación, elaboradas por los sujetos deudores y, en su caso, por los responsables solidarios, en el marco del procedimiento para hacer efectiva la compensación que se determine mediante real decreto.
 - c) La comunicación unificada de la facturación.
11. Los deudores y sus responsables solidarios permitirán a la persona jurídica que las entidades de gestión constituyan conforme a lo previsto en el apartado anterior, el control de las adquisiciones y de las ventas sujetas al pago de la compensación equitativa así como de aquellas afectadas por las excepciones establecidas en el apartado 7. Asimismo, los sujetos que hayan obtenido la certificación de excepción facilitarán, a petición de la referida persona jurídica, los datos necesarios para comprobar que se mantiene el efectivo cumplimiento de los requisitos para ser beneficiario de la excepción.
12. A los efectos de que el Ministerio de Educación, Cultura y Deporte, en el ejercicio de sus funciones de inspección, vigilancia y control sobre las entidades de gestión de derechos de propiedad intelectual, vele por el cumplimiento de las obligaciones de la referida persona jurídica, esta comunicará a la Secretaría de Estado de Cultura, el día 1 de abril de cada año, la siguiente información respecto del año anterior:
- a) Un listado pormenorizado de las relaciones periódicas de equipos, aparatos y soportes de reproducción respecto de los que haya nacido la obligación de pago de la compensación, elaboradas por los sujetos deudores y por los responsables solidarios.
 - b) Un listado pormenorizado de las compensaciones pagadas por los sujetos deudores y por los responsables solidarios.
 - c) La relación de certificaciones de excepción y de reembolsos tramitadas.
 - d) Cuanta información adicional que el Ministerio de Educación Cultura y Deporte considere necesaria para ejercer sus funciones. Dicha información se publicará en el sitio web del Ministerio de Educación, Cultura y Deporte.

Asimismo, el Ministerio de Educación, Cultura y Deporte resolverá los conflictos que se le planteen respecto de las denegaciones, por la referida persona jurídica, de los certificados de excepción previstos en las letras b) y c) del apartado 7 y las solicitudes de reembolso del pago de la compensación equitativa por copia privada previstas en el apartado 8.

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
grounds of their exceptional documentary character, be permitted;	through broadcasting, shall empower the broadcaster to record the work by its own means and for its own wireless broadcasts, in order to perform, once only, authorised public communication. For new disseminations of the work recorded the transfer of the right of reproduction and public communication shall be required].
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	–
(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;	<p>Art. 32(3) and (4)</p> <p>Article 32. [Quotations and reviews and illustration for educational or scientific research purposes.]</p> <p>3. The teaching staff of regulated education taught in integrated centres in the Spanish educational system and the staff of Universities and Public Research Organisations in their scientific research functions, shall not need authorisation from the author or editor to perform acts of reproduction, distribution and public communication of small fragments of works and isolated works of a plastic or figurative photographic nature, when, not having a commercial purpose, the following conditions are met simultaneously:</p> <p>a) Those acts are made solely for the purpose of illustrating their educational activities, both in classroom teaching and distance learning, or for scientific research purposes, and to the extent justified by the non-commercial purpose.</p> <p>b) Those works are already disclosed.</p> <p>c) The works do not have the status of textbook, university handbook or assimilated publication, except in the case of:</p> <p>1.º Acts of reproduction for public communication, including the act of public communication, which do not involve making available or allowing recipients access to the work or fragment. In these cases, a location from which the students can legally access the protected work must be expressly included.</p>

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	<p>2.º Acts of distribution of copies exclusively among the collaborating research staff of each specific research project and to the extent necessary for this project].</p> <p>d) The name of the author and the source are included, except in cases where it is impossible. For these purposes, an extract or quantitatively little relevant portion of the whole work shall be understood as a small fragment of a work. The authors and editors shall not be entitled to any remuneration for the performance of these acts.]³³⁶</p> <p>4. [The acts of partial reproduction, distribution and public communication of works or publications, printed or susceptible shall not need neither the authorisation of the author or publisher, when the following conditions concur simultaneously:</p> <p>a) Such acts are carried out solely for illustration for educational and scientific research purposes.</p>

³³⁶ Artículo 32. Citas y reseñas e ilustración con fines educativos o de investigación científica.

[...]

3. *El profesorado de la educación reglada impartida en centros integrados en el sistema educativo español y el personal de Universidades y Organismos Públicos de investigación en sus funciones de investigación científica, no necesitarán autorización del autor o editor para realizar actos de reproducción, distribución y comunicación pública de pequeños fragmentos de obras y de obras aisladas de carácter plástico o fotográfico figurativo, cuando, no concurriendo una finalidad comercial, se cumplan simultáneamente las siguientes condiciones:*

a) *Que tales actos se hagan únicamente para la ilustración de sus actividades educativas, tanto en la enseñanza presencial como en la enseñanza a distancia, o con fines de investigación científica, y en la medida justificada por la finalidad no comercial perseguida.*

b) *Que se trate de obras ya divulgadas.*

c) *Que las obras no tengan la condición de libro de texto, manual universitario o publicación asimilada, salvo que se trate de:*

1.º *Actos de reproducción para la comunicación pública, incluyendo el propio acto de comunicación pública, que no supongan la puesta a disposición ni permitan el acceso de los destinatarios a la obra o fragmento. En estos casos deberá incluirse expresamente una localización desde la que los alumnos puedan acceder legalmente a la obra protegida.*

2.º *Actos de distribución de copias exclusivamente entre el personal investigador colaborador de cada proyecto específico de investigación y en la medida necesaria para este proyecto.*

A estos efectos, se entenderá por libro de texto, manual universitario o publicación asimilada, cualquier publicación, impresa o susceptible de serlo, editada con el fin de ser empleada como recurso o material del profesorado o el alumnado de la educación reglada para facilitar el proceso de la enseñanza o aprendizaje.

d) *Que se incluyan el nombre del autor y la fuente, salvo en los casos en que resulte imposible.*

A estos efectos, se entenderá por pequeño fragmento de una obra, un extracto o porción cuantitativamente poco relevante sobre el conjunto de la misma.

Los autores y editores no tendrán derecho a remuneración alguna por la realización de estos actos.

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	<p>b) The acts are limited to a chapter of a book, article of a magazine or equivalent extension with respect to an assimilated publication, or extension equivalent to 10 percent of the total of the work, being indifferent to these effects that the copy is carried out through one or several acts of reproduction.</p> <p>c) The acts are carried out in universities or public research centres, by their personnel and with their own means and instruments.]</p> <p>d) At least one of the following conditions concurs:</p> <p>1.º The distribution of the partial copies is made exclusively among the students and teaching or research staff of the same centre in which the reproduction is made.</p> <p>2.º Only the students and the teaching or research staff of the centre in which the partial reproduction of the work is made can have access to it through the acts of public communication authorised in this section, carrying out the making available through the internal and closed networks to which only those beneficiaries can access or within the framework of a distance education programme offered by said centre.</p> <p>In the absence of specific prior agreement in this respect between the owner of the intellectual property right and the university centre or research organisation, and unless said center or body holds the corresponding intellectual property rights over the works reproduced, distributed and communicated publicly partially according to point b), the authors and publishers of these shall have an inalienable right to receive from the user centres an equitable remuneration, which shall be made effective through the management entities.]³³⁷</p>

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4. *Tampoco necesitarán la autorización del autor o editor los actos de reproducción parcial, de distribución y de comunicación pública de obras o publicaciones, impresas o susceptibles de serlo, cuando concurren simultáneamente las siguientes condiciones:*
- a) *Que tales actos se lleven a cabo únicamente para la ilustración con fines educativos y de investigación científica.*
- b) *Que los actos se limiten a un capítulo de un libro, artículo de una revista o extensión equivalente respecto de una publicación asimilada, o extensión asimilable al 10 por ciento del total de la obra, resultando indiferente a estos efectos que la copia se lleve a cabo a través de uno o varios actos de reproducción.*

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability, without prejudice to the obligations of Member States under Directive (EU) 2017/1564 of the European Parliament and of the Council;	<p>Art. 31a(2)</p> <p>Article 31b. [Accessibility for people with disabilities] Article 31 ter. Accessibility for people with disabilities.</p> <p>[1. The acts of reproduction, distribution and public communication of works already disclosed that benefit people with disabilities do not need authorization from the owner of the intellectual property rights, provided they do not have a lucrative purpose, they have a direct relationship with the disability in question, are carried out through a procedure or means adapted to the disability and are limited to what it demands.</p> <p>2. In those special cases that do not conflict with the normal exploitation of the work, and that do not prejudice in excess the legitimate interests of the right holder, the authorized entities established in Spain that produce copies in accessible format of works for exclusive use of blind people, with visual impairment or with other difficulties to access printed texts, may carry out the acts of the previous section, in the manner referred to in it, for the exclusive use of said beneficiaries or of an authorized entity established in any State member of the European Union. Likewise, the beneficiaries and authorized entities established in Spain may obtain or consult a copy in an accessible format provided by an authorized entity established in any Member State of the European Union.</p> <p>Visual impairment and difficulty in accessing printed works are understood, in order to determine the beneficiaries of this section, those that have the persons who:</p>

- c) *Que los actos se realicen en las universidades o centros públicos de investigación, por su personal y con sus medios e instrumentos propios.*
- d) *Que concurra, al menos, una de las siguientes condiciones:*
- 1.º *Que la distribución de las copias parciales se efectúe exclusivamente entre los alumnos y personal docente o investigador del mismo centro en el que se efectúa la reproducción.*
 - 2.º *Que sólo los alumnos y el personal docente o investigador del centro en el que se efectúe la reproducción parcial de la obra puedan tener acceso a la misma a través de los actos de comunicación pública autorizados en el presente apartado, llevándose a cabo la puesta a disposición a través de las redes internas y cerradas a las que únicamente puedan acceder esos beneficiarios o en el marco de un programa de educación a distancia ofertado por dicho centro docente.*
- En defecto de previo acuerdo específico al respecto entre el titular del derecho de propiedad intelectual y el centro universitario u organismo de investigación, y salvo que dicho centro u organismo sea titular de los correspondientes derechos de propiedad intelectual sobre las obras reproducidas, distribuidas y comunicadas públicamente de forma parcial según el apartado b), los autores y editores de éstas tendrán un derecho irrenunciable a percibir de los centros usuarios una remuneración equitativa, que se hará efectiva a través de las entidades de gestión.*

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	<p>a) they are blind;</p> <p>b) have a visual disability that can not be corrected to give a visual function substantially equivalent to that of a person without that type of disability, and who, consequently, are not able to read printed works to a degree substantially equivalent to that of a person without that type of disability;</p> <p>c) have a difficulty in perceiving or reading which, consequently, makes it impossible for them to read printed works to a degree substantially equivalent to that of a person without that difficulty, or</p> <p>d) they can not, due to a physical disability, hold or manipulate a book or focus their eyes or move their eyes to the extent that would normally be acceptable for reading.</p> <p>Authorized entities, for the purposes of this article, are those entities that provide non-profit organizations to blind people with visual impairments or other difficulties in accessing printed texts, education, pedagogical training, adapted reading or access to information. or that, being public institutions or non-profit organizations, have these services as one of their main activities, as one of their institutional obligations or as part of their public interest missions.</p> <p>3. Entities authorized for the purposes of this article shall:</p> <p>a) Distribute, communicate or make available copies in accessible format of works for the exclusive use of the beneficiaries of the previous section or of other authorized entities.</p> <p>b) Take the necessary measures to discourage the reproduction, distribution, communication to the public or making available to the public, in an unauthorized manner, copies in accessible format.</p> <p>c) Manage the works with due diligence, as well as their copies, in an accessible format, and keep a record of said management.</p> <p>d) Publish information on the actions carried out in application of the previous letters, being sufficient, for these purposes, a half-yearly update on its website and a referral of this information, updated every six months, to the management center of the Ministry of Education, Culture and Sport competent in the matter of intellectual property and the entity or</p>

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	<p>entities of management of intellectual property rights that represent the owners of the works adapted to accessible format. The referred center of the Ministry of Education, Culture and Sport will create and keep a record of the authorized entities and may verify, at any time, the actions reported by them.</p> <p>e) Provide in an accessible manner, upon request, the list of works and formats available as provided in letter d), and the data of the authorized entities with which they have exchanged copies in accessible format, to the beneficiaries of the previous section , to other authorized entities or right holders.</p> <p>The Ministry of Education, Culture and Sports will send the European Commission the information it has received from the authorized entities, including their name and contact information.</p> <p>These obligations must be fulfilled in full compliance with the regulations in force regarding the processing of personal data.</p> <p>4. The entities will communicate to the directive center of the Ministry of Education, Culture and Sport competent in the matter of intellectual property, the fulfillment of the requirements contained in the previous sections 2 and 3, enforceable to an authorized entity. In the event of non-compliance with the same and the failure to respond to the timely request for rectification, the termination of the activity regulated in this article will be required.</p> <p>5. The provisions of paragraphs 2, 3 and 4 above are without prejudice to the applicability of European Union regulations on the cross-border exchange between these and third countries of copies in accessible format of certain works and other benefits protected by copyright and related rights in favor of blind people, with visual impairment or with other difficulties to access printed texts.]³³⁸</p>

³³⁸ Artículo 31 ter. *Accesibilidad para personas con discapacidad.*

1. *No necesitan autorización del titular de los derechos de propiedad intelectual los actos de reproducción, distribución y comunicación pública de obras ya divulgadas que se realicen en beneficio de personas con discapacidad, siempre que los mismos carezcan de finalidad lucrativa, guarden una relación directa con la discapacidad de que se trate, se lleven a cabo mediante un procedimiento o medio adaptado a la discapacidad y se limiten a lo que ésta exige.*
2. *En aquellos supuestos especiales que no entren en conflicto con la explotación normal de la obra, y que no perjudiquen en exceso los intereses legítimos del titular del derecho, las entidades autorizadas establecidas en España que produzcan ejemplares en formato accesible de obras para uso exclusivo de personas ciegas,*

con discapacidad visual o con otras dificultades para acceder a textos impresos, podrán llevar a cabo los actos del apartado anterior, de la forma referida en el mismo, para uso exclusivo de dichos beneficiarios o de una entidad autorizada establecida en cualquier Estado miembro de la Unión Europea. Asimismo, los beneficiarios y las entidades autorizadas establecidas en España podrán conseguir o consultar un ejemplar en formato accesible facilitado por una entidad autorizada establecida en cualquier Estado miembro de la Unión Europea.

Se entiende por discapacidad visual y dificultad para acceder a obras impresas, a los efectos de determinar los beneficiarios de este apartado, las que tienen las personas que:

- a) sean ciegas;
- b) tengan una discapacidad visual que no pueda corregirse para darle una función visual sustancialmente equivalente a la de una persona sin ese tipo de discapacidad, y que, en consecuencia, no sean capaces de leer obras impresas en una medida sustancialmente equivalente a la de una persona sin ese tipo de discapacidad;
- c) tengan una dificultad para percibir o leer que, en consecuencia, las incapacite para leer obras impresas en una medida sustancialmente equivalente a la de una persona sin esa dificultad, o
- d) no puedan, debido a una discapacidad física, sostener o manipular un libro o centrar la vista o mover los ojos en la medida que normalmente sería aceptable para la lectura.

Serán entidades autorizadas, a los efectos de este artículo, aquellas entidades que proporcionen sin ánimo de lucro a las personas ciegas, con discapacidad visual o con otras dificultades para acceder a textos impresos, educación, formación pedagógica, lectura adaptada o acceso a la información, o que, siendo instituciones públicas u organizaciones sin ánimo de lucro, tengan estos servicios como una de sus actividades principales, como una de sus obligaciones institucionales o como parte de sus misiones de interés público.

3. Las entidades autorizadas a los efectos de este artículo, deberán:

- a) Distribuir, comunicar o poner a disposición ejemplares en formato accesible de obras para uso exclusivo de los beneficiarios del apartado anterior o de otras entidades autorizadas.
- b) Tomar las medidas necesarias para desincentivar la reproducción, distribución, comunicación al público o puesta a disposición del público, de forma no autorizada, de ejemplares en formato accesible.
- c) Gestionar con la diligencia debida las obras, así como sus ejemplares, en formato accesible, y mantener un registro de dicha gestión.
- d) Publicar información sobre las actuaciones realizadas en aplicación de las letras anteriores, siendo suficiente, a estos efectos, una actualización semestral en su portal de internet y una remisión de dicha información, actualizada semestralmente, al centro directivo del Ministerio de Educación, Cultura y Deporte competente en materia de propiedad intelectual y a la entidad o entidades de gestión de derechos de propiedad intelectual que representen a los titulares de las obras adaptadas a formato accesible. El referido centro directivo del Ministerio de Educación, Cultura y Deporte creará y llevará un registro de las entidades autorizadas y podrá comprobar, en cualquier momento, las actuaciones informadas por éstas.
- e) Facilitar de forma accesible, previa solicitud, la lista de obras y formatos disponibles según lo previsto en la anterior letra d), y los datos de las entidades autorizadas con las que hayan intercambiado ejemplares en formato accesible, a los beneficiarios del apartado anterior, a otras entidades autorizadas o a los titulares de derechos.

El Ministerio de Educación, Cultura y Deporte remitirá a la Comisión Europea la información que haya recibido de las entidades autorizadas, incluyendo su nombre y datos de contacto.

Estas obligaciones deberán cumplirse respetando plenamente la normativa vigente en materia de tratamiento de datos personales.

4. Las entidades comunicarán al centro directivo del Ministerio de Educación, Cultura y Deporte competente en materia de propiedad intelectual, el cumplimiento de los requisitos contenidos en los anteriores apartados 2 y 3, exigibles a una entidad autorizada. En caso de incumplimiento de los mismos y de no ser atendido el oportuno requerimiento de subsanación, se requerirá a aquéllas el cese de la actividad regulada en el presente artículo.
5. Lo previsto en los anteriores apartados 2, 3 y 4 lo es sin perjuicio de la aplicabilidad de la normativa de la Unión Europea en materia de intercambio transfronterizo entre ésta y terceros países de ejemplares en formato accesible de determinadas obras y otras prestaciones protegidas por derechos de autor y derechos

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	[2. The acts of reproduction, distribution and public communication of works already disclosed that are carried out for the benefit of persons with disabilities do not need authorisation either, provided that they do not have a lucrative purpose, they have a direct relationship with the disability in question, they are carried out by means of a procedure or means adapted to the disability and are limited to what it demands.] ³³⁹
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	Art. 33(1) and 35(1) Article 33. [Works on current topics.] [The works and articles on current topics disseminated by social media may be reproduced, distributed and communicated publicly by any other of the same class, citing the source and the author if the work appeared with signature and provided that it is not had originally stated the reservation of rights. All this without prejudice to the author's right to receive the agreed remuneration or, in the absence of an agreement, the one that is deemed equitable. When it comes to literary collaborations it shall be necessary, in any case, the authorisation of the author]. ³⁴⁰ Article 35. [Use of works on the occasion of current information and those located on public roads.] [1. Any work that can be seen or heard on the occasion of information about current events can be reproduced, distributed and communicated publicly, although only to the extent that this informative purpose justifies it]. ³⁴¹

afines en favor de personas ciegas, con discapacidad visual o con otras dificultades para acceder a textos impresos.

³³⁹ Artículo 31 bis. *Seguridad, procedimientos oficiales y discapacidades.*

[...]

2. *Tampoco necesitan autorización los actos de reproducción, distribución y comunicación pública de obras ya divulgadas que se realicen en beneficio de personas con discapacidad, siempre que los mismos carezcan de finalidad lucrativa, guarden una relación directa con la discapacidad de que se trate, se lleven a cabo mediante un procedimiento o medio adaptado a la discapacidad y se limiten a lo que ésta exige.*

³⁴⁰ Artículo 33. *Trabajos sobre temas de actualidad.*

1. *Los trabajos y artículos sobre temas de actualidad difundidos por los medios de comunicación social podrán ser reproducidos, distribuidos y comunicados públicamente por cualesquiera otros de la misma clase, citando la fuente y el autor si el trabajo apareció con firma y siempre que no se hubiese hecho constar en origen la reserva de derechos. Todo ello sin perjuicio del derecho del autor a percibir la remuneración acordada o, en defecto de acuerdo, la que se estime equitativa.*

Cuando se trate de colaboraciones literarias será necesaria, en todo caso, la oportuna autorización del autor.

³⁴¹ Artículo 35. *Utilización de las obras con ocasión de informaciones de actualidad y de las situadas en vías públicas.*

1. *Cualquier obra susceptible de ser vista u oída con ocasión de informaciones sobre acontecimientos de la actualidad puede ser reproducida, distribuida y comunicada públicamente, si bien sólo en la medida que lo*

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Art. 32(1) Article 32. [Quotations and reviews and illustration for educational or scientific research purposes]. 1. It shall be lawful to include in one's own work fragments of the works of others, whether of written, sound or audiovisual character, and also to include isolated works of three-dimensional, photographic, figurative or comparable art character, provided that the works concerned have already been disclosed and that they are included by way of quotation or for analysis, comment or critical assessment. Such use may only be made for teaching or research purposes and to the extent justified by the purpose of the inclusion, and the source and the name of the author of the work shall be stated. Periodical compilations made in the form of press summaries or reviews shall be treated as quotations. ³⁴²
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Art. 31a(1) Article 31a. [Security and official procedures.] 1. [The author's authorisation shall not be necessary when a work is reproduced, distributed or communicated publicly for purposes of public safety or for the proper development of administrative, judicial or parliamentary procedures.] ³⁴³
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Art. 33(2) Article 33. [Works on current issues.] 2. Lectures, addresses, court pleadings and other works of the same character that have been delivered in public may also be reproduced, distributed and communicated, provided that such uses are made for the sole purpose of

justifique dicha finalidad informativa.

³⁴² Artículo 32. Citas y reseñas e ilustración con fines educativos o de investigación científica.

1. Es lícita la inclusión en una obra propia de fragmentos de otras ajenas de naturaleza escrita, sonora o audiovisual, así como la de obras aisladas de carácter plástico o fotográfico figurativo, siempre que se trate de obras ya divulgadas y su inclusión se realice a título de cita o para su análisis, comentario o juicio crítico. Tal utilización sólo podrá realizarse con fines docentes o de investigación, en la medida justificada por el fin de esa incorporación e indicando la fuente y el nombre del autor de la obra utilizada.
Las recopilaciones periódicas efectuadas en forma de reseñas o revista de prensa tendrán la consideración de citas. [...]

³⁴³ Artículo 31 bis. Seguridad, procedimientos oficiales y discapacidades.

1. No será necesaria autorización del autor cuando una obra se reproduzca, distribuya o comunique públicamente con fines de seguridad pública o para el correcto desarrollo de procedimientos administrativos, judiciales o parlamentarios.

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	informing on current events. The latter condition shall not apply to speeches made at parliamentary sessions or meetings of public bodies. In any case, the author's right to publish such works in a collection shall be reserved. ³⁴⁴
(g) use during religious celebrations or official celebrations organised by a public authority;	Art. 38 [Partly implemented, only with regard to musical works] Article 38. [Official acts and religious ceremonies.] [The execution of musical works in the course of official acts of the State, public administrations and religious ceremonies shall not require authorisation from the holders of the rights, provided that the public can attend them free of charge and the artists who intervene in them do not receive specific remuneration for its interpretation or execution in said acts]. ³⁴⁵
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Art. 35(2) Article 35. [Use of works on the occasion of current information and those located on public roads.] 2. [Works permanently located in parks, streets, squares or other public roads can be reproduced, distributed and communicated freely through paintings, drawings, photographs and audiovisual procedures]. ³⁴⁶
(i) incidental inclusion of a work or other subject-matter in other material;	Art. 31(1) Article 31. [Provisional reproductions and private copy.] [1. The acts of provisional reproduction referred to in article 18 shall not require authorisation from

³⁴⁴ Artículo 33. *Trabajos sobre temas de actualidad.*

[...]

2. *Igualmente, se podrán reproducir, distribuir y comunicar las conferencias, alocuciones, informes ante los Tribunales y otras obras del mismo carácter que se hayan pronunciado en público, siempre que esas utilidades se realicen con el exclusivo fin de informar sobre la actualidad. Esta última condición no será de aplicación a los discursos pronunciados en sesiones parlamentarias o de corporaciones públicas. En cualquier caso, queda reservado al autor el derecho a publicar en colección tales obras.*

³⁴⁵ Artículo 38. *Actos oficiales y ceremonias religiosas.*

La ejecución de obras musicales en el curso de actos oficiales del Estado, de las Administraciones públicas y ceremonias religiosas no requerirá autorización de los titulares de los derechos, siempre que el público pueda asistir a ellas gratuitamente y los artistas que en las mismas intervengan no perciban remuneración específica por su interpretación o ejecución en dichos actos.

³⁴⁶ Artículo 35. *Utilización de las obras con ocasión de informaciones de actualidad y de las situadas en vías públicas.*

[...]

2. *Las obras situadas permanentemente en parques, calles, plazas u otras vías públicas pueden ser reproducidas, distribuidas y comunicadas libremente por medio de pinturas, dibujos, fotografías y procedimientos audiovisuales.*

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	the author which, in addition to lacking independent economic significance, are transitory or accessory and form an integral and essential part of a technological process and sole purpose is to facilitate either a network transmission between third parties by an intermediary, or a lawful use, understood as authorized by the author or the law.] ³⁴⁷
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	–
(k) use for the purpose of caricature, parody or pastiche;	Art. 39 Article 39. Parody. A parody of the work disclosed shall not be considered a transformation that requires the consent of the author, as long as it does not imply a risk of confusion with the work or damage to the original work or its author.]The parody of a disclosed work shall not be considered a transformation that requires the consent of the author, provided that it involves no risk of confusion with that work and does no harm to the original work or its author. ³⁴⁸
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(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;	Art. 37(3) Article 37. [Reproduction, loan and consultation of works through specialised terminals in certain establishments.] [3. Works communication or its making available to specific people of the public for research purposes shall not need authorization of the author when done through a closed and internal network through specialized terminals installed for

³⁴⁷ Artículo 31. *Reproducciones provisionales y copia privada.*

1. No requerirán autorización del autor los actos de reproducción provisional a los que se refiere el artículo 18 que, además de carecer por sí mismos de una significación económica independiente, sean transitorios o accesorios y formen parte integrante y esencial de un proceso tecnológico y cuya única finalidad consista en facilitar bien una transmisión en red entre terceras partes por un intermediario, bien una utilización lícita, entendiéndose por tal la autorizada por el autor o por la ley.

³⁴⁸ Artículo 39. *Parodia.*

No será considerada transformación que exija consentimiento del autor la parodia de la obra divulgada, mientras no implique riesgo de confusión con la misma ni se infiera un daño a la obra original o a su autor.

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
	<p>this purpose in the premises of the establishments mentioned in the previous section and whenever such works appear in the collections of the establishment itself and are not subject to acquisition or licensing conditions. All this without prejudice to the author's right to receive an equitable remuneration.]³⁴⁹</p> <p>[3. Communication of works or their making available to specific persons of the public for research purposes shall not be required by the author when done through a closed and internal network through specialised terminals installed for this purpose in the premises of the establishments mentioned before provided that such works appear in the collections of the establishment itself and are not subject to acquisition or licensing conditions. All this without prejudice to the author's right to receive an equitable remuneration].³⁵⁰</p>
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the	Art. 32(3) and (4) [See above.]

³⁴⁹ Artículo 37. Reproducción, préstamo y consulta de obras mediante terminales especializados en determinados establecimientos.

[...]

3. No necesitará autorización del autor la comunicación de obras o su puesta a disposición de personas concretas del público a efectos de investigación cuando se realice mediante red cerrada e interna a través de terminales especializados instalados a tal efecto en los locales de los establecimientos citados en el anterior apartado y siempre que tales obras figuren en las colecciones del propio establecimiento y no sean objeto de condiciones de adquisición o de licencia. Todo ello sin perjuicio del derecho del autor a percibir una remuneración equitativa.

³⁵⁰ Artículo 37. Reproducción, préstamo y consulta de obras mediante terminales especializados en determinados establecimientos.

[...]

3. No necesitará autorización del autor la comunicación de obras o su puesta a disposición de personas concretas del público a efectos de investigación cuando se realice mediante red cerrada e interna a través de terminales especializados instalados a tal efecto en los locales de los establecimientos citados en el anterior apartado y siempre que tales obras figuren en las colecciones del propio establecimiento y no sean objeto de condiciones de adquisición o de licencia. Todo ello sin perjuicio del derecho del autor a percibir una remuneración equitativa.

Directive 2001/29/EC	Royal Legislative Decree 1/1996
Text	Text
extent justified by the purpose of the authorised act of reproduction.	
5(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.	–

Directive 96/9/EC	Royal Legislative Decree 1/1996
Text	Text
<p>6. Exceptions to restricted acts</p> <p>1. The performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 5 which is necessary for the purposes of access to the contents of the databases and normal use of the contents by the lawful user shall not require the authorization of the author of the database. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part.</p> <p>2. Member States shall have the option of providing for limitations on the rights set out in Article 5 in the following cases:</p> <p>(a) in the case of reproduction for private purposes of a non-electronic database;</p> <p>(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;</p> <p>(c) where there is use for the purposes of public security or for the purposes of an administrative or judicial procedure;</p> <p>(d) where other exceptions to copyright which are traditionally authorized under national law are involved, without prejudice to points (a), (b) and (c).</p> <p>3. In accordance with the Berne Convention for the protection of Literary and Artistic Works, this Article may not be interpreted in such a way as to allow its application to be used in a manner which</p>	<p>Art. 34.</p> <p>Article 34. [Use of databases by the legitimate user and limitations on the exploitation rights of the owner of a database.]</p> <p>[1. The legitimate user of a database protected by virtue of article 12 of this Law or of copies thereof, may carry out, without the authorisation of the author of the database, all the acts that are necessary for accessing the content of the database, the database and its normal use by the user, although they are affected by any other exclusive right of that author. To the extent that the legitimate user is authorised to use only part of the database, this provision shall apply only to that party.</p> <p>Any agreement contrary to what is established in this provision shall be null and void.</p> <p>2. Without prejudice to the provisions of article 31, the authorisation of the author of a database protected under article 12 of this Law and which has been disclosed shall not be required:</p> <p>a) When dealing with a non-electronic database, a reproduction is made for private purposes.</p> <p>b) When the use is made for purposes of illustration of teaching or scientific research provided that it is carried out to the extent justified by the non-commercial objective pursued and indicating in any case its source.</p> <p>c) When it is a use for public security purposes or for the purposes of an administrative or judicial procedure].³⁵¹</p>

³⁵¹ Artículo 34. Utilización de bases de datos por el usuario legítimo y limitaciones a los derechos de explotación del titular de una base de datos.

1. El usuario legítimo de una base de datos protegida en virtud del artículo 12 de esta Ley o de copias de la misma, podrá efectuar, sin la autorización del autor de la base, todos los actos que sean necesarios para el

unreasonably prejudices the rightholder's legitimate interests or conflicts with normal exploitation of the database.	
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Directive 2006/115/EC	Royal Legislative Decree 1/1996
Text	Text
<p>6. Derogation from the exclusive public lending right</p> <p>1. Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain a remuneration for such lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives. of their cultural promotion objectives.</p> <p>2. Where Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration.</p> <p>3. Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.</p>	<p>Art. 37(2)</p> <p>Article 37. [Reproduction, loan and consultation of works through specialised terminals in certain establishments.]</p> <p>[2. Likewise, museums, archives, libraries, newspaper archives, phonograms or film libraries of public ownership or belonging to entities of general interest of a cultural, scientific or educational nature without profit motive, or to educational institutions integrated into the Spanish educational system, shall not specify authorisation of the holders of rights for the loans they make.</p> <p>The owners of these establishments shall remunerate the authors for the loans they make of their works in the amount determined by Royal Decree. The remuneration shall be made effective through the management entities of the intellectual property rights.</p> <p>Publicly owned establishments that provide services in municipalities with less than 5 000 inhabitants, as well as libraries of educational institutions integrated into the Spanish educational system, are exempted from the obligation to pay.</p> <p>The Royal Decree establishing the amount shall also contemplate the necessary collaboration mechanisms between the State, the autonomous communities and local corporations for the</p>

acceso al contenido de la base de datos y a su normal utilización por el propio usuario, aunque estén afectados por cualquier derecho exclusivo de ese autor. En la medida en que el usuario legítimo esté autorizado a utilizar sólo una parte de la base de datos, esta disposición será aplicable únicamente a dicha parte.

Cualquier pacto en contrario a lo establecido en esta disposición será nulo de pleno derecho.

2. Sin perjuicio de lo dispuesto en el artículo 31, no se necesitará la autorización del autor de una base de datos protegida en virtud del artículo 12 de esta Ley y que haya sido divulgada:
 - a) Cuando tratándose de una base de datos no electrónica se realice una reproducción con fines privados.
 - b) Cuando la utilización se realice con fines de ilustración de la enseñanza o de investigación científica siempre que se lleve a efecto en la medida justificada por el objetivo no comercial que se persiga e indicando en cualquier caso su fuente.
 - c) Cuando se trate de una utilización para fines de seguridad pública o a efectos de un procedimiento administrativo o judicial.

Directive 2006/115/EC	Royal Legislative Decree 1/1996
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	fulfillment of the remuneration obligations that affect publicly owned establishments]. ³⁵²
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Art. 37a</p> <p>Article 37a. [Orphan works.]</p> <p>[1. The work whose rights holders are not identified or, if they are, they are not located despite having made a diligent prior search of them, shall be considered an orphan work.</p> <p>2. If there are several holders of rights on the same work and not all of them have been identified or, despite having been identified, they have not been located after having carried out a diligent search, the work may be used in accordance with this law, without prejudice to the rights of the holders that have been identified and located and, where appropriate, of the need for the corresponding authorisation.]³⁵³</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the</p>	<p>[4. Educational centres, museums, libraries and newspaper libraries accessible to the public, as well as public broadcasting organisations, archives, phonograms and film libraries may reproduce, for the purpose of digitalisation, making available to the public, indexing, cataloging, conservation or restoration, and make available to the public, in the manner established in Article 20.2.i), the following orphan works,</p>

³⁵² Artículo 37. *Reproducción, préstamo y consulta de obras mediante terminales especializados en determinados establecimientos.*

[...]

2. *Asimismo, los museos, archivos, bibliotecas, hemerotecas, fonotecas o filmotecas de titularidad pública o que pertenezcan a entidades de interés general de carácter cultural, científico o educativo sin ánimo de lucro, o a instituciones docentes integradas en el sistema educativo español, no precisarán autorización de los titulares de derechos por los préstamos que realicen.*

Los titulares de estos establecimientos remunerarán a los autores por los préstamos que realicen de sus obras en la cuantía que se determine mediante Real Decreto. La remuneración se hará efectiva a través de las entidades de gestión de los derechos de propiedad intelectual.

Quedan eximidos de la obligación de remuneración los establecimientos de titularidad pública que presten servicio en municipios de menos de 5.000 habitantes, así como las bibliotecas de las instituciones docentes integradas en el sistema educativo español.

El Real Decreto por el que se establezca la cuantía contemplará asimismo los mecanismos de colaboración necesarios entre el Estado, las comunidades autónomas y las corporaciones locales para el cumplimiento de las obligaciones de remuneración que afecten a establecimientos de titularidad pública.

³⁵³ Artículo 37 bis. *Obras huérfanas.*

1. *Se considerará obra huérfana a la obra cuyos titulares de derechos no están identificados o, de estarlo, no están localizados a pesar de haberse efectuado una previa búsqueda diligente de los mismos.*
2. *Si existen varios titulares de derechos sobre una misma obra y no todos ellos han sido identificados o, a pesar de haber sido identificados, no han sido localizados tras haber efectuado una búsqueda diligente, la obra se podrá utilizar conforme a la presente ley, sin perjuicio de los derechos de los titulares que hayan sido identificados y localizados y, en su caso, de la necesidad de la correspondiente autorización.*

Directive 2006/115/EC	Royal Legislative Decree 1/1996
Text	Text
<p>exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>provided that such acts are carried out without profit and in order to achieve objectives related to their mission of public interest , in particular the conservation and restoration of the works included in its collection and the facilitation of access to it for cultural and educational purposes:</p> <ul style="list-style-type: none"> a) Cinematographic or audiovisual works, phonograms and published works in the form of books, newspapers, magazines or other printed material that appear in the collections of educational centres, museums, libraries and newspaper archives accessible to the public, as well as archives, phonograms and film libraries. b) Cinematographic or audiovisual works and phonograms produced by public radio broadcasting organisations up to and including 31 December 2002, and which appear in their archives. <p>The provisions of this article shall also apply to protected works and services that are inserted or incorporated in the works cited in this paragraph or are an integral part thereof.</p> <p>5. Orphan works may be used provided they have been published for the first time or, in the absence of publication, have been broadcast for the first time in a Member State of the European Union. Said use may be carried out after a diligent search, in said State, of the holders of the intellectual property rights of the orphan work. In the case of cinematographic or audiovisual works whose producer has his seat or habitual residence in a Member State of the European Union, the search for the owners must be made in that State.</p> <p>Likewise, the entities mentioned in the previous paragraph that have made available to the public, with the consent of their rights holders, unpublished works or broadcast, may use them, when it is reasonable to presume that their owners would not oppose the intended uses in this article. In this case, the search referred to in the previous subparagraph must be made in Spain.</p> <p>The diligent search shall be carried out in good faith, by consulting, at least, the sources of information that are determined by regulation, without prejudice to the obligation to consult additional sources available in other countries where there are indications of the existence of pertinent information on the rights holders.</p> <p>6. The entities cited in paragraph 4 shall register the search process of the right holders and shall</p>

Directive 2006/115/EC	Royal Legislative Decree 1/1996
Text	Text
	<p>send the following information to the competent body referred to in the following paragraph:</p> <p>a) The results of diligent searches that have been carried out and that have led to the conclusion that a work or a phonogram should be considered an orphan work.</p> <p>b) The use that entities make of orphan works in accordance with this law.</p> <p>c) Any change, in accordance with the following paragraph, in the status of orphan work of the works and phonograms that they use.</p> <p>d) The relevant contact information of the entity in question.]³⁵⁴</p>

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4. Los centros educativos, museos, bibliotecas y hemerotecas accesibles al público, así como los organismos públicos de radiodifusión, archivos, fonotecas y filmotecas podrán reproducir, a efectos de digitalización, puesta a disposición del público, indexación, catalogación, conservación o restauración, y poner a disposición del público, en la forma establecida en el artículo 20.2.i), las siguientes obras huérfanas, siempre que tales actos se lleven a cabo sin ánimo de lucro y con el fin de alcanzar objetivos relacionados con su misión de interés público, en particular la conservación y restauración de las obras que figuren en su colección y la facilitación del acceso a la misma con fines culturales y educativos:

- a) Obras cinematográficas o audiovisuales, fonogramas y obras publicadas en forma de libros, periódicos, revistas u otro material impreso que figuren en las colecciones de centros educativos, museos, bibliotecas y hemerotecas accesibles al público, así como de archivos, fonotecas y filmotecas.
- b) Obras cinematográficas o audiovisuales y fonogramas producidos por organismos públicos de radiodifusión hasta el 31 de diciembre de 2002 inclusive, y que figuren en sus archivos.

Lo dispuesto en este artículo se aplicará también a las obras y prestaciones protegidas que estén insertadas o incorporadas en las obras citadas en el presente apartado o formen parte integral de éstas.

5. Las obras huérfanas se podrán utilizar siempre que hayan sido publicadas por primera vez o, a falta de publicación, hayan sido radiodifundidas por primera vez en un Estado miembro de la Unión Europea. Dicha utilización podrá llevarse a cabo previa búsqueda diligente, en dicho Estado, de los titulares de los derechos de propiedad intelectual de la obra huérfana. En el caso de las obras cinematográficas o audiovisuales cuyo productor tenga su sede o residencia habitual en un Estado miembro de la Unión Europea, la búsqueda de los titulares deberá realizarse en dicho Estado.

Asimismo, las entidades citadas en el apartado anterior que hubieran puesto a disposición del público, con el consentimiento de sus titulares de derechos, obras huérfanas no publicadas ni radiodifundidas, podrán utilizarlas, cuando sea razonable presumir que sus titulares no se opondrían a los usos previstos en este artículo. En este caso, la búsqueda a que se refiere el párrafo anterior deberá realizarse en España.

6. Las entidades citadas en el apartado 4 registrarán el proceso de búsqueda de los titulares de derechos y remitirán la siguiente información al órgano competente a que se refiere el apartado siguiente:
- a) Los resultados de las búsquedas diligentes que hayan efectuado y que hayan llevado a la conclusión de que una obra o un fonograma debe considerarse obra huérfana.
 - b) El uso que las entidades hacen de las obras huérfanas de conformidad con la presente ley.
 - c) Cualquier cambio, de conformidad con el apartado siguiente, en la condición de obra huérfana de las obras y los fonogramas que utilicen.
 - d) La información de contacto pertinente de la entidad en cuestión.

La búsqueda diligente se realizará de buena fe, mediante la consulta de, al menos, las fuentes de información que reglamentariamente se determinen, sin perjuicio de la obligación de consultar fuentes adicionales disponibles en otros países donde haya indicios de la existencia de información pertinente sobre los titulares de derechos.

Directive 2006/115/EC	Royal Legislative Decree 1/1996
Text	Text
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	[3. Any use of an orphan work shall require the mention of the names of the authors and holders of intellectual property rights identified, without prejudice to the provisions of article 14.2.º] ³⁵⁵
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	[7. At any time, the holders of intellectual property rights of a work may request the competent body that statutorily determines the end of their orphan work status in terms of their rights and receive fair compensation for the use made performed in accordance with the provisions of this article.]
	<p>Art. 32(2)</p> <p>Article 32. [Appointments and reviews and illustration for educational or scientific research purposes].</p> <p>[2. The making available to the public by providers of electronic services of aggregation of contents of non-significant fragments of contents, disclosed in periodical publications or on websites regularly updated and that have an informative purpose, creating public opinion or entertainment, does not require authorisation, without prejudice to the right of the publisher or, as the case may be, of other holders of rights to receive fair compensation. This right shall be inalienable and shall be made effective through the management entities of intellectual property rights. In any case, the making available to the public by third parties of any image, photographic work or mere photograph disclosed in periodical publications or on websites regularly updated shall be subject to authorisation.</p> <p>Without prejudice to what is established in the previous paragraph, making available to the public</p>

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3. Toda utilización de una obra huérfana requerirá la mención de los nombres de los autores y titulares de derechos de propiedad intelectual identificados, sin perjuicio de lo dispuesto en el artículo 14.2.º

Directive 2006/115/EC	Royal Legislative Decree 1/1996
Text	Text
	by service providers that provide search tools for isolated words included in the contents referred to in the previous paragraph shall not be subject to authorisation or equitable compensation provided that such made available to the public is produced without its own commercial purpose and is strictly limited to what is necessary to offer search results in response to queries previously made by a user to the search engine and provided that the availability to the public includes a link to the page of origin of the contents]. ³⁵⁶

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Artículo 32. Citas y reseñas e ilustración con fines educativos o de investigación científica.

[...]

2. La puesta a disposición del público por parte de prestadores de servicios electrónicos de agregación de contenidos de fragmentos no significativos de contenidos, divulgados en publicaciones periódicas o en sitios Web de actualización periódica y que tengan una finalidad informativa, de creación de opinión pública o de entretenimiento, no requerirá autorización, sin perjuicio del derecho del editor o, en su caso, de otros titulares de derechos a percibir una compensación equitativa. Este derecho será irrenunciable y se hará efectivo a través de las entidades de gestión de los derechos de propiedad intelectual. En cualquier caso, la puesta a disposición del público por terceros de cualquier imagen, obra fotográfica o mera fotografía divulgada en publicaciones periódicas o en sitios Web de actualización periódica estará sujeta a autorización.

Sin perjuicio de lo establecido en el párrafo anterior, la puesta a disposición del público por parte de prestadores de servicios que faciliten instrumentos de búsqueda de palabras aisladas incluidas en los contenidos referidos en el párrafo anterior no estará sujeta a autorización ni compensación equitativa siempre que tal puesta a disposición del público se produzca sin finalidad comercial propia y se realice estrictamente circunscrita a lo imprescindible para ofrecer resultados de búsqueda en respuesta a consultas previamente formuladas por un usuario al buscador y siempre que la puesta a disposición del público incluya un enlace a la página de origen de los contenidos.

X. FRANCE

X.1. APPLICABLE NATIONAL LEGAL FRAMEWORK³⁵⁷

X.1.1. Constitution

The French Constitution does not contain provisions on intellectual property. However, intellectual property rights are considered as property rights and as such, they fall within the scope of Article 34 of the Constitution.

According to Article 34 of the French Constitution³⁵⁸:

(...) Statutes shall also lay down the basic principles of:

(...)

*– systems of ownership, property rights and civil and commercial obligations; (...)*³⁵⁹.

Besides, intellectual property rights are protected by the Preamble of the Constitution which gives a constitutional value to the Declaration of Human and Civic Rights of 26 August 1789, in particular Article 17 of such Declaration on the right of property which states:

*Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid*³⁶⁰.

X.1.2. Copyright law

The sources of French copyright law are contained in the Intellectual Property Code (IPC) ("Code de propriété intellectuelle" (CPI)), enacted by the statute of 1 July 1992, which codifies the prior statutes and decrees.

Copyright is dealt with in Part One of the Code, devoted to Literary and Artistic Property ('La propriété littéraire et artistique'). That Part is divided into three Books: Book One deals with Copyright ('Le droit d'auteur': Articles L. 111-1 to L. 136-4); Book Two with the Neighbouring Rights ('Les droits voisins du droit d'auteur': Articles L. 211-1 to L. 217-3) and Book Three contains some General Provisions relating to copyright, neighbouring rights and the rights of database producers ('Dispositions générales relatives au droit d'auteur, aux droits voisins et droits des producteurs de bases de données': Articles L. 311-1 to L. 343-7).

Book I is entirely devoted to copyright and is divided as follows:

³⁵⁷ Disclaimer: provisions of the French Intellectual Property Code (IPC) can be used and reproduced freely and free of charge. Source: Legifrance website, consolidated version of March 17, 2017 https://www.legifrance.gouv.fr/affichCode.do;jsessionid=9A738C5C023F9FAFBB6DFBA7005D0340.tplgfr40s_2?idSectionTA=LEGISCTA000006161633&cidTexte=LEGITEXT000006069414&dateTexte=20180105;

Translations in English of the French IPC can be used and reproduced freely and free of charge. Source: no translation in English available of the consolidated text of the French IPC. Translations are free adaptations after the translations in English on Legifrance website updated 09/15/2003 <https://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations>.

³⁵⁸ Official translation available on: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html>.

³⁵⁹ Constitution française, Article 34 : « (...) La loi détermine les principes fondamentaux : (...) »

– du régime de la propriété, des droits réels et des obligations civiles et commerciales ; (...) ».

³⁶⁰ Article 17 « La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité ».

- Title I: Subject of copyright (Articles L111-1 to L113-10) (Chapter I: Nature of copyright; Chapter II: Protected work; Chapter III: Owners of copyright)
- Title II: Authors' rights (Articles L121-1 to L123-12) (Chapter I: Moral rights; Chapter II: Economic rights; Chapter III: Term of protection)
- Title III: Exploitation of rights (Articles L 131-1 to L 136-4) (Chapter I: General provisions; Chapter II: Specific provisions for certain contracts; Chapter III: Payment for book lending in a library; Chapter IV: Specific provisions relating to the digital exploitation of out-of-commerce books; Chapter V: Specific provisions relating to certain uses of orphan works; Chapter VI: Provisions applicable to the search and referencing of plastic or graphical or photographic art works.

That legislative part has its corresponding regulatory part in the IPC.

However, it is sometimes necessary to refer to sources outside the IPC: ministerial decisions ('arrêtés') are not codified and additional rules relating to intellectual property law are to be found in other sources, such as the Labour Code, Penal Code, tax law, or competitions law.

X.2. COPYRIGHT

X.2.1. Definition and content

French legislation has a dual conception of copyright.

L 111-1 IPC states that

The author of a work of the mind shall enjoy in that work, by the mere fact of its creation, an exclusive incorporeal property right which shall be enforceable against all persons.

This right shall include attributes of an intellectual and moral nature as well as attributes of an economic nature, as determined by Books I and III of this Code (...)³⁶¹.

A work can be protected by copyright if it is an original work of the mind to which a form is given (ideas, concepts or principles cannot be protected by copyright).

According to Article L 111-3 IPC, the incorporeal property right set out in Article L 111-1 IPC shall be independent of any property right in the physical object.

X.2.1.1 Moral rights

The four components of the author's moral rights are the right to paternity (authorship), the right to the respect of the work (L 121-1 IPC), the right to disclose the work (L121-2 IPC), and the right to reconsider or to withdraw the work (L 121-4 IPC).

According to Article L 121-1 IPC:

An author shall enjoy the right to respect for his name, his authorship and his work.

This right shall attach to his person.

³⁶¹ L 111-1 CPI « L'auteur d'une oeuvre de l'esprit jouit sur cette oeuvre, du seul fait de sa création, d'un droit de propriété incorporelle exclusif et opposable à tous.

Ce droit comporte des attributs d'ordre intellectuel et moral ainsi que des attributs d'ordre patrimonial, qui sont déterminés par les livres Ier et III du présent code ».

It shall be perpetual, inalienable and imprescriptible. It may be transmitted mortis causa to the heirs of the author.

Exercise may be conferred on another person under the provisions of a will³⁶².

Article L 121-2 IPC states that:

The author alone shall have the right to divulge his work. He shall determine the method of disclosure and shall fix the conditions thereof, subject to Article L 132-24. After his death, the right to disclose his posthumous works shall be exercised during their lifetime by the executor or executors designated by the author. If there are none, or after their death, and unless the author has willed otherwise, this right shall be exercised in the following order: by the descendants, by the spouse against whom there exists no final judgment of separation and who has not remarried, by the heirs other than descendants, who inherit all or part of the estate and by the universal legatees or donees of the totality of the future assets. This right may be exercised even after expiry of the exclusive right of exploitation set out in Article L 123-1³⁶³.

Article L 121-4 IPC provides further that:

Notwithstanding assignment of his right of exploitation, the author shall enjoy a right to reconsider or of withdrawal, even after publication of his work, with respect to the assignee. However, he may only exercise that right on the condition that he indemnify the assignee beforehand for any prejudice the reconsideration or withdrawal may cause him. If the author decides to have his work published after having exercised his right to reconsider or of withdrawal, he shall be required to offer his rights of exploitation in the first instance to the assignee he originally chose and under the conditions originally determine³⁶⁴.

The personal character of the moral right means that it is linked to the person so that it is excluded from the frame of the marriage settlement and cannot be subject to an 'action oblique' initiated by the author's creditors.

³⁶² Article L 121-1 CPI « L'auteur jouit du droit au respect de son nom, de sa qualité et de son oeuvre.

Ce droit est attaché à sa personne.

Il est perpétuel, inaliénable et imprescriptible.

Il est transmissible à cause de mort aux héritiers de l'auteur.

L'exercice peut être conféré à un tiers en vertu de dispositions testamentaires ».

³⁶³ Article L 121-2 CPI « L'auteur a seul le droit de divulguer son oeuvre. Sous réserve des dispositions de l'article L. 132-24, il détermine le procédé de divulgation et fixe les conditions de celle-ci.

Après sa mort, le droit de divulgation de ses oeuvres posthumes est exercé leur vie durant par le ou les exécuteurs testamentaires désignés par l'auteur. À leur défaut, ou après leur décès, et sauf volonté contraire de l'auteur, ce droit est exercé dans l'ordre suivant : par les descendants, par le conjoint contre lequel n'existe pas un jugement passé en force de chose jugée de séparation de corps ou qui n'a pas contracté un nouveau mariage, par les héritiers autres que les descendants qui recueillent tout ou partie de la succession et par les légataires universels ou donataires de l'universalité des biens à venir.

Ce droit peut s'exercer même après l'expiration du droit exclusif d'exploitation déterminé à l'article L. 123-1 ».

³⁶⁴ Article L 121-4 CPI « Nonobstant la cession de son droit d'exploitation, l'auteur, même postérieurement à la publication de son oeuvre, jouit d'un droit de repentir ou de retrait vis-à-vis du cessionnaire. Il ne peut toutefois exercer ce droit qu'à charge d'indemniser préalablement le cessionnaire du préjudice que ce repentir ou ce retrait peut lui causer. Lorsque, postérieurement à l'exercice de son droit de repentir ou de retrait, l'auteur décide de faire publier son oeuvre, il est tenu d'offrir par priorité ses droits d'exploitation au cessionnaire qu'il avait originellement choisi et aux conditions originellement déterminées ».

The moral right is perpetual as it survives the termination of the economic rights.

The moral right being inalienable, the author may not assign it or waive it during his life.

French courts added to this list that the moral right may not be seized. However, despite its imperative nature, the moral right is not arbitrary.

The exercise of the moral right may raise specific issues in cases where the work is a joint work, a composite work or a collective work.

X.2.1.2 Economic rights

The so-called economic rights ("droits patrimoniaux") are also referred to as "the right of exploitation" ("le droit d'exploitation"). They cover the right of performance and the right of reproduction.

The resale right ("droit de suite") also belongs to the author's economic rights.

According to Article L 122-1 IPC:

[The] right of exploitation belonging to the author shall comprise the right of performance and the right of reproduction³⁶⁵.

Article L 123-1 IPC states further that:

The author shall enjoy, during his lifetime, the exclusive right to exploit his work in any form whatsoever and to derive monetary profit therefrom.

On the death of the author, that right shall subsist for his successors in title during the current calendar year and the 70 years thereafter³⁶⁶.

Article L 122-2 IPC defines « performance » as follows:

Performance shall consist in the communication of the work to the public by any process whatsoever, particularly:

1° public recitation, lyrical performance, dramatic performance, public presentation, public projection and transmission in a public place of a telediffused work

2° telediffusion.

Telediffusion shall mean distribution by any telecommunication process of sounds, images, documents, data and messages of any kind.

Transmission of a work towards a satellite shall be assimilated to a performance³⁶⁷.

³⁶⁵ Article L 122-1 CPI « Le droit d'exploitation appartenant à l'auteur comprend le droit de représentation et le droit de reproduction ».

³⁶⁶ Article L 123-1 CPI « L'auteur jouit, sa vie durant, du droit exclusif d'exploiter son oeuvre sous quelque forme que ce soit et d'en tirer un profit pécuniaire.

Au décès de l'auteur, ce droit persiste au bénéfice de ses ayants droit pendant l'année civile en cours et les soixante-dix années qui suivent ».

³⁶⁷ Article L 122-2 CPI « La représentation consiste dans la communication de l'oeuvre au public par un procédé quelconque et notamment:

1° Par récitation publique, exécution lyrique, représentation dramatique, présentation publique, projection publique et transmission dans un lieu public de l'oeuvre télédiffusée ;

2° Par télédiffusion.

La télédiffusion s'entend de la diffusion par tout procédé de télécommunication de sons, d'images, de documents, de données et de messages de toute nature.

Article L 122-3 IPC defines “reproduction” as follows:

Reproduction shall consist in the physical fixation of a work by any process permitting it to be communicated to the public in an indirect way.

It may be carried out, in particular, by printing, drawing, engraving, photography, casting and all processes of the graphical and plastic arts, mechanical, cinematographic or magnetic recording.

In the case of works of architecture, reproduction shall also consist in the repeated execution of a plan or of a standard project³⁶⁸.

Translation, adaptation or transformation, arrangement or reproduction by any technique or process whatsoever are considered as specific aspects of economic rights (Article L 122-4 IPC). As part of the reproduction right, the author also enjoys the exclusive right to authorise or prohibit rental and lending of his work.

Another “economic right” provided by French law is the resale right (“droit de suite”) i.e. the inalienable right of an artist to divert to his or her own benefit a small part of the resale price (a ‘royalty’) of the original work, subsequent to the first transfer of the work by the author. The main provision on that right is contained in Article L. 122-8 IPC³⁶⁹, which states:

Authors of original graphic and plastic works, of a State member of the EC or of a State party to the EEA shall have an inalienable right to participate in the proceeds of any sale of such work after the first assignment operated by the author or his heirs, involving as sellers, buyers or intermediaries art market professionals. By way of derogation, this resale right shall not apply where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed EUR 10 000.

Article L 122-7 IPC also states that:

The right of performance and the right of reproduction may be transferred, for or without payment.

Transfer of the right of performance shall not imply transfer of the right of reproduction.

Transfer of the right of reproduction shall not imply transfer of the right of performance.

Est assimilée à une représentation l'émission d'une oeuvre vers un satellite ».

³⁶⁸ Article L 122-3 CPI « La reproduction consiste dans la fixation matérielle de l'oeuvre par tous procédés qui permettent de la communiquer au public d'une manière indirecte.

Elle peut s'effectuer notamment par imprimerie, dessin, gravure, photographie, moulage et tout procédé des arts graphiques et plastiques, enregistrement mécanique, cinématographique ou magnétique.

Pour les oeuvres d'architecture, la reproduction consiste également dans l'exécution répétée d'un plan ou d'un projet type ».

³⁶⁹ Article L 122-8 CPI « Les auteurs d'oeuvres originales graphiques et plastiques ressortissants d'un État membre de la Communauté européenne ou d'un État partie à l'accord sur l'Espace économique européen bénéficient d'un droit de suite, qui est un droit inaliénable de participation au produit de toute vente d'une oeuvre après la première cession opérée par l'auteur ou par ses ayants droit, lorsque intervient en tant que vendeur, acheteur ou intermédiaire un professionnel du marché de l'art. Par dérogation, ce droit ne s'applique pas lorsque le vendeur a acquis l'oeuvre directement de l'auteur moins de trois ans avant cette vente et que le prix de vente ne dépasse pas 10 000 euros (...) » (see also the corresponding regulatory part in the IPC (Articles R 122-2 to R 122-12).

*Where a contract contains the complete transfer of either of the rights referred to in this Article, its effect shall be limited to the exploitation modes specified in the contract*³⁷⁰.

X.2.2. Author

Article L 113-1 IPC provides that:

*Authorship shall belong, unless proved otherwise, to the person or persons under whose name the work has been disclosed*³⁷¹.

Articles L 113-7 and L 113-8 IPC stipulate further that authorship of, respectively, an audiovisual work or a radio work shall belong to "the natural person or persons who carry out the intellectual creation of such work"³⁷².

As regards the computer software, unless otherwise provided by statutory provision or stipulation, the economic rights in the software and its documentation created by one or more employees in the execution of their duties or following the instructions given by their employer shall be the property of the employer and he exclusively shall be entitled to exercise (Article L 113-9)³⁷³.

Specific provisions relating to the authors of works of collaboration, composite works or collective works, or to pseudonymous and anonymous works, or to authors being legal persons, can also apply.

X.2.3. Protected works

Article L 112-1 IPC provides that:

*The provisions of this Code protect author's rights on any work of mind, whatever its kind, form of expression, merit, or destination*³⁷⁴.

This means that no works are excluded *per se*. Any creation of the mind can be protected by copyright: it needs only to fulfil the single substantive condition of protection which is originality. French courts and commentators define "originality" as the mark of the author's personality. French courts consider that a work can be protected by copyright if it is an original

³⁷⁰ Article L 122-7 CPI « Le droit de représentation et le droit de reproduction sont cessibles à titre gratuit ou à titre onéreux.

La cession du droit de représentation n'emporte pas celle du droit de reproduction.

La cession du droit de reproduction n'emporte pas celle du droit de représentation.

Lorsqu'un contrat comporte cession totale de l'un des deux droits visés au présent article, la portée en est limitée aux modes d'exploitation prévus au contrat ».

³⁷¹ Article L 113-1 CPI « La qualité d'auteur appartient, sauf preuve contraire, à celui ou à ceux sous le nom de qui l'oeuvre est divulguée ».

³⁷² Article L 113-7 CPI « Ont la qualité d'auteur d'une oeuvre audiovisuelle la ou les personnes physiques qui réalisent la création intellectuelle de cette oeuvre. (...) ».

Article L 113-8 CPI « Ont la qualité d'auteur d'une oeuvre radiophonique la ou les personnes physiques qui assurent la création intellectuelle de cette oeuvre.(...) ».

³⁷³ Article L 113-9 CPI « Sauf dispositions statutaires ou stipulations contraires, les droits patrimoniaux sur les logiciels et leur documentation créés par un ou plusieurs employés dans l'exercice de leurs fonctions ou d'après les instructions de leur employeur sont dévolus à l'employeur qui est seul habilité à les exercer ».

³⁷⁴ Article L 112-1 CPI « Les dispositions du présent code protègent les droits des auteurs sur toutes les oeuvres de l'esprit, quels qu'en soient le genre, la forme d'expression, le mérite ou la destination ».

work of the mind to which a form is given (ideas, concepts or principles cannot be protected by copyright).

The different categories of protected works are mentioned in Articles L 112-2 to L 112-4 IPC.

Article L 112-2 IPC³⁷⁵ lists examples of protectable works:

The following, in particular, shall be considered works of the mind, within the meaning of this Code :

1. Books, brochures and other literary, artistic and scientific writings;
2. Lectures, speeches, sermons, pleadings and other works of the same nature;
3. Dramatic or drama-musical works ;
4. Choreographic works, circus acts and feats, pantomimes, the acting form of which is set down in writing or in other manner;
5. Musical compositions with or without words;
6. Cinematographic works and other works consisting of animated sequences of images, with or without sound, together referred to as audiovisual works;
7. Works of drawing, painting, architecture, sculpture, engraving and lithography;
8. Graphical and typographical works;
9. Photographic works and works produced by techniques analogous to photography;
10. Works of applied art;
11. Illustrations, geographical maps;

³⁷⁵ Article L 112-2 CPI « Sont considérés notamment comme oeuvres de l'esprit au sens du présent code :

- 1° Les livres, brochures et autres écrits littéraires, artistiques et scientifiques ;
- 2° Les conférences, allocutions, sermons, plaidoiries et autres oeuvres de même nature ;
- 3° Les oeuvres dramatiques ou dramatico-musicales ;
- 4° Les oeuvres chorégraphiques, les numéros et tours de cirque, les pantomimes, dont la mise en oeuvre est fixée par écrit ou autrement ;
- 5° Les compositions musicales avec ou sans paroles ;
- 6° Les oeuvres cinématographiques et autres oeuvres consistant dans des séquences animées d'images, sonorisées ou non, dénommées ensemble oeuvres audiovisuelles ;
- 7° Les oeuvres de dessin, de peinture, d'architecture, de sculpture, de gravure, de lithographie ;
- 8° Les oeuvres graphiques et typographiques ;
- 9° Les oeuvres photographiques et celles réalisées à l'aide de techniques analogues à la photographie ;
- 10° Les oeuvres des arts appliqués ;
- 11° Les illustrations, les cartes géographiques ;
- 12° Les plans, croquis et ouvrages plastiques relatifs à la géographie, à la topographie, à l'architecture et aux sciences ;
- 13° Les logiciels, y compris le matériel de conception préparatoire ;
- 14° Les créations des industries saisonnières de l'habillement et de la parure. Sont réputées industries saisonnières de l'habillement et de la parure les industries qui, en raison des exigences de la mode, renouvellent fréquemment la forme de leurs produits, et notamment la couture, la fourrure, la lingerie, la broderie, la mode, la chaussure, la ganterie, la maroquinerie, la fabrique de tissus de haute nouveauté ou spéciaux à la haute couture, les productions des paruriers et des bottiers et les fabriques de tissus d'ameublement ».

12. *Plans, sketches and plastic art works relating to geography, topography, architecture and science;*

13. *Software, including the preparatory design material;*

14. *Creations of the seasonal industries of clothing and adorning. Industries which, by reason of the demands of fashion, frequently renew the form of their products, particularly the making of dresses, furs, underwear, embroidery, fashion, shoes, gloves, leather goods, the manufacture of fabrics of striking novelty or of special use in high fashion dressmaking, the products of manufacturers of articles of fashion and of footwear and the manufacture of fabrics for upholstery shall be deemed to be seasonal industries of clothing and adorning.*

Derived works are also protected by law, article L 112-3 IPC providing that:

*The authors of translations, adaptations, transformations or arrangements of works of the mind shall enjoy the protection afforded by this Code, without prejudice to the rights of the author of the original work. The same shall apply to the authors of anthologies or collections of miscellaneous works or data, such as databases, which, by reason of the selection or the arrangement of their contents, constitute intellectual creations(...)*³⁷⁶.

According to Article L 112-4:

*the title of a work of the mind shall be protected in the same way as the work itself where it is original in character. (...)*³⁷⁷.

Additional works have been declared protectable by caselaw.

Special categories of work are computer software (L 112-2(13) IPC), which enjoy a more limited protection under the traditional copyright system, and databases (Article L 113-2(2) IPC), which enjoy a protection under the traditional copyright system and/or a sui generis protection (Articles L 341-1 to L 343-7)..

X.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Directive 2001/29/EC of the European Parliament and of the Council³⁷⁸ contains a list of 20 optional exceptions or limitations and one mandatory exception to some of the author's exclusive economic rights. Directive 2012/28/EU of the European Parliament and of the Council³⁷⁹ adds a further mandatory exception as regards the reproducing and making available of orphan works.

³⁷⁶ Article L 112-3 CPI « *Les auteurs de traductions, d'adaptations, transformations ou arrangements des oeuvres de l'esprit jouissent de la protection instituée par le présent code sans préjudice des droits de l'auteur de l'oeuvre originale. Il en est de même des auteurs d'anthologies ou de recueils d'oeuvres ou de données diverses, tels que les bases de données, qui, par le choix ou la disposition des matières, constituent des créations intellectuelles (...)* ».

³⁷⁷ Article L 112-4 CPI « *Le titre d'une oeuvre de l'esprit, dès lors qu'il présente un caractère original, est protégé comme l'oeuvre elle-même* ».

³⁷⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

³⁷⁹ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5).

Most exceptions and limitations to copyright in French law are to be found in L 122-5 IPC³⁸⁰. They relate either to the reproduction right or to the performance right, or to both.

Those limitations and exceptions may be used only after the work was disclosed.

They are subject to strict interpretation. Besides, they have to fulfil the three-step test, which, in France, is also applied by the Courts, in the sense that exceptions or limitations are allowed³⁸¹:

- a) in certain special cases
- b) that do not conflict with a normal exploitation of the work, and
- c) that do not unreasonably prejudice the legitimate interests of the author/rightholder.

In some cases, compensation in the form of payment of a tax or remuneration is provided for, such as remuneration for private copying or reproduction (Articles L 311-1 to L 311-8 IPC)³⁸²

Some of those exceptions are also subject to certain conditions, such as mentioning the author's name and source (Article L. 122-5, 3° or 9° IPC).

The exceptions or limitations to the author's economic rights provided for in Directive 2001/29/EC and Directive 2012/28/EU have been transposed in French law as follows:

Directive 2001/29/EC	Intellectual Property Code (IPC)
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <ul style="list-style-type: none"> (a) a transmission in a network between third parties by an intermediary, or (b) a lawful use <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Art. L 122-5, first paragraph, introductory wording + 6°</p> <p>Once a work has been disclosed, the author may not prohibit: (...) ³⁸³</p> <p>6° The temporary reproduction having a transitory or accessory character, when it is an integral and essential part of a technological process and it has the sole purpose to allow the lawful use of the work or its transmission between parties by way of a network using an intermediary; however, this temporary reproduction which can only relate to works other than software and databases may not have its own economic value;³⁸⁴</p>

³⁸⁰ Article L 211-3 IPC lists the exceptions to the exercise of neighbouring rights by performing artists, phonogram or videogram producers and broadcasters. Those exceptions correspond to most of the exceptions provided for under Article L 122-5 IPC for copyright.

³⁸¹ Berne Convention (Article 9(2)); Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (Article 13); the WIPO Copyright Treaty (WCT) (Article 10); the WIPO Performances and Phonograms Treaty (WPPT) (Article 16); Directive 2001/29/EC, Article 5(5).

³⁸² See also: remuneration for public lending in a library (in particular Article 6 of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L376, 27.12.2006, p. 28) transposed in Articles L 133-1 to L 133-4 IPC.

³⁸³ « Lorsque l'oeuvre a été divulguée, l'auteur ne peut interdire : ».

³⁸⁴ L 122-5, 6° CPI « 6° La reproduction provisoire présentant un caractère transitoire ou accessoire, lorsqu'elle est une partie intégrante et essentielle d'un procédé technique et qu'elle a pour unique objet de permettre l'utilisation licite de l'oeuvre ou sa transmission entre tiers par la voie d'un réseau faisant appel à un intermédiaire ; toutefois, cette reproduction provisoire qui ne peut porter que sur des oeuvres autres que les logiciels et les bases de données ne doit pas avoir de valeur économique propre ; ».

Directive 2001/29/EC	Intellectual Property Code (IPC)
Text	Text
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	Art. L 122-5, first paragraph, introductory wording Once a work has been disclosed, the author may not prohibit: (...)
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	Art. L 122-5, first paragraph, introductory wording + 2° 2° Copies or reproductions made from a lawful source and strictly reserved for the private use of the copyist and not intended for collective use, with the exception of copies of works of art to be used for aims identical to those for which the original work was created and copies of software other than backup copies ³⁸⁵ made in accordance with paragraph II of Article L. 122-6-1 and copies or reproductions of an electronic database ^{386, 387}
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	Art. L 122-5, first paragraph, introductory wording + 2° 2° Copies or reproductions made from a lawful source and strictly reserved for the private use of the copyist and not intended for collective use, with the exception of copies of works of art to be used for aims identical to those for which the original work was created and copies of software other than backup copies made in accordance with paragraph II of Article L. 122-6-1 and copies or reproductions of an electronic database, ^{388 389}

³⁸⁵ Additional exceptions to copyright protection as regards computer programs are dealt with in Directive 2009/24/EC. Those exceptions have been transposed in Article L 122-6-1 IPC.

³⁸⁶ An additional exception to copyright protection as regards databases which is dealt with in Article 6(2) of Directive 96/9/EC has been transposed in Article L 122-5, 5° IPC, which reads as follows: 5° *Once a work has been disclosed, the author may not prohibit³⁸⁷ the acts necessary to access the content of an electronic database for the purposes and within the limits of the use provided by contract.*

³⁸⁷ L 122-5, 2° CPI « 2° Les copies ou reproductions réalisées à partir d'une source licite et strictement réservées à l'usage privé du copiste et non destinées à une utilisation collective, à l'exception des copies des oeuvres d'art destinées à être utilisées pour des fins identiques à celles pour lesquelles l'oeuvre originale a été créée et des copies d'un logiciel autres que la copie de sauvegarde établie dans les conditions prévues au II de l'article L. 122-6-1 ainsi que des copies ou des reproductions d'une base de données électronique ; ».

³⁸⁸ L 122-5, 2° CPI « 2° Les copies ou reproductions réalisées à partir d'une source licite et strictement réservées à l'usage privé du copiste et non destinées à une utilisation collective, à l'exception des copies des oeuvres d'art destinées à être utilisées pour des fins identiques à celles pour lesquelles l'oeuvre originale a été créée et des copies d'un logiciel autres que la copie de sauvegarde établie dans les conditions prévues au II de l'article L. 122-6-1 ainsi que des copies ou des reproductions d'une base de données électronique ; ».

³⁸⁹ In addition, Article L 122-5, 10° stipulates, as regards data mining that « Les copies ou reproductions numériques réalisées à partir d'une source licite, en vue de l'exploration de textes et de données incluses ou associées aux écrits scientifiques pour les besoins de la recherche publique, à l'exclusion de toute finalité commerciale. Un décret fixe les conditions dans lesquelles l'exploration des textes et des données est mise en œuvre, ainsi que les modalités de conservation et de communication des fichiers produits au terme des activités de recherche pour lesquelles elles ont été produites ; ces fichiers constituent des données de la recherche » (+ Article L 342-3, 5°).

Directive 2001/29/EC	Intellectual Property Code (IPC)
Text	Text
(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	Art. L-122-5, first paragraph, introductory wording + 8° 8° The reproduction of a work and its performance made for conservation purposes or to preserve the conditions of its consultation for the purpose of research or private study by individuals, in the premises of the institution and on dedicated terminals in publicly accessible libraries, museums or archive services, provided that they do not pursue any economic or commercial advantage; ³⁹⁰
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Art. L 214-1³⁹¹ Where a phonogram has been published for commercial purposes, the performer and the producer may not oppose: (...)2° Its broadcasting and its simultaneous and integral cable distribution, as well as its reproduction strictly reserved for those purposes, performed by or on behalf of audiovisual communication companies in order to add sound to their own programs broadcast on their own channels as well as on those of audiovisual communication companies who pay fair compensation. (...) ³⁹²
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	Art. L 122-5, first paragraph, introductory wording Once a work has been disclosed, the author may not prohibit:

³⁹⁰ L 122-5, 8° CPI « 8° La reproduction d'une œuvre et sa représentation effectuées à des fins de conservation ou destinées à préserver les conditions de sa consultation à des fins de recherche ou d'études privées par des particuliers, dans les locaux de l'établissement et sur des terminaux dédiés par des bibliothèques accessibles au public, par des musées ou par des services d'archives, sous réserve que ceux-ci ne recherchent aucun avantage économique ou commercial ; ».

³⁹¹ That exception has been partly implemented as far as neighbouring rights are concerned.

³⁹² L 214-1 CPI « Lorsqu'un phonogramme a été publié à des fins de commerce, l'artiste-interprète et le producteur ne peuvent s'opposer :

(...)

2° A sa radiodiffusion et à sa câblo-distribution simultanée et intégrale, ainsi qu'à sa reproduction strictement réservée à ces fins, effectuée par ou pour le compte d'entreprises de communication audiovisuelle en vue de sonoriser leurs programmes propres diffusés sur leur antenne ainsi que sur celles des entreprises de communication audiovisuelle qui acquittent la rémunération équitable (...) ».

Directive 2001/29/EC	Intellectual Property Code (IPC)
Text	Text
(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;	<p>Art. L 122-5, first paragraph, introductory wording + 3°, introductory wording + (e)</p> <p>3°. Provided that are clearly indicated the name of the author and the source:</p> <p>e) The performance or reproduction of excerpts of works, with the exception of works designed for educational purposes and of sheet music, for the sole purpose of illustration for teaching and research, including for the development and dissemination of topics of exams or competitions in extra lessons to the exclusion of any entertainment or recreational activity, provided that such performance or reproduction is intended, including through a digital workspace, to an audience mainly composed of pupils, students, teachers or researchers directly concerned by the act of teaching or training or the research activity requiring such performance or reproduction, that it is not the subject of any publication or dissemination to third parties other than the public concerned, that the use of such performance or reproduction does not give rise to any commercial exploitation and that it is compensated by a remuneration negotiated on a flat-rate basis without prejudice to the transfer of the reproduction right by reprography mentioned in Article L. 122-10;³⁹³</p>
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	<p>Art. L 122-5, first paragraph, introductory wording + 7°, + L 122-5-1 and L 122-5-2</p> <p>7° In accordance with Articles L. 122-5-1 and L. 122-5-2, reproduction and performance by legal persons and establishments open to the public, such as libraries, archives, documentation centers and multimedia cultural spaces, for a strictly personal consultation of the work by people with one or more impairments in motor, physical, sensory, mental, cognitive or psychic functions</p>

³⁹³ L 122-5, 3° e) CPI « 3. Sous réserve que soient indiqués clairement le nom de l'auteur et la source(...):
e) La représentation ou la reproduction d'extraits d'oeuvres, sous réserve des oeuvres conçues à des fins pédagogiques et des partitions de musique, à des fins exclusives d'illustration dans le cadre de l'enseignement et de la recherche, y compris pour l'élaboration et la diffusion de sujets d'examens ou de concours organisés dans la prolongation des enseignements à l'exclusion de toute activité ludique ou récréative, dès lors que cette reproduction est destinée, notamment au moyen d'un espace numérique de travail, à un public composé majoritairement d'élèves, d'étudiants, d'enseignants ou de chercheurs directement concernés par l'acte d'enseignement, de formation ou l'activité de recherche nécessitant cette représentation ou cette reproduction, qu'elle ne fait l'objet d'aucune publication ou diffusion à un tiers au public ainsi constitué, que l'utilisation de cette représentation ou cette reproduction ne donne lieu à aucune exploitation commerciale et qu'elle est compensée par une rémunération négociée sur une base forfaitaire sans préjudice de la cession du droit de reproduction par reprographie mentionnée à l'article L. 122-10; ».

Directive 2001/29/EC	Intellectual Property Code (IPC)
Text	Text
	and prevented, because of those deficiencies, from having access to the work in the form in which the author makes it available to the public; ³⁹⁴
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	<p>Art. L 122-5, first paragraph, introductory wording + 3°, introductory wording + (b) and L 122-5, first paragraph, introductory wording + 9°</p> <p>3°. Provided that are clearly indicated the name of the author and the source:</p> <p>b) press reviews;³⁹⁵</p> <p>9° The reproduction or performance of all or part of a graphic, plastic or architectural work of art, through the press or by broadcasting or online, for the sole purpose of immediate information and in direct relation to that information, provided that is clearly indicated the name of the author.</p> <p>The first paragraph of 9° does not apply to works, including photographic or illustrative works, that aim to convey such information by themselves;³⁹⁶</p>
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	<p>Art. L 122-5, first paragraph, introductory wording + 3°, introductory wording + (a)</p> <p>3. Provided that are clearly indicated the name of the author and the source:</p> <p>a) analyses and short quotations justified by the critical, polemic, educational, scientific or informative aspect of the work into which they are incorporated;³⁹⁷</p>
(e) use for the purposes of public security or to ensure the proper performance or reporting of	<p>Art. L 331-4</p> <p>The rights mentioned in the first part of this code may not thwart the acts necessary for the</p>

³⁹⁴ L 122-5, 7° CPI « 7° Dans les conditions prévues aux articles L. 122-5-1 et L. 122-5-2, la reproduction et la représentation par des personnes morales et par les établissements ouverts au public, tels que les bibliothèques, les archives, les centres de documentation et les espaces culturels multimédia, en vue d'une consultation strictement personnelle de l'œuvre par des personnes atteintes d'une ou de plusieurs déficiences des fonctions motrices, physiques, sensorielles, mentales, cognitives ou psychiques et empêchées, du fait de ces déficiences, d'accéder à l'œuvre dans la forme sous laquelle l'auteur la rend disponible au public ; ».

³⁹⁵ Article L 122-5, 3° b) CPI « 3° Sous réserve que soient indiqués clairement le nom de l'auteur et la source : (...) (b) Les revues de presse (...) ».

³⁹⁶ Article L 122-5, 9° CPI « 9° La reproduction ou la représentation, intégrale ou partielle, d'une oeuvre d'art graphique, plastique ou architecturale, par voie de presse écrite, audiovisuelle ou en ligne, dans un but exclusif d'information immédiate et en relation directe avec cette dernière, sous réserve d'indiquer clairement le nom de l'auteur.

Le premier alinéa du présent 9° ne s'applique pas aux oeuvres, notamment photographiques ou d'illustration, qui visent elles-mêmes à rendre compte de l'information ».

³⁹⁷ L 122-5, 3° a) CPI « 3° Sous réserve que soient indiqués clairement le nom de l'auteur et la source :

a) Les analyses et courtes citations justifiées par le caractère critique, polémique, pédagogique, scientifique ou d'information de l'oeuvre à laquelle elles sont incorporées ; ».

Directive 2001/29/EC	Intellectual Property Code (IPC)
Text	Text
administrative, parliamentary or judicial proceedings;	performance of parliamentary control procedure, judicial or administrative procedure provided by law, or acts undertaken for public safety purposes. ³⁹⁸
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Art. L 122-5, first paragraph, introductory wording + 3°, introductory wording + (c) 3. Provided that are clearly indicated the name of the author and the source: (...) c) The dissemination, even in full, through the press or by broadcasting, as current news, of speeches intended for the public made in political, administrative, judicial or academic assemblies, as well as in political public meetings and official ceremonies; ³⁹⁹
(g) use during religious celebrations or official celebrations organised by a public authority;	–
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Art. L 122-5, first paragraph, introductory wording, + 11° 11° Reproductions and representations of architectural works and sculptures, located permanently in public spaces, made by natural persons, excluding any commercial use. ⁴⁰⁰
(i) incidental inclusion of a work or other subject-matter in other material;	–
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Art. L 122-5, first paragraph, introductory wording + 3°, introductory wording + (d) 3. Provided that are clearly indicated the name of the author and the source: (...) d) Any full or partial reproduction of works of graphic or plastic art for inclusion in the catalogue of a judicial sale made in France for copies made available to the public before the sale for the sole purpose of describing the works of art offered for sale; ⁴⁰¹

³⁹⁸ L 331-4 CPI « Les droits mentionnés dans la première partie du présent code ne peuvent faire échec aux actes nécessaires à l'accomplissement d'une procédure parlementaire de contrôle, juridictionnelle ou administrative prévue par la loi, ou entrepris à des fins de sécurité publique ».

³⁹⁹ L 122-5, 3° c) CPI « 3° Sous réserve que soient indiqués clairement le nom de l'auteur et la source : (...) »
c) La diffusion, même intégrale, par la voie de presse ou de télédiffusion, à titre d'information d'actualité, des discours destinés au public prononcés dans les assemblées politiques, administratives, judiciaires ou académiques, ainsi que dans les réunions publiques d'ordre politique et les cérémonies officielles ; ».

⁴⁰⁰ L 122-5, 11° CPI « 11° Les reproductions et représentations d'œuvres architecturales et de sculptures, placées en permanence sur la voie publique, réalisées par des personnes physiques, à l'exclusion de tout usage à caractère commercial. ».

⁴⁰¹ L 122-5, 3° d) CPI « 3° Sous réserve que soient indiqués clairement le nom de l'auteur et la source : (...) »

Directive 2001/29/EC	Intellectual Property Code (IPC)
Text	Text
(k) use for the purpose of caricature, parody or pastiche;	Art. L 122-5, first paragraph, introductory wording + 4° 4° The parody, pastiche and caricature, observing the rules of the genre; ⁴⁰²
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(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;	Art. L 122-5, first paragraph, introductory wording + 8° 8° The reproduction of a work and its performance made for conservation purposes or to preserve the conditions of its consultation for the purpose of research or private study by individuals, in the premises of the institution and on dedicated terminals in publicly accessible libraries, museums or archive services, provided that they do not pursue any economic or commercial advantage; ⁴⁰³
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	Art. L 122-5, first paragraph, introductory wording + 1° 1° Private and gratuitous performances carried out exclusively within the family circle; ⁴⁰⁴
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	See above Articles L 122-5, 1°, 3°, 4°, 7°, 8°, 9° and 11°-
5(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	Art. L 122-5, second paragraph The exceptions listed in this article may not prejudice the normal exploitation of the work nor

(d) *Les reproductions, intégrales ou partielles d'œuvres d'art graphiques ou plastiques destinées à figurer dans le catalogue d'une vente judiciaire effectuée en France pour les exemplaires mis à la disposition du public avant la vente dans le seul but de décrire les œuvres d'art mises en vente ; ».*

⁴⁰² L 122-5, 4° CPI « 4° La parodie, le pastiche et la caricature, compte tenu des lois du genre ; ».

⁴⁰³ L 122-5, 8° CPI « 8° La reproduction d'une œuvre et sa représentation effectuées à des fins de conservation ou destinées à préserver les conditions de sa consultation à des fins de recherche ou d'études privées par des particuliers, dans les locaux de l'établissement et sur des terminaux dédiés par des bibliothèques accessibles au public, par des musées ou par des services d'archives, sous réserve que ceux-ci ne recherchent aucun avantage économique ou commercial ; ».

⁴⁰⁴ L 122-5, 1° CPI « 1° Les représentations privées et gratuites effectuées exclusivement dans un cercle de famille ; ».

Directive 2001/29/EC	Intellectual Property Code (IPC)
Text	Text
normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.	unreasonably prejudice the legitimate interests of the author. ⁴⁰⁵

Directive 2012/28/EU	Intellectual Property Code (IPC)
Text	
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Art. L 135-2, third sentence</p> <p>The use [of the orphan works] is made as follows:</p> <ol style="list-style-type: none"> 1. Making available to the public an orphan work in such a way that everyone can have access to it on his or her own initiative; 2. Reproduction of an orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.⁴⁰⁶
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>Art. L 135-2, first sentence</p> <p>The bodies mentioned in 1 ° of Article L. 135-1 are allowed to use the works mentioned in that Article only as part of their cultural, educational and research tasks and provided that they do not pursue any profit and that they receive, if any, for a period not exceeding seven years, only the revenues that cover the costs directly related to the digitisation and making available to the public of orphan works they use.⁴⁰⁷</p>
<p>6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the</p>	<p>Art. L 135-2, second sentence</p> <p>They mention the names of identified rightholders, respect the moral rights of the latter and</p>

⁴⁰⁵ L 122-5, deuxième alinéa, CPI « Les exceptions énumérées par le présent article ne peuvent porter atteinte à l'exploitation normale de l'oeuvre ni causer un préjudice injustifié aux intérêts légitimes de l'auteur. ».

⁴⁰⁶ L 135-2, troisième phrase, CPI : « Cette utilisation est faite selon les modalités suivantes : 1° Mise à la disposition du public d'une oeuvre orpheline de manière que chacun puisse y avoir accès de sa propre initiative; 2° Reproduction d'une oeuvre orpheline à des fins de numérisation, de mise à disposition, d'indexation, de catalogage, de préservation ou de restauration. ».

⁴⁰⁷ L 135-2, première phrase, CPI : « Les organismes mentionnés au 1° de l'article L. 135-1 ne peuvent utiliser les oeuvres mentionnées à ce même article que dans le cadre de leurs missions culturelles, éducatives et de recherche et à condition de ne poursuivre aucun but lucratif et de ne percevoir, le cas échéant et pour une durée ne pouvant excéder sept ans, que les recettes couvrant les frais découlant directement de la numérisation et de la mise à la disposition du public des oeuvres orphelines qu'ils utilisent. ».

Directive 2012/28/EU	Intellectual Property Code (IPC)
Text	
name of identified authors and other rightholders in any use of an orphan work.	communicate the information under 2° of Article L. 135-3 or under Article L. 135-4. ⁴⁰⁸
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	–
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	<p>Art. L 135-6</p> <p>Where a rightholder in an orphan work provides proof of his or her rights to a body referred to in Article L. 135-3, the latter may continue to use the work concerned only with the authorisation of the rightholder. The body concerned shall pay the rightholder equitable compensation for the damage he or she has suffered by reason of such use. This compensation shall be agreed between the body and the rightholder. It may take account of agreements or tariffs in force in the professional sectors concerned, if any.</p> <p>The rightholder can make himself or herself known at any time, notwithstanding any provision to the contrary.</p> <p>The body to which the rightholder is to provide proof of his or her rights shall inform without delay the Minister of Culture, or the body designated to that end by the latter, which shall transmit that information to the Office for Harmonization in the internal market referred to in 2° of Article L. 135-3.⁴⁰⁹</p>

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⁴⁰⁸ L 135-2, deuxième phrase, CPI : « Ils mentionnent le nom des titulaires de droits identifiés, respectent le droit moral de ces derniers et communiquent les informations prévues au 2° de l'article L. 135-3 ou à l'article L. 135-4. ».

⁴⁰⁹ L 135-6 CPI : « Lorsqu'un titulaire de droits sur une oeuvre orpheline justifie de ses droits auprès d'un organisme mentionné à l'article L. 135-3, ce dernier ne peut poursuivre l'utilisation de l'oeuvre qu'avec l'autorisation du titulaire de droits.

L'organisme verse au titulaire de droits une compensation équitable du préjudice que celui-ci a subi du fait de cette utilisation. Cette compensation est fixée par accord entre l'organisme et le titulaire de droits. Elle peut tenir compte, lorsqu'ils existent, des accords ou tarifs en vigueur dans les secteurs professionnels concernés.

Le titulaire de droits peut se faire connaître à tout moment, nonobstant toute stipulation contraire.

L'organisme auprès duquel le titulaire de droits justifie de ses droits informe sans délai le ministre chargé de la culture, ou l'organisme désigné à cette fin par celui-ci, qui transmet cette information à l'Office de l'harmonisation dans le marché intérieur mentionné au 2° de l'article L. 135-3 ».

XI. CROATIA

XI.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

XI.1.1. Constitution

Protection of intellectual property has been a constitutional norm since the beginning of modern Republic of Croatia (the then Article 68 of the 1990 Constitution). It has remained the same after few constitutional changes, and it exists today under heading "Protection of Human Rights and Fundamental Freedoms", within the Constitution's Chapter 3 "Economic, social and cultural rights", in the fourth paragraph of Article 69 reading:

*The protection of moral and material rights deriving from scientific, cultural, artistic, intellectual and other creative efforts shall be guaranteed.*⁴¹⁰

XI.1.2. Copyright law

First Copyright Act of the Republic of Croatia dates back to June 1991 when SFRY 1978 Copyright Act was taken over and, as such, made part of Croatian legal order. After several amendments, new Copyright and Related Rights Act (CRRRA) was adopted in 2003 (NN 167/2003), and the same, subsequently amended, is still in force, with all the relevant EU *acquis communautaire* implemented (directives 93/83/EEC, 96/9/EC, 2001/29/EC, 2001/84/EC, 2004/48/EC, 2006/123/EC, 2006/115/EC, 2006/116/EC, 2009/24/EC, 2011/77/EU, 2012/28/EU and 2014/26/EU).

XI.1.3. Organisation

Competent institution in the Republic of Croatia for dealing with intellectual property matters is State Intellectual Property Office (SIPO), established on 31 December 1991 (as Republic Industrial Property Office). SIPO is competent for industrial property protection, copyright and related rights, information and education activities in the relevant fields, as well as for international cooperation.

XI.2. COPYRIGHT

XI.2.1. Definition and content

The CRRRA does not really contain a standard definition of copyright, but only a longer version of the term in its Article 1(1):

This Act regulates:

1. *copyright - rights of authors in respect of their works in the literary, scientific and artistic domains;*⁴¹¹

As related rights to copyright, the CRRRA lists the following:

- performer's rights in respect of their performances;
- rights of producers of phonograms in respect of their phonograms;
- film producer's rights (producers of videograms) in respect of their videograms;

⁴¹⁰ Članak 69: "Jamči se zaštita moralnih i materijalnih prava koja proistječu iz znanstvenoga, kulturnog, umjetničkog, intelektualnog i drugog stvaralaštva."

⁴¹¹ Članak 1. stavak 1.: "Ovaj Zakon uređuje:

1. *autorsko pravo - pravo autora na njihovim djelima iz književnog, znanstvenog i umjetničkog života,*"

- broadcasting organizations' rights in respect of their broadcasts;
- publishers' rights in respect of their publications;
- rights of producers of databases in respect of their databases.

The content of the copyright is further elaborated in Article 13:

- (1) *Copyright shall include moral rights, economic rights and other rights of authors.*
- (2) *Copyright shall protect personal and intellectual ties of the author with his work (moral rights of the author), economic interests of the author in respect of his copyright work (economic rights of the author) and other interests of the author in respect of his work (other rights of the author).*
- (3) *The author is entitled to remuneration for each use of his work, unless otherwise provided for by this Act or by a contract.*⁴¹²

XI.2.1.1 Moral rights

The author's moral rights are regulated by Articles 14 to 17 of the CRRA and they include the right of first disclosure, the right of recognition of authorship, the right of respect for the work and honour or reputation of the author and the right of revocation.

XI.2.1.2 Economic rights

The author's economic rights grant him the exclusive right to do whatever he likes with his copyright work and the benefits deriving from it, and to exclude any other person from it, unless otherwise provided for by the law. That right includes right of reproduction (right of multiplication), right of distribution (right to put into circulation), right of communication of the work to the public and the right of alteration (Article 18)⁴¹³. Articles 19 to 31 of the CRRA regulate those rights in more detail.

XI.2.1.3 Other rights

Other rights of the author, regulated by Articles 32 to 40 of the CRRA, are right to remuneration, resale right, as well as right of access to the work and right to prohibit public exhibitions of the work.

XI.2.2. Author

By definition provided in Article 9(1) of the CRRA: *The author of the work is a natural person who has created the work.*⁴¹⁴ The CRRA regulates also the authors of compound works (Article 10) and co-authors (Article 11).

⁴⁵ Članak 13:

- "(1) Autorsko pravo sadržava moralna prava autora, imovinska prava autora i druga prava autora.*
- (2) Autorskim pravom štite se osobne i duhovne veze autora s njegovim autorskim djelom (moralna prava autora), imovinski interesi autora u pogledu njegovoga autorskog djela (imovinska prava autora) i ostali interesi autora u pogledu njegovoga autorskog djela (druga prava autora).*
- (3) Za svako korištenje autorskog djela autoru pripada naknada, ako ovim Zakonom ili ugovorom nije drukčije određeno."*

⁴¹³ Članak 18: *"Autor ima isključivo pravo sa svojim autorskim djelom i koristima od njega činiti što ga je volja, te svakoga drugog od toga isključiti, ako zakonom nije drukčije određeno. To pravo obuhvaća, osobito:*

- pravo reproduciranja (pravo umnožavanja),*
- pravo distribucije (pravo stavljanja u promet),*
- pravo priopćavanja autorskog djela javnosti,*
- pravo prerade."*

⁴¹⁴ Članak 9. stavak 1.: *"Autor djela je fizička osoba koja je autorsko djelo stvorila."*

XI.2.3. Protected works

Article 5 of the CRRRA regulates copyright work in detail:

- (1) A copyright work shall be an original intellectual creation in the literary, scientific and artistic domain, having an individual character, irrespective of the manner and form of its expression, its type, value or purpose, unless otherwise provided for in this Act.*
- (2) Copyright works shall be in particular:*
 - *works of language (written works, oral works, and computer programs);*
 - *musical works with or without words;*
 - *dramatic or dramatico-musical works;*
 - *choreographic works and works of pantomime;*
 - *works of visual art (in the field of painting, sculpture, and graphics), irrespective of the material they are made of, and other works of visual arts;*
 - *works of architecture;*
 - *works of applied art and industrial design;*
 - *photographic works and works produced by a process similar to photography;*
 - *audiovisual works (cinematographic works, and works created in a manner similar to cinematographic creation);*
 - *cartographic works;*
 - *presentations of a scientific or technical nature such as drawings, plans, sketches, tables, etc.*
- (3) The subject matter of copyright may be any copyright work, except the one, which cannot be such work by its nature, and the one for which the provisions of this Act provide that it cannot be the subject matter of copyright.*
- (4) The subject matter of copyright is the work as a whole, including an unfinished work, the title of a work, and the parts thereof that fulfil the pre-conditions set out in paragraph (1) of this Article.*
- (5) The title of the work, which does not fulfil the pre-conditions for being the subject matter of copyright, and which has already been used for a certain work, shall not be used for the same kind of work, if such title is likely to create confusion as to the author of the work.⁴¹⁵*

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Članak 5:

“(1) Autorsko djelo je originalna intelektualna tvorevina iz književnoga, znanstvenog i umjetničkog područja koja ima individualni karakter, bez obzira na način i oblik izražavanja, vrstu, vrijednost ili namjenu ako ovim Zakonom nije drukčije određeno.

(2) Autorska djela jesu osobito:

- *jezična djela (pisana djela, govorna djela, računalni programi),*
- *glazbena djela, s riječima ili bez riječi,*
- *dramska i dramsko-glazbena djela,*
- *koreografska i pantomimska djela,*

Alterations are protected as independent work (Article 6) and collections and databases are protected as such (Article 7).

Article 8 of the CRR regulates unprotected creations:

- (1) The subject matter of copyright shall include expressions and not ideas, procedures, methods of operation or mathematical concepts as such.*
- (2) The subject matter of copyright shall not include:*
 - 1. discoveries, official texts in the domain of legislation, administration, judiciary (acts, regulations, decisions, reports, minutes, judgments, standards, and the like) and other official works and their collections, disclosed for the purpose of officially informing the public;*
 - 2. news of the day and other news, having the character of mere items of press information.*
- (3) Folk literary and artistic creations in their original form shall not be the subject matter of copyright, but their communication to the public is subject to the payment of remuneration, as for the communication to the public of protected copyright works. The remuneration shall be the revenue of the budget, and shall be used for improving the creativity in the field concerned.⁴¹⁶*

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- djela likovne umjetnosti (s područja slikarstva, kiparstva i grafike), bez obzira na materijal od kojega su načinjena, te ostala djela likovnih umjetnosti,*
 - djela arhitekture,*
 - djela primijenjenih umjetnosti i industrijskog dizajna,*
 - fotografska djela i djela proizvedena postupkom sličnim fotografskom,*
 - audiovizualna djela (kinematografska djela i djela stvorena na način sličan kinematografskom stvaranju),*
 - kartografska djela,*
 - prikazi znanstvene ili tehničke prirode kao što su crteži, planovi skice, tablice i dr.*
- (3) Predmet autorskog prava može biti svako autorsko djelo osim onoga koje to ne može biti po svojoj naravi kao i onog za koje je odredbama ovoga Zakona određeno da ne može biti predmetom autorskog prava.*
 - (4) Predmet autorskog prava je autorsko djelo u cjelini, uključujući i nedovršeno autorsko djelo, naslov te dijelovi autorskog djela koji udovoljavaju pretpostavkama iz stavka 1. ovoga članka.*
 - (5) Naslov autorskog djela koji ne udovoljava pretpostavkama da bi bio predmet autorskog prava, a koji je već korišten za neko autorsko djelo, ne može se koristiti za djelo iste vrste ako bi mogao izazvati zabunu o autoru.”*

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Članak 8:

“(1) Predmetom autorskog prava su izražaji, a ne ideje, postupci, metode rada ili matematički koncepti kao takvi.

(2) Nisu predmetom autorskog prava:

- 1. otkrića, službeni tekstovi iz područja zakonodavstva, uprave i sudstva (zakoni, uredbe, odluke, izvješća, zapisnici, sudske odluke i sl.) i druga službena djela, kao i njihove zbirke, koja su objavljena radi službenog informiranja javnosti,*
 - 2. dnevne novosti i druge vijesti koje imaju karakter običnih medijskih informacija.*
- (3) Narodne književne i umjetničke tvorevine u izvornom obliku nisu predmetom autorskog prava, ali se za njihovo priopćavanje javnosti plaća naknada kao za priopćavanje javnosti zaštićenih autorskih djela. Naknada se koristi za poticanje odgovarajućeg umjetničkog i kulturnog stvaralaštva pretežno nekomercijalne naravi i kulturne raznolikosti u odgovarajućem umjetničkom i kulturnom području sukladno članku 167.a stavku 1. ovoga Zakona.”*

XI.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Chapter 6 of the CRRA (Articles 80 to 98) regulates the content wise limitations of copyright, transposing almost all of the cases of exceptions or limitations to the reproduction right offered as a possibility by Directive 2001/29/EC, and that on orphan work regulated by Directive 2012/28/EU.

Directive 2001/29/EC	Copyright and Related Rights Act
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Art. 81</p> <p>Temporary acts of reproduction of the copyright work, which are transient or incidental, and constitute an integral and essential part of a technological process, whose sole purpose is to enable a transmission in a network between third parties by an intermediary, or authorized use of the work, and which have no independent economic significance, shall be excluded from the exclusive right of reproduction referred to in Article 19, paragraph (1) of this Act. The provisions of this Article shall not affect the provisions of Article 97 of this Act.</p>
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p>	
<p>(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;</p>	<p>Art. 82</p> <p>Partially transposed in Article 82, with additional limitations:</p> <p>A natural person may reproduce a copyright work in any medium if he does so for private use, or in the form of photocopying and other personal use if this copy is not intended for or accessible to the public and has no direct or indirect commercial purpose. It shall not be permitted to reproduce the whole book, unless the copies of such book have been sold out for at least two years, graphic editions of musical works (hereinafter: sheet music), electronic databases, cartographic works, nor the building of architectural structures, unless otherwise provided by this Act or a contract.⁴¹⁷</p>
<p>(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;</p>	
<p>(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;</p>	<p>Art. 84</p> <p>Public archives, public libraries, educational and scientific institutions, preschool educational institutions and social (charitable) institutions</p>

⁴¹⁷ Članak 82.: „Fizička osoba može reproducirati autorsko djelo na bilo koju podlogu ako to čini za privatno korištenje, kao i reproducirati autorsko djelo u obliku fotokopije i za drugo vlastito korištenje, koje nema izravno ili neizravno komercijalnu svrhu i nije namijenjeno ili pristupačno javnosti. Nije dopušteno reproduciranje cijele knjige osim ako su primjerci te knjige rasprodani najmanje dvije godine, grafičkih izdanja glazbenih djela (u daljnjem tekstu: notni materijal), elektroničkih baza podataka, kartografskih djela kao ni izgradnja arhitektonskog objekta, ako ovim Zakonom ili ugovorom nije drukčije određeno.

Directive 2001/29/EC	Copyright and Related Rights Act
Text	Text
	pursuing non-commercial purposes may reproduce the work from their own copy to any media in not more than one copy. ⁴¹⁸
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Art. 83 (1) Broadcasting organization, which has the authorization to broadcast a work, may record it on audio, video or text fixation mediums, by means of its own facilities and for its own needs (ephemeral recordings). (2) Broadcasting organization is obliged to destroy its ephemeral recordings referred to in paragraph (1) of this Article, at the latest one month after such a broadcast, or deposit them in its own or public official archive, where such recordings have particular documentary value. (3) Ephemeral recordings that are deposited in accordance with paragraph (2) of this Article, may not be rebroadcast without the authorization of the right holder. ⁴¹⁹
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	See above: Article 84.
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(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;	Art. 88 It shall be permitted to publicly perform a work or to present it at stage in the form of direct teaching or at school events, to the extent justified by the educational purpose thereof to be achieved by such communication, where the works are not used for direct or indirect economic or commercial benefit by the educational institution, the

⁴¹⁸ Članak 84.: „Javni arhivi, javne knjižnice, muzeji i druge pravne osobe koje obavljaju muzejsku djelatnost, obrazovne i znanstvene ustanove, ustanove za predškolski odgoj i socijalne (karitativne) ustanove mogu iz vlastitog primjerka reproducirati autorsko djelo na bilo koju podlogu za potrebe očuvanja i osiguranja građe, tehničke obnove i popravljivanja građe, upravljanja zbirkom i ostale vlastite potrebe, ako pri tome ne ostvaruju izravnu ili neizravnu komercijalnu korist.”

⁴¹⁹ Članak 83.:

„(1) Organizacija za radiodifuziju koja ima odobrenje za emitiranje autorskog djela može snimiti to djelo vlastitim sredstvima na nosač zvuka, slike ili teksta za potrebe vlastitog emitiranja (efemerne snimke).

(2) Organizacija za radiodifuziju dužna je efemerne snimke iz stavka 1. ovoga članka najkasnije u roku od mjesec dana od dana emitiranja uništiti, ili ih pohraniti u vlastitom ili u javnom službenom arhivu ako te snimke imaju posebnu dokumentarnu vrijednost.

(3) Efemerne snimke, koje su u skladu s odredbama iz stavka 2. ovoga članka pohranjene, ne mogu se ponovno emitirati bez odobrenja nositelja prava.”

Directive 2001/29/EC	Copyright and Related Rights Act
Text	Text
	organizers or third persons, where the performers receive no payment (remuneration) for their performance and where the tickets are free of charge. ⁴²⁰
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Art. 86 The use of copyright works for the benefit of people with a disability shall be permitted where the work is used in a manner directly related to the disability of such people to the extent required by the specific disability, and where such use is of a non-commercial nature. ⁴²¹
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	Art. 89 (1) It shall be permitted, to the extent necessary for informing the public on current events by press, radio or television, to reproduce, to distribute and to communicate to the public: 1. works that are part of current event that is being reported on, provided that the work is used to the extent justified by the purpose and manner of reporting on current events; 2. newspapers' articles on and photographs of current political, economical or religious topics, which are released through other media of public communication, provided that the author has not expressly prohibited such use, and that the work is used to the extent justified by the purpose and manner of reporting; 3. public political, religious or other speeches made at state or local governmental bodies, religious institutions or at state or religious ceremonies, as well as excerpts from public presentations; (2) In all the cases referred to in paragraph (1) of this Article, the source and authorship shall be indicated. ⁴²²

⁴²⁰ Članak 88.: „Dopušteno je javno izvođenje ili scensko prikazivanje autorskih djela u obliku izravnog poučavanja na nastavi, ili na priredbama koje su vezane uz nastavu, u opsegu opravdanom obrazovnom svrhom koja se želi postići takvim priopćavanjem, ako se autorsko djelo ne koristi radi ostvarivanja izravne ili neizravne imovinske ili komercijalne koristi za obrazovnu ustanovu, organizatora ili treće osobe, ako izvođači ne primaju naknadu za izvođenje autorskih djela, te ako se ne naplaćuju ulaznice.”

⁴²¹ Članak 86.: „Za potrebe osoba s invalidnošću dopušteno je korištenje autorskih djela na način koji je u izravnoj vezi s invalidnošću tih osoba i koje je nekomercijalne naravi, a u opsegu potrebnom za odnosnu invalidnost.”

⁴²² Članak 89.:

„(1) Dopušteno je, u opsegu potrebnom za izvješćivanje javnosti o tekućim događajima putem tiska, radija ili televizije, reproduciranje, distribuiranje te priopćavanje javnosti:

1. autorskih djela koja se pojavljuju kao sastavni dio tekućeg događaja o kojem se javnost izvješćuje, pod uvjetom da se autorsko djelo koristi u opsegu koji odgovara svrsi i načinu izvješćivanja o tekućem događaju,

Directive 2001/29/EC	Copyright and Related Rights Act
Text	Text
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Art. 90 It shall be permitted to make quotations of excerpts from a copyright work, which has already been lawfully made available to the public for purposes of scientific research, teaching, criticism, polemics, revision, review to the extent justified by the purpose to be achieved and in accordance with fair practice, provided that the source and the name of the author are indicated. ⁴²³
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	–
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Art. 89(1)3 See above: point 3 of Article 89(1)
(g) use during religious celebrations or official celebrations organised by a public authority;	Art. 89(1)3 See above: point 3 of Article 89(1)
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Art. 91 (1) It shall be permitted to reproduce the works, which are permanently located on streets, squares, parks or other places that are accessible to the public, and to distribute and communicate to the public such reproductions. (2) The works referred to in paragraph (1) of this Article may not be reproduced in a three-dimensional form. (3) The source and authorship shall be indicated on the copies referred to in paragraph (1) of this Article, unless such indication is not possible. ⁴²⁴

2. novinskih članaka i fotografija o tekućim političkim, gospodarskim ili vjerskim pitanjima, koji su objavljeni u drugim sredstvima javnog priopćavanja, pod uvjetom da autor to nije izričito zabranio i da se autorsko djelo koristi u opsegu koji odgovara svrsi i načinu izvješćivanja,

3. javnih političkih, vjerskih i drugih govora održanih u tijelima državne ili lokalne vlasti, vjerskim ustanovama ili prilikom državnih ili vjerskih svečanosti te izvadaka iz javnih predavanja.

(2) U svim slučajevima iz stavka 1. ovoga članka potrebno je navesti izvor i autorstvo djela.”

⁴²³ Članak 90.: „Dopušteno je doslovno navođenje ulomaka autorskog djela (citata) koje je na zakonit način postalo pristupačno javnosti, radi znanstvenog istraživanja, nastave, kritike, polemike, recenzije, osvrta, u mjeri opravdanoj svrhom koja se želi postići i u skladu s dobrim običajima, time da se mora naznačiti izvor i ime autora.”

⁴²⁴ Članak 91.:

„(1) Dopušteno je reproduciranje autorskih djela koja su trajno smještena na ulicama, trgovima, parkovima ili drugim mjestima pristupačnim javnosti te distribuiranje i priopćavanje javnosti takvih reprodukcija.

(2) Djela iz stavka 1. ovoga članka ne smiju se reproducirati u trodimenzionalnom obliku.

Directive 2001/29/EC	Copyright and Related Rights Act
Text	Text
(i) incidental inclusion of a work or other subject-matter in other material;	–
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Art. 93 (1) To organizers of public exhibitions or auctions it shall be permitted, for the purpose of promoting and to the extent necessary for such purpose, to reproduce on posters and in catalogues for such exhibitions or auctions, and to distribute by means of such posters and catalogues the works of visual arts, architecture, applied art, industrial designs and photographic works, which are displayed at a public exhibition or auction or are intended for such display. (2) In the catalogues referred to in paragraph (1) of this Article, the source and authorship shall be indicated. ⁴²⁵
(k) use for the purpose of caricature, parody or pastiche;	Art. 94 It shall be permitted to transform the work into a parody or caricature to the extent necessary for the purpose thereof, by indicating the work being transformed and its author. ⁴²⁶
(l) use in connection with the demonstration or repair of equipment;	Art. 95 Shops which sell phonograms or videograms, or equipment for audio and video reproduction or reception, shall be allowed to record the works on audio, video or text fixation mediums, to communicate the works from such mediums, as well as to communicate the broadcast works, to the extent necessary for presenting to direct buyers or for testing the functioning of phonograms or films or for the repair thereof. ⁴²⁷

(3) Na primjercima djela iz stavka 1. ovoga članka potrebno je navesti izvor i autorstvo djela, osim ako to nije moguće.”

⁴²⁵ Članak 93.:

„(1) Organizatorima javnih izložbi ili aukcija dopušteno je, u svrhu njihova promoviranja i u opsegu potrebnom za tu svrhu, reproduciranje, na plakatima i u katalozima za te izložbe ili aukcije, i distribuiranje putem tih plakata i kataloga, djela likovnih umjetnosti, arhitekture, primijenjenih umjetnosti, industrijskog dizajna te fotografskih djela koja su izložena na javnoj izložbi ili aukciji ili namijenjena takvom izlaganju.

(2) U katalozima iz stavka 1. ovoga članka potrebno je navesti izvor i autorstvo djela.”

⁴²⁶ Članak 94.: „Dopuštena je prerada autorskog djela u parodiju u mjeri koja je potrebna za njen smisao, kao i karikaturu, a uz navođenje djela koje se prerađuje i njegovog autora.”

⁴²⁷ Članak 95.: „Trgovinama koje prodaju fonograme ili videograme ili uređaje za reproduciranje ili za prijam zvuka ili slike, dopušteno je snimanje autorskog djela na nosače zvuka, slike ili teksta, priopćavanje autorskog djela s tih nosača, kao i priopćavanje autorskog djela koja se radiodifuzijski emitiraju, u opsegu potrebnom za upoznavanje ili iskušavanje rada tih zvučnih snimaka ili filmova ili uređaja neposrednim kupcima ili za njihov popravak.”

Directive 2001/29/EC	Copyright and Related Rights Act
Text	Text
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Art. 91 - 92 See above: Article 91 Article 92: The provisions referred to in Article 91, paragraph (1) of this Act shall apply only in respect of outer appearance of the architectural structure. ⁴²⁸
(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;	–
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	Art. 85, 88 Two additional cases of exceptions: Article 85 (1) It shall be permitted to reproduce on paper or any similar medium and distribute particular portions (parts) of lawfully disclosed works, or integral short works from the domain of science, literature and music, as well as disclosed individual works of visual arts, architecture, applied arts and industrial design, photographic or cartographic works, and presentations of scientific or technical nature, in the form of a collection which contains contributions of several authors, and which is, by its contents, and systematisation exclusively intended for teaching or scientific research, as long as the source is indicated, unless the author expressly prohibits it. Reproduction and distribution of particular parts of copyright works shall not be considered as infringement referred to in Article 16 of this Act, unless the disclosure of particular part would jeopardize the honour or reputation of the author. (2) The authors of the works included in the collection referred to in paragraph (1) of this Article, are entitled to an equitable remuneration for the reproduction and distribution of their works. ⁴²⁹

⁴²⁸ Članak 92.: „Odredbe članka 91. stavka 1. ovoga Zakona primjenjuju se samo u pogledu vanjskog izgleda arhitektonskog objekta.”

⁴²⁹ Članak 85.:

„(1) Dopušteno je reproduciranje na papir ili sličan medij i distribuiranje pojedinih odlomaka zakonito objavljenih autorskih djela ili cjelovitih kratkih autorskih djela s područja znanosti, književnosti i glazbe, kao i pojedinačnih objavljenih autorskih djela s područja likovnih umjetnosti, arhitekture, primijenjenih umjetnosti i industrijskog dizajna, fotografskih ili kartografskih djela te prikaza znanstvene ili tehničke prirode, u obliku

Directive 2001/29/EC	Copyright and Related Rights Act
Text	Text
	<p>Article 88</p> <p>(1) It shall be permitted to reproduce copyright works for the use in judicial, administrative and, except for collections, in arbitration or other official proceedings.</p> <p>(2) The provisions of paragraph (1) of this Article shall apply mutatis mutandis to communication to the public of copies of the works, which are made for the purpose of official proceedings.⁴³⁰</p>
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	In the cases of use regulated in Articles 89, 91 and 93 there is also the right of distribution.
5(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.	<p>Art. 80</p> <p>Disclosed copyright work may be used without the author's authorization, or without the author's authorization and without payment of remuneration, only in the cases which are expressly stipulated in this Act. The provisions concerning the limitations referred to in this Chapter cover only such uses of a copyright work which do not conflict with regular use of the work and do not unreasonably prejudice the legitimate interests of the author.⁴³¹</p>

Directive 2012/28	Copyright and Related Rights Act
Text	Text
6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for	Art. 84a(1)

zbirke koja sadržava priloge više autora i koja je po svojem sadržaju i sistematizaciji isključivo namijenjena nastavi ili znanstvenom istraživanju uz navođenje izvora, osim ako to autor izričito ne zabrani. Reproduciranje i distribuiranje pojedinih dijelova autorskih djela ne smatra se povredom prava iz članka 16. ovoga Zakona osim ako bi se objavljivanjem pojedinih dijelova ugrozili čast ili ugled autora.

(2) Autori djela sadržanih u zbirci iz stavka 1. ovoga članka imaju pravo na primjerenu naknadu za reproduciranje i distribuiranje njihovih autorskih djela.”

⁴³⁰ Članak 87.:

„(1) Dopušteno je reproduciranje autorskih djela radi korištenja u sudskim, i upravnim postupcima, kao i, izuzevši zbirke, arbitražnim i drugim službenim postupcima.

(2) Odredbe iz stavka 1. ovoga članka na odgovarajući način primjenjuju se i na priopćavanje javnosti primjeraka autorskih djela izrađenih za potrebe službenih postupaka.”

⁴³¹ Članak 80.: „Objavljenim autorskim djelom može se koristiti bez autorovog odobrenja ili bez autorovog odobrenja i bez plaćanja naknade, samo u slučajevima koji su u ovom Zakonu izričito navedeni. Odredbe o ograničenjima iz ovoga poglavlja pokrivaju samo takvo korištenje autorskog djela koje se ne suprotstavlja redovitom korištenju autorskog djela i neopravdano ne šteti zakonitim interesima nositelja prava.”

Directive 2012/28	Copyright and Related Rights Act
Text	
<p>respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>(1) Publicly accessible libraries, educational establishments or museums and other legal persons carrying out the museum activity, as well as archives, film or audio heritage institutions and public-service broadcasting organizations established in the Republic of Croatia may reproduce orphan works which are contained in their collections for the purposes of digitization, making them available to the public, indexing, cataloguing, preservation or restoration and may then make available to the public. The mentioned institutions may perform the acts of reproduction and making available to the public only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of and the provision of cultural and educational access to, orphan works contained in their collections. The institutions may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitizing orphan works and making them available to the public. The above mentioned shall not affect the freedom of contract of such institutions in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.⁴³²</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>Art. 84a(2)</p> <p>(2) In any use of an orphan work, the institutions referred to in paragraph (1) of this Article shall indicate in the usual manner the identified author and co-authors of such works, respectively.⁴³³</p>
<p>6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.</p>	
<p>6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.</p>	
<p>6(5): Member States shall provide that a fair compensation is due to rightholders that put an</p>	<p>Art. 84a(3), (4)</p>

⁴³² Članak 84.a stavak 1.: „(1) Javno dostupne knjižnice, obrazovne ustanove ili muzeji i druge pravne osobe koje obavljaju muzejsku djelatnost, kao i arhivi, ustanove za filmsku i audiobaštinu te javne organizacije za radiodifuziju osnovane u Republici Hrvatskoj mogu reproducirati djela siročad koja su sadržana u njihovim zbirkama u svrhu digitalizacije, stavljanja na raspolaganje javnosti, indeksiranja, katalogiziranja, očuvanja ili obnove te ih mogu stavljati na raspolaganje javnosti. Radnje reproduciranja i stavljanja na raspolaganje javnosti navedene institucije mogu poduzimati samo radi postizanja ciljeva vezanih uz njihove zadaće od javnog interesa, posebno radi očuvanja i obnavljanja djela siročadi koja čine sastavni dio njihovih zbirki te osiguravanja njihove dostupnosti za kulturne i obrazovne potrebe. Institucije mogu od takvih korištenja ostvarivati prihode, isključivo u svrhu pokrivanja svojih troškova u svezi s digitalizacijom i stavljanjem na raspolaganje javnosti djela siročadi. Navedeno ne utječe na pravo institucija na slobodu ugovaranja u okviru provedbe svojih zadaća od javnog interesa, posebno u pogledu sklapanja sporazuma o javno-privatnom partnerstvu.”

⁴³³ Članak 84.a stavak 2.: „(2) Prigodom svakog korištenja djela siročadi institucije iz stavka 1. ovoga članka dužne su na uobičajen način navesti autora odnosno koautore tih djela koji su identificirani.”

Directive 2012/28	Copyright and Related Rights Act
Text	
<p>end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.</p>	<p>(3) An author or a co-author that put an end to the orphan work status in accordance with Article 12a paragraph (6) of this Act shall have a right to a fair compensation for the use that has been made of his work according to paragraph (1) of this Article. The compensation shall be paid by the institution referred to in paragraph (1) of this Article that used the work. The amount of the compensation shall be determined according to the category of orphan works, taking into account, among other things, the aims of the Republic of Croatia in the field of cultural promotion, the non-commercial nature of the use made by the institution referred to in paragraph (1) of this Article in order to achieve aims related to their public-interest missions, such as promoting learning and disseminating culture, as well as possible harm incurred to authors. The fair compensation shall be paid retroactively, for not more than three years, counting from the day of putting an end to the orphan work status.</p> <p>(4) A request for the payment of a fair compensation may be filed by the author or the respective collective rights management association, authorized by the author for filing such a request. A request for the payment of a fair compensation shall be subject to the statute of limitations, counting from the day of putting an end to the orphan work status.⁴³⁴</p>

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⁴³⁴

Članak 84.a stavci 3. i 4.:

„(3) Autor ili koautor koji ukine status djela siročeta u skladu s člankom 12.a stavkom 6. ovoga Zakona ima pravo na pravičnu naknadu za dotadašnje korištenje svojeg djela prema stavku 1. ovoga članka. Naknadu je dužna isplatiti institucija iz stavka 1. ovoga članka koja je koristila djelo. Visina naknade određuje se s obzirom na kategoriju djela siročadi, uzimajući u obzir, među ostalim, ciljeve Republike Hrvatske u području promicanja kulture, nekomercijalnu narav korištenja koje poduzima institucija iz stavka 1. ovoga članka i kojim se ostvaruju ciljevi vezani uz njihove zadaće od javnog interesa kao što su promicanje učenja i širenje kulture, te moguću štetu koju su pretrpjeli autori. Pravična naknada isplaćuje se za najviše tri godine unatrag, računajući od dana ukidanja statusa djela siročeta.

(4) Zahtjev za isplatom pravične naknade može postaviti autor ili odgovarajuća udruga za kolektivno ostvarivanje prava koju je autor ovlastio na podnošenje takvog zahtjeva. Zahtjev za isplatom pravične naknade zastarijeva u roku od godine dana, računajući od dana ukidanja statusa djela siročeta.”

XII. ITALY

XII.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

XII.1.1. Constitution

The Italian Constitution lacks an explicit reference to copyright protection. However, copyright protection may be inferred from several general principles enshrined in the Italian Constitution. First, while recognising and guaranteeing the inviolable rights of the person (Article 2 of the Italian Constitution), the Constitution urges each Italian citizen, in line with their individual choices, to perform an activity or a function contributing to the material or spiritual progress of society (Article 4 of the Italian Constitution). Italy, moreover, promotes the development of culture and scientific and technical research (Article 9 of the Italian Constitution). The participation to social life of the authors of copyrighted works takes place through their creative activity and through the dissemination of the works themselves. No control can be carried out over the content of the creation, in compliance with the freedom of expression principle (Article 21 of the Italian Constitution) and with the freedom of the arts and sciences (Article 33 of the Italian Constitution). The constitutional basis of the proprietary aspect of copyright lies in the protection of creative work *in all its forms and practices* (Article 35(1) of the Italian Constitution).

Finally, it should be highlighted that, according to Article 42 of the Italian Constitution, *private property is recognised and guaranteed by the law, which prescribes the ways in which it is acquired, enjoyed as well as its limitations, therefore ensuring its social function and making it accessible to all*.

XII.1.2. Copyright law

As far as Italy is concerned, copyright law is enshrined in Title IX (Articles 2575-2583) of Volume V of the Italian Civil Code ("Dei diritti sulle opere dell'ingegno e sulle invenzioni industriali") as well as in Law No 633 of 1941 for the Protection of Copyright and Neighbouring Rights.⁴³⁵

Directive 2014/26/EU has been transposed into the Italian legal system (well after the relevant deadline expired) by Legislative Decree No 35 of 2017.

XII.2. COPYRIGHT

XII.2.1. Definition and content

According to Article 2575 of the Italian Civil Code:

*The object of the author's right is an intellectual work of a creative nature that belongs to the sciences, literature, music, figurative art, architecture, theatre, and cinematography, regardless of the style or form of expression.*⁴³⁶

The definition appears also in Article 1 of Law No 633/1941.

⁴³⁵ Pursuant to Article 5 of Law No 633/1941, "The provisions of this Law shall not apply to the texts of official acts of the State or of public administrations, whether Italian or foreign". An English translation of the most relevant Italian copyright laws is available at: <http://www.wipo.int/wipolex/en/>. The text of the provisions of Law No 633/1941 amended by Legislative Decree No 163/2014 have been freely translated by the author.

⁴³⁶ "Formano oggetto del diritto di autore le opere dell'ingegno di carattere creativo che appartengono alle scienze, alla letteratura, alla musica, alle arti figurative, all'architettura, al teatro e alla cinematografia qualunque ne sia il modo o la forma di espressione."

According to widely accepted doctrine, four specific preconditions need to be met in order for a work to be protected. These preconditions, whose main function is to ensure a fair balance between the individual right to be creative and the minimum standards that need to be met for a legal protection of that right to be granted, are the following:

- a) a particular degree of creativity;
- b) novelty;
- c) the work's objectification or externalization;
- d) the work's affiliation to art or culture.

Article 2580 of the Italian Civil Code states that the copyrights belong to the author and the author's heirs, within the limits and for the purposes set out by special laws (Art. 2580). The copyrights include moral and economic rights.

XII.2.1.1 Moral rights

Moral rights are recognized by Section II of Law No 633 of 1941. They are not subject to deadlines or expiration dates. In fact they are eternal, non-transferable and inalienable. The provisions under the above-mentioned Section II aim at guaranteeing indefinitely to each author the recognition of the paternity over his or her intellectual creation. Moreover, if a transfer of the economic rights occurs, the author retains the right to claim authorship and to oppose to any mutilation of the work or any act that would be prejudicial to his/her honor or reputation.

XII.2.1.2 Economic rights

The author and the author's heirs have the exclusive right to publish the work, and to reproduce it within the limits set out by the law and for the purposes laid down therein. The author also has the exclusive right to authorise the rental or the lending of the work.

Indeed, Article 12 of Law No 633/1941 provides that: *12. An author shall have the exclusive right to publish his work. He shall also have the exclusive right to exploit his work in any form or manner, whether original or derivative, within the limits laid down by this Law, particularly the exercise of the exclusive rights set out in the following Articles. The first form of exercise of the right of exploitation shall be deemed to constitute first publication.*⁴³⁷ Article 13 further clarifies that *the exclusive right of reproduction concerns the multiplication of copies of a work, whether direct or indirect, temporary or permanent, in whole or in part, by any means or form, such as copying by hand, printing, lithography, engraving, photography, phonography, cinematography, and any other process of reproduction.*⁴³⁸

Certain categories of works, e.g. movies or operas, are subject to special exploitation rights, meaning that profit is shared among the authors in proportion to the estimated value of their contribution.

⁴³⁷ Art. 12. "L'autore ha il diritto esclusivo di pubblicare l'opera. Ha altresì il diritto esclusivo di utilizzare economicamente l'opera in ogni forma e modo originale, o derivato, nei limiti fissati da questa legge, ed in particolare con l'esercizio dei diritti esclusivi indicati negli articoli seguenti. È considerata come prima pubblicazione la prima forma di esercizio del diritto di utilizzazione."

⁴³⁸ Art. 13. "Il diritto esclusivo di riprodurre ha per oggetto la moltiplicazione in copie diretta o indiretta, temporanea o permanente, in tutto o in parte dell'opera, in qualunque modo o forma, come la copiatura a mano, la stampa, la litografia, l'incisione, la fotografia, la fonografia, la cinematografia ed ogni altro procedimento di riproduzione."

XII.2.2. Author

Article 2580 of the Italian Civil Code moreover states the general rule according to which the copyrights belong to the author and to the author's heirs. Other provisions can be found in Law No 633/1941, Title I, Chapter II, entitled "Holders of the copyright":

Article 6

Copyright shall be acquired on the creation of a work that constitutes the particular expression of an intellectual effort.

Article 7

In the case of a collective work, the person who organizes and directs its creation shall be deemed the author. A person who has created a derivative work shall be deemed the author of that work within the limits of his own effort.

Article 8

A person who is shown, in the customary manner, as the author, or is announced as such in the course of the recitation, performance or broadcasting of a work shall, in the absence of proof to the contrary, be deemed the author of the work. Any pseudonym, professional name, initials or customary sign, well known as being equivalent to a true name, shall be deemed to have the same value as such true name.

Article 9

Any person who has performed or published in any manner an anonymous or pseudonymous work shall be entitled to assert the rights of the author until such time as the author reveals his identity. This provision shall not apply in the case of pseudonymous as referred to in the second paragraph of the preceding Article.

Article 10

If the work has been created by the indistinguishable and inseparable contributions of two or more persons, the copyright shall belong to all the joint authors in common. In the absence of proof of a written agreement to the contrary, the indivisible shares shall be presumed to be of equal value. The provisions which regulate property owned in common shall be applicable. Furthermore, moral rights may be asserted at any time by any of the authors individually; and the work, if unpublished, may not be published, nor be modified or utilized in a form differing from that of first publication, without the agreement of all the co-authors. However, in the event of unjustified refusal by one or more joint authors, publication, modification or new utilization of the work may be authorized by the judicial authority upon such conditions and terms as that authority may order.

Article 11

Copyright in works created and published under the name and at the expense of the State, the Provinces or the Communes shall belong to them. In the absence of agreement to the contrary with the authors of the works published, the same right shall also belong to private legal entities of a non-profit-making character, as well as to the Academies and other public cultural organisations, in respect of records of their proceedings and their publications.⁴³⁹

⁴³⁹

Art. 6

XII.2.3. Protected works

The work's affiliation to art or culture is further specified by Article 2 of Law No 633/1941, which lists ten categories of protected works:

- 1) *In particular, protection shall extend to:*
 - (1) *literary, dramatic, scientific, didactic and religious works, whether in written or oral form;*
 - (2) *musical works and compositions, with or without words, dramatico-musical works, and musical variations that themselves constitute original works;*
 - (3) *choreographic works and works of dumb show, the form of which is fixed in writing or otherwise;*
 - (4) *works of sculpture, painting, drawing, engraving and similar figurative arts, including scenic art, even where such works are applied to industrial products, if their artistic value is distinct from the industrial character of the product with which they are associated;*
 - (5) *architectural plans and works;*

"Il titolo originario dell'acquisto del diritto di autore è costituito dalla creazione dell'opera, quale particolare espressione del lavoro intellettuale. "

Art. 7

"E' considerato autore dell'opera collettiva chi organizza e dirige la creazione dell'opera stessa.

E' considerato autore delle elaborazioni l'elaboratore, nei limiti del suo lavoro. "

Art. 8

"E' reputato autore dell'opera, salvo prova contraria chi è in essa indicato come tale, nelle forme d'uso, ovvero è annunciato come tale, nella recitazione, esecuzione, rappresentazione e radiodiffusione dell'opera stessa.

Valgono come nome lo pseudonimo, il nome d'arte, la sigla o il segno convenzionale, che siano notoriamente conosciuti come equivalenti al nome vero. "

Art. 9

"Chi abbia rappresentato, eseguito o comunque pubblicato un'opera anonima o pseudonima è ammesso a far valere i diritti dell'autore, finché questi non si sia rivelato.

Questa disposizione non si applica allorché si tratti degli pseudonimi indicati nel secondo comma dell'articolo precedente. "

Art. 10

"Se l'opera è stata creata con il contributo indistinguibile ed inscindibile di più persone, il diritto di autore appartiene in comune a tutti i coautori.

Le parti indivise si presumono di valore uguale, salvo la prova per iscritto di diverso accordo.

Sono applicabili le disposizioni che regolano la comunione. La difesa del diritto morale può peraltro essere sempre esercitata individualmente da ciascun coautore e l'opera non può essere pubblicata, se inedita, né può essere modificata o utilizzata in forma diversa da quella della prima pubblicazione, senza l'accordo di tutti i coautori. Tuttavia, in caso di ingiustificato rifiuto di uno o più coautori, la pubblicazione, la modificazione o la nuova utilizzazione dell'opera può essere autorizzata dall'autorità giudiziaria, alle condizioni e con le modalità da essa stabilite. "

Art. 11

"Alle amministrazioni dello Stato, alle Province ed ai Comuni, spetta il diritto di autore sulle opere create e pubblicate sotto il loro nome ed a loro conto e spese.

Lo stesso diritto spetta agli enti privati che non perseguano scopi di lucro, salvo diverso accordo con gli autori delle opere pubblicate, nonché alle accademie e agli altri enti pubblici culturali sulla raccolta dei loro atti e sulle loro pubblicazioni."

- (6) *works of cinematographic art, whether silent or with sound, provided they are not mere documentaries protected in accordance with the provisions of Chapter V of Part II;*
- (7) *works of photographic art and works expressed with processes analogous to photograph provided they are not simple photographs protected in accordance with the provisions of Chapter V of Part II;*
- (8) *computer programs, in whatever form they are expressed, provided that they are original and result from the author's own intellectual creation. Ideas and principles which underlay any element of a computer program, including those which underlay its interfaces, shall be excluded from the protection afforded by this Law. The term "computer program" shall include their preparatory design materials.*
- (9) *the databases referred to in the second paragraph of Article 1, understood as being collections of works, data or other independent elements systematically or methodically arranged and individually accessible by electronic means or otherwise. The protection of databases shall not extend to their contents and shall be without prejudice to rights existing in those contents.*
- (10) *industrial design works that have creative character or inherent artistic character.*⁴⁴⁰

Pursuant to Article 5 of Law No 633/1941, the provisions of this Law shall not apply to the texts of official acts of the State or of public administrations, whether Italian or foreign.⁴⁴¹

⁴⁴⁰ "In particolare sono comprese nella protezione:

- 1) *le opere letterarie, drammatiche, scientifiche, didattiche, religiose, tanto se in forma scritta quanto se orale;*
- 2) *le opere e le composizioni musicali, con o senza parole, le opere drammatico-musicali e le variazioni musicali costituenti di per sé opera originale;*
- 3) *le opere coreografiche e pantomimiche, delle quali sia fissata la traccia per iscritto o altrimenti;*
- 4) *le opere della scultura, della pittura, dell'arte del disegno, della incisione e delle arti figurative similari, compresa la scenografia;*
- 5) *i disegni e le opere dell'architettura;*
- 6) *le opere dell'arte cinematografica, muta o sonora, sempreché non si tratti di semplice documentazione protetta ai sensi delle norme del Capo V del Titolo II;*
- 7) *le opere fotografiche e quelle espresse con procedimento analogo a quello della fotografia sempre che non si tratti di semplice fotografia protetta ai sensi delle norme del Capo V del Titolo II;*
- 8) *i programmi per elaboratore, in qualsiasi forma espressi purché originali quale risultato di creazione intellettuale dell'autore. Restano esclusi dalla tutela accordata dalla presente legge le idee e i principi che stanno alla base di qualsiasi elemento di un programma, compresi quelli alla base delle sue interfacce. Il termine programma comprende anche il materiale preparatorio per la progettazione del programma stesso.*
- 9) *le banche di dati di cui al secondo comma dell'articolo 1, intese come raccolte di opere, dati o altri elementi indipendenti sistematicamente o metodicamente disposti ed individualmente accessibili mediante mezzi elettronici o in altro modo. La tutela delle banche di dati non si estende al loro contenuto e lascia impregiudicati diritti esistenti su tale contenuto.*
- 10) *Le opere del disegno industriale che presentino di per sé carattere creativo e valore artistico."*

⁴⁴¹ "Le disposizioni di questa legge non si applicano ai testi degli atti ufficiali dello Stato e delle Amministrazioni pubbliche, sia italiane che straniere".

XII.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

With regard to user rights, it is necessary to point out that Italian copyright law does not take “user rights” or “fair use” into account anymore. By contrast, it lays down a general copyright and provides for a number of exceptions to it, along the lines of Directive 2001/29/EC.

These exceptions can be divided in two categories: on the one hand, exceptions which do not require compensation to the author and, on the other hand, those for which a compensation is paid.

Regarding the first category, the most important exceptions are:

- a) the reproduction of current news articles or broadcasts (Article 65, Law 633/1941);
- b) the reproduction or dissemination of public speeches on matters of political or governmental interest (Article 66, Law 633/1941);
- c) the use of fragments or quotations for criticism, discussion, non-commercial teaching or research purposes (Article 70(1), Law 633/1941).

In such cases, Italian law only requires the user to indicate the source, the date and the author of the intellectual work referred to.

Moreover, compensation is not required (without obligation to mention the source) for:

- d) the dissemination of low-resolution images and music over the Internet for educational or scientific purposes (Article 70(1 bis), Law 633/1941);
- e) loans by State libraries made for cultural promotion or personal study purposes (Article 69, Law 633/1941).

On the other hand, compensation is required in the following cases:

- a) if a reprographic reproduction of 15% or more of a work is made for private use, a compensation must be paid to the authors by the library or the copy center where the reproduction took place (Article 68(3), Law 633/1941);
- b) the reproduction of music and videos for personal, non-commercial use. Authors and phonograph producers are entitled to a compensation for these activities via levies on recording devices. Such compensation amounts to a percentage of the price paid by the buyer to the retailer (Article 71 sexies, Law 633/1941).

Directive 2001/29/EC	National law - Law No 633/1941 (as amended by Legislative Decree No 163/2014)
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Article 68 bis</p> <p>Without prejudice to the provisions concerning the liability of the intermediary service providers set out in the law regulating the electronic commerce, temporary acts of reproduction which have no independent economic significance, which are transient or incidental and integral and essential part of technological process and whose sole purpose is to enable the transmission in a network between third parties by intervention of an intermediary or the lawful use of a work or other subject matters shall be exempted from the reproduction right.</p>

Directive 2001/29/EC	National law - Law No 633/1941 (as amended by Legislative Decree No 163/2014)
Text	Text
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	–
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	–
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	Article 71 sexies(1) 1. Private reproduction of phonograms and videograms on any carrier is permitted on condition that it is carried out by natural person with the sole purpose of personal use and provided that it has not a gainful intent, nor does it have direct or indirect commercial purposes and in compliance with the technological measures under art. 102-quater.
(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;	Article 68(2) 2. The photocopying of works available in publicly accessible libraries or in school libraries, in public museums or in public archives for the services of the said institutions shall be permitted, if made without any either direct or indirect economic or commercial advantage.
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Article 55 1. Without prejudice to the rights of the author in connection with the broadcasting of his work, the broadcasting organization shall be authorized to record the work on a disk or on another medium, for the purpose of subsequent broadcasting, when this is necessitated by consideration of time or technology, provided that, after its use, the recording be destroyed or rendered unusable. 2. The preservation of the recordings under the above paragraph in official archives shall be permitted, on the ground of their exceptional documentary character, and provided they are not used for further economic or commercial exploitation, unless this latter is authorized by the author of the work and by the neighbouring rights' holders.
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	Article 71 quater(1) 1. The reproduction of broadcasts made by public hospitals or prisons, for internal uses only, shall be permitted, on condition that rightholders receive a fair compensation, that shall be determined by a decree of the Minister of Culture, after hearing the Committee under art. 190.

Directive 2001/29/EC	National law - Law No 633/1941 (as amended by Legislative Decree No 163/2014)
Text	Text
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	–
(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;	Article 64 sexies(1)(a) 1. The authorization by the rightholder provided for in art. 64-quinquies shall not be required in the following cases: a) where the database is accessed and visualized for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purposes to be achieved. Within the above activities of access and visualization, the possible operations of permanent reproduction of the contents in whole or in a large part on any other carrier shall always be subject to the rightholder's authorization (...)
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Article 71 bis(1) 1. The reproduction of works or protected subject matter as well as the use of their communication to the public are permitted to persons with disability, for personal use, provided these permitted acts are directly related to the disability, are of a non-commercial nature and are limited to the extent required by the specific disability.
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	Article 65 1. Articles on current interest of an economic, political or religious character, published in magazines or newspapers, as well as articles broadcast or made available to the public, and other subject-matters of the same character shall be freely reproduced or communicated to the public in other magazines or newspapers also in broadcast news programs, unless such reproduction or utilization is expressly reserved, provided the source, the date and the author's name, if quoted, are indicated. 2. The reproduction or the communication to the public of works or protected subject-matters utilized during current events shall be permitted for the purposes of reporting the above current events and to the extent justified by the informatory purpose, as long as the source, including the author's name, if quoted, is indicated, unless it turns out to be impossible.
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that,	Article 70(1) 1. The abridgment, quotation or reproduction of fragments or parts of a work and their communication to the public for the purpose of

Directive 2001/29/EC	National law - Law No 633/1941 (as amended by Legislative Decree No 163/2014)
Text	Text
unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	criticism or discussion, shall be permitted within the limits justified for such purposes, provided such acts do not conflict with the commercial exploitation of the work; if they are made for teaching or research, the use must have the sole purpose of illustration, and non-commercial purposes.
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Article 64 sexies (1)(b) 1. The authorization by the rightholder provided for in art. 64-quinquies shall not be required in the following cases: (...) b) when using a database for the purposes of public security or as a consequence of administrative or judicial proceedings.
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Article 66(1) 1. Speeches on matters of political or administrative interest delivered in public assemblies or in any other public manner, as well as extracts of public lectures, shall be freely reproduced or communicated to the public, to the extent justified by the informatory purpose, in magazines or in newspapers, also if broadcast or in electronic format, provided that the source, the author's name, the date and the place where the speech was delivered, are indicated.
(g) use during religious celebrations or official celebrations organised by a public authority;	–
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	–
(i) incidental inclusion of a work or other subject-matter in other material;	–
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	–
(k) use for the purpose of caricature, parody or pastiche;	–
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(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	Article 71 ter The communication or making available to individual members of the public is free if made for

Directive 2001/29/EC	National law - Law No 633/1941 (as amended by Legislative Decree No 163/2014)
Text	Text
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 purpose of research or private study by dedicated terminals on the premises of publicly accessible libraries, educational establishment, museums or archives, limited to the works and other subject matter contained in their collections that are not subject to purchase or licensing terms.
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(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.	Article 71 sexies(4) 4. Without prejudice to the provisions under paragraph 3, rightholders must allow that, notwithstanding the application of technological measures under art. 102-quater, the natural person who has acquired legal possession of copies of the protected works or of protected subject matters, or has legally accessed them, may make a private copy, which can also be just an analogue copy, for personal use, on condition that this act does not conflict with the normal exploitation of the work or of the other subject-matter and does not unreasonably prejudice the rightholders.

Directive 2012/28	National law - Law No 633/1941 (as amended by Legislative Decree No 163/2014)
Text	Text
6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:	Article 69 bis(1) 1. Libraries, educational institutions and museums accessible to the public, as well as archives, institutes for the preservation of film or sound heritage and public service broadcasters are permitted to use orphan works referred to in Article 69 quater, contained in their collections, in the following ways:

Directive 2012/28	National law - Law No 633/1941 (as amended by Legislative Decree No 163/2014)
Text	Text
<p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>a) reproduction of the orphan work for the purposes of digitisation, indexing, cataloguing, preservation or restoration;</p> <p>b) by making the orphan work available to the public in such a way that everybody can have access to it individually from the chosen place and at the chosen time.</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>Article 69 bis(2) and (3)</p> <p>2. Orphan works can be used by the organizations referred to in paragraph 1 only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection.</p> <p>3. Any revenues generated in the course of the uses referred to in paragraph 2 shall be used to cover digitization costs related to orphan works and to ensure the public availability of the works themselves.</p>
<p>6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.</p>	<p>Article 69 bis(4)</p> <p>The organizations referred to in paragraph 1 shall indicate, whenever they make use of the orphan work, in the standard wordings, the name of the authors and of other rights holders who have been identified.</p>
<p>6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.</p>	<p>Article 69 bis(5), first sentence</p> <p>5. The organizations referred to in paragraph 1, in the pursuit of their public-interest missions, shall be entitled to conclude agreements aimed at increasing the value and the use the orphan works by means of the uses referred to in paragraph 1.</p>
<p>6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.</p>	<p>Article 69 quinquies (1), (2) and (3)</p> <p>1. Any person holding right on a work or on a phonogram considered as an orphan work shall have, at any time, the right put an end to the orphan work status as regards the rights belonging to him. The use of the works that are no more considered as orphan works can continue only upon authorisation by the holders of the relevant rights. The agreements referred to in Article 69 bis (5), cease to have effect.</p> <p>2. The rightholders that put an end to the status of orphan work are entitled to a fair compensation for the use referred to in Article 69 bis.</p> <p>3. The measure and methods for the calculation and payment of the fair compensation referred to</p>

Directive 2012/28	National law - Law No 633/1941 (as amended by Legislative Decree No 163/2014)
Text	Text
	in paragraph 2 are established by means of agreements concluded between the most representative rightholders workers' associations referred to in this Law and the relevant category associations referred to in Article 69 bis (1).

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XIII. CYPRUS

XIII.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

XIII.1.1. Constitution⁴⁴²

Intellectual property rights are protected by the Cypriot Constitution, which provides that property is protected by the state (Article 23). In particular, Article 23 reads:

1. *Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right...*⁴⁴³

XIII.1.2. Copyright Law

The main legislative act governing copyright and related rights is Law 59/1976 (as amended and now in force) on Copyright and related rights.⁴⁴⁴

The Cypriot legislation covers the whole field of copyright and related rights. Further acts brought amendments including implementation of the European Community Directives on copyright and related rights. Law 66(I)/2017 (amendment) transposes Directive 2014/26/EU.

XIII.2. COPYRIGHT⁴⁴⁵

XIII.2.1. Definition and content

Intellectual Property rights are rights recognised on the intangible work of man. These can be divided in two main categories: Copyright and Industrial Property. To put it simply, whereas Copyright refers to literary and artistic works, Industrial Property covers invention, ideas and designs. In Cyprus, the legislation not only protects Intellectual Property but also creates a favourable tax regime for the owner.

Copyright applies to works which are original. No copyright shall subsist in a literary, musical or artistic work unless it is of an original character, and has been reduced to writing, recorded or otherwise reduced to some material form. No copyright shall subsist in a scientific or artistic work if, at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process.

XIII.2.1.1 Moral rights

These rights are not treated in Law 59/1976.

XIII.2.1.2 Economic rights

The pecuniary rights of a copyright holder are defined in Article 7 of Law 59/1976, as follows:

1. a) *Copyright shall consist in the exclusive right to control the doing in the Republic of the following acts:*

⁴⁴² All translations regarding the Cypriot Constitution are adaptations based on the official translation provided by the Presidency of the Republic of Cyprus on its website.

⁴⁴³ Άρθρο 23 «1 Έκαστος, μόνος ή απο κοινού μετ' άλλων, έχει το δικαίωμα να αποκτά, να είναι κύριος, να κατέχει, απολαύη ή διαθέτη οιανδήποτε κινητήν ή ακίνητον ιδιοκτησίαν και δικαιούται να απαιτή τον σεβασμόν του τοιούτου δικαιώματος αυτού...».

⁴⁴⁴ N. 59/1976 (http://www.cylaw.org/nomoi/enop/non-ind/1976_1_59/full.html).

⁴⁴⁵ All translations regarding Law 59/1976 are adaptations based on the official translation provided on CyLaw website.

- i. *The reproduction;*
 - ii. *Advertising;*
 - iii. *Sale, rental, distribution, lending and exhibiting to the public of the original work and copy;*
 - iv. *The broadcasting to the public, communication to the public by satellite, cable broadcasting;*
 - v. *The translation, adaptation and any other arrangement;*
 - vi. *The communication to the public, and the rights of authors to make them accessible to the public in such a way that anyone can access them where and when they choose;*
 - vii. *Prohibiting or authorizing the making available to the public, in a wired or wireless manner, of protected objects, in accordance with the provisions of article 7F,*
- of the whole work or a substantial part thereof.*⁴⁴⁶

XIII.2.2. Author

According to Article 11 of Law 59/1976:

- 1) *Copyright subsisting by virtue of this Law shall vest initially in the author:*

Provided that, notwithstanding the provisions of subsection (5) of section 12, where the doing of a work—

- (a) is commissioned by a person or body corporate who is not the author's employer under a contract of service or apprenticeship, or*
- (b) not having been so commissioned, is made in the course of the author's employment as part of his duties under his contract of employment, the copyright shall be deemed to be transferred to the person or body corporate who commissioned the work or to the author's employer, subject to any agreement between the parties excluding or limiting such transfer.*

- 2) a) *The original filmmaker is the producer of the film*

⁴⁴⁶ Άρθρο 7 παρ. 1: «α) Το δικαίωμα πνευματικής ιδιοκτησίας συνιστάται στο αποκλειστικό δικαίωμα ελέγχου της διενέργειας στη Δημοκρατία της—

(i) Αναπαραγωγής,

(ii) διαφημίσεως,

(iii) πωλήσεως, εκμισθώσεως, διανομής, δανεισμού, και εκθέσεως στο κοινό του πρωτοτύπου και αντιγράφων,

(iv) μεταδόσεως προς το κοινό, εκπομπής, παρουσιάσεως στο κοινό μέσω δορυφόρου, καλωδιακής αναμεταδόσεως,

(v) μεταφράσεως, διασκευής και οποιασδήποτε άλλης προσαρμογής,

(vi) παρουσίασης στο κοινό των έργων, ενσυρμάτως ή ασυρμάτως, καθώς και το δικαίωμα των δημιουργών να καθιστούν προσιτά τα έργα τους στο κοινό κατά τρόπο, ώστε οποιοσδήποτε να έχει πρόσβαση σε αυτά όπου και όταν επιλέγει αυτός,

(vii) απαγόρευσης ή της συγκατάθεσης της διάθεσης στο κοινό, ενσυρμάτως ή ασυρμάτως, προστατεύσιμων αντικειμένων, σύμφωνα με τις διατάξεις του άρθρου 7ΣΤ.

ολόκληρου του έργου ή ουσιώδους τμήματος αυτού.».

- b) *Apart from the producer, the director is considered co-creator of the film. This provision applies only to works which have been produced since 1 July 1994.*
- 3) *The name on a work purporting to be the name of its author shall be deemed as such, unless the contrary is proved.*
- 4) *In the case of an anonymous or pseudonymous work, the publisher whose name is indicated on the work as such shall be deemed to be, unless the contrary is proved, the lawful representative of the anonymous or pseudonymous author and shall be entitled to exercise and protect the rights belonging to the author under this Law.*
- 5) *In the case of an unpublished work where the identity of the author is unknown, but where there are reasons supporting the view that he is a citizen of the Republic the copyright subsisting by virtue of this Law shall be deemed to vest in the Minister of Education.*
- 6) *The provisions of subsections (3) and (4) shall cease to apply as soon as the identity of the author becomes known.*
- 7) *The provisions of this Article shall apply mutatis mutandis to related rights.*⁴⁴⁷

XIII.2.3. Protected works

The object of copyright is set out in Article 3 of Law 59/1976. More specifically, Article 3 (1) stipulates:

- (1) *Subject to the provisions of this section, copyright shall subsist in the following works—*
 - a) *Under copyright*

⁴⁴⁷ Άρθρο 11: «1) Το δυνάμει του παρόντος Νόμου αναγνωριζόμενον δικαίωμα πνευματικής ιδιοκτησίας αρχικώς ανήκει εις τον δημιουργόν:

Νοείται ότι, ανεξαρτήτως των διατάξεων του εδαφίου (5) του άρθρου 12, οσάκις η δημιουργία ενός έργου-

- (α) αναλαμβάνεται κατά παραγγελίαν προσώπου ή οργανισμού όστις δεν είναι ο εργοδότης του δημιουργού δυνάμει συμβάσεως περί παροχής υπηρεσιών ή μαθητείας ή
- (β) μη έχουσα ούτως αναληφθή κατά παραγγελίαν, πραγματοποιείται κατά την διάρκειαν της απασχολήσεως του δημιουργού, ως μέρος των καθηκόντων αυτού δυνάμει της περί απασχολήσεως συμβάσεως αυτού, το δικαίωμα πνευματικής ιδιοκτησίας λογίζεται ως μεταβιβάσθην εις το πρόσωπον ή τον οργανισμόν όστις παρήγγειλε το έργον ή εις τον εργοδότην του δημιουργού, επιφυλασσομένης οιασδήποτε μεταξύ των μερών συμφωνίας αποκλειούσης ή περιοριζούσης την τοιαύτην μεταβίβασιν.
- 2) (α) Αρχικός δημιουργός της ταινίας είναι ο παραγωγός της ταινίας.
- (β) Πέραν του παραγωγού, θεωρείται ως συνδημιουργός της ταινίας ο κύριος σκηνοθέτης. Η διάταξη αυτή έχει εφαρμογή μόνο σε έργα, τα οποία παρήχθησαν μετά την 1η Ιουλίου 1994.
- (3) Το επί έργου τινός αναγεγραμμένον όνομα, όπερ σκοπεύ να είναι το του δημιουργού αυτού, θεωρείται ως το τοιούτο μέχρις αποδείξεως του εναντίου.
- (4) Εν περιπτώσει ανωνύμου ή ψευδωνύμου έργου το πρόσωπον ούτινος το όνομα αναγράφεται επί του έργου ως εκδότης λογίζεται, μέχρις αποδείξεως του εναντίου, ως ο νόμιμος αντιπρόσωπος του ανωνύμου ή ψευδωνύμου δημιουργού, δικαιούται δε να ενασκή και προασπίζει τα δικαιώματα άτινα ανήκουν εις τον δημιουργόν δυνάμει του παρόντος Νόμου.
- (5) Εν περιπτώσει αδημοσιεύτου έργου, οσάκις δεν είναι μεν γνωστή η ταυτότης του δημιουργού υφίστανται όμως λόγοι ενισχύοντες την άποψιν ότι ούτος είναι πολίτης της Δημοκρατίας, το αναγνωριζόμενον υπό του παρόντος Νόμου δικαίωμα πνευματικής ιδιοκτησίας λογίζεται ανήκον εις τον Υπουργόν Παιδείας.
- (6) Αι διατάξεις των εδαφίων (3) και (4) παύουν να εφαρμόζονται ευθύς ως η ταυτότης του δημιουργού καταστή γνωστή.
- (7) Οι διατάξεις του παρόντος άρθρου εφαρμόζονται αναλόγως και επί συγγενικών δικαιωμάτων.».

- i. scientific works;
 - ii. literary works including computer programs;
 - iii. musical works;
 - iv. artistic works including photos of any nature;
 - v. cinematograph films;
 - vi. databases;
 - vii. sound recordings;
 - viii. broadcasts;
 - ix. publications of previously unpublished works.
- b) under a related right, performances by artists:

Means that-

1. The provisions on copyright protection shall apply *mutatis mutandis* to related rights. The provisions of this Law, which provide protection to related rights, are not open to extensive interpretation;
- ii. the provisions which confer protection on related rights can not be interpreted in such a way as to hinder, directly or indirectly, now or in the future, even where appropriate, the protection of intellectual property works and the interests of authors;
- iii. the exceptions and limitations recognized by copyright in this Article and in Article 7, including the exhaustion right in Article 7, are also applicable to related rights, unless otherwise provided.⁴⁴⁸

⁴⁴⁸ Άρθρο 3: «(1) Τηρουμένων των διατάξεων του παρόντος άρθρου, προστατεύσιμα υπό του παρόντος Νόμου είναι—

(α) Υπό μεν δικαιώματος πνευματικής ιδιοκτησίας—

- (i) Επιστημονικά έργα·
- (ii) φιλολογικά έργα, συμπεριλαμβανομένων των προγραμμάτων ηλεκτρονικών υπολογιστών
- (iii) μουσικά έργα·
- (iv) καλλιτεχνικά έργα, συμπεριλαμβανομένων των φωτογραφιών πάσης φύσεως·
- (v) ταινίες·
- (vi) βάσεις δεδομένων
- (vii) ηχογραφήσεις·
- (viii) εκπομπές·
- (ix) δημοσιεύσεις προτέρως αδημοσίευτων έργων

(β) υπό δε συγγενικού δικαιώματος, ερμηνείες ή εκτελέσεις έργων από καλλιτέχνες:

Νοείται ότι—

- (i) Οι περί προστασίας της πνευματικής ιδιοκτησίας διατάξεις εφαρμόζονται αναλόγως επί των συγγενικών δικαιωμάτων. Οι διατάξεις του παρόντος Νόμου, οι οποίες παρέχουν προστασία σε συγγενικά δικαιώματα, δεν είναι δεκτικές διασταλτικής ερμηνείας,
- (ii) οι διατάξεις, οι οποίες παρέχουν προστασία σε συγγενικά δικαιώματα, δε δύνανται να ερμηνευθούν κατά τρόπο, ώστε να θίγεται, άμεσα ή έμμεσα, τώρα ή στο μέλλον, έστω και ενδεχομένως, η προστασία των έργων της πνευματικής ιδιοκτησίας, καθώς και τα συμφέροντα των δημιουργών,
- (iii) οι εις βάρος της πνευματικής ιδιοκτησίας αναγνωριζόμενες εξαιρέσεις και περιορισμοί στο παρόν άρθρο

XIII.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Under Law 59/1976, the exercise of the economic rights is subject to limitations.

Those limitations are set out in Articles 7(2), 7A, 7N.

Directive 2001/29/EC	National law - Law No 59/1976
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Art. 7(2)(a)</p> <p>the doing of any of the aforesaid acts by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, on condition that, if such use is made in public, it shall be accompanied by an acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast;⁴⁴⁹</p>
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p>	<p>Art. 7(2)</p> <p>Provided that copyright in any such work shall not include the right to control;⁴⁵⁰</p>
<p>(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;</p>	<p>Art. 7(2)(p)</p> <p>in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;⁴⁵¹</p>
<p>(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;</p>	<p>Art. 7(2)(o)</p> <p>in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures to the work or subject-matter concerned;⁴⁵²</p>

και στο άρθρο 7, συμπεριλαμβανομένων των ρυθμίσεων περί εξαντλήσεως δικαιώματος στο άρθρο 7, έχουν, σε περίπτωση απουσίας αντιθέτου διατάξεως, εφαρμογή και επί των συγγενικών δικαιωμάτων. »

⁴⁴⁹ Άρθρο 7 παρ. 2 εδ. α: «Της τελέσεως οιασδήποτε των πράξεων, οι οποίες προανφέρθηκαν, με πνεύμα καλής πίστεως για το σκοπό έρευνας, ατομικής χρήσεως, κριτικής ανασκοπήσεως ή αναφοράς σε επίκαιρα γεγονότα, υπό τον όρο ότι, εάν η χρήση αυτή γίνεται δημόσια, αυτή συνοδεύεται από αναγνώριση του τίτλου και της πατρότητας του έργου, με εξαίρεση την περίπτωση, κατά την οποία το έργο παρεμπιπτόντως συμπεριελήφθη σε εκπομπή».

⁴⁵⁰ Άρθρο 7 παρ. 2: «Το δικαίωμα πνευματικής ιδιοκτησίας δεν περιλαμβάνει το δικαίωμα ελέγχου—».

⁴⁵¹ Άρθρο 7 παρ. 2 εδ. ιστ: «της αναπαραγωγής σε χαρτί ή ανάλογο υλικό φορέα, με τη χρήση οποιουδήποτε είδους φωτογραφικής τεχνικής ή με οποιαδήποτε άλλη μέθοδο που επιφέρει παρόμοια αποτελέσματα, εκτός από τις παρτιτούρες, υπό τον όρο ότι οι δικαιούχοι λαμβάνουν δικαίαι αποζημίωση».

⁴⁵² Άρθρο 7 παρ. 2 εδ. ιε: «της αναπαραγωγής σε οποιοδήποτε μέσο που πραγματοποιείται από φυσικό πρόσωπο

Directive 2001/29/EC	National law - Law No 59/1976
Text	Text
(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;	Art. 7(2)(j) 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; ⁴⁵³
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Art. 7(2)(k) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts where such reproduction or any copies thereof are intended exclusively for a lawful broadcast and are destroyed before the end of the period of six calendar months following immediately after making of the reproduction or such longer periods as may be agreed between the broadcasting authority and the owner of the relevant part of the copyright in the work: Provided that any reproduction of a work made under this paragraph may, if it constitutes an exceptional portrayal or recording of objective facts, (documentary) be preserved in the archives of the broadcasting authority, which are hereby designated official archives for the purpose, but, nevertheless subject to the provisions of this Law, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work; ⁴⁵⁴
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial	Art. 7(2)(q)

για ιδιωτική χρήση και για μη άμεσους ή έμμεσους εμπορικούς σκοπούς, υπό τον όρο ότι οι δικαιούχοι λαμβάνουν δίκαιη αποζημίωση που συνεκτιμά την εφαρμογή ή όχι των τεχνολογικών μέτρων στο συγκεκριμένο έργο ή άλλο υλικό».

⁴⁵³ Άρθρο 7 παρ. 2 εδ. ι: «οιασδήποτε αναπαραγωγής ενός έργου, η οποία γίνεται από προσiτές στο κοινό βιβλιοθήκες, επιστημονικά ιδρύματα, εκπαιδευτικά ιδρύματα, μουσεία ή αρχεία και η οποία πράξη αναπαραγωγής δεν αποσκοπεί, άμεσα ή έμμεσα, σε κανένα εμπορικό ή οικονομικό όφελος».

⁴⁵⁴ Άρθρο 7 παρ. 2 εδ. ια: «της αναπαραγωγής για εφήμερες εγγραφές έργων που πραγματοποιούνται δι' ιδίων μέσων από ραδιοτηλεοπτικό οργανισμό ή υπό την διεύθυνση ή τον έλεγχο αυτού, εφ' όσον ή αναπαραγωγή αυτή ή τα οιαδήποτε αντίτυπα αυτής προορίζονται αποκλειστικά για νόμιμη εκπομπή, καταστρέφονται δε πριν από το τέλος περιόδου έξι ημερολογιακών μηνών, οι οποίοι αρχίζουν αμέσως μετά την πραγματοποίηση της αναπαραγωγής, ή πριν από το τέλος μεγαλύτερων περιόδων, οι οποίες ήθελον συμφωνηθεί μεταξύ του ραδιοτηλεοπτικού οργανισμού και του δικαιούχου του σχετικού μέρους του δικαιώματος πνευματικής ιδιοκτησίας επί του έργου:

Νοείται ότι κάθε αναπαραγωγή έργου δυνάμει της παρούσας παραγράφου, εφ' όσον το έργο αυτό συνιστά απεικόνιση ή αποτύπωση αντικειμενικών γεγονότων (ντοκυμαντέρ) εξαιρετικού ιστορικού ενδιαφέροντος, δύναται να διατηρείται στα αρχεία της ραδιοφωνικής αρχής, τα οποία δια του παρόντος χαρακτηρίζονται ως επίσημα αρχεία για τον ως άνω σκοπό. Όμως, τηρουμένων των διατάξεων του παρόντος Νόμου, η αναπαραγωγή αυτή δεν δύναται να χρησιμοποιείται για εκπομπές, ή για οιονδήποτε άλλο σκοπό, χωρίς την συγκατάθεση του δικαιούχου του σχετικού μέρους του δικαιώματος πνευματικής ιδιοκτησίας επί του έργου».

Directive 2001/29/EC	National law - Law No 59/1976
Text	Text
purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation. ⁴⁵⁵
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(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;	Art. 7(2)(r) 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; ⁴⁵⁶
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Art. 7(2)(s) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability; ⁴⁵⁷
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informative purpose and as long as the source, including the author's	Art. 7(2)(n) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informative purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible; ⁴⁵⁸

⁴⁵⁵ Άρθρο 7 παρ. 2 εδ. ιζ: «της αναπαραγωγής εκπομπών εκ μέρους μη κερδοσκοπικών κοινωνικών ιδρυμάτων, όπως τα νοσοκομεία ή οι φυλακές, υπό τον όρο ότι οι δικαιούχοι λαμβάνουν δίκαιη αποζημίωση».

⁴⁵⁶ Άρθρο 7 παρ. 2 εδ. ιη: «οιασδήποτε χρήσεως χάριν μόνο παραδείγματος κατά τη διδασκαλία ή την επιστημονική έρευνα, εφόσον αναφέρεται η πηγή, συμπεριλαμβανομένου του ονόματος του δημιουργού, εκτός εάν διαπιστωθεί ότι αυτό είναι αδύνατο και εφόσον δικαιολογείται από τον επιδιωκόμενο μη εμπορικό σκοπό».

⁴⁵⁷ Άρθρο 7 παρ. 2 εδ. ιθ: «οιασδήποτε χρήσεως χάριν μόνο παραδείγματος κατά τη διδασκαλία ή την επιστημονική έρευνα, εφόσον αναφέρεται η πηγή, συμπεριλαμβανομένου του ονόματος του δημιουργού, εκτός εάν διαπιστωθεί ότι αυτό είναι αδύνατο και εφόσον δικαιολογείται από τον επιδιωκόμενο μη εμπορικό σκοπό».

⁴⁵⁸ Άρθρο 7 παρ. 2 εδ. ιδ: «της αναπαραγωγής δια του τύπου, παρουσίασης στο κοινό ή διάθεσης δημοσιευμένων άρθρων για οικονομικά, πολιτικά ή θρησκευτικά θέματα επικαιρότητας ή ραδιοηλεκτρονικά μεταδιδόμενων έργων ή άλλων αντικειμένων του ιδίου τύπου, όταν η χρήση αυτή δεν απαγορεύεται ρητά και εφόσον αναφέρεται η πηγή, συμπεριλαμβανομένου του ονόματος του δημιουργού, ή χρήση έργων ή άλλων αντικειμένων κατά την παρουσίαση της επικαιρότητας, στο βαθμό που δικαιολογείται από τον ενημερωτικό σκοπό και εφόσον αναφέρεται η πηγή, συμπεριλαμβανομένου του ονόματος του δημιουργού, εκτός εάν διαπιστωθεί ότι αυτό είναι αδύνατο».

Directive 2001/29/EC	National law - Law No 59/1976
Text	Text
name, is indicated, unless this turns out to be impossible;	
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Art. 7(2)(f) the quotation of passages from published works if they are compatible with fair practice and their extent does not exceed that justified by the purpose, including extracts from newspaper articles and magazines in the form of press summaries, provided that mention is made of the source and of the name of the author which appears on the work thus used; ⁴⁵⁹
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Art. 7(2)(m) any use made of a work for the purpose of a judicial,parliamentary or administrative procedure or reference to any such proceedings; ⁴⁶⁰
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	–
(g) use during religious celebrations or official celebrations organised by a public authority;	–
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Art. 7(2)(b) and (c) (b) the inclusion in a cinematograph film or broadcast of any artistic work situated in a place where it may be viewed by the public; (c) the reproduction and distribution of copies of any artistic work permanently situated in a place where it may be viewed by the public; ⁴⁶¹
(i) incidental inclusion of a work or other subject-matter in other material;	Art. 7(2)(d)

⁴⁵⁹ Άρθρο 7 παρ. 2 εδ. στ: «της παραθέσεως αποσπασμάτων από έργα, τα οποία δημοσιεύθηκαν, εφόσον αυτό δεν αντιβαίνει προς τη χρηστή πρακτική και εφόσον η έκταση αυτών δεν υπερβαίνει την έκταση που δικαιολογείται από το σκοπό αυτό, περιλαμβανομένης της παραθέσεως αποσπασμάτων από άρθρα εφημερίδων και περιοδικών υπό μορφή συνοψίσεως του τύπου, νοουμένου ότι γίνεται μνεία της πηγής προελεύσεως και του ονόματος του δημιουργού, το οποίο εμφανίζεται επί του έργου που χρησιμοποιείται με τον τρόπο αυτό».

⁴⁶⁰ Άρθρο 7 παρ. 2 εδ. ιγ: «οιασδήποτε χρήσεως έργου, η οποία γίνεται για σκοπούς δικαστικής, κοινοβουλευτικής ή διοικητικής διαδικασίας ή αναφοράς σε οιαδήποτε τέτοια διαδικασία».

⁴⁶¹ Άρθρο 7 παρ. 2 εδ. β και γ:

«(β) της συμπεριλήψεως σε ταινία ή εκπομπή οιασδήποτε καλλιτεχνικού έργου εγκατεστημένου σε μέρος όπου αυτό δύναται να βλέπεται από το κοινό·

(γ) της αναπαραγωγής και διανομής αντιτύπων οιασδήποτε καλλιτεχνικού έργου μονίμως εγκατεστημένου σε μέρος όπου αυτό δύναται να βλέπεται από το κοινό».

Directive 2001/29/EC	National law - Law No 59/1976
Text	Text
	the incidental inclusion of a work of art in a movie or broadcast; ⁴⁶²
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	–
(k) use for the purpose of caricature, parody or pastiche;	–
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Art. 7A Provided that the copyright in any such work does not include the right to control the renovation, at the same extent as the original, of the building to which this intellectual property right relates. ⁴⁶³
(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;	–
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(5): The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in	–

⁴⁶² Άρθρο 7 παρ. 2 εδ. δ: «της παρεμπίπτουσας συμπεριλήψεως καλλιτεχνικού έργου σε ταινία ή εκπομπή».

⁴⁶³ Άρθρο 7Α: «Το δικαίωμα πνευματικής ιδιοκτησίας επί αρχιτεκτονικού έργου περιλαμβάνει επίσης το αποκλειστικό δικαίωμα ελέγχου της ανεγέρσεως οιασδήποτε οικοδομής, η οποία αναπαράγει ολόκληρο το έργο ή ουσιαστικό μέρος αυτού είτε υπό την πρωτότυπη μορφή αυτού είτε υφ' οιασδήποτε μορφή, η οποία έλκει την καταγωγή ανεγνωρισμένως από το πρωτότυπο:

Νοείται ότι το δικαίωμα πνευματικής ιδιοκτησίας εφ' οιοσδήποτε τέτοιου έργου δεν περιλαμβάνει το δικαίωμα ελέγχου της ανακαίνισσης, στον ίδιο ρυθμό με αυτόν του πρωτοτύπου, οικοδομής με την οποία σχετίζεται το εν λόγω δικαίωμα πνευματικής ιδιοκτησίας.».

Directive 2001/29/EC	National law - Law No 59/1976
Text	Text
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.	

Directive 2012/28	National law - Law No 59/1976
Text	Text
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Art. 7N(2)</p> <p>Notwithstanding the provisions of Articles 7, 7F and 9, the organizations referred to in subparagraph (1) of Article 7I shall be entitled to use orphan works included in their collections in any of the following ways:</p> <p>(a) By making the orphan work available to the public within the meaning of Articles 7, 7F and 9;</p> <p>(b) by acts of reproduction, within the meaning of Article 7 (1) a (i) for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.⁴⁶⁴</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>Art. 7N(3)</p> <p>The organisations referred to in Article 7I (1) shall use orphan works in accordance with paragraph (2) only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.⁴⁶⁵</p>

⁴⁶⁴ Άρθρο 7ΙΔ παρ. 2: «Ανεξάρτητα από τις διατάξεις των άρθρων 7, 7ΣΤ και 9, οι οργανισμοί που αναφέρονται στο εδάφιο (1) του άρθρου 7Ι δικαιούνται να χρησιμοποιούν ορφανά έργα που περιλαμβάνονται στις συλλογές τους με οποιονδήποτε από τους ακόλουθους τρόπους:

(α) Θέτοντας το ορφανό έργο στη διάθεση του κοινού, κατά την έννοια των άρθρων 7, 7ΣΤ και 9.

(β) μέσω αναπαραγωγής κατά την έννοια της υποπαραγράφου (i) της παραγράφου (α) του εδαφίου (1) του άρθρου 7, για σκοπούς ψηφιοποίησης, διάθεσης στο κοινό, ευρετηρίασης, καταλογογράφησης, συντήρησης ή αποκατάστασης.».

⁴⁶⁵ Άρθρο 7ΙΔ παρ. 3: «Οι αναφερόμενοι στο εδάφιο (1) του άρθρου 7Ι οργανισμοί χρησιμοποιούν ορφανά έργα σύμφωνα με τις διατάξεις του εδαφίου (2) αποκλειστικά και μόνο για να επιτύχουν στόχους που σχετίζονται με τις δημοσίου συμφέροντος αποστολές τους και ειδικότερα τη συντήρηση, την αποκατάσταση ή την παροχή πολιτικής ή εκπαιδευτικής πρόσβασης στα έργα ή φωνογραφήματα που περιλαμβάνονται στη συλλογή τους και παράλληλα δύνανται να παράγουν έσοδα στο πλαίσιο τέτοιων χρήσεων με αποκλειστικό σκοπό να καλύπτουν τις

Directive 2012/28	National law - Law No 59/1976
Text	Text
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Art. 7N(4) The organizations referred to in subsection (1) of Article 7I indicate the names of the identified authors and other rights holders in any use of an orphan work. ⁴⁶⁶
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	Art. 7N(5)(a) (a) The organizations referred to in subsection (1) of Article 7I shall provide that a fair compensation is due to rights-holders that put an end to the orphan work status of their works or other protected subject-matter as provided for in the provisions of subsection (2) of this Article of such works or other protected subject-matter by these organizations. ⁴⁶⁷

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δαπάνες τους για τη ψηφιοποίηση και τη διάθεση στο κοινό ορφανών έργων.».

⁴⁶⁶ Άρθρο 7ΙΔ παρ. 4: «Οι οργανισμοί που αναφέρονται στο εδάφιο (1) του άρθρου 7Ι αναφέρουν το όνομα των ταυτοποιημένων δημιουργών και άλλων κατόχων δικαιωμάτων σε οποιαδήποτε χρήση ορφανού έργου.».

⁴⁶⁷ Άρθρο 7ΙΔ παρ. 5 εδ. α: «Οι αναφερόμενοι στο εδάφιο (1) του άρθρου 7Ι οργανισμοί οφείλουν και καταβάλλουν δίκαιη αποζημίωση σε κατόχους δικαιωμάτων οι οποίοι θέτουν τέρμα στο καθεστώς, ως ορφανών έργων, των έργων τους ή άλλων προστατευόμενων αντικειμένων, όσον αφορά την προβλεπόμενη στις διατάξεις του εδαφίου (2) του παρόντος άρθρου χρήση αυτών των έργων ή προστατευόμενων αντικειμένων από τους εν λόγω οργανισμούς.».

XIV. LATVIA

Pro memoria

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XV. LITHUANIA

XV.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

XV.1.1. Constitution⁴⁶⁸

The Constitution of the Republic of Lithuania of 25 October 1992⁴⁶⁹ provides in Article 23 for the protection of ownership which also encompasses the protection of intellectual property, pursuant to the Ruling of 5 July 2000 of the Constitutional Court of the Republic of Lithuania:

Article 23

Property shall be inviolable.

The rights of ownership shall be protected by law.

*Property may be taken only for the needs of society according to the procedure established by law and shall be justly compensated for.*⁴⁷⁰

Article 42(3) of the Constitution provides more explicitly for the protection of copyright and moral and economic interests of the author:

Article 42(3)

*The law shall protect and defend the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work.*⁴⁷¹

XV.1.2. Copyright Law

The protection of copyright and related rights is regulated by the Law of 18 May 1999 No VIII-1185 on Copyright and Related Rights⁴⁷² as amended (the Copyright Law), which is harmonized with the International and the European Union legal acts. The Copyright Law defines the authors' economic and moral rights, establishes the objects and subjects of copyright and related rights, terms of protection of copyright, exceptions and limitations to copyright protection and functions of collective administration associations supervised by the Ministry of Culture of the Republic of Lithuania. The most recent amendment of the Copyright Law took place on 3 November 2016, whereby the provisions of Directive 2014/26/EU were transposed to the national law.

The liability for the breach of the copyright is established by the Criminal Code of the Republic of Lithuania, Article XXIX "Crimes against Intellectual and Industrial Property" and the Administrative Code of the Republic of Lithuania, Article 214¹⁰.

⁴⁶⁸ All translations contained in this document are official translations provided by the Office of the Seimas of the Republic of Lithuania.

⁴⁶⁹ <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>

⁴⁷⁰ Konstitucijos 23 straipsnis: „Nuosavybė neliečiama.
Nuosavybės teisės saugo įstatymai.

Nuosavybė gali būti paimama tik įstatymo nustatyta tvarka visuomenės poreikiams ir teisingai atlyginama.“

⁴⁷¹ Konstitucijos 42 straipsnio 3 pastraipa: „Dvasinius ir materialinius autoriaus interesus, susijusius su mokslo, technikos, kultūros ir meno kūryba, saugo ir gina įstatymas.

⁴⁷² <https://www.e-tar.lt/portal/lt/legalAct/TAR.551F0CDE5B64/ASjOmwJBnm>

XV.2. COPYRIGHT

XV.2.1. Definition and content

There is no clear-cut definition of copyright provided in the Lithuanian legislation. However, it can be interpreted on the basis of legal provisions that copyright is the author's economic rights and author's moral right to his/her creation. The Copyright Law, nevertheless, describes the subject matter of copyright:

Article 4(1)

1. *The subject matter of copyright shall include original literary, scientific and artistic works which are the result of creative activities of an author, whatever may be the objective form of their expression.*⁴⁷³

Article 2(29) of the Copyright Law provides for a definition of a work, which, in order to be subject to copyright protection, has to meet three criteria - (a) originality; (b) result of creative activity and (c) objective form of expression:

Article 2(29)

29. *"Work" means any original result of creation activities in the literary, scientific or artistic domain, whatever may be its artistic value, the mode or form of its expression.*⁴⁷⁴

In Lithuania, copyright encompasses two sets of rights: moral/non-economic rights and material/economic rights.

XV.2.1.1 Moral rights

The author's moral rights are defined in Article 14 of the Copyright Law. The author of a work, independently of economic rights, is always entitled to the following moral rights:

- 1) the right of authorship;
- 2) the right to the author's name;
- 3) the right to the inviolability/integrity of a work.

Pursuant to the Copyright Law, the author's moral rights are protected for an indefinite period of time and cannot be transferred to other persons. Upon the death of the author, author's moral rights can be protected by a person designated by the author. In the absence of such a person, an author's moral rights can be protected by his/her heirs. In the absence of any heirs, the protection of author's moral rights is to be executed by the Ministry of Culture of the Republic of Lithuania.

XV.2.1.2 Economic rights

The author's economic rights are defined in Article 15(1) of the Copyright Law:

Article 15(1)

1. *The author shall have the exclusive rights to authorise or to prohibit any of the following acts:*
 - 1) *reproduction of a work in any form or by any means;*

⁴⁷³ Įstatymo 4 straipsnio 1 dalis: „1. Autorių teisių objektai – originalūs literatūros, mokslo ir meno kūriniai, kurie yra kokio nors objektyvia forma išreikštas kūrybinės veiklos rezultatas.“

⁴⁷⁴ Įstatymo 2 straipsnio 29 punktas: „29. Kūrinys – originalus kūrybinės veiklos rezultatas literatūros, mokslo ar meno srityje, nepaisant jo meninės vertės, išraiškos būdo ar formos.“

- 2) *publication of a work;*
- 3) *translation of a work;*
- 4) *adaptation, arrangement, dramatisation or other transformation of a work;*
- 5) *distribution of the original or copies of a work to the public by sale, rental, lending, or by any other transfer of ownership or possession, as well as by exporting and importing;*
- 6) *public display of the original or copies of a work;*
- 7) *public performance of a work in any form or by any means;*
- 8) *broadcasting, retransmission of a work, as well as communication to the public of a work in any other way, including the making available to the public of a work via computer networks (on the Internet).*⁴⁷⁵

The author's economic rights may be transferred by an agreement (copyright agreement), through inheritance or through any other means determined by the law (e. g. an agreement with employers, producers of collective works, such as encyclopedias, dictionaries, newspapers, etc, or producers of audiovisual works).

XV.2.2. Author

Article 6 of the Copyright Law defines author as "a natural person who has created a work".

Article 6(2) further elaborates on the identification of the owner of copyright:

Article 6(2)

2. *A natural person, whose name is indicated on a work in the usual manner shall, in the absence of proof to the contrary, be regarded as the author of the work.*⁴⁷⁶

Section 2 of the Copyright Law is dedicated to various types of ownership of copyright, including joint authorship, copyright in collective works, copyright in computer programmes, copyright in audiovisual works, etc.

XV.2.3. Protected works

Article 4(2) of the Copyright Law provides a non-exhaustive list of protected works:

Article 4(2)

⁴⁷⁵ Įstatymo 15 straipsnio 1 dalis: „15 straipsnis. Autorių turtinės teisės

1. Autorius turi išimtinės teisės leisti arba uždrausti šiuos veiksmus:

- 1) *atgaminti kūrinį bet kokia forma ar būdu;*
- 2) *išleisti kūrinį;*
- 3) *versti kūrinį;*
- 4) *adaptuoti, aranžuoti, inscenizuoti ar kitaip perdirbti kūrinį;*
- 5) *platinti kūrinio originalą ar jo kopijas parduodant, įskaitant viešą siūlymą juos pirkti ar tikslinę kūrinio originalo ar jo kopijų reklamą, skatinančią vartotojus juos įsigyti, taip pat nuomoti, teikti panaudai ar kitaip perduoti kūrinio originalą ar jo kopijas nuosavybėn arba valdyti, importuoti ar eksportuoti;*
- 6) *viešai rodyti kūrinio originalą ar kopijas;*
- 7) *viešai atlikti kūrinį bet kokiais būdais ir priemonėmis;*
- 8) *transliuoti, retransliuoti ir kitaip viešai skelbti kūrinį, įskaitant jo padarymą viešai prieinamu kompiuterių tinklais (internete).“*

⁴⁷⁶ Įstatymo 6 straipsnio 2 dalis: „2. Fizinis asmuo, kurio vardas įprastu būdu nurodytas kūrinyje, yra laikomas to kūrinio autoriumi, jeigu neįrodyta kitaip.“

2. *The subject matter of copyright shall comprise the following:*
- 1) *books, brochures, articles, diaries, and other literary works, whatever may be the form of their expression, including an electronic form, as well as computer programmes;*
 - 2) *speeches, lectures, sermons and other oral works;*
 - 3) *written and verbal works of science (scientific lectures, studies, monographs, deductions, scientific projects and documented project material, as well as other works relative to science);*
 - 4) *dramatic, dramatico-musical, pantomime, choreographic and other works intended to be performed on the stage, theatrical productions, as well as scenarios and shooting scripts;*
 - 5) *musical works with or without accompanying words;*
 - 6) *audiovisual works (motion pictures, television films, television broadcasts, video films, diafilms and other works expressed by cinematographic means), radiophonic works;*
 - 7) *works of sculpture, painting and graphic art, monumental decorative art, other works of fine art and works of scenery;*
 - 8) *photographic works and other works created by a process analogous to photography;*
 - 9) *works of architecture (projects, designs, sketches and models of buildings and other construction works, as well as completed buildings and other construction works);*
 - 10) *works of applied art;*
 - 11) *illustrations, maps, charts, projects of gardens and parks, sketches and three-dimensional works relative to geography, topography and exact sciences;*
 - 12) *other works.*⁴⁷⁷

⁴⁷⁷ Įstatymo 4 straipsnio 2 dalis: „2. Autorių teisių objektai:

- 1) *knygos, brošiūros, straipsniai, dienoraščiai ir kiti literatūros kūriniai, išreikšti bet kokia forma, įskaitant elektroninę, taip pat kompiuterių programas;*
- 2) *kalbos, paskaitos, pamokslai ir kiti žodiniai kūriniai;*
- 3) *rašytiniai ir žodiniai mokslo kūriniai (mokslinės paskaitos, studijos, monografijos, išvados, mokslo projektai ir projektinė dokumentacija bei kiti mokslo kūriniai);*
- 4) *dramos, muzikiniai dramos, pantomimos, choreografijos ir kiti scenoje atlikti skirti kūriniai ir režisuoti spektakliai, taip pat scenarijai ir scenarijų planai;*
- 5) *muzikos kūriniai su tekstu arba be teksto;*
- 6) *audiovizualiniai kūriniai (kino filmai, televizijos filmai, televizijos laidos, videofilmai, diafilmai ir kiti kinematografinėmis priemonėmis išreikšti kūriniai), radijo laidos;*
- 7) *skulptūros, tapybos bei grafikos kūriniai, monumentalioji dekoratyvinė dailė, kiti dailės kūriniai, taip pat scenografijos kūriniai;*
- 8) *fotografijos kūriniai ir kiti fotografijai analogiškais būdais sukurti kūriniai;*
- 9) *architektūros kūriniai (pastatų ir kitų statinių projektai, brėžiniai, eskizai ir modeliai, taip pat pastatai ir kiti statiniai);*
- 10) *taikomosios dailės kūriniai;*

Pursuant to Article 4(3) of the Law, the protected works also include derivative works created on the basis of other literary, scientific or artistic works, such as translations, adaptations, reviews; collections of works or compilations of data; unofficial translations of legal acts, official documents of administrative, legal or regulative nature.

Article 5 of the Copyright Law provides for an exhaustive list of exceptions with regard to certain works which do not enjoy the copyright protection:

Article 5. Works not attributed to the Subject Matter of Copyright

Copyright shall not apply to:

- 1) ideas, procedures, processes, systems, methods of operation, concepts, principles, discoveries or mere data;*
- 2) legal acts, official documents texts of administrative, legal or regulative nature (decisions, rulings, regulations, norms, territorial planning and other official documents), as well as their official translations;*
- 3) official State symbols and insignia (flags, coat-of-arms, anthems, banknote designs, and other State symbols and insignia) the protection of which is regulated by other legal acts;*
- 4) officially registered drafts of legal acts;*
- 5) regular information reports on events;*
- 6) folklore works.⁴⁷⁸*

XV.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

As far as limitations to copyright protection are concerned, Section 4 of the Copyright Law provides for the list of those limitations on economic rights. The relevant provisions of Directive 2012/28/EU have been fully transposed into the national law. The relevant provisions of Directive 2001/29/EC were also transposed to the national law, except for two points - Art. 5(2)(e) and 5(4).

11) *ilustracijos, žemėlapiai, planai, sodų ir parkų projektai, eskizai ir trimačiai kūriniai, susiję su geografijos, topografijos ar tikslųjų mokslų sritimis;*

12) *kiti kūriniai.“*

⁴⁷⁸ Įstatymo 5 straipsnis: „5 straipsnis. Autorių teisės nesaugomi objektai

Autorių teisių objektais nelaikomi:

- 1) idėjos, procedūros, procesai, sistemos, veiklos metodai, koncepcijos, principai, atradimai ar atskiri duomenys;*
- 2) teisės aktai, oficialūs administracinio, teisinio ar norminio pobūdžio dokumentai (sprendimai, nuosprendžiai, nuostatai, normos, teritorijų planavimo ir kiti oficialūs dokumentai), taip pat jų oficialūs vertimai;*
- 3) oficialūs valstybės simboliai ir ženklai (vėliavos, herbai, himnai, piniginiai ženklai ir kiti valstybės simboliai bei ženklai), kurių apsaugą reglamentuoja kiti teisės aktai;*
- 4) oficialiai įregistruoti teisės aktų projektai;*
- 5) įprastinio pobūdžio informaciniai pranešimai apie įvykius;*
- 6) folkloro kūriniai.“*

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Article 29, introductory part and point (1)</p> <p>It shall be permitted, without the authorisation of an author or any other owner of copyright and without a remuneration:</p> <p>1) to carry out temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable an efficient transmission in a network between third persons by an intermediary, or a lawful use of a work to be made (when it is permitted by the owner of copyright or is not restricted by this Law), and which have no independent economic significance;⁴⁷⁹</p>
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p>	<p>Article 20(1)</p> <p>1. It shall be permitted for a natural person, without the authorisation of the author of the work or any other owner of copyright in the work, to reproduce, exclusively for his individual use and not for commercial advantage, in a single copy a work lawfully published or communicated to the public.⁴⁸⁰</p>
<p>(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;</p>	<p>Article 20¹(1)-(3)</p> <p>1. It shall be permitted, without the authorisation of the author of a work or any other owner of copyright in this work, to reproduce by means of reprography, for private use but not for purposes of commercial advantage, a lawfully published article or any other short work, or a short extract of a writing with or without illustrations (effected by the use of any kind of photocopying technique or by some other process having similar effects, where a work is reproduced on paper or any similar medium).</p> <p>2. The provisions of paragraph 1 of this Article shall not apply to the reproduction by means of reprography of the whole text of a book or a major part thereof, or sheet music.</p>

⁴⁷⁹ Įstatymo 29 straipsnio įžanginė dalis ir 1 punktas:

„1. Leidžiama be autoriaus ar kito autorių teisių subjekto leidimo ir be autorinio atlyginimo:

1) atlikti laikinus atgaminimo veiksmus, kurie yra trumpalaikiai arba atsitiktiniai, sudarantys neatskiriamą ir esminę technologinio proceso dalį ir atliekami tik tam, kad tarpininkas galėtų užtikrinti veiksmingą perdavimą kompiuterių tinklais tarp trečiųjų asmenų, arba tam, kad paskui būtų teisėtai (kai tai leidžia autorių teisių subjektas arba to neriboja šis Įstatymas) pasinaudota kūrinium, jeigu tokie laikini atgaminimo veiksmai atskirai neturi ekonominės vertės;“

⁴⁸⁰ Įstatymo 20 straipsnio 1 dalis: „1. Be kūrinio autoriaus arba kito šio kūrinio autorių teisių subjekto leidimo fiziniam asmeniui išimtinai savo asmeniniam naudojimui nekomerciniais tikslais leidžiama atgaminti teisėtai išleisto ar viešai paskelbto kūrinio egzempliorių.“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
	3. The owners of copyright and publishers shall be entitled to the compensatory remuneration for the reproduction of works by means of reprography as provided for in paragraph 1 of this Article (hereinafter: 'compensatory remuneration'). ⁴⁸¹
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	Article 20(1)-(4) 1. It shall be permitted, without the authorisation of the author of a work or any other owner of copyright in this work, to reproduce by means of reprography, for private use but not for purposes of commercial advantage, a lawfully published article or any other short work, or a short extract of a writing with or without illustrations (effected by the use of any kind of photocopying technique or by some other process having similar effects, where a work is reproduced on paper or any similar medium). 2. The provisions of paragraph 1 of this Article shall not apply to the reproduction by means of reprography of the whole text of a book or a major part thereof, or sheet music. 3. The owners of copyright and publishers shall be entitled to the compensatory remuneration for the reproduction of works by means of reprography as provided for in paragraph 1 of this Article (hereinafter: 'compensatory remuneration'). 4. The compensatory remuneration must be paid for services of reprographic reproduction provided to natural persons as well as for reprographic devices which are specified in Annex II to this Law, released for circulation in the Republic of Lithuania and sold there for the first time, produced in the Republic of Lithuania or brought into its territory (hereinafter in this Article: 'reprographic devices'). The compensatory remuneration must be paid by the persons who provide services of reprographic reproduction as well as the persons selling reprographic devices (hereinafter in this Article:

⁴⁸¹ Įstatymo 20¹ straipsnio 1, 2 ir 3 dalys:

- „1. Leidžiama be kūrinio autoriaus arba kito šio kūrinio autorių teisių subjekto leidimo atgaminti asmeniniais tikslais reprografijos būdu (bet koku fotokopijavimo būdu ar naudojant kitus panašaus pobūdžio procesus, kai atgaminama popieriuje ar kitoje panašioje laikmenoje) teisėtai išleista straipsnį ar kitą trumpą kūrinių arba trumpą rašytinio kūrinio ištrauką su iliustracijomis ar be jų, kai atgaminama nekomerciniais tikslais.
2. Šio straipsnio 1 dalies nuostatos netaikomos reprografijos būdu viso knygos teksto ar didesnės jo dalies arba muzikos kūrinių natų atgaminimui.
3. Autorių teisių subjektai ir leidėjai turi teisę gauti kompensacinį atlyginimą už šio straipsnio 1 dalyje numatytą kūrinių atgaminimą reprografijos būdu (toliau šiame straipsnyje – kompensacinis atlyginimas).“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
(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;	<p>'payers of the compensatory remuneration') in the Republic of Lithuania.⁴⁸²</p> <p>Article 23: Use of Works to Preserve Fonds and Collections of Libraries, Educational Institutions, Museums or Archives</p> <p>Without the authorisation of the author of or any other owner of copyright in a work and also without remuneration, however, indicting, where possible, the source, including the author's name, it shall be permitted to reproduce for non-commercial purposes works held by libraries, educational institutions, museums or archives, with the exception of works communicated to the public via computer networks (on the Internet), so that a lost, destroyed or rendered-unusable copy of the work of the fonds and collections of the establishments specified in this Article would be preserved or reproduced or when it is necessary to restore a lost, destroyed or rendered-unusable copy from the permanent collection of any other similar library, educational institution, museum or archives, if it is impossible to obtain such a copy by other acceptable means. Repeated acts of such reproduction shall be permitted if they are done on unrelated occasions.⁴⁸³</p>

⁴⁸² Įstatymo 20 straipsnio 1-4 dalys:

- „1. Be kūrinio autoriaus arba kito šio kūrinio autorių teisių subjekto leidimo fiziniam asmeniui išimtinai savo asmeniniam naudojimui nekomerciniais tikslais leidžiama atgaminti teisėtai išleisto ar viešai paskelbto kūrinio egzempliorių.
2. Kūrinių atgaminimą asmeniniais tikslais reprografijos būdu (bet koku fotokopijavimo būdu ar naudojant kitus panašaus pobūdžio procesus, kai atgaminama popieriuje ar kitoje panašioje laikmenoje) reglamentuoja šio Įstatymo 201 straipsnio nuostatos.
3. Šio straipsnio 1 dalies nuostatos netaikomos, kai atgaminami šie kūriniai:
 - 1) architektūros kūriniai pastatų ar kitokių statinių pavidalu;
 - 2) kompiuterių programos (išskyrus šio Įstatymo 30 ir 31 straipsniuose numatytus atvejus);
 - 3) elektroninės duomenų bazės (išskyrus šio Įstatymo 32 straipsnyje numatytus atvejus).
4. Autorių teisių ir gretutinių teisių subjektai turi teisę gauti kompensacinį atlyginimą už šio straipsnio 1 dalyje numatytą audiovizualinių kūrinių ar fonogramose įrašytų kūrinių atgaminimą asmeniniais tikslais (toliau šiame straipsnyje – kompensacinis atlyginimas).“

⁴⁸³ Įstatymo 23 straipsnis: „Kūrinių panaudojimas bibliotekų, mokymo įstaigų, muziejų, archyvų fondams ir kolekcijoms išsaugoti

Be kūrinio autoriaus ar kito šio kūrinio autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir autoriaus vardą, leidžiama nekomerciniais tikslais atgaminti bibliotekose, mokymo įstaigose, muziejuose arba archyvuose esančius kūrinius, išskyrus kompiuterių tinklais (internete) paskelbtus kūrinius, tam, kad būtų išsaugotas arba atgamintas prarastas, sunaikintas arba tapęs netinkamas naudoti šiame straipsnyje nurodytų įstaigų fondų ar kolekcijų egzempliorius arba kai reikia atkurti prarastą, sunaikintą ar tapusį netinkamą naudoti kitos panašios bibliotekos, mokymo įstaigos, muziejaus arba archyvo nuolatinės kolekcijos egzempliorių, jeigu tokio egzemplioriaus neįmanoma gauti kitais būdais. Pakartotinai šio atgaminimo atvejai leidžiami, jeigu jie vienas su kitu nesusiję.“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	<p>Article 29, introductory part and point (2) together with 29(2)</p> <p>It shall be permitted, without the authorisation of an author or any other owner of copyright and without a remuneration:</p> <p>2) to make ephemeral recordings of works made by broadcasting organisations or a person acting on behalf of and under the responsibility of the broadcasting organisation by means of their own facilities and for their own broadcasts.</p> <p>2. Recordings specified in point 2 of paragraph 1 of this Article may be preserved for a period not exceeding 30 days and must be erased after their use for broadcasting. The preservation of these recordings in state archives may, on the grounds of their exceptional documentary character, be permitted.⁴⁸⁴</p>
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(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;	<p>Article 22, points (1), (2) and (4): Reproduction of a Work for the Purpose of Illustration of Teaching or Scientific Research</p> <p>The following shall be permitted without the authorisation of the author of a work or any other owner of copyright in this work and without the payment of a remuneration, but indicating, where possible, the source, including the author's name:</p> <p>1) reproduction, communication to the public and public display, for the non-commercial purpose of illustration for teaching or scientific research, of short works lawfully published or communicated to the public or short extracts of a work lawfully published or communicated to the public, either in the original language or translated into another language, provided that this is related</p>

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[statymo 29 straipsnio įžanginė dalis ir 2 punktas bei 2 dalis:

„1. Leidžiama be autoriaus ar kito autorių teisių subjekto leidimo ir be autorinio atlyginimo:

- 2) daryti trumpalaikius kūrinių įrašus, kuriuos daro transliuojančiosios organizacijos ar transliuojančiosios organizacijos vardu ir atsakomybe veikiantis asmuo savo pačių įrangą ir savo transliacijoms.
2. Šio straipsnio 1 dalies 2 punkte nurodyti įrašai gali būti saugomi ne ilgiau kaip 30 dienų ir panaudojus transliacijai turi būti ištrinti. Išimtinai dokumentinio pobūdžio įrašai gali būti perduoti saugoti oficialiems valstybės archyvams.“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
	<p>to study programmes and does not exceed the extent justified by the purpose to be achieved;</p> <p>2) reproduction, communication to the public and public display, by way of illustration, for non-commercial purposes of works created to evaluate students' learning achievements, provided that this is related to study programmes and teacher professional development programmes and is done to the extent justified by the purpose of teaching or teacher professional development;</p> <p>4) public performance and public display for non-commercial purposes of a work at concerts, exhibitions of formal and non-formal education institutions and pre-school education institutions (nurseries, nursery-kindergartens, kindergartens; also nurseries, nursery-kindergartens and kindergartens for pre-school education of children with special needs), where such concerts and exhibitions constitute a part of education process carried out by these institutions.⁴⁸⁵</p>
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	<p>Article 25: Use of Works in Manners Intended for Persons with a Disability</p> <p>1. It shall be permitted for natural and legal persons approved by the institution authorised by the Government representing the interests of persons with a disability, when they act for non-commercial purposes, without the authorisation of the author of a work or any other owner of copyright in this work, and without the payment of a remuneration, but indicating, where possible, the source, including the author's name, to use a work lawfully published or communicated to the public in the manners laid down in paragraphs 2 and 3 of this Article, provided that only persons with a disability shall have the possibility to use and access this work, to the extent required by the</p>

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Istatymo 22 straipsnio 1, 2 ir 4 punktai: „Kūrinio panaudojimas mokymo ir mokslinių tyrimų tikslais

Be kūrinio autoriaus ar kito šio kūrinio autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir autoriaus vardą, leidžiama:

- 1) kaip pavyzdį nekomerciniais mokymo ir mokslinių tyrimų tikslais atgaminti, viešai paskelbti ir viešai rodyti nedidelius teisėtai išleistus ar viešai paskelbtus kūrinius ir trumpas teisėtai išleistų ar viešai paskelbtų kūrinių ištraukas tiek originalo kalba, tiek išverstus į kitą kalbą, kiek tai susiję su mokymo programomis ir neviršija mokymui ar moksliniam tyrimui reikalingo masto;
- 2) kaip pavyzdį nekomerciniais tikslais atgaminti, viešai paskelbti ir viešai rodyti mokinių mokymosi pasiekimams vertinti sukurtus kūrinius, kiek tai susiję su mokymo ir pedagogų kvalifikacijos tobulinimo programomis ir neviršija mokymui ar pedagogų kvalifikacijos tobulinimui reikalingo masto;
- 4) nekomerciniais tikslais viešai atlikti ir viešai rodyti kūrinį formaliojo ir neformaliojo švietimo mokyklų ir ikimokyklinio ugdymo mokyklų (lopšelių, lopšelių-darželių, darželių, specialiųjų poreikių vaikų ikimokyklinio ugdymui skirtų lopšelių, lopšelių-darželių ir darželių) koncertuose, parodose, kurie yra šių įstaigų vykdomo ugdymo proceso dalis.“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
	<p>specific disability, with the exception of the works specially created for this purpose.</p> <p>2. For the purposes of the limitation specified in paragraph 1 of this Article, it shall be permitted to reproduce, publish, adapt and communicate to the public, including the making available to the public of a work via computer networks (on the Internet), an audio version (also in electronic form) and a Braille version of the work.</p> <p>3. It shall be permitted for the needs of persons with intellectual and reading impairments to reproduce, publish, adapt and communicate to the public, including the making available to the public of a work via computer networks (on the Internet) the works specially adapted for these persons. The adaptation of works for persons with intellectual and reading impairments shall mean a transformation of works by simplifying lexis, grammar and (or) morphology, or by shortening the text, i.e. in such a manner as to make the works perceivable by persons with such impairments.⁴⁸⁶</p>
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's	<p>Art. 24, points (1) and (2)</p> <p>Article 24. Use of a Work for Information Purposes</p> <p>1. The following acts shall be permitted without the authorisation of the author of or any other owner of copyright in a work and also without remuneration, however, indicating, where possible, the source, including the author's name:</p> <p>1) reproduction by the press, communication to the public (including making available via computer networks) of published or communicated to the public articles on current economic, political or religious topics or of</p>

⁴⁸⁶ Įstatymo 25 straipsnis: „Kūrinių panaudojimas neįgaliems žmonėms skirtais būdais

1. Be kūrinio autoriaus ar kito šio kūrinio autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir autoriaus vardą, Vyriausybės įgaliotos institucijos patvirtintiems fiziniams ir juridiniams asmenims, atstovaujantiems neįgalių žmonių interesams, kai jie veikia nekomerciniais tikslais, leidžiama teisėtai išleisti ar viešai paskelbti kūrinių naudoti nekomerciniais tikslais šio straipsnio 2 ir 3 dalyse nurodytais būdais, jeigu tuo kūriniu galės naudotis ir prieigą prie jo turės tik neįgalūs žmonės, kiek tai pateisinama konkrečia negalia, išskyrus atvejus, kai tie kūriniai buvo specialiai sukurti šiam tikslui.
2. Šio straipsnio 1 dalyje nustatyto apribojimo tikslais galima atgaminti, išleisti, adaptuoti ir viešai skelbti, įskaitant padarymą viešai prieinamos kompiuterių tinklais (internete), kūrinio garsinę versiją (taip pat ir elektroninės formos) ir versiją Brailio raštu.
3. Intelkto ir skaitymo sutrikimų turinčių asmenų poreikiams leidžiama atgaminti, išleisti, adaptuoti ir viešai skelbti, įskaitant padarymą viešai prieinamų kompiuterių tinklais (internete), specialiai pritaikytus jiems kūrinius. Kūrinių pritaikymas intelekto ir skaitymo sutrikimų turintiems asmenims reiškia kūrinių perdirbimą supaprastinant leksiką, gramatiką ir (ar) morfologiją, sutrumpinant tekstą, t. y. tokiu būdu, kad kūriniai taptų suvokiami tokių sutrikimų turintiems asmenims.“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
name, is indicated, unless this turns out to be impossible;	broadcast works of the same character, in cases where such use is not expressly reserved by the authors of or other owners of copyright in such works, and as long as the source, including the author's name, is indicated in the published or communicated to the public copies of the works, or in another way;
	2) reproduction and communication to the public of literary and artistic works the place of performance or display of which renders information on public events or current events in the press, radio or television, provided that such use is justified by the informatory purpose and constitutes additional information material. ⁴⁸⁷
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Article 21: Quotation It shall be permitted, without the authorisation of the author or any other owner of copyright and without a remuneration, as long as the source, including the author's name, is indicated, unless this turns out to be impossible, to reproduce, publish and communicate to the public (including making it available to the public via computer networks) a relatively short passage of a literary and scientific work which has been lawfully published or made available to the public, both in the original and translated language, in the form of a quotation (for purposes such as criticism or review) in another work, provided that such use is in accordance with fair practice and to the extent required by the specific purpose. ⁴⁸⁸

⁴⁸⁷ Įstatymo 24 straipsnio 1 ir 2 punktai: „Kūrinio panaudojimas informacijos tikslais

1. Leidžiama be kūrinio autoriaus ar kito šio kūrinio autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir autoriaus vardą:

1) atgaminti spaudoje, viešai skelbti (įskaitant padarymą viešai prieinamų kompiuterių tinklais) išleistus ar viešai paskelbtus straipsnius aktualiomis ekonomikos, politikos ar religijos temomis, taip pat analogiško pobūdžio transliuojamus kūrinius, jeigu autoriai ar kiti tų kūrinių autorių teisių subjektai nėra uždraudę taip naudoti kūrinius, nurodant šaltinį, įskaitant autoriaus vardą, išleistuose ar viešai paskelbtuose kūrinių egzemplioriuose arba kitais būdais;

2) atgaminti ir viešai skelbti literatūros ir meno kūrinius, kai iš jų atlikimo vietos ar viešos parodos pateikiama informacija apie visuomenės gyvenimo įvykius arba dienos įvykių apžvalgos spaudoje, per radiją ar televiziją, jeigu tokį kūrinių.“

⁴⁸⁸ Įstatymo 21 straipsnis: „Citavimas

Leidžiama be kūrinio autoriaus ar kito šio kūrinio autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir autoriaus vardą, atgaminti, išleisti ir viešai skelbti (įskaitant padarymą viešai prieinamoms kompiuterių tinklais) nedidelę teisėtai išleisto ar viešai paskelbto literatūros ir mokslo kūrinio dalį tiek originalo kalba, tiek išverstą į kitą kalbą, kaip citatą (pvz., kritikos ar apžvalgos tikslais) kitame kūrinyje, jeigu toks panaudojimas yra sąžiningas ir nevirsta citavimo tikslui reikalingo masto.“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Article 27: Use of a Work for the purposes of Public Security It shall be permitted, without the authorisation of an author or any other owner of copyright, and without a remuneration, to reproduce and communicate to the public a work for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings. ⁴⁸⁹
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Article 24, point (3) 3) reproduction for the purpose of informing the public in newspapers or periodicals, or communication to the public in any other mode of political speeches, extracts of public lectures or similar works, as well as speeches delivered during court proceedings, to the extent justified by the informatory purpose to be achieved. ⁴⁹⁰
(g) use during religious celebrations or official celebrations organised by a public authority;	Article 26: Use of a Work during Religious Celebrations It shall be permitted, without the authorisation of an author or any other owner of copyright and without a remuneration, to reproduce, communicate to the public and perform in public for non-commercial purposes a work during religious celebrations, as long as the source, including the author's name, is indicated, unless this turns out to be impossible. ⁴⁹¹
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Article 28(1), point (1) 1. It shall be permitted to carry out the following acts without the authorisation of an author or any other owner of copyright and without a remuneration, as long as the source, including the author's name, is indicated, unless this turns out to be impossible:

⁴⁸⁹ Įstatymo 27 straipsnis: „Kūrinio panaudojimas visuomenės saugumo tikslais

Leidžiama be autoriaus ar kito autorių teisių subjekto leidimo ir be autorinio atlyginimo atgaminti ir viešai skelbti kūrinį visuomenės saugumo tikslais arba siekiant užtikrinti valstybės valdžios, valdymo ar teismo proceso veiksmų atlikimą arba pranešimą apie juos.“

⁴⁹⁰ Įstatymo 24 straipsnio 3 punktas: „1. Leidžiama be kūrinio autoriaus ar kito šio kūrinio autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir autoriaus vardą: 3) informuojant visuomenę atgaminti laikraščiuose, periodiniuose leidiniuose ar bet kuriuo būdu viešai skelbti politines kalbas, ištraukas iš viešų paskaitų ar kitų panašių kūrinių, taip pat teismo proceso metu pasakytas kalbas tiek, kiek tai pateisina informavimo tikslai.“

⁴⁹¹ Įstatymo 26 straipsnis: „Kūrinio panaudojimas religinių apeigų metu

Be kūrinio autoriaus ar kito šio kūrinio autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir autoriaus vardą, leidžiama nekomerciniais tikslais atgaminti, viešai skelbti ir viešai atlikti kūrinį religinių apeigų metu.“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
	1) to reproduce and make available to the public works of architecture and sculptures, made to be located permanently in public places, except for the cases where they are displayed in exhibitions and museums. ⁴⁹²
(i) incidental inclusion of a work or other subject-matter in other material;	Article 58(1), point (11) 1. It shall be permitted, without the authorisation of the owner of related rights and without the payment of a remuneration, but, where possible, indicating the source, including the author's name, to use a performance, a phonogram, a fixation of an audiovisual work (film) and a broadcast of a broadcasting organisation or fixations thereof, for: 11) incidental inclusion of an object of related rights in other material. ⁴⁹³
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Article 24, point (4) 4) reproduction, publication or communication to the public of works for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use. ⁴⁹⁴
(k) use for the purpose of caricature, parody or pastiche;	Article 58(1), point (12) 1. It shall be permitted, without the authorisation of the owner of related rights and without the payment of a remuneration, but, where possible, indicating the source, including the author's name, to use a performance, a phonogram, a fixation of an audiovisual work (film) and a broadcast of a broadcasting organisation or fixations thereof, for: 12) use for the purpose of caricature or parody. ⁴⁹⁵

⁴⁹² Įstatymo 28 straipsnio 1 dalies 1 punktą: „Architektūros ir skulptūros kūrinių autorių teisių apribojimas
1. Be kūrinių autoriaus ar kito šio kūrinių autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir autoriaus vardą, leidžiama:

1) atgaminti ir viešai paskelbti architektūros kūrinius ir skulptūras, sukurtus nuolat stovėti viešosiose vietose, išskyrus atvejus, kai jie eksponuojami parodose ir muziejuose.“

⁴⁹³ Įstatymo 58 straipsnio 1 dalies 11 punktą:

„1. Be gretutinių teisių subjektų leidimo ir be atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir atlikėjo vardą, leidžiama naudoti atlikimą, fonogramą, audiovizualinio kūrinių (filmo) įrašą ir transliuojančiosios organizacijos transliaciją arba jų įrašus:

11) kai atsitiktinai gretutinių teisių objektas įtraukiamas į kitą medžiagą.“

⁴⁹⁴ Įstatymo 24 straipsnio 4 punktą: „4) atgaminti, išleisti ir viešai paskelbti kūrinius meno kūrinių viešai parodai ar pardavimui reklamuoti, kiek to reikia pranešti apie renginį, išskyrus bet kokį kitą komercinį naudojimą;“

⁴⁹⁵ Įstatymo 58 straipsnio 1 dalies 12 punktą:

„1. Be gretutinių teisių subjektų leidimo ir be atlyginimo, tačiau nurodžius, jei tai įmanoma, naudojamą šaltinį ir atlikėjo vardą, leidžiama naudoti atlikimą, fonogramą, audiovizualinio kūrinių (filmo) įrašą ir transliuojančiosios organizacijos transliaciją arba jų įrašus:

12) karikatūrai ar parodijai sukurti.“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
(l) use in connection with the demonstration or repair of equipment;	Article 24, point (5) 5) reproduction and communication to the public of a work in connection with the demonstration or repair of devices. ⁴⁹⁶
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Article 28, point (2) 2) to use a project, design, sketch or model of a building or any other construction works for the purpose of reconstructing this building or construction works. ⁴⁹⁷
(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;	Article 22, point (3) 3) use of works held by libraries, by libraries of educational and research institutions, museums or archives, communicating them to the public, for the non-commercial purpose of research or private study, via computer networks at the terminals designated for that purpose in those establishments, if the work is not publicly traded and the copyright owners do not prohibit the use of such works. For the purpose of such limitation, the establishment referred to in this point may reproduce the acquired copies of the works, but only in order to make communication of a work to the public technically possible via computer networks. At the same time, it shall not be permitted to make accessible via computer networks more copies of a work than held by these institutions. The establishments specified in this point must ensure the use of effective technical protection measures so copies of works would not be reproduced and the content information of works would not be transferred or transmitted outside the terminals of the establishments to external networks. ⁴⁹⁸
(o) use in certain other cases of minor importance where exceptions or limitations already exist	Article 33: Display of a Work of Fine Arts

⁴⁹⁶ Įstatymo 24 straipsnio 5 punktas: „5) atgaminti ir viešai skelbti kūrinių, kai tai susiję su įrangos demonstravimu ar taisymu.“

⁴⁹⁷ Įstatymo 28 straipsnio 2 punktas: „2) pastato ar kito statinio projektą, brėžinį, eskizą ar modelį panaudoti to pastato ar statinio rekonstrukcijai.“

⁴⁹⁸ Įstatymo 22 straipsnio 3 punktas: „3) naudoti kūrinius, esančius bibliotekose, mokymo ir mokslo įstaigų bibliotekose, muziejuose arba archyvuose, nekomerciniais mokslinių tyrimų ar asmeninių studijų tikslais juos padarant viešai prieinamus kompiuterių tinklais tam skirtuose terminaluose tų įstaigų patalpose, jeigu kūrinio nėra viešojoje prekyboje ir autorių teisių subjektai nėra uždraudę tokio kūrinių panaudojimo. Šio apribojimo tikslais šiame punkte nurodytos įstaigos gali atgaminti įsigytus kūrinių egzempliorius, tačiau tik tam, kad būtų įmanoma techniškai padaryti kūrinių viešai prieinamą kompiuterių tinklais. Tuo pačiu metu negali būti padaroma prieinamų kompiuterių tinklais daugiau kūrinio egzempliorių, negu jų yra šiose įstaigose. Šiame punkte nurodytos įstaigos privalo užtikrinti, kad būtų naudojamos efektyvios techninės apsaugos priemonės, neleidžiančios atgaminti kūrinių kopijų, taip pat bet kokių būdu perkelti ar perduoti kūrinių turinio informaciją už įstaigų terminalų ribų į išorės tinklus;“

Directive 2001/29/EC	National law - Law No VIII-1185
Text	Text
under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	It shall be permitted, without the authorisation of an author or any other owner of copyright and without a remuneration, as long as the author's name is indicated, unless this turns out to be impossible, to display for non-commercial purposes in public an original work of fine arts or a copy thereof, if the work has been sold or its ownership has been otherwise transferred to another natural or legal person and where the author or his successor in title knows or has reasonable grounds to know that such a public display (exhibition) of the works constitutes part of the regular activities of the natural or legal person who has acquired the work. ⁴⁹⁹
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(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.	Article 19(1) 1. Any limitations on economic rights shall be permitted exclusively to the cases provided for in this Law. They must not conflict with a normal exploitation of a work and must not prejudice the legitimate interests of author or other owner of copyright. ⁵⁰⁰

Directive 2012/28/EU	National law - Law No VIII-1185
Text	Text
6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use	Article 94(1) 1. Users of orphan works shall be permitted to use the orphan works contained in their collections in the following ways: 1) by acts of reproduction, within the meaning of Article 2(1) of this Law, for the purposes of

⁴⁹⁹ Įstatymo 33 straipsnis: „Dailės kūrinio rodymas

Be kūrinio autoriaus ar kito šio kūrinio autorių teisių subjekto leidimo ir be autorinio atlyginimo, tačiau nurodžius, jei tai įmanoma, autoriaus vardą, leidžiama nekomerciniais tikslais viešai rodyti dailės kūrinio originalą ar jo kopiją, kai kūrinys yra parduotas ar kitu būdu nuosavybės teisės į jį perduotos kitam fiziniam arba juridiniam asmeniui ir kai autorius ar jo teisių perėmėjas žino ar turi pagrindą žinoti, kad toks viešas kūrinio rodymas (paroda) yra įsigijusio kūrinį fizinio arba juridinio asmens įprastinės veiklos dalis.“

⁵⁰⁰ Įstatymo 19 straipsnio 1 dalis: „1. Apriboti turtinės teisės leidžiama specialiais šio Įstatymo numatytais atvejais. Turtinių teisių apribojimas neturi prieštarauti įprastiniam kūrinio naudojimui ir nepagrįstai pažeisti teisėtų autoriaus arba kito autorių teisių subjekto interesų.“

Directive 2012/28/EU	National law - Law No VIII-1185
Text	Text
<p>orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>digitisation, making available, indexing, cataloguing, preservation or restoration;</p> <p>2) by making the orphan works available to the public by wire or wireless means, in such a way that members of the public may access the works from a place and at a time individually chosen by them (e.g. via computer networks (the Internet), etc.).⁵⁰¹</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>Article 91(1) and 94(2)</p> <p>1. Only the cultural, educational and scientific institutions and the public broadcaster referred to in Article 89(1) of this Law (hereinafter: 'users of orphan works') may, in the areas of their activities, use orphan works for non-commercial purposes in the ordinary management of their activities aimed at their public-interest missions in the fields of the promotion of culture, heritage protection, education, science and public information, provided that the orphan works which are being used are contained in their collection.⁵⁰²</p> <p>2. When using an orphan work within the meaning of paragraph 1 of this Article, users of orphan works may generate revenues for the exclusive purpose of covering their costs of reproducing the orphan works and making them available to the public.⁵⁰³</p>
<p>6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.</p>	<p>Article 94(3)</p> <p>3. Users of orphan works must ensure that the name of identified authors and/or performers and the name or title of other rightholders be indicated</p>

⁵⁰¹ Įstatymo 94 straipsnio 1 dalis:

„1. Nenustatytų teisių turėtojų kūrinių naudotojai turi teisę savo kolekcijose esančius nenustatytų teisių turėtojų kūrinius naudoti šiais būdais:

- 1) atgaminti juos taip, kaip apibrėžta šio Įstatymo 2 straipsnio 1 dalyje, skaitmeninimo, padarymo viešai prieinamais, indeksavimo, sisteminimo, išsaugojimo arba atkūrimo tikslais;
- 2) padaryti juos viešai prieinamus laidais ar bevielėmis ryšio priemonėmis tokiu būdu, kad visuomenės nariai galėtų juos pasiekti individualiai pasirinktoje vietoje ir pasirinktu laiku (kompiuterių tinklais (internete) ir pan.).“

⁵⁰² Įstatymo 91 straipsnio 1 dalis: „1. Nenustatytų teisių turėtojų kūrinius savo veiklos srityse nekomerciniais tikslais, vykdydamos savo įprastinę veiklą, susijusią su viešo intereso tikslais kultūros sklaidos, paveldo apsaugos, švietimo, mokslo ir visuomenės informavimo srityse, gali naudoti tik šio Įstatymo 89 straipsnio 1 dalyje nurodytos kultūros, švietimo ir mokslo įstaigos bei visuomeninis transliuotojas (toliau – nenustatytų teisių turėtojų kūrinių naudotojai), su sąlyga, kad naudojami nenustatytų teisių turėtojų kūriniai yra jų kolekcijose.“

⁵⁰³ Įstatymo 94 straipsnio 2 dalis: „2. Nenustatytų teisių turėtojų kūrinių naudotojai, naudodami nenustatytų teisių turėtojų kūrinius šio straipsnio 1 dalyje nurodytais būdais, gali gauti pajamų išimtinai tik patiriamoms nenustatytų teisių turėtojų kūrinių atgaminimo ir jų padarymo viešai prieinamais išlaidoms padengti.“

Directive 2012/28/EU	National law - Law No VIII-1185
Text	Text
	when using an orphan work within the meaning of paragraph 1 of this Article. ⁵⁰⁴
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	Article 91(2) 2. In the pursuit of their public-interest missions specified in paragraph 1 of this Article and related to the use of orphan works, the users of orphan works shall have the right to conclude with other persons service contracts, cooperation, partnership and other agreements. ⁵⁰⁵
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	Article 96(1)-(3) 1. Upon the end of the orphan work status in accordance with the procedure laid down in Article 95(1) of this Law, the rightholders shall be entitled to one-off compensation for the use of the former orphan work in the manner specified in Article 94(1) of this Law. The rightholders shall submit applications for the payment of such compensation to an institution authorised by the Government. A decision of the payment and the amount of compensation shall be taken by the institution authorised by the Government with due consideration of the recommended findings of the panel of experts on compensation for the use of orphan works (hereinafter: the 'panel of experts'). The decision of the institution authorised by the Government shall be taken and the recommended findings of the panel of experts shall be accepted upon having evaluated the conditions of non-commercial use of a specific former orphan work (public access to a work or phonogram, manner of its use, need to preserve or reproduce the lost, destroyed or rendered-unusable copies, importance of public-interest missions pursued by a user of orphan works, possible inflicted damage to the rightholders). The institution authorised by the Government shall set up for the period of two years and approve the regulations of a panel of experts composed of seven members – representatives of the Lithuanian Association of Artists, collective administration associations and the institution authorised by the Government.

⁵⁰⁴ Įstatymo 94 straipsnio 3 dalis: „3. Nenustatytų teisių turėtojų kūrinių naudotojai turi užtikrinti, kad naudojant nenustatytų teisių turėtojų kūrinius šio straipsnio 1 dalyje nurodytais būdais, bus nurodomi nustatytų autorių ir/ar atlikėjų vardai ir kitų nustatytų teisių turėtojų vardai ar pavadinimai.“

⁵⁰⁵ Įstatymo 91 straipsnio 2 dalis: „2. Nenustatytų teisių turėtojų kūrinių naudotojai, siekdami įgyvendinti šio straipsnio 1 dalyje nurodytus viešojo intereso tikslus, susijusius su nenustatytų teisių turėtojų kūrinių naudojimu, turi teisę įstatymų nustatyta tvarka sudaryti su kitais asmenimis bendradarbiavimo, jungtinės veiklos (partnerystės), paslaugų ir kitas sutartis.“

Directive 2012/28/EU	National law - Law No VIII-1185
Text	Text
	<p>2. Compensation for the use of an orphan work must not exceed the amount of ten base social benefits. Such amount shall be distributed and paid proportionately to the rightholders. Compensation shall be paid to the rightholders not later than 31 March of the year following that in which the institution authorised by the Government, taking into consideration the recommended findings of the panel of experts, took the decision concerning the payment and the amount of the compensation. Other conditions and procedure for paying compensation for the use of an orphan work shall be laid down by the institution authorised by the Government.</p> <p>3. Compensation for the use of an orphan work shall be paid with the funds provided for such purpose in the Law on the Approval of Financial Indicators of the State budget and Municipal Budget, where the level of funding required shall be determined by having regard to the decisions concerning the payment and the amount of the compensation taken in accordance with the procedure laid down in paragraph 2 of this Article.⁵⁰⁶</p>

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⁵⁰⁶ Įstatymo 96 straipsnis: „Teisė gauti kompensaciją, panaikinus nenustatytų teisių turėtojų kūrinio statusą

1. Šio Įstatymo 95 straipsnio 1 dalyje nustatyta tvarka panaikinus nenustatytų teisių turėtojų kūrinio statusą, teisių turėtojai turi teisę gauti vienkartinę kompensaciją už buvusio nenustatytų teisių turėtojų kūrinio naudojimą šio Įstatymo 94 straipsnio 1 dalyje nustatytais būdais. Prašymus išmokėti kompensaciją teisių turėtojai pateikia Vyriausybės įgaliotai institucijai. Sprendimą dėl kompensacijos išmokėjimo ir jos dydžio Vyriausybės įgaliota institucija priima atsižvelgdama į Nenustatytų teisių turėtojų kūrinių naudojimo kompensavimo ekspertų komisijos (toliau – ekspertų komisija) rekomendacines išvadas. Vyriausybės įgaliotos institucijos sprendimas ir ekspertų komisijos išvados priimamos įvertinus konkretaus buvusio nenustatytų teisių turėtojų kūrinio nekomercinės naudojimo sąlygas (kūrinio ar fonogramos viešą prieinamumą visuomenei, naudojimo būdus, poreikį išsaugoti arba atgaminti prarastus, sunaikintus arba tapiusius netinkamus naudoti egzempliorius, nenustatytų teisių turėtojų kūrinių naudotojo vykdomų viešo intereso tikslų svarbą, galimai padarytą žalą teisių turėtojams). Ekspertų komisiją iš 7 narių - Lietuvos meno kūrėjų asociacijos, kolektyvinio administravimo asociacijų ir Vyriausybės įgaliotos institucijos atstovų 2 metams sudaro ir jos nuostatus tvirtina Vyriausybės įgaliota institucija.
2. Išmokamos kompensacijos dydis už buvusio nenustatytų teisių turėtojų kūrinio naudojimą neturi viršyti 10 bazinių socialinių išmokų dydžio sumos paskirstant išmokamą sumą proporcingai jo teisių turėtojams. Kompensacija teisių turėtojams išmokama iki kitų metų kovo 31 d., pasibaigus metams, kuriais Vyriausybės įgaliota institucija, atsižvelgusi į ekspertų komisijos rekomendacines išvadas, priėmė sprendimą dėl kompensacijos išmokėjimo ir jos dydžio. Kitas kompensacijos mokėjimo sąlygas ir tvarką nustato Vyriausybės įgaliota institucija.
3. Kompensacija mokama iš Valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatyme šiam tikslui numatytų lėšų, kurių poreikis nustatomas atsižvelgus į šio straipsnio 2 dalyje nustatyta tvarka priimtus sprendimus dėl kompensacijų išmokėjimo ir jų dydžio.“

XVI. LUXEMBOURG

Pro memoria

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XVII. HUNGARY

Pro memoria

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XVIII. MALTA

XVIII.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

XVIII.1.1. Constitution

Article 32(a):

Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;

..... the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest⁵⁰⁷.

XVIII.1.2. Copyright Law

Prior to becoming an independent country Malta applied English law on the subject of copyright, that is, the Copyright Act of 1911⁵⁰⁸. Independent Malta enacted its first Copyright Act in 1967 (Act No VI of 1967). The act took into account new developments in technology (radio and television broadcasting). When Malta joined the European Union in 2004 a new copyright act was introduced so as to take into consideration EU directives on the subject. The "Copyright Act" (Chapter 415 of the Laws of Malta)⁵⁰⁹ transposed Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

The Copyright Act is divided in thirteen parts namely:

- Part I Definitions
- Part II Copyright

⁵⁰⁷ Artikolu 32a:

Billi kull persuna f'Malta hija intitolata għad-drittijiet u libertajiet fundamentali tal-individwu, jiġifieri, id-dritt, tkun xi tkun ir-razza, post ta' oriġini, fehmiet politiċi, kulur, twemmin, sess, orjentazzjoni sesswali jew identità tal-ġeneru tagħha, iżda suġġett għar-rispett tad-drittijiet u l-libertajiet ta' oħrajn u tal-interess pubbliku, għal kull waħda u kollha kemm huma dawn li ġejjin, jiġifieri-

(a) il-ħajja, libertà, sigurtà tal-persuna, it-tgawdija ta' proprjetà u l-protezzjoni tal-liġi;

...id-disposizzjonijiet li ġejjin ta' dan il-Kapitolu jkollhom effett sabiex jagħtu protezzjoni għad-drittijiet u libertajiet imsemmija qabel, salvi dawk il-limitazzjonijiet ta' dik il-protezzjoni kif jinsabu f'dawk id-disposizzjonijiet li huma limitazzjonijiet maħsuba biex jiżguraw illi t-tgawdija tal-imsemmija drittijiet u libertajiet minn xi individwu ma tippregudikax id-drittijiet u libertajiet ta' oħrajn jew l-interess pubbliku.

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=2>

⁵⁰⁸ <http://www.wipo.int/edocs/lexdocs/laws/en/il/il013en.pdf>.

⁵⁰⁹ The Laws of Malta may be reproduced, for non-commercial public use, without charge or further permission from the Government of Malta as long as the latter is identified as the source - <http://www.justiceservices.gov.mt/>. Translation available on: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8881&l=1>.

- Part III Moral rights of authors
- Part IV Neighbouring rights
- Part V Moral rights of performers
- Part VI Transfer of Copyright and Neighbouring rights
- Part VII Sui generis right in respect of databases
- Part VIII Sui generis right in respect of semiconductor product topographies
- Part IX Infringement
- Part X The Copyright Board
- Part XI Collective Administration of rights
- Part XII Regulations
- Part XIII Transitory provisions

The following regulations have been adopted as subsidiary legislation (S.L.) under the Copyright Act:

- a) S.L. 415.01 Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations⁵¹⁰
- b) S.L. 415.02 Revival of Copyright and Neighbouring Rights (Protection) and Exhaustion of Distribution Rights (Extension) Regulations⁵¹¹
- c) S.L. 415.03 Artists' Resale Right Regulations⁵¹²
- d) S.L. 415.04 Extension to Term of Protection (Neighbouring Rights) Regulations⁵¹³
- e) S.L. 415.05 Certain Permitted Uses of Orphan Works Regulations⁵¹⁴
- f) S.L. 415.06 Functions of the Copyright Board Regulations⁵¹⁵

Another separate act that regulates the enforcement of intellectual property rights is the *Enforcement of intellectual property rights (Regulation) Act* (Chapter 488 of the Laws of Malta⁵¹⁶). Enforcement of procedures and remedies against infringements of copyright have been partly harmonised at EU level.

⁵¹⁰ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10638&l=1>

⁵¹¹ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10639&l=1>

⁵¹² <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10640&l=1>

⁵¹³ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12164&l=1>

⁵¹⁴ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12255&l=1>

⁵¹⁵ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12254&l=1>

⁵¹⁶ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8954&l=1>

XVIII.2. COPYRIGHT

XVIII.2.1. Definition and content

Under Maltese law copyright is simply defined as meaning “copyright under this Act”⁵¹⁷.

According to the art. 3 (2) of the Copyright Act, in order to be eligible for copyright a work needs to satisfy three criteria, namely - qualification⁵¹⁸, originality⁵¹⁹ and fixation:

A literary, musical, or artistic work shall not be eligible for copyright unless the work has an original character and it has been written down, recorded, fixed⁵²⁰ or otherwise reduced to material form.⁵²¹

The copyright owner has two types of rights in Malta: material/economic rights and moral/non-economic rights.

XVIII.2.1.1 Moral rights

Moral rights, which are personal in nature and are not harmonised at EU level, go further than economic rights, and include the author’s right to claim authorship of his/her work⁵²² and the performer’s right to claim to be identified as the performer of his/her performance since they invested a certain amount of intellectual or physical creativity. Moreover, the author enjoys the moral right that his/her name be not indicated on the copies, and in connection with any public use, of his/her work, or that his/her pseudonym be so indicated.

The moral rights of authors prohibit the mutilation, modification, distortion or subjecting to derogatory treatment of any work⁵²³. The moral rights of performers prohibit the distortion, mutilation and modification of performances⁵²⁴. Moral rights cannot be transferred during the lifetime of the author/performer. Article 12(3) and Article 23(2) list the persons who are entitled to “inherit” the moral right:

Article 12(3):

On the death of the author -

(a) the right passes to such person as he may by testamentary disposition specifically direct, provided that on this person’s death the right passes to his successor;

(b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes;

(c) if or to the extent the right does not pass under paragraph (a) or paragraph (b) it would be exercisable by the owners of the copyright.⁵²⁵

⁵¹⁷ Definition section of the Copyright Act: drittijiet tal-awtur" tfisser drittijiet tal-awtur skont dan l-Att.

⁵¹⁸ Article 4, 5, 22, 29 and 36 of the Copyright Act.

⁵¹⁹ Advocate Henri Mizzi (representing foreign company The Football Association Premier League Limited; and Melita Cable p.l.c., today known as Melita Limited vs. Telestarr Limited (30/09/2016).

⁵²⁰ Carmel Said Formosa vs The Richard Clarke Academy (2014).

⁵²¹ Artikolu 3(2):

Xogħol letterarju, mużikali jew artistiku ma jkununx eliġibbli għad-drittijiet tal-awtur kemm-il darba x-xogħol ma jkollux kwalità oriġinali u ma jkunx inkiteb, ġie reġistrat, iffissat jew xort'oħra mogħti forma materjali.

⁵²² Maestro Joseph Gatt vs Lawrence Scicluna (27/10/2016).

⁵²³ Article 12 of the Copyright Act.

⁵²⁴ Article 23(1) of the Copyright Act.

⁵²⁵ Artikolu 12(3):

Article 23(2):

On the death of the performer -

(a) the right passes to such person as he may by testamentary disposition specifically direct, provided that on this person's death the right passes to his successor;

(b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes.⁵²⁶

Unlike moral rights, economic rights, namely copyright and neighbouring rights, are transmissible by assignment, operation of law or by testamentary disposition as movable property.

XVIII.2.1.2 Economic rights

Material rights relate to carrying out certain acts with regards to the work, in particular they relate to reproduction and distribution rights⁵²⁷ and performance rights⁵²⁸. Copyright allows the author of an audiovisual work, a database, a literary, musical or artistic work⁵²⁹, the producer of sound recordings⁵³⁰, the maker of a database⁵³¹ and the creator of semiconductor product topographies⁵³² to enjoy the exclusive right to authorise or prohibit the making and distribution of copies including communication to the public. Right holders can thus control the use of their works and other protected material and be remunerated for their use. Economic rights and their terms of protection are harmonised at EU level.

Mal-mewt tal-awtur –

(a) id-dritt jgħaddi lil dik il-persuna li huwa jista' permezz ta' dispozizzjoni testamentarja speċifikament jindika, b'dan illi meta dik il-persuna tmut id-dritt jgħaddi għal għand is-suċċessur tagħha;

(b) jekk ma jkunx hemm indikazzjoni bħal dik iżda d-drittijiet tal-awtur fuq ix-xogħol ikunu jagħmlu parti mill-eredità tiegħu, id-dritt jgħaddi għal għand il-persuna għand min jgħaddu d-drittijiet tal-awtur;

(c) jekk jew daqskemm id-dritt ma jgħaddix taħt il-paragrafu (a) jew il-paragrafu (b) dan ikun eżerċitabbli mill-proprjetarji tad-drittijiet tal-awtur.

⁵²⁶ Artikolu 23(2):

Mal-mewt tal-artist –

(a) id-dritt jgħaddi għal għand dik il-persuna li hu jista' permezz ta' dispozizzjoni testamentarja speċifikament jordna, b'dan illi mal-mewt ta' dik il-persuna d-dritt jgħaddi għal għand is-suċċessur tagħha;

(b) jekk ma jkunx hemm ordni bħal dik iżda d-drittijiet tal-awtur fix-xogħol involut ikunu jagħmlu parti mill-eredità tiegħu, id-dritt jgħaddi għal għand il-persuna li għandha jgħaddu d-drittijiet tal-awtur.

⁵²⁷ The exhaustion of distribution rights are dealt with in Article 8 (for original work enjoying copyright), Article 20 (for fixations of performances, sound recordings, original and copies of audiovisual works and fixations of broadcasts conferred by the preceding articles of this Act on performers, producers of sound recordings, producers of the first fixations of audiovisual works and broadcasting organisations respectively), Article 31 (for a database) and Article 34 (for topography or the semiconductor product).

⁵²⁸ Part IV of the Copyright Act.

⁵²⁹ Article 7 of the Copyright Act.

⁵³⁰ Article 15 of the Copyright Act.

⁵³¹ Article 25 of the Copyright Act; Yellow Pages (Malta) Limited (C11814) vs Malta Directories Limited (17/06/2015).

⁵³² Article 32 of the Copyright Act.

XVIII.2.2. Author

"Author" means the natural person or group of natural persons who created the work eligible for copyright but in the case of an audiovisual work it includes the principal director but excludes the producer of the first fixation of the audiovisual work⁵³³.

XVIII.2.3. Protected works

Works, which are eligible for copyright, are listed in Article 3 of the Copyright Act:

- a) artistic works;
- b) audiovisual works;
- c) databases;
- d) literary works;
- e) musical works.

Copyright protection shall however not extend to ideas, procedures, methods of operations or mathematical concepts as such⁵³⁴.

XVIII.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

Article 9 of Chapter 415 transposes Article 5 of Directive 2001/29/EC. It provides for an exhaustive list of exceptions with regards to certain works. This means that third parties do not need an authorisation from the right holders in order to make use of the protected material mentioned in this article. Article 5 of the Directive is an optional list and therefore Member States can pick and choose (apart from the exception for temporary copying) which exceptions and limitations they wish to implement.

Directive 2001/29/EC	National law - Chapter 415
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <ul style="list-style-type: none"> (a) a transmission in a network between third parties by an intermediary, or (b) a lawful use <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Article 9.1(a)</p> <p>9 Copyright in an audiovisual work, a database, a literary work other than in the case of a computer programme, a musical or artistic work shall not include the right to authorise or prohibit -</p> <ul style="list-style-type: none"> (a) temporary acts of reproduction, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable: <ul style="list-style-type: none"> (i) a transmission in a network between third parties by an intermediary, or (ii) another lawful use of a work or other subject-matter to be made, and which have no independent economic significance⁵³⁵

⁵³³ Definition section of the Copyright Act.

⁵³⁴ Artikolu 3(2):

Barra minn hekk, il-protezzjoni tad-drittijiet tal-awtur m'għandhiex testendi għal ideat, proċeduri, metodi ta' tħaddim jew kunċetti matematiki bħal dawk.

⁵³⁵ Artikolu 9(1):

Id-drittijiet tal-awtur f'xogħol awdjoviżiv, database, xogħol letterarju ħlief fil-każ ta' program tal-computer,

Directive 2001/29/EC	National law - Chapter 415
Text	Text
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	Article 9.1 Copyright in an audiovisual work, a database, a literary work other than in the case of a computer programme, a musical or artistic work shall not include the right to authorise or prohibit - ⁵³⁶
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	Article 9.1(b) reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders received fair compensation; ⁵³⁷
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	Article 9.1(c) reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application or technological measures to the work or subject-matter concerned ⁵³⁸ ;
(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;	Article 9.1(d) 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 ⁵³⁹ ;
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own	Article 9.1(e)

xogħol mużikali jew artistiku ma għandux jinkludi d-dritt ta' awtorizzazzjoni jew projbizzjoni:

(a) *ta' għemejjel temporanji ta' riproduzzjoni li jkunu transjenti jew incidentali li jiffurmaw parti ċentrali u essenżjali ta' proċess teknoloġiku u li l-għan ewlieni tiegħu jkun li jiffacilita:*

(i) *trasmissjoni f'network bejn terzi minn intermedjarju, jew*

(ii) *użu leġittimu ieħor li jsir xogħol jew suġġett ieħor, u li ma jkollhom ebda sinifikat ekonomiku indipendenti;*

⁵³⁶ Artikolu 9(1):

Id-drittijiet tal-awtur f'xogħol awdjoviziv, database, xogħol letterarju ħlief fil-każ ta' program tal-computer, xogħol mużikali jew artistiku ma għandux jinkludi d-dritt ta' awtorizzazzjoni jew projbizzjoni:

⁵³⁷ Artikolu 9(1)(b):

ir-riproduzzjonijiet fuq il-karta jew xi mezz bħal dak, li jsiru billi tintuża kull xorta ta' teknika fotografika jew xi proċess ieħor li jkollu effetti simili, ħlief għal mużika fuq il-karta, sakemm id-detenturi ta' drittijiet jirċievu kumpens xieraq;

⁵³⁸ Artikolu 9(1)(c):

ir-riproduzzjonijiet fuq xi mezz li ssir minn persuna naturali għall-użu privat u għal finijiet li la huma direttament u lanqas indirettament kummerċjali, bil-kondizzjoni li d-detenturi ta' drittijiet jirċievu kumpens xieraq li jqis l-applikazzjoni jew nuqqas ta' applikazzjoni ta' miżuri teknoloġiċi għax-xogħol jew għas-suġġett in kwistjoni;

⁵³⁹ Artikolu 9(1)(d):

atti speċifiċi tar-riproduzzjoni magħmulin minn libreriji, stabbilimenti edukattivi jew mużewijiet aċċessibbli pubblikament, jew minn arkivi, li ma jeżistux għal xi vantaġġ ekonomiku jew kummerċjali dirett jew indirett;

Directive 2001/29/EC	National law - Chapter 415
Text	Text
broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	ephemeral recordings or works made by broadcasting organisations by means of their own facilities and for their own broadcasts: Provided that any reproduction of a work made under this paragraph may, if it is of exceptional documentary character be preserved in official archives ⁵⁴⁰ ;
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	Article 9.1(f) reproduction of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation ⁵⁴¹ ;
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	Article 9.1 Copyright in an audiovisual work, a database, a literary work other than in the case of a computer programme, a musical or artistic work shall not include the right to authorise or prohibit ⁵⁴² -
(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;	Article 9.1(h) the reproduction, translation, distribution or communication to the public of a work for the sole purpose of illustration for teaching or scientific research only to the extent justified by the noncommercial purpose to be achieved, and as long as the source, including the author's name, is, unless this is impossible, indicated ⁵⁴³ ;
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Article 9.1(i) the reproduction, translation, distribution or communication to the public of a work for the benefit of people with a disability, which are directly related to the disability and on a non-

⁵⁴⁰ Artikolu 9(1)(e):

reġistrazzjonijiet qosra ħafna ta' xogħlijiet magħmulin minn organizzazzjonijiet tax-xandir permezz tal-faċilitajiet tagħhom infushom u għax-xandiriet tagħhom stess:

lżda wkoll ir-riproduzzjoni ta' xogħol magħmul taħt dan il-paragrafu jista', jekk ikollu xorta ta' dokumentarju eċċezzjonali, jinżamm sigur fl-arkivji uffiċjali;

⁵⁴¹ Artikolu 9(1)(f):

ir-riproduzzjonijiet ta' xandiriet li jsiru minn istituzzjonijiet uffiċjali li jkunu qed jitmexxew skont finijiet mhux kummerċjali, bħalma huma sptarijiet jew ħabsijiet, sakemm id-detenturi ta' drittijiet jirċievu kumpens xieraq;

⁵⁴² Artikolu 9(1):

Id-drittijiet tal-awtur f'xogħol awdjoviżiv, database, xogħol letterarju ħlief fil-każ ta' program tal-computer, xogħol mużikali jew artistiku ma għandux jinkludi d-dritt ta' awtorizzazzjoni jew projbizzjoni:

⁵⁴³ Artikolu 9(1)(h):

ir-riproduzzjoni, traduzzjoni, distribuzzjoni jew komunikazzjoni lill-pubbliku ta' xogħol għall-għan ewlieni li ssir illustrazzjoni biss għal tagħlim jew riċerka xjentifika sal-limitu ġustifikat biex jintlaħaq l-iskop mhux kummerċjali, u sakemm l-origini, inkluż l-isem tal-awtur ikun indikat, sakemm dan ma jkunx impossibbli;

Directive 2001/29/EC	National law - Chapter 415
Text	Text
	commercial nature, to the extent required by the specific disability ⁵⁴⁴ ;
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	Article 9.1(j) the reproduction by the press, translation, distribution or communication to the public of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is, unless this is impossible, indicated ⁵⁴⁵ ;
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Article 9.1(k) the reproduction, translation, distribution or communication to the public of quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, as long as, unless this is impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purposes ⁵⁴⁶ ;
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Article 9.1(l) the reproduction, translation, distribution or communication to the public of a work for the purposes of public security or to ensure the proper

⁵⁴⁴ Artikolu 9(1)(i):
ir-riproduzzjoni, traduzzjoni, distribuzzjoni jew komunikazzjoni lill-pubbliku ta' xogħol għall-benefiċċju ta' nies b'diżabbiltà, li jkun relatat direttament mad-diżabbiltà u ta' natura mhux kummerċjali, sal-limitu meħtieġ bid-diżabbiltà speċifika;

⁵⁴⁵ Artikolu 9(1)(j):
ir-riproduzzjoni mill-istampa, traduzzjoni, distribuzzjoni, komunikazzjoni lill-pubbliku ta' artikoli pubblikati fuq topiċi ekonomiċi, politiċi jew reliġjużi kurrenti jew suġġett ieħor tal-istess xorta, f'każijiet fejn dak l-użu ma jkunx espressament riżervat, u sakemm l-origini, magħdud l-isem tal-awtur, ikun indikat jew użu ta' xogħlijiet jew suġġett ieħor dwar ir-rappurtaġġ ta' grajjiet kurrenti, sal-limitu ġustifikat bl-iskop ta' informazzjoni u sakemm l-origini, magħdud l-isem tal-awtur ikun indikat, sakemm dan ma jkunx impossibbli;

⁵⁴⁶ Artikolu 9(1)(k):
ir-riproduzzjoni, traduzzjoni, distribuzzjoni jew komunikazzjoni lill-pubbliku ta' kwotazzjonijiet għal skopijiet bħal kritika jew rivista, sakemm jirreferu għal xogħol jew suġġett li jkun diġa tqegħid għad-dispożizzjoni tal-pubbliku b'mod legittimu, sakemm, ma jkunx impossibbli, l-origini, magħdud l-isem tal-awtur, ikun indikat u li l-użu tagħhom ikun skont prattika xierqa, u sal-limitu meħtieġ bl-għanijiet speċifiċi;

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	performance or reporting of administrative, parliamentary or judicial proceedings ⁵⁴⁷ ;
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Article 9.1(m) the reproduction, translation, distribution or communication to the public of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by informatory purposes and provided that the source, including the author's name, is, except where this is impossible, indicated ⁵⁴⁸ ;
(g) use during religious celebrations or official celebrations organised by a public authority;	Article 9.1(n) the reproduction, translation, distribution or communication to the public of a work for use during religious celebrations or official celebrations organized by a public authority ⁵⁴⁹ ;
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Article 9.1(p) the inclusion in a communication to the public, the making of a graphic representation and the making of a photograph or film, of a work of architecture or sculpture or similar works made to be located permanently in public places ⁵⁵⁰ ;
(i) incidental inclusion of a work or other subject-matter in other material;	Article 9.1(q) the incidental inclusion of a work or other subject-matter in other material ⁵⁵¹ ;
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Article 9.1(r) the reproduction, distribution or communication to the public of a work for the purpose of advertising the public exhibition or sale of artistic

⁵⁴⁷ Artikolu 9(1)(l):

ir-riproduzzjoni, traduzzjoni, distribuzzjoni jew komunikazzjoni lill-pubbliku ta' xogħol għall-finijiet ta' sigurtà pubblika jew sabiex jiġi żgurat il-funzjonament jew rappurtaġġ xieraq ta' proċedimenti amministrattivi, parlamentari jew ġudizzjarji;

⁵⁴⁸ Artikolu 9(1)(m):

ir-riproduzzjoni, traduzzjoni, distribuzzjoni jew komunikazzjoni lill-pubbliku ta' taħdidiet politiċi kif ukoll ta' estratti ta' lectures pubbliċi jew ta' xogħlijiet jew suġġetti bħal daww sal-limitu ġustifikat b'għanijiet ta' informazzjoni u sakemm l-origini, inkluż isem l-awtur, ikun indikat, sakemm ma jkunx responsabbli;

⁵⁴⁹ Artikolu 9(1)(n):

ir-riproduzzjoni, traduzzjoni, distribuzzjoni jew komunikazzjoni lill-pubbliku ta' xi xogħol għall-użu waqt ċelebrazzjonijiet reliġjużi jew ċelebrazzjonijiet uffiċjali organizzati minn xi awtorità pubblika;

⁵⁵⁰ Artikolu 9(1)(p):

l-inkluzjoni f'komunikazzjoni lill-pubbliku, ir-riproduzzjoni grafika, it-teħid ta' ritratt jew film ta' xogħol ta' arkitettura jew skultura jew xogħlijiet simili magħmula biex ikunu lokalizzati b'mod permanenti f'post pubbliku;

⁵⁵¹ Artikolu 9(1)(q):

l-inkluzjoni inkidentalment ta' xogħol jew suġġett ieħor b'materjal ieħor;

Directive 2001/29/EC	National law - Chapter 415
Text	Text
	works, to the extent necessary to promote the event, excluding any other commercial use ⁵⁵² ;
(k) use for the purpose of caricature, parody or pastiche;	Article 9.1(s) the reproduction or communication to the public of a work by way of caricature, pastiche or parody ⁵⁵³ ;
(l) use in connection with the demonstration or repair of equipment;	Article 9.1(t) the reproduction, translation, distribution or communication to the public of a work in connection with the demonstration or repair of equipment ⁵⁵⁴ ;
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Article 9.1(u) the reproduction, distribution or communication to the public of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building ⁵⁵⁵ ;
(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;	Article 9.1(v) the communication to the public, 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 (d) of works and other subject-matter, not subject to purchase or licensing terms, which are contained in their collections ⁵⁵⁶ ;
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within	Article 9.1(g), (o), (w) (Copyright in an audiovisual work, a database, a literary work other than in the case of a computer programme, a musical or artistic work shall not include the right to authorise or prohibit ⁵⁵⁷ -

⁵⁵² Artikolu 9(1)(r):

ir-riproduzzjoni, distribuzzjoni jew komunikazzjoni pubblika ta' xi xogħol għall-fini ta' reklamar, esibizzjoni pubblika jew il-bejgħ ta' xogħlijiet artistici, sal-limitu meħtieġ biex iġib 'il quddiem il-grajja, eskluż kull użu kummerċjali ieħor;

⁵⁵³ Artikolu 9(1)(s):

ir-riproduzzjoni jew komunikazzjoni lill-pubbliku ta' xi xogħol bħala karikatura, pastiche jew parodija;

⁵⁵⁴ Artikolu 9(1)(t):

ir-riproduzzjoni, traduzzjoni, distribuzzjoni jew komunikazzjoni lill-pubbliku ta' xi xogħol li jkollu x'jaqsam mal-wiri jew it-tiswija ta' tagħmir;

⁵⁵⁵ Artikolu 9(1)(u):

ir-riproduzzjoni, distribuzzjoni jew il-komunikazzjoni lill-pubbliku ta' xogħol artistiku fl-għamla ta' xi bini jew tpinġija jew pjanta ta' bini għall-finijiet li dak il-bini jerġa' jinbena mill-ġdid;

⁵⁵⁶ Artikolu 9(1)(v):

il-komunikazzjoni lill-pubbliku, għall-fini ta' riċerka jew ta' studju privat, lill-membri individwali tal-pubbliku permezz ta' terminali dedikati fil-fond ta' stabbilimenti msemmija fil-paragrafu (d) ta' xogħlijiet u suġġetti oħra, li ma jkunux soġġetti għal patti ta' xiri jew ta' liċenzjar, li jkunu jinsabu fil-kollezzjonijiet tagħhom;

⁵⁵⁷ Artikolu 9(1):

Directive 2001/29/EC	National law - Chapter 415
Text	Text
the Community, without prejudice to the other exceptions and limitations contained in this Article.	(g) the performing, playing or showing of a work in a place where no admission fee is charged in respect of such an act by any club whose aim is not profitmaking ⁵⁵⁸ ; (o) the reading or recitation in public by a person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement ⁵⁵⁹ ; (w) in the case of a database, the performance of those acts which are normally necessary in order that the licensed user obtains access to the contents of the database and normal use thereof, in respect of the whole or part of the database which the user is licensed to use; and any contractual provisions running counter to what is prescribed in this paragraph shall be null and void ⁵⁶⁰ .
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	Please refer to Article 9 (h), (i), (j), (k), (l), (m), (n), (r), (t) and (u) which refer to exceptions to the right of distribution
5(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.	Article 9(3) The exceptions and limitations provided for in this article shall only be applied in such particular 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 ⁵⁶¹ .

Id-drittijiet tal-awtur f'xogħol awdjoviziv, database, xogħol letterarju ħlief fil-każ ta' program tal-computer, xogħol mużikali jew artistiku ma għandux jinkludi d-dritt ta' awtorizzazzjoni jew probizzjoni:

⁵⁵⁸ Artikolu 9(1)(g):

it-tweġġieq, daqq jew wiri ta' xogħol f'post fejn ma jithallas ebda dritt ta' dħul għal dan l-att minn xi club li l-iskop tiegħu ma jkunx li jagħmel qligħ;

⁵⁵⁹ Artikolu 9(1)(o):

il-qari jew reċitazzjoni fil-pubbliku minn persuna ta' xi estratt raġonevoli minn xogħol letterarju pubblikat jekk ikollu miegħu rikonoxximent biżżejjed;

⁵⁶⁰ Artikolu 9(1)(w):

fil-każ ta' database, l-għemil ta' dawk l-atti li normalment ikunu meħtieġa sabiex min ikun qed jużah bil-liċenza jikseb aċċess għall-kontenut tad-database u l-użu normali tagħha, dwar id-database kollha jew parti minnha li minn jużaha jkolli l-liċenza biex juża; u kull disposizzjoni kuntrattwali li tmur kontra dak li hu preskritt f'dan il-paragrafu jkun nulli u bla effett.

⁵⁶¹ Artikolu 9(1)(3):

L-eċċezzjonijiet u l-limitazzjonijiet li hemm provduti dwarhom f'dan l-artikolu għandhom jiġu biss applikati f'dawk il-każijiet partikolari li ma jmorru kuntrarju mal-esplotazzjoni normali tax-xogħol jew suġġett ieħor u li ma jippreġudikawx b'mod mhux raġonevoli l-interessi legittimi tad-detentur ta' drittijiet.

Directive 2012/28	National law - Legal Notice 394 of 2014 (Subsidiary legislation 415.05)
Text	Text
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Article 9(1)</p> <p>Notwithstanding the provisions of articles 7(1)(a) and 7(1)(e), as well as articles 13(a), 13(e), 15(a) and 15(d) of the Act, the organisations referred to in regulation 4(1) shall be permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of articles 7(1)(e), 13(e) and 15(d) of the Act;</p> <p>(b) by acts of reproduction, within the meaning of articles 7(1)(a), 13(b) and 15(a) of the Act, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration⁵⁶².</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>Article 9(2)</p> <p>The organisations referred to in regulation 4(1) shall use an orphan work in accordance with sub-regulation (1) only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public⁵⁶³.</p>
<p>6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the</p>	<p>Article 9(3)</p>

⁵⁶² Artikolu 9(1):

Minkejja d-dispożizzjonijiet tal-artikoli 7(1)(a) u 7(1)(e), kif ukoll tal-artikoli 13(a), 13(e), 15(a) u 15(d) tal-Att, l-organizzazzjonijiet imsemmija fir-regolament 4(1) għandhom jithallew jużaw ix-xogħlijiet orfni li jinsabu fil-kollezzjonijiet tagħhom bil-modi li ġejjin:

(a) billi jagħmlu x-xogħol orfni disponibbli lill-pubbliku, fl-isfond tat-tifsira tal-artikoli 7(1)(e), 13(e) u 15(d) tal-Att;

(b) permezz ta' atti ta' riproduzzjoni, fis-sens tal-artikoli 7(1)(a), 13(b) u 15(a) tal-Att, għal skopijiet ta' digitazzjoni, disponibbiltà, indiċjar, katalogar, preservazzjoni jew restawr.

⁵⁶³ Artikolu 9(2):

L-organizzazzjonijiet imsemmija fir-regolament 4(1) għandhom jużaw xogħol orfni kif hemm fis-subregolament (1) biss sabiex jinkisbu l-għanijiet relatati mal-missjonijiet tagħhom ta' interess tal-pubbliku, b'mod partikolari l-preservazzjoni, restawr, u l-ftuħ ta' aċċess kulturali u edukattiv għal xogħlijiet u fonogrammi li jkunu jinsabu fil-kollezzjoni tagħhom. L-organizzazzjonijiet jistgħu jigġeneraw dħul fil-kors ta' dawn l-użi, bil-għan esklussiv li jkopru l-ispejjeż tagħhom għad-digitizzazzjoni ta' xogħlijiet orfni u biex jagħmluhom disponibbli għall-pubbliku.

Directive 2012/28	National law - Legal Notice 394 of 2014 (Subsidiary legislation 415.05)
Text	Text
name of identified authors and other rightholders in any use of an orphan work.	The organisations referred to in regulation 4(1) shall indicate the name of identified authors and other rightholders in any use of an orphan work ⁵⁶⁴ .
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	Article 9(4) These regulations are without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements ⁵⁶⁵ .
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	Article 9(5) A fair compensation shall be due to rightholders that put an end to the orphan work status of their works or other protected subject-matter, for the use that has been made by the organisations referred to in regulation 4(1) of such works and other protected subject-matter in accordance with sub-regulation (1). The level of compensation shall be agreed upon by the organisation making use of the work or protected subject matter and the re-appearing rightholder after having taken into consideration the following circumstances: (a) the non-commercial nature of the use made by the organisation, (b) the public-interest mission of the organisation using the work or the protected subject matter to which the re-appearing rightholder is claiming a right; (c) the possible harm made to the re-appearing rightholder by the use of the work or the protected subject matter: Provided that in circumstances where prejudice to the rightholder is minimal, such as in those cases where there has not been economic use of the work or protected subject matter for a reasonable period of time, no compensation shall be due: Provided further that a fair and reasonable compensation is only due if re-appearing

⁵⁶⁴ Artikolu 9(3):

L-organizzazzjonijiet imsemmija fir-regolament 4(1) għandhom jindikaw l-isem tal-awturi identifikati u ta' detenturi ta' drittijiet oħra f'kull użu ta' xi xogħol orfni.

⁵⁶⁵ Artikolu 9(4):

Dawn ir-regolamenti huma mingħajr preġudizzju għal-libertà li dawn l-organizzazzjonijiet għandhom li jagħmlu kuntratti fl-insewiment tal-missjonijiet tagħhom ta' interess tal-pubbliku, partikolarment fir-rigward ta' kull ftehim ta' xorta ta' sħubija pubblika-privata.

Directive 2012/28	National law - Legal Notice 394 of 2014 (Subsidiary legislation 415.05)
Text	Text
	rightholders are able to demonstrate their right to the work, and the extent of their right ⁵⁶⁶ .

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⁵⁶⁶

Artikolu 9(5):

Għandu jkun dovut kumpens għad-detenturi ta' drittijiet li jtemmu l-istatus ta' xogħol orfni tax-xogħolijiet tagħhom jew ta' xi suġġett ieħor protett, għall-użu li jkun sar mill-organizzazzjonijiet imsemmija fir-regolament 4(1) ta' daww ix-xogħolijiet u ta' suġġetti oħra protetti kif hemm fis-subregolament (1) . Il-livell ta' kumpens għandu jiġi miftiehem mill-organizzazzjoni li tkun qegħda tuża x-xogħol jew suġġett protett u d-detentur tad-drittijiet li jiġi lura wara li jkunu tqiesu ċ-ċirkostanzi li ġejjin:

(a) ix-xorta mhux kummerċjali tal-użu li jsir mill-organizzazzjoni,

(b) il-missjoni ta' interess pubbliku tal-organizzazzjoni li tkun qegħda tuża x-xogħol jew is-suġġett protett li dwarhom ikun qiegħed jitlob dritt id-detentur tad-drittijiet li jiġi lura;

(c) il-ħsara li setgħet saret lid-detentur tad-drittijiet li jiġi lura bl-użu tax-xogħol jew tas-suġġett protett:

Iżda f'daww iċ-ċirkostanzi fejn il-preġudizzju għad-detentur tad-drittijiet ikun minimu, bħal f'daww il-każijiet fejn ma sarx użu ekonomiku tax-xogħol jew tas-suġġett protett għal perjodu ta' żmien raġonevoli, m'għandu jingħata ebda kumpens:

Iżda wkoll kumpens għust u raġonevoli jkun biss dovut jekk detenturi ta' drittijiet li jiġu lura jkunu kapaċi juru d-dritt tagħhom fuq ix-xogħol, u kemm ikun kbir id-dritt tagħhom.

XIX. THE NETHERLANDS

XIX.1. APPLICABLE NATIONAL LEGAL FRAMEWORK⁵⁶⁷

XIX.1.1. Constitution

The Constitution of the Kingdom of the Netherlands of 24 August 1815 does not contain a reference to copyright protection.

XIX.1.2. Copyright law

The main legislative act governing the protection of copyright in the Netherlands is the Act of 23 September 1912, containing New Regulation for Copyright⁵⁶⁸ or Copyright Act⁵⁶⁹ in short, which has been amended several times since its adoption, often also as a result of the obligation to transpose European Union Directives.

The Dutch Copyright Act is divided into several Chapters:

- Chapter I General Provisions
- Chapter Ia Exploitation Agreements
- Chapter II The exercise and enforcement of copyright and criminal law provisions
- Chapter III Duration of copyright
- Chapter IV Special provisions concerning resale right
- Chapter V Special provisions concerning films
- Chapter VI Special provisions concerning computer programs
- Chapter VII Protection of works disclosed to the public following expiry of the term of protection
- Chapter VIII Transitional and final provisions

XIX.2. COPYRIGHT

XIX.2.1. Definition and content

The Copyright Act contains a definition of copyright in Article 1:

Copyright is the exclusive right of the author of a literary, scientific or artistic work or his successors in title to disclose the work to the public and to reproduce it, subject to the exceptions laid down by law.⁵⁷⁰

This definition is further elaborated in Articles 3 to 25a of the Copyright Act. It should be noted that there are no formalities required, nor registration: the right exists from the moment of

⁵⁶⁷ All translations included in this part are based on the translation of the Dutch Copyright Act by Hendriks & James Legal Translations as published in 2015 (DeLex Publishers), which in itself was based on a previous translation by Mireille van Eechoud.

⁵⁶⁸ Wet van 23 september 1912, houdende nieuwe regeling van het auteursrecht.

⁵⁶⁹ Auteurswet.

⁵⁷⁰ Artikel 1: “Het auteursrecht is het uitsluitend recht van den maker van een werk van letterkunde, wetenschap of kunst, of van diens rechtverkrijgenden, om dit openbaar te maken en te verveelvoudigen, behoudens de beperkingen, bij de wet gesteld.”

creation. As in most legal orders, copyright in the Netherlands is comprised of two sets of rights, namely moral and economic rights.

XIX.2.1.1 Moral rights

Under the Dutch Copyright Act the author's moral rights include the right to oppose the publication of the work without reference to the name of the author (*droit de paternité*) and the right to oppose any disfigurement, distortion or other debasement of the work (*droit au respect*). Article 25(1) states:

Even after assigning his copyright, the author of a work has the following rights:

- a. the right to oppose disclosure to the public of the work without reference to his name or other indication as author, unless such opposition would be unreasonable;*
- b. the right to oppose disclosure to the public of the work under a name other than his own, as well as any alteration to the title of the work or the indication of the author, insofar as these appear on or in the work or have been disclosed to the public in connection with the work;*
- c. the right to oppose any other alteration to the work, unless the nature of the alteration is such that opposition would be unreasonable;*
- d. the right to oppose any distortion, mutilation or other impairment of the work that could be prejudicial to the honour or reputation of the author or to his dignity as an author.⁵⁷¹*

XIX.2.1.2 Economic rights

The economic rights (or exploitation rights) of the author are incorporated in the definition as set out in Article 1:

Copyright is the exclusive right of the author of literary, scientific or artistic work or his successors in title to disclose the work to the public and to reproduce it, subject to the exceptions laid down by law.

Permission of the author or right holder is required for disclosure of the work to the public and for reproduction of the work. Thus, they can control the use of their protected works and be remunerated for their use. This is further elaborated in Articles 12 to 14, where several examples are listed, such as the disclosure to the public of a reproduction, lending and broadcasting (disclosure to the public) and translations, filming, and adaptations (reproduction). In principle,

⁵⁷¹ Artikel 25, lid 1: "De maker van een werk heeft, zelfs nadat hij zijn auteursrecht heeft overgedragen, de volgende rechten:

- a. het recht zich te verzetten tegen openbaarmaking van het werk zonder vermelding van zijn naam of andere aanduiding als maker, tenzij het verzet zou zijn in strijd met de redelijkheid;*
- b. het recht zich te verzetten tegen de openbaarmaking van het werk onder een andere naam dan de zijne, alsmede tegen het aanbrengen van enige wijziging in de benaming van het werk of in de aanduiding van de maker, voor zover deze op of in het werk voorkomen, dan wel in verband daarmee zijn openbaar gemaakt;*
- c. het recht zich te verzetten tegen elke andere wijziging in het werk, tenzij deze wijziging van zodanige aard is, dat het verzet zou zijn in strijd met de redelijkheid;*
- d. het recht zich te verzetten tegen elke misvorming, verminking of andere aantasting van het werk, welke nadeel zou kunnen toebrengen aan de eer of de naam van de maker of aan zijn waarde in deze hoedanigheid."*

even a public presentation in a closed circle is included, unless this is restricted to family, friends or similar and offered for free⁵⁷².

XIX.2.2. Author

Article 4 of the Copyright Act establishes a general presumption of authorship, Articles 5 to 9 regulate specific cases. In general, the author should be understood to mean the person who developed the immaterial creation. Exceptions to this rule exist, most importantly the exception as set out in Article 7: if a work was created in the context of employment to that end, the employer will be regarded the maker, unless otherwise stipulated in the contract of employment.

XIX.2.3. Protected works

The Copyright Act lacks a definition of the concept 'protected work'. According to established case law and doctrine, to be eligible for copyright protection, a work should:

- 1) have an individual, original character and have the personal mark of the creator⁵⁷³;
- 2) be perceptible by the senses; and
- 3) not be mostly aimed at technical effect (in order to distinguish from patent right).

Article 10(1) of the Copyright Act contains a non-exhaustive list of protected works of literature, science or art:

For the purposes of this Act, literary, scientific or artistic works are:

- 1°. books, brochures, newspapers, periodicals and other writings;*
 - 2°. dramatic and dramatic-musical works;*
 - 3°. recitations;*
 - 4°. choreographic works and mime shows;*
 - 5°. musical works, with or without words;*
 - 6°. drawings, paintings, works of architecture and sculpture, lithographs, engravings and other graphic works;*
 - 7°. geographical maps;*
 - 8°. designs, sketches and plastic models pertaining to architecture, geography, topography or other sciences;*
 - 9°. photographic works;*
 - 10° films;*
 - 11° works of applied art and industrial drawings and models;*
 - 12° computer programs and preparatory design materials for such;*
- and generally any creation in the literary, scientific or artistic domain, regardless of the manner or form in which it has been expressed.*⁵⁷⁴

⁵⁷² See also Hoge Raad 09-03-1979 Stichting Willem Dreeshuis/BUMA.

⁵⁷³ Hoge Raad 04-01-1991 Van Dale/Romme.

⁵⁷⁴ Artikel 10, lid 1: "Onder werken van letterkunde, wetenschap of kunst verstaat deze wet:

By contrast, pursuant to Article 11 there is no copyright on laws, decisions, or regulations from a public authority, nor on court decisions or administrative decisions. Furthermore it is generally accepted that there is no copyright on facts and data (for the protection of databases a separate law exists), nor on styles and trends, ideas or theories.

Moreover, according to case law, the principle of exhaustion applies: the copyright owners' right to control copies of their work 'exhausts' on its first sale by the copyright owner or with their consent⁵⁷⁵.

XIX.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

There are, under Dutch law, limitations to copyright protection.

Those limitations are set out in Articles 15 to 25a, such as quoting of press by the press, use in educational contexts, copying for personal use or study, and parodies. According to case law, this list is non-exhaustive⁵⁷⁶.

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Article 13a</p> <p>The reproduction of a literary, scientific or artistic work does not include the temporary reproduction that is transient or incidental, forming an integral and essential part of a technological process, carried out for the sole purpose of enabling:</p> <p>(a) transmission in a network between third parties by an intermediary, or</p> <p>(b) lawful use to be made of a work, and which has no independent economic significance.⁵⁷⁷</p>

1°. boeken, brochures, nieuwsbladen, tijdschriften en andere geschriften;

2°. tooneelwerken en dramatisch-muzikale werken;

3°. mondelinge voordrachten;

4°. choreografische werken en pantomimes;

5°. muziekwerken met of zonder woorden;

6°. teken-, schilder-, bouw- en beeldhouwwerken, lithografieën, graveer- en andere plaatwerken;

7°. aardrijkskundige kaarten;

8°. ontwerpen, schetsen en plastische werken, betrekkelijk tot de bouwkunde, de aardrijkskunde, de plaatsbeschrijving of andere wetenschappen;

9°. fotografische werken;

10°. filmwerken;

11°. werken van toegepaste kunst en tekeningen en modellen van nijverheid;

12°. computerprogramma's en het voorbereidend materiaal;

en in het algemeen ieder voortbrengsel op het gebied van letterkunde, wetenschap of kunst, op welke wijze of in welken vorm het ook tot uitdrukking zij gebracht."

⁵⁷⁵ Hoge Raad 20-11-1987 Stemra/Free Record Shop.

⁵⁷⁶ Hoge Raad 20-10-1995 Dior/Evora.

⁵⁷⁷ Artikel 13a: „Onder de vervaelvoudiging van een werk van letterkunde, wetenschap of kunst wordt niet verstaan de tijdelijke reproductie die van voorbijgaande of incidentele aard is, en die een integraal en essentieel onderdeel

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	–
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	Article 16h 1. A reprographic reproduction of an article in a daily or weekly newspaper or weekly or other periodical, or of a small part of a book and other works contained in such a work, is not regarded as an infringement of the copyright, provided that compensation is paid for this reproduction. 2. A reprographic reproduction of the whole work is not regarded as an infringement of the copyright if it may reasonably be assumed that no new copies of the book will be made available to third parties for payment of any kind, provided that compensation is paid for this reproduction. 3. By order in council it may be determined that, in relation to the reproduction of works referred to in Section 10 (1) sub 1°, the provisions of one or more of the foregoing subsections may be derogated from for the benefit of public service as well as for the performance of tasks entrusted to institutions operating in the public interest. Further rules may be issued and conditions set by order in council in this regard. ⁵⁷⁸
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of	Article 16b to 16f Article 16b 1. Making a reproduction of a literary, scientific or artistic work that is limited to a few copies intended exclusively for private practice, study or use by the natural person who, for ends that are neither directly nor indirectly commercial, made

vormt van een technisch procédé dat wordt toegepast met als enig doel

a) de doorgifte in een netwerk tussen derden door een tussenpersoon of

b) een rechtmatig gebruik

van een werk mogelijk te maken, en die geen zelfstandige economische waarde bezit.”

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Artikel 16h:

„1 Een reprografische verveelvoudiging van een artikel in een dag-, nieuws- of weekblad of een tijdschrift of van een klein gedeelte van een boek en van de in zo'n werk opgenomen andere werken wordt niet beschouwd als inbreuk op het auteursrecht, mits voor deze verveelvoudiging een vergoeding wordt betaald.

2 Een reprografische verveelvoudiging van het gehele werk wordt niet beschouwd als inbreuk op het auteursrecht, indien van een boek naar redelijkerwijs mag worden aangenomen geen nieuwe exemplaren tegen betaling, in welke vorm dan ook, aan derden ter beschikking worden gesteld, mits voor deze verveelvoudiging een vergoeding wordt betaald.

3 Bij algemene maatregel van bestuur kan worden bepaald dat ten aanzien van de verveelvoudiging van werken als bedoeld bij artikel 10, eerste lid, onder 1°, van het in een of meer der voorgaande leden bepaalde mag worden afgeweken ten behoeve van de uitoefening van de openbare dienst, alsmede ten behoeve van de vervulling van taken waarmee in het algemeen belang werkzame instellingen zijn belast. Daarbij kunnen nadere regelen worden gegeven en nadere voorwaarden worden gesteld.”

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
technological measures referred to in Article 6 to the work or subject-matter concerned;	<p>the reproduction or had it made exclusively for his own benefit, is not regarded as an infringement of the copyright in that work.</p> <p>2. Where this concerns a daily or weekly newspaper or weekly or other periodical, or a book or a score or parts of a musical work, and of other works included in the said works, the reproduction is furthermore to be limited to a small part of the work, except in the case of:</p> <ol style="list-style-type: none"> works of which it may reasonably be assumed that no new copies will be made available to third parties for payment of any kind; short articles, news items or other texts, which have appeared in a daily or weekly newspaper or weekly or other periodical. <p>3. Where this concerns a work referred to in Article 10(1) sub 6°, the reproduction must differ appreciably from the original work, in size or as a result of the manner in which it was made.</p> <p>4. If a reproduction permitted under this article has been made, the copies made may not be issued to third parties without the consent of the author or his successors in title, unless it is for the purposes of judicial or administrative proceedings.</p> <p>5. It may be determined by order in council that fair compensation is due to the author or his successors in title for the reproduction referred to in the first paragraph. Further rules may be issued and conditions set for this.</p> <p>6. This article does not apply to acts of reproduction referred to in Article 16c, or to the recreation of works of architecture.⁵⁷⁹</p>

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Artikel 16b:

- „1. Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd de verveelvoudiging welke beperkt blijft tot enkele exemplaren en welke uitsluitend dient tot eigen oefening, studie of gebruik van de natuurlijke persoon die zonder direct of indirect commercieel oogmerk de verveelvoudiging vervaardigt of tot het verveelvoudigen uitsluitend ten behoeve van zichzelf opdracht geeft.
2. Waar het geldt een dag-, nieuws- of weekblad of een tijdschrift of een boek of de partituur of de partijen van een muziekwerk en de in die werken opgenomen andere werken, blijft die verveelvoudiging bovendien beperkt tot een klein gedeelte van het werk, behalve indien het betreft:
 - werken, waarvan naar redelijkerwijs mag worden aangenomen geen nieuwe exemplaren tegen betaling, in welke vorm ook, aan derden ter beschikking zullen worden gesteld;
 - in een dag-, nieuws- of weekblad of tijdschrift verschenen korte artikelen, berichten of andere stukken.
3. Waar het geldt een werk, als bedoeld bij artikel 10, eerste lid, onder 6°, moet de verveelvoudiging door haar grootte of door de werkwijze, volgens welke zij vervaardigd is, een duidelijk verschil vertonen met het oorspronkelijke werk.
4. Indien een ingevolge dit artikel toegelaten verveelvoudiging heeft plaatsgevonden, mogen de vervaardigde exemplaren niet zonder toestemming van de maker of zijn rechtverkrijgenden aan derden worden afgegeven,

tenzij de afgifte geschiedt ten behoeve van een rechterlijke of bestuurlijke procedure.

- 5. Bij algemene maatregel van bestuur kan worden bepaald dat voor de verveelvoudiging, bedoeld in het eerste lid, ten behoeve van de maker of diens rechtverkrijgenden een billijke vergoeding is verschuldigd. Daarbij kunnen nadere regelen worden gegeven en voorwaarden worden gesteld.*
- 6. Dit artikel is niet van toepassing op het reproduceren, bedoeld in artikel 16c, noch op het nabouwen van bouwwerken.”*

	<p>Article 16c</p> <ol style="list-style-type: none"> 1. Reproducing a literary, scientific or artistic work or part of it on an article that is intended for allowing a work to be heard, shown or presented, provided that the reproduction is carried out for ends that are neither directly nor indirectly commercial and is intended exclusively for private practice, study or use by the natural person who makes the reproduction, is not regarded as an infringement of the copyright in that work. 2. For the reproduction referred to in the first paragraph, fair compensation is owed to the author or his successor in title. The manufacturer or the importer of the articles referred to in the first paragraph is obliged to pay the compensation. 3. The manufacturer's obligation to pay compensation arises at the time that the articles manufactured by him are ready to be put into circulation. The importer incurs this obligation at the time of import. 4. The obligation to pay compensation lapses if the person liable for the payment referred to in the second paragraph exports the article referred to in the first paragraph. 5. The compensation is only due once for each article. 6. Further rules may be issued by order in council for the articles for which compensation referred to in the second paragraph is due. For the implementation of this article, further rules may be issued and conditions set, also by order in council, with respect to the level and form of fair compensation and liability for payment. 7. If a reproduction permitted under this article has been made, an article as referred to in the first paragraph may not be issued to third parties without the consent of the author or his successors in title, unless it is for judicial or administrative proceedings. 8. This article does not apply to the reproduction of a collection accessible by electronic means as referred to in Article 10(3).⁵⁸⁰ <p>Article 16d</p> <ol style="list-style-type: none"> 1. The compensation referred to in Article 16c must be paid to a legal person which is to be designated and judged representative by the Minister of Security and Justice and which is entrusted with the collection and distribution of that compensation in accordance with regulations it has drawn up and which have been approved by the Supervisory Board referred to in the Supervision of Collective Management Organisations for Copyright and Related Rights
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Directive 2001/29/EC	Dutch Copyright Act
Text	Text
	<p>Act. In matters relating to collection and compensation, this legal person will represent the authors and their successors in title both in and out of court.</p> <p>2. The legal person referred to in the first paragraph will be supervised by the Supervisory Board as referred to in the Supervision of Collective Management Organisations for Copyright and Related Rights Act.⁵⁸¹</p> <p>Article 16e</p> <p>The level of the compensation referred to in Article 16c will be determined by a foundation to be designated by the Minister of Security and Justice, the board of which is composed so as to represent, in a balanced manner, the interests of the authors or their successors in title and the persons liable for</p>

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Artikel 16c:

- „1. Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd het reproduceren van het werk of een gedeelte ervan op een voorwerp dat bestemd is om een werk ten gehore te brengen, te vertonen of weer te geven, mits het reproduceren geschiedt zonder direct of indirect commercieel oogmerk en uitsluitend dient tot eigen oefening, studie of gebruik van de natuurlijke persoon die de reproductie vervaardigt.
2. Voor het reproduceren, bedoeld in het eerste lid, is ten behoeve van de maker of diens rechtverkrijgenden een billijke vergoeding verschuldigd. De verplichting tot betaling van de vergoeding rust op de fabrikant of de importeur van de voorwerpen, bedoeld in het eerste lid.
3. Voor de fabrikant ontstaat de verplichting tot betaling van de vergoeding op het tijdstip dat de door hem vervaardigde voorwerpen in het verkeer kunnen worden gebracht. Voor de importeur ontstaat deze verplichting op het tijdstip van invoer.
4. De verplichting tot betaling van de vergoeding vervalt indien de ingevolge het tweede lid betalingsplichtige een voorwerp als bedoeld in het eerste lid uitvoert.
5. De vergoeding is slechts eenmaal per voorwerp verschuldigd.
6. Bij algemene maatregel van bestuur kunnen nadere regelen worden gegeven met betrekking tot de voorwerpen ten aanzien waarvan de vergoeding, bedoeld in het tweede lid, verschuldigd is. Bij algemene maatregel van bestuur kunnen voorts nadere regelen worden gegeven en voorwaarden worden gesteld ter uitvoering van het bepaalde in dit artikel met betrekking tot de hoogte, verschuldigdheid en vorm van de billijke vergoeding.
7. Indien een ingevolge dit artikel toegelaten reproductie heeft plaatsgevonden, mogen voorwerpen als bedoeld in het eerste lid niet zonder toestemming van de maker of zijn rechtverkrijgenden aan derden worden afgegeven, tenzij de afgifte geschiedt ten behoeve van een rechterlijke of bestuurlijke procedure.
8. Dit artikel is niet van toepassing op het veeleenvoudigen van een met elektronische middelen toegankelijke verzameling als bedoeld in artikel 10, derde lid.”

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Artikel 16d:

- „1. De betaling van de in artikel 16c bedoelde vergoeding dient te geschieden aan een door Onze Minister van Justitie aan te wijzen, naar zijn oordeel representatieve rechtspersoon, die belast is met de inning en de verdeling van deze vergoeding overeenkomstig een reglement, dat is opgesteld door deze rechtspersoon, en dat is goedgekeurd door het College van Toezicht, bedoeld in de Wet toezicht collectieve beheersorganisaties auteurs- en naburige rechten. In aangelegenheden betreffende de inning en vergoeding vertegenwoordigt deze rechtspersoon de makers of hun rechtverkrijgenden in en buiten rechte.
2. De rechtspersoon, bedoeld in het eerste lid, staat onder toezicht van het College van Toezicht, bedoeld in de Wet toezicht collectieve beheersorganisaties auteurs- en naburige rechten.”

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
	<p>payment pursuant to Article 16c(2). The chair of the board of the said foundation will be appointed by the Minister of Security and Justice.⁵⁸²</p> <p>Article 16f</p> <p>The person who is required to pay the compensation referred to in Article 16c is obliged to submit a specification of the number of articles as referred to in Article 16c(1) that were imported or manufactured by him, to the legal person referred to in Article 16d(1), either immediately or within a period agreed with the said legal person. He is also obliged to provide the said legal person, on request, with immediate access to the documents necessary to establish liability for payment and the level of the compensation.⁵⁸³</p>
(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;	<p>Article 16n</p> <p>1. It is not regarded as an infringement of the copyright in a literary, scientific or artistic work for publicly accessible libraries, educational establishments and museums or archives which are not seeking a direct or indirect economic or commercial advantage, to make a reproduction provided that the sole purpose of making the reproduction is:</p> <p>1°. to restore the original work or a copy thereof;</p> <p>2°. if the original work or a copy thereof is likely to decay, to preserve it for the institution;</p> <p>3°. to preserve access to the work if the technology available to make it accessible becomes obsolete.</p> <p>2. The acts of reproduction as referred to in the first paragraph are only permitted if:</p> <p>1°. the copies of the work form part of the collection held by the publicly accessible libraries, educational establishments and museums or archives that rely on this exception; and</p>

⁵⁸² Artikel 16e: „De hoogte van de in artikel 16c bedoelde vergoeding wordt vastgesteld door een door Onze Minister van Justitie aan te wijzen stichting waarvan het bestuur zodanig is samengesteld dat de belangen van de makers of hun rechtverkrijgenden en de ingevolge artikel 16c, tweede lid, betalingsplichtigen op evenwichtige wijze worden behartigd. De voorzitter van het bestuur van deze stichting wordt benoemd door Onze Minister van Justitie.”

⁵⁸³ Artikel 16f: „Degene die tot betaling van de in artikel 16c bedoelde vergoeding verplicht is, is gehouden onverwijld of binnen een met de in artikel 16d, eerste lid, bedoelde rechtspersoon overeengekomen tijdvak opgave te doen aan deze rechtspersoon van het aantal van de door hem geïmporteerde of vervaardigde voorwerpen, bedoeld in artikel 16c, eerste lid. Hij is voorts gehouden aan deze rechtspersoon op diens aanvraag onverwijld die bescheiden ter inzage te geven, waarvan kennisneming noodzakelijk is voor de vaststelling van de verschuldigheid en de hoogte van de vergoeding.”

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	<p>2°. the provisions of Article 25 are observed.⁵⁸⁴</p> <p>Article 17b</p> <p>1. Unless otherwise agreed, the authority to disclose to the public a radio or television programme by broadcasting it by radio or television or another medium fulfilling the same function, does not include authorisation to create a fixation of the work.</p> <p>2. The broadcasting organisation that is authorised to disclose to the public as referred to in the first paragraph, is however entitled to create a temporary fixation of the work intended for broadcasting with its own equipment and exclusively for the purposes of broadcasting its own radio or television programmes. The broadcasting organisation thus entitled to create a fixation is nonetheless obliged to respect the rights of the author of the work as referred to in Article 25.</p> <p>3. Fixations created with due observance of the second paragraph and which have exceptional documentary character may be kept in official archives.⁵⁸⁵</p>

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Artikel 16n:

- „1. Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd de verveelvoudiging door voor het publiek toegankelijke bibliotheken, onderwijsinstellingen en musea of archieven die niet het behalen van een direct of indirect economisch of commercieel voordeel nastreven, indien die verveelvoudiging geschiedt met als enig doel:
- 1°. het exemplaar van het werk te restaureren;
 - 2°. bij dreiging van verval van het exemplaar van het werk een verveelvoudiging daarvan te behouden voor de instelling;
 - 3°. het werk raadpleegbaar te houden als de technologie waarmee het toegankelijk gemaakt kan worden in onbruik raakt.
2. De in het eerste lid bedoelde verveelvoudigingen zijn slechts geoorloofd indien:
- 1°. de exemplaren van het werk deel uitmaken van de verzameling van de voor het publiek toegankelijke bibliotheken, onderwijsinstellingen en musea of archieven die een beroep op deze beperking doen; en
 - 2°. artikel 25 in acht wordt genomen.”

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Artikel 17b:

- „1. Tenzij anders is overeengekomen, sluit de bevoegdheid tot openbaarmaking door uitzending van een radio- of televisieprogramma via radio of televisie, of een ander medium dat eenzelfde functie vervult niet in de bevoegdheid het werk vast te leggen.
2. De omroeporganisatie die bevoegd is tot de openbaarmaking, bedoeld in het eerste lid, is echter gerechtigd met haar eigen middelen en uitsluitend voor uitzending van haar eigen radio- of televisieprogramma's het ter uitzending bestemde werk tijdelijk vast te leggen. De omroeporganisatie, die dientengevolge gerechtigd is tot vastlegging, is desalniettemin verplicht de rechten van de maker van het werk, bedoeld in artikel 25, te eerbiedigen.
3. Vastleggingen die met inachtneming van het tweede lid zijn vervaardigd en een uitzonderlijke documentaire waarde bezitten, mogen in officiële archieven worden bewaard.”

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	–
(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;	<p>Article 16</p> <p>1. The reproduction or disclosure to the public of parts of a literary, scientific or artistic work for the sole purpose of illustration for teaching, insofar as this is justified by the intended and non-commercial purpose, is not regarded as an infringement of the copyright in that work, provided that:</p> <p>1°. the work from which the part is taken has been lawfully disclosed to the public;</p> <p>2°. it is in accordance with what is generally regarded as reasonably acceptable use;</p> <p>3°. the provisions of Article 25 have been observed;</p> <p>4°. insofar as reasonably possible the source, including the author's name, has been clearly indicated; and</p> <p>5°. fair compensation is paid to the author or his successors in title.</p> <p>2. For the same purpose, and subject to the same conditions, use of the whole work is allowed if it concerns a short work or a work as referred to in Article 10(1) sub 6°, 9° or 11°.</p> <p>3. Where the use is for a compilation, the use of works by the same author must be limited to a few short works or short passages of his works. Where it concerns works referred to in Article 10(1) sub 6°, 9° or 11°, only a few of the said works may be used and only if the reproductions differ appreciably from the original work, in size or as a result of the manner in which they are made, on the understanding that, where two or more such works were disclosed to the public together, the reproduction of only one of them is permitted.</p> <p>4. The provisions of this article also apply where the use is in a language other than the original.⁵⁸⁶</p>

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Artikel 16:

„1. Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd de verveelvoudiging of openbaarmaking van gedeelten ervan uitsluitend ter toelichting bij het onderwijs, voor

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Article 15i 1. The reproduction or disclosure to the public of a literary, scientific or artistic work where this is exclusively intended for disabled persons is not regarded as an infringement of the copyright in that work, provided this is directly related to the disability, is not of a commercial nature and is required on account of the disability. 2. Fair compensation is due to the author or his successor in title for the act of reproduction or disclosure to the public referred to in the first subsection. ⁵⁸⁷
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's	Article 15 and 16a Article 15 1. Using reports or articles on current economic, political, religious or ideological topics or works of the same nature which have been published in a daily or weekly newspaper or weekly or other periodical, radio or television programme or other medium that has the same function, is not regarded as an infringement of the copyright in a literary, scientific or artistic work, if:

zover dit door het beoogde, niet-commerciële doel wordt gerechtvaardigd, mits:

- 1°. *het werk waaruit is overgenomen rechtmatig openbaar gemaakt is;*
- 2°. *het overnemen in overeenstemming is met hetgeen naar de regels van het maatschappelijk verkeer redelijkerwijs geoorloofd is;*
- 3°. *artikel 25 in acht wordt genomen;*
- 4°. *Voor zover redelijkerwijs mogelijk, de bron, waaronder de naam van de maker, op duidelijke wijze wordt vermeld; en*
- 5°. *aan de maker of zijn rechtverkrijgenden een billijke vergoeding wordt betaald.*
2. *Waar het geldt een kort werk of een werk als bedoeld in artikel 10, eerste lid onder 6°, onder 9° of onder 11°, mag voor hetzelfde doel en onder dezelfde voorwaarden het gehele werk worden overgenomen.*
3. *Waar het het overnemen in een compilatiewerk betreft, mag van dezelfde maker niet meer worden overgenomen dan enkele korte werken of korte gedeelten van zijn werken, en waar het geldt werken als bedoeld in artikel 10, eerste lid onder 6°, onder 9° of onder 11°, niet meer dan enkele van die werken en in zodanige verveelvoudiging, dat deze door haar grootte of door de werkwijze, volgens welke zij vervaardigd is, een duidelijk verschil vertoont met het oorspronkelijke met dien verstande, dat wanneer van deze werken er twee of meer verenigd openbaar zijn gemaakt, die verveelvoudiging slechts ten aanzien van een daarvan geoorloofd is.*
4. *De bepalingen van dit artikel zijn mede van toepassing ten aanzien van het overnemen in een andere taal dan de oorspronkelijke."*

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Artikel 15i:

- „1. Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd de verveelvoudiging of openbaarmaking die uitsluitend bestemd is voor mensen met een handicap, mits deze direct met de handicap verband houdt, van niet commerciële aard is en wegens die handicap noodzakelijk is.
2. Voor de verveelvoudiging of openbaarmaking, bedoeld in het eerste lid, is ten behoeve van de maker of diens rechtverkrijgenden een billijke vergoeding verschuldigd. "

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
name, is indicated, unless this turns out to be impossible;	<p>1°. the use is made by a daily or weekly newspaper, a weekly or other periodical, a radio or television programme or other medium that has the same function;</p> <p>2°. the provisions of Article 25 are observed;</p> <p>3°. the source, including the name of the author, is clearly indicated; and</p> <p>4°. the copyright is not expressly reserved.</p> <p>2. This article also applies to use in a language other than the original.⁵⁸⁸</p> <p>Article 16a</p> <p>Making a short recording, show or presentation of a literary, scientific or artistic work in public in a photographic, film, radio or television report is not regarded as an infringement of the copyright in that work, insofar as this is justified for giving a proper account of the current event that is the subject of the report and provided that, as far as is reasonably possible, the source, including the author's name, is indicated clearly.⁵⁸⁹</p>
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	<p>Article 15a</p> <p>1. Quoting from a literary, scientific or artistic work in an announcement, review, polemic or scientific treatise or a piece with a comparable purpose, is not regarded as an infringement of the copyright in a literary, scientific or artistic work provided that:</p> <p>1°. the work quoted from has been lawfully disclosed to the public;</p>

⁵⁸⁸ Artikel 15:

„1. Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd het overnemen van berichten of artikelen over actuele economische, politieke, godsdienstige of levensbeschouwelijke onderwerpen alsmede van werken van dezelfde aard die in een dag-, nieuws- of weekblad, tijdschrift, radio- of televisieprogramma of ander medium dat eenzelfde functie vervult, zijn openbaar gemaakt, indien:

1°. het overnemen geschiedt door een dag-, nieuws- of weekblad of tijdschrift, in een radio- of televisieprogramma of ander medium dat een zelfde functie vervult;

2°. artikel 25 in acht wordt genomen;

3°. de bron, waaronder de naam van de maker, op duidelijke wijze wordt vermeld; en

4°. het auteursrecht niet uitdrukkelijk is voorbehouden.

2. Dit artikel is mede van toepassing op het overnemen in een andere taal dan de oorspronkelijke.”

⁵⁸⁹ Artikel 16a: „Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd een korte opname, weergave en mededeling ervan in het openbaar in een foto-, film-, radio- of televisiereportage voor zover zulks voor het behoorlijk weergeven van de actuele gebeurtenis welke het onderwerp der reportage uitmaakt, gerechtvaardigd is en mits, voor zover redelijkerwijs mogelijk, de bron, waaronder de naam van de maker, duidelijk wordt vermeld.”

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
	<p>2°. the quotation is in accordance with what is generally regarded as reasonably acceptable and the number and size of the quoted parts are justified by the purpose to be achieved;</p> <p>3°. the provisions of Article 25 are observed; and</p> <p>4°. the source, including the author's name, is clearly indicated, insofar as this is reasonably possible.</p> <p>2. In this article the term quotation also includes quotations in the form of press surveys of articles appearing in a daily or weekly newspaper or other periodical.</p> <p>3. This article also applies to quotations in a language other than the original.⁵⁹⁰</p>
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	<p>Article 22(2)</p> <p>The use of a literary, scientific, or artistic work for purposes of public safety, or for ensuring the proper course of administrative, parliamentary or judicial proceedings or the reporting of them, is not regarded as an infringement of the copyright in that work.⁵⁹¹</p>
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	–
(g) use during religious celebrations or official celebrations organised by a public authority;	Article 17c

⁵⁹⁰ Artikel 15a:

„1. Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd het citeren uit een werk in een aankondiging, beoordeling, polemiek of wetenschappelijke verhandeling of voor een uiting met een vergelijkbaar doel mits:

1°. het werk waaruit geciteerd wordt rechtmatig openbaar gemaakt is;

2°. het citeren in overeenstemming is met hetgeen naar de regels van het maatschappelijk verkeer redelijkerwijs geoorloofd is en aantal en omvang der geciteerde gedeelten door het te bereiken doel zijn gerechtvaardigd;

3°. artikel 25 in acht wordt genomen; en

4°. voor zover redelijkerwijs mogelijk, de bron, waaronder de naam van de maker, op duidelijke wijze wordt vermeld.

2. Onder citeren wordt in dit artikel mede begrepen het citeren in de vorm van persoverzichten uit in een dag-, nieuws- of weekblad of tijdschrift verschenen artikelen.

3. Dit artikel is mede van toepassing op het citeren in een andere taal dan de oorspronkelijke.”

⁵⁹¹ Artikel 22, lid 2: „Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd het overnemen ervan ten behoeve van de openbare veiligheid of om het goede verloop van een bestuurlijke, parlementaire of gerechtelijke procedure of de berichtgeving daarover te waarborgen.”

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
	Singing in a congregation with instrumental accompaniment during a service of worship is not regarded as an infringement of the copyright in a literary or artistic work. ⁵⁹²
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Article 18 The reproduction or disclosure to the public of images of a work referred to in Article 10(1) sub 6° or a work pertaining to architecture as referred to in Article 10(1) sub 8° which has been made to be permanently situated in public places and as it is situated there is not regarded as an infringement of the copyright in that work. Where this concerns incorporation into a compilation work, no more than a few works by the same author may be incorporated. ⁵⁹³
(i) incidental inclusion of a work or other subject-matter in other material;	Article 18a The incidental incorporation of a literary, scientific or artistic work into another work as a part of minor significance is not regarded as an infringement of the copyright in that work. ⁵⁹⁴
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Article 23 Unless otherwise agreed, whoever owns, possesses or holds a drawing, painting, sculpture or a work of architecture or applied art, is permitted to reproduce and disclose that work to the public insofar as that is necessary for a public exhibition or public sale of that work, subject to the exclusion of any other commercial use. ⁵⁹⁵
(k) use for the purpose of caricature, parody or pastiche;	Article 18b Disclosure to the public or reproduction of a literary, scientific or artistic work in the context of a caricature, parody or pastiche is not regarded as an infringement of the copyright in that work,

⁵⁹² Artikel 17c: „Als inbreuk op het auteursrecht op een werk van letterkunde of kunst wordt niet beschouwd de gemeentezang en de instrumentale begeleiding daarvan tijdens een eredienst.”

⁵⁹³ Artikel 18: „Als inbreuk op het auteursrecht op een werk als bedoeld in artikel 10, eerste lid, onder 6°, of op een werk, betrekkelijk tot de bouwkunde als bedoeld in artikel 10, eerste lid, onder 8°, dat is gemaakt om permanent in openbare plaatsen te worden geplaatst, wordt niet beschouwd de verveelvoudiging of openbaarmaking van afbeeldingen van het werk zoals het zich aldaar bevindt. Waar het betreft het overnemen in een compilatiewerk, mag van dezelfde maker niet meer worden overgenomen dan enkele van zijn werken.”

⁵⁹⁴ Artikel 18a: „Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd de incidentele verwerking ervan als onderdeel van ondergeschikte betekenis in een ander werk.”

⁵⁹⁵ Artikel 23: „Tenzij anders overeengekomen, is de eigenaar, bezitter of houder van een teken-, schilder-, bouw- of beeldhouwwerk of een werk van toegepaste kunst bevoegd dat werk te verveelvoudigen of openbaar te maken voor zover dat noodzakelijk is voor openbare tentoonstelling of openbare verkopen van dat werk, een en ander met uitsluiting van enig ander commercieel gebruik.”

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
	provided that this use is in accordance with what is generally regarded as reasonably acceptable. ⁵⁹⁶
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(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;	Article 15h Unless otherwise agreed, providing access to a literary, scientific or artistic work that forms part of the collections of publicly accessible libraries, educational establishments and museums or archives which do not seek a direct or indirect economic or commercial advantage, by means of a closed network and through dedicated terminals on the premises of these establishments, to individual members of the public, for purposes of research or private study, is not regarded as an infringement of the copyright. ⁵⁹⁷
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(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-	–

⁵⁹⁶ Artikel 18b: „Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst wordt niet beschouwd de openbaarmaking of verveelvoudiging ervan in het kader van een karikatuur, parodie of pastiche mits het gebruik in overeenstemming is met hetgeen naar de regels van het maatschappelijk verkeer redelijkerwijs geoorloofd is.”

⁵⁹⁷ Artikel 15h: „Tenzij anders overeengekomen, wordt niet als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst beschouwd het door middel van een besloten netwerk beschikbaar stellen van een werk dat onderdeel uitmaakt van verzamelingen van voor het publiek toegankelijke bibliotheken, onderwijsinstellingen en musea of archieven die niet het behalen van een direct of indirect economisch of commercieel voordeel nastreven, door middel van daarvoor bestemde terminals in de gebouwen van die instellingen aan individuele leden van het publiek voor onderzoek of privé-studie.”

Directive 2001/29/EC	Dutch Copyright Act
Text	Text
matter and do not unreasonably prejudice the legitimate interests of the rightholder.	

Directive 2012/28	Dutch Copyright Act
Text	Text
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Article 16o(1)</p> <p>It is not regarded as an infringement of the copyright in a literary, scientific or artistic work referred to in Article 10(1) sub 1°, 5° or 10°, for publicly accessible libraries, educational establishments and museums, as well as archives and film or audio-visual heritage institutions that do not seek any direct or indirect economic or commercial advantage, to reproduce or make available a work first disclosed to the public in a Member State of the European Union or in a State that is party to the Agreement on the European Economic Area provided that:</p> <ol style="list-style-type: none"> the work forms part of the own collection of organisations referred to above; the rightholder to the work has not been identified and located after a diligent search within the meaning of Article 16p has been carried out; and the work is reproduced and made available within the scope of the performance of a public duty, in particular the conservation and restoration of works and providing access for cultural and educational purposes to the works from the own collections of the organisations referred to above.⁵⁹⁸
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve	<p>Article 16o(4)</p> <p>The organisations referred to in the first paragraph may generate revenue by reproducing and making</p>

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Artikel 16o, lid 1: „Als inbreuk op het auteursrecht op een werk van letterkunde, wetenschap of kunst als bedoeld in artikel 10, eerste lid, onder 1, 5 of 10, wordt niet beschouwd de reproductie of beschikbaarstelling door voor het publiek toegankelijke bibliotheken, onderwijsinstellingen en musea, alsmede archieven en instellingen voor cinematografisch of audiovisueel erfgoed die niet het behalen van een direct of indirect economisch of commercieel voordeel nastreven, van een voor het eerst in een lidstaat van de Europese Unie of in een staat die partij is bij de Overeenkomst betreffende de Europese Economische Ruimte openbaar gemaakt werk mits:

- het werk deel uitmaakt van de eigen verzameling van de hiervoor bedoelde organisaties;
- de rechthebbende op het werk na een zorgvuldig onderzoek als bedoeld in artikel 16p niet is geïdentificeerd en opgespoord; en
- de reproductie en beschikbaarstelling geschiedt in het kader van de uitoefening van een publieke taak, in het bijzonder het behouden en restaureren van de werken en het verstrekken van voor culturele en onderwijsdoeleinden bestemde toegang tot de werken uit de eigen verzameling van de hiervoor bedoelde organisaties.”

Directive 2012/28	Dutch Copyright Act
Text	Text
aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	the works available provided that this revenue serves solely to compensate the costs of digitising and making the works referred to in the first paragraph available. ⁵⁹⁹
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Article 16o(2) If the copyright in the work is vested in one or more persons and not all the rightholders have been identified and located after a diligent search has been carried out, the work may only be reproduced and made available if the located rightholder has given his consent in relation to the rights that he himself holds. Upon making a work available, the organisations referred to in the first paragraph must indicate the identified, but not yet located, rightholder or rightholders. ⁶⁰⁰
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	–
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union	Article 16q The use of a literary, scientific or artistic work in accordance with Article 16o (1) will be revoked if a rightholder avails himself of the possibility to put an end to the orphan work status in respect of rights that he himself holds. Fair compensation is due from the organisations referred to in Article 16o(1) to the right-holder for the use that has been made of the work on the basis of Article 16o. ⁶⁰¹

⁵⁹⁹ Art. 16o, lid 4: „De organisaties, genoemd in het eerste lid, mogen met de reproductie en beschikbaarstelling inkomsten gener[er]en op voorwaarde dat deze inkomsten uitsluitend dienen ter vergoeding van de kosten van de digitalisering en beschikbaarstelling van de in het eerste lid bedoelde werken.”

⁶⁰⁰ Art. 16o, lid 2: „Indien aan twee of meer personen het auteursrecht toekomt op het werk en na een zorgvuldige onderzoek niet alle rechthebbenden zijn geïdentificeerd en opgespoord, kan het werk alleen worden gereproduceerd en beschikbaar gesteld indien de opgespoorde rechthebbende met betrekking tot de rechten waarover hij beschikt daarvoor toestemming verleent. De organisaties, genoemd in het eerste lid, vermelden bij de beschikbaarstelling de geïdentificeerde, maar niet opgespoorde rechthebbende(n).”

⁶⁰¹ Artikel 16q: „Het gebruik van een werk van letterkunde, wetenschap of kunst overeenkomstig artikel 16o, eerste lid, wordt beëindigd indien een rechthebbende met betrekking tot de rechten waar hij over beschikt, gebruik maakt van de mogelijkheid om de status van verweesd werk te beëindigen. De organisaties bedoeld in artikel 16o, eerste lid, zijn aan de rechthebbende een billijke vergoeding verschuldigd voor het gebruik dat op grond van artikel 16o van het werk is gemaakt.”

Directive 2012/28	Dutch Copyright Act
Text	Text
law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	

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XX. AUSTRIA

Pro memoria

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XXI. POLAND

XXI.1. APPLICABLE NATIONAL LEGAL FRAMEWORK⁶⁰²

XXI.1.1. Constitution

The Constitution of the Republic of Poland of 2 April 1997⁶⁰³ does not explicitly provide for protection of intellectual property. It does, however, contain general provisions concerning the protection of ownership:

Art. 21(1)

*The Republic of Poland shall protect ownership and the right of succession.*⁶⁰⁴

Art. 64.

- 1. Everyone shall have the right to ownership, other property rights and the right of succession.*
- 2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.*
- 3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.*⁶⁰⁵

Pursuant to the judgement of the Constitutional Tribunal of 21 March 2001 (K 14/99), the concept of 'ownership' within the meaning of the Constitution is to be understood in a broader sense than under civil law. Therefore, it is argued, the abovementioned provisions of the Constitution cover also ownership of intellectual property.

XXI.1.2. Copyright Law

The protection of copyright in Poland is governed chiefly by the Act of 4 February 1994 on Copyright and Related Rights⁶⁰⁶, as subsequently amended ("the Copyright Act").

The Copyright Act is divided into 17 chapters and constitutes a comprehensive legal instrument covering all aspects of copyright, including provisions concerning i.a. the copyright

⁶⁰² The original texts of Polish normative acts are not protected by copyright and may be reproduced freely.

The source of the translations of the Polish Constitution is the Sejm Information System (System Informacyjny Sejmu) and the English text is available on the official website of the Polish Sejm: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

Translations of the Copyright Act are, unless indicated otherwise, based on the English version thereof, as published on the website of the World Intellectual Property Organization (http://www.wipo.int/wipolex/en/text.jsp?file_id=129377) and as subsequently adapted for the purposes of this study.

⁶⁰³ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. z 1997 r., nr 78, poz. 483 ze zm.).

⁶⁰⁴ Art. 21: 1. *Rzeczpospolita Polska chroni własność i prawo dziedziczenia.*

⁶⁰⁵ Art. 64: 1. *Każdy ma prawo do własności, innych praw majątkowych oraz prawo dziedziczenia.*

2. Własność, inne prawa majątkowe oraz prawo dziedziczenia podlegają równej dla wszystkich ochronie prawnej.

3. Własność może być ograniczona tylko w drodze ustawy i tylko w zakresie, w jakim nie narusza ona istoty prawa własności.

⁶⁰⁶ Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych (t.j. Dz. U. z 2017 r., poz. 880 ze zm.).

protection of computer programs, related rights as well as criminal sanctions for infringements of copyright.

XXI.2. COPYRIGHT

XXI.2.1. Definition and content

While the Copyright Act does not contain a definition of copyright as such, it describes the content of this right by reference to the object of protection, i.e. the work.

Art. 1(1)

Any manifestation of creative activity of individual character, established in any form, irrespective of its value, purpose or form of expression (the work) shall be the object of copyright.⁶⁰⁷

Article 1(3) of the Copyright Act states that:

Art. 1(3)

The work shall be the object of copyright from the moment of it being established, even if it is incomplete.⁶⁰⁸

Based on those provisions a creation can only qualify as work, and thus enjoy copyright protection, if:

- a) it is a result of a creative activity;*
- b) it has individual character;*
- c) it is established, i.e. it has assumed 'any form, even if impermanent, but sufficiently stable for the content and the features of the work to make an artistic impression'⁶⁰⁹.*

As in most legal orders, copyright in Poland is comprised of two sets of rights, namely moral and economic rights.

XXI.2.1.1 Moral rights

The author's moral rights are defined in Article 16 of the Copyright Act as rights protecting the link between the author and his or her work. That link is unlimited in time and cannot be waived or transferred to another person.

Art. 16

Unless otherwise stipulated in this Act, the author's moral rights protect the link between the author and his or her work which is perpetual and cannot be waived or transferred, and in particular the right to:

- 1) authorship of the work;*
- 2) sign the work with the author's name or pseudonym or to make it available anonymously;*
- 3) inviolability of the content and form of the work and to its proper use;*

⁶⁰⁷ Art. 1: 1. Przedmiotem prawa autorskiego jest każdy przejaw działalności twórczej o indywidualnym charakterze, ustalony w jakiejkolwiek postaci, niezależnie od wartości, przeznaczenia i sposobu wyrażenia (utwór).

⁶⁰⁸ Art. 1: 3. Utwór jest przedmiotem prawa autorskiego od chwili ustalenia, chociażby miał postać nieukończoną.

⁶⁰⁹ Judgement of the Supreme Court of 25 April 1973, I CR 91/73.

4) *decide on making the work available to the public for the first time;*

5) *exercise control over the manner of the use of the work.*⁶¹⁰

XXI.2.1.2 Economic rights

The author's economic rights are defined in general terms in Article 17 of the Copyright Act and comprise three specific sets of rights:

- a) the right to use the work;
- b) the right to make dispositions of the work (including any kind of transfers, licensing, waiver, etc.);
- c) to receive compensation for the use of the work.

Art. 17

*Unless otherwise stipulated in this Act, the author shall enjoy an exclusive right to use and make dispositions of the work on all fields of exploitation and to receive compensation for the use of the work.*⁶¹¹

Specific provisions concerning the author's economic rights are contained in Division 2 of Chapter 3 of the Copyright Act (Articles 17 to 21¹).

XXI.2.2. Author

The Copyright Act does not provide for a legal definition of the author. It is generally accepted however, that the concept of 'author' should be understood to mean a natural person who is the actual creator of a given work.

Article 8(2) of the Copyright Act establishes a presumption of authorship:

Art. 8(2)

*Any person whose name as an author is presented on copies of a work or whose authorship is otherwise made public in connection with the dissemination of a work is presumed to be an author.*⁶¹²

XXI.2.3. Protected works

Article 1(2) of the Copyright Act contains an indicative list of protected works:

Art. 1(2)

In particular, the following works shall be the object of copyright:

⁶¹⁰ Art. 16: *Jeżeli ustawa nie stanowi inaczej, autorskie prawa osobiste chronią nieograniczoną w czasie i niepodlegającą zrzeczeniu się lub zbyciu więź twórcy z utworem, a w szczególności prawo do:*

- 1) *autorstwa utworu;*
- 2) *oznaczenia utworu swoim nazwiskiem lub pseudonimem albo do udostępniania go anonimowo;*
- 3) *nienaruszalności treści i formy utworu oraz jego rzetelnego wykorzystania;*
- 4) *decydowania o pierwszym udostępnieniu utworu publiczności;*
- 5) *nadzoru nad sposobem korzystania z utworu.*

⁶¹¹ Art. 17: *Jeżeli ustawa nie stanowi inaczej, twórcy przysługuje wyłączne prawo do korzystania z utworu i rozporządzania nim na wszystkich polach eksploatacji oraz do wynagrodzenia za korzystanie z utworu.*

⁶¹² Art. 8: 2. *Domniemywa się, że twórcą jest osoba, której nazwisko w tym charakterze uwidoczniiono na egzemplarzach utworu lub której autorstwo podano do publicznej wiadomości w jakikolwiek inny sposób w związku z rozpowszechnianiem utworu.*

- 1) *works expressed in words, mathematical symbols, graphic signs (literary, journalistic, scientific and cartographic works as well as computer programs);*
- 2) *artistic works;*
- 3) *photographic works;*
- 4) *lutherie works;*
- 5) *industrial design works;*
- 6) *architectural, architectural and urban planning, as well as urban planning works;*
- 7) *musical as well as musical and lyrical works;*
- 8) *theatrical, theatrical and musical works, as well as choreographic works and pantomime works;*
- 9) *audio-visual works (including films).*⁶¹³

Pursuant to Article 4 of the Copyright Act, the following are excluded from copyright protection:

Art. 4

The following shall not be the object of copyright:

- 1) *normative acts and their official drafts;*
- 2) *official documents, materials, signs and symbols;*
- 3) *published patent, utility model and industrial design specifications;*
- 4) *simple press information.*⁶¹⁴

Furthermore, Article 1(2¹) of the Copyright Act excludes the following from copyright protection:

- a) *discoveries;*
- b) *ideas;*

⁶¹³ Art. 1: 2. *W szczególności przedmiotem prawa autorskiego są utwory:*

- 1) *wyrażone słowem, symbolami matematycznymi, znakami graficznymi (literackie, publicystyczne, naukowe, kartograficzne oraz programy komputerowe);*
- 2) *plastyczne;*
- 3) *fotograficzne;*
- 4) *lutnicze;*
- 5) *wzornictwa przemysłowego;*
- 6) *architektoniczne, architektoniczno-urbanistyczne i urbanistyczne;*
- 7) *muzyczne i słowno-muzyczne;*
- 8) *sceniczne, sceniczno-muzyczne, choreograficzne i pantomimiczne;*
- 9) *audiowizualne (w tym filmowe).*

⁶¹⁴ Art. 4: *Nie stanowią przedmiotu prawa autorskiego:*

- 1) *akty normatywne lub ich urzędowe projekty;*
- 2) *urzędowe dokumenty, materiały, znaki i symbole;*
- 3) *opublikowane opisy patentowe lub ochronne;*
- 4) *proste informacje prasowe.*

- c) procedures;
- d) methods and principles of operation;
- e) mathematical concepts.

Art. 1(2¹)

Copyright protection applies only to forms of expression, whereas discoveries, ideas, procedures, methods and principles of operation, as well as mathematical concepts are excluded from protection.⁶¹⁵

XXI.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

The Polish Copyright Act provides for a number of exceptions and limitations to copyright, largely by way of transposition of the provisions of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and of Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works.

The exceptions and limitations provided for in Division 3 of Chapter 3 of the Copyright Act (Articles 23–35) are subject to a number of general conditions, namely that the use of works is permitted provided that the author's name and surname, as well as the source are mentioned, and that the permitted use shall not conflict with normal exploitation of a work or prejudice the interests of the rightholder.

Art. 34

Works may be used, within the limits of permitted use, provided that the author and the source are named. When naming the author and the source, account should be taken of the existing possibilities. The author shall not have the right to compensation, unless otherwise provided for in this Act.⁶¹⁶

Art. 35

The permitted use shall not conflict with normal exploitation of a work or prejudice the reasonable interests of the rightholder.^{617}*

Furthermore, some exceptions and limitations are subject to specific conditions explained in detail in the Copyright Act.

Directive 2001/29/EC	Copyright Act
Text	Text
5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which	Article 23¹

⁶¹⁵ Art. 1: 2¹. Ochroną objęty może być wyłącznie sposób wyrażenia; nie są objęte ochroną odkrycia, idee, procedury, metody i zasady działania oraz koncepcje matematyczne.

⁶¹⁶ Art. 34: Można korzystać z utworów w granicach dozwolonego użytku pod warunkiem wymienienia imienia i nazwiska twórcy oraz źródła. Podanie twórcy i źródła powinno uwzględniać istniejące możliwości. Twórcy nie przysługuje prawo do wynagrodzenia, chyba że ustawa stanowi inaczej.

⁶¹⁷ Art. 35: Dozwolony użytek nie może naruszać normalnego korzystania z utworu lub godzić w słusne interesy twórcy.

* Own translation.

Directive 2001/29/EC	Copyright Act
Text	Text
are an integral and essential part of a technological process and the sole purpose of which is to enable (a) a transmission in a network between third parties by an intermediary, or (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.	The author's permission shall not be required for transient or incidental reproduction of works, provided that such reproduction has no independent economic significance but constitutes an integral and essential part of a technological process the sole purpose of which is to enable: 1) transmission of work through the data transmission system between third parties by an intermediary; or 2) the lawful use of work. ⁶¹⁸
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	Article 23 [This limitation is covered by general provisions on permitted personal use. The rightholders' compensation is covered by separate provisions concerning levies imposed on entrepreneurs providing reprographic services as well as on manufacturers and importers of playback and copying equipment and data carriers] 1. It shall be allowed to use, without the author's permission and free of charge, an already disseminated work for the purposes of personal use. This provision shall not constitute an authorisation to build constructions according to other authors' architectural works as well as architectural and urban planning works, or to use electronic databases which possess the characteristics of a work unless this concerns one's own scientific use not connected with any commercial purposes. 2. The scope of personal use shall include the use of single copies of works by a circle of people having personal relationships, and in particular any consanguinity, affinity or social relationship. ⁶¹⁹
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	

⁶¹⁸ Art. 23¹: Nie wymaga zezwolenia twórcy tymczasowe zwielokrotnienie, o charakterze przejściowym lub incydentalnym, niemające samodzielnego znaczenia gospodarczego, a stanowiące integralną i niezbędną część procesu technologicznego, którego celem jest wyłącznie umożliwienie:

- 1) przekazu utworu w systemie teleinformatycznym pomiędzy osobami trzecimi przez pośrednika lub
- 2) zgodnego z prawem korzystania z utworu.

⁶¹⁹ Art. 23:

1. Bez zezwolenia twórcy wolno nieodpłatnie korzystać z już rozpowszechnionego utworu w zakresie własnego użytku osobistego. Przepis ten nie upoważnia do budowania według cudzego utworu architektonicznego i architektoniczno-urbanistycznego oraz do korzystania z elektronicznych baz danych spełniających cechy utworu, chyba że dotyczy to własnego użytku naukowego niezwiązanego z celem zarobkowym.
2. Zakres własnego użytku osobistego obejmuje korzystanie z pojedynczych egzemplarzy utworów przez krąg

Directive 2001/29/EC	Copyright Act
Text	Text
(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;	Article 28(1), point 2 1. Educational institutions, universities, research institutes which carry out the activity referred to in Article 2(3) of the Act of 30 April 2010 on research institutes (O.J. of 2016, positions 371, 1079, 1311 and 2260 and of 2017, position 202), scientific institutes of the Polish Academy of Sciences which carry out the activity referred to in Article 50(4) of the Act of 30 April 2010 on the Polish Academy of Sciences (O.J. of 2016, positions 572, 1311, 1933 and 2260 and of 2017, position 624), libraries, museums and archives may: (...) 2) reproduce works contained in their collections for the purposes of restoration, preservation or protection of those collections, (...) – provided that such activities are not carried out for direct or indirect economic benefits. ^{620*} * [Own translation].
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Article 23² 1. Radio and television organisations are allowed to record works by means of their own facilities and for the purposes of their own broadcasts. 2. The recordings referred to in paragraph 1 shall be destroyed within one month of expiry of the right to broadcast the work. 3. Paragraph 2 shall not apply to recordings which are archive materials included in the national archive resources. ^{621*}

osób pozostających w związku osobistym, w szczególności pokrewieństwa, powinowactwa lub stosunku towarzyskiego.

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Art. 28:

1. Instytucje oświatowe, uczelnie, instytuty badawcze prowadzące działalność, o której mowa w art. 2 ust. 3 ustawy z dnia 30 kwietnia 2010 r. o instytutach badawczych (Dz. U. z 2016 r. poz. 371, 1079, 1311 i 2260 oraz z 2017 r. poz. 202), instytuty naukowe Polskiej Akademii Nauk prowadzące działalność, o której mowa w art. 50 ust. 4 ustawy z dnia 30 kwietnia 2010 r. o Polskiej Akademii Nauk (Dz. U. z 2016 r. poz. 572, 1311, 1933 i 2260 oraz z 2017 r. poz. 624), biblioteki, muzea oraz archiwa mogą:

(...)

- 2) zwielokrotniać utwory znajdujące się we własnych zbiorach w celu uzupełnienia, zachowania lub ochrony tych zbiorów,

(...)

- jeżeli czynności te nie są dokonywane w celu osiągnięcia bezpośredniej lub pośredniej korzyści majątkowej.

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Art. 23²:

1. Organizacjom radiowym i telewizyjnym wolno przy pomocy własnych środków utrzymywać utwory na potrzeby własnych nadań.

Directive 2001/29/EC	Copyright Act
Text	Text
	* [Own translation].
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(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;	<p>Article 27 and 27¹</p> <p>Article 27</p> <p>1. Educational institutions, universities and scientific units within the meaning of the Act of 30 April 2010 on the principles of the financing of science (O.J. of 2016, positions 2045, 1933 and 2260) may, for illustration of content communicated for teaching purposes or for conducting scientific research, use already disseminated works in their original versions as well as their translations and reproduce for those purposes disseminated minor works or parts of larger works.</p> <p>2. In the case of making works available to the public in such a way, that anyone could access those works in a place and at a time of his or her choosing, the use, as referred to in paragraph 1, shall be allowed only for a limited group of learners, teachers or researchers, identified by the entities referred to in paragraph 1.^{622*}</p> <p>* [Own translation].</p> <p>Article 27¹</p> <p>1. Already disseminated minor works or parts of larger works may be included, for teaching and</p>

2. Utrwalenia, o których mowa w ust. 1, niszczy się w terminie miesiąca od dnia wygaśnięcia uprawnienia do nadania utworu.
3. Przepisu ust. 2 nie stosuje się do utrwań będących materiałami archiwalnymi wchodzącymi do narodowego zasobu archiwalnego.

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Art. 27:

1. Instytucje oświatowe, uczelnie oraz jednostki naukowe w rozumieniu ustawy z dnia 30 kwietnia 2010 r. o zasadach finansowania nauki (Dz. U. z 2016 r. poz. 2045, 1933 i 2260) mogą na potrzeby zilustrowania treści przekazywanych w celach dydaktycznych lub w celu prowadzenia badań naukowych, korzystać z rozpowszechnionych utworów w oryginale i w tłumaczeniu oraz zwielokrotniać w tym celu rozpowszechnione drobne utwory lub fragmenty większych utworów.
2. W przypadku publicznego udostępniania utworów w taki sposób, aby każdy mógł mieć do nich dostęp w miejscu i czasie przez siebie wybranym korzystanie, o którym mowa w ust. 1, jest dozwolone wyłącznie dla ograniczonego kręgu osób uczących się, nauczających lub prowadzących badania naukowe, zidentyfikowanych przez podmioty wymienione w ust. 1.

Directive 2001/29/EC	Copyright Act
Text	Text
	scientific purposes, in handbooks, selections of excerpts and in anthologies. 2. In the cases referred to in paragraph 1, the author shall have a right to compensation. ^{623*} * [Own translation].
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Article 33¹ It shall be permitted to use already disseminated works for the benefit of people with a disability, provided that such use is directly related to their disability, is of non-commercial nature and is limited to the extent required by the nature of the disability. ⁶²⁴
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	Article 25 and 26 Article 25 1. It shall be permitted, for informatory purposes, to disseminate through the press, radio and television: 1) already disseminated: a) reports on current events, b) articles concerning current political, economic or religious topics unless there is an express reservation that the further dissemination of those articles is prohibited, c) current comments and photographs taken by reporters; 2) short excerpts from reports and articles referred to in point 1(a) and (b); 3) digests of disseminated publications and works; 4) (repealed); 5) short summaries of disseminated works. 2. The author shall have the right to compensation for the use of the works referred to in paragraph 1 point 1(b) and (c). 3. Dissemination of the works referred to in paragraph 1 shall be allowed both in their original versions as well as their translations. 4. Paragraphs 1–3 apply mutatis mutandis to making works available to the public in such a way,

⁶²³ Art. 27¹:

1. *Wolno w celach dydaktycznych i naukowych zamieszczać rozpowszechnione drobne utwory lub fragmenty większych utworów w podręcznikach, wypisach i antologiach.*
2. *W przypadkach, o których mowa w ust. 1, twórcy przysługuje prawo do wynagrodzenia.*

⁶²⁴ Art. 33¹: *Wolno korzystać z już rozpowszechnionych utworów dla dobra osób niepełnosprawnych, jeżeli to korzystanie odnosi się bezpośrednio do ich upośledzenia, nie ma zarobkowego charakteru i jest podejmowane w rozmiarze wynikającym z natury upośledzenia.*

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	that anyone could access those works in a place and at a time of his or her choosing, provided that if the payment of compensation referred to in paragraph 2 is not made on the basis of an agreement with a rightholder, the compensation is paid through a copyright or related rights collective management organisation. Art. 26 It shall be permitted to quote, in reports on current events, the works made available in the course of such events, within the limits justified by the purpose of information. ⁶²⁵
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Article 29 It shall be permitted to quote, in works constituting an independent whole, fragments of disseminated works as well as disseminated artistic works, photographic works or minor works in full, to the extent justified by the purposes of the quotation, such as explanation, critical debate, critical or scientific analysis, teaching or by the rules governing a given genre of creative activity. ⁶²⁶

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Art. 25:

1. *Wolno rozpowszechniać w celach informacyjnych w prasie, radiu i telewizji:*
 - 1) *już rozpowszechnione:*
 - a) *sprawozdania o aktualnych wydarzeniach,*
 - b) *artykuły na aktualne tematy polityczne, gospodarcze lub religijne, chyba że zostało wyraźnie zastrzeżone, że ich dalsze rozpowszechnianie jest zabronione,*
 - c) *aktualne wypowiedzi i fotografie reporterskie;*
 - 2) *krótkie wyciągi ze sprawozdań i artykułów, o których mowa w pkt 1 lit. a i b;*
 - 3) *przeglądy publikacji i utworów rozpowszechnionych;*
 - 4) *(uchylony)*
 - 5) *krótkie streszczenia rozpowszechnionych utworów.*
2. *Za korzystanie z utworów, o których mowa w ust. 1 pkt 1 lit. b i c, twórcy przysługuje prawo do wynagrodzenia.*
3. *Rozpowszechnianie utworów na podstawie ust. 1 jest dozwolone zarówno w oryginale, jak i w tłumaczeniu.*
4. *Przepisy ust. 1–3 stosuje się odpowiednio do publicznego udostępniania utworów w taki sposób, aby każdy mógł mieć do nich dostęp w miejscu i czasie przez siebie wybranym, z tym że jeżeli wypłata wynagrodzenia, o którym mowa w ust. 2, nie nastąpiła na podstawie umowy z uprawnionym, wynagrodzenie jest wypłacane za pośrednictwem właściwej organizacji zbiorowego zarządzania prawami autorskimi lub prawami pokrewnymi.*

Art. 26: *Wolno w sprawozdaniach o aktualnych wydarzeniach przytaczać utwory udostępniane podczas tych wydarzeń, jednakże w granicach uzasadnionych celem informacji.*

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Art. 29: *Wolno przytaczać w utworach stanowiących samoistną całość urywki rozpowszechnionych utworów oraz rozpowszechnione utwory plastyczne, utwory fotograficzne lub drobne utwory w całości, w zakresie uzasadnionym celami cytatu, takimi jak wyjaśnianie, polemika, analiza krytyczna lub naukowa, nauczanie lub prawami gatunku twórczości.*

Directive 2001/29/EC	Copyright Act
Text	Text
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Article 33² It shall be permitted to use works for the purposes of public security or for the purposes of administrative, court or legislative proceedings and any reports thereon. ⁶²⁷
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Article 26¹ It shall be permitted to use, within the limits justified by the purpose of information, political speeches and speeches delivered at public hearings as well as fragments of public statements, lectures or sermons. Nothing in this provision constitutes an authorisation to publish anthologies of such works. ^{628*} *[Own translation].
(g) use during religious celebrations or official celebrations organised by a public authority;	Article 31(1) and (3) 1. It shall be allowed to use works during religious celebrations and official celebrations organised by public authorities, provided that this is not connected with obtaining, directly or indirectly, economic benefits. (...) 3. Paragraphs 1 and 2 shall not apply to the use of works during advertising, promotional and electoral events. ^{629*} *[Own translation].
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Article 33(1) It shall be allowed to disseminate: 1) however not for the same manner of use, works exhibited permanently on publicly accessible roads, streets, squares or gardens; (...) ⁶³⁰
(i) incidental inclusion of a work or other subject-matter in other material;	Article 29²

⁶²⁷ Art. 33²: Wolno korzystać z utworów dla celów bezpieczeństwa publicznego lub na potrzeby postępowań administracyjnych, sądowych lub prawodawczych oraz sprawozdań z tych postępowań.

⁶²⁸ Art. 26¹: Wolno korzystać w granicach uzasadnionych celem informacji z przemówień politycznych i mów wygłoszonych na publicznych rozprawach, a także fragmentów publicznych wystąpień, wykładów oraz kazań. Przepis nie upoważnia do publikacji zbiorów tego rodzaju utworów.

⁶²⁹ Art. 31:

1. Wolno korzystać z utworów podczas ceremonii religijnych oraz oficjalnych uroczystości organizowanych przez władze publiczne, jeżeli nie łączy się z tym osiągnięcie pośrednio lub bezpośrednio korzyści majątkowej.
(...)
3. Przepisów ust. 1 i 2 nie stosuje się do korzystania z utworów podczas imprez reklamowych, promocyjnych i wyborczych.

⁶³⁰ Art. 33: Wolno rozpowszechniać:

1) utwory wystawione na stałe na ogólnie dostępnych drogach, ulicach, placach lub w ogrodach, jednakże nie do tego samego użytku; (...)

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	It shall be allowed to incidentally include a work in another work, provided that the included work does not have any significance for the work in which it was included. ^{631*} *[Own translation].
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Article 33³ 1. It shall be allowed to use works for the purposes of advertising a publicly accessible exhibition or public sale of works, insofar as justified by the purpose of promoting that exhibition or sale and excluding any other commercial use. 2. The use referred to in paragraph 1 relates to, in particular, publicly accessible exhibitions in museums, galleries, exhibition halls and includes using the works in notices, catalogues and other materials disseminated for the purposes of promotion of the exhibition or sale, as well as exhibiting works or making them otherwise available for those purposes. ^{632*} *[Own translation].
(k) use for the purpose of caricature, parody or pastiche;	Article 29¹ It shall be allowed to use works for the purposes of parody, pastiche or caricature, insofar as justified by the rules governing those genres of creative activity. ^{633*} *[Own translation].
(l) use in connection with the demonstration or repair of equipment;	Article 33⁴ It shall be permitted to use works in connection with any demonstration or repair of equipment. ⁶³⁴
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Article 33⁵ It shall be permitted to use a work in the form of a building, its drawing, plan or other document, for

⁶³¹ Art. 29²: *Wolno w sposób niezamierzony włączyć utwór do innego utworu, o ile włączony utwór nie ma znaczenia dla utworu, do którego został włączony.*

⁶³² Art. 33³:

1. *Wolno korzystać z utworów w celu reklamy publicznie dostępnej wystawy lub publicznej sprzedaży utworów, w zakresie uzasadnionym promocją tej wystawy lub sprzedaży, z wyłączeniem innego handlowego wykorzystania.*
2. *Korzystanie, o którym mowa w ust. 1, dotyczy w szczególności publicznie dostępnych wystaw w muzeach, galeriach, salach wystawowych i obejmuje korzystanie z utworów w ogłoszeniach, katalogach i innych materiałach rozpowszechnianych dla promocji wystawy lub sprzedaży oraz wystawienie lub inne udostępnianie egzemplarzy utworów dla tych celów.*

⁶³³ Art. 29¹: *Wolno korzystać z utworów na potrzeby parodii, pastiszu lub karykatury, w zakresie uzasadnionym prawami tych gatunków twórczości.*

⁶³⁴ Art. 33⁴: *Wolno korzystać z utworów w związku z prezentacją lub naprawą sprzętu.*

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(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 purposes of reconstruction or repair of a building. ⁶³⁵ Article 28(1), point 3 1. Educational institutions, universities, research institutes which carry out the activity referred to in Article 2(3) of the Act of 30 April 2010 on research institutes (O.J. of 2016, positions 371, 1079, 1311 and 2260 and of 2017, position 202), scientific institutes of the Polish Academy of Sciences which carry out the activity referred to in Article 50(4) of the Act of 30 April 2010 on the Polish Academy of Sciences (O.J. of 2016, positions 572, 1311, 1933 and 2260 and of 2017, position 624), libraries, museums and archives may: (...) 3) make collections available for research or learning purposes by means of information technology system terminals located on their premises – provided that such activities are not carried out for direct or indirect economic benefits. ^{636*} * [Own translation].
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	Articles 24, 28(1)(1), 31(2) and (3), 32, 33(3) Article 24 1. It shall be permitted to disseminate through a collective antenna or cable network the works broadcast by another radio or television broadcasting organisation through satellite or terrestrial networks if it is done within the framework of concurrent, integral and gratuitous dissemination of radio and television programmes and is addressed for a specific group of recipients

⁶³⁵ Art. 33⁵: *Wolno korzystać z utworu w postaci obiektu budowlanego, jego rysunku, planu lub innego ustalenia, w celu odbudowy lub remontu obiektu budowlanego.*

⁶³⁶ Art. 28:

1. *Instytucje oświatowe, uczelnie, instytuty badawcze prowadzące działalność, o której mowa w art. 2 ust. 3 ustawy z dnia 30 kwietnia 2010 r. o instytutach badawczych (Dz. U. z 2016 r. poz. 371, 1079, 1311 i 2260 oraz z 2017 r. poz. 202), instytuty naukowe Polskiej Akademii Nauk prowadzące działalność, o której mowa w art. 50 ust. 4 ustawy z dnia 30 kwietnia 2010 r. o Polskiej Akademii Nauk (Dz. U. z 2016 r. poz. 572, 1311, 1933 i 2260 oraz z 2017 r. poz. 624), biblioteki, muzea oraz archiwa mogą:*

(...)

3) *udostępniać zbiory dla celów badawczych lub poznawczych za pośrednictwem końcówek systemu informatycznego (terminali) znajdujących się na terenie tych jednostek*
– *jeżeli czynności te nie są dokonywane w celu osiągnięcia bezpośredniej lub pośredniej korzyści majątkowej.*

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	<p>located either in a single building or single-family houses comprising up to 50 households.</p> <p>2. Holders of devices used for receiving radio or television programme may receive by means of such devices broadcast works even if such devices are located in a publicly accessible place, provided that it is not connected with the obtaining of economic benefits.</p> <p>3. (repealed).</p> <p>4. (no longer in force).⁶³⁷</p> <p>Article 28</p> <p>1. Educational institutions, universities, research institutes which carry out the activity referred to in Article 2(3) of the Act of 30 April 2010 on research institutes (O.J. of 2016, positions 371, 1079, 1311 and 2260 and of 2017, position 202), scientific institutes of the Polish Academy of Sciences which carry out the activity referred to in Article 50(4) of the Act of 30 April 2010 on the Polish Academy of Sciences (O.J. of 2016, positions 572, 1311, 1933 and 2260 and of 2017, position 624), libraries, museums and archives may:</p> <p>1) within the framework of their statutory tasks, lend free of charge copies of already disseminated works,</p> <p>(...)</p> <p>– provided that such activities are not carried out for direct or indirect economic benefits.^{638*}</p>

⁶³⁷

Art. 24:

1. *Wolno rozpowszechniać za pomocą anteny zbiorowej oraz sieci kablowej utwory nadawane przez inną organizację radiową lub telewizyjną drogą satelitarną albo naziemną, jeżeli następuje to w ramach równoczesnego, integralnego i nieodpłatnego rozpowszechniania programów radiowych lub telewizyjnych i przeznaczone jest do oznaczonego grona odbiorców znajdujących się w jednym budynku lub w domach jednorodzinnych obejmujących do 50 gospodarstw domowych.*
2. *Posiadacze urządzeń służących do odbioru programu radiowego lub telewizyjnego mogą za ich pomocą odbierać nadawane utwory, choćby urządzenia te były umieszczone w miejscu ogólnie dostępnym, jeżeli nie łączy się z tym osiągnięcie korzyści majątkowych.*
3. *(uchylony)*
4. *(utracił moc)*

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Art. 28:

1. *Instytucje oświatowe, uczelnie, instytuty badawcze prowadzące działalność, o której mowa w art. 2 ust. 3 ustawy z dnia 30 kwietnia 2010 r. o instytutach badawczych (Dz. U. z 2016 r. poz. 371, 1079, 1311 i 2260 oraz z 2017 r. poz. 202), instytuty naukowe Polskiej Akademii Nauk prowadzące działalność, o której mowa w art. 50 ust. 4 ustawy z dnia 30 kwietnia 2010 r. o Polskiej Akademii Nauk (Dz. U. z 2016 r. poz. 572, 1311, 1933 i 2260 oraz z 2017 r. poz. 624), biblioteki, muzea oraz archiwa mogą:*
 - 1) *użyczać, w zakresie swoich zadań statutowych, egzemplarze utworów rozpowszechnionych,*

Directive 2001/29/EC	Copyright Act
Text	Text
	<p>* [Own translation].</p> <p>Article 31</p> <p>2. It shall be permitted to publicly perform or play already disseminated works, free of charge, with the use of equipment or data carriers located in the same place as the audience, during school or university events, provided that this is not connected with obtaining, directly or indirectly, economic benefits and that the performing artists and persons who play the works do not receive compensation.</p> <p>3. Paragraphs 1 and 2 shall not apply to the use of works during advertising, promotional and electoral events.^{639*}</p> <p>*[Own translation]</p> <p>Article 32</p> <p>1. The owner of a copy of an artistic work may exhibit it publicly provided that this is not connected with obtaining economic benefits.</p> <p>2. Where the owner of an original copy of an artistic work located in a publicly accessible space decides to destroy that original copy, he or she shall be obliged to offer the author or his or her relatives to sell it, if it is possible to contact the author in order to make the offer of sale. The maximum price shall be the value of the materials. If the sale is not possible, the owner shall make it possible for the author to make a copy or, depending on the type of the work, appropriate documentation thereof.⁶⁴⁰</p>

(...)

- jeżeli czynności te nie są dokonywane w celu osiągnięcia bezpośredniej lub pośredniej korzyści majątkowej.

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Art. 31:

2. Wolno nieodpłatnie publicznie wykonywać lub odtwarzać przy pomocy urządzeń lub nośników znajdujących się w tym samym miejscu co publiczność rozpowszechnione utwory podczas imprez szkolnych oraz akademickich, jeżeli nie łączy się z tym osiąganie pośrednio lub bezpośrednio korzyści majątkowej i artyści wykonawcy oraz osoby odtwarzające utwory nie otrzymują wynagrodzenia.
3. Przepisów ust. 1 i 2 nie stosuje się do korzystania z utworów podczas imprez reklamowych, promocyjnych i wyborczych.

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Art. 32:

1. Właściciel egzemplarza utworu plastycznego może go wystawiać publicznie, jeżeli nie łączy się z tym osiąganie korzyści majątkowych.
2. W razie podjęcia decyzji o zniszczeniu oryginalnego egzemplarza utworu plastycznego znajdującego się w miejscu publicznie dostępnym, właściciel jest obowiązany złożyć twórcy utworu lub jego bliskim ofertę sprzedaży, jeżeli porozumienie się z nim, celem złożenia oferty, jest możliwe. Górną granicę ceny określa wartość materiałów. Jeżeli sprzedaż nie jest możliwa, właściciel jest obowiązany umożliwić twórcy sporządzenie kopii bądź – zależnie od rodzaju utworu – stosownej dokumentacji.

Directive 2001/29/EC	Copyright Act
Text	Text
	<p>Article 33</p> <p>It shall be allowed to disseminate:</p> <p>(...)</p> <p>3) in encyclopaedias and atlases – published artistic and photographic works, if the problems with contacting the author for the purpose of obtaining his or her consent proved difficult to surmount. In such case, the author shall have the right to compensation.⁶⁴¹</p>
<p>5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.</p>	
<p>5(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.</p>	<p>Article 35</p> <p>The permitted use shall not conflict with normal exploitation of a work or prejudice the reasonable interests of the rightholder.^{642*}</p> <p>*[Own translation].</p>

Directive 2012/28	Copyright Act
Text	Text
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available,</p>	<p>Article 35⁵(2)</p> <p>2. Archives, educational institutions, universities, research institutes which carry out the activity referred to in Article 2(3) of the Act of 30 April 2010 on research institutes, scientific institutes of the Polish Academy of Sciences which carry out the activity referred to in Article 50(4) of the Act of 30 April 2010 on the Polish Academy of Sciences, libraries and museums, as well as cultural institutions, whose statutory tasks include the collection, protection and promotion of collections of film or phonographic heritage, and public radio and television organisations may reproduce orphan works which have been</p>

⁶⁴¹ Art. 33: *Wolno rozpowszechniać:*
(...)

3) w encyklopediach i atlasach – opublikowane utwory plastyczne i fotograficzne, o ile nawiązanie porozumienia z twórcą celem uzyskania jego zezwolenia napotyka trudne do przezwyciężenia przeszkody. Twórcy przysługuje wówczas prawo do wynagrodzenia.

⁶⁴² Art. 35: *Dozwolony użytek nie może naruszać normalnego korzystania z utworu lub godzić w słusne interesy twórcy.*

Directive 2012/28	Copyright Act
Text	Text
indexing, cataloguing, preservation or restoration.	published or, in the absence of publication, which have been broadcast for the first time on the territory of the European Union or of the European Economic Area, and may make them available to the public in such a way, that anyone could access those works in a place and at a time of his or her choosing. ^{643*} [Own translation].
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	Article 35⁵(3) 3. The use of orphan works pursuant to paragraph 2 shall be permitted only in order to fulfil the statutory public-interest tasks of the entities referred to in paragraph 2, in particular the preservation of, restoration of, and provision of cultural and educational access to, works contained in their collections. Those entities may generate revenues in the course of such uses, provided that those revenues are allocated for covering their direct costs of digitising orphan works and making them available to the public. ^{644*} *[Own translation].
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Article 35⁵(7) and 34 Article 35 ⁵ 7. The first and second sentences of Article 34 and Article 35 shall apply to the use of orphan works pursuant to paragraph 2 of this Article. ^{645*} *[Own translation]. Art. 34 Works may be used, within the limits of permitted use, provided that the author and the source are named. When naming the author and the source, account should be taken of the existing possibilities. The author shall not have the right to

⁶⁴³ Art. 35⁵: 2. Archiwa, instytucje oświatowe, uczelnie, instytuty badawcze prowadzące działalność, o której mowa w art. 2 ust. 3 ustawy z dnia 30 kwietnia 2010 r. o instytutach badawczych, instytuty naukowe Polskiej Akademii Nauk prowadzące działalność, o której mowa w art. 50 ust. 4 ustawy z dnia 30 kwietnia 2010 r. o Polskiej Akademii Nauk, biblioteki i muzea, a także instytucje kultury, których statutowym zadaniem jest gromadzenie, ochrona i upowszechnianie zbiorów dziedzictwa filmowego lub fonograficznego, oraz publiczne organizacje radiowe i telewizyjne mogą zwielokrotniać utwory osierocone opublikowane, a w przypadku braku publikacji – nadane po raz pierwszy na terytorium Unii Europejskiej lub Europejskiego Obszaru Gospodarczego oraz udostępniać je publicznie w taki sposób, aby każdy mógł mieć do nich dostęp w miejscu i czasie przez siebie wybranym.

⁶⁴⁴ Art. 35⁵: 3. Korzystanie z utworów osieroconych na podstawie ust. 2, jest dozwolone w celu realizacji służących interesowi publicznemu statutowych zadań podmiotów wymienionych w ust. 2, w szczególności zachowania, odnawiania i udostępniania w celach kulturalnych i edukacyjnych utworów znajdujących się w ich zbiorach. Podmioty te mogą uzyskiwać przychody z takiego korzystania, o ile zostaną one przeznaczone na pokrycie bezpośrednich kosztów digitalizacji i publicznego udostępniania utworów osieroconych.

⁶⁴⁵ Art. 35⁵: 7. Do korzystania z utworów osieroconych na podstawie ust. 2 przepisy art. 34 zdanie pierwsze i drugie oraz art. 35 stosuje się.

Directive 2012/28	Copyright Act
Text	Text
	compensation, unless otherwise provided for in this Act. ⁶⁴⁶
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	<p>Article 35⁸(5) and 35⁸(1)</p> <p>5. The rightholder referred to in paragraph 1 of this Article shall have the right to claim fair compensation from the entity referred to in Article 35⁵(2) for the use of his or her work as an orphan work. The value of the compensation shall be determined taking into account the nature and extent of the use of that work, the value of revenues generated pursuant to the second sentence Article 35⁵(3) and the losses incurred by the rightholder in connection with that use.^{647*}</p> <p>*[Own translation].</p> <p>1. The holder of the author's economic rights, as regards the fields of exploitation referred to in Article 35⁵(2), to a work considered to be an orphan work shall have the right to request that the entity, which entered that work in the database referred to in Article 35⁷(1), or its legal successor, declare an end to the orphan work status, to the extent that the rightholder proves his rights in respect of that work.^{648*}</p> <p>*[Own translation].</p>

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⁶⁴⁶ Art. 34: Można korzystać z utworów w granicach dozwolonego użytku pod warunkiem wymienienia imienia i nazwiska twórcy oraz źródła. Podanie twórcy i źródła powinno uwzględniać istniejące możliwości. Twórcy nie przysługuje prawo do wynagrodzenia, chyba że ustawa stanowi inaczej.

⁶⁴⁷ Art. 35⁸: 5. Uprawniony, o którym mowa w ust. 1, może żądać od podmiotu wymienionego w art. 35⁵ ust. 2 zapłaty godziwej rekompensaty za korzystanie z jego utworu jako utworu osieroconego. Wysokość rekompensaty uwzględnia charakter i zakres korzystania z tego utworu, wysokość przychodów uzyskanych na podstawie art. 35⁵ ust. 3 zdanie drugie oraz szkodę, jaka została wyrządzona uprawnionemu w związku z tym korzystaniem.

⁶⁴⁸ Art. 35⁸: 1. Uprawniony, któremu w zakresie pól eksploatacji wymienionych w art. 35⁵ ust. 2 przysługują autorskie prawa majątkowe do utworu uznanego za osierocony, może żądać od podmiotu, który wpisał ten utwór do bazy danych, o której mowa w art. 35⁷ ust. 1, albo od jego następcy prawnego, stwierdzenia wygaśnięcia statusu utworu osieroconego w zakresie, w jakim wykaże przysługujące mu prawa do tego utworu.

XXII. PORTUGAL

Pro memoria

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XXIII. ROMANIA

XXIII.1. APPLICABLE NATIONAL LEGAL FRAMEWORK⁶⁴⁹

XXIII.1.1. Constitution⁶⁵⁰

Article 136(5) reads:

5. *Private property is inviolable, in accordance with the organic law.*⁶⁵¹

Property in general also covers the intellectual property.

Article 11(1) also reads:

1. *The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to.*⁶⁵²

XXIII.1.2. Copyright Law

The Main legislative act governing copyright and related rights is the Ordinary Law No 8 of 14 March 1996 (updated) on Copyright and Neighboring Rights⁶⁵³ (hereinafter named “the Copyright Law”).

That law deals in Title I with copyright, which is divided into General provisions and Special provisions, the latter covering Cinematographic Works and Other Audio-visual Works, Computer Programs and Works of Three-Dimensional Art, Architecture, and Photography.

Title II deals with Neighbouring and Sui-Generis Rights, while Title III deals with Management and Protection of Copyright and Neighboring Rights.

According to Article 151², the Copyright Law transposes the following EU legislative acts:

- a) Council Directive 91/250/EEC⁶⁵⁴;
- b) Council Directive 92/100/EEC⁶⁵⁵;
- c) Council Directive 93/83/EEC;
- d) Council Directive 93/98/EEC⁶⁵⁶;
- e) Directive 96/9/EC of the European Parliament and of the Council;
- f) Directive 2001/29/EC of the European Parliament and of the Council;

⁶⁴⁹ All translations of the Copyright Law included in this section are adaptations after the official translation in its version of November 2014, provided by the Romanian Copyright Office (ORDA).

⁶⁵⁰ Translation available on the official website of the Chamber of Deputies of Romania: <http://www.cdep.ro/pls/dic/site.page?id=371>.

⁶⁵¹ Articolul 136 alineatul (5): (5) *Proprietatea privată este inviolabilă, în condițiile legii organice.*

⁶⁵² Articolul 11 alineatul (1): (1) *Statul român se obligă să îndeplinească întocmai și cu bună-credință obligațiile ce-i revin din tratatele la care este parte.*

⁶⁵³ Legea ordinară nr. 8 din 14 martie 1996 (*actualizată*) privind dreptul de autor și drepturile conexe (<http://www.orda.ro/default.aspx?pagina=650>).

⁶⁵⁴ As replaced by Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

⁶⁵⁵ As replaced by Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

⁶⁵⁶ As replaced by Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights.

- g) Directive 2001/84/EC of the European Parliament and of the Council;
- h) Directive 2004/48/EC of the European Parliament and of the Council;
- i) Directive 2012/28/EU of the European Parliament and of the Council;
- j) Directive 2011/77/EU of the European Parliament and of the Council;
- k) Directive 2012/28/EU of the European Parliament and of the Council;
- l) Directive 2014/26/EU of the European Parliament and of the Council.

XXIII.2. COPYRIGHT

XXIII.2.1. Definition and content

According to paragraphs (1) and (2) of Article 1 of the Copyright Law,

1. *The copyright in a literary, artistic or scientific work and in any similar work of intellectual creation shall be recognized and guaranteed as provided in this Law. That right vests in the author and embodies attributes of moral and economic character.*
2. *A work of intellectual creation shall be acknowledged and protected, independently of its disclosure to the public, simply by virtue of its creation, even though in an unfinished form.*⁶⁵⁷

The doctrine considers that in order to protect a work by copyright, 2 conditions need to be met:

- the work is the result of a creative activity and has originality - not be confused with novelty
- the work takes a concrete form of expression that speaks to the senses.

XXIII.2.1.1 Moral rights

Article 10 lists an exhaustive list of such moral rights, while Article 11 states that those rights cannot be waived or disposed of.

Article 10— The author of a work shall have the following moral rights:

- (a) to decide whether, how and when the work will be disclosed to the public;*
- (b) to demand recognition of his authorship of the work;*
- (c) to decide under what name the work will be disclosed to the public;*
- (d) to demand respect for the integrity of the work and to oppose any modification or any distortion of the work if it is prejudicial to his honour or reputation;*
- (e) to withdraw the work, subject to indemnification of any holder of exploitation rights who might be prejudiced by the exercise of the said withdrawal right.*

Article 11 — 1. The moral rights may not be renounced or disposed of.

⁶⁵⁷ Articolul 1:

- (1) Dreptul de autor asupra unei opere literare, artistice sau științifice, precum și asupra altor opere de creație intelectuală este recunoscut și garantat în condițiile prezentei legi. Acest drept este legat de persoana autorului și comportă atribute de ordin moral și patrimonial.*
- (2) Opera de creație intelectuală este recunoscută și protejată, independent de aducerea la cunoștința publică, prin simplul fapt al realizării ei, chiar în formă nefinalizată.*

2. *After the author's death, the exercise of the rights provided for in Article 10 (a), (b) and (d) shall be transferred by inheritance, in accordance with civil law, for an unlimited period of time. If there are no heirs, the exercise of the said rights shall revert to the collective management organization that has managed the author's rights or, as the case may be, to the organization having the largest membership, in the field of creation concerned.*⁶⁵⁸

XXIII.2.1.2 Economic rights

The patrimonial rights of a copyright holder are defined in Article 12, as follows:

*Article 12 - The author of a work shall have the exclusive economic right to decide whether, how, and when his work is to be used or exploited, including the right to authorize the use of the work by others.*⁶⁵⁹

More details as to which acts can be authorised or prohibited based on economic rights are mentioned in Article 13, with each of such acts being explained in Articles 14-23.

Article 13 - The use of a work gives rise to distinct and exclusive economic rights of the author to authorize or to prohibit:

- (a) reproduction of the work;*
- (b) distribution of the work;*
- (c) import for trading on the domestic market, of copies of the work made with the author's consent;*
- (d) rental of the work;*
- (e) lending of the work;*
- (f) communication to the public, directly or indirectly, of the work, by any means, including by making the work available to the public, in such a way that members of the public may access them from a place and at a time individually chosen by them;*
- (g) broadcasting of the work;*
- (h) cable retransmission of the work;*

⁶⁵⁸ Articolul 10: *Autorul unei opere are următoarele drepturi morale:*

- a) dreptul de a decide dacă, în ce mod și când va fi adusă opera la cunoștință publică;*
- b) dreptul de a pretinde recunoașterea calității de autor al operei;*
- c) dreptul de a decide sub ce nume va fi adusă opera la cunoștință publică;*
- d) dreptul de a pretinde respectarea integrității operei și de a se opune oricărei modificări, precum și oricărei atingeri aduse operei, dacă prejudiciază onoarea sau reputația sa;*
- e) dreptul de a retracta opera, despăgubind, dacă este cazul, pe titularii drepturilor de utilizare, prejudiciați prin exercitarea retractării.*

Articolul 11: (1) Drepturile morale nu pot face obiectul vreunei renunțări sau înstrăinări.

- (2) După moartea autorului, exercițiul drepturilor prevăzute la art. 10 lit. a), b) și d) se transmite prin moștenire, potrivit legislației civile, pe durată nelimitată. Dacă nu există moștenitori, exercițiul acestor drepturi revine organismului de gestiune colectivă care a administrat drepturile autorului sau, după caz, organismului cu cel mai mare număr de membri, din domeniul respectiv de creație.*

⁶⁵⁹ Articolul 12: *Autorul unei opere are dreptul patrimonial exclusiv de a decide dacă, în ce mod și când va fi utilizată opera sa, inclusiv de a consimți la utilizarea operei de către alții.*

(i) *making of derivative works.*⁶⁶⁰

XXIII.2.2. Author

According to Article 3 (1) 1. *The natural person or persons who created the work shall be the author thereof.*

Paragraphs (2) and (3) go on to state that:

2. *In cases expressly provided for by law, legal entities and natural persons other than the author may benefit from the protection granted to the author.*

3. *Ownership of copyright may be transferred as provided by law.*⁶⁶¹

According to the newly introduced⁶⁶² paragraph (4):

4. *The natural or legal persons who have acquired copyright shall be recognized and protected as copyright holders by inheritance or assignment under the law, as do the publishers of musical and written works, for the rights which have been transferred to them under individual agreements and who are entitled to at least a part of the income from these rights.*⁶⁶³

XXIII.2.3. Protected works

The object of copyright is set out, by way of example, in Articles 7 and 8.

Article 7 - The subject matter of copyright shall be original works of intellectual creation in the literary, artistic, or scientific field, regardless of their manner of creation, specific form or mode of expression and independently of their merit and purpose, such as:

⁶⁶⁰ Articolul 13: *Utilizarea unei opere dă naștere la drepturi patrimoniale, distincte și exclusive, ale autorului de a autoriza sau de a interzice:*

- a) *reproducerea operei;*
- b) *distribuirea operei;*
- c) *importul în vederea comercializării pe piața internă a copiilor realizate, cu consimțământul autorului, după operă;*
- d) *închirierea operei;*
- e) *împrumutul operei;*
- f) *comunicarea publică, direct sau indirect a operei, prin orice mijloace, inclusiv prin punerea operei la dispoziția publicului, astfel încât să poată fi accesată în orice loc și în orice moment ales, în mod individual, de către public;*
- g) *radiodifuzarea operei;*
- h) *retransmiterea prin cablu a operei;*
- i) *realizarea de opere derivate.*

⁶⁶¹ Articolul 3:

- (1) *Este autor persoana fizică sau persoanele fizice care au creat opera.*
- (2) *În cazurile expres prevăzute de lege, pot beneficia de protecția acordată autorului persoanele juridice și persoanele fizice, altele decât autorul.*
- (3) *Calitatea de subiect al dreptului de autor se poate transmite în condițiile legii.*

⁶⁶² By the last amending act, Law No 74/2018 of 30.3.2018.

⁶⁶³ Articolul 3: (4) *Sunt recunoscuți și protejați ca titulari ai dreptului de autor persoanele fizice sau juridice, care au dobândit această calitate prin moștenire sau cesiune, în condițiile legii, precum și editorii de opere muzicale și de opere scrise, pentru drepturile care le-au fost transferate în baza unor acorduri individuale și care au dreptul cel puțin la o parte din veniturile provenite din drepturi.*

- (a) literary and journalistic writings, lectures, sermons, pleadings, addresses and any other written or oral works, as well as computer programs;
- (b) scientific works, written or oral, such as presentations, studies, university textbooks, school textbooks and scientific projects and documentation;
- (c) musical compositions with or without words;
- (d) dramatic and dramatic-musical works, choreographic and mimed works;
- (e) cinematographic works and any other audio-visual works;
- (f) photographic works and any other works expressed by a process analogous to photography;
- (g) works of visual or graphic art such as: works of sculpture, painting, drawing, engraving, lithography, monumental art, stage design, tapestry, ceramics, glass and metal shaping, and also works of art applied to products intended for practical use;
- (h) works of architecture, including sketches, scale models and the graphic work that constitutes an architectural project;
- (i) visual works, maps and drawings in the field of topography, geography and science in general.

Article 8 - Without prejudice to the rights of the authors of the original work, copyright shall likewise subsist in derived works created on the basis of one or more pre-existing works, namely:

- (a) translations, adaptations, annotations, documentary works, musical arrangements and any other transformation of a literary, artistic or scientific work that entail creative intellectual work;
- (b) collections of literary, artistic or scientific works, such as encyclopaedias and anthologies, collections and compilations of protected or unprotected material or data, including databases, which, by reason of the selection or arrangement of their subject matter constitute intellectual creations.⁶⁶⁴

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Articolul 7: Constituie obiect al dreptului de autor operele originale de creație intelectuală în domeniul literar, artistic sau științific, oricare ar fi modalitatea de creație, modul sau forma de exprimare și independent de valoarea și destinația lor, cum sunt:

- a) scrierile literare și publicistice, conferințele, predicile, pledoariile, prelegerile și orice alte opere scrise sau orale, precum și programele pentru calculator;
- b) operele științifice, scrise sau orale, cum ar fi: comunicările, studiile, cursurile universitare, manualele școlare, proiectele și documentațiile științifice;
- c) compozițiile muzicale cu sau fără text;
- d) operele dramatice, dramatico-muzicale, operele coregrafice și pantomimele;
- e) operele cinematografice, precum și orice alte opere audiovizuale;
- f) operele fotografice, precum și orice alte opere exprimate printr-un procedeu analog fotografiei;
- g) operele de artă grafică sau plastică, cum ar fi: operele de sculptură, pictură, gravură, litografie, artă monumentală, scenografie, tapiserie, ceramică, plastica sticlei și a metalului, desene, design, precum și alte opere de artă aplicată produselor destinate unei utilizări practice;
- h) operele de arhitectură, inclusiv planșele, machetele și lucrările grafice ce formează proiectele de arhitectură;
- i) lucrările plastice, hărțile și desenele din domeniul topografiei, geografiei și științei în general.

Article 9 sets out an exhaustive list of what cannot be considered and hence is out of the scope of a protected work.

Article 9 - The following shall not benefit from the legal protection of copyright:

- (a) ideas, theories, concepts, scientific discoveries, proceedings, functioning methods or mathematical concepts as such and inventions, contained in a work, whatever the manner of the adoption, writing, explanation or expression thereof;*
- (b) official texts of a political, legislative, administrative or judicial nature, and official translations thereof;*
- (c) official symbols of the State, of public authorities and organizations, such as armorial bearings, seals, flags, emblems, shields, badges and medals;*
- (d) means of payment;*
- (e) news and press information;*
- (f) simple facts and data.⁶⁶⁵*

XXIII.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

The exercise of the economical dimension of the copyright is subject, under the Romanian law, to limitations.

Those limitations are set out in Articles 33-38 and concern the reproduction right, the distribution right, the import right, the rental and lending rights, the communication to the public right, as well as the rights to broadcasting of the work, to cable retransmission and to making derivative works.

It appears that Romania has transposed almost all of the provisions of Directive 2001/29/EC in this respect, even if most of them are not compulsory.

Those limitations for the use of a copyright protected work are subject to several conditions, such as: the protected work has been already been brought to the public knowledge, such use

Articolul 8: Fără a prejudicia drepturile autorilor operei originale, constituie, de asemenea, obiect al dreptului de autor operele derivate care au fost create plecând de la una sau mai multe opere preexistente, și anume:

- a) traducerile, adaptările, adnotările, lucrările documentare, aranjamentele muzicale și orice alte transformări ale unei opere literare, artistice sau științifice care reprezintă o muncă intelectuală de creație;*
- b) culegerile de opere literare, artistice sau științifice, cum ar fi: enciclopediile și antologiile, colecțiile sau compilațiile de materiale sau date, protejate ori nu, inclusiv bazele de date, care, prin alegerea sau dispunerea materialului, constituie creații intelectuale.*

⁶⁶⁵ Articolul 9: Nu pot beneficia de protecția legală a dreptului de autor următoarele:

- a) ideile, teoriile, conceptele, descoperirile științifice, procedeele, metodele de funcționare sau conceptele matematice ca atare și invențiile, conținute într-o operă, oricare ar fi modul de preluare, de scriere, de explicare sau de exprimare;*
- b) textele oficiale de natură politică, legislativă, administrativă, judiciară și traducerile oficiale ale acestora;*
- c) simbolurile oficiale ale statului, ale autorităților publice și ale organizațiilor, cum ar fi: stema, sigiliul, drapelul, emblema, blazonul, insigna, ecusonul și medalia;*
- d) mijloacele de plată;*
- e) știrile și informațiile de presă;*
- f) simplele fapte și date.*

is in conformity to the public practice, such use does not contravene the normal exploitation of the work and it is not prejudicial to the author or to the owners of the exploitation rights.

Directive 2001/29/EC	National law - Law No 8/1996
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Article 33(3)</p> <p>(3) Temporary acts of reproduction that are transient or incidental forming an integral and essential part of a technical process and the sole purpose of which is to enable transfer, in a network between third parties, by an intermediary or the lawful use of another protected object and that should have no separate economic value on their own, are excepted from the reproduction right.⁶⁶⁶</p>
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p>	<p>Article 33(1)</p> <p>(1) The following uses of a work already disclosed to the public shall be permitted without the author's consent and <u>without payment of remuneration</u>, provided that such uses conform to proper practice, are not at variance with the normal exploitation of the work and are not prejudicial to the author or to the owners of the exploitation rights.⁶⁶⁷</p>
<p>(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;</p>	<p>Article 34(2)</p> <p>(2) For the media on which sound or audio-visual recordings can be made or on which <u>reproductions of the works graphically</u> expressed can be made, as well as for equipment dedicated to copying, in the situation provided for in paragraph (1), <u>a compensatory remuneration established by negotiation</u>, according to the provisions of this law, shall be paid.⁶⁶⁸</p>
<p>(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders</p>	<p>Article 34(1) and (2)</p> <p>(1) It shall not be a violation of copyright, for the purposes of this law, the reproduction of a work, without the author's consent for personal use or</p>

⁶⁶⁶ Articolul 33(3): Sunt exceptate de la dreptul de reproducere, în condițiile prevăzute la alin. (1), actele provizorii de reproducere care sunt tranzitorii sau accesorii și constituie o parte integrantă și esențială a unui proces tehnic și al căror scop unic este să permită transmiterea, în cadrul unei rețele între terți, de către un intermediar, sau utilizarea licită a unei opere ori a altui obiect protejat și care nu au o semnificație economică de sine stătătoare.

⁶⁶⁷ Articolul 33(1): Sunt permise, fără consimțământul autorului și fără plata vreunei remunerații, următoarele utilizări ale unei opere aduse anterior la cunoștință publică, cu condiția ca acestea să fie conforme bunelor uzanțe, să nu contravină exploatării normale a operei și să nu îl prejudicieze pe autor sau pe titularii drepturilor de utilizare:

⁶⁶⁸ Articolul 34(2): Pentru suporturile pe care se pot realiza înregistrări sonore sau audiovizuale ori pe care se pot realiza reproduceri ale operelor exprimate grafic, precum și pentru aparatele concepute pentru realizarea de copii, în situația prevăzută la alin. (1), se va plăti o remunerație compensatorie stabilită prin negociere, conform prevederilor prezentei legi.

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receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	for use by a normal family circle, provided that the work has already been disclosed to the public, while the reproduction does not contravene to the normal use of the work or prejudice the author or the owner of the utilization rights. (2) For the media on which sound or audio-visual recordings can be made or on which reproductions of the works graphically expressed can be made, as well as for equipment dedicated to copying, in the situation provided for in paragraph (1), a compensatory remuneration established by negotiation, according to the provisions of this law, shall be paid. ⁶⁶⁹
(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;	Article 33(1) (e) and (g) corroborated with the introductory part of 33(1) (e) 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; ⁶⁷⁰ (g) the representation and execution of a work as part of the activities of educational establishments, exclusively for specific purposes and provided that both the representation or execution and the public's access are free of charge; ⁶⁷¹
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Article 38(2) (2) In the case of ephemeral recording of particular works made by means of their own facilities by the radio or television broadcasting organizations for their own broadcasts, the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted. ⁶⁷²

⁶⁶⁹ Articolul 34:

- (1) *Nu constituie o încălcare a dreptului de autor, în sensul prezentei legi, reproducerea unei opere fără consimțământul autorului, pentru uz personal sau pentru cercul normal al unei familii, cu condiția ca opera să fi fost adusă anterior la cunoștința publică, iar reproducerea să nu contravină utilizării normale a operei și să nu îl prejudicieze pe autor sau pe titularul drepturilor de utilizare.*
- (2) *Pentru suporturile pe care se pot realiza înregistrări sonore sau audiovizuale ori pe care se pot realiza reproduceri ale operelor exprimate grafic, precum și pentru aparatele concepute pentru realizarea de copii, în situația prevăzută la alin. (1), se va plăti o remunerație compensatorie stabilită prin negociere, conform prevederilor prezentei legi.*

⁶⁷⁰ Articolul 33(1): (e) *reproducerile specifice realizate de bibliotecile accesibile publicului, de instituțiile de învățământ sau de muzee ori de către arhive, care nu sunt realizate în scopul obținerii unui avantaj comercial sau economic, direct ori indirect;*

⁶⁷¹ Articolul 33(1): (g) *reprezentarea și executarea unei opere în cadrul activităților instituțiilor de învățământ, exclusiv în scopuri specifice și cu condiția ca atât reprezentarea sau executarea, cât și accesul publicului să fie fără plată;*

⁶⁷² Articolul 38(2): *În cazul înregistrărilor temporare ale unor opere realizate prin mijloace proprii de organisme de*

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(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	Article 33(1)(c) corroborated with the introductory part of 33(1) (c) the use of isolated articles or brief excerpts from works in publications, television or radio broadcasts or sound or audio-visual recordings exclusively intended for teaching purposes and also the reproduction for teaching purposes, within the framework of public education or social welfare institutions, of isolated articles or brief extracts from works, to the extent justified by the intended purpose; ⁶⁷³
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	Article 33(2) (2) Subject to conditions provided for in paragraph (1), the reproduction, distribution, broadcasting or communication to the public, with neither direct nor indirect commercial or economic advantage, are allowed ⁶⁷⁴ :
(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;	Article 33(2)(d) corroborated with 33(4) (d) of works, for the sole purpose of illustration for teaching or scientific research; ⁶⁷⁵ (4) In all cases provided for in paragraph (1) letters b), c), e), f), i) and paragraph (2) the source, including the author's name, has to be indicated, unless this turns out to be impossible; in case of works of visual art, photographic or architecture works the place in which the original is to be found has to be indicated. ⁶⁷⁶
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Article 33(2)(e) (e) of works, for the benefit of people with disabilities, which are directly related to that disability and to the extent required by the specific disability; ⁶⁷⁷

radiodifuziune sau de televiziune pentru propriile emisiuni, conservarea acestor înregistrări în arhivele oficiale este permisă în cazul în care prezintă o valoare documentară deosebită.

⁶⁷³ Articolul 33(1): (c) utilizarea de articole izolate sau de scurte extrase din opere în publicații, în emisiuni de radio sau de televiziune ori în înregistrări sonore sau audiovizuale, destinate exclusiv învățământului, precum și reproducerea pentru învățământ, în cadrul instituțiilor de învățământ sau de ocrotire socială, de articole izolate sau de scurte extrase din opere, în măsura justificată de scopul urmărit;

⁶⁷⁴ Articolul 33(2): În condițiile prevăzute la alin. (1), sunt permise reproducerea, distribuirea, radiodifuzarea sau comunicarea către public, fără un avantaj direct sau indirect, comercial sau economic;

⁶⁷⁵ Articolul 33(2): (d) de opere, în cazul utilizării exclusiv pentru ilustrare în învățământ sau pentru cercetare științifică;

⁶⁷⁶ Articolul 33(4): În toate cazurile prevăzute la alin. (1) lit. b), c), e), f), i) și la alin. (2) trebuie să se menționeze sursa și numele autorului, cu excepția cazului în care acest lucru se dovedește a fi imposibil; în cazul operelor de artă plastică, fotografică sau de arhitectură trebuie să se menționeze și locul unde se găsește originalul.

⁶⁷⁷ Articolul 33(2): (e) de opere, în beneficiul persoanelor cu handicap, care sunt direct legate de acel handicap și în limita cerută de handicapul respectiv;

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(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	Article 33(2)(a) and (c) (a) of brief excerpts from press articles and radio or televised reportages, for informative purposes on current events, except those for which such a use is expressly reserved; ⁶⁷⁸ (c) of brief excerpts of the works, within information on current events, to the extent justified by the informative purpose; ⁶⁷⁹
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Article 33(1)(b) corroborated with the introductory part of 33(1) (b) the use of brief quotations from a work for the purpose of an analysis, commentary or criticism, or for illustration, to the extent justified by use thereof; ⁶⁸⁰
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Article 33(1)(a) corroborated with the introductory part of 33(1) (a) the reproduction of a work in connection with judicial or administrative proceedings, to the extent justified by the purpose thereof; ⁶⁸¹
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Article 33(2)(b) (b) of brief excerpts of lectures, addresses, pleadings and other similar works that have been orally expressed in public, provided that these uses to have the sole purpose of informing on the present; ⁶⁸²

⁶⁷⁸ Articolul 33(2): (a) de scurte extrase din articole de presă și reportaje radiofonice sau televizate, în scopul informării asupra problemelor de actualitate, cu excepția celor pentru care o astfel de utilizare este, în mod expres, rezervată;

⁶⁷⁹ Articolul 33(2): (c) de scurte fragmente ale operelor, în cadrul informațiilor privind evenimentele de actualitate, dar numai în măsura justificată de scopul informării;

⁶⁸⁰ Articolul 33(1): (b) utilizarea de scurte citate dintr-o operă, în scop de analiză, comentariu sau critică ori cu titlu de exemplificare, în măsura în care folosirea lor justifică întinderea citatului;

⁶⁸¹ Articolul 33(1): (a) reproducerea unei opere în cadrul procedurilor judiciare, parlamentare sau administrative ori pentru scopuri de siguranță publică;

⁶⁸² Articolul 33(2): (b) de scurte fragmente ale conferințelor, alocuțiunilor, pledoariilor și ale altor opere de același fel, care au fost exprimate oral în public, cu condiția ca aceste utilizări să aibă ca unic scop informarea privind actualitatea;

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(g) use during religious celebrations or official celebrations organised by a public authority;	Article 33(1)(h) corroborated with the introductory part of 33(1) (h) use of works during religious celebrations or official celebrations organized by a public authority; ⁶⁸³
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Article 33(1)(f) corroborated with the introductory part of 33(1) (f) the reproduction, to the exclusion of any means involving direct contact with the work, distribution or communication to the public of the image of an architectural work, work of plastic art, photographic work or work of applied art permanently located in a public place, except where the image of the work is the main subject of such reproduction, distribution or communication, and if it is used for commercial purposes; ⁶⁸⁴
(i) incidental inclusion of a work or other subject-matter in other material;	Article 33(1)(f) corroborated with the introductory part of 33(1) (f) the reproduction, to the exclusion of any means involving direct contact with the work, distribution or communication to the public of the image of an architectural work, work of plastic art, photographic work or work of applied art permanently located in a public place, except where the image of the work is the main subject of such reproduction, distribution or communication, and if it is used for commercial purposes; ⁶⁸⁵
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Article 33(1)(i) (i) use for the purpose of advertising, of the images of the works presented within exhibitions with public access or sale, of fairs, public auctions of works of art, to the extent necessary to promote the event, excluding any other commercial use. ⁶⁸⁶
(k) use for the purpose of caricature, parody or pastiche;	Article 35 introductory part and point (b)

⁶⁸³ Articolul 33(1): (h) utilizarea operelor în timpul celebrărilor religioase sau al ceremoniilor oficiale organizate de o autoritate publică;

⁶⁸⁴ Articolul 33(1): (f) reproducerea, cu excluderea oricăror mijloace care vin în contact direct cu opera, distribuirea sau comunicarea către public a imaginii unei opere de arhitectură, artă plastică, fotografică sau artă aplicată, amplasată permanent în locuri publice, în afara cazurilor în care imaginea operei este subiectul principal al unei astfel de reproduceri, distribuiri sau comunicări și dacă este utilizată în scopuri comerciale;

⁶⁸⁵ Articolul 33(1): (f) reproducerea, cu excluderea oricăror mijloace care vin în contact direct cu opera, distribuirea sau comunicarea către public a imaginii unei opere de arhitectură, artă plastică, fotografică sau artă aplicată, amplasată permanent în locuri publice, în afara cazurilor în care imaginea operei este subiectul principal al unei astfel de reproduceri, distribuiri sau comunicări și dacă este utilizată în scopuri comerciale;

⁶⁸⁶ Articolul 33(1): (i) utilizarea, în scopuri publicitare, a imaginilor operelor prezentate în cadrul expozițiilor cu acces public sau cu vânzare, al târgurilor, licitațiilor publice de opere de artă, ca mijloc de promovare a evenimentului, excluzând orice utilizare comercială.

Directive 2001/29/EC	National law - Law No 8/1996
Text	Text
	The alteration of a work shall be permissible without the author's consent and <u>without payment of remuneration</u> in the following cases: (b) if the result of the alteration is a parody or caricature, provided that the said result does not cause confusion with the original work and the author thereof; ⁶⁸⁷
(l) use in connection with the demonstration or repair of equipment;	Article 37(1) (1) For the purpose of testing the operation of their products at the time of manufacture or sale, the companies regulated by Law No 31/1990, republished with its subsequent modifications and completions, engaged in the production or sale of sound or audio-visual recordings, equipment for the reproduction or communication to the public thereof and also equipment for receiving radio and television broadcasts may reproduce and present extracts from works, provided that such acts are performed only to the extent required for testing. ⁶⁸⁸
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	–
(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;	Article 33(1)(d) corroborated with the introductory part of 33(1) (d) the reproduction of brief excerpts from works for information or research within the framework of libraries, museums, film archives, sound archives, archives of non-profit cultural or scientific public institutions; the complete reproduction of a copy of a work shall be allowed for the replacement of the sole copy in such an archive or library's permanent collection in the event of the destruction, serious deterioration or loss thereof; ⁶⁸⁹

⁶⁸⁷ Articolul 35: Transformarea unei opere, fără consimțământul autorului și fără plata unei remunerații, este permisă în următoarele cazuri: b) dacă rezultatul transformării este o parodie sau o caricatură, cu condiția ca rezultatul să nu creeze confuzie în ce privește opera originală și autorul acesteia.

⁶⁸⁸ Articolul 37(1): În scopul de a testa funcționarea produselor la momentul fabricării sau vânzării, societățile reglementate de Legea nr. 31/1990, republicată, cu modificările și completările ulterioare, care produc ori vând înregistrări sonore sau audiovizuale, echipament pentru reproducerea ori comunicarea publică a acestora, precum și echipament pentru receptarea de emisiuni de radio și de televiziune pot reproduce și prezenta extrase din opere, cu condiția ca aceste operațiuni să fie reduse la dimensiunile necesare testării.

⁶⁸⁹ Articolul 31(1): d) reproducerea pentru informare și cercetare de scurte extrase din opere, în cadrul bibliotecilor, muzeelor, filmotecilor, fonotecilor, arhivelor instituțiilor publice culturale sau științifice, care funcționează fără scop lucrativ; reproducerea integrală a exemplarului unei opere este permisă, pentru înlocuirea acestuia, în cazul distrugerii, al deteriorării grave sau al pierderii exemplarului unic din colecția permanentă a bibliotecii sau a arhivei respective.

Directive 2001/29/EC	National law - Law No 8/1996
Text	Text
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	Article 35(a) and (c) The alteration of a work shall be permissible without the author's consent and <u>without payment of remuneration</u> in the following cases: (a) if the alteration is made privately and is neither intended for nor made available to the public ⁶⁹⁰ ; (c) if the alteration is made necessary by the purpose of the use permitted by the author; ⁶⁹¹
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	Article 33(2) Subject to conditions provided for in paragraph (1), the reproduction, distribution, broadcasting or communication to the public, with neither direct nor indirect commercial or economic advantage, are allowed ⁶⁹² ;
5(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.	Article 33(1) (1) The following uses of a work already disclosed to the public shall be permitted without the author's consent and without payment of remuneration, provided that such uses conform to proper practice, are not at variance with the normal exploitation of the work and are not prejudicial to the author or to the owners of the exploitation rights ⁶⁹³

Directive 2012/28	National law - Law No 8/1996
Text	Text
6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:	Article 112³(1) (1) The use of orphan works or phonograms by publically accessible libraries, educational establishments and museums, as well as by archives, institutions of film or phonographic heritage and by public radio or television broadcasting organisations, in order to achieve the

⁶⁹⁰ Articolul 35: Transformarea unei opere, fără consimțământul autorului și fără plata unei remunerații, este permisă în următoarele cazuri:

a) dacă este o transformare privată, care nu este destinată și nu este pusă la dispoziția publicului;

⁶⁹¹ Articolul 35: (c) dacă transformarea este impusă de scopul utilizării permise de autor.

⁶⁹² Articolul 33(2): În condițiile prevăzute la alin. (1), sunt permise reproducerea, distribuirea, radiodifuzarea sau comunicarea către public, fără un avantaj direct sau indirect, comercial sau economic:

⁶⁹³ Articolul 33(1): Sunt permise, fără consimțământul autorului și fără plata vreunei remunerații, următoarele utilizări ale unei opere aduse anterior la cunoștință publică, cu condiția ca acestea să fie conforme bunelor uzanțe, să nu contravină exploatării normale a operei și să nu îl prejudicieze pe autor sau pe titularii drepturilor de utilizare:

Directive 2012/28	National law - Law No 8/1996
Text	Text
<p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>objectives related to their public-interest missions, may be made by :</p> <p>a) making the orphan work available to the public pursuant to Article 15;</p> <p>b) acts of reproduction, within the meaning of Article 14, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.⁶⁹⁴</p>
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	Article 112³(2) The institutions referred to in paragraph (1) may use an orphan work solely to achieve objectives related to their public-interest mission, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. Those bodies may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public. ⁶⁹⁵
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Article 112³(3) (3) The institutions referred to in paragraph (1) shall indicate the name of identified authors and other rightholders in any use of an orphan work. ⁶⁹⁶
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	Article 112³(4) (4) The provisions of this law are without prejudice to the freedom of contract of the institutions referred to in paragraph (1) in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements. ⁶⁹⁷

⁶⁹⁴ Articolul 112³

(1): *Utilizarea operelor sau fonogramelor orfane de către biblioteci, instituții de învățământ și muzee accesibile publicului, precum și de către arhive, de către instituții ale patrimoniului cinematografic sau fonografic și de către organismele publice de radiodifuziune și de televiziune, pentru a realiza obiective legate de misiunile lor de interes public, se poate realiza prin:*

a) *punere la dispoziția publicului, în sensul art. 15;*

b) *reproducere, în sensul art. 14, în vederea digitizării, punerii la dispoziție, indexării, catalogării, conservării sau restaurării.*

⁶⁹⁵ Articolul 112³ (2): *Instituțiile prevăzute la alin. (1) pot utiliza o operă orfană numai în scopul realizării obiectivelor legate de misiunile lor de interes public, în special conservarea operelor și fonogramelor aflate în colecțiile lor, restaurarea acestora și furnizarea de acces în scop cultural și educațional la acestea. Aceste organisme pot obține venituri din utilizarea operelor orfane în scopul exclusiv de acoperire a costurilor legate de digitizarea și de punerea acestora la dispoziția publicului.*

⁶⁹⁶ Articolul 112³ (3): *Instituțiile prevăzute la alin. (1) au obligația de a preciza numele autorilor identificați și ale altor titulari ai drepturilor de autor în toate utilizările unei opere orfane.*

⁶⁹⁷ Articolul 112³ (4): *Dispozițiile prezentei legi nu aduc atingere libertății contractuale a instituțiilor prevăzute la alin. (1) în ceea ce privește exercitarea misiunilor lor de interes public, îndeosebi în ceea ce privește acordurile de parteneriat public-privat.*

Directive 2012/28	National law - Law No 8/1996
Text	Text
<p>6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.</p>	<p>Article 112³(5) and (6)</p> <p>(5) The rightholders that put an end to the orphan work status of their works or phonograms shall benefit from a fair compensation for the use that has been made by the institutions referred to in paragraph (1) of such works or phonograms, in accordance with the law.</p> <p>(6) The compensation referred to in paragraph (5) is established in accordance with the number of copies or reproductions made of that work or phonogram.⁶⁹⁸</p>

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⁶⁹⁸ Articolul 112³(5): *Titularii drepturilor de autor care pun capăt statutului de operă orfană al operelor sau fonogramelor lor beneficiază de o compensație echitabilă pentru utilizarea de către instituțiile prevăzute la alin.*

(1) a acestor opere sau fonograme, în condițiile legii.

(6) Compensația echitabilă, prevăzută la alin. (5), se stabilește în funcție de numărul de copii/reproduceri realizate după opera sau fonograma respectivă.

XXIV. SLOVENIA

XXIV.1. APPLICABLE NATIONAL LEGAL FRAMEWORK⁶⁹⁹

XXIV.1.1. Constitution

The Constitution of the Republic of Slovenia provides for explicit protection of intellectual property, in addition to the general clause on protection of private property.

Art. 33

*The right to private property and inheritance shall be guaranteed.*⁷⁰⁰

Art. 60

*The protection of copyright and other rights deriving from artistic, scientific, research, and invention activities shall be guaranteed.*⁷⁰¹

XXIV.1.2. Copyright law

The protection of copyright in Slovenia is governed mainly by the Copyright and Related Rights Act, as subsequently amended⁷⁰² ("the Copyright Act").

The Copyright Act is divided into 9 chapters and constitutes a comprehensive legal instrument covering all aspects of copyright and related rights. It transposes the following EU legislation:

- a) Council Directive 91/250/EEC;
- b) Council Directive 92/100/EEC;
- c) Council Directive 93/83/EEC;
- d) Council Directive 93/98/EEC;
- e) Directive 96/9/EC of the European Parliament and of the Council;
- f) Directive 2001/29/EC of the European Parliament and of the Council;
- g) Directive 2001/84/EC of the European Parliament and of the Council;
- h) Directive 2004/48/EC of the European Parliament and of the Council;
- i) Directive 2012/28/EU of the European Parliament and of the Council.

XXIV.2. COPYRIGHT

XXIV.2.1. Definition and content

The Copyright Act defines the copyright in Article 15 in connection with Articles 5 to 8. Those Articles define and set out the copyright works.

⁶⁹⁹ Most translations included in this document are adaptations after the translation provided by the Slovenian Intellectual Property Office (http://www.uil-sipo.si/fileadmin/upload_folder/zakonodaja/ZASP_EN_2007.pdf).

⁷⁰⁰ Člen 33: *Zagotovljena je pravica do zasebne lastnine in dedovanja.*

⁷⁰¹ Člen 60: *Zagotovljeno je varstvo avtorskih in drugih pravic, ki izvirajo iz umetniške, znanstvene, raziskovalne in izumiteljske dejavnosti.*

⁷⁰² Published in the Official Journal of the Republic of Slovenia on 14 April 1995, with the last amendment thereto published on 7 October 2016.

Art. 15 (Content)

Copyright is an indivisible right to a work, from which emanate exclusive personal powers (moral rights), exclusive economic powers (economic rights), and other powers of the author (other rights of the author).⁷⁰³

Art. 5(1) (Copyright works)

Copyright works are individual intellectual creations in the domain of literature, science, and art, which are expressed in any mode, unless otherwise provided by this Act.⁷⁰⁴

XXIV.2.1.1 Moral rights

The author's moral rights are set out in Articles 16 to 20 of the Copyright Act as rights protecting the author with regard to the link between him or her and his or her work. According to Article 70(1) these rights are non-transferable.

Art. 16 (Content)

Moral rights shall protect the author with respect to his or her intellectual and personal ties to the work.⁷⁰⁵

Art. 17 (Right to the first disclosure)

The author shall have the exclusive right to determine whether, when, and how his or her work is to be disclosed for the first time.⁷⁰⁶

Art. 18 (Right to recognition of authorship)

- 1. The author shall have the exclusive right to recognition of the authorship of his work.*
- 2. The author may determine whether his or her authorship is to be indicated at the time of disclosure of his or her work, and with what mark.⁷⁰⁷*

Art 19. (Right to integrity of the work)

The author shall have the exclusive right to prohibit any distortion or any other tampering with his or her work, as well as any use of his or her work, if such tampering or use could be prejudicial to his or her person.⁷⁰⁸

Art. 20 (Right to withdrawal)

- 1. The author shall have the exclusive right to revoke his or her transferred economic right from its holder, provided that he or she has serious moral reasons for this, and that he or she first reimburses the damage caused to the holder by such revocation.*

⁷⁰³ Člen 15: Avtorska pravica je enovita pravica na avtorskem delu, iz katere izvirajo izključna osebna upravičenja (moralne avtorske pravice), izključna premoženjska upravičenja (materialne avtorske pravice) in druga upravičenja avtorja (druge pravice avtorja).

⁷⁰⁴ Člen 5(1): Avtorska dela so individualne intelektualne stvaritve s področja književnosti, znanosti in umetnosti, ki so na kakršenkoli način izražene, če ni s tem zakonom drugače določeno.

⁷⁰⁵ Člen 16: Moralne avtorske pravice varujejo avtorja glede njegovih duhovnih in osebnih vezi do dela.

⁷⁰⁶ Člen 17: Avtor ima izključno pravico odločiti, ali, kdaj in kako bo njegovo delo prvič objavljeno.

⁷⁰⁷ Člen 18: 1. Avtor ima izključno pravico do priznanja avtorstva na svojem delu.

2. Avtor lahko določi, ali naj se pri objavi dela navede njegovo avtorstvo in s kakšno oznako.

⁷⁰⁸ Člen 19: Avtor ima izključno pravico, da se upre skazitvi in vsakemu drugemu posegu v svoje delo ali vsaki uporabi svojega dela, če bi ti posegi ali ta uporaba lahko okrnili njegovo osebnost.

2. *With the exercise of the right to withdrawal, the economic right of the holder shall be extinguished.*
3. *The author must adequately reimburse the holder. The holder must notify the author of the extent of damages suffered by him or her within three months of the receipt of the notice of revocation. If the holder fails to do so, the right to withdrawal shall take effect on the expiration of this term.*
4. *If the author later wishes to transfer the economic rights in his or her work again, he or she shall be required, within the period of ten years after exercising his or her right to withdrawal, to offer these rights first to the previous holder, under the same conditions that were originally stipulated.*
5. *The provisions of this Article shall not apply to computer programs, audiovisual works and databases.*⁷⁰⁹

XXIV.2.1.2 Economic rights

The author's economic rights are outlined in Articles 21 and 22, and further set out in several other Articles.

Art. 21 (Content)

1. *Economic rights protect the author with respect to his or her economic interests by giving the author an exclusive right to authorise or to prohibit the use of his or her work or copies thereof.*
2. *Unless otherwise provided by this Act, the use of copyright work shall be lawful only if the author, in accordance with this Act, and under the conditions he or she has set, transferred the respective economic right.*⁷¹⁰

Art. 22. (Economic rights)

1. *Use of the work in material form includes in particular the right of reproduction (Article 23).*
2. *Use of the work in non-material form (communication to the public) includes in particular the following rights:*
 - (1) *the right of public performance (Article 26);*
 - (2) *the right of public transmission (Article 27);*

⁷⁰⁹ Člen 20:

1. *Avtor ima izključno pravico, da do imetnika materialne avtorske pravice slednjo prekliče, če ima za to resne moralne razloge in če predhodno imetniku povrne škodo, ki mu s tem nastane.*
2. *Z uveljavitvijo pravice skesanja materialna avtorska pravica imetnika ugasne.*
3. *Avtor mora imetniku povrniti primerno odškodnino. Imetnik mora v treh mesecih od prejema preklica sporočiti avtorju obseg svoje škode. Če tega ne stori, učinkuje pravica skesanja s potekom tega roka.*
4. *Če želi avtor kasneje ponovno prenesti materialne avtorske pravice na svojem delu, mora v desetih letih po uveljavitvi pravice skesanja ta prenos prednostno in pod prejšnjimi pogoji ponuditi prvotnemu imetniku.*
5. *Določbe tega člena ne veljajo za računalniške programe, avdiovizualna dela in baze podatkov.*

⁷¹⁰ Člen 21:

1. *Materialne avtorske pravice varujejo premoženjske interese avtorja s tem, da avtor izključno dovoljuje ali prepoveduje uporabo svojega dela in primerkov svojega dela.*
2. *Če ni s tem zakonom drugače določeno, je uporaba avtorskega dela dopustna le, če je avtor v skladu s tem zakonom in pod pogoji, ki jih je določil, prenesel ustrezno materialno avtorsko pravico.*

- (3) *the right of public communication by phonograms and videograms (Article 28);*
 - (4) *the right of public presentation (Article 29);*
 - (5) *the right of broadcasting (Article 30);*
 - (6) *the right of rebroadcasting (Article 31);*
 - (7) *the right of secondary broadcasting (Article 32);*
 - (8) *the right of making available to the public (Article 32a).*
3. *Use of the work in a modified form includes in particular the following rights:*
- (1) *the right of transformation (Article 33);*
 - (2) *the right of audiovisual adaptation (Article 104).*
4. *Use of copies of a work includes the following rights:*
- (1) *the right of distribution (Article 24);*
 - (2) *the rental right (Article 25).⁷¹¹*

XXIV.2.2. Author

According to Article 10 of the Copyright Act *an author is a natural person who created the copyright works*. As stipulated above, the latter are defined and set out in Articles 5 to 8 thereof.

XXIV.2.3. Protected works

The Copyright Act defines and sets out protected works in Articles 5 to 8:

Art. 5 (Copyright/protected works)

- 1. *Copyright works are individual intellectual creations in the domain of literature, science, and art, which are expressed in any mode, unless otherwise provided by this Act.*
- 2. *As copyright works are considered, in particular:*

⁷¹¹ Člen 22:

- 1. *Uporaba dela v telesni obliki obsega zlasti pravico reproduciranja (23. člen).*
- 2. *Uporaba dela v netelesni obliki (priobčitev javnosti) obsega zlasti naslednje pravice:*
 - (1) *pravico javnega izvajanja (26. člen);*
 - (2) *pravico javnega prenašanja (27. člen);*
 - (3) *pravico javnega predvajanja s fonogrami in videogrami (28. člen);*
 - (4) *pravico javnega prikazovanja (29. člen);*
 - (5) *pravico radiodifuznega oddajanja (30. člen);*
 - (6) *pravico radiodifuzne retransmisije (31. člen);*
 - (7) *pravico sekundarnega radiodifuznega oddajanja (32. člen);*
 - (8) *pravico dajanja na voljo javnosti (32.a člen).*
- 3. *Uporaba dela v spremenjeni obliki obsega zlasti naslednje pravice:*
 - (1) *pravico predelave (33. člen);*
 - (2) *pravico avdiovizualne priredbe (104. člen).*
- 4. *Uporaba primerkov avtorskega dela obsega naslednji pravici:*
 - (1) *pravico distribuiranja (24. člen);*
 - (2) *pravico dajanja v najem (25. člen).*

- (1) *spoken works such as speeches, sermons, and lectures;*
- (2) *written works such as belletristic works, articles, manuals, studies, and computer programs;*
- (3) *musical works with or without words;*
- (4) *theatrical or theatrico-musical works, and works of puppetry;*
- (5) *choreographic works and works of pantomime;*
- (6) *photographic works and works produced by a process similar to photography;*
- (7) *audiovisual works;*
- (8) *works of fine art such as paintings, graphic works, and sculptures;*
- (9) *works of architecture such as sketches, plans, and built structures in the field of architecture, urban planning, and landscape architecture;*
- (10) *works of applied art and industrial design;*
- (11) *cartographic works;*
- (12) *presentations of a scientific, educational or technical nature (technical drawings, plans, sketches, tables, expert opinions, three-dimensional representations, and other works of similar nature).⁷¹²*

Art.6 (Elements of a copyright work)

1. *Draft, component parts and the title of a work, which are in themselves individual intellectual creations, shall enjoy the same protection as the work itself.*
2. *Regardless of the foregoing paragraph, it is not permitted to use for a title of a work such title as has already been used for the same kind of work, if such title creates or is likely to create confusion as to the source of the work.⁷¹³*

⁷¹² Člen 5:

1. *Avtorska dela so individualne intelektualne stvaritve s področja književnosti, znanosti in umetnosti, ki so na kakršenkoli način izražene, če ni s tem zakonom drugače določeno.*
2. *Za avtorska dela veljajo zlasti:*
 - (1) *govorjena dela, kot npr. govori, pridige, predavanja;*
 - (2) *pisana dela, kot npr. leposlovna dela, članki, priročniki, študije ter računalniški programi;*
 - (3) *glasbena dela z besedilom ali brez besedila;*
 - (4) *gledališka, gledališko-glasbena in lutkovna dela;*
 - (5) *koreografska in pantomimska dela;*
 - (6) *fotografska dela in dela, narejena po postopku, podobnem fotografiranju;*
 - (7) *avdiovizualna dela;*
 - (8) *likovna dela, kot npr. slike, grafike in kipi;*
 - (9) *arhitekturna dela, kot npr. skice, načrti ter izvedeni objekti s področja arhitekture, urbanizma in krajinske arhitekture;*
 - (10) *dela uporabne umetnosti in industrijskega oblikovanja;*
 - (11) *kartografska dela;*
 - (12) *predstavitve znanstvene, izobraževalne ali tehnične narave (tehnične risbe, načrti, skice, tabele, izvedenska mnenja, plastične predstavitve in druga dela enake narave).*

⁷¹³ Člen 6:

Art. 7 (Transformations of copyright works)

1. *Translations, adaptations, arrangements, changes and other transformations of a preexisting work or of other material, which are individual intellectual creations, shall be deemed independent works.*
2. *Rights of authors of pre-existing works must not be infringed by transformations mentioned in the foregoing paragraph.*⁷¹⁴

Art. 8 (Collections)

1. *Collections of works or of other material, such as encyclopaedias, anthologies, databases, collections of documents, etc., which, by virtue of selection, coordination or arrangement of their contents, are individual intellectual creations, shall be deemed as independent works.*
2. *Rights of authors of pre-existing works shall not be infringed by the inclusion of such works in a collection; by the inclusion in a collection, pre-existing material shall not become a protected work.*
3. *Databases as mentioned in paragraph 1 are collections of independent works, data or other materials in any form, arranged in a systematic or methodical way and individually accessible by electronic or other means.*
4. *Protection under this Article shall not apply to computer programs used in the making or operation of electronic databases.*⁷¹⁵

Article 9 sets out an exhaustive list of what cannot be considered and hence is out of the scope of a protected work.

Art. 9 (Non-protected creations)

1. *Copyright protection shall not be afforded to:*
(1) ideas, principles, discoveries;

-
1. *Osnutek, sestavni deli in naslov avtorskega dela, ki so sami po sebi individualne intelektualne stvaritve, uživajo enako varstvo kot samo delo.*
 2. *Ne glede na prejšnji odstavek ni dovoljeno jemati za naslov avtorskega dela naslova, ki je bil že uporabljen za kakšno avtorsko delo enake vrste, če bi tak naslov ustvaril ali utegnil ustvariti zmedo glede izvora dela.*

⁷¹⁴ Člen 7:

1. *Prevodi, priredbe, aranžmaji, spremembe in druge predelave prvotnega avtorskega dela ali drugega gradiva, ki so individualna intelektualna stvaritev, so samostojna avtorska dela.*
2. *S predelavo iz prejšnjega odstavka ne smejo biti prizadete pravice avtorja prvotnega dela.*

⁷¹⁵ Člen 8:

1. *Zbirke avtorskih del ali drugega gradiva, kot so enciklopedije, antologije, baze podatkov, zbirke dokumentov ipd., ki so po izbiri, uskladitvi ali razporeditvi vsebine individualne intelektualne stvaritve, so samostojna avtorska dela.*
2. *Z uvrstitvijo prvotnih del v zbirko ne smejo biti prizadete pravice avtorjev teh del; z uvrstitvijo prvotnega gradiva v zbirko to gradivo ne postane varovano delo.*
3. *Baze podatkov iz prvega odstavka tega člena so zbirke neodvisnih del, podatkov ali drugega gradiva v kakršnikoli obliki, ki je sistematično ali metodično urejeno in posamično dostopno z elektronskimi ali drugimi sredstvi.*
4. *Varstvo po tem členu ne velja za računalniške programe, uporabljene za izdelavo ali delovanje elektronskih baz podatkov.*

(2) official legislative, administrative and judicial texts;

(3) folk literary and artistic creations.

2. Translations of texts mentioned under point 2 of the foregoing paragraph shall enjoy copyright protection, unless they are published as official texts.⁷¹⁶

XXIV.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

The Copyright Act provides for a number of limitations to copyright, largely by way of transposition of the provisions of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and of Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable (a) a transmission in a network between third parties by an intermediary, or (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.	Article 49a Temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable a transmission in a network between third parties by an intermediary, or a lawful use of a work, and which have no independent economic significance, shall be free. ⁷¹⁷
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	Article 46 Limitations on copyright shall be permissible in cases mentioned in this Section, provided that the extent of such exploitation of copyright works is limited by the intended purpose, is compatible with fair practice, does not conflict with normal use of the work, and does not unreasonably prejudice the legitimate interests of the author. ⁷¹⁸
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind	Article 47

⁷¹⁶ Člen 9:

1. Avtorskoppravno niso varovane:

(1) ideje, načela, odkritja;

(2) uradna besedila z zakonodajnega, upravnega in sodnega področja;

(3) ljudske književne in umetniške stvaritve.

2. Prevodi besedil iz 2. točke prejšnjega odstavka so avtorskoppravno varovani, razen če so objavljeni kot uradna besedila.

⁷¹⁷ Člen 49a: Začasno reproduciranje dela je prosto, če je prehodno ali spremljajoče dejanje, ki je sestavni in bistveni del nekega tehničnega postopka ter nima nobenega neodvisnega gospodarskega pomena, njegov edini namen pa je omogočiti, da se delo prenese v omrežju med tretjimi osebami s pomočjo posrednika ali zakonito uporabi.

⁷¹⁸ Člen 46: Vsebinske omejitve avtorske pravice so dopustne v primerih, ki so določeni v tem oddelku, s tem, da je obseg take uporabe avtorskih del omejen glede na namen, ki ga je treba doseči, da je v skladu z dobrimi običaji, da ne nasprotuje običajni uporabi dela in da ni v nerazumni meri v nasprotju z zakonitimi interesi avtorja.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	<p>1. Without the assignment of a respective economic right, but on payment of fair compensation, it shall be lawful:</p> <p>(1) to reproduce in readers and textbooks intended for teaching, parts of works, as well as single works of photography, fine arts, architecture, applied art, industrial design and cartography, provided that these are already disclosed works of a number of authors;</p> <p>(2) to reproduce in periodical publications or press review individual published articles on current economic, political or religious topics or containing other content of a similar nature, unless the author expressly prohibited it.</p> <p>2. Provisions of the foregoing paragraph apply accordingly to public communication of the works mentioned therein.</p> <p>3. In cases stated in the foregoing paragraphs, the source authorship of the work must be indicated, if the latter is indicated on the work used.⁷¹⁹</p>
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	<p>Article 50(1), (2), (4) and (5)</p> <p>1. Subject to Article 37, the reproduction of a disclosed work shall be free, if made in no more than three copies and provided that the conditions of paragraphs 2 or 3 are fulfilled.</p> <p>2. A natural person shall be free to reproduce works:</p> <p>(1) on paper or any similar medium by the use of a photographic technique or by some other process having similar effects; and</p> <p>(2) on any other medium if this is done for private use, if the copies are not available to the public, and if this is not done for direct or indirect economic advantage.</p> <p>4. Reproduction according to the foregoing paragraphs shall not be permitted with respect to written works to the extent of the whole book,</p>

⁷¹⁹ Člen 47:

1. Brez prenosa ustrezne materialne avtorske pravice, vendar ob plačilu primerne nadomestila, je dopustno:
 - (1) reproducirati v čitankah in učbenikih, namenjenih za pouk, dele avtorskih del ter posamična dela s področij fotografije, likovne umetnosti, arhitekture, uporabne umetnosti, industrijskega oblikovanja in kartografije, če gre za že objavljena dela več avtorjev;
 - (2) reproducirati v periodičnem tisku ali v pregledih tiska posamične objavljene članke o aktualnih gospodarskih, političnih ali verskih temah ali z drugo vsebino podobnega značaja, če avtor tega ni izrecno prepovedal.
2. Določbe prejšnjega odstavka se smiselno uporabljajo tudi za javno priobčitev navedenih del.
3. V primerih iz prejšnjih odstavkov je treba navesti vir in avtorstvo dela, če je navedeno na uporabljenem delu.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
	<p>graphic editions of musical works, electronic databases and computer programs, and in the form of building of architectural structures, unless otherwise provided by this Act or by contract.</p> <p>5. Notwithstanding paragraph 4, it shall be permissible, under the conditions of paragraph 1:</p> <p>(1) to reproduce a written work to the extent of the whole book, if such work is out of print for a minimum of two years;</p> <p>(2) to reproduce a graphic edition of musical work by means of handwritten transcription.⁷²⁰</p>
(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;	<p>Article 50(1), (3), (4) and (5)</p> <p>1. Subject to Article 37, the reproduction of a disclosed work shall be free, if made in no more than three copies and provided that the conditions of paragraphs 2 or 3 are fulfilled.</p> <p>3. Publicly accessible archives and libraries, museums and educational or scientific establishments shall be free to reproduce, on any medium, works from their own copies for internal use, provided that this is not done for direct or indirect economic advantage.</p> <p>4. Reproduction according to the foregoing paragraphs shall not be permitted with respect to written works to the extent of the whole book, graphic editions of musical works, electronic databases and computer programs, and in the form of building of architectural structures, unless otherwise provided by this Act or by contract.</p>

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Člen 50:

1. Ob upoštevanju 37. člena tega zakona je reproduciranje že objavljenega dela prosto, če je izvršeno v največ treh primerkih in če so izpolnjeni pogoji iz drugega ali tretjega odstavka tega člena.
2. Fizična oseba lahko prosto reproducira delo
 - (1) na papirju ali podobnem nosilcu z uporabo fotokopiranja ali druge fotografske tehnike s podobnimi učinki,
 - (2) na katerem koli drugem nosilcu, če to stori za privatno uporabo, če primerki niso izročeni ali priobčeni v javnosti in če pri tem nima namena dosežati neposredne ali posredne gospodarske koristi.
3. Javni arhivi, javne knjižnice, muzeji ter izobraževalne in znanstvene ustanove lahko za lastne potrebe prosto reproducirajo delo na kateremkoli nosilcu, če to storijo iz lastnega primerka in če pri tem nimajo namena dosežati neposredne ali posredne gospodarske koristi.
4. Reproduciranje po prejšnjih odstavkih tega člena ni dovoljeno glede pisanih del v obsegu celotne knjige, grafičnih izdaj glasbenih del, elektronskih baz podatkov in računalniških programov ter v obliki izvedbe arhitekturnega objekta, če ni s tem zakonom ali s pogodbo drugače določeno.
5. Ne glede na prejšnji odstavek je pod pogoji iz prvega odstavka tega člena prosto:
 - (1) reproducirati pisano delo v obsegu celotne knjige, če je njena naklada izčrpana že najmanj dve leti;
 - (2) reproducirati grafično izdajo glasbenega dela z ročnim prepisovanjem.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
	5. Notwithstanding paragraph 4, it shall be permissible, under the conditions of paragraph 1: (1) to reproduce a written work to the extent of the whole book, if such work is out of print for a minimum of two years; (2) to reproduce a graphic edition of musical work by means of handwritten transcription.
	Article 49b For the purposes of surveys or individual learning, publicly accessible archives, libraries, museums and educational institutions may freely communicate public works in their collections via dedicated screens located in their premises, provided that it is not otherwise specified in the contract on the transfer of copyright. ⁷²¹
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Article 77(2) 2. In case of assignment of the right of broadcasting (Article 30), it shall be presumed that the broadcasting organisation also acquired the right: (1) to make fixations of the work, provided that the broadcasting organisation makes such fixations with its own facilities and for its own broadcasts, that it broadcasts them only once, and that it destroys such fixations no later than one month after the broadcast (ephemeral fixations); and (2) to deliver ephemeral fixations to a public archive if such fixations have exceptional documentary value. The broadcasting organisation must immediately notify the author about this. ⁷²²
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–

⁷²¹ Člen 49b: Za namene raziskave ali individualnega pridobivanja znanja lahko javno dostopni arhivi, knjižnice, muzeji ter izobraževalne ustanove prosto priobčijo javnosti dela iz svojih zbirk po temu namenjenih zaslonih, ki se nahajajo v njihovih prostorih, če s pogodbo o prenosu materialnih avtorskih pravic ni drugače določeno.

⁷²² Člen 77(2): 2. Pri prenosu pravice radiodifuznega oddajanja dela (30. člen) se šteje, da je bila na RTV organizacijo prenesena tudi pravica

(1) do posnetkov dela, če jih posname z lastnimi sredstvi in za lastne oddaje, če jih oddaja le enkrat in če jih najkasneje en mesec po oddajanju zbriše (efemerni posnetki); in

(2) do izročitve efemernih posnetkov javnemu arhivu, če imajo izredno dokumentarno vrednost. O tem mora RTV organizacija nemudoma obvestiti avtorja.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	Article 46 Limitations on copyright shall be permissible in cases mentioned in this Section, provided that the extent of such exploitation of copyright works is limited by the intended purpose, is compatible with fair practice, does not conflict with normal use of the work, and does not unreasonably prejudice the legitimate interests of the author.
(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;	Article 47 1. Without the assignment of a respective economic right, but on payment of fair compensation, it shall be lawful: (1) to reproduce in readers and textbooks intended for teaching, parts of works, as well as single works of photography, fine arts, architecture, applied art, industrial design and cartography, provided these are already disclosed works of a number of authors; (2) to reproduce in periodical publications or press review individual published articles on current economic, political or religious topics or containing other content of a similar nature, unless the author expressly prohibited it. 2. Provisions of the foregoing paragraph apply accordingly to public communication of the works mentioned therein. 3. In cases stated in the foregoing paragraphs, the source authorship of the work must be indicated, if the latter is indicated on the work used.
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	Article 48a For the benefit of disabled persons reproduction and distribution of work and public recitation shall be free, provided that this work is not available in the required format and the use is directly linked to the disability of these persons and is limited to its scope and does not aim to achieve direct or indirect economic or commercial advantage. ⁷²³
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other	Article 48 1. For the purpose of informing the public it shall be free: (1) to reproduce works, which are capable of being seen or heard as a part of a current event that is being reported on;

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Člen 48a: V korist invalidnih oseb je prosto reproduciranje in distribuiranje dela ter javno recitiranje, če to delo ni na voljo v zahtevani obliki in je uporaba neposredno povezana z invalidnostjo teh oseb, omejena na njen obseg ter ni namenjena doseganju neposredne ali posredne gospodarske koristi.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	<p>(2) to prepare and reproduce abstracts of published newspaper and similar articles in the form of press reviews;</p> <p>(3) to reproduce public political speeches and public speeches made at hearings before state, religious or similar bodies;</p> <p>(4) to use the news of the day, which have the nature of a press release.</p> <p>2. Provisions of the foregoing paragraph apply mutatis mutandis to public communications of the works mentioned therein.</p> <p>3. In cases stated in the foregoing paragraphs, the source and authorship of the work must be indicated, if the latter is indicated on the work used.⁷²⁴</p>
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	<p>Article 51</p> <p>1. It shall be permissible to make quotations of parts of a disclosed work and of single disclosed photographs, works of fine arts, architecture, applied art, industrial design and cartography, provided that it is necessary for the purpose of illustration, argumentation or referral.</p> <p>2. In cases stated in the foregoing paragraph, the source and authorship of the work must be indicated, if the latter is indicated on the work used.⁷²⁵</p>
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	<p>Article 56</p> <p>The use of works shall be free if this is indispensable, in certain concrete cases, for the performance of tasks relating to public security or the performance of any official proceedings, such as proceedings in the National Assembly or</p>

⁷²⁴ Člen 48:

1. Za namen obveščanja javnosti je prosto:
 - (1) pri obveščanju o dnevnih dogodkih reproducirati dela, ki se vidijo ali slišijo ob poteku tega dogodka;
 - (2) pripraviti in reproducirati povzetke izdanih časopisnih in podobnih člankov v pregledih tiska;
 - (3) reproducirati javne politične govore in javne govore na obravnavah pred državnimi, cerkvenimi in podobnimi organi;
 - (4) uporabiti dnevne novice in vesti, ki imajo naravo tiskovnega poročila.
2. Določbe prejšnjega odstavka se smiselno uporabljajo tudi za javno priobčitev navedenih del.
3. V primerih iz prejšnjih odstavkov je treba navesti vir in avtorstvo dela, če je navedeno na uporabljenem delu.

⁷²⁵ Člen 51:

1. Navajanje odlomkov objavljenega dela ali posamičnih objavljenih del s področij fotografije, likovne umetnosti, arhitekture, uporabne umetnosti, industrijskega oblikovanja in kartografije je prosto, če je to potrebno z namenom ponazoritve, soočenja ali napotitve.
2. V primerih iz prejšnjega odstavka je treba navesti vir in avtorstvo dela, če je navedeno na uporabljenem delu.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	National Council of the Republic of Slovenia, or judicial, administrative or arbitrary proceedings. ⁷²⁶ Article 48(1)(3) and 48(2) and (3) 1. For the purpose of informing the public it shall be free: (3) to reproduce public political speeches and public speeches made at hearings before state, religious or similar bodies; 2. Provisions of the foregoing paragraph apply mutatis mutandis to public communications of the works mentioned therein. 3. In cases stated in the foregoing paragraphs, the source and authorship of the work must be indicated, if the latter is indicated on the work used.
(g) use during religious celebrations or official celebrations organised by a public authority;	Article 48(1)(3) and 48(2) and (3) 1. For the purpose of informing the public it shall be free: (3) to reproduce public political speeches and public speeches made at hearings before state, religious or similar bodies; 2. Provisions of the foregoing paragraph apply mutatis mutandis to public communications of the works mentioned therein. 3. In cases stated in the foregoing paragraphs, the source and authorship of the work must be indicated, if the latter is indicated on the work used.
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Article 55 1. Works permanently placed in parks, streets, squares, or other generally accessible premises may be used freely. 2. Works mentioned in the foregoing paragraph may not be reproduced in a three-dimensional form, used for the same purpose as the original work, or used for economic gain. 3. In cases stated in paragraph 1 of this Article, the source and authorship of the work must be indicated, if the latter is indicated on the work used. ⁷²⁷

⁷²⁶ Člen 56: Uporaba dela je prosta, kadar je to nujno potrebno v posamičnih konkretnih primerih zaradi izvajanja nalog javne varnosti ali zagotovitve izvedbe katerih koli uradnih postopkov, kot so postopki v Državnem zboru Republike Slovenije ali v Državnem svetu Republike Slovenije, sodni, upravni in arbitražni postopki.

⁷²⁷ Člen 55:

1. Dela, ki so trajno v parkih, na ulicah, na trgih ali na drugih splošno dostopnih krajih, so v prosti uporabi.
2. Uporaba iz prejšnjega odstavka se ne sme izvršiti v tridimenzionalni obliki ali za isti namen kot prvotno delo

Directive 2001/29/EC	National law - Copyright Act
Text	Text
(i) incidental inclusion of a work or other subject-matter in other material;	Article 52 Such disclosed works that may be regarded as accessory works of secondary importance with regard to the actual purpose of some material object, may be used freely while exploiting such an object. ⁷²⁸
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Article 54 1. The organiser of a public exhibition or sale of artistic works shall be free to use such works to the extent necessary to promote the event, provided that this is not done for direct or indirect economic advantage. 2. In cases referred to in paragraph 1, the source and authorship of the work shall be indicated if the latter is indicated on the work used. ⁷²⁹
(k) use for the purpose of caricature, parody or pastiche;	Article 53, point 2 Transformation of a disclosed work is permissible: (2) if the work is transformed into a parody or caricature, provided this does not, or is not likely to, create confusion as to the source of the work; ⁷³⁰
(l) use in connection with the demonstration or repair of equipment;	Article 57 Workshops and shops that manufacture or sell phonograms, videograms, equipment for their reproduction or public communication and equipment for reception of broadcasts, may, in order to test their functioning at the time of manufacture or sale, freely reproduce and publicly communicate works, provided that this is done only to the extent necessary for the purpose of testing. ⁷³¹

ali vršiti za doseganje gospodarske koristi.

3. V primerih iz prvega odstavka tega člena je treba navesti vir in avtorstvo dela, če je navedeno na uporabljenem delu.

⁷²⁸ Člen 52: Tista objavljena dela, ki so nebitvena pritiklina glede na siceršnjo namembnost nekega predmeta, so pri izkoriščanju tega predmeta v prosti uporabi.

⁷²⁹ Člen 54:

1. Prireditelj javne razstave ali javne prodaje umetniških del lahko prosto uporabi ta dela v zvezi s tem dogodkom v obsegu, ki je potreben za njegovo promocijo, pod pogojem da tega ne stori z namenom doseganja gospodarske koristi.

2. V primerih iz prejšnjega odstavka je treba navesti vir in avtorstvo dela, če je navedeno na uporabljenem delu.

⁷³⁰ Člen 53, točka 2: Predelava objavljenega dela je prosta:

(2) če gre za predelavo v parodijo ali karikaturu, če to ne ustvari ali utegne ustvariti zmede glede izvora dela.

⁷³¹ Člen 57: Obrati in trgovine, ki proizvajajo ali dajejo v promet fonograme ali videograme, naprave za njihovo reproduciranje ali javno priobčitev ter naprave za sprejem oddaj, lahko prosto reproducirajo in javno priobčujejo dela v obsegu, ki je potreben, da se preizkusi njihovo delovanje pri proizvodnji ali pri prodaji.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Article 44 1. The owner of a work of architecture which has been executed shall be free to make reconstructions thereof. 2. When implementing the provision of paragraph 1, the owner must respect the author's right to integrity of the work. 3. Where a work of architecture has been awarded a prize in an open contest, the owner must obtain the consent of the author. The consent shall not involve disproportionate costs for the owner or considerably prolong the time of reconstruction. ⁷³²
(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;	Article 49b For the purposes of surveys or individual learning, publicly accessible archives, libraries, museums and educational institutions may freely communicate public works in their collections via dedicated screens located in their premises, provided that it is not otherwise specified in the contract on the transfer of copyright.
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	–
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	Article 48a For the benefit of disabled persons reproduction and distribution of work and public recitation shall be free, provided that this work is not available in the required format and the use is directly linked to the disability of these persons and is limited to its scope and does not aim to achieve direct or indirect economic or commercial advantage.
5(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.	Article 46 Limitations on copyright shall be permissible in cases mentioned in this Section, provided that the extent of such exploitation of copyright works is limited by the intended purpose, is compatible with fair practice, does not conflict with normal use

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Člen 44:

1. Lastnik zgrajenega arhitekturnega objekta lahko to delo prosto predela.
2. Pri izvajanju določb prejšnjega odstavka mora lastnik upoštevati avtorjevo pravico do spoštovanja dela.
3. Kadar je bil objekt nagrajen na javnem natečaju, mora lastnik pridobiti soglasje avtorja. Soglasje lastniku ne sme povzročiti nesorazmernih stroškov oziroma znatno podaljšati časa predelave.

Directive 2001/29/EC	National law - Copyright Act
Text	Text
	of the work, and does not unreasonably prejudice the legitimate interests of the author.

Directive 2012/28	National law - Copyright Act
Text	Text
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Article 50a(1)</p> <p>1. Publicly accessible libraries, museums, archives, educational establishments, film or audio heritage institutions and public broadcasting organisation may, for carrying out tasks in the public interest, in particular the preservation and restoration of their collections and providing cultural and educational access to those collections, including digital collections, make the orphan work in their collections freely available to the public and freely reproduce it for its digitalisation, labelling, cataloguing, preservation or restoration.⁷³³</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>Article 50a(1) and (2)</p> <p>1. Publicly accessible libraries, museums, archives, educational establishments, film or audio heritage institutions and public broadcasting organisation may, for carrying out tasks in the public interest, in particular the preservation and restoration of their collections and providing cultural and educational access to those collections, including digital collections, make the orphan work in their collections freely available to the public and freely reproduce it for its digitalisation, labelling, cataloguing, preservation or restoration.</p> <p>2. Legal persons referred to in the preceding paragraph may generate revenue through the use of orphan works only to cover the costs of reproduction and of making available of orphan works to the public.⁷³⁴</p>

⁷³³ Člen 50a(1): 1. Javno dostopni arhivi, knjižnice, muzeji, izobraževalne ustanove, ustanove filmske ali avdio dediščine ter javne RTV-organizacije lahko za izvajanje nalog v javnem interesu, zlasti ohranjanje in obnovo njihovih zbirk ter zagotovitev kulturnega in izobraževalnega dostopa do njih, vključno z digitalnimi zbirkami, osirotelo delo iz svojih zbirk prosto dajo na voljo javnosti in ga za njegovo digitalizacijo, razpolaganje, označevanje, katalogiziranje, ohranjanje ali obnavljanje prosto reproducirajo.

⁷³⁴ Člen 50a(2): 2. Pravne osebe iz prejšnjega odstavka lahko z uporabo osirotelih del ustvarijo prihodke izključno za kritje stroškov reproduciranja in dajanja na voljo javnosti osirotelega dela.

Directive 2012/28	National law - Copyright Act
Text	Text
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Article 50a(4) 4. When using an orphan work, legal persons referred to in the first paragraph of this Article shall indicate the author of the work and his or her legal successor, if known. ⁷³⁵
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	Article 50a(3) 3. Legal persons referred to in the first paragraph of this Article may contractually transfer to another person the carrying out of reproduction or making available to the public. ⁷³⁶
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	Article 50d 1. If the author of the work which, under this Act, is considered to be an orphan work, is found or identified, the legal persons referred to in the first paragraph of Article 50a of this Act shall, as soon as they become aware of it, cease to use this work. 2. The author of the orphan work shall be entitled to fair compensation for the use that has been made of his or her work, which he or she may request from the legal person referred to in the first paragraph of Article 50a of this Act, that was using his or her work. 3. When determining the amount of fair compensation, account shall be taken of the costs of the diligent search, the costs and revenues associated with making orphan works available to the public, the costs of reproduction and the possible damage sustained by the rightholders. Account shall also be taken of the public interest in the field of culture, as provided for in the law governing the exercise of the public interest in field of culture and the mission of the respective public institutes or public agencies as determined in their respective constitutive acts. 4. Method for calculating the amount of the fair compensation referred to in paragraph 2 of this Article and the manner of its payment shall be determined by the Government of the Republic of Slovenia on the proposal of the minister responsible for culture. ⁷³⁷

⁷³⁵ Člen 50a(4): 4. Pravne osebe iz prvega odstavka tega člena pri uporabi osirotelega dela navedejo avtorja dela in njegovega pravnega naslednika, če sta znana.

⁷³⁶ Člen 50a(3): 3. Pravne osebe iz prvega odstavka tega člena lahko izvedbo reproduciranja ali dajanja na voljo javnosti s pogodbo prenesejo na drugo osebo.

⁷³⁷ Člen 50d:

1. Če je avtor dela, ki se po tem zakonu šteje za osirotelo delo, najden ali opredeljen, pravne osebe iz prvega odstavka 50.a člena tega zakona takoj, ko za to izvejo, to delo prenehajo uporabljati.

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2. *Avtor osirotelega dela ima pravico do pravičnega nadomestila za dotedanjo uporabo svojega dela, ki ga lahko zahteva od pravne osebe iz prvega odstavka 50.a člena tega zakona, ki je njegovo delo uporabljala.*
 3. *Pri določitvi višine pravičnega nadomestila se upoštevajo stroški izvedbe skrbnega iskanja, stroški in prihodki, povezani z dajanjem osirotelega dela na voljo javnosti, stroški reproduciranja in stroški morebitnega oškodovanja imetnikov pravic. Upošteva se tudi javni interes na področju kulture, kot ga določa zakon, ki ureja uresničevanje javnega interesa za kulturo ter poslanstvo posameznega javnega zavoda oziroma javne agencije, kot je določeno v njihovem ustanovitvenem aktu.*
 4. *Način izračuna višine pravičnega nadomestila iz drugega odstavka tega člena in način njegovega plačila določi Vlada Republike Slovenije na predlog ministra, pristojnega za kulturo.*

XXV. SLOVAKIA

XXV.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

XXV.1.1. Constitution

The Slovak Constitution^{738 739} in its consolidated version does contain specific provisions concerning the protection of intellectual property. Article 43 of the Constitution guarantees the rights to freedom of scientific research and freedom of artistic expression, the intellectual property rights and the right to access to cultural heritage.

Article 43

(1) Freedom of scientific research and the freedom of artistic expression shall be guaranteed. Intellectual property rights shall be protected by the law⁷⁴⁰.

XXV.1.2. Copyright Law

The protection of copyright in Slovakia is governed by the Copyright Act No 185/2015 Coll. on Copyright and Related Rights⁷⁴¹, as amended ('the Copyright Act') replacing the former Copyright Act No 618/2003.

The Copyright Act is divided into six parts and constitutes a comprehensive legal instrument covering all aspects of copyright, including provisions concerning, *inter alia* the copyright protection of computer programs, the protection of related rights as well as legal concept of protected work in the course arising out of contract and in the course of employment, and collective rights management.

The Copyright Act transposes, according to Annex No 3, the following EU legislation:

1. Council Directive 93/83/EEC;
2. Directive 96/9/EC of the European Parliament and of the Council;
3. Directive 2001/29/EC of the European Parliament and of the Council;
4. Directive 2001/84/EC of the European Parliament and of the Council;
5. Directive 2004/48/EC of the European parliament and of the Council;
6. Directive 2006/115/EC of the European Parliament and of the Council;
7. Directive 2006/116/EC of the European Parliament and of the Council;
8. Directive 2009/24/EC of the European Parliament and of the Council;
9. Directive 2012/28/EU of the European Parliament and of the Council;
10. Directive 2014/26/EU of the European Parliament and of the Council.

⁷³⁸ Ústava Slovenskej republiky (Ústavný zákon č. 460/1992 Zb.)

⁷³⁹ Official translation available on the website of the President of Slovakia: <https://www.prezident.sk/upload-files/46422.pdf>.

⁷⁴⁰ Článok 43: *(1) Sloboda vedeckého bádania a umenia sa zaručuje. Práva na výsledky tvorivej duševnej činnosti chráni zákon.*

⁷⁴¹ Official translation available on the website of the Ministry of Culture of Slovakia: <http://www.culture.gov.sk/extdoc/6416/AZ%20eng>.

XXV.2. COPYRIGHT

XXV.2.1. Definition and content

While the Copyright Act does not contain a definition of copyright as such, it describes the content of the protection granted.

The Copyright Act defines the subject of the copyright as follows:

Article 3 (1)

Subject of copyright is a work in the area of literature, arts or science, which is a unique result of creative and artistic activity of author, perceivable by senses, irrespective of its shape, content, quality, purpose, form of expression or level of completion⁷⁴².

As in most legal orders, copyright in Slovakia includes exclusive moral rights and exclusive economic rights.

XXV.2.1.1 Moral rights

The author's moral rights ("výhradné osobnostné práva") are described in Article 18 of the Copyright Act as the right to authorship to the work, right to decide on releasing or non-releasing of the work, right to be indicated as author and to decide on a manner of such indication, as well as the right to inviolability of the work.

Exclusive Moral Rights

Article 18

(1) Author has right to authorship to his work.

(2) Author has right

- a) to decide on releasing or non-releasing of his work,*
- b) to be indicated as author and to decide on a manner of such indication, primarily by his name or pseudonym during every use of his work, provided that such manner of indication is possible and usual with respect to the work in question,*
- c) to inviolability of his work, in particular right to protection against any unauthorised alteration or other unauthorised intervention into the work, as well as any defamatory manipulation with the work which would result in decrease of value of the work or would negatively affect dignity or personal reputation of the author.*

(3) Author may not waive rights pursuant to paragraphs 1 and 2, these rights are non-transferable and are terminated by the death of the author.

(4) No person can claim authorship to the work after death of its author and the work may only be used in a manner not degrading its value; name or pseudonym of the author must be indicated, unless it is an anonymous work.

(5) Author may grant a user of his work an authorisation with intervention into his moral rights. Such authorisation with intervention into moral rights must be

⁷⁴² § 3 ods. 1: (1) Predmetom autorského práva je dielo z oblasti literatúry, umenia alebo vedy, ktoré je jedinečným výsledkom tvorivej duševnej činnosti autora vnímateľným zmyslami, bez ohľadu na jeho podobu, obsah, kvalitu, účel, formu jeho vyjadrenia alebo mieru jeho dokončenia.

limited in its scope and manner of intervention and unless otherwise agreed, the authorisation may be revoked⁷⁴³.

XXV.2.1.2 Economic rights

The author's economic rights ("výhradné majetkové práva") are described in general terms in Articles 19 and 20 of the Copyright Act.

Exclusive Economic Rights

Article 19

- (1) Author has right to use his work and right to grant authorisation to using of his work.*
- (2) Work may only be used with authorisation of the author, unless otherwise stipulated by this Act.*
- (3) Author has right to remuneration for using of work, unless otherwise stipulated in Chapter Four of this Act; this does not affect of Article 65 paragraph 1, second sentence.*
- (4) Using of work is especially*
 - a) alteration of work,*
 - b) merging of work with another work,*
 - c) including of work into database pursuant to Article 131,*
 - d) making a copy of work,*
 - e) public distribution of original or copy of work by means of*
 - 1. transfer of title,*
 - 2. lending,*
 - 3. rental,*
 - f) disclosure of the work to the public by means of*

⁷⁴³ Výhradné osobnostné práva
§ 18

- (1) Autor má právo na autorstvo k svojmu dielu.*
- (2) Autor má právo*
 - a) rozhodnúť o zverejnení alebo o nezverejnení svojho diela,*
 - b) byť označený ako autor a rozhodnúť o spôsobe takéhoto označenia najmä menom alebo pseudonymom, a to pri každom použití svojho diela, ak je takýto spôsob označenia pri danom diele a spôsobe použitia možný a obvyklý,*
 - c) na nedotknuteľnosť svojho diela, najmä na ochranu pred akoukoľvek nedovolenou zmenou alebo iným nedovoleným zásahom do svojho diela, ako aj pred akýmkoľvek hanlivým nakladaním so svojím dielom, ktoré by znižovalo hodnotu diela alebo spôsobilo ujmu autora na jeho cti alebo dobrej povesti.*
- (3) Autor sa nemôže vzdať práv podľa odsekov 1 a 2, tieto práva sú neprevoditeľné a smrťou autora zanikajú.*
- (4) Po smrti autora si nikto nesmie prisvojiť jeho autorstvo k dielu, dielo možno použiť len spôsobom neznižujúcim jeho hodnotu a musí sa uviesť meno autora alebo jeho pseudonym, ak nejde o anonymné dielo.*
- (5) Autor môže používateľovi svojho diela udeliť súhlas so zásahom do svojich osobnostných práv. Súhlas so zásahom do osobnostných práv musí byť obmedzený rozsahom a spôsobom tohto zásahu, a ak nie je dohodnuté inak, možno ho odvolať.*

1. *public exhibition of original or copy of work,*
2. *public performance of work,*
3. *communication of work to the public.*

Article 20

- (1) *Economic rights do not expire by granting authorisation to using of the work, author shall allow the use of work by another person within the scope of granted authorisation.*
- (2) *Economic rights are non-transferable, may not be waived and are not subject to judicial execution proceedings; this does not apply to claims arising from economic rights.*
- (3) *Economic rights are subject to inheritance. In case a co-author has no heirs or heirs rejected inheritance, his economic rights pass to other co-authors⁷⁴⁴.*

XXV.2.2. Author

Article 13 of the Copyright Act provides in paragraph 1 for a definition of “author” and paragraph 2 of that Article establishes a presumption of authorship.

Article 13

Author

⁷⁴⁴ Výhradné majetkové práva
§ 19

- (1) *Autor má právo použiť svoje dielo a právo udeliť súhlas na použitie svojho diela.*
- (2) *Dielo je možné použiť iba so súhlasom autora, ak tento zákon neustanovuje inak.*
- (3) *Za použitie diela má autor právo na odmenu, ak tento zákon v štvrtej hlave neustanovuje inak; tým nie je dotknuté ustanovenie § 65 ods. 1 druhej vety.*
- (4) *Použitím diela je najmä*
 - a) *spracovanie diela,*
 - b) *spojenie diela s iným dielom,*
 - c) *zaradenie diela do databázy podľa § 131,*
 - d) *vyhotovenie rozmnoženiny diela,*
 - e) *verejné rozširovanie originálu diela alebo rozmnoženiny diela*
 1. *prevodom vlastníckeho práva,*
 2. *vypožičaním,*
 3. *nájomom,*
 - f) *uvedenie diela na verejnosti*
 1. *verejným vystavením originálu diela alebo rozmnoženiny diela,*
 2. *verejným vykonaním diela,*
 3. *verejným prenosom diela.*

§ 20

- (1) *Majetkové práva udelením súhlasu na použitie diela nezanikajú; autor je povinný strpieť použitie diela inou osobou v rozsahu udeleného súhlasu.*
- (2) *Majetkové práva sú neprevoditeľné, nemožno sa ich vzdať a nemožno ich postihnúť exekúciou; to neplatí pre pohľadávky vzniknuté z majetkových práv.*
- (3) *Majetkové práva sú predmetom dedičstva. Ak spoluautor nemá dedičov alebo dedičia odmietnu dedičstvo prijať, jeho majetkové práva prechádzajú na ostatných spoluautorov.*

- (1) *Author is a natural person who created the work.*
- (2) *Natural person, being indicated by name, surname or name and surname (hereinafter referred to as "name") in the work or in the manner common as indication of author for such work, is considered to be an author of the work, unless proved otherwise. This applies also to cases where the work is indicated by a pseudonym, provided there are no doubts about identity of the author⁷⁴⁵.*

XXV.2.3. Protected works

The Copyright Act provides in Article 3 for a definition of "work" which is subject to the protection (paragraph 1) as well as the definitions of such works (paragraphs 2 to 7).

SUBJECT OF COPYRIGHT

Article 3

Work

- (1) *Subject of copyright is a work in the area of literature, arts or science, which is a unique result of creative and artistic activity of author, perceivable by senses, irrespective of its shape, content, quality, purpose, form of expression or level of completion.*
- (2) *Work means a literary work, a theatrical work, musical work, audio-visual work, work of fine art, architectural work, work of applied arts, cartographic work or other type of artistic work or scientific work, provided that it meets requirements under paragraph 1.*
- (3) *Theatrical work is in particular a staged dramatic work with or without music, a pantomimic work and staged dance choreography or other type of choreographic work; in which cases an author is primarily a director who created the work by own creative and artistic activity.*
- (4) *Artistic work is a painting, a drawing, a collage, a tapestry, an engraving, a lithography or other graphic work, a sculpture, pottery, a jewel or other work of fine art and a photographic work.*
- (5) *Photographic work means a fixation of picture through photographic technical device, provided that it is a result of creative and artistic activity of author; where no other requirements under paragraph 1 apply.*
- (6) *Architectural work is the most general expression of creative architectural idea of author, in particular graphical and dimensional depiction of architectural design of building or urbanistic arrangement of territory, as well as a building and a work of garden, interior or scenic architecture and a work of architectural design.*

⁷⁴⁵

§ 13

Autor

- (1) *Autor je fyzická osoba, ktorá dielo vytvorila.*
- (2) *Fyzická osoba, ktorej meno, priezvisko alebo meno a priezvisko9) (ďalej len "meno") je uvedený na diele alebo vo vzťahu k dielu obvyklým spôsobom ako označenie autora, sa považuje za autora diela, ak nie je preukázaný opak. To platí aj vtedy, keď je dielo označené pseudonymom, ak nie sú nijaké pochybnosti o totožnosti autora.*

- (7) *Work of applied arts is an artistic creation with utilising functions or a work included into utility, regardless of whether it was hand-made, industrial-made or created by other technological process.*

Article 4

Subject of copyright is also a part of work, name of work and a name of a character, provided that they meet requirements pursuant to Article 3 (1)⁷⁴⁶.

Pursuant to Article 5 of the Copyright Act, the following concepts are excluded from copyright protection:

Article 5

The following concepts are not subject to copyright:

- a) idea, manner, system, method, concept, principle, discovery or information that has been expressed, described, explained, depicted or incorporated into a work,*
- b) a text of legislation, a decision of public authority or a court decision, technical norm, including draft materials and translations thereof, irrespective of whether they meet requirements pursuant to Article 3(1)*
- c) land-use planning documents, irrespective of whether they meet requirements pursuant to Article 3(1),*
- d) state symbol, municipality symbol, symbol of self-governing region; this does not apply to a work which formed ground for creating of such symbol,*

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PREDMET AUTORSKÉHO PRÁVA

§ 3

Dielo

- (1) Predmetom autorského práva je dielo z oblasti literatúry, umenia alebo vedy, ktoré je jedinečným výsledkom tvorivej duševnej činnosti autora vnímateľným zmyslami, bez ohľadu na jeho podobu, obsah, kvalitu, účel, formu jeho vyjadrenia alebo mieru jeho dokončenia.*
- (2) Dielom je literárne dielo, slovesné dielo, divadelné dielo, hudobné dielo, audiovizuálne dielo, dielo výtvarného umenia, architektonické dielo, dielo úžitkového umenia, kartografické dielo alebo iný druh umeleckého diela alebo vedeckého diela, ak spĺňa podmienky podľa odseku 1.*
- (3) Divadelným dielom je najmä inscenované dramatické dielo s hudbou alebo bez hudby, pantomíma a inscenovaná tanečná choreografia alebo iná choreografia; jeho autorom je najmä jeho režisér, ktorý toto dielo vytvoril tvorivou duševnou činnosťou.*
- (4) Dielom výtvarného umenia je maľba, kresba, koláž, tapiséria, rytina, litografia alebo iná grafika, socha, keramika, šperk alebo iné dielo výtvarného umenia a fotografické dielo.*
- (5) Fotografickým dielom je zachytenie obrazu prostredníctvom fotografického technického zariadenia, ak je výsledkom tvorivej duševnej činnosti autora; žiadne iné podmienky podľa odseku 1 sa neuplatnia.*
- (6) Architektonickým dielom je najvšeobecnejšie vyjadrenie tvorivej architektonickej myšlienky autora, najmä grafické a priestorové zobrazenie architektonického riešenia stavby alebo urbanistického usporiadania územia, stavba, ako aj dielo záhradnej, interiérovej a scénickej architektúry a dielo architektonického dizajnu.*
- (7) Dielom úžitkového umenia je umelecký výtvar s úžitkovými funkciami alebo dielo, ktoré je začlenené do úžitkového predmetu bez ohľadu na to, či bolo vyrobené ručne, priemyselne alebo iným technologickým postupom.*

§ 4

Predmetom autorského práva je aj časť diela, názov diela a meno postavy, ak spĺňajú podmienky podľa § 3 ods. 1.

- e) *speech presented in discussions on public affairs, irrespective of whether it meets requirements pursuant to Article 3(1),*
- f) *daily news; daily news is information on event or circumstance; where a work informing about daily news or a work in which daily news is included, is not considered as daily news,*
- g) *work of traditional folk culture,*
- h) *result of activity of expert, interpreter or translator acting under special law⁷⁴⁷.*

XXV.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

The Copyright Act provides in Chapter four for a number of exceptions and limitations to copyright, largely by way of transposition of the provisions of Directive 2001/29/EC of the European Parliament and of the Council and of Directive 2012/28/EU of the European Parliament and of the Council. Those limitations concern mainly:

- a) temporary acts of reproduction - Article 54
- b) photocopying/photo-reproduction - Article 43
- c) private copying - Article 42
- d) reproductions by libraries, archives and museums - Article 49
- e) ephemeral recordings made by broadcasters - Article 40, only if the recording has audiovisual value
- f) reproduction of broadcasts by social institutions - none
- g) illustration for teaching or scientific research - Article 44
- h) use for the benefit of people with a disability - Article 46(1)
- i) reporting by the press on current events - Article 39(1)(2) (There is a textual difference in comparison with the Directive - application of implementing provision is not limited only to press but can be used by any person)
- j) quotation for criticism or review - Article 37
- k) use for public security purposes - Article 53

⁷⁴⁷

§ 5

Za predmet autorského práva sa nepovažuje

- a) *myšlienka, spôsob, systém, metóda, koncept, princíp, objav alebo informácia, ktorá bola vyjadrená, opísaná, vysvetlená, znázornená alebo zahrnutá do diela,*
- b) *text právneho predpisu, úradné rozhodnutie alebo súdne rozhodnutie, technická norma, ako aj spolu s nimi vytvorená prípravná dokumentácia a ich preklad, bez ohľadu na to, či spĺňajú podmienky podľa § 3 ods. 1,*
- c) *územnoplánovacia dokumentácia, bez ohľadu na to, či spĺňa podmienky podľa § 3 ods. 1,*
- d) *štátny symbol, symbol obce, symbol samosprávneho kraja; to neplatí, ak ide o dielo, ktoré je podkladom na vytvorenie symbolu,*
- e) *prejav prednesený pri prerokúvaní vecí verejných, bez ohľadu na to, či spĺňa podmienky podľa § 3 ods. 1,*
- f) *denná správa; dennou správou je informácia o udalosti alebo skutočnosti, pričom za dennú správu sa nepovažuje dielo, ktoré o dennej správe informuje alebo v ktorom je denná správa zahrnutá,*
- g) *dielo tradičnej ľudovej kultúry,*
- h) *výsledok výkonu činnosti znalca, tlmočníka alebo prekladateľa podľa osobitného predpisu.*

- l) use of public speeches and public lectures - Article 39(3)
- m) use during religious or official celebrations - Article 47
- n) use of works of architecture or sculptures in public spaces - Article 41
- o) incidental inclusion - Article 55
- p) use for advertising the exhibition or sale of works of art - Article 57
- q) use for the purpose of caricature, parody or pastiche - Article 38
- r) use for the demonstration or repair of equipment - Article 56
- s) use for the purpose of reconstructing a building - Article 52
- t) use for the purpose of research or private study - Article 48
- u) pre-existing exceptions of minor importance - Articles 45 and 50 (This covers the performing, playing or showing of a work in a place where no admission fee is charged in respect of such an act by any club whose aim is not profit-making)
- v) reproducing and making available of orphan works - Article 51

A number of the limitations listed above are subject to specific conditions explained in detail in the respective provisions of the Copyright Act.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Section 54: Transient Making a Copy of Work</p> <p>(1) Copyright is not infringed by a person who without authorisation of its author makes transient copy of released work as an indivisible and substantive part of technological process, which copy is incidental or transient, for the purpose of</p> <p>a) enabling authorised using of the work or</p> <p>b) transmission of work in electronic communication network between third persons and an intermediary.</p> <p>(2) Making a copy pursuant to paragraph 1 may not have a separate economic value⁷⁴⁸.</p> <hr/> <p>Section 55: Incidental Use of Work</p> <p>Copyright is not infringed by a person who without authorisation of its author uses work which was incidentally included into different context by making its copy, by communication to the public or public distribution by transfer of title;</p>

⁷⁴⁸ Dočasné vyhotovenie rozmnoženiny diela

- (1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora vyhotoví dočasnú rozmnoženinu zverejneného diela v rámci neoddeliteľnej a podstatnej časti technologického procesu, ktorá je náhodná alebo prechodná, na účel
- a) umožnenia oprávneného použitia diela alebo
 - b) prenosu diela v elektronickej komunikačnej sieti medzi tretími osobami a sprostredkovateľom.
- (2) Vyhotovenie rozmnoženiny podľa odseku 1 nesmie mať samostatný hospodársky význam.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	<p>incidentally used work may only be used in connection with such context⁷⁴⁹.</p> <p>Section 103: Exceptions and Limitations of Economic Rights of Performing artist</p> <p>(1) Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of performing artist.</p> <p>(2) Rights of performing artist are not infringed by a person who without authorisation of performing artist makes fixation of his artistic performance in cases pursuant to Sections 39, 40 and Sections 42 to 51 under circumstances prescribed in Sections 34 to 36⁷⁵⁰.</p> <p>Section 113</p> <p>Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of producer of sound recording⁷⁵¹.</p> <p>Section 121</p> <p>Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of producer of audiovisual recording⁷⁵².</p> <p>Section 127</p> <p>(1) Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of broadcaster.</p> <p>(2) Right of broadcaster is not infringed by a person who without authorisation of broadcaster makes record of broadcast according to Sections 39 and 40 and Sections 42 to 45 under conditions prescribed in Sections 34 to 36⁷⁵³.</p>

⁷⁴⁹ Náhodné použitie diela

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva dielo, ktoré bolo náhodne zaradené do iného obsahu; náhodne zaradené dielo možno použiť výlučne v spojení s týmto obsahom.

⁷⁵⁰ Výnimky a obmedzenia majetkových práv výkonného umelca

(1) Na výnimky a obmedzenia majetkových práv výkonného umelca sa primerane vzťahujú ustanovenia § 34 až 57.

(2) Do práva výkonného umelca nezasahuje ani osoba, ktorá bez súhlasu výkonného umelca vyhotoví záznam jeho umeleckého výkonu v prípadoch podľa § 39, 40 a § 42 až 51 za podmienok ustanovených v § 34 až 36.

⁷⁵¹ Na výnimky a obmedzenia majetkových práv výrobcu zvukového záznamu sa primerane vzťahujú ustanovenia § 34 až 57.

⁷⁵² Na výnimky a obmedzenia majetkových práv výrobcu audiovizuálneho záznamu sa primerane vzťahujú ustanovenia § 34 až 57.

⁷⁵³ (1) Na výnimky a obmedzenia majetkových práv vysielateľa sa primerane vzťahujú ustanovenia § 34 až 57.

(2) Do práva vysielateľa nezasahuje ani osoba, ktorá bez súhlasu vysielateľa vyhotoví záznam jeho vysielania v prípadoch podľa § 39 a 40 a 42 až 45 za podmienok ustanovených v § 34 až 36.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
<p>5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:</p>	<p>Section 103</p> <p>(1) Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of performing artist.</p> <p>(2) Rights of performing artist are not infringed by a person who without authorisation of performing artist makes fixation of his artistic performance in cases pursuant to Sections 39, 40 and Sections 42 to 51 under circumstances prescribed in Sections 34 to 36⁷⁵⁴.</p> <p>Section 113</p> <p>Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of producer of sound recording⁷⁵⁵.</p> <p>Section 121</p> <p>Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of producer of audiovisual recording⁷⁵⁶.</p> <p>Section 127</p> <p>(1) Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of broadcaster.</p> <p>(2) Right of broadcaster is not infringed by a person who without authorisation of broadcaster makes record of broadcast according to Sections 39 and 40 and Sections 42 to 45 under conditions prescribed in Sections 34 to 36⁷⁵⁷.</p>
<p>(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the right holders receive fair compensation;</p>	<p>Section 43: Reprography</p> <p>(1) Copyright is not infringed by a legal person acting for its own need or by a natural person who without authorisation of its author, personally or through a third person, uses the work by making a copy by means of transmitting the work to a paper or other similar base using reprographic device or</p>

⁷⁵⁴ Výnimky a obmedzenia majetkových práv výkonného umelca

(1) Na výnimky a obmedzenia majetkových práv výkonného umelca sa primerane vzťahujú ustanovenia § 34 až 57.

(2) Do práva výkonného umelca nezasahuje ani osoba, ktorá bez súhlasu výkonného umelca vyhotoví záznam jeho umeleckého výkonu v prípadoch podľa § 39, 40 a § 42 až 51 za podmienok ustanovených v § 34 až 36.

⁷⁵⁵ Na výnimky a obmedzenia majetkových práv výrobcu zvukového záznamu sa primerane vzťahujú ustanovenia § 34 až 57.

⁷⁵⁶ Na výnimky a obmedzenia majetkových práv výrobcu audiovizuálneho záznamu sa primerane vzťahujú ustanovenia § 34 až 57.

⁷⁵⁷ (1) Na výnimky a obmedzenia majetkových práv vysielateľa sa primerane vzťahujú ustanovenia § 34 až 57.

(2) Do práva vysielateľa nezasahuje ani osoba, ktorá bez súhlasu vysielateľa vyhotoví záznam jeho vysielania v prípadoch podľa § 39 a 40 a 42 až 45 za podmienok ustanovených v § 34 až 36.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	<p>other technical device with similar effect; such copy may be publicly distributed by means of free-of-charge transfer of title.</p> <p>(2) Paragraph 1 does not apply to using of complete literary work or of its substantive part, to using of musical work recorded in writing and to using of graphical expression of architectural work⁷⁵⁸.</p> <p>Section 36(2)</p> <p>(2) In case of using of work pursuant to Sections 42 and 43, its author has right to compensation for remuneration calculated from the sum and using the calculation formula as prescribed in Annex No 2⁷⁵⁹.</p>
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	<p>Section 42: Making a Copy of Work for Private Purpose</p> <p>Copyright is not infringed by a natural person who without authorisation of its author uses the work by making a copy for his own private purpose which is neither directly nor indirectly commercial⁷⁶⁰.</p> <p>Section 36(2)</p> <p>(2) In case of using of work pursuant to Sections 42 and 43, its author has right to compensation for remuneration calculated from the sum and using the calculation formula as prescribed in Annex No 2⁷⁶¹.</p>
(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;	<p>Section 49: Using of Work for the Purpose of its Archiving</p> <p>Copyright is not infringed by a library, an archive, a museum or a school which without authorisation of its author uses the work deposited in the library,</p>

⁷⁵⁸ Reprografia

(1) Do autorského práva nezasahuje právnická osoba konajúca pre svoju potrebu alebo fyzická osoba, ktorá bez súhlasu autora sama alebo prostredníctvom tretej osoby použije dielo vyhotovením rozmnoženiny tak, že ho prenesie na papier alebo na podobný podklad prostredníctvom reprografického zariadenia alebo iného technického zariadenia s podobným účinkom; takto vyhotovenú rozmnoženinu možno verejne rozširovať bezodplatným prevodom vlastníckeho práva.

(2) Ustanovenie odseku 1 sa nevzťahuje na celé slovesné dielo ani na jeho podstatnú časť, na hudobné dielo zaznamenané v písomnej podobe a na grafické vyjadrenie architektonického diela.

⁷⁵⁹ (2) Za použitie diela podľa § 42 a 43 vzniká povinnosť zaplatiť autorovi náhradu odmeny zo základu na jej výpočet a vo výške podľa prílohy č. 2.

⁷⁶⁰ Vyhotovenie rozmnoženiny diela pre súkromnú potrebu

Do autorského práva nezasahuje fyzická osoba, ktorá bez súhlasu autora použije dielo vyhotovením rozmnoženiny pre svoju súkromnú potrebu na účel, ktorý nie je priamo ani nepriamo obchodný.

⁷⁶¹ (2) Za použitie diela podľa § 42 a 43 vzniká povinnosť zaplatiť autorovi náhradu odmeny zo základu na jej výpočet a vo výške podľa prílohy č. 2.

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Text	Text
	archive, museum or school by making a copy for the purpose of substituting, archiving or securing of the original of the work or its copy against loss, destruction or damage ⁷⁶² .
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	Section 40: Recording of Broadcast Copyright is not infringed by a broadcaster who without authorisation of the author creates temporary recording of the work through his own device and for the purpose of own broadcast. Broadcaster is authorised to archive the recording created pursuant to the first sentence in a manner prescribed by the special law only in case the recording has audio-visual value ⁷⁶³ .
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	Section 103: Exceptions and Limitations of Economic Rights of Performing artist (1) Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of performing artist. (2) Rights of performing artist are not infringed by a person who without authorisation of performing artist makes fixation of his artistic performance in cases pursuant to Sections 39, 40 and Sections 42 to 51 under circumstances prescribed in Sections 34 to 36 ⁷⁶⁴ . Section 113 Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of producer of sound recording ⁷⁶⁵ .

⁷⁶² Použitie diela na účel archivovania

Do autorského práva nezasahuje knižnica, archív, múzeum alebo škola, ktorá bez súhlasu autora použije dielo uložené v knižnici, archíve, múzeu alebo škole vyhotovením rozmnoženiny na účel nahradenia, archivovania alebo zabezpečenia originálu diela alebo jeho rozmnoženiny pre prípad straty, zničenia alebo poškodenia.

⁷⁶³ Záznam vysielania

Do autorského práva nezasahuje vysielateľ, ktorý bez súhlasu autora vyhotoví dočasný záznam diela prostredníctvom vlastného zariadenia a na účel vlastného vysielania. Vysielateľ je oprávnený záznam diela podľa prvej vety archivovať podľa osobitného predpisu, len ak má tento záznam audiovizuálnu hodnotu.

⁷⁶⁴ Výnimky a obmedzenia majetkových práv výkonného umelca

(1) Na výnimky a obmedzenia majetkových práv výkonného umelca sa primerane vzťahujú ustanovenia § 34 až 57.

(2) Do práva výkonného umelca nezasahuje ani osoba, ktorá bez súhlasu výkonného umelca vyhotoví záznam jeho umeleckého výkonu v prípadoch podľa § 39, 40 a § 42 až 51 za podmienok ustanovených v § 34 až 36.

⁷⁶⁵ Na výnimky a obmedzenia majetkových práv výrobcu zvukového záznamu sa primerane vzťahujú ustanovenia

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	<p>Section 121</p> <p>Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of producer of audio-visual recording⁷⁶⁶.</p> <p>Section 127</p> <p>(1) Sections 34 to 57 apply accordingly to exceptions and limitations of economic rights of broadcaster.</p> <p>(2) Right of broadcaster is not infringed by a person who without authorisation of broadcaster makes record of broadcast according to Sections 39 and 40 and Sections 42 to 45 under conditions prescribed in Sections 34 to 36⁷⁶⁷.</p>
(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;	<p>Section 44: Using of Work for Educational and Scientific Purpose</p> <p>Copyright is not infringed by a person who without authorisation of its author uses released work by making a copy, by public performance or communication to the public for the purpose of organising object-lesson for educational or scientific research, provided that such using of work does not result in direct or indirect economic benefit⁷⁶⁸.</p>
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	<p>Section 46: Using of Work for the Benefit of Persons with a Disability</p> <p>(1) Copyright is not infringed by a person who without authorisation of its author uses released work by making a copy, by public performance, communication to the public and public distribution by means of transfer of title or by lending, provided that such use is intended solely for the benefit of persons with a disability and to the extent required by the level of disability and having purpose other than direct or indirect commercial benefit.</p> <p>(2) Copyright is not infringed by a person who without authorisation of its author supplements</p>

§ 34 až 57.

⁷⁶⁶ Na výnimky a obmedzenia majetkových práv výrobcu audiovizuálneho záznamu sa primerane vzťahujú ustanovenia § 34 až 57.

⁷⁶⁷ (1) Na výnimky a obmedzenia majetkových práv vysielateľa sa primerane vzťahujú ustanovenia § 34 až 57.
(2) Do práva vysielateľa nezasahuje ani osoba, ktorá bez súhlasu vysielateľa vyhotoví záznam jeho vysielania v prípadoch podľa § 39 a 40 a 42 až 45 za podmienok ustanovených v § 34 až 36.

⁷⁶⁸ Použitie diela na vyučovacie účely a pri výskume

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije zverejnené dielo vyhotovením rozmnoženiny, verejným vykonaním alebo verejným prenosom na účel názornej ukážky pri výučbe alebo pri výskume, ak pri takomto použití nedochádza k priamemu alebo nepriamemu majetkovému prospechu.

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Text	Text
	<p>audiovisual work with verbal description of visual element of the work intended solely for persons with a disability and to the extent required by level of disability. Using of audiovisual work supplemented in such manner is governed by paragraph 1.</p> <p>(3) Copyright is not infringed by a person who without authorisation of its author creates sound recording of literary work intended solely for persons with a disability and in the extent required by the level of disability. Using of such sound recording is governed by paragraph 1⁷⁶⁹.</p>
<p>(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;</p>	<p>Section 39: Using of Work for Information Purpose</p> <p>(1) Copyright is not infringed by a person who without authorisation of its author uses a literary work in a form of an article or a broadcasted work concerning current economic, political or religious topics by making a copy or communication to the public through mass media, unless such using is expressly reserved.</p> <p>(2) Copyright is not infringed by a person who without authorisation of its author uses the work by making a copy, communication to the public or public distribution by transfer of title solely for the purpose of providing information on current events within the extent justified by right to information⁷⁷⁰.</p>

⁷⁶⁹ Použitie diela pre potreby osôb so zdravotným postihnutím

- (1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije zverejnené dielo vyhotovením rozmnoženiny, verejným vykonaním, verejným prenosom, verejným rozširovaním prevodom vlastníckeho práva alebo vypožičaním, ak sa takéto použitie uskutočňuje výhradne pre potreby osôb so zdravotným postihnutím v rozsahu odôvodnenom ich zdravotným postihnutím a účel tohto použitia nie je priamo ani nepriamo obchodný.
- (2) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora doplní do audiovizuálneho diela slovné vyjadrenie obrazovej zložky tohto diela výhradne pre potreby osôb so zdravotným postihnutím v rozsahu odôvodnenom ich zdravotným postihnutím. Na použitie takto doplneného audiovizuálneho diela sa vzťahuje odsek 1.
- (3) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora vyrobí zvukový záznam slovesného diela výhradne pre potreby osôb so zdravotným postihnutím v rozsahu odôvodnenom ich zdravotným postihnutím. Na použitie takéhoto zvukového záznamu sa vzťahuje odsek 1.

⁷⁷⁰ Použitie diela na informačné účely

- (1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije zverejnené slovesné dielo vo forme článku alebo vysielať dielo týkajúce sa aktuálnych hospodárskych, politických alebo náboženských tém vyhotovením rozmnoženiny alebo verejným prenosom prostredníctvom hromadného informačného prostriedku, ak takéto použitie nie je výslovne vyhradené.
- (2) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije dielo vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva výlučne v súvislosti s informovaním o aktuálnych udalostiach v rozsahu odôvodnenom právom na informácie.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	Section 35(1) (1) In case of using a work pursuant to Sections 37 and 39 a name of its author or his pseudonym must be indicated, unless a work constitutes an anonymous work, or a name of a person under who's name, business name or designation the work is presented in the public, as well as name of the work and its source ⁷⁷¹ .
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	Section 37: Quotation (1) Copyright is not infringed by a person who without authorisation of its author uses the released work or its part by means of quotation primarily for the purpose of review or critique of the work. (2) Using of a work or its part pursuant to paragraph 1 must be in accordance with customs and its scope may not exceed the scope justified by the purpose of quotation ⁷⁷² . Section 35(1) (1) In case of using a work pursuant to Sections 37 and 39 a name of its author or his pseudonym must be indicated, unless a work constitutes an anonymous work, or a name of a person under who's name, business name or designation the work is presented in the public, as well as name of the work and its source ⁷⁷³ .
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	Section 53: Using of Work for Official Purpose Copyright is not infringed by a person who without authorisation of its author uses the work by making a copy, by communication to the public, technical performance or public distribution by transfer of title in the extent necessary for ensuring a) public security, b) due course of administrative proceedings, criminal proceedings or judicial proceedings or

⁷⁷¹ (1) Pri použití diela podľa § 37 a 39 sa musí uviesť meno autora alebo jeho pseudonym, ak nejde o anonymné dielo, alebo meno osoby, pod ktorej menom, obchodným menom alebo názvom sa dielo uvádza na verejnosti, ako aj názov diela a prameň.

⁷⁷² Citácia

(1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije formou citácie zverejnené dielo alebo jeho časť najmä na účel recenzie alebo kritiky tohto diela.

(2) Použitie diela alebo časti diela podľa odseku 1 musí byť v súlade so zvyklosťami a jeho rozsah nesmie presiahnuť rámec odôvodnený účelom citácie.

⁷⁷³ (1) Pri použití diela podľa § 37 a 39 sa musí uviesť meno autora alebo jeho pseudonym, ak nejde o anonymné dielo, alebo meno osoby, pod ktorej menom, obchodným menom alebo názvom sa dielo uvádza na verejnosti, ako aj názov diela a prameň.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	c) meeting of National Council of the Slovak Republic and its committees, meetings of municipal assemblies or assemblies of self-governing regions ⁷⁷⁴ .
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	<p>Section 39(3)</p> <p>(3) Copyright is not infringed by a person who without authorisation of its author uses the work which is a political speech or public lecture, by making a copy, communication to the public or public distribution by transfer of title in the extent justified by right to information⁷⁷⁵.</p> <p>Section 35(1)</p> <p>(1) In case of using a work pursuant to Sections 37 and 39 a name of its author or his pseudonym must be indicated, unless a work constitutes an anonymous work, or a name of a person under who's name, business name or designation the work is presented in the public, as well as name of the work and its source⁷⁷⁶.</p>
(g) use during religious celebrations or official celebrations organised by a public authority;	<p>Section 47: Using of Work in Religious and Official Ceremonies and Holidays</p> <p>Copyright is not infringed by a person who without authorisation of the author uses released work by creating of a copy, by public performance, communication to the public or by public distribution by means of transfer of title, provided that such using is performed in the course of</p> <ul style="list-style-type: none"> a) religious ceremony or an official ceremony, or b) event organised abroad by a central authority of state administration or with its participation as a celebration of state holiday, public holiday,

⁷⁷⁴ Použitie diela na úradné účely

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom, technickým predvedením alebo verejným rozširovaním prevodom vlastníckeho práva dielo v rozsahu nevyhnutnom na účel zabezpečenia

- a) verejnej bezpečnosti,
- b) priebehu správneho konania, trestného konania alebo súdneho konania alebo
- c) rokovania Národnej rady Slovenskej republiky a jej výborov, zastupiteľstva obce alebo zastupiteľstva vyššieho územného celku.

⁷⁷⁵ (3) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije dielo, ktoré je politickým prejavom alebo verejnou prednáškou, vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva v rozsahu odôvodnenom právom na informácie.

⁷⁷⁶ (1) Pri použití diela podľa § 37 a 39 sa musí uviesť meno autora alebo jeho pseudonym, ak nejde o anonymné dielo, alebo meno osoby, pod ktorej menom, obchodným menom alebo názvom sa dielo uvádza na verejnosti, ako aj názov diela a prameň.

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Text	Text
	memorial day or significant anniversary with all-society importance ⁷⁷⁷ .
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Section 41: Using of Work Situated in Public Places (1) Copyright is not infringed by a person who without authorisation of its author uses the work permanently situated in public places by making copies, communication to the public or public distribution by transfer of title. (2) Paragraph 1 does not apply to making a copy of architectural work by means of building ⁷⁷⁸ .
(i) incidental inclusion of a work or other subject-matter in other material;	Section 55: Incidental Use of Work Copyright is not infringed by a person who without authorisation of its author uses work which was incidentally included into different context by making its copy, by communication to the public or public distribution by transfer of title; incidentally used work may only be used in connection with such context ⁷⁷⁹ .
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Section 57: Promotion of Exhibition and Auction of Artistic Work (1) Copyright is not infringed by a person who without authorisation of its author uses artistic work for promotion of a public exhibition or promotion of sale of the work by making a copy, by communication to the public or public distribution by transfer of title, in the extent necessary for such promotion.

⁷⁷⁷ Použitie diela v rámci náboženských a úradných obradov a sviatkov

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije zverejnené dielo vyhotovením rozmnoženiny, verejným vykonaním, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva, ak sa takéto použitie uskutočňuje počas

- a) náboženského obradu alebo počas úradného obradu, alebo
- b) podujatia organizovaného v zahraničí ústredným orgánom štátnej správy alebo jeho súčasťou pri oslave štátneho sviatku, dňa pracovného pokoja, pamätného dňa alebo mimoriadneho výročia s celospoločenským významom.

⁷⁷⁸ Použitie diela umiestneného na verejnom priestranstve

(1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva dielo trvalo umiestnené na verejnom priestranstve.

(2) Ustanovenie odseku 1 sa nevzťahuje na vyhotovenie rozmnoženiny architektonického diela stavbou.

⁷⁷⁹ Náhodné použitie diela

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva dielo, ktoré bolo náhodne zaradené do iného obsahu; náhodne zaradené dielo možno použiť výlučne v spojení s týmto obsahom.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
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	(2) Using of artistic work after termination of its public exhibition or after completing of its sale is not governed by paragraph 1 ⁷⁸⁰ .
(k) use for the purpose of caricature, parody or pastiche;	Section 38: Caricature, Parody, Pastiche Copyright is not infringed by a person who without authorisation of its author uses the work by means of caricature, parody or pastiche in the manner not giving rise to likelihood of confusion with the original work ⁷⁸¹ .
(l) use in connection with the demonstration or repair of equipment;	Section 56: Using of Work in Repair and Testing of Device Copyright is not infringed by a person who without authorisation of the author uses released work by making a copy, by technical performance or by communication to the public by means of technical device for the purpose of repair or testing of operation and features of such device ⁷⁸² .
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Section 52: Using of Architectural Work Copyright is not infringed by a person who without authorisation of its author uses an artistic work in form of building, depiction of building or building plan for renovation of building by making a copy, by communication to the public or public distribution by free-of-charge transfer of title. Renovation means a set of specialised artistic and craftsmanship activities and other professional activities resulting in maintenance, conservation, repair or reconstruction of a building or its part with intention to preserve its artistic value and function ⁷⁸³ .

⁷⁸⁰ Propagácia výstavy a dražby umeleckého diela

(1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva umelecké dielo na účel propagácie verejnej výstavy umeleckého diela alebo propagácie predaja umeleckého diela, a to v rozsahu potrebnom na takúto propagáciu.

(2) Na použitie umeleckého diela po skončení jeho verejného vystavenia alebo po jeho predaji sa odsek 1 nevzťahuje.

⁷⁸¹ Karikatúra, paródia, pastiš

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije dielo na účel karikatúry, paródie alebo pastiša, a to spôsobom, ktorý nevyvoláva nebezpečenstvo zámeny s pôvodným dielom.

⁷⁸² Použitie diela pri oprave a ukážke zariadenia

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije zverejnené dielo vyhotovením rozmnoženiny, technickým predvedením alebo verejným prenosom prostredníctvom technického zariadenia na účel opravy alebo ukážky funkčnosti a vlastností tohto zariadenia.

⁷⁸³ Použitie architektonického diela

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním bezodplatným prevodom vlastníckeho práva umelecké dielo vo forme stavby, zobrazenia stavby alebo plánu stavby na účel obnovy stavby. Obnovou sa rozumie súbor

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(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;	Section 48: Using of Work through Terminal Equipment Copyright is not infringed by a library, an archive, a museum or a school which without authorisation of its author uses the work deposited in the library, archive, museum or a school by making a copy or its communication to the public for private purpose of a natural person through terminal equipment located in premises of library, archive, museum or a school, justified by using for education, scientific study or research, provided that such use does not violate rules of acquiring and using of such work by a library, archive, museum or school ⁷⁸⁴ .
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	Section 45: Using of Work in School Performances (1) Copyright is not infringed by a school, educational establishment, university, educational institution for further education (hereinafter referred to as "school") and by their pedagogical employee, vocational employee, natural person providing further education or natural person participating in socio-educational or educational process, who without authorisation of its author uses released work in school performance organised solely by the school or by its founder, having purpose other than direct or indirect economic benefit. (2) Copyright is not infringed by a school which without authorisation of the author uses the school work in the course of free-of-charge fulfilling of objectives of the school ⁷⁸⁵ .

špecializovaných umelecko-remeselných činností a iných odborných činností, ktorými sa vykonáva údržba, konzervovanie, oprava, úprava alebo rekonštrukcia stavby alebo jej časti s cieľom zachovať umeleckú hodnotu stavby alebo jej funkčné využívanie.

⁷⁸⁴ Použitie diela prostredníctvom koncového zariadenia

Do autorského práva nezasahuje knižnica, archív, múzeum alebo škola, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny alebo verejným prenosom pre potrebu fyzickej osoby prostredníctvom na to určeného koncového zariadenia umiestneného v priestoroch knižnice, archívu, múzea alebo školy dielo uložené v knižnici, archíve, múzeu alebo v škole, a to na účel vzdelávania, bádania alebo výskumu, ak to nie je v rozpore s podmienkami nadobudnutia alebo použitia takého diela knižnicou, archívom, múzeom alebo školou.

⁷⁸⁵ Použitie diela pri školských predstaveniach

(1) Do autorského práva nezasahuje škola, školské zariadenie, vysoká škola, vzdelávacia inštitúcia ďalšieho vzdelávania (ďalej len "škola") a jej pedagogický zamestnanec, odborný zamestnanec, fyzická osoba zabezpečujúca ďalšie vzdelávanie alebo fyzická osoba, ktorá sa v nej zúčastňuje na výchovno-vzdelávacom alebo vzdelávacom procese, ak bez súhlasu autora použije zverejnené dielo v rámci školského predstavenia usporiadaného výlučne školou alebo jej zriaďovateľom, ktorého účel nie je priamo ani nepriamo majetkový.
(2) Do autorského práva nezasahuje škola, ktorá bez súhlasu autora použije školské dielo pri bezplatnom plnení úloh patriacich do predmetu činnosti školy.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
<p>5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.</p>	<p>Section 37: Quotation</p> <p>(1) Copyright is not infringed by a person who without authorisation of its author uses the released work or its part by means of quotation primarily for the purpose of review or critique of the work.</p> <p>(2) Using of a work or its part pursuant to paragraph 1 must be in accordance with customs and its scope may not exceed the scope justified by the purpose of quotation⁷⁸⁶.</p> <p>Section 38: Caricature, Parody, Pastiche</p> <p>Copyright is not infringed by a person who without authorisation of its author uses the work by means of caricature, parody or pastiche in the manner not giving rise to likelihood of confusion with the original work⁷⁸⁷.</p> <p>Section 39: Using of Work for Information Purpose</p> <p>(1) Copyright is not infringed by a person who without authorisation of its author uses a literary work in a form of an article or a broadcasted work concerning current economic, political or religious topics by making a copy or communication to the public through mass media, unless such using is expressly reserved.</p> <p>(2) Copyright is not infringed by a person who without authorisation of its author uses the work by making a copy, communication to the public or public distribution by transfer of title solely for the purpose of providing information on current events within the extent justified by right to information.</p> <p>(3) Copyright is not infringed by a person who without authorisation of its author uses the work which is a political speech or public lecture, by making a copy, communication to the public or public distribution by transfer of title in the extent justified by right to information⁷⁸⁸.</p>

⁷⁸⁶ Citácia

- (1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije formou citácie zverejnené dielo alebo jeho časť najmä na účel recenzie alebo kritiky tohto diela.
- (2) Použitie diela alebo časti diela podľa odseku 1 musí byť v súlade so zvyklosťami a jeho rozsah nesmie presiahnuť rámec odôvodnený účelom citácie.

⁷⁸⁷ Karikatúra, paródia, pastiš

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije dielo na účel karikatúry, paródie alebo pastiša, a to spôsobom, ktorý nevyvoláva nebezpečenstvo zámeny s pôvodným dielom.

⁷⁸⁸ Použitie diela na informačné účely

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	<p>Section 42: Copy of Work for Private Purpose</p> <p>Copyright is not infringed by a natural person who without authorisation of its author uses the work by making a copy for his own private purpose which is neither directly nor indirectly commercial⁷⁸⁹.</p> <p>Section 43: Reprography</p> <p>(1) Copyright is not infringed by a legal person acting for its own need or by a natural person who without authorisation of its author, personally or through a third person, uses the work by making a copy by means of transmitting the work to a paper or other similar base using reprographic device or other technical device with similar effect; such copy may be publicly distributed by means of free-of-charge transfer of title.</p> <p>(2) Paragraph 1 does not apply to using of complete literary work or of its substantive part, to using of musical work recorded in writing and to using of graphical expression of architectural work⁷⁹⁰.</p> <p>Section 45: Using of Work in School Performances</p> <p>(1) Copyright is not infringed by a school, educational establishment, university, educational institution for further education (hereinafter referred to as "school") and by their pedagogical</p>

(1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije zverejnené slovesné dielo vo forme článku alebo vysielané dielo týkajúce sa aktuálnych hospodárskych, politických alebo náboženských tém vyhotovením rozmnoženiny alebo verejným prenosom prostredníctvom hromadného informačného prostriedku, ak takéto použitie nie je výslovne vyhradené.

(2) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije dielo vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva výlučne v súvislosti s informovaním o aktuálnych udalostiach v rozsahu odôvodnenom právom na informácie.

(3) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije dielo, ktoré je politickým prejavom alebo verejnou prednáškou, vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva v rozsahu odôvodnenom právom na informácie.

⁷⁸⁹ Vyhotovenie rozmnoženiny diela pre súkromnú potrebu

Do autorského práva nezasahuje fyzická osoba, ktorá bez súhlasu autora použije dielo vyhotovením rozmnoženiny pre svoju súkromnú potrebu na účel, ktorý nie je priamo ani nepriamo obchodný.

⁷⁹⁰ Reprografia

(1) Do autorského práva nezasahuje právnická osoba konajúca pre svoju potrebu alebo fyzická osoba, ktorá bez súhlasu autora sama alebo prostredníctvom tretej osoby použije dielo vyhotovením rozmnoženiny tak, že ho prenesie na papier alebo na podobný podklad prostredníctvom reprografického zariadenia alebo iného technického zariadenia s podobným účinkom; takto vyhotovenú rozmnoženinu možno verejne rozširovať bezodplatným prevodom vlastníckeho práva.

(2) Ustanovenie odseku 1 sa nevzťahuje na celé slovesné dielo ani na jeho podstatnú časť, na hudobné dielo zaznamenané v písomnej podobe a na grafické vyjadrenie architektonického diela.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	<p>employee, vocational employee, natural person providing further education or natural person participating in socio-educational or educational process, who without authorisation of its author uses released work in school performance organised solely by the school or by its founder, having purpose other than direct or indirect economic benefit.</p> <p>(2) Copyright is not infringed by a school which without authorisation of the author uses the school work in the course of free-of-charge fulfilling of objectives of the school⁷⁹¹.</p> <p>Section 46: Using of Work for the Benefit of Persons with a Disability</p> <p>(1) Copyright is not infringed by a person who without authorisation of its author uses released work by making a copy, by public performance, communication to the public and public distribution by means of transfer of title or by lending, provided that such use is intended solely for the benefit of persons with a disability and to the extent required by the level of disability and having purpose other than direct or indirect commercial benefit.</p> <p>(2) Copyright is not infringed by a person who without authorisation of its author supplements audiovisual work with verbal description of visual element of the work intended solely for persons with a disability and to the extent required by level of disability. Using of audiovisual work supplemented in such manner is governed by paragraph 1.</p> <p>(3) Copyright is not infringed by a person who without authorisation of its author creates sound recording of literary work intended solely for persons with a disability and in the extent required by the level of disability. Using of such sound recording is governed by paragraph 1⁷⁹².</p>

⁷⁹¹ Použitie diela pri školských predstaveniach

- (1) Do autorského práva nezasahuje škola, školské zariadenie, vysoká škola, vzdelávacia inštitúcia ďalšieho vzdelávania (ďalej len "škola") a jej pedagogický zamestnanec, odborný zamestnanec, fyzická osoba zabezpečujúca ďalšie vzdelávanie alebo fyzická osoba, ktorá sa v nej zúčastňuje na výchovno-vzdelávacom alebo vzdelávacom procese, ak bez súhlasu autora použije zverejnené dielo v rámci školského predstavenia usporiadaného výlučne školou alebo jej zriaďovateľom, ktorého účel nie je priamo ani nepriamo majetkový.
- (2) Do autorského práva nezasahuje škola, ktorá bez súhlasu autora použije školské dielo pri bezplatnom plnení úloh patriacich do predmetu činnosti školy.

⁷⁹² Použitie diela pre potreby osôb so zdravotným postihnutím

- (1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije zverejnené dielo vyhotovením

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	<p>Section 47: Using of Work in Religious and Official Ceremonies and Holidays</p> <p>Copyright is not infringed by a person who without authorisation of the author uses released work by creating of a copy, by public performance, communication to the public or by public distribution by means of transfer of title, provided that such using is performed in the course of</p> <ul style="list-style-type: none"> a) religious ceremony or an official ceremony, or b) event organised abroad by a central authority of state administration or with its participation as a celebration of state holiday, public holiday, memorial day or significant anniversary with all-society importance⁷⁹³. <p>Section 52: Using of Architectural Work</p> <p>Copyright is not infringed by a person who without authorisation of its author uses an artistic work in form of building, depiction of building or building plan for renovation of building by making a copy, by communication to the public or public distribution by free-of-charge transfer of title. Renovation means a set of specialised artistic and craftsmanship activities and other professional activities resulting in maintenance, conservation, repair or reconstruction of a building or its part with intention to preserve its artistic value and function⁷⁹⁴.</p>

rozmnoženiny, verejným vykonaním, verejným prenosom, verejným rozširovaním prevodom vlastníckeho práva alebo vypožičaním, ak sa takéto použitie uskutočňuje výhradne pre potreby osôb so zdravotným postihnutím v rozsahu odôvodnenom ich zdravotným postihnutím a účel tohto použitia nie je priamo ani nepriamo obchodný.

- (2) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora doplní do audiovizuálneho diela slovné vyjadrenie obrazovej zložky tohto diela výhradne pre potreby osôb so zdravotným postihnutím v rozsahu odôvodnenom ich zdravotným postihnutím. Na použitie takto doplneného audiovizuálneho diela sa vzťahuje odsek 1.
- (3) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora vyrobí zvukový záznam slovesného diela výhradne pre potreby osôb so zdravotným postihnutím v rozsahu odôvodnenom ich zdravotným postihnutím. Na použitie takéhoto zvukového záznamu sa vzťahuje odsek 1.

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Použitie diela v rámci náboženských a úradných obradov a sviatkov

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije zverejnené dielo vyhotovením rozmnoženiny, verejným vykonaním, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva, ak sa takéto použitie uskutočňuje počas

- a) náboženského obradu alebo počas úradného obradu, alebo
- b) podujatia organizovaného v zahraničí ústredným orgánom štátnej správy alebo jeho súčasťou pri oslave štátneho sviatku, dňa pracovného pokoja, pamätného dňa alebo mimoriadneho výročia s celospoločenským významom.

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Použitie architektonického diela

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním bezodplatným prevodom vlastníckeho práva umelecké dielo vo forme

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	<p>Section 53: Using of Work for Official Purpose</p> <p>Copyright is not infringed by a person who without authorisation of its author uses the work by making a copy, by communication to the public, technical performance or public distribution by transfer of title in the extent necessary for ensuring</p> <ul style="list-style-type: none"> a) public security, b) due course of administrative proceedings, criminal proceedings or judicial proceedings or c) meeting of National Council of the Slovak Republic and its committees, meetings of municipal assemblies or assemblies of self-governing regions⁷⁹⁵. <p>Section 55: Incidental Use of Work</p> <p>Copyright is not infringed by a person who without authorisation of its author uses work which was incidentally included into different context by making its copy, by communication to the public or public distribution by transfer of title; incidentally used work may only be used in connection with such context⁷⁹⁶.</p> <p>Section 57: Promotion of Exhibition and Auction of Artistic Work</p> <p>(1) Copyright is not infringed by a person who without authorisation of its author uses artistic work for promotion of a public exhibition or promotion of sale of the work by making a copy, by communication to the public or public distribution by transfer of title, in the extent necessary for such promotion.</p>

stavby, zobrazenia stavby alebo plánu stavby na účel obnovy stavby. Obnovou sa rozumie súbor špecializovaných umelecko-remeselných činností a iných odborných činností, ktorými sa vykonáva údržba, konzervovanie, oprava, úprava alebo rekonštrukcia stavby alebo jej časti s cieľom zachovať umeleckú hodnotu stavby alebo jej funkčné využívanie.

⁷⁹⁵ Použitie diela na úradné účely

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom, technickým predvedením alebo verejným rozširovaním prevodom vlastníckeho práva dielo v rozsahu nevyhnutnom na účel zabezpečenia

- a) verejnej bezpečnosti,
- b) priebehu správneho konania, trestného konania alebo súdneho konania alebo
- c) rokovania Národnej rady Slovenskej republiky a jej výborov, zastupiteľstva obce alebo zastupiteľstva vyššieho územného celku.

⁷⁹⁶ Náhodné použitie diela

Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva dielo, ktoré bolo náhodne zaradené do iného obsahu; náhodne zaradené dielo možno použiť výlučne v spojení s týmto obsahom.

Directive 2001/29/EC	National law - Act No 185/2015 Coll
Text	Text
	(2) Using of artistic work after termination of its public exhibition or after completing of its sale is not governed by paragraph 1 ⁷⁹⁷ .
5(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.	Section 34 Exceptions and limitations of economic rights of author are permitted only in cases expressly prescribed in this Chapter, provided that such disposition with work does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author ⁷⁹⁸ .

Directive 2012/28	National law - Act No 185/2015 Coll
Text	Text
6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways: (a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC; (b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.	Section 51(1)(2): Using of Orphan Work (1) Orphan work may be used without authorisation of the author by a library, an archive, a school or a legal depositary pursuant to the special law ²¹) solely for educational or cultural purposes and for fulfilment of services in public interest by a) making a copy of orphan work for the purposes of its digitalisation, indexing, cataloguing, preservation, restoration or for the purposes of enabling access of the public to the work, b) making the orphan work available to the public. (2) Person specified in paragraph 1 may not use orphan work for the purpose of gaining direct or indirect economic benefit; such person may claim compensation for reasonably incurred costs ⁷⁹⁹ .

⁷⁹⁷ Propagácia výstavy a dražby umeleckého diela

(1) Do autorského práva nezasahuje osoba, ktorá bez súhlasu autora použije vyhotovením rozmnoženiny, verejným prenosom alebo verejným rozširovaním prevodom vlastníckeho práva umelecké dielo na účel propagácie verejnej výstavy umeleckého diela alebo propagácie predaja umeleckého diela, a to v rozsahu potrebnom na takúto propagáciu.

(2) Na použitie umeleckého diela po skončení jeho verejného vystavenia alebo po jeho predaji sa odsek 1 nevzťahuje.

⁷⁹⁸ Výnimky a obmedzenia majetkových práv autora sú dovolené len v osobitných prípadoch ustanovených v tejto hlave a nakladanie s dielom podľa týchto ustanovení nesmie byť v rozpore s bežným využitím diela a nesmie neodôvodnene zasahovať do právom chránených záujmov autora.

⁷⁹⁹ Použitie osirelého diela

(1) Osirelé dielo môže bez súhlasu autora použiť knižnica, archív, múzeum, škola alebo zákonný depozitár podľa osobitného predpisu²¹) len na vzdelávacie a kultúrne účely a na plnenie úloh vo verejnom záujme

a) vyhotovením rozmnoženiny osirelého diela na účely digitalizácie, indexácie, katalogizovania, uchovávanía, reštaurovania alebo na účely umožnenia prístupu verejnosti,

Directive 2012/28	National law - Act No 185/2015 Coll
Text	Text
	<p>Section 115</p> <p>Sections 4, 6, 7, Sections 9 to 11, Sections 13, 16, Section 20 paragraphs 1 and 3, Sections 21, 22, 24, Sections 26 to 30, Section 33 paragraphs 1 to 6, Sections 58 to 64 and Sections 91 to 93 apply accordingly to producer of sound recording and his sound recording⁸⁰⁰.</p>
<p>6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.</p>	<p>Section 51(1)(2): Using of Orphan Work</p> <p>(1) Orphan work may be used without authorisation of the author by a library, an archive, a school or a legal depositary pursuant to the special law²¹ solely for educational or cultural purposes and for fulfilment of services in public interest by</p> <p>a) making a copy of orphan work for the purposes of its digitalisation, indexing, cataloguing, preservation, restoration or for the purposes of enabling access of the public to the work,</p> <p>b) making the orphan work available to the public.</p> <p>(2) Person specified in paragraph 1 may not use orphan work for the purpose of gaining direct or indirect economic benefit; such person may claim compensation for reasonably incurred costs⁸⁰¹.</p> <p>Section 115</p> <p>Sections 4, 6, 7, Sections 9 to 11, Sections 13, 16, Section 20 paragraphs 1 and 3, Sections 21, 22, 24, Sections 26 to 30, Section 33 paragraphs 1 to 6, Sections 58 to 64 and Sections 91 to 93 apply accordingly to producer of sound recording and his sound recording⁸⁰².</p>

b) sprístupňovaním osirelého diela verejnosti.

(2) Osoba podľa odseku 1 nemôže použiť osirelé dielo na získanie priameho alebo nepriameho majetkového prospechu; môže požiadať len o úhradu účelne vynaložených nákladov.

⁸⁰⁰ Na výrobcu zvukového záznamu a jeho zvukový záznam sa primerane vzťahujú ustanovenia § 4, 6, 7, 9 až 11, 13, 16, § 20 ods. 1 a 3, § 21, 22, 24, § 26 až 30, § 33 ods. 1 až 6, § 58 až 64 a § 91 až 93.

⁸⁰¹ Použitie osirelého diela

(1) Osirelé dielo môže bez súhlasu autora použiť knižnica, archív, múzeum, škola alebo zákonný depozitár podľa osobitného predpisu²¹) len na vzdelávacie a kultúrne účely a na plnenie úloh vo verejnom záujme

a) vyhotovením rozmnoženiny osirelého diela na účely digitalizácie, indexácie, katalogizovania, uchovávanía, reštaurovania alebo na účely umožnenia prístupu verejnosti,

b) sprístupňovaním osirelého diela verejnosti.

(2) Osoba podľa odseku 1 nemôže použiť osirelé dielo na získanie priameho alebo nepriameho majetkového prospechu; môže požiadať len o úhradu účelne vynaložených nákladov.

⁸⁰² Na výrobcu zvukového záznamu a jeho zvukový záznam sa primerane vzťahujú ustanovenia § 4, 6, 7, 9 až 11, 13, 16, § 20 ods. 1 a 3, § 21, 22, 24, § 26 až 30, § 33 ods. 1 až 6, § 58 až 64 a § 91 až 93.

Directive 2012/28	National law - Act No 185/2015 Coll
Text	Text
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	<p>Section 51(3)</p> <p>(3) Using of orphan work in the manner prescribed in paragraph 1 with respect to authors, who were identified, is governed by Section 35⁸⁰³.</p> <p>Section 115</p> <p>Sections 4, 6, 7, Sections 9 to 11, Sections 13, 16, Section 20 paragraphs 1 and 3, Sections 21, 22, 24, Sections 26 to 30, Section 33 paragraphs 1 to 6, Sections 58 to 64 and Sections 91 to 93 apply accordingly to producer of sound recording and his sound recording⁸⁰⁴.</p>
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	–
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	<p>Section 10(7)</p> <p>(7) Author who has put an end to the status of the orphan work pursuant to paragraph 6, has right to a fair compensation from the person who used the work pursuant to Section 51. In determination of amount of a fair compensation, regard is to be had to conditions prescribed in Section 69 paragraph 1 and 4⁸⁰⁵.</p> <p>Section 115</p> <p>Sections 4, 6, 7, Sections 9 to 11, Sections 13, 16, Section 20 paragraphs 1 and 3, Sections 21, 22, 24, Sections 26 to 30, Section 33 paragraphs 1 to 6, Sections 58 to 64 and Sections 91 to 93 apply accordingly to producer of sound recording and his sound recording⁸⁰⁶.</p>

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⁸⁰³ (3) Na použitie osirelého diela podľa odseku 1 sa vo vzťahu k autorom, ktorí boli určení, primerane vzťahuje ustanovenie § 35.

⁸⁰⁴ Na výrobcu zvukového záznamu a jeho zvukový záznam sa primerane vzťahujú ustanovenia § 4, 6, 7, 9 až 11, 13, 16, § 20 ods. 1 a 3, § 21, 22, 24, § 26 až 30, § 33 ods. 1 až 6, § 58 až 64 a § 91 až 93.

⁸⁰⁵ (7) Autor, ktorý ukončil status osirelého diela podľa odseku 6, má právo na primeranú odmenu voči osobe, ktorá toto dielo použila podľa § 51. Pri určení výšky primeranej odmeny sa prihliada na podmienky ustanovené v § 69 ods. 1 a 4.

⁸⁰⁶ Na výrobcu zvukového záznamu a jeho zvukový záznam sa primerane vzťahujú ustanovenia § 4, 6, 7, 9 až 11, 13, 16, § 20 ods. 1 a 3, § 21, 22, 24, § 26 až 30, § 33 ods. 1 až 6, § 58 až 64 a § 91 až 93.

XXVI. FINLAND

Pro memoria

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XXVII. SWEDEN

XXVII.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

XXVII.1.1. Constitution

The Swedish constitution does not explicitly provide for protection of intellectual property. It does, however, contain general provisions concerning the protection of ownership.

XXVII.1.2. Copyright Law

Copyright law is enshrined in the following legislation:

- The Copyright Act (Swe. Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk)
- The Copyright Regulation (Swe. Upphovsrättsförordning (1993:1212))
- The International Copyright Regulation (Swe. Internationell upphovsrättsförordning (1994:193))

However, Swedish copyright law has implemented applicable Directives in the Copyright Act. The most recent one, Directive 2014/26/EU has been implemented in Swedish copyright law through the Collective Management of Copyright Act (Swe. Lag (2016:977) om kollektiv förvaltning av upphovsrätt) on January 1, 2017.

XXVII.2. COPYRIGHT

XXVII.2.1. Definition and content

Copyright is defined in Chapter 1, Article 2 of the Copyright Act as an exclusive right for the originator to have control of the work by reproducing it and by making it available to the public, in original or an altered form, in translation or adaptation, in another form of literature, art or technology. Copyright in Sweden is formless, i.e. the originator does not need to make any formal notification or registration of his work for the work to be covered by copyright.

According to Swedish case law, a precondition for a work to be considered subject to copyright is that it meets the threshold of originality (Swe. verkshöjd)⁸⁰⁷. The function of this precondition is to ensure a fair balance between individuals' right to be creative and the minimum standard for a legal protection of that right to be granted. The threshold of originality means that the work must be the result of an intellectual creative activity that has such individual distinctive character that two people, reasonably, could not obtain exactly the same result.

Regarding the content of copyright as established in Swedish law, there is a distinction between non-economic (or moral) rights and, on the other hand, economic rights. Moral rights are not subject to deadlines or expiration dates. In fact they are eternal, non-transferable and inalienable. This provision aims at guaranteeing indefinitely to each originator the recognition of his or her intellectual creation. However, for practical reasons the moral rights can be partially waived. For example, when filming a novel, it makes it easier for the film company to be sure that the originator does not subsequently claim that the filmed version constitutes vehement changes to the work.

⁸⁰⁷ NJA 1921 p. 579 and NJA 2015 p. 1097.

XXVII.2.2. Author

In Sweden, an originator's exclusive right to his or her work dates back to 1810 when it constituted a statutory right in the Press Act. The author is someone who according to Chapter 1, Article 1 of the Copyright Act is the actual creator of a given work.

The originator is entitled to, without limits, transfer the economic rights attached to his or her creation, but even when such transfer occurs, he or she retains the right to claim authorship and to oppose to any mutilation of the work or any act that would be prejudicial to the originator's honour or reputation. After the expiration, the work becomes publicly available thus ensuring the interest of society to cultural and technological progress.

In employment relations, the copyright is attributable to the employee. However, the economic rights of the copyright may under certain circumstances be transferred to the employer. Such a transfer occurs when work is created by an employee within the framework of the employment or on a special assignment from the employer. Thus, this is only applicable if what the employee is creating consists a result of what he or she is required to perform in order to fulfill his employment agreement.

XXVII.2.3. Protected works

Chapter 1, Article 1 of the Copyright Act lists categories of works that are covered by copyright, provided that they meet the abovementioned threshold of originality:

- Literary works
- Computer software
- Musical or dramatic works
- Cinematographic works
- Photographic works or other works of fine arts
- Architectural or applied arts works
- Works that have been expressed in another manner

XXVII.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

In Swedish law, there are some limitations to the copyright. These are listed in Chapter 2 of the Copyright Act. Some examples are i.a. anyone is entitled to make, for private purposes, one copy or a few copies of works which have been made public, quotes can be used from works that have been made available to the public, special provisions on making copies for educational purposes, and for archives and libraries, for disabled persons, special provisions on broadcasting works on radio or television, copying computer programmes, when a work has been published the copies may be publicly displayed.

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which	Article 11a

⁸⁰⁸ Translation for amendments up to April 1, 2011 taken from WIPO lex. Please note that the translation is an unofficial translation from the Ministry of Justice of Sweden. Changes made after April 1, 2011 are own translations.

⁸⁰⁹ The basic Copyright Act dates from 1960. Changes transposed from the Directive 2001/29/EC were made by

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
<p>are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Temporary forms of copies of works may be made, if the making of the copies is an integral and essential part of a technological process and if the copies are transient or have only a secondary importance in that process. The copies must not to have any independent economic importance.</p> <p>The making of copies under the first paragraph is permissible only if the sole purpose of that making is to enable</p> <ol style="list-style-type: none"> 1. a transmission in a network between third parties by an intermediary, or 2. a lawful use, that is a use that occurs with the consent of the author or his successor in title, or another use that is not un-permissible under this Act. <p>The provisions under the first and second paragraphs do not confer a right to make copies of literary works in the form of computer programs or compilations.</p> <p><i>Amended by Act (2005:359) ⁸¹⁰</i></p>
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	–
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of	<p>Article 12</p> <p>Anyone is entitled to make, for private purposes, one or a few copies of works that have been made public. As regards literary works in written form the copies may, however, concern only limited parts of works or such works of limited scope. The copies</p>

amending act (2005:359). Where changes have been made otherwise to the basic act before or after Directive 2001/29/EC the year and number of the act is mentioned.

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11 a § Tillfälliga former av exemplar av verk får framställas, om framställningen utgör en integrerad och väsentlig del i en teknisk process och om exemplaren är flyktiga eller har underordnad betydelse i processen. Exemplaren får inte ha självständig ekonomisk betydelse.

Framställning av exemplar enligt första stycket är tillåten bara om det enda syftet med framställningen är att möjliggöra

1. överföring i ett nät mellan tredje parter via en mellanhand, eller

2. laglig användning, dvs. användning som sker med tillstånd från upphovsmannen eller dennes rättssinnehavare, eller annan användning som inte är otillåten enligt denna lag.

Första och andra styckena ger inte rätt att framställa exemplar av litterära verk i form av datorprogram eller sammanställningar. Lag (2005:359).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
technological measures referred to in Article 6 to the work or subject-matter concerned;	<p>must not be used for other purposes than private use.</p> <p>The provisions in the first paragraph do not confer a right to</p> <ol style="list-style-type: none"> 1. construct works of architecture , 2. make copies of computer programs, or 3. make copies in digital form of compilations in digital form. <p>Furthermore, the provisions in the first paragraph do not confer a right to engage, for private purposes, another person to</p> <ol style="list-style-type: none"> 1. make copies of musical works or cinematographic works, 2. make utilitarian articles or sculptures, or 3. copy another person's work of fine arts by means of artistic reproduction. <p>This Article does not confer a right to make copies of a work when the copy that constitutes the real master copy has been prepared or has been made available to the public in violation of Article 2.</p> <p><i>Amended by Act (2005:359)</i>⁸¹¹</p>
(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;	<p>Article 16</p> <p>Governmental and municipal archival authorities, such scientific and research libraries that are operated by public authorities and public libraries are entitled to make copies of works, with the exception of computer programs,</p> <ol style="list-style-type: none"> 1. for purposes of preservation, completion or research 2. in order to satisfy the desires of library borrowers, for single articles or short extracts of works, or for material which, for security

⁸¹¹ 12 § Var och en får för privat bruk framställa ett eller några få exemplar av offentliggjorda verk. Såvitt gäller litterära verk i skriftlig form får exemplarframställningen dock endast avse begränsade delar av verk eller sådana verk av begränsat omfång. Exemplaren får inte användas för andra ändamål än privat bruk.

Första stycket ger inte rätt att

1. uppföra byggnadsverk,
2. framställa exemplar av datorprogram, eller
3. framställa exemplar i digital form av sammanställningar i digital form.

Första stycket ger inte heller rätt att för privat bruk låta en utomstående

1. framställa exemplar av musikaliska verk eller filmverk,
2. framställa bruksföremål eller skulpturer, eller
3. genom konstnärligt förfarande efterbilda andra konstverk.

Denna paragraf ger inte rätt att framställa exemplar av ett verk när det exemplar som är den egentliga förlagan framställts eller gjorts tillgängligt för allmänheten i strid med 2 §. Lag (2005:359).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
	<p>reasons, must not be given away in original form, or</p> <p>3. for use in reading devices.</p> <p>Copies that have been made on paper pursuant to the first Paragraph, item 2, may be distributed to library borrowers.</p> <p>Other archives have the right to make copies of works, with the exception of computer programs, for purposes of preservation. The same applies to other libraries that are open to the public.</p> <p><i>Amended by Act (2017:323)</i>⁸¹²</p>
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;	<p>Article 26e</p> <p>A sound radio or television organisation which has the right to broadcast a work is also entitled to record the work on a material support from which it can be perceived, if this act is made</p> <ol style="list-style-type: none"> 1. for use in its own broadcasts on a few occasions during a limited time, 2. to ensure evidence concerning the content of the broadcast, or 3. in order to make it possible for a governmental authority to exercise supervision over the broadcasting activities. <p>A person who under Chapter 5 Article of 3 the Act (1991:1559) with regulations in the area of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression is obliged to record a program provided in pay-per-view television may produce copies of works that are part of the program, if it is done in order to ensure evidence concerning the content of the program, or to make it possible for a governmental authority to exercise supervision over the activities.</p> <p>Recordings made in accordance with the provisions of the first paragraph, items 2 and 3, may be used only for the purposes indicated there. Such recordings which have a documentary value may, however, be preserved in the Royal Library.</p>

⁸¹² 16 § De statliga och kommunala arkivmyndigheterna, de vetenskapliga bibliotek och fackbibliotek som drivs av det allmänna och folkbiblioteken har rätt att framställa exemplar av verk, dock inte datorprogram,

1. för bevarande-, kompletterings- eller forskningsändamål,
2. för att tillgodose lånesökandes önskemål om enskilda artiklar eller korta avsnitt eller om material som av säkerhetsskäl inte bör lämnas ut i original, eller
3. för användning i läsapparater.

Exemplar som framställs på papper med stöd av första stycket 2 får spridas till lånesökande.

Andra arkiv har rätt att framställa exemplar av verk, dock inte datorprogram, för bevarandeändamål. Detsamma gäller andra bibliotek som är tillgängliga för allmänheten. Lag (2017:323).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
	<p>Copies referred to in the second paragraph may be used only for the purposes mentioned there.</p> <p>A governmental authority which has as its task of supervising advertising in sound radio and television broadcasts and programs referred to in the second paragraph may reproduce works that are part of this to the extent necessary for the purpose.</p> <p><i>Amended by Act (2015:661)</i> ⁸¹³</p>
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.	–
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(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;	<p>Articles 14, 18 and 23</p> <p>Article 14</p> <p>Teachers and pupils may for educational purposes make recordings of their own performances of works, Such recordings may not be use for other purposes.</p> <p><i>Amended by Act (1993:1007)</i> ⁸¹⁴</p> <p>Article 18</p> <p>Anyone who, for use in educational activities, prepares a composite work consisting of works by a comparatively large number of authors may, reproduce minor portions of literary and musical works and such works of a limited scope, provided</p>

⁸¹³ 26 e § Ett radio- eller tv-företag som har rätt att sända ut ett verk får ta upp verket på en anordning genom vilken det kan återges, om det görs

1. för användning vid egna utsändningar ett fåtal gånger under begränsad tid,
2. för att säkerställa bevisning om utsändningens innehåll, eller
3. för att en statlig myndighet ska kunna utöva tillsyn över utsändningsverksamheten.

Den som enligt 5 kap. 3 § lagen (1991:1559) med föreskrifter på tryckfrihetsförordningens och yttrandefrihetsgrundlagens områden är skyldig att spela in ett program som tillhandahålls i beställ-tv får framställa exemplar av verk som ingår i programmet, om det görs för att säkerställa bevisning om programmets innehåll eller för att en statlig myndighet ska kunna utöva tillsyn över verksamheten.

Upptagningar som avses i första stycket 2 och 3 får användas endast för de ändamål som anges där. Om sådana upptagningar har dokumentariskt värde, får de dock bevaras hos Kungl. biblioteket. Exemplar som avses i andra stycket får användas endast för de ändamål som anges där.

En statlig myndighet som har till uppgift att utöva tillsyn över reklamen i ljudradio- och televisionsutsändningar och program som avses i andra stycket får återge verk som ingår i dessa i den omfattning som motiveras av ändamålet med tillsynen. Lag (2015:661).

⁸¹⁴ 14 § För undervisningsändamål får lärare och elever göra upptagningar av sina egna framföranden av verk. Upptagningarna får inte användas för andra ändamål. Lag (1993:1007).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
	<p>that five years have elapsed from the year in which the works were published. Works of fine art may be reproduced in connection with the text, provided that five years have elapsed from the year when they were made public. The authors have a right to remuneration.</p> <p>The provisions of the first paragraph do not apply to works that have been created for use in educational activities and does not confer a right to prepare composite works for commercial purposes</p> <p><i>Amended by Act (2005:359)</i>⁸¹⁵</p> <p>Article 23</p> <p>Works of fine art which have been made public may be reproduced</p> <ol style="list-style-type: none"> 1. in connection with the text in a scientific presentation which has not been prepared for commercial purposes, 2. in connection with the text in a critical presentation, except if it is in digital form, 3. in a newspaper and a periodical in connection with a report on a current news event, except if the work has been created for reproduction in such a publication. <p>The provisions in the first paragraph apply only if the use of the reproduction is carried out in conformity with proper usage and to the extent called for by the information purpose.</p> <p><i>Amended by Act (2005:359)</i></p>
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;	<p>Article 17</p> <p>Anyone is entitled to make, by means other than recording of sounds, such copies of literary and musical works which have been made public and of works of visual art which have been made public, which persons with a disability need in order to be able to enjoy the works. The copies may also be distributed to those persons.</p> <p>Libraries and organizations working with inclusiveness for persons with disabilities may also</p> <ol style="list-style-type: none"> 1. communicate copies of the works that are referred to in the first paragraph to persons

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18 § Den som framställer ett samlingsverk, sammanställt ur verk från ett större antal upphovsmän, för användning vid undervisning, får återge mindre delar av litterära och musikaliska verk och sådana verk av litet omfång, om det har gått fem år efter det år då verken gavs ut. Konstverk får återges i anslutning till texten, om det har gått fem år efter det år då verket offentliggjordes. Upphovsmännen har rätt till ersättning.

Första stycket gäller inte sådana verk som har skapats för att användas vid undervisning och ger inte rätt att i förvärvssyfte framställa samlingsverk. Lag (2005:359).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
	<p>with a disability who need the copies in order to be able to enjoy the work,</p> <p>2. by means of sound recording make such copies of literary works that have been made public which persons with a disability need in order to be able to enjoy the works, and to distribute and communicate such sound recordings to those persons, and</p> <p>3. make such copies of works transmitted on sound radio or television, and of cinematographic works, that deaf or hearing-impaired persons need in order to be able to enjoy the works, and to distribute and communicate copies of the works to those persons.</p> <p>The making of copies, the distribution and the communication to the public pursuant to this Article must not be carried out for commercial purposes, nor must the copies be used for purposes other than those mentioned in the Article.</p> <p>When libraries and organisations distribute or communicate copies of works to persons with a disability in such a way that those persons may keep a copy of the work, the author has a right to remuneration. The same applies if anyone, pursuant to the first paragraph, second sentence, transmits more than a few copies to persons with a disability.</p> <p><i>Amended by Act (2017:323)</i>⁸¹⁶</p>

⁸¹⁶ 17 § Var och en får på annat sätt än genom ljudupptagning framställa sådana exemplar av offentliggjorda litterära och musikaliska verk samt av offentliggjorda alster av bildkonst, som personer med funktionsnedsättning behöver för att kunna ta del av verken. Exemplaren får också spridas till dessa personer.

Bibliotek och sådana organisationer som arbetar för delaktighet för personer med funktionsnedsättning får även

1. överföra exemplar av de verk som avses i första stycket till personer med funktionsnedsättning som behöver exemplaren för att kunna ta del av verken,
2. genom ljudupptagning framställa sådana exemplar av offentliggjorda litterära verk som personer med funktionsnedsättning behöver för att kunna ta del av verken, samt sprida och överföra ljudupptagningarna till dessa personer, och
3. framställa sådana exemplar av verk som sänds ut i ljudradio eller television och av filmverk som personer som är döva eller har en hörselnedsättning behöver för att kunna ta del av verken, samt sprida och överföra exemplar av verken till dessa personer.

Framställning av exemplar, spridning av exemplar och överföring till allmänheten av exemplar med stöd av denna paragraf får inte ske i förvärvssyfte. Exemplaren får inte heller användas för andra ändamål än som avses i paragrafen.

När bibliotek och organisationer sprider exemplar eller överför exemplar av verk till personer med funktionsnedsättning på ett sådant sätt att dessa personer får behålla ett exemplar av verket, har upphovsmannen rätt till ersättning. Detsamma gäller om någon med stöd av första stycket andra meningen överlåter fler än några få exemplar till personer med funktionsnedsättning. Lag (2017:323).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;	<p>Articles 23 and 25</p> <p>Article 23</p> <p>Works of fine art which have been made public may be reproduced</p> <ol style="list-style-type: none"> 1. in connection with the text in a scientific presentation which has not been prepared for commercial purposes, 2. in connection with the text in a critical presentation, except if it is in digital form, 3. in a newspaper and a periodical in connection with a report on a current news event, except if the work has been created for reproduction in such a publication. <p>The provisions in the first paragraph apply only if the use of the reproduction is carried out in conformity with proper usage and to the extent called for by the information purpose.</p> <p><i>Amended by Act (2005:359)</i>⁸¹⁷</p> <p>Article 25</p> <p>Works which are seen or heard in the course of an event may be used in connection with information concerning the event through sound radio, television, direct transmission or film. The works may, however, be used only to the extent justified by the purpose of information.</p> <p><i>Amended by Act (1993:1007)</i>⁸¹⁸</p>
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance	<p>Articles 22, 3 and 11</p> <p>Article 22</p> <p>Anyone may, in accordance with proper usage and to the extent necessary for the purpose, quote from works which have been made available to the public.</p> <p><i>Amended by Act (1993:1007)</i>⁸¹⁹</p>

⁸¹⁷ 23 § Offentliggjorda konstverk får återges

1. i anslutning till texten i en vetenskaplig framställning som inte framställts i förvärvssyfte,
2. i anslutning till texten i en kritisk framställning, dock inte i digital form och
3. i en tidning eller tidskrift i samband med en redogörelse för en dagshändelse, dock inte om verket har skapats för att återges i en sådan publikation.

Första stycket gäller endast om återgivningen sker i överensstämmelse med god sed och i den omfattning som motiveras av ändamålet. Lag (2005:359).

⁸¹⁸ 25 § Verk som syns eller hörs under en dagshändelse får återges vid information om dagshändelsen genom ljudradio, television, direkt överföring eller film. Verken får dock återges endast i den omfattning som motiveras av informationssyftet. Lag (1993:1007).

⁸¹⁹ 22 § Var och en får citera ur offentliggjorda verk i överensstämmelse med god sed och i den omfattning som motiveras av ändamålet. Lag (1993:1007).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
with fair practice, and to the extent required by the specific purpose;	<p>Article 3</p> <p>When copies are made of a work, or when it is made available to the public, the name of the author shall be stated to the extent and in the manner required by proper usage.</p> <p>A work may not be changed in a manner which is prejudicial to the author's literary or artistic reputation or to his individuality, nor may it be made available to the public in such a form or in such a context as is prejudicial in the manner stated.</p> <p>The author may, with binding effect, waive his right under this Article only in relation to uses which are limited as to their character and scope.</p> <p><i>Original act from 1960</i> ⁸²⁰</p> <p>Article 11</p> <p>The provisions of this Chapter do not limit the author's right under Article 3, except as provided in Article 26 c.</p> <p>When a work is used publicly on the basis of the provisions in this Chapter, the source shall be stated to the extent and in the manner required by proper usage, and the work may not be altered more than necessary for the use.</p> <p><i>Amended by Act (1993:1007)</i> ⁸²¹</p>
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	<p>Articles 26, 26a and 26b</p> <p>Article 26</p> <p>Anyone is entitled to use oral or written statements</p> <ol style="list-style-type: none"> 1. before public authorities, 2. in government or municipal representative bodies, 3. in public debates on public matters, 4. at public questionings on such matters. <p>The provisions of the first paragraph, items 1. and 2. do not however apply as regards information for which secrecy applies under Chapter 31, Article 23</p>

⁸²⁰ 3 § Då exemplar av ett verk framställs eller verket göres tillgängligt för allmänheten, skall upphovsmannen angivas i den omfattning och på det sätt god sed kräver.

Ett verk må icke ändras så, att upphovsmannens litterära eller konstnärliga anseende eller egenart kränkes; ej heller må verket göras tillgängligt för allmänheten i sådan form eller i sådant sammanhang som är på angivet sätt kränkande för upphovsmannen.

Sin rätt enligt denna paragraf kan upphovsmannen med bindande verkan eftergiva endast såvitt angår en till art och omfattning begränsad användning av verket.

⁸²¹ 11 § Bestämmelserna i detta kapitel medför inga inskränkningar i upphovsmannens rätt enligt 3 § utöver dem som följer av 26 c §.

När ett verk återges offentligt med stöd av detta kapitel skall källan anges i den omfattning och på det sätt som god sed kräver samt får verket inte ändras i större utsträckning än användningen kräver. Lag (1993:1007).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
	<p>of the Public Access to Information and Secrecy Act (2009:400).</p> <p>In the application of the provisions in the first paragraph it shall, however, be observed,</p> <ol style="list-style-type: none"> 1. that writings cited as evidence, reports and similar works may be used only in connection with a report concerning the legal proceedings or case in which they have appeared and only to the extent necessary for the purpose of such a report, 2. that the author has an exclusive right to publish compilations of his statements, and 3. that what is stated during questionings as mentioned in the first paragraph, item 4. must not be used, on the basis of that provision, in sound radio or television broadcasts. <p><i>Amended by Act (2009:406)</i>⁸²²</p> <p>Article 26a</p> <p>Anyone is entitled to use works which form part of the documents mentioned in Article 9, first paragraph, and which are of the kind mentioned in Article 9, second paragraph, items 2 to 4. This does not apply to works referred to in Article 9, third paragraph. The author is entitled to remuneration except when the use occurs in connection with</p> <ol style="list-style-type: none"> 1. the activities of a public authority, 2. a report of a legal proceeding or a case in which the work appears and the work is used only to the extent necessary for the information purpose. <p>Anyone is entitled to use documents which are prepared by Swedish public authorities but which</p>

⁸²² 26 § Var och en får återge vad som muntligen eller skriftligen anföras

1. inför myndigheter,
2. i statliga eller kommunala representationer,
3. vid offentliga debatter om allmänna angelägenheter eller
4. vid offentliga utfrågningar om sådana angelägenheter.

Första stycket 1 och 2 gäller dock inte uppgifter för vilka sekretess gäller enligt 31 kap. 23 § offentlighets- och sekretesslagen (2009:400).

Vid tillämpning av första stycket gäller

1. att skrifter vilka åberopas som bevis, utlåtanden och liknande får återges endast i samband med en redogörelse för det mål eller ärende i vilket de förekommit och endast i den omfattning som motiveras av ändamålet med redogörelsen,
2. att en upphovsman har ensamrätt att ge ut samlingar av sina anföranden och
3. att det som anföras vid sådana utfrågningar som avses i första stycket 4 inte får återges i ljudradio eller television med stöd av den bestämmelsen. Lag (2009:406).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
	<p>are not such as are mentioned in Article 9, first paragraph.</p> <p>The second paragraph does not apply to</p> <ol style="list-style-type: none"> 1. maps, 2. technical models, 3. computer programs, 4. works created for educational purposes, 5. works which are the result of scientific research, 6. works of drawing, painting or engraving, 7. musical works, 8. works of poetry, or 9. works copies of which are made available to the public through public authorities in connection with commercial activities. <p><i>Amended by Act (2000:92)</i> ⁸²³</p> <p>Article 26b</p> <p>Notwithstanding copyright therein, official documents shall be made available to the public as prescribed in Chapter 2 of the Freedom of the Press Act.</p> <p>Copyright does not prevent the use of a work in the interest of the administration of justice or of public security.</p> <p><i>Amended by Act (1997:790)</i> ⁸²⁴</p>

⁸²³ 26 a § Var och en får återge verk, vilka ingår i de handlingar som avses i 9 § första stycket och är av de slag som anges i 9 § andra stycket 2-4. Detta gäller dock inte ett sådant verk som avses i 9 § tredje stycket. Upphovsmannen har rätt till ersättning, utom när återgivningen sker i samband med

1. en myndighets verksamhet eller
2. en redogörelse för ett mål eller ärende i vilket verket förekommit och verket återges endast i den omfattning som motiveras av ändamålet med redogörelsen.

Var och en får återge handlingar som är upprättade hos svenska myndigheter men inte är sådana som avses i 9 § första stycket.

Andra stycket gäller inte beträffande

1. kartor,
2. tekniska förebilder,
3. datorprogram,
4. verk som skapats för undervisning,
5. verk som är resultatet av vetenskaplig forskning,
6. alster av bildkonst,
7. musikaliska verk,
8. diktverk eller
9. verk av vilka exemplar genom en myndighets försorg tillhandahålls allmänheten i samband med affärsverksamhet. Lag (2000:92).

⁸²⁴ 26 b § Allmänna handlingar skall oavsett upphovsrätten tillhandahållas enligt 2 kap. tryckfrihetsförordningen.

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	<p>Article 26</p> <p>Anyone is entitled to use oral or written statements</p> <ol style="list-style-type: none"> 1. before public authorities, 2. in government or municipal representative bodies, 3. in public debates on public matters, 4. at public questionings on such matters. <p>The provisions of the first paragraph, items 1. and 2. do not however apply as regards information for which secrecy applies under Chapter 31, Article 23 of the Public Access to Information and Secrecy Act (2009:400).</p> <p>In the application of the provisions in the first paragraph it shall, however, be observed,</p> <ol style="list-style-type: none"> 1. that writings cited as evidence, reports and similar works may be used only in connection with a report concerning the legal proceedings or case in which they have appeared and only to the extent necessary for the purpose of such a report, 2. that the author has an exclusive right to publish compilations of his statements, and 3. that what is stated during questionings as mentioned in the first Paragraph, item 4. must not be used, on the basis of that provision, in sound radio or television broadcasts. <p><i>Amended by Act (2009:406) ⁸²⁵</i></p>
(g) use during religious celebrations or official celebrations organised by a public authority;	–

Upphovsrätten hindrar inte att ett verk används i rättsvårdens eller den allmänna säkerhetens intresse. Lag (1997:790).

⁸²⁵ 26 § Var och en får återge vad som muntligen eller skriftligen anförs

1. inför myndigheter,
2. i statliga eller kommunala representationer,
3. vid offentliga debatter om allmänna angelägenheter eller
4. vid offentliga utfrågningar om sådana angelägenheter.

Första stycket 1 och 2 gäller dock inte uppgifter för vilka sekretess gäller enligt 31 kap. 23 § offentlighets- och sekretesslagen (2009:400).

Vid tillämpning av första stycket gäller

1. att skrifter vilka åberopas som bevis, utlåtanden och liknande får återges endast i samband med en redogörelse för det mål eller ärende i vilket de förekommit och endast i den omfattning som motiveras av ändamålet med redogörelsen,
2. att en upphovsman har ensamrätt att ge ut samlingar av sina anföranden och
3. att det som anförs vid sådana utfrågningar som avses i första stycket 4 inte får återges i ljudradio eller television med stöd av den bestämmelsen. Lag (2009:406).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	Article 24 Works of fine art may be reproduced in pictorial form <ol style="list-style-type: none"> 1. if they are permanently located outdoors on, or at, a public place 2. if the purpose is to advertise an exhibition or a sale of the works of fine art but only to the extent necessary for the promotion of the exhibition or the sale or 3. if they form part of a collection, in catalogues, however not in digital form. Buildings may be freely reproduced in pictorial form. Amended by Act (2005:359) ⁸²⁶
(i) incidental inclusion of a work or other subject-matter in other material;	–
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	Article 24 Works of fine art may be reproduced in pictorial form <ol style="list-style-type: none"> 1. if they are permanently located outdoors on, or at, a public place 2. if the purpose is to advertise an exhibition or a sale of the works of fine art but only to the extent necessary for the promotion of the exhibition or the sale or 3. if they form part of a collection, in catalogues, however not in digital form. Buildings may be freely reproduced in pictorial form. Amended by Act (2005:359) ⁸²⁷
(k) use for the purpose of caricature, parody or pastiche;	This concept is not regulated in Swedish legislation. However there is some Swedish case

⁸²⁶ 24 § Konstverk får avbildas

1. om de stadigvarande är placerade på eller vid allmän plats utomhus,
2. om syftet är att annonsera en utställning eller försäljning av konstverken, men endast i den utsträckning som behövs för att främja utställningen eller försäljningen, eller
3. om de ingår i en samling, i kataloger, dock inte i digital form.

Byggnader får fritt avbildas. Lag (2005:359).

⁸²⁷ 24 § Konstverk får avbildas

1. om de stadigvarande är placerade på eller vid allmän plats utomhus,
2. om syftet är att annonsera en utställning eller försäljning av konstverken, men endast i den utsträckning som behövs för att främja utställningen eller försäljningen, eller
3. om de ingår i en samling, i kataloger, dock inte i digital form.

Byggnader får fritt avbildas. Lag (2005:359).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
	law. The important thing has been considered to be that the objective for the work is to be a parody and that the work being a parody becomes a new and independent work. ⁸²⁸
(l) use in connection with the demonstration or repair of equipment;	–
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Article 24 (See above)
(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;	–
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	Article 23 Works of fine art which have been made public may be reproduced <ol style="list-style-type: none"> 1. in connection with the text in a scientific presentation which has not been prepared for commercial purposes, 2. in connection with the text in a critical presentation, except if it is in digital form, 3. in a newspaper and a periodical in connection with a report on a current news event, except if the work has been created for reproduction in such a publication. The provisions in the first Paragraph apply only if the use of the reproduction is carried out in conformity with proper usage and to the extent called for by the information purpose. <i>Amended by Act (2005:359)</i> ⁸²⁹

⁸²⁸ NJA 1975 page 679 (Swedish flag). The new text of the song was considered to be mainly diverging from the original text which pays tribute to the Swedish flag with its new text desecrating the American flag. Since the text was so diverging it could not be considered to be a parody. NJA 2005 page 905 (Alfons) concerned a radio programme on public radio where original lines from a well known Swedish book for children were merged with lines from a film about drug dealers. It was considered that in this case a comic and surprising effect was created by mixing the two environments, and a new and independent work was created, and that in this case the original writer's moral rights were not inflicted upon.

⁸²⁹ 23 § Offentliggjorda konstverk får återges

1. i anslutning till texten i en vetenskaplig framställning som inte framställts i förvärvssyfte,
2. i anslutning till texten i en kritisk framställning, dock inte i digital form och
3. i en tidning eller tidskrift i samband med en redogörelse för en dagshändelse, dock inte om verket har skapats för att återges i en sådan publikation.

Första stycket gäller endast om återgivningen sker i överensstämmelse med god sed och i den omfattning som motiveras av ändamålet. Lag (2005:359).

Directive 2001/29/EC	National law - The Copyright Act (1960:729) ⁸⁰⁸
Text	Text ⁸⁰⁹
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	–
5(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.	–

Directive 2012/28	National law - Copyright Act (1960:729)
Text	Text
<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Articles 16a and 16b</p> <p>Article 16 a</p> <p>Libraries, educational entities and museums that are available to the public and archives and institutions for the film- or sound heritage may make copies of literary works in writing and of cinematographic works and transfer those works to the public in such a way that individuals may have access to the works from a place and time they decide themselves, if</p> <ol style="list-style-type: none"> 1. the work is considered or has been considered to be an orphan work under Article 16 b and the successor in title has not made him or her known to the user, 2. the work is a part of the user's own collections, 3. the work is related to a country that is part of the European Economic Area (a EEA-country) via that <ol style="list-style-type: none"> a) if the work has been published, the first publication has taken place in such a country, or b) if the work has not been published, but has been broadcasted in sound radio or television, the first broadcast has taken place in such a country, or c) if the work has neither been published or broadcasted, it with the approval of the successor in title has been made available to the public in such a country by a user referred to in this Article and it reasonably can be presumed that the successor in title does not oppose the exploitation,

Directive 2012/28	National law - Copyright Act (1960:729)
Text	Text
	<p>4. the user is established in an EEA-country,</p> <p>5. the activities of the user are not carried out without profitmaking purposes and, when it comes to institutions for the film or sound heritage,</p> <p>6. the exploitation takes place to achieve the purpose concerning the mission in public interest and, regarding the making of copies, to digitalise, index, catalogue, preserve, restore or transmit the work to the public,</p> <p>7. the proceeds from the exploitation only aims at covering the costs to digitalise and transmit orphan works to the public, and</p> <p>8. successor in title that are known are mentioned.</p> <p>A radio- or television company in the service of the public may exploit cinematographic works that have been produced by or for such a company before 1 January 2003 in the ways and under those circumstances that are referred to in the first paragraph item 1-4 and 6-8.</p> <p>A user referred to in the first paragraph may in those ways and under those circumstances that are referred to there exploit works that are a part of a literary work in a writing, a cinematographic work or a sound recording with such a relation to an EEA-country that is referred to in the first paragraph item 3. A radio- or television company in the service of the public may in the ways and under those circumstances that are referred to in the first paragraph items 1-4 and 6-8 exploit works that are a part of such a cinematographic work or sound recording, if the cinematographic work or the sound recording has been produced by or for such a company before 1 January 2003.</p> <p><i>Amended by Act (2014:884)⁸³⁰</i></p>

⁸³⁰ 16 a § Bibliotek, utbildningsanstalter och museer som är tillgängliga för allmänheten samt arkiv och institutioner för film- eller ljudarvet får framställa exemplar av litterära verk i skrifter och av filmverk samt överföra sådana verk till allmänheten på ett sådant sätt att enskilda kan få tillgång till verket från en plats och vid en tidpunkt som de själva väljer, om

1. verket anses eller har ansetts herrelöst enligt 16 b § och rättsinnehavaren inte har gett sig till känna för användaren,
2. verket ingår i användarens egna samlingar,
3. verket har anknytning till ett land som ingår i Europeiska ekonomiska samarbetsområdet (ett EES-land) genom att
 - a) om verket har getts ut, den första utgivningen har skett i ett sådant land, eller
 - b) om verket inte har getts ut men sänts ut i ljudradio eller television, den första utsändningen har skett i ett sådant land, eller

Directive 2012/28	National law - Copyright Act (1960:729)
Text	Text
	<p>Article 16 b</p> <p>A work is considered to be orphan if all successors in title are unknown or have not been able to find after a user referred to in Article 16 a has carried out a careful research under Article 16 c and has documented it. If a work has several successors in title and only someone or a few of them are unknown or have not been able to find, shall what is said in this law on orphan works be applied on the right to the orphan work of that or those successors in title.</p> <p>If the successor in title makes him or herself know for a user that has exploited the work based on Article 16 a, the work is no longer considered to be an orphan work. The successor in title has the right to a reasonable compensation by the person who has exploited the work.</p> <p>Amended by Act (2014:884)⁸³¹</p>
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in	Articles 16a and 16b (See above)

c) om verket varken har getts ut eller sänts ut, det med rättsinnehavarens samtycke har gjorts tillgängligt för allmänheten i ett sådant land av en användare som avses i denna paragraf och det rimligen kan antas att rättsinnehavaren inte motsätter sig förfogandet,

- användaren är etablerad i ett EES-land,
- användarens verksamhet inte bedrivs i vinstsyfte och, när det gäller institutioner för film- eller ljudarvet, institutionen utsetts av det allmänna att förvalta film- eller ljudarvet,
- förfogandet sker för att uppnå mål som rör användarens uppdrag i allmänhetens intresse och, i fråga om exemplarframställning, för att digitalisera, indexera, katalogisera, bevara, restaurera eller överföra verket till allmänheten,
- intäkterna från förfogandet uteslutande syftar till att täcka kostnaderna för att digitalisera och överföra herrelösa verk till allmänheten, och
- rättsinnehavare som är kända anges.

Ett radio- eller tv-företag i allmänhetens tjänst får förfoga över filmverk som har producerats av eller för ett sådant företag före den 1 januari 2003 på de sätt och under de förutsättningar som anges i första stycket 1-4 och 6-8.

En användare som avses i första stycket får på de sätt och under de förutsättningar som anges där förfoga över verk som ingår i ett litterärt verk i en skrift, ett filmverk eller en ljudupptagning med sådan anknytning till ett EES-land som anges i första stycket 3. Ett radio- eller tv-företag i allmänhetens tjänst får på samma sätt och under de förutsättningar som anges i första stycket 1-4 och 6-8 förfoga över verk som ingår i ett sådant filmverk eller i en sådan ljudupptagning, om filmverket eller ljudupptagningen har producerats av eller för ett sådant företag före den 1 januari 2003. Lag (2014:884).

⁸³¹ 16 b § Ett verk ska anses herrelöst om samtliga rättsinnehavare är okända eller inte gått att finna efter det att en användare som avses i 16 a § har utfört en omsorgsfull efterforskning enligt 16 c § och dokumenterat den. Om ett verk har flera rättsinnehavare och endast någon eller några av dessa är okända eller inte gått att finna, ska det som sägs i denna lag om herrelösa verk tillämpas på den rätt till verket som tillkommer denna eller dessa rättsinnehavare.

Om rättsinnehavaren ger sig till känna för en användare som förfogat över verket med stöd av 16 a §, ska verket inte längre anses herrelöst. Rättsinnehavaren har rätt till rimlig kompensation av den som har förfogat över verket. Lag (2014:884).

Directive 2012/28	National law - Copyright Act (1960:729)
Text	Text
particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	Articles 16a and 16b (See above)
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	Articles 16a and 16b (See above)
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	Articles 16a and 16b (See above)

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XXVIII. UNITED KINGDOM

XXVIII.1. APPLICABLE NATIONAL LEGAL FRAMEWORK

XXVIII.1.1. Constitution

The UK does not have a written constitution.

XXVIII.1.2. Copyright law⁸³²

The principal legislation on copyright can be found in the Copyright, Designs and Patents Act 1988.

The Copyright, Designs and Patents Act 1988 has been amended on a number of occasions since it came into force on 1 August 1989, but the amending laws have not been officially consolidated into a single text.

The most important legislation that has amended the Copyright, Designs and Patents Act 1988 is as follows:

- Broadcasting Act 1990 - Part IX
- Broadcasting Act 1996 - Part VII
- The Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002
- The Legal Deposit Libraries Act 2003
- The Enterprise and Regulatory Reform Act 2013

XXVIII.2. COPYRIGHT

XXVIII.2.1. Definition and content⁸³³

Copyright holders have the exclusive right to do or authorise the following:

- copying the work;
- issuing copies of the work to the public;
- renting or lending the work to the public;
- performing, showing or playing the work in public;
- communicating the work to the public; and
- adapting the work.

The copyright owner can restrict these acts in relation to the whole or any substantial part of the work.

The courts have shown that they are willing to find intermediary service providers (ISPs) liable for primary copyright infringement where they have infringed the exclusive right of copyright owners to authorise any of the above acts, most notably where ISPs have authorised the copying of works or making them available to the public.

⁸³² The information in this section has been taken directly from the UK government website.

⁸³³ The information in this section is taken directly from International Comparative Legal Guides' Copyright 2017: United Kingdom, section 4 ("Owners' Rights"). The law firm Bird & Bird LLP authored the UK chapter.

The courts have also shown a willingness to use common law principles to protect the rights of copyright owners. For example:

- parties have been found to infringe copyright where they act in a common design with each other to induce others to do any of the above infringing acts; and
- recent case law has also found that where website operators or service providers provide the key means by which copyright can be infringed, and they know or intend for their service to be used for that purpose, they can be held to be joint tortfeasors with those who actually do the infringing act.

There are a number of ancillary rights associated with the creation of copyright works, the most common of which are:

- Moral rights: the author or director of a copyright work usually has moral rights in relation to the work. These are the rights to: i) be identified as the work's author or director; ii) object to derogatory treatment of the work; iii) privacy in respect of certain photographs and films; and iv) not have the work's authorship wrongly attributed. These rights may be waived by the author or director but not assigned. The first three rights have the same duration as copyright, but the right to object to false attribution lasts for the author's or director's lifetime plus 20 years.
- Performers' rights: performers have various rights in their performances, as well as in the recordings or broadcasts of their performances.
- Publication right: the publication right grants rights equivalent to copyright to a person who publishes for the first time a literary, dramatic, musical or artistic work, or a film in which copyright has expired.

XXVIII.2.2. Author⁸³⁴

The author, i.e. the person who creates the work, is usually the first owner of copyright in that work. The presumption is that the author will be:

- the person who creates a work for literary, dramatic, musical or artistic works;
- the producer of a sound recording;
- the producer and the principal director of a film;
- the publisher of a published edition;
- the person making a broadcast or effecting a retransmission of a broadcast;
- the publisher of a typographical arrangement; and
- the person making the arrangements necessary for the creation of the work for computer-generated works.

However, this may be amended by agreement. For example, it is possible for someone who would ordinarily be deemed to be the copyright owner to assign the benefit of future copyright, even prior to that work having been created.

⁸³⁴ The information in this section is taken directly from International Comparative Legal Guides' Copyright 2017: United Kingdom, section 2 ("Ownership").

XXVIII.2.3. Protected works⁸³⁵

Copyright can subsist in literary, musical and artistic works. This includes dramatic works (e.g. plays, dance); typographical arrangements of published editions (e.g. magazines, periodicals); sound recordings (which may be recordings of other copyright works, e.g. musical and literary); films; and broadcasts.

Computer programs are protected as literary works. However, copyright protects the expression of an idea, not the idea itself, therefore, certain forms may not carry copyright protection, e.g. the functionality, programming language and interfaces (such as data file formats) of computer programs are not protected by copyright to the extent that they are not contained in the software's source code (which is the written expression in which copyright can subsist).

Requirements

For copyright to subsist:

- literary, dramatic, musical and artistic works must comply with the criterion of originality, i.e. the work must originate from its author and must not be copied from another work. This does not mean that the work must be the expression of original or inventive thought; the originality required relates to the expression of the thought and is not a subjective test regarding the 'artistic' originality or novelty. The standard of originality is low and depends on the author having created the work through his own skill, judgment and individual effort, and not having copied from other works;
- the work must be fixed, i.e. recorded in writing or in some other material form; and
- the work must meet UK qualification requirements, either through the nationality of its author or through its place of first publication.

There are no registration requirements; copyright subsists automatically.

XXVIII.3. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT PROTECTION

The table below indicates the provisions of UK law that reflect Directives 2001/29/EC and 2012/28/EU. The text of the UK legislation has been copied from the UK legislation web portal.

Directive 2001/29/EC	National law - Copyright, Designs and Patents Act 1988
Text	Text
<p>5(1): Temporary acts of reproduction referred to in Article 2, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.</p>	<p>Section 28A: Making of temporary copies</p> <p>Copyright in a literary work, other than a computer program or a database, or in a dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—</p> <p>(a) a transmission of the work in a network between third parties by an intermediary; or</p>

⁸³⁵ The information in this section is taken directly from International Comparative Legal Guides' Copyright 2017: United Kingdom, section 1 ("Copyright Subsistence").

Directive 2001/29/EC	National law - Copyright, Designs and Patents Act 1988
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	(b) a lawful use of the work; and which has no independent economic significance.
5(2): Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:	
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;	–
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;	<p>Section 28B, 70</p> <p>Section 28B: Personal copies for private use</p> <p>(1) The making of a copy of a work, other than a computer program, by an individual does not infringe copyright in the work provided that the copy—</p> <p>(a) is a copy of—</p> <p>(i) the individual's own copy of the work, or</p> <p>(ii) a personal copy of the work made by the individual,</p> <p>(b) is made for the individual's private use, and</p> <p>(c) is made for ends which are neither directly nor indirectly commercial.</p> <p>(2) In this section "the individual's own copy" is a copy which—</p> <p>(a) has been lawfully acquired by the individual on a permanent basis,</p> <p>(b) is not an infringing copy, and</p> <p>(c) has not been made under any provision of this Chapter which permits the making of a copy without infringing copyright.</p> <p>(3) In this section a "personal copy" means a copy made under this section.</p> <p>(4) For the purposes of subsection (2)(a), a copy "lawfully acquired on a permanent basis"—</p> <p>(a) includes a copy which has been purchased, obtained by way of a gift, or acquired by means of a download resulting from a purchase or a gift (other than a download of a kind mentioned in paragraph (b)); and</p> <p>(b) does not include a copy which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a</p>

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	<p>download enabling no more than temporary access to the copy.</p> <p>(5) In subsection (1)(b) “private use” includes private use facilitated by the making of a copy—</p> <p>(a) as a back up copy,</p> <p>(b) for the purposes of format-shifting, or</p> <p>(c) for the purposes of storage, including in an electronic storage area accessed by means of the internet or similar means which is accessible only by the individual (and the person responsible for the storage area).</p> <p>(6) Copyright in a work is infringed if an individual transfers a personal copy of the work to another person (otherwise than on a private and temporary basis), except where the transfer is authorised by the copyright owner.</p> <p>(7) If copyright is infringed as set out in subsection (6), a personal copy which has been transferred is for all purposes subsequently treated as an infringing copy.</p> <p>(8) Copyright in a work is also infringed if an individual, having made a personal copy of the work, transfers the individual’s own copy of the work to another person (otherwise than on a private and temporary basis) and, after that transfer and without the licence of the copyright owner, retains any personal copy.</p> <p>(9) If copyright is infringed as set out in subsection (8), any retained personal copy is for all purposes subsequently treated as an infringing copy.</p> <p>(10) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.</p> <p>Section 70: Recording for purposes of time-shifting</p> <p>The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or in any work included in it.</p> <p>Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with—</p> <p>(a) it shall be treated as an infringing copy for the purposes of that dealing; and</p>

Directive 2001/29/EC	National law - Copyright, Designs and Patents Act 1988
Text	Text
	<p>(b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.</p> <p>(3) In subsection (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.</p>
<p>(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;</p>	<p>Section 40A - 42</p> <p>Section 40A: Lending of copies by libraries or archives</p> <p>Copyright in a work of any description is not infringed by the following acts by a public library in relation to a book within the public lending right scheme—</p> <p>(a) lending the book;</p> <p>(b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.</p> <p>(1A) In subsection (1)—</p> <p>(a) "book", "audio-book" and "e-book" have the meanings given in section 5 of the Public Lending Right Act 1979,</p> <p>(b) "the public lending right scheme" means the scheme in force under section 1 of that Act,</p> <p>(c) a book is within the public lending right scheme if it is a book within the meaning of the provisions of the scheme relating to eligibility, whether or not it is in fact eligible, and</p> <p>(d) "lending" is to be read in accordance with the definition of "lent out" in section 5 of that Act (and section 18A of this Act does not apply).</p> <p>(2) Copyright in a work is not infringed by the lending of copies of the work by a library or archive (other than a public library) which is not conducted for profit.</p> <p>Article 41: Copying by librarians: supply of single copies to other libraries</p> <p>(1) A librarian may, if the conditions in subsection (2) are met, make a single copy of the whole or part of a published work and supply it to another library, without infringing copyright in the work.</p> <p>(2) The conditions are—</p> <p>(a) the copy is supplied in response to a request from a library which is not conducted for profit, and</p> <p>(b) at the time of making the copy the librarian does not know, or could not reasonably find</p>

Directive 2001/29/EC	National law - Copyright, Designs and Patents Act 1988
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	<p>out, the name and address of a person entitled to authorise the making of a copy of the work.</p> <p>(3) The condition in subsection (2)(b) does not apply where the request is for a copy of an article in a periodical.</p> <p>(4) Where a library makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.</p> <p>(5) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.</p> <p>Section 42: Copying by librarians etc: replacement copies of works</p> <p>(1) A librarian, archivist or curator of a library, archive or museum may, without infringing copyright, make a copy of an item in that institution's permanent collection—</p> <p>(a) in order to preserve or replace that item in that collection, or</p> <p>(b) where an item in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the item in the collection of that other library, archive or museum,</p> <p>provided that the conditions in subsections (2) and (3) are met.</p> <p>(2) The first condition is that the item is—</p> <p>(a) included in the part of the collection kept wholly or mainly for the purposes of reference on the institution's premises,</p> <p>(b) included in a part of the collection not accessible to the public, or</p> <p>(c) available on loan only to other libraries, archives or museums.</p> <p>(3) The second condition is that it is not reasonably practicable to purchase a copy of the item to achieve either of the purposes mentioned in subsection (1).</p> <p>(4) The reference in subsection (1)(b) to a library, archive or museum is to a library, archive or museum which is not conducted for profit.</p> <p>(5) Where an institution makes a charge for supplying a copy to another library, archive or museum under subsection (1)(b), the sum charged must be calculated by reference to the costs attributable to the production of the copy.</p>

Directive 2001/29/EC	National law - Copyright, Designs and Patents Act 1988
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	<p>(6) In this section "item" means a work or a copy of a work.</p> <p>(7) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.</p>
<p>(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;</p>	<p>Section 68: Incidental recording for purposes of broadcast</p> <p>(1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast—</p> <p>(a) a literary, dramatic or musical work, or an adaptation of such a work,</p> <p>(b) an artistic work, or</p> <p>(c) a sound recording or film.</p> <p>(2) He shall by virtue of this section be treated as licensed by the owner of the copyright in the work to do or authorise any of the following for the purposes of the broadcast —</p> <p>(a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, to make a sound recording or film of the work or adaptation;</p> <p>(b) in the case of an artistic work, to take a photograph or make a film of the work;</p> <p>(c) in the case of a sound recording or film, to make a copy of it.</p> <p>(3) That licence is subject to the condition that the recording, film, photograph or copy in question—</p> <p>(a) shall not be used for any other purpose, and</p> <p>(b) shall be destroyed within 28 days of being first used for broadcasting the work</p> <p>(4) A recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy—</p> <p>(a) for the purposes of any use in breach of the condition mentioned in subsection (3)(a), and</p> <p>(b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is broken.</p>
<p>(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.</p>	<p>Section 72: Free public showing or playing of broadcast</p> <p>(1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any copyright in—</p>

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	<p>(a) the broadcast; or</p> <p>(b) any sound recording (except so far as it is an excepted sound recording) included in it.</p> <p>(c) [omitted]</p> <p>(1A) For the purposes of this Part an “excepted sound recording” is a sound recording—</p> <p>(a) whose author is not the author of the broadcast in which it is included; and</p> <p>(b) which is a recording of music with or without words spoken or sung.</p> <p>(1B) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public—</p> <p>(a) [omitted]</p> <p>(b) is necessary for the purposes of—</p> <p>(i) repairing equipment for the reception of broadcasts;</p> <p>(ii) demonstrating that a repair to such equipment has been carried out; or</p> <p>(iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.</p> <p>(2) The audience shall be treated as having paid for admission to a place—</p> <p>(a) if they have paid for admission to a place of which that place forms part; or</p> <p>(b) if goods or services are supplied at that place (or a place of which it forms part)—</p> <p>(i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast, or</p> <p>(ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.</p> <p>(3) The following shall not be regarded as having paid for admission to a place—</p> <p>(a) persons admitted as residents or inmates of the place;</p> <p>(b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts is only incidental to the main purposes of the club or society.</p>

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	(4) Where the making of the broadcast was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast shall be taken into account in assessing the damages for that infringement.
5(3): Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:	
(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;	<p>Section 29, 29A, 35, 36, 43</p> <p>Section 29: Research and private study</p> <p>Fair dealing with a work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.</p> <p>(1B) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.</p> <p>(1C) Fair dealing with a work for the purposes of private study does not infringe any copyright in the work.</p> <p>(2) [omitted]</p> <p>(3) Copying by a person other than the researcher or student himself is not fair dealing if—</p> <p>(a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under section 42A (copying by librarians: single copies of published works), or</p> <p>(b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.</p> <p>(4) It is not fair dealing—</p> <p>(a) to convert a computer program expressed in a low level language into a version expressed in a higher level language, or</p> <p>(b) incidentally in the course of so converting the program, to copy it,</p> <p>(these acts being permitted if done in accordance with section 50B (decompilation)).</p> <p>(4A) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being</p>

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	<p>permitted if done in accordance with section 50BA (observing, studying and testing)).</p> <p>(4B) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.</p> <p>Section 29A: Copies for text and data analysis for non-commercial research</p> <p>(1) The making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work provided that—</p> <p>(a) the copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for the sole purpose of research for a non-commercial purpose, and</p> <p>(b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).</p> <p>(2) Where a copy of a work has been made under this section, copyright in the work is infringed if—</p> <p>(a) the copy is transferred to any other person, except where the transfer is authorised by the copyright owner, or</p> <p>(b) the copy is used for any purpose other than that mentioned in subsection (1)(a), except where the use is authorised by the copyright owner.</p> <p>(3) If a copy made under this section is subsequently dealt with—</p> <p>(a) it is to be treated as an infringing copy for the purposes of that dealing, and</p> <p>(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.</p> <p>(4) In subsection (3) “dealt with” means sold or let for hire, or offered or exposed for sale or hire.</p> <p>(5) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.</p> <p>Section 35: Recording by educational establishments of broadcasts</p> <p>(1) A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing</p>

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	<p>copyright in the broadcast, or in any work included in it, provided that—</p> <p>(a) the educational purposes are non-commercial, and</p> <p>(b) the recording or copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).</p> <p>(2) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, made under subsection (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the non-commercial educational purposes of that establishment.</p> <p>(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.</p> <p>(4) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.</p> <p>(5) If a copy made under this section is subsequently dealt with—</p> <p>(a) it is to be treated as an infringing copy for the purposes of that dealing, and</p> <p>(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.</p> <p>(6) In this section "dealt with" means—</p> <p>(a) sold or let for hire,</p> <p>(b) offered or exposed for sale or hire, or</p> <p>(c) communicated otherwise than as permitted by subsection (2).</p> <p>Section 36: Copying and use of extracts of works by educational establishments</p> <p>(1) The copying of extracts of a relevant work by or on behalf of an educational establishment does not infringe copyright in the work, provided that—</p> <p>(a) the copy is made for the purposes of instruction for a non-commercial purpose, and</p> <p>(b) the copy is accompanied by a sufficient acknowledgement (unless this would be</p>

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	<p>impossible for reasons of practicality or otherwise).</p> <p>(2) Copyright is not infringed where a copy of an extract made under subsection (1) is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.</p> <p>(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.</p> <p>(4) In this section "relevant work" means a copyright work other than—</p> <p>(a) a broadcast, or</p> <p>(b) an artistic work which is not incorporated into another work.</p> <p>(5) Not more than 5% of a work may be copied under this section by or on behalf of an educational establishment in any period of 12 months, and for these purposes a work which incorporates another work is to be treated as a single work.</p> <p>(6) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.</p> <p>(7) The terms of a licence granted to an educational establishment authorising acts permitted by this section are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted by this section.</p> <p>(8) If a copy made under this section is subsequently dealt with—</p> <p>(a) it is to be treated as an infringing copy for the purposes of that dealing, and</p> <p>(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.</p> <p>(9) In this section "dealt with" means—</p> <p>(a) sold or let for hire,</p> <p>(b) offered or exposed for sale or hire, or</p> <p>(c) communicated otherwise than as permitted by subsection (2).</p>

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Text	Text
	<p>Section 43: Copying by librarians or archivists: single copies of unpublished works</p> <p>(1) A librarian or archivist may make and supply a single copy of the whole or part of a work without infringing copyright in the work, provided that—</p> <p>(a) the copy is supplied in response to a request from a person who has provided the librarian or archivist with a declaration in writing which includes the information set out in subsection (2), and</p> <p>(b) the librarian or archivist is not aware that the declaration is false in a material particular.</p> <p>(2) The information which must be included in the declaration is—</p> <p>(a) the name of the person who requires the copy and the material which that person requires,</p> <p>(b) a statement that the person has not previously been supplied with a copy of that material by any library or archive, and</p> <p>(c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.</p> <p>(3) But copyright is infringed if—</p> <p>(a) the work had been published or communicated to the public before the date it was deposited in the library or archive, or</p> <p>(b) the copyright owner has prohibited the copying of the work,</p> <p>and at the time of making the copy the librarian or archivist is, or ought to be, aware of that fact.</p> <p>(4) Where a library or archive makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.</p> <p>(5) Where a person ("P") makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—</p> <p>(a) P is liable for infringement of copyright as if P had made the copy, and</p> <p>(b) the copy supplied to P is to be treated as an infringing copy for all purposes.</p>
(b) uses, for the benefit of people with a disability, which are directly related to the disability and	<p>Section 31A, 31B, 31BA, 31BB, 31F</p> <p>Section 31A: Disabled persons: copies of works for personal use</p>

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<p>of a non-commercial nature, to the extent required by the specific disability;</p>	<p>(1) This section applies if—</p> <p>(a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a work, and</p> <p>(b) the person's disability prevents the person from enjoying the work to the same degree as a person who does not have that disability.</p> <p>(2) The making of an accessible copy of the copy of the work referred to in subsection (1)(a) does not infringe copyright if—</p> <p>(a) the copy is made by the disabled person or by a person acting on behalf of the disabled person,</p> <p>(b) the copy is made for the disabled person's personal use, and</p> <p>(c) the same kind of accessible copies of the work are not commercially available on reasonable terms by or with the authority of the copyright owner.</p> <p>(3) If a person makes an accessible copy under this section on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy.</p> <p>(4) Copyright is infringed by the transfer of an accessible copy of a work made under this section to any person other than—</p> <p>(a) a person by or for whom an accessible copy of the work may be made under this section, or</p> <p>(b) a person who intends to transfer the copy to a person falling within paragraph (a),</p> <p>except where the transfer is authorised by the copyright owner.</p> <p>(5) An accessible copy of a work made under this section is to be treated for all purposes as an infringing copy if it is held by a person at a time when the person does not fall within subsection (4)(a) or (b).</p> <p>(6) If an accessible copy made under this section is subsequently dealt with—</p> <p>(a) it is to be treated as an infringing copy for the purposes of that dealing, and</p> <p>b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.</p> <p>(7) In this section "dealt with" means sold or let for hire or offered or exposed for sale or hire.</p>

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	<p>Section 31B: Making and supply of accessible copies by authorised bodies</p> <p>(1) If an authorised body has lawful possession of a copy of the whole or part of a published work, the body may, without infringing copyright, make and supply accessible copies of the work for the personal use of disabled persons.</p> <p>(2) But subsection (1) does not apply if the same kind of accessible copies of the work are commercially available on reasonable terms by or with the authority of the copyright owner.</p> <p>(3) If an authorised body has lawful access to or lawful possession of the whole or part of a broadcast or a copy of a broadcast, the body may, without infringing copyright—</p> <p>(a) in the case of a broadcast, make a recording of the broadcast, and make and supply accessible copies of the recording or of any work included in the broadcast, and</p> <p>(b) in the case of a copy of a broadcast, make and supply accessible copies of that copy or of any work included in the broadcast,</p> <p>for the personal use of disabled persons.</p> <p>(4) But subsection (3) does not apply if the same kind of accessible copies of the broadcast, or of any work included in it, are commercially available on reasonable terms by or with the authority of the copyright owner.</p> <p>(5) For the purposes of subsections (1) and (3), supply “for the personal use of disabled persons” includes supply to a person acting on behalf of a disabled person.</p> <p>(6) An authorised body which is an educational establishment conducted for profit must ensure that any accessible copies which it makes under this section are used only for its educational purposes.</p> <p>(7) An accessible copy made under this section must be accompanied by—</p> <p>(a) a statement that it is made under this section, and</p> <p>(b) a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).</p> <p>(8) If an accessible copy is made under this section of a work which is in copy-protected electronic form, the accessible copy must, so far as is reasonably practicable, incorporate the same or</p>

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	<p>equally effective copy protection (unless the copyright owner agrees otherwise).</p> <p>(9) An authorised body which has made an accessible copy of a work under this section may supply it to another authorised body which is entitled to make accessible copies of the work under this section for the purposes of enabling that other body to make accessible copies of the work.</p> <p>(10) If an authorised body supplies an accessible copy it has made under this section to a person or authorised body as permitted by this section and charges the person or body for it, the sum charged must not exceed the cost of making and supplying the copy.</p> <p>(11) If an accessible copy made under this section is subsequently dealt with—</p> <p>(a) it is to be treated as an infringing copy for the purposes of that dealing, and</p> <p>(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.</p> <p>(12) In this section “dealt with” means sold or let for hire or offered or exposed for sale or hire.</p> <p>Section 31BA: Making and supply of intermediate copies by authorised bodies</p> <p>(1) An authorised body which is entitled to make an accessible copy of a work under section 31B may, without infringing copyright, make a copy of the work (“an intermediate copy”) if this is necessary in order to make the accessible copy.</p> <p>(2) An authorised body which has made an intermediate copy of a work under this section may supply it to another authorised body which is entitled to make accessible copies of the work under section 31B for the purposes of enabling that other body to make accessible copies of the work.</p> <p>(3) Copyright is infringed by the transfer of an intermediate copy made under this section to a person other than another authorised body as permitted by subsection (2), except where the transfer is authorised by the copyright owner.</p> <p>(4) If an authorised body supplies an intermediate copy to an authorised body under subsection (2) and charges the body for it, the sum charged must not exceed the cost of making and supplying the copy.</p>

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	<p>Section 31BB: Accessible and intermediate copies: records and notification</p> <p>(1) An authorised body must keep a record of—</p> <ul style="list-style-type: none"> (a) accessible copies it makes under section 31B, (b) intermediate copies it makes under section 31BA, and (c) the persons to whom such copies are supplied. <p>(2) An authorised body must allow the copyright owner or a person acting for the copyright owner, on giving reasonable notice, to inspect at any reasonable time—</p> <ul style="list-style-type: none"> (a) records kept under subsection (1), and (b) records of copies made under sections 31B and 31C as those sections were in force before the coming into force of these Regulations. <p>(3) Within a reasonable time of making an accessible copy under section 31B, an authorised body must—</p> <ul style="list-style-type: none"> (a) notify any body which— <ul style="list-style-type: none"> (i) represents particular copyright owners or owners of copyright in the type of work concerned, and (ii) has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it, or (b) if there is no such body, notify the copyright owner (unless it is not reasonably possible to ascertain the name and address of the copyright owner). <p>Section 31F: Sections 31A to 31BB: interpretation and general</p> <p>(1) This section supplements sections 31A to 31BB and includes definitions.</p> <p>(2) “Disabled person” means a person who has a physical or mental impairment which prevents the person from enjoying a copyright work to the same degree as a person who does not have that impairment, and “disability” is to be construed accordingly.</p> <p>(3) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.</p> <p>(4) An “accessible copy” of a copyright work means a version of the work which enables the fuller enjoyment of the work by disabled persons.</p>

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	<p>(5) An accessible copy—</p> <p>(a) may include facilities for navigating around the version of the work, but</p> <p>(b) must not include any changes to the work which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.</p> <p>(6) “Authorised body” means—</p> <p>(a) an educational establishment, or</p> <p>(b) a body that is not conducted for profit.</p> <p>(7) The “supply” of a copy includes making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.</p> <p>(8) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of section 31A, 31B or 31BA, would not infringe copyright, that term is unenforceable.</p>
<p>(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;</p>	<p>Section 30: Criticism, review, quotation and news reporting</p> <p>(1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise) and provided that the work has been made available to the public.</p> <p>(1ZA) Copyright in a work is not infringed by the use of a quotation from the work (whether for criticism or review or otherwise) provided that—</p> <p>(a) the work has been made available to the public,</p> <p>(b) the use of the quotation is fair dealing with the work,</p> <p>(c) the extent of the quotation is no more than is required by the specific purpose for which it is used, and</p> <p>(d) the quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).</p> <p>(1A) For the purposes of subsections (1) and (1ZA) a work has been made available to the public if it has been made available by any means, including—</p> <p>(a) the issue of copies to the public;</p>

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	<p>(b) making the work available by means of an electronic retrieval system;</p> <p>(c) the rental or lending of copies of the work to the public;</p> <p>(d) the performance, exhibition, playing or showing of the work in public;</p> <p>(e) the communication to the public of the work, but in determining generally for the purposes of those subsections whether a work has been made available to the public no account shall be taken of any unauthorised act.</p> <p>(2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that (subject to subsection (3)) it is accompanied by a sufficient acknowledgement.</p> <p>(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.</p> <p>(4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of subsection (1ZA), would not infringe copyright, that term is unenforceable.</p> <p>Common law defence⁸³⁶</p> <p>Under common law, a general defence based on public interest exists which permits, in singular cases, the publication of non-published works (which may include private journals or tapped telephone conversations).</p>
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;	<p>Section 29, 29A, 30</p> <p>Not specifically implemented, although quotation is permitted for research and private study under ss 29 and 29A (quoted above) and criticism or review and reporting current events under s 30 (quoted above).⁸³⁷</p>

⁸³⁶ The information under this heading is taken directly from Guido Westkamp, 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: Report to the European Commission, DG Internal Market, February 2007, Part II, section XXVIII(B)(vii), p. 445.

⁸³⁷ See Guido Westkamp, 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, Part II, section XXVIII(B)(viii), p. 446.

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(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;	<p>Section 45-47 and 49-50</p> <p>Section 45: Parliamentary and judicial proceedings</p> <p>(1) Copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings.</p> <p>(2) Copyright is not infringed by anything done for the purposes of reporting such proceedings; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.</p> <p>Section 46: Royal Commissions and statutory inquiries</p> <p>(1) Copyright is not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry.</p> <p>(2) Copyright is not infringed by anything done for the purpose of reporting any such proceedings held in public; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.</p> <p>(3) Copyright in a work is not infringed by the issue to the public of copies of the report of a Royal Commission or statutory inquiry containing the work or material from it.</p> <p>(4) In this section—</p> <p>“Royal Commission” includes a Commission appointed for Northern Ireland by the Secretary of State in pursuance of the prerogative powers of Her Majesty delegated to him under section 7(2) of the Northern Ireland Constitution Act 1973; and</p> <p>“statutory inquiry” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment.</p> <p>Section 47: Material open to public inspection or on official register</p> <p>(1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.</p> <p>(2) Where material is open to public inspection pursuant to a statutory requirement, copyright in</p>

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	<p>the material is not infringed by an act to which subsection (3A) applies provided that—</p> <ul style="list-style-type: none"> (a) the act is done by or with the authority of the appropriate person, (b) the purpose of the act is— <ul style="list-style-type: none"> (i) to enable the material to be inspected at a more convenient time or place, or (ii) to otherwise facilitate the exercise of any right for the purpose of which the statutory requirement is imposed, and (c) in the case of the act specified in subsection (3A)(c), the material is not commercially available to the public by or with the authority of the copyright owner. <p>(3) Where material which contains information about matters of general scientific, technical, commercial or economic interest is on a statutory register or is open to public inspection pursuant to a statutory requirement, copyright in the material is not infringed by an act to which subsection (3A) applies provided that—</p> <ul style="list-style-type: none"> (a) the act is done by or with the authority of the appropriate person, (b) the purpose of the act is to disseminate that information, and (c) in the case of the act specified in subsection (3A)(c), the material is not commercially available to the public by or with the authority of the copyright owner. <p>(3A) This subsection applies to any of the following acts—</p> <ul style="list-style-type: none"> (a) copying the material, (b) issuing copies of the material to the public, and (c) making the material (or a copy of it) available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them. <p>(4) The Secretary of State may by order provide that subsection (1), (2) or (3) shall, in such cases as may be specified in the order, apply only to copies marked in such manner as may be so specified.</p> <p>(5) The Secretary of State may by order provide that subsections (1) to (3) apply, to such extent and with such modifications as may be specified in the order—</p>

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	<p>(a) to material made open to public inspection by—</p> <ul style="list-style-type: none"> (i) an international organisation specified in the order, or (ii) a person so specified who has functions in the United Kingdom under an international agreement to which the United Kingdom is party, or <p>(b) to a register maintained by an international organisation specified in the order,</p> <p>as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register.</p> <p>(6) In this section—</p> <p>“appropriate person” means the person required to make the material open to public inspection or, as the case may be, the person maintaining the register;</p> <p>“statutory register” means a register maintained in pursuance of a statutory requirement; and</p> <p>“statutory requirement” means a requirement imposed by provision made by or under an enactment.</p> <p>(7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.</p> <p>Section 49: Public records</p> <p>Material which is comprised in public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923, or in Welsh public records (as defined in the the Government of Wales Act 2006), which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringement of copyright.</p> <p>Section 50: Acts done under statutory authority</p> <p>(1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright.</p> <p>(2) Subsection (1) applies in relation to an enactment contained in Northern Ireland</p>

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	<p>legislation as it applies in relation to an Act of Parliament.</p> <p>(3) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.</p>
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;	Section 30 (quoted above) permits the use of speeches for the purpose of news reporting.
(g) use during religious celebrations or official celebrations organised by a public authority;	Section 72 (quoted above).
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;	<p>Section 62: Representation of certain artistic works on public display</p> <p>(1) This section applies to—</p> <p>(a) buildings, and</p> <p>(b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.</p> <p>(2) The copyright in such a work is not infringed by—</p> <p>(a) making a graphic work representing it,</p> <p>(b) making a photograph or film of it, or</p> <p>(c) making a broadcast of] a visual image of it.</p> <p>(3) Nor is the copyright infringed by the issue to the public of copies, or the communication to the public, of anything whose making was, by virtue of this section, not an infringement of the copyright.</p>
(i) incidental inclusion of a work or other subject-matter in other material;	<p>Section 31: Incidental inclusion of copyright material</p> <p>(1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast.</p> <p>(2) Nor is the copyright infringed by the issue to the public of copies, or the playing, showing or communication to the public, of anything whose making was, by virtue of subsection (1), not an infringement of the copyright.</p> <p>(3) A musical work, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, shall not be regarded as incidentally</p>

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	included in another work if it is deliberately included.
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;	<p>Section 63: Advertisement of sale of artistic work</p> <p>(1) It is not an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work.</p> <p>(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.</p> <p>For this purpose "dealt with" means sold or let for hire, offered or exposed for sale or hire, exhibited in public, distributed or communicated to the public.</p>
(k) use for the purpose of caricature, parody or pastiche;	<p>Section 30A: Caricature, parody or pastiche</p> <p>(1) Fair dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright in the work.</p> <p>(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.</p>
(l) use in connection with the demonstration or repair of equipment;	<p>Section 72(1B)</p> <p>Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public—</p> <p>(a) [omitted]</p> <p>(b) is necessary for the purposes of—</p> <ul style="list-style-type: none"> (i) repairing equipment for the reception of broadcasts; (ii) demonstrating that a repair to such equipment has been carried out; or (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;	Section 62 (quoted above).

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(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;	<p>Section 40B: Libraries and educational establishments etc: making works available through dedicated terminals</p> <p>(1) Copyright in a work is not infringed by an institution specified in subsection (2) communicating the work to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in subsection (3) are met.</p> <p>(2) The institutions are—</p> <ul style="list-style-type: none"> (a) a library, (b) an archive, (c) a museum, and (d) an educational establishment. <p>(3) The conditions are that the work or a copy of the work—</p> <ul style="list-style-type: none"> (a) has been lawfully acquired by the institution, (b) is communicated or made available to individual members of the public for the purposes of research or private study, and (c) is communicated or made available in compliance with any purchase or licensing terms to which the work is subject.
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.	—
5(4): Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.	—
5(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.	—

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<p>6(1): Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:</p> <p>(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;</p> <p>(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p>	<p>Paragraphs 1, 2 of Schedule ZA1</p> <p>1.(1) A relevant body does not infringe the copyright in a relevant work in its collection which is an orphan work by—</p> <p>(a) making the orphan work available to the public; or</p> <p>(b) reproducing the orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p> <p>(2) A relevant body does not infringe the rights conferred by Chapter 2 of Part 2 by doing either of the following in relation to a relevant work in its collection which is an orphan work—</p> <p>(a) making the orphan work available to the public; or</p> <p>(b) reproducing the orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.</p> <p>(3) A relevant body does not commit an offence under section 107 or 198 by using an orphan work in a way which, by virtue of this Schedule, does not infringe copyright or the rights conferred by Chapter 2 of Part 2.</p> <p>(4) This paragraph is subject to paragraph 6 (further requirements for use of orphan works).</p> <p>2.(1) In this Schedule “relevant body” means—</p> <p>(a) a publicly accessible library, educational establishment or museum,</p> <p>(b) an archive,</p> <p>(c) a film or audio heritage institution, or</p> <p>(d) a public service broadcasting organisation.</p> <p>(2) Subject to sub-paragraph (4), in this Schedule “relevant work” means a work to which sub-paragraph (3) applies which is—</p> <p>(a) a work in the form of a book, journal, newspaper, magazine or other writing which is contained in the collection of a publicly accessible library, educational establishment or museum, an archive or a film or audio heritage institution;</p> <p>(b) a cinematographic or audiovisual work or a sound recording which is contained in the collection of a publicly accessible library, educational establishment or museum, an archive or a film or audio heritage institution; or</p> <p>(c) a cinematographic or audiovisual work or a sound recording which was commissioned for</p>

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	<p>exclusive exploitation by, or produced by, one or more public service broadcasting organisations on or before 31 December 2002 and is contained in the archives of that organisation or one or more of those organisations.</p> <p>(3) This sub-paragraph applies to a work if—</p> <p>(a) it is protected by copyright or rights conferred by Chapter 2 of Part 2, and</p> <p>(b) the first publication or first broadcast of the work was in a member State.</p> <p>(4) wIn this Schedule “relevant work” also includes a work listed in any of paragraphs (a) to (c) of sub-paragraph (2) which—</p> <p>(a) is protected by copyright or rights conferred by Chapter 2 of Part 2, and</p> <p>(b) has never been published or broadcast, but</p> <p>(c) has been made publicly accessible by a relevant body with the consent of the rightholders,</p> <p>as long as it is reasonable to assume that the rightholders would not oppose the use of the work as mentioned in paragraph 1(1) or (2).</p> <p>(5) References in this Schedule to a relevant work include—</p> <p>(a) a work that is embedded or incorporated in, or constitutes an integral part of, a relevant work, and</p> <p>(b) a performance in relation to which rights are conferred by Chapter 2 of Part 2 and which is embedded or incorporated in, or constitutes an integral part of, a relevant work.</p> <p>(6) In this Schedule “rightholder” in relation to a relevant work means—</p> <p>(a) an owner of the copyright in the work,</p> <p>(b) a licensee under an exclusive licence in relation to the work,</p> <p>(c) a person with rights under Chapter 2 of Part 2 in relation to a performance recorded by the work, or</p> <p>(d) a licensee under an exclusive licence in relation to those rights.</p> <p>(7) In the application of sub-paragraph (6) to a performance by virtue of sub-paragraph (5), the reference in sub-paragraph (6)(c) to a performance recorded by the work is to be read as a reference to the performance.</p>

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	(8) In this paragraph “public service broadcasting organisation” includes a public service broadcaster within the meaning of section 264 of the Communications Act 2003.
6(2): The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the reservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.	<p>Paragraphs 1, 2, 6 of Schedule ZA1</p> <p>Paragraphs 1 and 2 are quoted immediately above.</p> <p>6. This Schedule does not prevent the use by a relevant body of an orphan work as mentioned in paragraph 1 from infringing copyright or the rights conferred by Chapter 2 of Part 2 if—</p> <p>(a) the revenues generated in the course of the use of the orphan work are used otherwise than for the exclusive purpose of covering the costs of the relevant body in digitising orphan works and making them available to the public;</p> <p>(b) the relevant body uses the orphan work in order to achieve aims which are not related to its public-interest mission (and the aims which are to be treated as related to its public interest mission include, in particular, the preservation of, the restoration of, and the provision of cultural and educational access to, works contained in its collection);</p> <p>(c) any rightholder who has been identified or located has, in relation to the rightholder’s rights, not authorised the relevant body’s use of the orphan work as mentioned in paragraph 1; or</p> <p>(d) the relevant body fails, in the course of the permitted use of the orphan work, to acknowledge the name of any author of or other rightholder in the work who has been identified.</p>
6(3): Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.	–
6(4): This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.	–
6(5): Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of	–

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this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.	

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As part of the mission to provide the Members and Committees of the European Parliament with new research tools in the area of comparative law, this document presents salient features of copyright law across the EU Member States and, more in particular, the *prima facie* corresponding provisions in national law relating to the exceptions and limitations contained in Directives 2001/29/EC and 2012/28/EU.

The document will be updated regularly, especially in its electronic version, to take account of new or modified provisions of national law in relation to – mandatory or optional – exceptions and limitations deriving from existing or future EU legislation.

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