

# Exceptions to copyright

## Should optional exceptions be made mandatory?

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- ▶ The Commission has announced a reform of the copyright rules in the EU before the end of 2015. It intends to reduce the differences between national copyright rules by way of harmonised exceptions. In this respect it is considering whether to make optional exceptions to copyright mandatory.
- ▶ Mandatory exceptions may improve the functioning of the internal market.
- ▶ Exceptions that are closely linked to the exercise of fundamental rights should be mandatory.
- ▶ To ensure that mandatory exceptions do not reduce the incentive to create new works, the „three-step test“ must be rigorously applied.

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## 1 Introduction

Copyright protects works of a creator which are his own intellectual creation. In principle, therefore, the use of works protected under copyright requires the authorisation of the rightholder. In certain cases, however, the use of protected works without authorisation is possible due to limitations and exceptions to copyright (hereinafter: exceptions). Since there is, as yet, no comprehensive EU copyright law, copyright varies from Member State to Member State. However, the EU has regulated specific aspects of copyright. The InfoSoc Directive<sup>1</sup> provides an exhaustive catalogue of exceptions to copyright. All but one of these exceptions are optional. It is therefore left largely up to the Member States to decide whether they want to implement an exception into their national copyright laws.

In the digital age, copyright-protected works are often made available and used cross-border especially via the internet. Service providers want to offer their services across the Member States just as consumers wish to access works from other Member States. Different exception rules in the various Member States can be an obstacle in cross-border situations.

The Commission has announced a reform of the current copyright rules. Since there is no realistic prospect of a unitary EU copyright title in the short term, the Commission intends to reduce the differences between the national copyright rules by way of harmonised exceptions. In this respect it is considering whether to make optional exceptions mandatory.

This **ceplnput** assesses the benefits and problems of making optional exceptions to copyright mandatory EU-wide. Section 2 provides an overview of the current copyright rules in the EU with a focus on the InfoSoc Directive. Section 3 looks at a possible reform of the existing exception rules which could include making optional exceptions mandatory. In section 4, the benefits and problems of mandatory exceptions are presented and assessed.

## 2 Current copyright rules in the EU

### 2.1 The InfoSoc Directive

Currently there is no uniform copyright law in the EU. Works in the EU are protected by the copyright laws of the 28 Member States. Hence, the scope of national copyright is limited to the territory of the Member State granting the right. International agreements on copyright, such as the Berne Convention for the Protection of Literary and Artistic Works, only set a minimum standard for the copyright laws in the EU. Furthermore, the EU has regulated only specific aspects of copyright by way of several EU-Directives, among which the InfoSoc Directive is of particular importance. It harmonises the following exclusive rights of the rightholders: the reproduction right, the right of communication to the public and the distribution right.<sup>2</sup> It also provides a catalogue of largely optional exceptions.<sup>3</sup> Exceptions limit the exclusive rights of the rightholders and favour some uses because an authorisation from the rightholder is not necessary. Further exceptions are established in the Database Directive (96/9/EC), the Rental and Lending Directive (2006/115/EC) and the Software Directive (2009/24/EC). As the InfoSoc Directive forms the focus of the current discussion, this **ceplnput** deals only with the exceptions laid down in the InfoSoc Directive.

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<sup>1</sup> Directive on the Harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC).

<sup>2</sup> Article 2 to 4 Directive 2001/29/EC.

<sup>3</sup> Article 5 Directive 2001/29/EC.

The InfoSoc Directive has three main aims. Firstly, it seeks to achieve proper functioning of the internal market<sup>4</sup>, specifically by way of the listed exceptions.<sup>5</sup> Secondly, it aims to adapt copyright to technical developments.<sup>6</sup> And thirdly, it aims to increase legal certainty and ensure a high level of protection for copyright and related rights.<sup>7</sup>

## 2.2 The exceptions under the InfoSoc Directive

The purpose of the exceptions is to maintain an appropriate balance between the interests of rightholders and the interests of users of the protected works.<sup>8</sup> Furthermore the InfoSoc Directive states that differences in the existing exceptions in the Member States have “direct negative effects on the functioning of the internal market”.<sup>9</sup> In order to avoid such negative effects, exceptions should be “defined more harmoniously”. Thus the impact of the respective exception on the internal market should determine the degree of harmonisation.<sup>10</sup>

The exceptions provided by the InfoSoc Directive take account of the different legal traditions of the Member States<sup>11</sup> by reflecting the national exceptions of the time when it was adopted, i.e. 2001.<sup>12</sup> The catalogue of exceptions provided by the InfoSoc Directive is exhaustive.<sup>13</sup> This means that the Member States must not introduce exceptions that are not included in the InfoSoc Directive.<sup>14</sup> However, all exceptions are optional, apart from one – the exception for temporary acts of reproduction which are a part of a technological process – that is mandatory (see Tab. 1). It is up to the Member States to decide which optional exceptions they implement. Furthermore, the formulation of certain exceptions is rather broad and leaves room for further flexibility in the Member States with regard to implementation. However, the InfoSoc Directive states that the Member States “should arrive at a coherent application” of the exceptions.<sup>15</sup>

Due to the wide discretion provided by the InfoSoc Directive, the Member States enjoy considerable leeway with regard to implementation of the exceptions. How the Member States use this discretion depends mainly on the cultural and legal traditions of the respective Member State. Legal traditions vary between the Member States due to different perceptions of copyright law. In some Member States, for example Germany and France, copyright is focused on the person of the creator. His creative output should be recognised and remunerated by copyright law (*droit d’auteur*). In other Member States, for example the United Kingdom, copyright is focused on the work and the economic investment is recognised.<sup>16</sup> Due to the differing perceptions of copyright law within the EU, the array of exceptions varies greatly among the Member States. Furthermore, the exceptions implemented at national level also vary between the Member States due to different interpretations of the terms used in the InfoSoc Directive.<sup>17</sup>

<sup>4</sup> Recitals 1 to 2 Directive 2001/29/EC.

<sup>5</sup> Recital 32 Directive 2001/29/EC.

<sup>6</sup> Recitals 5 to 7 Directive 2001/29/EC.

<sup>7</sup> Recitals 4 and 9 Directive 2001/29/EC.

<sup>8</sup> Cf. Recital 31 Directive 2001/29/EC, cf. also Lettl, T. (2014), *Urheberrecht*, § 6 Tz. 2.

<sup>9</sup> Recital 31 Directive 2001/29/EC.

<sup>10</sup> Recital 31 Directive 2001/29/EC.

<sup>11</sup> Recital 32 Directive 2001/29/EC.

<sup>12</sup> Cf. Stieper, M. (2009), *Rechtfertigung, Rechtsnatur und Disponibilität der Schranken des Urheberrechts*, p. 10.

<sup>13</sup> Recital 32 Directive 2001/29/EC.

<sup>14</sup> Subject to certain conditions, Member States can maintain exceptions of minor importance that already existed when the Directive came into force, cf. Article 5 (3) (o) Directive 2001/29/EC.

<sup>15</sup> Recital 32 Directive 2001/29/EC.

<sup>16</sup> Cf. Schack, H. (2013), *Urheber- und Urhebervertragsrecht*, p. 12.

<sup>17</sup> Cf. Stieper, M. (2009), *Rechtfertigung, Rechtsnatur und Disponibilität der Schranken des Urheberrechts*, p. 10.

However, there is a limitation on the leeway enjoyed by the Member States with regard to implementation: all exceptions must fulfil the conditions of the “three-step test”. This test was first laid down in Article 9 (2) of the Berne Convention for the Protection of Literary and Artistic Works and was incorporated into the InfoSoc Directive. It prescribes **firstly** that exceptions shall only be applied in certain special cases which **secondly** do not conflict with a normal exploitation of the work or other subject-matter and **thirdly** do not unreasonably prejudice the legitimate interests of the rightholder.<sup>18</sup> The three-step test ensures that the exclusive rights of rightholders are not undermined.<sup>19</sup>

Tab. 1 provides an overview of the permitted exceptions included in the InfoSoc Directive.

**Tab. 1: List of exceptions of the InfoSoc Directive<sup>20</sup>**

<b>Mandatory exception to the reproduction right [Article 5 (1)]</b>
Temporary acts of reproduction which are a part of a technological process
<b>Optional exceptions to the reproduction right [Article 5 (2)]</b>
Reproductions on paper or any similar medium
Reproductions made by a natural person for private use
Reproductions made by publicly accessible libraries, educational establishments, museums or archives
Archival preservation of ephemeral recordings of works made by broadcasting organisations
Reproductions of broadcasts made by social institutions
<b>Optional exceptions to the reproduction right and the right of communication to the public [Article 5 (3)]</b>
Illustration for teaching or scientific research
Uses for the benefit of people with a disability
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 the use of works in connection with the reporting of current events
Quotations for purposes such as criticism or review
Use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings
Use of political speeches and extracts of public lectures
Use during religious celebrations or official celebrations organized by a public authority
Use of works such as works of architecture or sculpture made to be located permanently in public places (freedom of panorama)
Incidental inclusion of a work in other material

<sup>18</sup> Article 5 (5) Directive 2001/29/EC.

<sup>19</sup> Cf. Lettl, T. (2014), Urheberrecht, § 6 Tz. 1.

<sup>20</sup> Where Member States may provide for an exception to the right of reproduction [Article 5 (2) and (3) Directive 2001/29/EC] they may provide similarly for an exception to the right of distribution [Article 4 Directive 2001/29/EC] to the extent justified by the purpose of the authorised act of reproduction, cf. Article 5 (4) Directive 2001/29/EC.

Use for the purpose of advertising the public exhibition or sale of artistic works
Use for the purpose of caricature, parody or pastiche
Use in connection with the demonstration or repair of equipment
Use of an artistic work in the form of a building or a drawing plan or plan of a building for the purposes of reconstructing the building
Use for the purpose of research or private study
Use in certain other cases of minor importance where exceptions already exist under national law

### 3 Possible reform of the existing EU exception rules

A reform of the EU copyright rules has been the subject of recent discussions in the EU. The Commission wants to adapt the existing copyright rules to meet the requirements of the digital age. The copyright reform will also take account of changes in consumer behaviour and the cultural diversity of the EU.<sup>21</sup> In its work programme for 2015, the Commission announced a proposal for the “modernisation” of copyright rules.<sup>22</sup> The legislative proposals are expected before the end of 2015.<sup>23</sup> The Commissioner for Digital Economy and Society, Günther Oettinger, wants the reform to respect a balance between the interests of rightholders and consumers.<sup>24</sup>

#### 3.1 Unitary EU copyright title?

A unitary EU copyright title would replace national copyright laws and could consist of a uniform framework for rights and exceptions to copyright as well as for enforcement.<sup>25</sup> The advantage of such a title is that it would give rise to uniform EU-wide copyright protection. This could increase legal clarity for creators, companies and consumers but national features would no longer be taken into account. In view of the significant differences which currently exist between national copyright laws, the agreement of a copyright title hardly seems like a realistic prospect in the short term.

The Commission appears to take the same view. In its Digital Single Market Strategy the Commission announced that it will propose a reform of the copyright regime to “reduce” the differences between national copyright laws.<sup>26</sup> According to this document, the Commission intends to improve the cross-border use of content for specific purposes by way of “harmonised exceptions” rather than applying uniform rules.<sup>27</sup>

<sup>21</sup> Cf. Mission Letter by Jean-Claude Juncker, President of the European Commission to Günther Oettinger, Commissioner for Digital Economy and Society, 1 November 2014, p. 4.

<sup>22</sup> Cf. European Commission (2014), Commission Work Programme 2015 A new start, COM(2014) 910, Annex I, p. 2.

<sup>23</sup> Cf. European Commission (2015), A Digital Single Market Strategy for Europe, COM(2015) 192, p. 8.

<sup>24</sup> Cf. Oettinger via Twitter, 12 January 2015, available at <https://twitter.com/goettingereu/status/554660381223059456>.

<sup>25</sup> Cf. European Commission (2013) Public Consultation on the review of the EU copyright rules, p. 36.

<sup>26</sup> Cf. European Commission (2015), A Digital Single Market Strategy for Europe, COM(2015) 192, p. 8.

<sup>27</sup> Cf. European Commission (2015), A Digital Single Market Strategy for Europe, COM(2015) 192, p. 8.

## 3.2 Reform of the exception rules

There have been intense discussions in the EU regarding the reform of exceptions to copyright. As part of the copyright review process, the Commission launched a public consultation dealing with the question of whether the optional exceptions give rise to problems.<sup>28</sup> In the consultation, the Commission also raised the question of whether some or all of the exceptions should be made mandatory.<sup>29</sup> Furthermore, a draft report by the European Parliament called on the Commission to make all the exceptions contained in the InfoSoc Directive mandatory.<sup>30</sup> Finally, in their latest communication concerning the Digital Single Market Strategy, the Commission announced the harmonisation of exceptions as part of copyright reform.<sup>31</sup> In this respect it is considering whether to make optional exceptions mandatory.

## 4 Benefits and problems of making optional exceptions mandatory

### 4.1 Impact on the internal market

#### (1) Problem definition

One of the objectives of the InfoSoc Directive is to achieve a proper functioning of the internal market and it is the exceptions that specifically aim to ensure this.<sup>32</sup> As already laid down in the InfoSoc Directive, differences in the exception rules of the Member States can have negative effects on the functioning of the internal market.<sup>33</sup> Some stakeholders argue that different exceptions hinder cross-border trade between Member States.<sup>34</sup> For example, the “freedom of panorama”<sup>35</sup> exception allows pictures to be taken of buildings and the pictures to be distributed.<sup>36</sup> In Member States that have not introduced this exception, distribution without authorisation is illegal. The cost of acquiring authorisation could prevent companies from offering photographs in these Member States.

In addition, determining which exceptions apply in another Member State is a costly process. These costs may prevent companies from offering their services or products in other Member States even if it is legal.

#### (2) cepAssessment

Not all exceptions have a significant impact on the internal market.<sup>37</sup> The exception for reproductions of broadcasts made by social institutions<sup>38</sup> such as prisons<sup>39</sup>, for example, has little or

<sup>28</sup> Cf. Public Consultation on the review of the EU copyright rules, question 21, p. 17. The Consultation took place between December 2013 and March 2014.

<sup>29</sup> Cf. Public Consultation on the review of the EU copyright rules, question 22, p. 17.

<sup>30</sup> Cf. Draft report on the implementation 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 (2014/2256(INI)) of 15 January 2015, p. 6.

<sup>31</sup> Cf. European Commission (2015), A Digital Single Market Strategy for Europe, COM(2015) 192, p. 8.

<sup>32</sup> Cf. Recitals 1, 2 and 32 Directive 2001/29/EC.

<sup>33</sup> Recital 31 Directive 2001/29/EC.

<sup>34</sup> Cf. Commission (2014), Report on the responses to the public Consultation on the Review of the EU Copyright Rules, p. 29.

<sup>35</sup> Article 5 (3) (h) Directive 2001/29/EC.

<sup>36</sup> Cf. Decision “Hundertwasser”, Bundesgerichtshof I ZR 192/00 of 5 June 2003.

<sup>37</sup> Cf. Recital 31 Directive 2001/29/EC; Commission (2013), Public Consultation on the review of the EU copyright rules, p. 16.

<sup>38</sup> Article 5 (2) (e) Directive 2001/29/EC.

<sup>39</sup> Cf. Fischer, O. (2014), Perspektiven für ein Europäisches Urheberrecht, p. 376.

even no impact.<sup>40</sup> Exceptions without impact on the internal market should not be made mandatory. This is supported by the fact that mandatory exceptions without internal market impact cannot be based on the legislative competence for the internal market (Article 114 TFEU). The legal competence to protect intellectual property (Article 118 TFEU) also requires a reference to the functioning of the internal market. Any further basis for legislative competence is not apparent.<sup>41</sup> The existing optional exceptions in the InfoSoc Directive that have no impact on the internal market can be interpreted as a clarification of the fact that it is the Member State that is competent for the introduction of these exceptions.<sup>42</sup>

There are other exceptions that may restrict the internal market. This applies for example to the exception applicable to illustrations for teaching purposes.<sup>43</sup> If this exception does not apply in all Member States, the provision of cross-border e-learning platforms that include protected illustrations will be restricted or entail high costs for obtaining authorizations. With regard to these services or products that are currently restricted, the internal market will be strengthened as a result of mandatory exceptions. However, even where there are mandatory exceptions, restriction of the internal market may arise from differences in the implementation of exceptions.

Other obstacles to the internal market in connection with copyright remain in place, for example the problem of multi-territorial licensing of copyrights. Many services – especially internet services – are not offered EU-wide because service providers need an individual license for every Member State. Therefore service providers are discouraged from making cross-border offers and have to block users from other countries (geo-blocking), such as e.g. where access to videos on internet platforms is denied. Such restriction of the internal market cannot be eliminated by way of mandatory exceptions.

To sum up, making certain exceptions mandatory may improve the functioning of the internal market but it does not address all obstacles.

## 4.2 Balance between interests of rightholders and users

### (1) Problem definition

One of the purposes of exceptions is to maintain an appropriate balance between the interests of rightholders and users.<sup>44</sup> It is often argued that these interests are contradictory. The interests of rightholders include the protection of exclusive rights and a fair remuneration when the protected works are used by others. The interests of users include access to protected works, i.e. access to knowledge and culture. The users' interests are derived in particular from two arguments.

Firstly, users argue that certain exceptions have to be mandatory because otherwise the exercise of their fundamental rights as laid down in the Charter of Fundamental Rights of the EU is restricted.<sup>45</sup> Users claim that this is especially true in the case of the exceptions for reporting of current events<sup>46</sup>, quotation<sup>47</sup> and caricature, parody or pastiche<sup>48</sup> that are linked to fundamental rights such as the

<sup>40</sup> Cf. Fischer, O. (2014), Perspektiven für ein Europäisches Urheberrecht, p. 371.

<sup>41</sup> Cf. Fischer, O. (2014), Perspektiven für ein Europäisches Urheberrecht, p. 371.

<sup>42</sup> Cf. Fischer, O. (2014), Perspektiven für ein Europäisches Urheberrecht, p. 370, 378.

<sup>43</sup> Article 5 (3) (a) Directive 2001/29/EC.

<sup>44</sup> Cf. Recital 31 Directive 2001/29/EC.

<sup>45</sup> Cf. European Commission (2014), Report on the responses to the public Consultation on the Review of the EU Copyright Rules, p. 30.

<sup>46</sup> Article 5 (3) (c) Directive 2001/29/EC.

<sup>47</sup> Article 5 (3) (d) Directive 2001/29/EC.

<sup>48</sup> Article 5 (3) (k) Directive 2001/29/EC.



freedom of expression and information<sup>49</sup>. It is argued that the exercise of such fundamental rights is restricted if Member States have not introduced the related exceptions.

The second argument is that an optional exception should be made mandatory if there is an EU-wide public interest. Such public interest can be assumed if “key policy documents of the EU” promote that interest or by the fact that almost all Member States have that exception already in place.<sup>50</sup> On the basis of this argument, there have been discussions about making the exception of reproductions made by publicly accessible libraries mandatory.<sup>51</sup>

## (2) cepAssessment

It is doubtful that the interests of rightholders and users are always contradictory. Users are interested in the availability of a great variety of works, which is only possible if the rightholders receive appropriate remuneration. For the same reason, the frequently heard request from users to have free access to protected works without remuneration for the creator is short-sighted. The assignment of property rights to the creator of an intellectual work – and their enforcement – is no different from assigning the property rights of a product to the manufacturer. Otherwise neither creators of intellectual work nor manufacturers of consumer products would have any incentive to create or produce.

Rightholders have an interest in the dissemination of their works and therefore support access to their works. Exceptions that help to disseminate their work – without jeopardizing normal exploitation as laid down in the three-step test<sup>52</sup> – are therefore in the interest not only of the users but also of the rightholders.

However, there can be a conflict of interest:

**Fundamental rights:** A mandatory exception may, on the one hand, guarantee the exercise of a fundamental right of the user but can, on the other hand, have a negative impact on the remuneration of the rightholder. For example, the exception to freely use a photograph of a politician for the purpose of parody may limit the remuneration of the rightholder. Nonetheless exceptions that are closely linked to the exercise of fundamental rights should apply in all Member States because this ensures that everyone is able to exercise the fundamental rights guaranteed by the Charter of Fundamental Rights of the EU.

**EU-wide public interest:** The notions of “public interest” and “key policy documents” are very vague. Given this vagueness, limitations on the exclusive rights of the rightholder are problematic. Unless uniformly accepted definitions are established, making the optional exception mandatory must therefore be rejected. More precisely, EU-wide public interest should only be assumed if almost all Member States have already implemented an exception explicitly for this reason. Only if this is the case can EU-wide public interest justify mandatory exceptions.

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<sup>49</sup> Article 11 Charter of Fundamental Rights of the EU.

<sup>50</sup> Cf. De Wolf & Partners, Study on the application of Directive 2001/29/EC on copyright and related rights in the information society, p. 397.

<sup>51</sup> Article 5 (2) (c) Directive 2001/29/EC.

<sup>52</sup> Article 5 (5) Directive 2001/29/EC, cf. also section 2.2.

## 4.3 Legal certainty, legal clarity and user-friendliness

### (1) Problem definition

Optional exceptions lead to different exception rules across the Member States. This may cause problems. Consumers in particular sometimes argue that different exception rules across Member States are difficult to understand and that they do not know which ones apply to them.<sup>53</sup> It is often argued that mandatory exceptions may reduce this lack of transparency and improve “legal certainty”<sup>54</sup> and “legal clarity” as well as “user-friendliness”.<sup>55</sup>

### (2) cepAssessment

Making optional exceptions mandatory promotes the harmonisation of exceptions in the Member States. However, this will not improve legal certainty. Legal uncertainty only arises if two conditions are fulfilled: (1) consumers and companies do not know if the use of protected work – for example user generated content – is legal and (2) this is the case because the law does not contain any rules in this regard or is inconsistent. This problem cannot be solved by mandatory exceptions; new or at least updated exceptions are required.

Problems can also arise, however, if creators, companies and consumers are not sure what exception rules apply in other Member States. This problem is not a question of legal certainty but one of legal clarity and user-friendliness. A lack of legal clarity and user-friendliness can be an obstacle for the internal market because creators, consumers and companies incur costs in order to investigate the legal situation in other Member States (see section 4.1). Mandatory exceptions may help to improve legal clarity and user-friendliness.

## 4.4 Cultural diversity

### (1) Problem definition

The introduction of exceptions is an expression of the cultural and legal identity of a Member State.<sup>56</sup> In some Member States, the number of exceptions will increase if optional exceptions are made mandatory. It is argued that such changes in national law negatively affect the acceptance of copyright in the society.

### (2) cepAssessment

As consumers will benefit from mandatory exceptions there will be no negative effect on the acceptance of copyright from this side. In contrast, rightholders might oppose mandatory exceptions fearing that additional mandatory exceptions could reduce their remuneration and hence their incentive to create new works. To avoid this, the three-step test must be rigorously applied.

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<sup>53</sup> Cf. European Commission (2014), Report on the responses to the public Consultation on the Review of the EU Copyright Rules, p. 29.

<sup>54</sup> Cf. European Commission (2014), Report on the responses to the public Consultation on the Review of the EU Copyright Rules, p. 33 et seq.

<sup>55</sup> Draft report on the implementation 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 (2014/2256(INI)) of 15 January 2015, p. 8 et seq.

<sup>56</sup> Cf. Fischer, O. (2014), Perspektiven für ein Europäisches Urheberrecht, p. 369.

## 4.5 Conclusion

Making optional exceptions mandatory may improve the functioning of the internal market. However, not all exceptions have an impact on the functioning of the internal market. Exceptions without impact on the internal market should not therefore be made mandatory.

When making optional exceptions mandatory, the Commission should also limit the Member States' scope for discretion when deciding how mandatory exceptions are implemented into national copyright law; this would improve the functioning of the internal market. Nevertheless, mandatory exceptions are no cure-all; other obstacles to the internal market relating to copyright remain in place, for example the problem of multi-territorial licensing of copyrights.

Exceptions that are closely linked to fundamental rights should be made mandatory for all Member States. The notion of public interest is very vague; such an interest does not therefore justify mandatory exceptions unless almost all Member States have already implemented an exception for this reason.

Legal uncertainty cannot be remedied by mandatory exceptions. This requires new or at least updated exceptions. However, mandatory exceptions may contribute to legal clarity and user-friendliness as it will reduce costs incurred by consumers and companies to investigate the legal situation in other Member States.

To ensure that mandatory exceptions do not reduce the incentive to create new works, the three-step test must be rigorously applied.

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