

CEN/ISSS Learning Technology Workshop

Workplan Project

Draft Workplan Structure

Draft of the documentation 'LEGAL ISSUES'
by Arnold Vahrenwald Prof. Ph.D.

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LEGAL ISSUES

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1. INTRODUCTION

The scope of the term learning technologies is very broad. The term is applicable to technologies used for basic education and higher education, but also to technologies employed in university education and scientific research. Additionally, it comprises continuing education and tools for individual studies. The means employed for learning technologies relate to telecommunications, broadcasting, new interactive media, software and hardware used for computers. The term 'learning technologies' refers to technologies which may have 'dual use' applications. However, insofar as they are used within the field of education, it may be justified to apply special rules which facilitate their employment at preferential conditions.

A review of the EU's research and development in technologies for education and training from 1994 to 1998 was provided in September 1998 (see http://www2.echo.lu/telematics/education/en/news/intermediate_report.html) The report contains on pages 17 to 26 propositions concerning priorities for future research. With regard to accompanying measures also pre-standardization activities were being dealt with (at 24):

"The ability to share, re-use and integrate units of learning material as well as education tools is the core requirement of the educational developers. The success of the Web clearly demonstrates that standards offering even just a basic level of interoperability trigger an impressive level of development. It is worth mentioning that the standardization process today goes well beyond selecting the best solution 'off the shelf' and becomes integral part of the research process. For example MPEG researchers have not 'selected' a compression scheme but invented a new technology. It becomes clear that RTD activities aimed at a large market should incorporate significant participation to standardization activities. In parallel to the R&D activities, projects should also participate in study groups that seek to develop standards and guidelines for interoperable educational delivery components. The complexity of the education requirements, the lack of common terminology, the variety of learning paradigm and the loose organisation of the educational developers' community suggest that the standardization process might be slow. Nevertheless the lessons learnt with the Web demonstrate that even simple targeted standards should prove highly valuable for communities who share similar learning paradigms."

Among the programmes presently pursued by the EU Commission is the European Cooperation on School Education, COMENIUS, promoting the use of information and communication technologies in the field of school education (see <http://europa.eu.int/en/comm/dg22/socrates/comenius/site/new-tec.html> with references to the Socrates programme and the Fifth Research and Technology Development Framework programme).

1.1. GENERAL OBSERVATIONS

Which learning technologies can be used within which legal framework? A preliminary condition is the need to maintain an equal appeal of science, technology and design employed by the learning technology.

Elisabeth CÖLFEN, Heiko KAUTZOR: "Multimediale Lernpäckchen zur Linguistik", *International Journal for Language Data Processing*, 1998/55-67 at 56: "According to Bonsiepe an innovation which does not consider in its conception equally the three sectors of science, technology and design, will remain without social recognition or acceptance. Technology leads to technocracy, science to academism and mere design to formal aesthetics."

The functional structure of learning technologies must be borne in mind.

Ann de VAINÉY: "Will Educators Ever Unmask that Determiner, Technology?", *Educational Policy*, 1998/568-585 at 577: "Technology-as-Progress. Technology and ideas of progress have been inextricably yoked in this modern narrative, both in and outside of schools. The fusion of separate concepts, technology and progress, into a unified myth had a particular genesis in the United States. Although the myth has its origin in Western industrial revolution, its articulation in America depended on the acceptance of doctrines emerging from utilitarianism, empiricism, and social efficiency in the earlier part of this century ... Particular ways of designing software or particular classroom practices with computers are simply the result of conversations about machines by designers, producers, promoters, buyers, educators, and parents. In these conversations, the dominant discourse, technology-as-progress, usually emerges. These are the larger sites of power – the conversations at Apple, Microsoft, and Broderbund as well as the discourses of university regents setting policy, of education faculty and administrators creating new curriculum around machines, of educational district administrators buying machines and wiring their buildings before the appearance of substantive electronic curricula, and of

publishers establishing a spate of new semi-scholarly computer journals ... Other sites of power exist solely to promote technology in the classroom and to provide examples of correct usage" ...

There is an abundance of possible technologies to which the term 'learning technologies' may be applied.

Valerio GREMENTIERI: "Innovation Technology and Higher Education", Higher Education in Europe, (1998) vol. XXIII, no. 2, 169-175 at 174: "Communications strategies – especially those relating to teaching and learning – are changing profoundly in relation to the availability of new types of electronic knowledge. A change in the means of accessing knowledge inevitably brings with it a qualitative change in the knowledge itself, at least at the level of general knowledge. ... Mass media producers have already started to design general tools that can be used with electronic means but are difficult to adapt to traditional means: on the one hand, there are great works, but on the other, a collection of images, varieties of knowledge, and sounds that can be used through the new electronic multimedia and hypermedia instruments to plan new training programmes."...

1.2. LEARNING TECHNOLOGIES AT SCHOOLS AND UNIVERSAL SERVICE

At the basis of learning technologies are those technologies which belong to universal service telecommunications and which thus benefit from support by society.

In the US the policy which concerned universal service developed from the need of interconnection of subscribers of different telephone companies. It was contained in the practice that the surplus generated by long distance calls should pay for local service, that every home should be connected to the essential service of telecommunications. The convergence of telecommunications and information technologies in the sector of education has created a more complicated infrastructure for access. Card based access has become a reality and different systems were developed concerning the use of debit cards, card based access in wireless services, credit and charge cards leading to a broader societal application of cards. Thus the concept of universal service was spread to cover telecommunications services with a distinct social task. Can the concept of universal service be applied to the educational environment? Should the use of means of telecommunication benefit from lower prices provided that it is made for educational services? It may be beneficial to society to apply lower fees for connection in cases of educational use, provided that the service can count with economies of scale, that is to say with a large number of subscribers.

"A growing number of colleges and universities use debit cards for tuition payments, long-distance phone calls ... The University of Michigan at Ann Arbor has about 46,000 magnetic stripe cards in circulation which can be used for identification, building access, ATM transactions, campus events, and purchases at about sixty-five merchant locations. The university's card program is part of an alliance with First of America Bank. Only those with First of America accounts can use the cards for ATM and merchant transactions; in return, the bank picked up the cost of the merchant terminals, transaction network, and transaction processing. Most of these existing debit cards have a limited, "closed-loop" functionality. They are meant for a single type of transaction, like telephone calls or a transit pass, or they can only be used at locations within a set geographical boundary, such as a specific university or state." (**Milton MUELLER: "Telecommunications Access in the Age of Electronic Commerce: Toward a Third-Generation Universal Service Policy", Federal Communications Law Journal, April 1997, vol. 49, No. 3, 655-673 at 667).**

In the US schools and libraries may benefit from discounts on telecommunications services, Internet access and internal connections. The US Federal Communications Commission has established a certification form which has to be filled in by the applicant institution (see <http://www.ed.gov/Technology/erateforms/inst470ba.html>).

The general conditions for the use of learning technologies at schools are established by policy decisions. Such decisions are made taking into account of the existing infrastructure and possibilities of funding, often at the national, regional or local level.

Henry Jay BECKER: "Running to Catch a Moving Train: Schools and Information Technologies", Theory into Practice, 1998/20-30 at 24: "Interpretations and Policy Implications. Educational technology policy is made at several levels: a) policies guiding investment by public bodies and private developers, b) policies made by schools and districts to guide their capital acquisitions and consumption expenditures, and c) implementation policies made within schools that guide allocation decisions regarding the spatial locations, instructional purposes, and benefiting recipients of the acquired technology. ... The data elements that appear to have the greatest implications for policy are a) the age mix of the technology present in

schools, b) the present density of particular technologies versus the density required for effective implementation, c) allocations of student-use technologies between shared spaces (labs) and individual classrooms, d) general patterns of instructional use of computers and video, and d) support that teachers require for using technology."

In fact, there is no unanimous definition of the term 'universal service'. The European Communities and their Member States added **Additional Comments on the Fourth Protocol to the General Agreement on Trade in Services (GATS)** according to which the term 'universal service' may be defined by Member States (EU O.J. L 347/45-58 of 18/12/1997).

No. 3 of the Additional Comments states:

"3. UNIVERSAL SERVICE. Any Member State has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member."

The EU Directive 97/51/EC which adapted Directives 90/387/EEC and 92/44/EEC to a competitive environment in telecommunications (EU O.J. L 295/23-34 of 29/10/97) refers in Recital 4 to the necessity that "the concept of universal service must evolve to keep pace with advances in technology, market development and changes in user demand", and it stresses that "universal service will have a role to play in strengthening social and economic cohesion,"... It also indicates that "where justified, the net cost of universal service obligations may be shared by market players in accordance with Community law".

In Recital 5 the Directive refers to the establishment of standards and specifications: The Directive recognises the necessity that "the basic principles concerning access to and the use of public telecommunications networks and services, set out within the open network provision framework, must be adapted to ensure Europe-wide services in a liberalised environment, in order to benefit users and organisations providing public telecommunications networks and/or services". At the same time the Directive considers that "a voluntary approach based on common technical standards and specifications, with consultations undertaken where necessary to satisfy user needs, is appropriate in a liberalised environment", but it stresses that "the provision of universal service and the availability of a minimum set of services must be guaranteed to all users in the Community in accordance with the Community measures applicable".

Article 2(4) of the Directive defines 'universal service' as meaning "a defined minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price".

1.3. LEARNING TECHNOLOGIES AT UNIVERSITIES

The extent to which learning technologies should be employed for higher education is controversial.

Paul Michael PRIVATEER: "Academic Technology and the Future of Higher Education", *The Journal of Higher Education* (1999) 60-79 at 70: "To be truly a revolutionary force in higher education, academic technologies should:

- be deployed in new kinds of academic environments driven by a real understanding of change,
- reflect an understanding of the underlying catalysis for this change, and
- be driven by an understanding of how new digital technologies require radically new and different notions of pedagogy."

Which are the possibilities of learning technologies in a university environment?

"Are Universities prepared and willing to support the champions of innovative opportunities for learning?" (**Editorial: 'University-supported learning', *Journal of Computer Assisted Learning* (1997) 13/73**). Also: "...current thinking suggests that knowledge only takes on meaning in context; that what we know is not based on a purely internal map of the world but is intrinsically linked with the outside world, artefacts (including other people), culture and history. These perspectives demand that a fundamentally new look at the function of universities in their support of learning is required and it should be recognised that the context of knowledge is as important as the content. Communication technologies offer various opportunities:

- campus network use to allow traditional students better access to resources (including tutors)

- widening the accessibility of existing courses to off-campus students (including those in other countries), but perhaps more fundamentally:
- providing a focus for those seeking continuing learning to set the agenda for 'learning' in such a way that learning becomes predominantly a process of knowledge exchange with peers (tutors providing process rather than content contributions)."

The policy decisions concerning higher education are made at national levels. Accordingly, international cooperation is a precondition for the establishment of supra-national or European standards.

Leo van AUDENHOVE: "Development Cooperation and Linkages in Higher Education: Key Issues Concerning Policy and Organisation", *International Review of Education* 1998/531-548 at 539: "The organisation of development cooperation in higher education at the national level differs considerably from country to country. Support for higher education in developing countries can at the administrative level be managed by a donor agency, an intermediate institution or by an arrangement between these institutions. //542// In the programming process, partner institutions are matched, fields for cooperation identified and indicative project plans formulated."...

1.4. LEARNING TECHNOLOGIES, COSTS AND COMPETITION

The use of learning technologies takes place in a competitive environment of which many Europeans are not aware, because here education is often considered as a public service.

P. HOSIE and T. MAZZAROL: "Using Technology for the Competitive Delivery of Education Services", *Journal of Computer Assisted Learning* (1999) 15/118-128 at 118: "The use of information technology to offer education programs over long distances is becoming an increasing necessity as government policy in traditional markets changes. //119// Fees students currently pay for traditional offshore education can be structured to be competitive, compared to the costs of providing similar learning experiences through virtual modes of delivery. Technical infrastructure costs are small in comparison to those incurred for education traditionally offered by foreign institutions. There is every indication that the impact of information exchange on the Internet will rapidly translate into a viable international distance education service.//125// The findings of the multi-country study outlined in this paper suggest that institutions seeking to develop a competitive advantage in the field of international education need to focus upon at least five key factors:

- developing a reputation for quality,
- gaining a high market profile,
- making effective use of information technology,
- offering a broad range of courses, and
- having adequate financial resources."

The global implications of learning technologies at universities should be borne in mind.

John T.E. RICHARDSON, Alistair MORGAN and Alan WOODLEY: "Approaches to Studying in Distance Education Higher Education", *The Journal of Higher Education* (1999) 37/23-55 at 23: "There is currently a crisis affecting higher education on a global scale: there are increasing numbers of people seeking access to higher education, and yet the vast majority of industrialised and developing countries find it hard to sustain even the current level of provision in economic terms. This predicament is encouraging an increasing interest in the delivery of higher education through distance-teaching methods, which in certain cases can be more cost-effective than traditional, campus-based forms of higher education."

The assessment of costs of learning technologies should include the beneficial effects.

Otto PETROVIC, Norbert KAILER, Josef SCHEFF: "Lernformen, Einsatzdefizite und –potentiale in Unternehmen und Universitäten", *Grundlagen der Weiterbildung*, 1999/62-64 at 62: "The increasing intensity of knowledge of our professional world, the decreasing period of the value of knowledge and the increasing pressure of efficiency increase the demand which is made to educational work at undertakings and universities. By means of the use of new technologies based on computers it is expected to achieve an improvement of the results of learning and the process of learning and a reduction of the time and cost factors. However, the experience made up to now shows that these can only seldomly be used. //63// Expected Impact of the Use of Technologies. Taking into account of the expected impact it is

surprising that both undertakings and universities expect an increase of the costs for the achievement of the aims of teaching, even if a reduction of the time and an improvement of the teaching process and an improvement of the results of the teaching is expected. The questioned persons obviously considered as the costs the purchase and operation of the technology. A unitary assessment of the 'costs for the achievement of the aims of training' should, however, consider the savings through the reduced time and the improvement of the learning process and the learning results."

1.5. THE NEGATIVE EXAMPLE: THE ISO-ILL STANDARD AND ITS LACK OF EFFICIENCY CONCERNING COPYRIGHT

The importance of the observance of legal issues in the case of standardization is made evident in the subsequent article in which the author argues that the lack of regard of copyright issues caused the failure of the standard of the ISA Interlibrary Loan Protocol over TCP/IP.

Ahmed PATEL: "Managing Automated Electronic Document Delivery Using the ISA Interlibrary Loan Protocol over TCP/IP", *Computer Standards & Interfaces*, 1998/77-87

Abstract: The paper describes the ISO-ILL standard and issues involved in implementing the ILL protocol in a connection-oriented mode. The functional profile of ILL Protocol Data Units and how to carry them over a TCP/IP network are also discussed. This is then followed by a discussion on how an ILL server may be used to manage automated delivery of electronic items. Some key issues which are lacking in the ILL standard, such as copyright tracking, tariffing and management of stream delivery services are mentioned. A critical assessment of the ILL protocol is finally presented.

at 77: "ISO Interlibrary Loan (ILL) is a standard defining a protocol which allows parties to communicate and manage document delivery services. ... (at 86:) Items for Further Research. The issue of copyright control in an electronic document delivery environment is a major problem and one which requires urgent attention. There are many open questions concerning how to control distribution of copyright electronic items. Traditionally, copyright control of journal material was carried out by library staff but once electronic versions of books and journals are made available it is a trivial matter to make the material available to the whole world. One solution to the problem for document tracking for the purposes of copyright control may come from the technique of digital fingerprinting. The recent proposals (R. Goodlatte: The Security and Freedom Through Encryption Act of 1997, <http://www.house.gov/goodlatte/encryption.htm>) to ease the restrictions on the use of strong cryptographic methods such as DES (Data Encryption Standard, ANSI X3.92, American National Standards for Data Encryption Algorithm, USA, 1983), and RSA (Rivest-Shamir-Adleman, ISO/IEC 9796, Information Technology-Security Techniques-Digital Signature Scheme Giving Message Recovery, Geneva 1991) will permit the use of accurate digital fingerprinting. Management and control of cost recovery and item delivery systems are difficult to maintain without an adequate tariffing and billing framework or model. This must take into account the needs of the composite information and network services tariffing as well as consolidated billing to suite different supplier/customer pricing and payment requirements (P. Sweetland, Integrated Billing and the Internet, *Telecommunications* 31 (6) (1997) 127-130, International edn.). Electronic documents may be available in many different file formats ... File format negotiation is a key feature of automated document delivery systems and as yet there is no standard or guideline to achieve this and aid implementers. It is possible to implement a solution to this problem using the ISO-ILL protocol. However the lack of guidelines hinders designers from achieving systems which can interoperate and interwork correctly. This will also present problems when implementing large scale ILL networks."

2. COPYRIGHT AND NEIGHBOURING RIGHTS

Copyright and neighbouring or related rights protect original works of the mind and other products or performances which the legislator considered worthy of protection. The content of learning technologies is often concerned with protected material. Accordingly, any standards which should be developed in order to facilitate the use and marketing of such technologies will have to take into account the relevant basic legal issues involved with copyright and neighbouring or related rights.

Copyright and neighbouring rights at the international level:

- Berne Convention (see <http://www.wipo.org/>)
- WIPO Copyright Treaty (WCT) (see <http://www.wipo.org/>)

Copyright and neighbouring rights at the international level:

- WTO-TRIPs (see <http://www.wto.org>)

Neighbouring rights at the international level:

- WIPO Performances and Phonograms Treaty (WPPT) (see <http://www.wipo.org/>)
- Rome Convention concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961) (see <http://www.wipo.org/>)
- Convention concerning the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971) (see <http://www.wipo.org/>)

Copyright and neighbouring rights at the EU-level (see <http://www2.echo.lu/legal/en/ipr/ipr.html>):

- Directive 91/250/EEC of 14/05/91 on the legal protection of computer programs
- Directive 92/100 EEC of 19/11/92 on rental right and lending right and on certain rights related to copyright in the field of intellectual property
- Directive 93/83/EEC of 27/09/93 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission
- Directive 93/98/EEC of 29/10/93 harmonizing the term of protection of copyright and certain related rights
- Directive 96/9/EC of 11/03/96 on the legal protection of databases

Concerning the future development of intellectual property law within the EU there is of particular importance:

- EU Commission's Amended Proposal for a Directive on the harmonization of certain aspects of copyright and related rights in the Information Society (http://europa.eu.int/eur-lex/en/com/dat/1999/en_599PC0250.html) (<http://europa.eu.int/comm/dg15/intprop/intprop/copy2.htm>)

2.1. GENERAL CONCEPTS OF THE INTERNATIONAL PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

A very useful practical Guide on Intellectual Property Rights for Electronic Information Interchange was established by the OII, that is to say the EU Commission's Open Information Interchange service (see <http://www2.echo.lu/oii/en/iprguide.html>).

2.1.1. Principles of International Intellectual Property Right

The Berne Convention for the Protection of Literary and Artistic Works, in short, 'Berne Convention' is the most important international convention concerning copyright. It establishes basic principles, for example:

- copyright is given only to original works of the mind (nature of protected works)
- exclusive rights (the rightholder enjoys certain moral rights and exploitation rights)
- national treatment (states protect authors from other states of the Union like national authors)
- state of protection (an author holds a bundle of national copyrights, but not an 'international' unitary copyright, accordingly, many issues such as those concerning limitations and exceptions of the rights have to be analyzed with regard to the national law of the state where protection is claimed)
- no formality (copyright arises without formalities)
- minimum duration of protection (up to 70 years after the author's death)

The Berne Convention is complemented by other international instruments which contain additional regulations, for example the TRIPs and the WCT or, on the EU level, by the relevant Directives.

With regard to neighbouring rights, the relevant international instruments grant protection similar to copyright protection, however, on a lower level. The standard of qualification is lower, protection is given for the making of performances or the production of certain products. Thus performers of music or plays can be protected or producers of audiograms, producers of first fixations of films, and broadcasters which record their programs may enjoy protection. Generally, the scope of protection is narrower than in copyright, relating to certain exploitation rights only, a very limited range of moral rights and a shorter duration. Due to the fact that the international instruments relating to neighbouring rights met with less acceptance, the situation is less harmonized than in copyright. However, the WPPT has achieved substantial progress with this respect concerning audio performers and producers of audiograms.

2.1.2. Categories of Protected Works, Performances and Products Protected by Copyright and Neighbouring Rights

The international copyright instruments do not contain exclusive lists of protected works and national copyright laws often indicate certain categories of works as examples of an unlimited range of protected original works of the mind. Such works are:

- works of literature, dramatic works and works of computer programs
- works of music and choreography
- photographic and audiovisual works
- works of the fine arts, works of architecture

Works of a certain structure may also be protected

- composite works such as works of the opera
- collective works such as journals

Concerning neighbouring rights, the international instruments do not contain identical lists of protected subject-matter. Within the EU the following may be protected:

- performers with regard to their audio and audiovisual performances
- producers of audiograms with regard to the first recording of audiovisual works
- producers of phonograms
- broadcasters with regard to the broadcasts of their programs
- producers of images.

Within the EU makers of databases enjoy a 'sui generis' right.

2.1.3. Exclusive Rights: Moral Rights and Exploitation Rights

Moral rights protect the author of a work in his personal relation to the work, such rights are

- the right of paternity (to claim authorship)
- the right of integrity (to object against distortions)
- the right of publishing (to render the work public)

Generally, the exploitation rights which are based on copyright or related rights/neighbouring rights are separated into corporeal rights and incorporeal rights.

Corporeal Rights:

- right of reproduction (copying, for example by reprography)
- right of distribution (of copies)
- right of rental and lending (of copies)

Incorporeal Rights:

- right of public display (for example in cinema, theatre)
- right of broadcasting (for example terrestrial, satellite, cable)
- right of communication to the public (for example online)

2.2. GENERAL OBSERVATIONS CONCERNING COPYRIGHT IN THE DIGITAL ENVIRONMENT

Copyright in the digital environment is often seen as an antiquated tool which impedes the exchange of information and the dissipation of knowledge. With the creation of multimedia works and databases, particular problems arose. These new kinds of works had to be fitted into the system of works protected by copyright. However, the problems concerning multimedia works were generally solved by jurisprudence. The protection of such works is basically ensured by conceiving a multimedia work as an audiovisual work. The protection of databases has been the subject matter of an EU Directive (see above, No. 2).

The development of databases for the purposes of learning technologies has been highlighted with reference to the University of Rome La Sapienza by **MAGICA: "C'Era Una Volta L'Ufficio", Ricerca e Analisi Gestione d'Impresa Audiovisiva e Multimediale, FrancoAngeli, Milan 1999 at 85**, indicating that since the early 1990s universities developed databases and communication networks for purposes of research and publication of the sectors of research: "Within this framework there have been important developments toward the creation of special databases which combine the mere online access to bibliographical information with the possibility of direct consultation either through bibliographical fonts or archived supporting documentation. Additionally, special software was developed which permits the making of results of the work of research at a distance through both, individual or group research. The telematic thus rendered possible a collaboration between researchers working in the same field or on the same subject. Beyond, in the future there can be expected a wide opening of the research to achieve even more than this what could be realised within a department or an institute for research: the online cooperation may not only relate to universities but become rather international, meaning the widest possible opening of the research in the future.

2.2.1. Exclusive Rights in the Digital Environment

The digital technology does not affect the scope of the exclusive rights. It has to be asked, whether a digital use falls within the scope of exclusive rights so that the user would need the rightholder's authorization.

Reproduction Right

Concerning the reproduction right, the

Report of the US Working Group on Intellectual Property Rights "Intellectual Property and the National Information Infrastructure" of 1995 established at 65 and 66:

- When a work is placed into a computer, whether on a disk, diskette, ROM, or other storage device or in a RAM for more than a very brief period, a copy is made.
- When a printed work is scanned into a digital file, a copy, the digital file itself, is made.
- When other works, including photographs, motion pictures, or sound recordings, are digitized, copies are made.
- Whenever a digitized file is "uploaded" from a user's computer to a bulletin board system (BBS) or other server, a copy is made.
- Whenever a digitized file is downloaded from the BBS or other server, a copy is made.
- When a file is transferred from one computer network user to another, multiple copies generally are made.
- Under current technology, when an end-user's computer is employed as a dumb terminal to access a file resident on another computer such as a BBS or Internet host, a copy of at least the portion viewed is made in the user's computer. Without such copying into the RAM or buffer of the user's computer, no screen display would be possible.

Distribution Right

In the online digital environment the exclusive distribution right is generally irrelevant, "because the concept of the distribution of a work implies according to the prevailing view that corporeal copies of the work are made and distributed",

see **Arnold VAHRENWALD: "The Law of Online and Offline Publishing", Informatica e Diritto 2/1996/7-88 at 40.**

Broadcasting Right

Whether the online-communication of a work would fall within the exclusive broadcasting right is controversial, see **Arnold VAHRENWALD**, note above, at 41, 42. The controversy related particularly to the question whether the online communication of a work could be considered as broadcasting, taking into account that the communication was not made to a multitude of persons at the same place at the same time. With this regard, the interpretation of national copyright laws permitted different answers. The controversy was overcome through the introduction of the new communication to the public right by the WCT.

(Online) Communication to the Public

The WCT (WIPO Copyright Treaty of 1996) introduced the new exclusive right of the communication of the work to the public. According to Article 8 of the WCT the author enjoys this right, and it is irrelevant whether the online communication is made to persons at different places and whether the communication is simultaneously or not. Thus authors enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless 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. However, the provisions of the WCT have to be implemented into national laws.

See **Arnold VAHRENWALD: "Recht in Online und Multimedia", looseleaf, Luchterhand, Neuwied, No.s 6.1.3.4 and 6.4.1.**

2.2.2. The Need for European and Global Standards in the Digital Environment and Copyright

The Commission observes in Recital 32 of the amended Proposal of a Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society of 1999 that "important progress has been made in the international standardization of technical systems of identification of works and protected subject matter in digital format", however, "in an increasingly networked environment differences between technological measures could lead to an incompatibility of systems within the Community", accordingly, "compatibility and interoperability of different systems should be encouraged", and the Commission even indicates that "it would be highly desirable to encourage the development of global systems".

2.2.3. Standards for the Licensing of Rights in the Digital Environment

Particular problems may relate to the need for the obtaining of an authorization for the national territories of the Internal Market. Since according to the international conventions the rightholder does not have a global, supra-

national or international copyright, but a bundle of national copyrights, licences would have to relate to national territories, even if the territories licensed are indicated in regions, continents or even the universe. Since the national copyright legislations differ, because the international conventions only provide for a minimum standard of protection, and because legal traditions differ, in particular between common law and civil law countries, no unitary contractual licences for educational uses developed in Europe. The problem is made evident by:

Ian BUTTERWORTH: "The Impact of Electronic Publishing on the Academic Community", European Review (1998) vol 6, no. 1, 97-102 at 101, stated with regard to the issues of 'Copyright and Licensing': "...that in the US academic community, there is a growing belief that copyright law and treaties do not address academic needs or the technical capabilities of high-speed information distribution. Instead, publishers and academic users are turning to a set of licensing arrangements to determine what uses can be made of any given piece of information, covered not by copyright but by contract law. Licensing methods for electronic media are underdeveloped in Europe and should be further explored."

However, the existing system of legislation concerning copyright and neighbouring rights in the Internal Market does not facilitate the development of standardized licensing methods. Whereas national laws of Member States relating to other intellectual property subjects like patents and trade marks are harmonized to a large degree, the laws of copyright and neighbouring rights are harmonized only with regard to certain aspects. Due to the state of protection principle, issues of:

- the creation of the right
- the scope of rights (concerning, for example, issues of infringement or of limitations and exceptions)
- initial authorship
- transferability of rights (concerning, for example, the assignability of the right, the possibility to transfer rights for the exploitation of future technologies)
- available remedies

are decided by reference to the national law which may differ in these aspects,

see **Arnold VAHRENWALD: "Freedom of Contract vs. State of Protection", (1998) 7 Entertainment Law Review, 259-263**,

Additionally, the national laws of contract differ considerably, in particular between the legal systems of the codified law and the common law, for example concerning mandatory and non mandatory provisions. However, it appears that the establishment of the Internal Market would require legal certainty about the availability of certain contractual types in order to exploit intellectual property for purposes of learning technologies. Thus steps should be undertaken to permit the acquisition of rights for the whole internal market at a cost price as low as possible.

Typical issues of copyright for distance learning were highlighted by

Georgia HARPER: "Copyright Law of Distance Learning" (see <http://www.utsystem.edu/OGC/IntellectualProperty/distance.htm>).

It has been suggested that new copyright cultures would be established within the sector of learning technologies:

Georgia HARPER: "The E-Challenge for Copyright Law" (see <http://www.utsystem.edu/ogc/IntellectualProperty/challenge.htm>): "Alternative copyright cultures already exist and new ones are likely to evolve: Public funding for creation and free distribution (scholarly community), advertising funding for creation and free distribution (the broadcast model), selling what can be controlled, rather than what cannot be controlled (selling service and expertise rather than a digital product such as software). Where control remains the operative paradigm, contract law and technological controls are poised to replace copyright law as mechanisms for allocating rights and responsibilities."

Typical problems of copyright in the digital world for publishers were explained by:

Charles CLARK: "The Copyright Environment for the Publisher in the Digital World", Joint ICSU/ Press UNESCO Expert Conference on ELECTRONIC PUBLISHING IN SCIENCE, UNESCO, Paris 19-23/02/96 at 9 (see <http://www.epub.org.br/papers/clark.htm>): "The imperative need here is to convince governments that voluntary negotiation will resolve the licensing issues 'upstream' ... between authors and publishers and then 'downstream' between publishers and users. ... The Association of Authors Agents in the UK has suggested that, as regards the publishing of general interest trade books, all negotiations should take account of essentials which they express in the following questions:

- what languages will the work be published in,
- in what territories will it be published,
- what is the length of the licence,
- is there a minimum sales target,
- what is the price and will payment be on a royalty basis,

- will the text be an unaltered version of the original (and if not will abridgements be subject to the author's approval,
- if substantial changes are made so that the result becomes a 'derivative work' who will own the derivative version,
- what safeguard (if any) will the product offer to render the text unalterable by the user, what is the liability where text can be edited by the user and then copied on,
- what percentage of the whole project does the text represent,
- precisely what platform is being requested,
- what is the approval mechanism for transferring to another platform?"

It has also been argued that the development of nonprofit publishing alternatives should be supported by academic authors and organisations:

The Pew Higher Education Roundtable Discussion: Managing Intellectual Property, November 1997 (see <http://www.utsystem.edu/OGC/IntellectualProperty/pew.htm>): "Three facts lie at the heart of for-profit dominance of and dramatic publisher price increases for scholarly journals: most scholarly literature is non-fungible, the demand for it is primarily from commercial entities (75% of the market world-wide) and that demand is fairly inelastic. Universities' gift to commercial publishers of complete control over any and all use of our scholarly works makes any hope that we might affect prices impossible. The only leverage universities have to change this circumstance is copyright. In contrast to our small share of the market for scholarly journals, American universities contribute well over three-fourths of the content to these publications. This means that we do have some hope of affecting prices if we use our leverage to facilitate the growth of nonprofit publishing alternatives. For example, instead of freely assigning these rights away and paying increasingly outrageous prices to buy back our works as a consequence we could use our copyrights to license publishing in two different markets: we could license nonprofit publishing within the university community and permit sublicensing to for-profit publishers of a royalty-bearing right to distribute outside the university community. ... For these reasons, the participants unanimously concluded that in order to control costs, universities, as a group, would have to assert ownership of copyrights in scholarly works and educational materials created on their campuses."

Practical problems concerning the licensing of rights are made evident, for example, by the ACORN project (Project ACORN Phase Two Permissions Progress Report, see <http://acorn.lboro.ac.uk/perm/permsep.htm>). Within the Project ACORN: Copyright permissions information flows (<http://acorn.lboro.ac.uk/acorn/copflow.htm>) a diagram shows the process of gaining and logging copyright permissions and usage data for the electronic short loan collection.

2.2.4. The US Example: Fair Use Guidelines for Faculty-created Multimedia

The US Fair Use Guidelines (see also below, 2.5.5.) were based on a series of negotiations between the Coalition of Colleges and University Media Centres (CCUMC) and copyright holders.

Laura N. GASAWAY: "Fair Use for Faculty-created Multimedia", *Information & Communications Technology Law*, vol. 6, no. 2, 1997/153-164, at 153, abstract: "With the development of software that facilitates the production of multimedia works, educators began to create multimedia works to enhance their teaching and their students' learning. Under US law, in order to reproduce these works for inclusion in a multimedia programme, a teacher should seek permission from each copyright holder. A teacher-created multimedia work may consist of hundreds of images, music, film clips and the like, which would require permission from a like number of copyright owners. The time and effort to contact these individual copyright owners is overwhelming to an already over-worked educator. The Copyright Act of 1976 defines broad rights under § 110(1) for a teacher to perform or display a copyrighted work in a classroom for instructional purposes when engaged in face-to-face teaching. Further, § 107 fair use permits a variety of uses of copyrighted works in non-profit educational institutions."

2.3. LIMITATIONS AND EXCEPTIONS OF EXCLUSIVE RIGHTS CONCERNING THE USE OF LEARNING TECHNOLOGIES

In the public interest the exclusive exploitation rights are limited and certain acts are even exempted from the scope and do not constitute infringement even if done without the rightholder's authorization. The international instruments such as the Berne Convention permit states of the Union to make inroads into the exclusive rights in the public interest. Whereas exceptions from the exclusive right render the relevant actions non-infringing, limitations

will basically restrict the rightholder's possibility to act against unauthorized users, for example, if the statutory limitation permits the use but obligates the user to pay a remuneration to a collecting society.

However, since the international instruments generally permit states to provide for certain limitations and exceptions, the relevant laws differ considerably (see the relevant national laws in the ANNEX). As regards limitations of and exceptions of exclusive rights, both WIPO Treaties refrain from listing particular types of limitations and exceptions. However, they make use of the 'three step test' of Article 9(2) of the Berne Convention as confirmed by Article 13 WTO/TRIPs. This test is applicable to all limitations and exceptions concerning authors rights granted by the WCT (Article 10 WCT) as well as to all limitations and exceptions concerning rights granted under the WPPT (Article 16 WPPT). It was understood that these provisions permit Contracting Parties to carry forward into and to devise new exceptions and limitations that are appropriate in the digital environment, provided that these comply with the standards set out in the Berne Convention.

However, it may be recommendable to aim at a higher degree of standardization of limitations and exceptions at least with regard to learning technologies. Such a standardization could lower the cost price of learning technologies and contribute to their increased use for the benefit of education, science and research within the Internal Market.

2.3.1. Interpretation of Limitations and Exceptions

Since limitations and exceptions are inroads into the exclusive rights and since they have, as such, 'exceptional' character, they should be given a narrow interpretation. With regard to the Italian Copyright Act

Stefania ERCOLANI: "Limitations and Exceptions in the Italian Copyright Legislation", (1999) Entertainment Law Journal 5-12 at 8, stated: "As to the exceptions introduced for private and personal use, the main one is found in article 68 of the law, which allows the reproduction of individual works for the personal use of readers. The provision establishes that the reproduction covered by the exception must be made by hand and achieved by means that make the work unsuitable for marketing. Consequently, the application of this exception must be intended as extremely limited, also in consideration of the fact that it leaves no room for technical innovations. The provision clearly indicates that the exception concerns exclusively literary works and the written form of drama works, while musical, graphic and figurative art works as well as a film and audiovisual works are excluded."

2.3.2. Limitations and Exceptions in the Digital Environment

In principle the digital use of works protected by copyright or neighbouring rights does not lead to a different view with regard to the exclusive exploitation rights. The storage of a work of literature in the memory of a computer will be considered as a reproduction, see above, No. 2.2.1. However, whether and up to which extent limitations and exceptions are applicable if the use of the works is made in the digital environment, may be controversial, and different solutions may be found according to the different national laws. Whereas the application of limitations and exceptions to the digital environment is rejected by some authors with the argument that limitations and exceptions will have to be interpreted narrowly and that the attempt to conceive of digital transmissions as covered by limitations and exceptions would be restrained by the three-step-test (Article 9(2) of the Berne Convention), according to which a the limitation or exception concerning the reproduction right must concern certain particular uses only, it must be not cause unjustified damage to the author, and it must not compete with the normal exploitation of the work.

In fact, it may be over-demanding to assert that users could not claim the limitation or exception from copyright in the case of digital uses, taking into account that a corresponding interpretation of the national laws will often not be evident. However, if a national copyright law, such as in the case of the Danish Copyright Act, § 12(2)(iv), expressly states that the limitation or exception relating to reproduction "does not provide the right to produce copies in digitised form of other works if the reproduction is made on the basis of a production of the work in digitised form", it is obvious that such digital uses cannot be based on limitations and exceptions from the exclusive rights and that such uses require the rightholder's authorization.

Digital Transmissions

Whereas it has been suggested that within the framework of digital transmissions the rules concerning limitations and exceptions could not be applicable (see Stefania ERCOLANI: "Limitations and Exceptions in the Italian Copyright Legislation", (1999) Entertainment Law Journal 5-12 at 11) it appears appropriate to analyze the particular exploitation with regard to the individual rules relating to limitations and exceptions from the exclusive exploitation rights. Thus if an online transmission of a protected work constitutes a reproduction, the limitations and exceptions applicable to the reproduction of works should be applicable.

Concerning the incidence of new technologies in the copyright environment on the reproduction for personal purposes **Piergaetano MARCHETTI and Luigi Carlo UBERTAZZI: "Commentario Breve al**

Diritto della Concorrenza", Cedam, Padova 1997, at 1864, recommended a global solution based on a scheme of global licences: Apart from any considerations of a theoretical nature there is no doubt that the main problem, realistically speaking, concerns the issue which is addressed by Article 61 (of the Italian Copyright Act according to which the author has the exclusive right of the recording of the work on audio and video carriers) with regard to modern technologies: facing the impossibility of control and of a detailed intervention the only way for a solution seems to be the one of a compromise. In fact, such a solution (...) can be provided by a system of licences against a payment of a global nature, or by collective agreements between categories of users and organisations which administer rights of rightholders. But certainly it can be observed that such a solution which envisages the conclusion of contracts with an organisation for the administration of authors' rights poses questions relating to the protection of foreign authors and that also a system of a global compensation is not without challenges, be it with regard to the supposition of the distribution of the compensation amongst authors, be it with regard to the supposition that the means for reproduction are also applied to not protected works."

The authors' view is certainly attractive if it could be applied to uses of works for purposes of learning technologies. The grant of compulsory or statutory licences which would not only relate to the national territory but, differently, to uses of the work on a global basis would facilitate the distribution of the works and permit an increased use. At the same time, authors may benefit from such uses due to the exploitation by economies of scale. Yet it appears that according to the existing different national copyright laws which limit the application of the 'fair use' of protected material in the case of reproductions with regard to digital technologies expressly (for example in § 12(2)(iv) of the Danish Copyright Act) or which permit only reproductions made by hand according to Article 68(1) of the Italian Copyright Act, the value of contractual licences will differ according to national territories. The application of a global system of a kind of collective licensing in application of compulsory or statutory licensing for purposes of digital transmissions thus would require the harmonization of national laws relating to the limitations and exceptions concerned. A global system by means of which the royalties for licences would be collected by using identical standards (possibly employing digital metering equipment and using rates differentiating according to the material) would have to be implemented in all national legal systems. With regard to the present state of the law it appears that not even within the Internal Market it would be easy to implement such a system. However, in spite of the difficulties which the introduction of such a system would face should not be disputed that the cyberspace permitting for digital transmissions is hardly susceptible to fragmentation by cultural borders so that, at least for digital transmissions limitations and exceptions should be drafted globally on a unitary model.

2.3.3. Limitations and Exceptions of the Exploitation Rights for Purposes of Learning

In the public interest the exclusive rightholder has to accept a limitation of his rights if the protected work is used for purposes of learning.

Special Cases of Reproduction

According to Article 9(2) of the Berne Convention countries of the Union may permit the reproduction of works in special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. A similar provision is contained in Article 13 of TRIPs.

Illustrations for Teaching

The Berne Convention provides for limitations and exceptions with regard to certain rights. According to Article 10(2) of the Convention the countries of the Union may permit the utilisation of works by way of illustration in publications, broadcasts or sound or visual recordings for **teaching**, provided such utilisation is compatible with fair practice and to the extent justified by the purpose. In such cases the name of the author of the work must be mentioned and the source, Article 10(3) of the Convention.

Quotations

According to Article 10(1) of the Berne Convention it is permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and that their extent does not exceed that justified by the purpose. In such cases the name of the author of the work must be mentioned and the source, Article 10(3) of the Convention.

Broadcasting of Works

According to Article 11bis(2) of the Berne Convention countries of the Union may determine the conditions under which the broadcasting rights may be exercised by the author, however, such conditions shall only apply in the countries where they have been prescribed, and they shall not prejudice the author's right to obtain an equitable remuneration which, in the absence of agreement, shall be fixed by a competent authority.

2.3.4. Limitations and Exceptions of Exclusive Rights and Contracts

May the rightholders extend their 'monopoly' by means of contractual obligations with users and exclude in the contract the application of the limitations? May a licensee rely on limitations and exceptions, for example by invoking the fair use doctrine or the use for education and research against the licensor's claim for the payment of royalties?

Since copyright and neighbouring rights are given to authors as a bundle of national rights, the scope of the limitations of the exclusive rights depend upon national laws. Accordingly, international contracts for the use of protected works and products may have to take into account of the differences in national laws. Concerning the issue of copyright versus contract, the **IMPRIMATUR Report 'Contracts and Copyright Exemptions' of January 1998** (see <http://www.imprimatur.alcs.co.uk/legal.htm>) identified at 23:

"Whether specific copyright rules constitute imperative or default contract rules is to be determined essentially in light of public interest and market failure considerations. It is important to remember, however, that public interest is mostly a matter of national policy: //24// what is in the public interest in one country, is not necessarily in the public interest in another. ... While market failure arises basically in the same manner in all countries, the solutions adopted by national legislatures in the form of restrictions to the exclusive rights may vary widely. Market failure may indeed be remedied through non-voluntary licences, with or without fees, through the transformation of certain exclusive rights into remuneration rights or through the application of the fair use defence, where recognized. The survival of this type of limitation in the digital networked environment is now the object of animated discussions among scholars and government officials."

The US Congress Report of the Register of Copyright on the General Revision of the US Copyright Law of July 1961 (87th Congress, 1st Session, at 6) identified the issue as follows:

"The primary purpose of copyright is to stimulate the creation and dissemination of intellectual works, thus advancing 'the progress of science and useful arts'. The grant of exclusive rights to authors is a means of achieving this end, and of compensating authors for their labours and their contributions to society. Within limits, the author's interests coincide with those of the public. Where they conflict, the public interest must prevail. The ultimate task of the copyright law is to strike a fair balance between the author's right to control the dissemination of his works and the public interest in fostering their widest dissemination."

The **IMPRIMATUR Report** (at 26) achieved the result, that, without regard to differing national policies, the public interest must prevail in certain circumstances where the rights of copyright owners and users conflict. But the report recognised that

"it is far from evident that all copyright limitations based on public interest considerations deserve the same treatment. ... Exemptions pertaining to the study, research, criticism ... constitute such fundamental limitations implemented for the defence of the public's freedom of information, freedom of speech and right to privacy. In our opinion, it would go against Article 8 and 10 of the European Convention on Human Rights to allow parties to a contract to waive the application of any of these crucial limitations."

The Report accepted at 31 that, "unless the legislator expressly states that some copyright limitations are to be treated as public order norms ..., they risk being set aside by contract. This remark holds true for negotiated and non-negotiated agreements." Concluding, the Imprimatur Report admitted (at 32): "As the matter currently stands, many questions still need to be answered." All aspects of the implementation of a contractual system within IMPRIMATUR should therefore be carefully considered.

The issue of limitations and exceptions of copyright and contracts concluded by electronic commerce was raised by the Transatlantic Consumer Dialoge (TACD) which established Recommendations on Food, Electronic Commerce and Trade in April 1999.

The **TACD Recommendations** (see <http://www.tacd.org/>), **Brussels 23 and 24 April, stated at 35:**

"The Internet and new information technologies present a number of complex issues regarding intellectual property rights. Authors and creators have an interest in protecting unauthorised commercial exploitation of their works, but also in obtaining access to the works of others. Firms that sell computing equipment and software may seek protection for those works, but also may need the right to reverse engineer or develop products that are interoperable with works owned by others. Citizens develop products that are interoperable with works owned by others. Citizens benefit from the economic incentives of copyright laws, but also from fair ("innocent") use exemptions in several national copyright systems. the free flow of information is essential for a variety of purposes, including the exercise of free speech and the ability of innovate and create. Education use presents special issues, including those involved in distance learning.

For these reasons, governments in the US and the EU should embrace an intellectual property framework that includes the following elements:

1. Distance Education. Mechanisms to protect copyrighted works on the Internet should not unduly restrict the ability of educators to share information with students in ways that are equivalent to current practices involving more conventional teaching methods.
2. Privacy. ...
3. Copyright Exemptions. Governments should provide copyright exemptions that address such issues as fair or innocent use, private copying, library uses, research and private study, and exemptions that are essential for reverse engineering and other techniques needed for the development of interoperable products. Consumer rights in the digital world should not be less than traditional rights in older publishing and other information technologies. Consumer rights for fair uses of copyrighted materials should not be alienated by coercive or unfair contracts. Legislation to implement WIPO treaties should address these concerns.
4. TRIPs Article 13. Governments should ask the WTO to expand Article 13 of the TRIPs regarding exemptions to copyrights. The language is currently too narrow, and does not even include the language in Article 30 concerning patents, that permits governments to consider the legitimate interests of third parties." ...

In its responses the European Commission Services' (at 37 and 38) stated:

"The European Commission services take note of the Recommendations made by TACD on matters relating to the protection of intellectual property rights in the framework of electronic commerce. The emerging Information Society will bring new challenges to the protection of intellectual property rights. A number of these challenges resulting from the digital environment have already been addressed in two international treaties adopted in December 1996 under the auspices of the World Intellectual Property Organisation (WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty). They represent a major step forward in providing for adequate protection of authors, performers and phonogram producers in the digital environment. The Draft Directive on Copyright and Related Rights in the Information Society plays a crucial role in this context. The aim of this proposal is to adjust and complement the existing EU framework on copyright and related rights to provide for a Community-wide level playing field in the digital environment, which ensures public acceptance of the new services and fosters creativity and investment in them. At the same time, the draft Directive serves to implement the main obligations of the two WIPO treaties signed by the European Community and Member States in the course of 1997. The European Community and the Member States are currently in the process of ratifying and implementing these treaties. Citizens will benefit from a harmonised legal framework on copyright and related rights, including appropriate exemptions to these rights, as well as the conditions of their application. Such a harmonisation is crucial in order to facilitate cross-border exploitation of copyright protected goods and services, including their dissemination to users. The TACD has already stressed the need for swift ratification and implementation of the two treaties by the US, the EU and other third countries. The TRIPs Council has just begun to look into matters related to the impact of electronic commerce on the protection of intellectual property rights. Further discussions will be held in the near future to examine the current provisions of the TRIPs Agreement and the possible need to adapt them to the new developments. ... The need for limitations and exemptions to copyright and related rights for certain uses, such as for educational use (Recommendation No. 1), private copying, library use and research (Recommendation No. 3) has always been recognised, in the international conventions as well as in the EU "acquis communautaire" on copyright and related rights, including proposed legislation which explicitly allows for exemptions for specific uses. However, the economic impact of any such exemption in the new technological environment may be different compared to the traditional environment. The scope of certain exemptions may therefore need to be re-assessed in the light of the new environment, in order to avoid economic damage to the market of protected works and other subject-matter." ...

A Case for Standardised Rules Concerning Limitations and Exceptions

It appears as if the EU Commission would not favour an approach directed towards the harmonisation of national laws concerning limitations and exceptions from intellectual property rights with regard to uses for learning technologies. It seems that concerning policy making the Commission is placed in a similar dilemma in its relations with global organisations than Member States in their relations with the EU. If the EU established a policy which provided for clearer guidance and unity concerning the scope of limitations and exceptions from copyright in the digital environment, it might lack in adaptability during the establishment of a global policy at the WTO. Similarly, Member States may refrain from developing new policies concerning limitations and exceptions in the digital environment, if secondary EU law is being developed. Therefore, it seems that there is a case for the proposal of a clear set of rules concerning limitations and exceptions from intellectual property rights in standardised form by the Workshop.

Possible European Guidelines for Uses of Protected Works by Means of Learning Technologies

It would appear recommendable to draft Guidelines for uses of protected works by means of learning technologies, similar to those Guidelines proposed in Appendix G to the US Copyright Office's Report on Copyright and Digital Distance Education (see below No. 2.5.5. and <http://lcweb.log.gov/copyright/disted>). However, the differences of national laws with regard to the limitations and exception concerning copyright will render such a project nearly to impossible. As is shown in the ANNEX, these differences are considerable.

For example, the limitations and exceptions provided for by the Danish Copyright Act in § 12 for private reproduction do not permit the making of digital copies of works produced on digital carriers, whereas no other copyright law of an EU Member State has a similar regulation. Also the limitations and exceptions concerning educational uses of protected works contained in the Danish Copyright Act (§ 13) could hardly be in agreement with any general rule, taking into account that the Danish legislator requires the compliance with provisions relating to a collective agreement licence of the Act. Additionally, the Act limits the educational use to specifically named institutions. But not only Denmark has its particular rules, each EU Member State has a particular set of rules relating to limitations and exceptions concerning copyright (and related rights), as shown in the ANNEX. This renders the development of useful guidelines concerning permissible uses of protected works extremely difficult.

Possible European Licensing Schemes for Uses of Protected Works by Means of Learning Technologies

Similarly, the development of a coherent set of licensing schemes for the use of protected works by means of learning technologies is rendered impossible for the Internal Market, because of the differences in national legislations concerning the scope of limitations and exemptions from the copyright. Even if one might recommend that the parties to such a licence contract should choose a certain national law of a Member State as the law applicable to the contract, this choice of law is not likely to render those provisions inapplicable which national legislators consider as of "ordre public". The scope of the copyright is very likely to be exempt from the freedom of contract so that it would not be at the disposition of the parties to broaden or narrow the limitations and exceptions. This is particularly true in cases where the national law operates in the interest of authors, for example when collective agreements are involved, such as in the case of § 13 of the Danish Copyright Act. Accordingly, different from US copyright law which is applicable in the whole territory of the US, the Internal Market of the EU is, with regard to copyright, fragmented into national jurisdictions, and, in consequence, general licensing schemes for the use of works by learning technologies for the whole Internal Market will have to remain very basic in order not to conflict with particular national laws. The UK Copyright Act, for example, contains rules on the scope of licences concerning works stored in electronic form, Section 56. Other national copyright laws do not seem to have equivalent rules.

However, there have been successful attempts to provide information on the licensing issue in Europe. The **European Schoolnet's Copyright Management and Rights Acquisition Guidelines of 15/06/99** (see <http://www.eun.org>) deal with different forms of licences such as voluntary or contractual licences which are subdivided in individual licences or collective administration licences, with extended collective licences (see, for example, the Norwegian Copyright Act, Articles 36, 37 and 38a) and non-voluntary licences. However, taking into account that not only the scope of the copyright but also its transferability will have to be decided in application of the state of protection principle, the use of such Guidelines can only be made with reference to the particular national legal situation. Also the bodies responsible for collecting compulsory or statutory licences (collecting societies) are different organisations according to the relevant laws of Member States. Additionally, the facts which render a user liable to make such payments differ from Member State to Member State, and also the amounts payable can only be assessed on the basis of national laws and regulations.

Implications of National Regulations concerning Limitations and Exemptions for the Establishment of European Guidelines

The establishment of Guidelines for the use of protected material which takes into account the differences in national laws concerning limitations and exemptions relating to copyright will have to take into account:

- **the educational environment** which is the addressee of limitations and exceptions concerning copyright with regard to the national law (educational institutions, students, teachers),
- **the particular framework within which the exploitation of the work will be made**, such as, for example, in class or for private study,
- **the categories of works** to which limitations and exceptions relate according to the relevant national law,
- **the particular modes of exploitation** to which limitations and exemptions relate according to the relevant national law and
- **the particular conditions for the use** of protected works permissible according to the limitations and exemptions provided for by the relevant national law.

To give an example, the limitation of the copyright according to § 46 of the German Copyright Act which permits the making of collections for school or instructional use is applicable to a large variety of educational institutions, however, not to schools of music if the collection shall relate to musical works. Subject matter of the limitation may be most categories of works protected by copyright, however, the limitation does not relate to audiovisual works. The limitation permits only the reproduction and distribution of works, but not the incorporeal exploitation (whether by broadcasting, communication to the public or online communication). The use of the works which are subject to the limitation is not free, but it has to be made against the payment of a reasonable royalty. Additionally, the limitation may only be claimed, if the author or rightholder of the work has been informed of the intention to make use of the work by registered letter and if two weeks have lapsed – if his address is unknown, this communication must be made in the German Official Journal.

2.3.5. The EU Commission's Proposal of a Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society

Within EU Member States the scope of limitations and exceptions concerning copyright is regulated differently. In order to overcome the differences in the national laws of Member States which are susceptible to create barriers for the free providing of services within the Internal Market, the Commission proposed a certain harmonization of the limitations and exceptions concerning copyright and related or neighbouring rights.

According to the international system of intellectual property law it is a matter of national legislation to decide on the scope of limitations and exceptions concerning exclusive rights, however, the international instruments provide for basic rules which may not be surpassed by legislators. The envisaged EU Directive will harmonize limitations and exceptions concerning intellectual property rights to a relatively small degree. Member States remain free, not to provide for many limitations and exceptions, because limitations and exceptions which are permissible according to subsections 2 and 3 of the amended Article 5 of the proposal are optional. As can be seen from the ANNEX, in fact, national laws of Member States differ considerably with this regard. The proposed Directive will not lead to the establishment of unitary principles relating to limitations and exceptions concerning learning technologies, but it will limit the possibilities of Member States to make greater inroads in the scope of exploitation rights which they could do by relying on the more general provisions of existing international law contained in instruments such as the Berne Convention or TRIPs.

In consequence, there will not be a standardization of limitations and exceptions relating to learning technologies. This means that the right to benefit from such regulations within the sector of learning technologies has to be analyzed with regard to the laws of each Member State, because the laws of Member States may continue to provide for very different sets of rules. However, the rationale of this solution should not only be viewed as a corollary of the concept of subsidiarity of Community action and of the need to protect the integrity of the cultural diversity of Member States, but also from the economic point of view. According to the present system, the analysis of the scope of limitations and exemptions for the purpose of the clearing of rights has to be made with regard to each national legal system. This increases considerably the cost factor for the use of learning technologies within the Internal Market, in particular for SMEs which do not have an own legal department.

Thus within the EU the cost price of material of learning technologies may be higher than in other large markets which have a unitary structure in this legal sector. Since the justification for the maintenance of a system of different national solutions in this sector appears rather weak, a simpler approach relating to limitations and exceptions of relevance to learning technologies including the use for private studying may be recommendable. Such a simpler system could not only leave it up to the Member States to make a choice from the number of limitations and exceptions which are offered by the proposed Directive, but it would establish the rules itself. Taking into account of the need to preserve the principle of subsidiarity according to Article 5 of the EU Treaty, it should be taken into account that copyright belongs to the intellectual property rights like the laws of trademarks and patents which have been harmonized to a much higher degree. The EU's competence to regulate the copyright laws with this regard could possibly be based on Articles 3(1)(c) of the Treaty – the task of the establishment of the Internal Market – 3(1)(m) of the Treaty – the task of the promotion of the competitiveness of the Community's industry – and the task of the coordination of the economic policy – Article 4 of the Treaty.

The Proposal of 1997

The EU Commission's Proposal for a European Parliament and Council Directive on the harmonization of certain aspects of copyright and related rights in the Information Society (document COM(97) 628 final of 10/12/97) stresses that "appropriate measures are critical in order to achieve a favourable environment which stimulates creativity and investment with respect both to the traditional and the evolving new markets in intellectual property" (at 8), and (at 9):

"Such an Internal Market, characterized by comparable effective and transparent terms of protection across national borders, is not only beneficial for rightholders, but also for users and investors such as providers of

services. It fosters adequate, comparable and secure investment conditions and legal certainty across Member States. This will enable rightholders and those who use protected material to further develop cross-border exploitation of copyright protected goods and services. This is vital for the development of the Information Society in Europe"...

With regard to the impact of the differences of national copyright laws the Commission observes (at 12):

"Although the growth in digital technology has led to increasing opportunities for the exploitation of works and other subject matter through goods and services which cross borders, the intrinsically territorial nature of copyright and related rights as set out in the international conventions, has not changed. Rights are granted for a particular country according to the laws of that country. As a general rule, the acts of exploitation of rights including potential infringements are governed by the national laws under which the right has been granted and where protection is sought. This is also the case with respect to transnational acts of exploitation with the result that several national laws may apply in parallel."

Within Chapter 3 of the Proposal of 1997 which is concerned with the particular issues for harmonization the Commission states with regard to the reproduction right, examining the existing legal framework (at 16):

"Almost all Member States provide in their legislation an exception to the exclusive right of reproduction for copying of audio and audio-visual material for private use. The major reason for this exception has been the non-enforceability of the exclusive right in this area in practice as well as the thought that it was not even desirable to try to enforce an exclusive right in this area of private use for reasons of privacy in view of the significant economic importance of 'private copying' of copyright protected material, eleven out of fifteen Member States do not provide for a 'free exception' but set out a 'legal licence': they compensate rightholders for taking away their exclusive right with a right to remuneration ('levy system'). These systems vary widely in their scope and the way in which they function. The economic significance of private copying revenues is considerable.

Usually no distinction is made in Member States' private copying legislation between analogue and digital technology. At present, only one Member State (Denmark) does not provide for a 'private copy exemption' for the copying of protected subject matter incorporated in digital media, regardless of whether the copying facility is digital or analogue. Figures indicate that, in parallel with the new digital environment, analogue private copying will remain an important market at least for the next five to fifteen years to come. In recent years the majority of Member States has also provided for an exception to the reproduction right for photoprint type reproduction ('reprography') combined with a right to remuneration. The rationale for this exception is similar to that for private copying of audio and audio-visual material. These levy systems, where they exist, differ only to some extent.

Almost all Member States' laws list a variety of other exceptions and limitations to the reproduction right and, to a much more limited extent, to the distribution right or the communication to the public right. These include a variety of specifically defined, but widely differing exceptions for educational and/or scientific use as well as for library and archival use."

In its Green Paper on Copyright and Related Rights in the Information Society of 1995 the Commission had analyzed the issue of digital copying as follows (at 90): "The development and spread of analogue systems of reproduction had made it impossible to control copying, and especially private copying, but digitization of works and other protected matter means that strict control of reproduction can now be envisaged once again. The right of reproduction, and the exceptions to it, particularly private copying, should be reviewed accordingly."

With regard to the international copyright law the Commission states in its Proposal of a Directive of 1997 (at 18):

"The limitations set out to the reproduction right at international level vary. The Berne Convention provides for a number of compulsory exceptions (for news of the day, miscellaneous facts, quotations) as well as several exceptions of an optional nature, notably for informational and **educational use**. These exceptions apply to most rights and only allow for those uses which are justified by the specific purpose envisaged in the exception and which are compatible with fair practice."... "The limitations set out in the Rome Convention and the WTO/TRIPs Agreement with respect to related rights are wider to some extent. Several exceptions to the reproduction right are permitted under both Treaties, in particular as regards 'private use' ... and 'use solely for the purpose of teaching or scientific research'. The 'three step test' (Article 9(2) of the Berne Convention, Article 13 WTO/TRIPs) was not adopted for holders of neighbouring rights under the Rome Convention or the WTO/TRIPs Agreement.

The Text of Article 5 of the Proposal of 1997. Exceptions to the Restricted Acts Set Out in Articles 2 and 3

(Article 2 concerns the reproduction rights, Article 3 the right of communication to the public, including the right of making available works or other subject matter)

- (1) Temporary acts of reproduction referred to in Article 2 which are an integral part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter and having no independent economic significance, shall be exempted from the right set out in Article 2.
- (2) Member States may provide for limitations to the exclusive right of reproduction provided for in Article 2 in the following cases:
 - a) **in respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects.**
 - b) **in respect of reproductions on audio, visual or audio-visual recording media made by a natural person for private use and for non-commercial ends.**
 - c) **in respect of specific acts of reproduction made by establishments accessible to the public, which are not for direct or indirect economic or commercial advantage.**
- (3) Member States may provide for limitations to the rights referred to 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 is indicated and to the extent justified by the non-commercial purpose to be achieved,**
 - b) for uses for the benefit of visually-impaired or hearing-impaired persons which are directly related to the disability and of a non-commercial nature and to the extent required by the specific disability,
 - c) use of exemptions in connection with the reporting of current events (...)
 - 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 the source is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose,
 - e) (...)
- (4) The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonable prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject-matter.

In the Comments to the Articles, the Commission states, with regard to Article 5(3)(a) of the Proposal:

"Article 5(3)(a) allows Member States to exempt the use of a work such as a work of literature or a photography or other subject-matter, such as a sound or visual recording, or parts of it, for instance for a compilation of an anthology, provided that such use exclusively serves the purpose of illustration of teaching or scientific research Member States may provide for a remuneration right. In any case, only the part of the use which is justified by its non-commercial purpose may be exempted from the exclusive right. Moreover, the source must be indicated. this provision is identical with the relevant provision in the Database Directive (Articles 6(2)(b) which in turn follows Article 10 Berne Convention. It does not only cover traditional forms using protected material such as through print or broadcasted media, but might also serve to exempt certain uses in the contest of on-demand delivery of works and other protected matter. Member States will have to take due account of the significant economic impact such an exception may have when being applied to the new electronic environment. This implies that the scope of application may have to be even more limited than with respect to the 'traditional environment' when it comes to certain new uses of works and other subject matter."... "As stressed in Article 5(4) the application of the exceptions and limitations provided in this Article must follow the established principles enshrined in Article 9(2) of the Berne Convention, Article 13 of the WTO/TRIPs Agreement and Article 10 WCT with respect to authors, and confirmed in Article 16 WPPT with respect to two categories of neighbouring rightholders. Therefore, limitations and exceptions have to be confined to certain specific cases and may not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests, or conflicts with normal exploitation of the protected subject-matter (the 'three step test')".

Article 5 of the Amended Proposal of 1999

The Commission's amended Proposal for the Directive (<http://europa.eu.int/comm/dg15/intprop/intprop/copy2.htm>) which dated of 21 May 1999 states in the explanatory memorandum, No. I.2.

"The substantive amendments, proposed by Parliament and accepted by the Commission relate to:

- (1) The principles underlying the amendments relating to private copying. The Commission shares the Parliament's view on the need to distinguish between private analogue copying and private digital copying. It accepts the principle of linking the exercise of the exception in both cases to fair compensation for the rightholders. As regards the relationship between private copying and technical measures, it replaces the expression 'without prejudice to technical means'... with the expression proposed by the Parliament 'where there are no reliable and effective technical means'... (Recital 26, Article 5(2)(b) and (ba)new).

- (2) Compensation for the rightholders in most of the cases in which the proposal for a Directive provides for a legal exception to the exclusive rights. This is the case with reproduction on paper, private copying and illustration for teaching and scientific research (Recital 26: Article 5(2)(a), (b), (ba) new and 5(3)(a)).
- (3) The new wording of the exception to the right of reproduction relating to certain establishments (libraries, archives and other teaching, educational or cultural institutions) for acts of reproduction made for archive or conservation purposes (Article 5(2)(c)).
- (5) The extension to all persons with disabilities of the exception previously reserved for visually-impaired or hearing-impaired persons (Recital 24(a) new, Article 5(3)(b))."

In No. I.4. of the explanatory memorandum the Commission observes:

"The amendments or parts of amendments not accepted by the Commission for reasons of substance relate to: ... (4) The specific mention in Article 5(4) that the exceptions and limitations to the exclusive rights do not prevent the use of technical protection measures. The link between the technical measures and private copying is set out in Article 5(2)(b) and 5(2)(ba) and need not be reiterated in Article 5(4). In the case of the other limitations and exceptions, this question is dealt with in Article 6, as amended, relating to technological measures (amendment 47)."

In the Recitals of the amended Proposal it is indicated that:

"(21) the existing exceptions to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment, existing differences in the limitations and exceptions to certain restricted acts have direct negative effects on the functioning of the Internal Market of copyright and related rights, such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities, in order to ensure the proper functioning of the Internal Market such exceptions should be defined more harmoniously, the degree of their harmonization should be based on their impact on the smooth functioning of the Internal Market."

In Recital (22) it is indicated that this Directive provides for an exhaustive enumeration of exceptions concerning the reproduction right and the rights of communication to the public, some exemptions only apply to the reproduction rights, where appropriate, this list takes due account of the different legal traditions in Member States, at the same time, aiming to ensure a functioning Internal Market, it is desirable that Member States should arrive at a coherent application of these exceptions which will be assessed when reviewing implementing legislation in the future.

In Recital (23) it is indicated that the exclusive right of reproduction should be subject to allow certain acts of temporary reproduction such as transient and incidental reproductions, forming an integral part of and essential to a technological process carried out for the sole purpose of enabling the use of a work or other protected subject matter and which have no separate economic value on their own, that under these conditions, this exception should include acts of caching or browsing.

In Recital 24 it is stated that Member States should be given the option of providing **for certain exceptions for cases such as educational and scientific purposes, for the benefit of public institution such as libraries and archives**, for purposes of news reporting, **for quotations**, for use by people with disabilities, for public security uses and for use in administrative and judicial proceedings.

In the new Recital 24bis it is stated that it is in any case important for the Member States to adopt all necessary measures to facilitate access to works by persons suffering from a disability which constitutes an obstacle to the use of the works themselves, and to pay particular attention to accessible formats.

The Text of Article 5 of the Amended Proposal. Exceptions to the Restricted Acts Set Out in Articles 2, 3 and 4

(see http://europa.eu.int/eur-lex/en/com/dat/1999/en_599PC0250.html)

Exceptions to the restricted acts set out in Articles 2, 3 and 4

1. Temporary acts of reproduction referred to in Article 2, such as transient and incidental acts of reproduction which are an integral and essential part of a technological process, including those which facilitate effective functioning of transmission systems whose sole purpose is to enable use to be made of a work or other subject matter, and which have no independent economic significance, shall be exempted from the right set out in Article 2.
2. Member States may provide for **limitations or exceptions to the exclusive right of reproduction** provided for in Article 2 in the following cases:
 - a) in respect of **reproductions on paper or any similar medium**, with the exception of musical works in published form, effected by the use of any kind of photographic technique or by some other process having similar effects, provided that the rightholders receive fair compensation;

- b) in respect of **reproductions on audio, visual or audiovisual analogue recording media** made by a **natural person for private and strictly personal use and for non-commercial ends**, on condition that the rightholders receive fair compensation;
 - b)bis in respect of **reproductions on audio, visual or audio-visual digital recording media** made by a **natural person for private and strictly personal use and for non-commercial ends**, without prejudice to operational, reliable and effective technical means capable of protecting the interests of the rightholders; **for all digital private copying, however, fair compensation for all rightholders must be provided;**
 - c) in respect of specific acts of reproduction made for archiving or conservation purposes by establishments which are not for direct or indirect economic or commercial advantages, such as, in particular **libraries and archives and other teaching, educational or cultural establishments;**
 - d) in respect of ephemeral fixations made by broadcasting organisations by means of their own facilities and for their own broadcasts;
3. Member States may provide for limitations to the rights referred to 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 is indicated and to the extent justified by the non-commercial purpose to be achieved, on condition that the rightholders receive fair compensation;
 - b) uses for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature and to the extent required by the specific disability;
 - c) use of excerpts in connection with the reporting of current events, as long as the source and, if possible, the author's name is indicated, and to the extent justified by the informatory purpose and the objective of illustrating the event concerned;
 - d) **quotations for purposes such as criticism or review**, provided that they relate to work or other subject matter which has already been lawfully made available to the public, that the source and, if possible, 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;
 - e) ...
- 3bis. Where the Member States may provide for an exception to the right of reproduction pursuant to paragraphs 2 and 3 of this Article, they may provide similarly for an exception to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorized act of reproduction;
4. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 3a **shall only be applied to certain cases** and shall not be interpreted in such a way as to allow their application to be used in a manner which **unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter.**

2.4. THE PROTECTION OF TECHNIQUES FOR THE PREVENTION OF TECHNICAL MEASURES PROTECTING COPYRIGHT AND THE PROTECTION OF COPYRIGHT MANAGEMENT INFORMATION

The protection of techniques for the prevention of technical measures protecting copyright and the protection of copyright management information can be based on the WCT, such legal provisions are also contained in the US Digital Millennium Copyright Act of 1998, and it is also contained in the EU Commission's amended proposal for a Directive on Certain Aspects of Copyright and Related Rights in the Information Society. Also the EU Directive concerning Conditional Access provides for the protection of technical measures.

In the technical sector there are already existing some EU Commission sponsored projects assessing various proposals for copyright protection of electronic data, see for example the OII Guide to Intellectual Property Rights for Electronic Information Interchange, which refers, at page 7, to the following projects with the indication of the relevant Web Sites (see <http://www2.echo.lu/oii/en/iprguide.html>): Imprimatur, OPEARMS, CITED, COPICAT, OSPREY, CopySmart, AMIDE, TALISMAN, MUSE, and OKAPI

2.4.1. The Protection of Technological Measures for the Protection of Copyright

Technologies which may protect copyright are, in particular:

- devices to prevent copying,
- devices controlling the access to protected material,
- proprietary viewer software,
- watermarking or fingerprinting techniques,
- metering systems,
- electronic copyright management systems.

According to Article 11 of the WCT "Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with

the exercise of their rights under this Treaty or the Berne Convention and that restricts acts, in respect of their works which are not authorized by the authors concerned or permitted by the law".

The EU Commission's Amended Proposal for a Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society

The EU Commission's amended Proposal for a Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society of 21 May 1999 provides in Article 6:

Article 6. Obligations as to technological measures.

- (1) Member States shall provide adequate legal protection against the circumvention without authority of any effective technological measures designed to protect any copyright or any rights related to copyright as provided by law or the sui generis right provided for in Chapter III of European Parliament and Council Directive 96/9/EC, which the person concerned carries out in the knowledge, or with reasonable grounds to know that he or she pursues that objective.
- (2) Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices, products, or components or the provision of services, carried out without authority, which:
 - a) are promoted, advertised or marketed for the purpose of circumvention of, or
 - b) have only a limited commercially significant purpose or use other than to circumvent, or
 - c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,
 any effective technological measures designed to protect any copyright or any right related to copyright as provided by law or the sui generis right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.
- (3) The expression 'technological measures', as used in this Article, means any technology, device or component that, in the normal course of its operation, is designed to prevent or inhibit the infringement of any copyright or any right related to copyright as provided by law or the sui generis right provided for in Chapter III of European Parliament and Council Directive 96/9/EC.
 Technological means shall be deemed 'effective' where the access to or use of a protected work or other subject matter is controlled through application of an access code or any other type of protection process which achieves the protection objective in an operational and reliable manner with the authority of the rightholders. Such measures may include decryption, descrambling or other transformation of the work or other subject-matter.

The technological measures envisaged by the amended proposal do not have particular characteristics with regard to learning technologies. However, there may be particular developments and therefore the need for standardization should be followed in the future.

2.4.2. Rights Management Information

Articles 12 of the WCT and the WPPT state:

- (1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:
 - (i) to remove or alter any electronic rights management information without authority;
 - (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.
- (2) As used in this Article, 'rights management information' means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.

The relevant provision contained in the EU Commission's amended proposal for a Directive on the harmonization of certain aspects of copyright and related rights in the Information Society (document COM(1999) 250 final 97/0359/COD) states:

Article 7. Obligations concerning rights-management information

- (1) Member States shall provide for adequate legal protection against any person performing without authority any of the following acts:
 - a) the removal or alteration of any electronic rights-management information;

- b) the distribution, importation for distribution, broadcasting, communication or making available to the public, of copies of works or other subject matter protected under this Directive or under Chapter III of Directive 96/9/EC from which electronic rights management information has been removed or altered without authority,
if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling or facilitating an infringement of any copyright or any rights related to copyright as provided by law, or of the sui generis right provided for in Chapter III of Directive 96/9/EC.
- (2) The expression 'rights-management information' as used in this Article, means any information provided by rightholders which identifies the work or other subject matter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive 96/9/EC, the author or any other rightholder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.
The first subparagraph shall apply when any of these items of information are associated with a copy of, or appear in connection with the communication to the public of, a work or other subject matter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive 96/9/EC.

The establishment of rights management information which supports the obtaining of rights clearance does not encounter particular problems in the sector of learning technologies. However, the situation may be complicated if one takes into account the limitations and exceptions to intellectual property rights (see Chapter 2.2). In the sector of education many national intellectual property laws provide for different regulations so that protected works or product may be used for learning technologies on some Member States without the rightholder's authorization whereas in other States without such an authorization the user might commit an infringement of rights. Therefore, it seems clearly recommendable if necessary authorizations could be obtained for the Internal Market in a 'one-stop-shop' procedure, possibly with the involvement of collecting societies.

2.5. THE US DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998 AND THE REPORT ON COPYRIGHT AND DIGITAL DISTANCE EDUCATION OF MAY 1999

Pursuant to Section 403 of the US Digital Millennium Copyright Act of 1998 the US Copyright Office supplied its Report on Copyright and Digital Distance Education in May 1999 (see <http://www.loc.gov/copyright/disted>)

The comprehensive Report, some 300 pages including annexes, dealt with the following issues:

- the nature of distance education today,
- licensing of copyrighted works,
- technologies involved in digital distance education,
- application of copyright law to distance education,
- prior initiatives addressing copyright and digital distance education,
- should current law be changed?

2.5.1. The Development of Distance Education in the US

The Report stressed that distance education was a vibrant and burgeoning field in the US and that the most important development related to students being separated from their instructors by time and/or space. Accordingly, the most extensive use of learning technologies is made in higher education. The services involved in distance education rely increasingly on material in digital form, either by providing the material themselves or relying on digital libraries. With this regard, institutions are adopting copyright policies, training faculty and staff, and they are also developing licensing practices.

2.5.2. Licensing Practices

In practice, the Report observed, licensing activities remained 'traditional' in the sense that most of the works for which licences were obtained related to text to be used in digital form. The Report observed that in order to avoid contractual negotiations, distance education institutions might use not protected material or rely on limitations and exemptions from the copyright for educational purposes. According to experience, problems in obtaining licences were reported to relate to the sectors of:

- identifying the rightholders,
- receiving a timely reply from the rightholders,
- demand of high royalties or unreasonable terms, in particular with regard to journal articles and audiovisual works.

The Report stressed that the provisions on the protection of copyright management information and an increase of the use of such practices in the case of digitised works, but also the development of practices relating to digital material by collective initiatives might alleviate such problems.

2.5.3. Technologies Used for Digital Distance Education

Concerning the technologies used for digital distance education, the Report indicated that a variety of technologies were employed, such as digital TV broadcasts of videoconferencing, digital network technology, for example via the Internet, but also including the use of CD-ROM and DVD. Additionally, technologies may be combined, for example e-mail and chat rooms or streaming technologies.

There are no particular technologies used to protect material of distance education, because the protection against unauthorized uses is a general problem. Thus industry has developed several possibilities according to which access may be limited, for example through:

- password protection,
- firewalls,
- screening for IP addresses or
- domain names and
- hardware.

Additionally, students may be limited in the use of the material, for example through downstream technologies:

- proprietary viewer technologies which permit certain uses only, such as viewing the document without possibility of printing or copying it,
- streaming formats which do not facilitate the making of copies,
- digital watermarking which will help to identify unauthorized uses.

However, according to the Report these technologies are only in its infancy so that it cannot be foresaid which particular technologies will be successful on the market.

2.5.4. Copyright Law and Distance Education

The US copyright law provides for certain limitations and exemptions of relevance for learning technologies. These are, in particular, two specific educational uses, and the more general fair use exemption.

- the exemption for the communication to the public of works in the course of systematic instruction that is to say concerning 'in class' activities (face-to-face teaching activities) and instructional broadcasting; however in the case of instructional broadcasts the exemption is limited to activities by non-profit educational institutions or governmental bodies, it must be related and assist to teaching content, and it must be made primarily for reception in classrooms;
- the fair use exemption which, though not explored by US jurisprudence, has been explained by guidelines.

Concerning international implications, the Report stated that any new rules relating to limitations or exemptions concerning copyright which would relate to distance education must take into account the obligations undertaken by the US according to international law. With this respect the Berne Convention and TRIPs are of particular relevance. The Report's executive summary stated at (ix):

"In addition, the enactment of any new exemption will have an impact abroad, primarily due to doctrines of choice of law. **When an educational institution in the US transmits courses to students in other countries, it is unclear whether US law will apply to such transmissions, or the law of the country where the transmission is received, making it difficult for educators to determine what uses of works are permissible.** Other countries are also making or considering amendments to their copyright laws to address digital distance education."

2.5.5. Recommended Modifications of the US Copyright Act

The Report did not recommend a marked modification of the US Copyright Act, taking the view that "emerging markets should be permitted to develop with minimal government regulation".

Modifications to the 'Classroom' Exemption

However, the Report considered that the exemptions concerning in class delivery of protected material should be broadened in order to make sure that they would also cover digital transmissions to computers. In order to avoid that uncontrolled digital copies could be made of the material by students, the Report recommended that "rights of reproduction and/or distribution should not be added in their entirety, but only to the extent technologically required in order to transmit the performance or display authorized by the exemption". The exemption should thus not permit the making of digital copies for educational purposes, but only insofar as the reproduction serves a mediated instruction. The concept of mediated instruction to which the exemption should relate would permit the legislator to

give up the requirement that the exemption should relate to classroom teaching. Additionally, new safeguards should be added to make sure that the use of works would be covered by the exemption. Thus the Report recommended that

- any copies should no longer be retained than reasonably necessary for the completion of the transmission;
- institutions which benefit from the exemption should implement a copyright policy, informing students, faculty and staff members about copyright and the uses which could be done with protected works;
- technological measures should be used by institutions which benefit from the exemption in order to control unauthorized uses;
- the categories of works to which the exemption relates should be broadened; whereas according to the present law the exemption relates to non-dramatic literary works and musical works, it should, in the future, also cover dramatic works and audiovisual works;
- in order to balance the interests, the exemptions relating to new categories of works should be limited to parts of the work so that the transmission of integral dramatic or audiovisual works would not be covered;
- a new ephemeral copying exemption should permit the uploading of the digital work by an educator who then transmits the work to students.

Clarification of the Fair Use Exemption through Guidelines

The fair use exemption permits the use of protected works for educational purposes, for example according to the Fair Use Guidelines for Educational Multimedia (Appendix F to the Report) or the Proposal for Educational Fair Use Guidelines for Distance Learning (Appendix G to the Report). The latter Guidelines concern the transmission or communication to the public of audiovisual and other works protected by copyright. These Guidelines have the following content:

- the explanation of the concept of fair use,
- the background of the concept of fair use, and purpose, namely the providing of guidance for the transmission or communication to the public of protected work for educational purposes, insofar as such use is not covered by the specific 'classroom' exemptions,
- the concept of distance learning in general,
- the scope of application of the Guidelines, which relates, different from the specific 'classroom' exceptions, also
 - to audiovisual and
 - dramatic works,
 and uses relating to
 - live interactive distance learning classes and
 - faculty instruction recorded without students present for later transmission,
 but they do not permit the circumventing of anti-copying devices,
- eligible educational institutions are non-profit institutions and government agencies,
- eligible students are only those enrolled in courses at eligible institutions,
- works related to instruction are those integrated into the course,
- transmission must be over "a secure system with technological limitations on access to the class or program such as a PIN number, password, smartcard or other means of identification of the eligible student",
- reception "must be in a classroom or other similar place normally devoted to instruction or any other site where the reception can be controlled by the eligible institution",
- the exception is limited to a one time use (only once for a distance learning course), subsequent communications require the authorization of the rightholder,
- the receiving institution may store the protected work for up to 15 consecutive class days,
- access to the stored data "must be in a controlled environment such as a classroom, library or media centre, and the institution must prevent copying by students",
- in the case of commercially produced multimedia, the terms of the copyright licence are applicable if the work was bought with such a licence; if the work was bought without a licence, the provisions of the Guidelines are applicable,
- authorizations by the rightholder will be necessary, for example, where the use is intended:
 - by a non-profit educational institution for a for-profit corporation against a fee,
 - by the non-profit educational institution for a further transmission of the recorded work,
 - by the non-profit educational institution beyond the 15 days limitation.

2.6. LIBRARIES AND LIMITATIONS AND EXCEPTIONS CONCERNING COPYRIGHT

With regard to learning technologies the role of libraries has increased, because the digitization of material facilitates storage and communication. An important aspect relating to limitations and exemptions of exclusive rights relates to the role which libraries or archives may play for the private copying. Since it is permissible according to the laws of some states to make or to have made copies of protected works for scientific research or of articles for personal use, libraries may possibly supply such digital copies on demand. Generally, laws permitting

such limitations or exemptions make provisions for a fair remuneration to be paid to authors or rightholders, however, the digital technology may lead to the situation that the 'normal' economic exploitation of the protected material may be affected negatively through an extensive use. Accordingly, it might be argued that digital reproductions should not fall within the scope of limitations and exemptions concerning copyright and related rights in the sense of Article 13 of TRIPs and other international instruments.

2.6.1. The Report on the Role of Libraries in the Modern World

In the Report on the Green Paper on the Role of Libraries in the Modern World of 25/06/98 (see <http://www.publiclibraries.fi/publications/report.htm>) which reflected the position of libraries, the EU Commission was called upon "to take account of libraries and their role as an information source for members of the public when resolving copyright issues. The Directive on Copyright in the Information Society should preserve the existing balance among the various parties and harmonise the rights of users, while exceptions should be applied in accordance with international obligations, considers, furthermore, that such exceptions must not be applied in a way which damages the legitimate interests of right holders or the normal exploitation of their works" (No. 6). The libraries were particularly concerned that new expenses for licences for electronic uses might burden their budgets and they expected from the Commission the development of schemes which would permit also small and weak libraries to give to their users access to electronic documents (No. 11).

2.6.2. The US President's Call for the Creation of a Digital Library for Education

Thus the US President had asked the Congress to support his request for the creation of a digital library for education (New York Times of 02/02/99). The proposal aims in part to bring into classrooms electronic versions of the wealth of archival and other material now in the hands of US federal institutions. The government expected that the project will significantly increase the educational and cultural resources of children, in particular by permitting access to everybody. However, the content of the library will be limited to material in the public domain.

2.6.3. US AAU-ARL Task Force Report on a National Strategy for Managing Scientific and Technological Information

The Association of American Universities (AAU) and the US Association of Research Libraries (ARL) published a report on a national strategy for Managing Scientific and Technological Information in 1997 (see <http://www.arl.org/sparc/discuss.html>). The organisation recommended:

- to ensure that electronic networks and networking policies are in place to take full advantage of the technologies at hand and accommodate the demands of a transformed system of scientific communication,
- to introduce more competition and cost-based pricing into the marketplace by encouraging a mix of commercial and not-for-profit organizations to engage in electronic publication of the results of scientific research,
- to explore the feasibility of actions to mandate retention of the ownership of certain scientific and technological information intellectual property in the not-for-profit sector,
- to promote the establishment of a system of national repositories for scientific research to establish not-for-profit electronic outlets for scientific and technological information,
- to undertake a demonstration project to test the concept of a distributed national science and technology library,
- to invest in and evaluate the results of new ways of managing scientific and technological information, and
- to promote the awareness of the Task Force findings among all participants in the scientific communication process.

The report of 1994 (see <http://www.arl.org/aau/STI.html>) identified new opportunities for the university, in particular beyond the sciences:

"There is extraordinary potential in the current electronic environment for innovation and discovery of new methods of scientific inquiry and for improvement in the management of scientific and technological information. Indeed, the opportunities for the university as a whole surpass those for the sciences. Institutional and library actions that take full advantage of networks, networked information, and creative applications of information technology are strategic investments that:

- recognize the changing nature of scholarly research and communication and its reliance on networks and new technologies,
- support research and teaching in all disciplines,
- enable libraries to improve their services for scientific and technological information, and other research resources as well, and
- provide universities with a capacity to pursue distance learning, independent education, worldwide education, and industry/education collaboration.

The challenge for universities and libraries – individually and collectively – is to achieve a level of readiness that will maximize the potential of such applications in support of science and to leverage this investment for the benefit of the institution as a whole.

2.6.4. US AAU-ARL Task Force on Intellectual Property Rights in an Electronic Environment

The US Association of American Universities (AAU) and the Association of Research Libraries (ARL) published recommendations on Intellectual Property Rights in an Electronic Environment in 1997 (see <http://www.arl.org/sparc/discuss.html>). As a local action it was recommended that several institutions would volunteer or be asked to create model policies and documents for their own universities in two areas: first, copyright use (copying), second, copyright creation (authorship, ownership, copyright transfer, and licensing). As a national action it was recommended that in addition to coordinating the local activity, a national level group should study and prepare reports and recommendations on the next phase of university intellectual property matters. This report should include, first, the academic/research community consensus on what should constitute fair use rights in an electronic environment, second, a feasibility study on creating and strengthening competitive university and society-based electronic publishing outlets. Strategies should include the maximizing of the existing university press capabilities and the start up of a cooperative consortium for deposit of scholarly/scientific articles in electronic databases.

2.7. COPYRIGHT PIRACY IN THE DIGITAL AGE

In the Green Paper 'Combating Counterfeiting and Piracy in the Single Market' (document COM(98)569 of 15/10/98) the EU Commission examined, inter alia, the possibilities of monitoring by the private sector and the use of technical devices. Defining the nature and characteristics of the phenomenon, the Commission indicated (at 8) that illegal activities are common in the copyright field and, especially in recent years, in the information technology field. The Commission indicated that it wanted to examine the issue in order "to know exactly which sectors are affected by the phenomenon in the single market as products may be involved which are attended by risks ... where technical and safety standards are not met". The Commission observes (at 9) that on the basis of the information already available there are two channels for counterfeiting and piracy: clandestine channels and normal commercial channels. The clandestine channels are by definition organised outside the regular market", for example via the Internet.

The Economic and Social Committee expressed in its opinion on the Commission's Green Paper (O.J. C 116/35 of 28/04/99), No. 6, that it would be useful to search out technology for identifying and 'tracking' fraudulent goods. The Committee felt that pilot schemes for transferring technology would be welcome, preferably for high-RTD projects, for transferring techniques already used in other areas. In No. 10 the Committee recommended, inter alia, the setting-up of a 'European observatory to combat counterfeiting, piracy and other parasitic acts', operating in a network with all the organisations and associations concerned. The Committee suggested pilot schemes to encourage projects on a European scale aimed at alerting and informing the public and training the authorities concerned.

Taking into account that already considerable actions are undertaken in order to fight copyright piracy, it appears that within the framework of learning technologies no particular efforts need to be undertaken at present which would be directed towards a further standardization.

2.8. QUOTATIONS ONLINE AND REFERENCE LINKING

The digital environment permits new forms of quotations. Using cyberspace, citations need to recognise intangible, digital and paper space.

"Identifiers that only deal with the "cyberspace" work won't solve the problem of citations (i.e. the creation of a seamless means of navigating citation links) unless every single printed document of the existing literature of science is digitised and every reference therein is converted to the corresponding digital manifestation pointer. This seems unlikely to happen immediately, particularly for material that has already appeared in printed form. What is needed is a common scheme that can deal with entities of all forms (intangible, digital, and physical): a framework able to identify, distinguish and relate all of these manifestations and the corresponding intangible work. ... Since sometimes we need to group things in one way, and at other times in another way, we cannot use just one simple number. Instead we must use a network of identifiers; or supporting metaxdata about the entity (weell-formed metadata is no more than a network of identifiers, of metadata entities). ... Two general approaches are presently being suggested to making identifiers persistent on the Internet:

a) Don't change the URL. Design the URL to be an unchanging persistent label for the resource at a maintained location.

b) Assign a name to the entity, and use redirection: accept that URLs may change, so assign a name ("URN") (which does not change) and a mechanism of resolving this to the URL (purl.org and redirect.net are examples of such services)."...

Norman Paskin: "E-Citations: Actionable Identifiers and Scholarly Referencing", 17/12/99, see <http://www.doi.org/>

A possibility to make sure that documents will not be changed is the use of the format. Thus PDF files may provide more resistance against modifications than HTML files. The author recommended that provisional guidelines on scientific reporting should be drafted, including the related aspects of what constitutes a publication: "Guidelines would also be helpful in avoiding a myriad of different metadata sets for different purposes, by agreeing a common data model from which specific (yet inoperable) sets could be derived. These guidelines would start from the functional requirements of science, but make use of metadata activities such as the INDECS framework (see <http://www.indecs.org/>) to express the precise distinctions agreed upon."

Concerning reference linking in the scientific world, there has been made some progress through cooperation by the industry. Leading scientific and scholarly publishers established a reference linking service to be managed by an elected board operating in cooperation with the International Digital Object Identifier (DOI) (see <http://www.doi.org/ref-link-press-release-11-99.html>). By means of such a service, readers of online journals will be able to go directly from references to the original content at publishers' sites.

3. LIABILITY

The issue of liability does not offer particular problems within the context of learning technologies. However, since the general issue of liability in the digital environment is relatively new, it may be justified to indicate recent developments of the law.

3.1. LIABILITY IN CIVIL LAW (CONTRACT, TORT) AND CRIMINAL LAW

The issue of liability in the digital environment is a particular concern of service providers. Within the sector of education, it is closely related to all levels relating to the online communication, that is to say to the content, the transmission and access levels. Different circles of persons may be identified as particular addressees of liability in the learning technology sector:

- children
- students
- teachers
- assistants and professors
- school and university staff
- internal and external providers
- learning technology publishers.

Traditional issues of liability may be separated into liability relating to civil law and tort and to criminal law. With this regard, no particular rules have to be developed for learning technologies. However, the use of the digital technologies involves many different groups of persons and creates new types of relations between them.

3.1.1. New Digital Technologies and the EU Commission' Proposal of a Directive concerning Electronic Commerce

The EU Commission's Proposal for a Directive on certain legal aspects of electronic commerce in the internal market of 23/12/98 (document COM(1998) 586 final – 98/0325(COD), EU O.J. C 30/4 of 05/02/99) deals with liability in Recital 16. The Commission considered that "Both existing and emerging disparities in Member States' legislation and case-law concerning civil and criminal liability of service providers acting as intermediaries prevent the smooth functioning of the internal market, in particular by impairing the development of cross-border services and producing distortions of competition". The Commission recognised that "service providers have a duty to act, under certain circumstances, with a view to preventing or ceasing illegal activities", and that "the provisions of this Directive should constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information". It stated that "such mechanisms could be developed on the basis of voluntary agreements between all parties concerned" and that "it is in the interest of all parties involved in the provision of Information Society services to adopt and implement such procedures". With regard to technical protection measures the Commission observed that "the provisions of this Directive relating to liability should not

preclude the development and effective operation by the different interested parties, of technical systems of protection and identification".

In the Proposal the EU Commission was particularly concerned with the harmonization of the laws of Member States relating to the liability of intermediaries. Such liability could be incurred when providers of information society services are involved in the communication of content, in particular if they transmit and store third party information. There is no particular reference in the Directive to learning technologies. The proposed system contains the following fundamentals: The proposed articles contain a basic exemption from liability for mere conduit, for caching and for hosting which is conditioned upon the fulfilment of certain requirements and also limited to certain forms of liability. Thus in the case of caching and hosting it is envisaged that the liability may lead only to a prohibitory injunction but not to damages or other remedies.

Mere Conduit

Draft Article 12 of the Proposal states:

“Mere conduit.

1. Where an Information Society service is provided that consists of the transmission in a communication network of information provided by the recipient of the service, or the provision of access to a communication network, Member States shall provide in their legislation that the provider of such a service shall not be liable, otherwise than under a prohibitory injunction, for the information transmitted, on condition that the provider:
 - (a) does not initiate the transmission;
 - (b) does not select the receiver of the transmission; and
 - (c) does not select or modify the information contained in the transmission.
2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.”

Article 12 of the Proposal addresses the situation where the service provider plays a passive role in the providing of information for third persons. This liability exemption covers both cases in which a service provider could be held directly liable for an infringement and cases in which a service provider could be considered secondarily liable for someone else’s infringement (for instance as an accomplice). The liability regulated by Article 12 does not relate to the recovery of damages or the criminal law.

Concerning Article 12(1) of the Proposal it is a requirement that the information transmitted by the service provided must be provided by the recipient of the service.

The provision grants an exemption from liability if three conditions are fulfilled:

- if the provided is not the person who makes the decision to carry out the transmission, in other words if the transmission is made automatically,
- if the provider does not select the receivers of the transmission,
- if the provider neither selects nor modifies the information contained in the transmission.

Article 12(2) of the Proposal makes clear that the intermediate and transient storage taking place during the transmission of the information is covered by the “mere conduit” exemption.

Only those acts of storage will be considered as relating to the ‘mere conduit’ which occur during the transmission provided that they do not serve any other purpose. In the draft the Commission indicated that the term “automatic” refers to the fact that the act of storage occurs through the ordinary operation of the technology. The term “intermediate” is indicated to refer to the fact that the storage of information is made in the course of the transmission and the term “transient” is said to refer to the fact that the storage is for a limited period of time.

Caching

Article 13 of the Proposal states:

“Caching.

Where an Information Society service is provided that consists in the transmission in a communication network of information provided by a recipient of the service, Member States shall provide in their legislation that the provider shall not be liable, otherwise than under a prohibitory injunction, for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information’s onward transmission to other recipients of the service upon their request, on condition that:

- (a) the provider does not modify the information;

- (b) the provider complies with conditions on access to the information;
- (c) the provider complies with rules regarding the updating of the information, specified in a manner consistent with industrial standards;
- (d) the provider does not interfere with the technology, consistent with industrial standards, used to obtain data on the use of the information; and
- (e) the provider acts expeditiously to remove or to bar access to the information upon obtaining actual knowledge of one of the following:
 - the information at the initial source of the transmission has been removed from the network;
 - access to it has been barred;
 - a competent authority has ordered such removal or barring.”

‘Caching’ involves the copying of data as a result of the technical operation of online-transmission of content. The storage of the data is ephemeral and it is undertaken with a view to accelerate the online communication through digital networks. Accordingly, service providers will not meet liability for copying which is merely ‘intermediate’ in the sense of ‘caching’, provided that certain conditions – (a) to (e) – are met.

Hosting

Article 14 of the Proposal states:

1. “Where an Information Society service is provided that consists in the storage of information provided by a recipient of the service, Member States shall provide in their legislation that the provider shall not be liable, otherwise than under a prohibitory injunction, for the information stored at the request of a recipient of the service, on condition that:
 - (a) the provider does not have actual knowledge that the activity is illegal and, as regards claims for damages, is not aware of facts or circumstances from which illegal activity is apparent; or
 - (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.
2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.”

Just like Article 13 concerning caching, 14 of the Proposal establishes a limit on liability as regards the activity of storage of information provided by recipients of the service and at their request. This concerns, for example, the provision of server space for another organisation’s web site. However, the exemption from liability is not available if the service provider is aware of the illegal activities. The standard employed is actual knowledge. Thus the service provider cannot claim the exemption from liability for damages if he is aware of facts and circumstances which indicate an illegal activity.

As a principle, a service providers does not lose the exemption from liability if he acts to remove or disable the access to the information after he has obtained the actual knowledge or become aware of facts and circumstances which indicate an illegal activity. According to subsection (2) of the proposed Article 14 the service provider is not exempt from liability if he acts under the authority or control of the provider, because in such a case there is no justification for the exemption which lies in the mere transport or storing of data, irrespective of their content, on behalf of a third person.

No Obligation to Monitor

Article 15 of the Proposal states:

1. "Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.
2. Paragraph 1 shall not affect any targeted, temporary surveillance activities required by national judicial authorities in accordance with national legislation to safeguard national security, defence, public security and for the prevention, investigation, detection and prosecution of criminal offences."

Taking into account the considerable investment in time and personnel which the imposition of a general duty to monitor the information which is transmitted or stored, service providers in countries where such an obligation is imposed by law would suffer competitive disadvantages. For this reason, the Commission wants to make sure that service providers will not be charged with a duty of monitoring the content which they store or transmit for third persons. This Article establishes that no general obligation should be imposed on providers to screen or to actively monitor third party content. However, this general rule does not affect the possibility of a court or law enforcement agency requesting a service provider to monitor, for instance, a specific site during a given period of time, in order to prevent or fighting specific illegal activity.

3.1.2. EU Product Liability Laws

The law of product liability may become relevant within the sector of learning technologies. However, it will suffice to deal with these aspects only briefly, taking into account that no particular rules may have to be developed. The EU Directive concerning product liability of 1985 (EC/85/374) which is applicable to computer software (Statement by the Commission of 15/11/88, O.J. C 114/42 of 08/05/89) provides for a standard of strict liability of the producer in Article 1. However, a service provider will generally not qualify as a producer in the sense of the Directive.

Article 23 of the Data Protection Directive of 1995 (EC/95/46) establishes an obligation upon the controller to compensate any person who has suffered damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to the Directive. According to subsection (2) of the provision he may be exempted from this liability if he proves that he is not responsible for the event giving rise to damage. The duty to establish evidence is imposed upon the controller.

3.2. THE US DIGITAL MILLENNIUM COPYRIGHT ACT

The US Digital Millennium Copyright Act of 1998 incorporates the 'Online Copyright Infringement Liability Limitation Act'. It limits service providers' liability in Section 512 which is headed: "Limitations on liability relating to material online" (see H.R.2281, <http://www.thomas.loc.gov/cgi-bin/query/>).

The US legislator's concern with intellectual property issues in the online environment reflects the important role of the related industries in this state:

US Senator Hatch in the Senate, BNA's Patent, Trademark & Copyright Journal of 21 May 1998 at 88: "The copyright industries are one of America's largest and fastest growing economic assets. ... In fact, the copyright industries contribute more to the U.S. economy and employ more workers than any single manufacturing sector, including chemicals, electronics, food processing, textiles, and apparel, and aircraft. More significantly, for the WIPO treaties, in 1996 the U.S. copyright industries achieved foreign sales and exports of \$60.18 billion, for the first time leading all major industry sectors, including agriculture, automobiles and auto parts, and the aircraft industry. There can be no doubt that copyright is of supreme importance to the American economy. Yet, American companies are losing \$18 to \$ 20 billion annually due to the international piracy of copyrighted works. But the potential of the Internet, both as information highway and marketplace, depends on its speed and capacity. Without clarification of their liability, service providers may hesitate to make the necessary investment to fulfill that potential. In the ordinary course of their operations service providers must engage in all kinds of acts that expose them to potential copyright infringement liability."...

The need to establish legal security in the offline sector extends also to learning technologies. Section 512(e) of the Act facilitates the use of online technologies at nonprofit educational institutions by providing for relaxed rules in the academic environment. However, the application of the limitation is made dependent upon strict requirements. Therefore the practical implications of this limitation may be of little relevance. However, the limitation has to be seen in the context with Section 403 of the Act which obligates the Register of Copyrights to submit recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works (see above, No. 2.5).

3.2.1. Service Providers' Limitation of Liability concerning 'Digital Network Communications'

Section 512(a) of the Act limits service providers' liability concerning 'digital network communications' with regard to damages and injunctions based on copyright infringement through the transmitting, routing or providing connections for material through a system or network controlled or operated by or for the service provider or the intermediate and transient storage of such material in the course of such transmitting, routing or providing connections, if:

- such activity was initiated by or at the direction of a person other than the service provider,
- it is carried out through an automatic technical process without selection of such material by the service provider or
- the service provider does not select the recipients of such material except as an automatic response to the request of another,
- no copy of the material made by the service provider is maintained unless consistent with anticipated use,
- the material is transmitted without modification of its content.

3.2.2. Service Providers' Limitation of Liability concerning 'Caching'

Section 512(b) of the Act limits service providers' liability concerning 'caching' with regard to damages and injunctions based on copyright infringement for the intermediate and temporary storage of material on the system or network controlled or operated by or for the service provider, if:

- such material is made available online by a person other than the service provider,
- the material is transmitted from this person through such system or network to someone other than this person at the direction of this person,
- the storage is carried out through an automatic technical process for the purpose of making such material available to users of such system or network if such user subsequently request access to that material from this person.

However, the limitation will only be applicable if the following conditions are met:

- the material is transmitted to such subsequent users without modification to the content from the manner in which the material otherwise was transmitted from this person,
- the service provider complies with rules concerning the refreshing, reloading or other updating of such material when specified by the person making that material available online in accordance with an accepted industry standard data communications protocol for the system or network through which that person makes the material available, and the rules are not used by this person to prevent or unreasonably impair such intermediate storage,
- the service provider does not interfere with the ability of technology associated with such material which returns to this person the information which would have been available to this person if the material had been obtained by subsequent users directly from this person provided that such technology:
 - does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material,
 - is consistent with accepted industry standard communications protocols, and
 - does not extract information from the provider's system or network other than the information which would have been available to this person if such material had been accessed by such users directly from this person,
- this person does not currently condition access to such material or if access to such material is so conditioned by this person, by a current individual pre-condition, such as a pre-condition based on payment or a fee, or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have been so authorized and only in accordance with those conditions and
- if this person makes that material available online without the authorization of the copyright owner then the service provider responds expeditiously to remove, or disable access to, the material which is claimed to be infringing upon the notification of the claimed infringements,
 - if this material has previously been removed from the originating site or access had been disabled or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled and
 - if the party giving the notification includes in the notification a statement confirming that such material has been removed or access to it has been disabled or ordered to be removed or have access disabled.

3.2.3. Service Providers' Limitation of Liability concerning 'Information Stored on Systems or Networks at Direction of Users'

Section 512(c) of the Act limits service providers' liability relating to 'information stored on systems or networks at direction of users' with regard to damages and injunctions based on copyright infringement for the storage at the direction of a user of material which resides on a system or network controlled or operated by or for the service provider, if:

- the service provider
 - does not have actual knowledge that the material or activity is infringing,
 - in the absence of actual knowledge, the service provider is not aware of facts or circumstances from which infringing activity is apparent, or
 - if upon obtaining such knowledge or awareness the service provider acts expeditiously to remove or disable access to, the material,
- and if he does not receive a financial benefit directly attributable to the infringing activity where the service provider has the right and ability to control such activity, and
- in the instance of a notification of claimed infringements, responds expeditiously to remove or disable access to the material which is claimed to be infringing or to be the subject of infringing activity;

However, the limitation of liability will operate only, if the service provider has designated an agent to receive notifications of claimed infringements, including the indication of the address on the website;

the 'notification' of the infringement must:

- be made to the service provider's designated agent,
- include a written communication, carrying a physical or electronic signature,
- identify the protected work, or, if several works are contained on a single online site, a representative list of works at that site,
- identify the material claimed to be infringing or to be subject to an infringing activity and that is to be removed or access to which is to be disabled, and
- contain information to enable the service provider to contact the complaining party,
- contain a statement that the complaining party has a good faith belief that use of the material complained of is not authorized by the copyright owner or right holder, and
- contain a statement that the information in the notification is accurate, under penalty of perjury and that the complaining party has the authority to enforce the owner's rights infringement of which is claimed.

3.2.4. Service Providers' Limitation of Liability concerning 'Information Location Tools'

Section 512(d) of the Act exempts service providers from liability concerning 'information location tools' with regard to damages and injunctions based on copyright infringement for the referring or linking users to an online location containing infringing material or activity by using information location tools, including a directory, index, reference, pointer or hypertext link, if the provider:

- does not have actual knowledge that the material or activity is infringing or,
- in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent,
- does not receive a financial benefit directly attributable to the infringing activity where the service provider has the rights and ability to control such activity, and
- responds expeditiously to remove or disable the reference or link upon notification of claimed infringement.

3.2.5. Limitation of Liability of Non-profit Educational Institutions

Section 512(e) of the Act limits the liability of non-profit institutions of higher education if:

- the institution is a service provider,
- a faculty member or graduate student who is an employee of such institution is performing a teaching or research function for the purposes of transitory digital network communications or system caching;

such faculty member or graduate student shall be considered to be a person other than the institution, and, for the purposes of assessing the exemption from liability concerning 'information residing on systems or networks at direction of users' or 'information location tools', the knowledge or awareness of his or her infringing activities shall not be attributed to the institution if:

- such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student,
- the institution has not, within the preceding 3-year period, received more than two notifications of claimed infringement by such faculty member or graduate student and such notifications of claimed infringement were not actionable, and
- the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, US copyright law.

3.2.6. Liability of Persons Making Misrepresentations

In relation with service providers' liability, Section 512(f) of the Act deals with the liability concerning 'misrepresentations' which consist of wrong information supplied to service providers by users or other persons. Such misrepresentations render liable for any damages including costs and attorneys' fees incurred by the alleged infringer, by the right holder or service provider who is injured by such misrepresentation.

3.2.7. Service Providers' Liability concerning 'Replacement and Removal of Material of and the Disabling of Access

Section 512(g) of the Act limits service provider's liability in the case of replacement or removed or disabled material. Accordingly, a service provider will not be liable for the disabling of access to or removal of, material or activity claimed to be infringing, provided the service provider is in good faith and has informed the subscriber that he has removed or disabled access to the material, and, upon counter notice by the subscriber, provides the person who provided the notice with a copy of the counter notice, informing him that he will replace the removed material or cease disabling access to it in ten business days and replaces the removed material and ceases disabling access to it not less than ten, no more than fourteen business days following receipt of the counter notice, unless his designated agent first received notice from the person who submitted the notification that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

3.2.8. Service Providers' Duty of Cooperation concerning Alleged Copyright Infringement

The Act imposes upon service providers the duty of cooperation in the case of an alleged direct copyright infringement by their subscribers, Section 512(g). In the case of an alleged infringement, the right holder may request an order for the release of the identification of an alleged infringer. Such a request consists of a notification described above, including a proposed order, and a sworn declaration that the purpose of the order is to obtain the identity of an alleged infringer, with the clerk of any U.S. District Court. The order shall authorize and order the service provider to disclose to the right holder the alleged direct infringer of the material described in the notification to the extent such information is available to the service provider.

3.2.9. Service Providers' Duty of Compliance with Contractual and Technical Standards

Section 512(h) of the Act provides a general condition for the application of the service provider's exemption of limitation, namely the observance of certain standards. According to this provision the service provider can benefit from the limitation of liability only, if:

- he has adopted and implemented a policy for the termination of contracts with subscribers of the service who are repeated infringers and
- he accommodates standard technical measures, namely those developed by right holders to identify or protect their works if they:
 - were developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process
 - are available to any person on reasonable and non-discriminatory terms and
 - do not impose substantial costs on service providers, their systems and networks.

3.2.10. Injunctions Directed Against Service Providers

The Act provides particular rules for injunctions which may be obtained against those service providers who cannot be subject to a claim for damages according to Section 512(i) of the Act. In the case where the service provider's liability concerning digital network communications is not limited, a court may grant injunctive relief only by:

- an order restraining him from providing access to infringing material or activity residing at a particular online site on the provider's system network,
- an order restraining him from providing access to an identified subscriber of the service provider's system or network who is engaging in infringing activity by terminating the specified accounts of such subscriber or
- such other injunctive remedies as the court may consider necessary to prevent or restrain infringement of specified protected material at a certain online location, provided that such remedies are the least burdensome to the service provider which are comparably effective for that purpose.

If the service provider qualifies for the limitation of liability concerning digital network communications, a court may grant injunctive relief only in the form of:

- an order restraining him from providing access to an identified subscriber of the service provider's system or network which is using the provider's service to engage in infringing activity by terminating the specified accounts of such subscriber, or
- an order restraining him from providing access, by taking specified reasonable steps to block access to a specific identified foreign online location.

Before the grant of injunctive relief the court shall consider:

- whether such an injunction, either alone or in combination with other injunctions would significantly burden either the provider or the operation of his system or network,
- the magnitude of the harm likely to be suffered by the right holder in the digital network environment if steps are not taken to prevent or restrain the infringement,
- whether implementation of the injunction would be technically feasible and effective, and would not interfere with access to non-infringing material at other online locations and
- whether other less burdensome and comparatively effective means of preventing or restraining access to the infringing material are available.

4. THE PROTECTION OF PERSONAL DATA AND PRIVACY

The technological progress increases the demand for the protection of the processing of personal data and of privacy. The right in the protection of the processing of personal data is in a comprehensive manner regulated in the EU Data protection directive 95/46/EC. Also privacy rights may be relevant if the information concerned is not covered by data protection laws. The borderline between data protection and the protection of privacy is not easy to draw. Basically, the law concerning the protection of personal data appears as a special case of the law of privacy. In

the US, where data protection laws have not such a concise shape as the relevant laws of the EU and its Member States, issues relating to data protection are often dealt with under the concept of the protection of privacy.

The right to privacy may comprise the right to be left alone and the right to exercise control over one's personal information. Privacy issues in relation to learning technologies are of a mixed technical and legal nature, for example:

- the electronic leash created by the enhanced tracking capabilities of personal communications systems whereby the movements of an individual can be tracked,
- the data shadow which a user of an online system causes and which permits inferences with regard to his intelligence, life style and habits or preferences,
- the registration of the consumer's use of services and consumption,
- the surveillance at home through systems of security services by electronic means which may be combined with electronic publishing equipment without the knowledge of the user,
- the uncontrolled use and marketing of personal information,
- lacking security measures of services dealing with personal information,
- cross-border transfers of personal information.

4.1. THE EU DATA PROTECTION DIRECTIVE 95/46/EC

The protection of privacy is regulated differently in the Member States of the European Union. The Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data focuses on the right to privacy which is recognised in Article 8 of the European Convention European for the Protection of Human Rights and Fundamental Freedoms. This provision states: '(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.' The importance of the Directive may be derived from the number of 72 Recitals which are very useful for the explanation of the background and the interpretation of the Articles.

According to Article 1 of the Directive the Member States of the European Union shall protect the fundamental rights and freedom of natural persons, and in particular the right to privacy, with respect to the processing of personal data. This provision imposes on Member States of the Union the obligation to protect privacy - a right which was not established in all Member States before. The purpose of the Directive is to harmonise the laws in the Member States of the European Union so that the undertakings of the internal market are subject to similar rules; according to Article 32(1) of the Directive Member States shall adapt their laws to the requirements of the Directive within three years that is to say by October 1998. The scope of applicability of the Directive is related to the techniques used to capture, transmit, manipulate, record, store or communicate sound and image data relating to natural persons. However, concerning the processing of sound and image data carried out for purposes of journalism or for the purposes of literary or artistic expression in particular in the audiovisual field, the principles of the Directive are to apply in a restricted manner according to Article 9 of the Directive.

4.1.1. Principles of Protection according to the Directive

- **personal data** are any information relating to an identified or identifiable person (data subject),
- **processing of data** means operations performed on personal data whether or not by automatic means (collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction),
- a controller is the person or body which determines the purposes and means of the processing of personal data,
- a processor is the person or body which processes data on behalf of the controller,
- **personal data may be processed only if the data subject has given his consent and if processing is necessary,**
- subject to exceptions, it is prohibited the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership and the processing of data concerning health or sex life,
- Article 9 of the Directive states: 'Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression.'

- **the controller must provide a data subject from whom data are collected with information** on the identity of the controller, the purposes of the processing and other information such as concerning the recipient if this is necessary to guarantee fair processing in respect of the data subject,
- **the data subject has a right of access to the data** within reasonable intervals which includes the right to information about the data processed, the purposes of the processing and the recipients or categories of recipients to whom the data are disclosed,
- restrictions with regard to the scope of the data subject's rights may be made if this is necessary for purposes of national security, defence, public security, the prevention and prosecution of criminal offences, for the protection of the data subject or of rights and freedoms of others and also for important economic or financial interests of a Member State or of the Union,
- the data subject has a **right to object to the processing** on compelling legitimate grounds relating to his particular situation or if the data are used for direct marketing,
- **the confidentiality of data processing** is provided by the provision that data may be processed on instructions from the controller,
- the security of data processing is provided by the implementation of technical and organisational measures to protect data against unlawful or unauthorized destruction, loss, alteration, disclosure or access and processing, and by the duty to impose the obligation on the processor to act upon the instruction of the controller,
- **the transfer of data to third countries may only be made if these countries ensure an adequate level of protection**,
- Member States shall establish a supervisory authority which is responsible for monitoring the application of the Directive in the Member State,
- the controller must notify the supervisory authority before carrying out automatic processing operations, the notification must relate to the name of the controller, the purpose of the processing, the description of the category of data, the recipients of the data and the transfer of data to third countries,
- a working party on the protection of individuals with regard to the processing of personal data is established which is composed of representatives of the supervisory authority of Member States and which shall examine the application of the Directive by Member States and advise the Commission on the level of protection in the Community and in third countries and make recommendations on all matters relating to the protection of persons with regard to the processing of personal data.

The implementation of the Directive by Member States required considerable efforts, taking into account of the broad definition of the term 'personal data'.

4.1.2. Working Document on Preliminary Views on the Use of Contractual Provisions in the Context of Transfers of Personal Data to Third Countries.

The EU Commission's Working Party on the Protection of Individuals with regard to the Processing of Personal Data issued a Working Document on Preliminary views on the use of contractual provisions in the context of transfers of personal data to third countries (<http://europa.eu.int/comm/dg15/en/media/dataprot/wpdocs/>) on 22/04/98. Even though the document does not address the issue of learning technologies specifically, the recommendations (at pp. 11 and 12) will be of relevance also for standardized contractual forms relating to the transfer of personal data to non-Member States.

4.1.3. Working Document on Anonymity on the Internet

The Working Party released also a recommendation on Anonymity on the Internet (Recommendation 3/97), (<http://europa.eu.int/comm/dg15/en/media/dataprot/wpdocs/>).

4.2. EU DATA PROTECTION AND TELECOMMUNICATION

On 15 December 1997 a Directive on the protection of personal data and privacy in the telecommunications sector was adopted. The Telecommunications data protection Directive relates to the following issues:

- security of information transmitted over public telecommunications networks,
- confidentiality of communications,
- limitations in scope and time to processing of traffic and billing data by service providers,
- privacy options regarding the transmission of calling and connected line identification,
- tracing of malicious and nuisance calls,
- privacy concerns regarding automatically forwarded calls,
- right of subscribers not to appear in public directories,
- protection of privacy with regard to unsolicited calls.

4.2.1. Working Document on Respect of Privacy during the Surveillance of Telecommunications

On 03/05/99 the EU Commission's Working Party on the Protection of Individuals with regard to the Processing of Personal Data issued a Working Document on Respect of Privacy during the Surveillance of Telecommunications (<http://europa.eu.int/comm/dg15/en/media/dataprot/wpdocs/>) in which it made recommendations concerning the rules which should be applicable to those authorities which may undertake the surveillance of means of telecommunications according to national laws. In its recommendations, the Working Party dealt with the duties of service providers in chapter C (No.s 8 to 11). In particular, these recommendations though recalling basic duties deriving from data protection laws, state that service providers should take the necessary measures in order to prevent unauthorized third persons from access.

4.2.2. Operation of Telecommunication Services by Educational Institutions

Generally, the telecommunications secrecy is conceived of as a basic law which has to be observed by the educational institution. In cases where an educational institution operates a corporate network or connecting server for the communication within the institution or with third persons it will be subject to particular rules concerning the telecommunications secrecy. Covered by the telecommunications secrecy are services such as e-mail, newsgroups and websites.

see **Johann BIZER: Schüler am Netz: Rechtsfragen beim Einsatz von Email, Newsgroups and WWW in Schulen, in: Lernort Multimedia, Jahrbuch Telekommunikation und Gesellschaft 1998, R.V. Decker's, Heidelberg 1998, 244-256.**

4.3. PROTECTION OF PRIVACY

The EU Commission's Green Paper on Copyright and Related Rights in the Information Society of 1995 discussed the issue of reproduction and privacy (at 180). The Commission indicated that "a detailed examination will be necessary of the questions of protection of users' privacy which are raised by the fact that the network operators will be collecting and compiling precise details about the use of information and cultural services by each individual consumer."

The obligation to protect the confidentiality of information obtained at work (relating to staff, professors, tutors, etc.) is essentially a matter of labour law. The confidentiality of personal data is guaranteed by Article 5 of EU Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector (EU O.J. L 24 of 30/01/98).

Taking into account that the 'copying' of personal data will generally constitute the 'processing' of such data, the relevant acts have to comply with rules of data protection laws, so that, at least for the field of learning technologies, no particular recommendations with regard to the standardization will be required.

The increase of Internet access will lead to an increase of Websites of educational institutions. The material posted on Websites may violate the privacy of the persons about which information is communicated. Thus any information about persons should only be posted with their consent if there is a risk that such communication might violate the right of privacy.

5. ACCREDITATION AND RECOGNITION OF LEARNING TECHNOLOGY COURSES AND DIPLOMAS

5.1. RECOGNITION OF EDUCATIONAL INSTITUTIONS AND DIPLOMAS

Distance learning has been the subject matter of regulation by EU Member States for a long time. However, the use of learning technologies brings with it new problems.

5.1.1. Educational Institutions

The EU does not have the power to grant educational institutions a particular status. But in the sector of learning technologies it could be of interest to establish a network of online institutions for education which are cooperating at standardized conditions.

5.1.2. Accreditation and Educational Diplomas

Standardized conditions for the accreditation of courses which use learning technologies should be achieved in Europe and also such conditions for access. There are several legal instruments which concern the recognition of diplomas in Europe (see <http://europa.eu.int/en/comm/dg22/recognition/index.html>): the Directive 89/48/EEC of 21

December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (EU O.J. L 19/16-23 of 24/01/89) and the Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (EU O.J. L 209/25-45 of 24/07/92).

5.2. USE OF ONLINE TECHNOLOGY FOR APPLICATION FORMS

The use of online technology for the filing of applications should not pose legal problems. Online technologies may be used for the communication which, in the past, was made by exchange of letters. The German Administrative Court of Saarlouis of 23/07/98 (Computer & Recht 1999/262) recognised expressly that it was lawful to use an educational institution's Internet home page in order to offer students forms for an online registration. The Court held: The examination office of a university is free to offer students, additionally to the application forms to be filled in by writing, forms which are communicated via the Internet by means of a specially established Home Page. However, in such a case the university has to ensure that the electronic application can be proved similarly to a written application. This means that the applicant must be able to recognise on the screen without doubts whether the transmission of the application for the examination was successful.

5.3. CERTIFICATION AND CREDITS

The use of online learning technologies creates particular problems in the case of the award of certifications and credits to students.

Harm PASCHEN: "Beglaubigungen pädagogischer Diskurse im Internet", *Bildung und Erziehung*, 1999/49-63 at 49:

"Pedagogical discourses in the Internet are problematic regarding their certifications considering all the possibilities of faking personal attributes, professions, research, even intentions or basic sincerity. Like platonic dialogues, discourse contributions must have textual indicators of certification. These indicators (arguments, plurality of aspects and pedagogies, and calculation of weighing) are discussed under historical and systematical aspects. The potential openness of the Internet and the nature of pedagogical deliberation both ask for these indicators of pedagogical competence."

5.4. AUTHENTICATION

The use of authentication methods in learning technologies is an issue closely linked to technical issues (see for example <http://www.ukoln.ac.uk/services/elib/papers/others/scoping/scoping.doc>). Legal issues may concern defects of such systems or the adequacy of authentication methods to provide proof of the fact to which the authentication relates. However, it seems that no particular standards may be needed at present within the sector of learning technologies.

6. ACCESS

Within the EU educational institutions should benefit from a status of universal service which means that special rules concerning the telecommunications sector will be applicable.

6.1. CONDITIONAL ACCESS

The EU Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access (EU O.J. L 320/54 of 11/11/98), is applicable to a wide range of online services but also pay-tv, video-on-demand and electronic publishing services.

6.1.1. 'Information Society Service' and Learning Technologies

The Directive on Conditional Access addresses only those services which are normally provided for remuneration according to Recital 3. The term 'information society service' to which the Directive refers in Article 2(a) is defined in Article 1(2) of the Directive 98/48/EC of 20/07/98 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (EU O.J. L 217/18). Such a service

means "any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. For the purposes of this definition:

- 'at a distance' means that the service is provided without the parties being simultaneously present,
- 'by electronic means' means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electro-magnetic means,
- 'at the individual request of a recipient of services' means that the service is provided through the transmission of data on individual request".

Accordingly, the relevance of the Directive will be limited to cases in which the employment of learning technologies is not without charges. This may be the case, for example, if the students have to pay fees in order to obtain the access to modules which are available at the school's Intranet or internal network.

6.1.2. Protection of Information Society Services

Assuming that learning technologies are provided through an 'information society service' in the sense of the Directive on Conditional Access, the provisions of the Directive would be applicable and Member States would be obliged to apply the Internal market principles, established by Article 3. According to subsection 1 of this provision each Member State shall take the measures necessary to prohibit on its territory infringing activities in the sense of Article 4 and to provide for the sanctions and remedies laid down in Article 5. Subsection 2 of Article 4 obligates Member States not to restrict the provision of protected services, or associated services, which originate in another Member State, or restrict the free movement of conditional access devices for reasons falling within the field coordinated by the Directive.

The Directive obligates Member States in Article 4 to prohibit on their territory the use of illicit devices which are defined as any equipment or software designed or adapted to give access to a protected service in an intelligible form without the authorization of the service provider:

- the manufacture, import, sale, distribution, rental or possession for commercial purposes of illicit devices,
- the installation, maintenance or replacement for commercial purposes of an illicit device,
- the use of commercial communications to promote illicit devices.

6.2. PAYMENT SYSTEMS

The implication of the use of payment systems concerning access was analyzed with regard to the US market. In the US the policy dealing with universal service developed from the need of interconnection of subscribers of different telephone companies, it was contained in the practice that the surplus generated by long distance calls should pay for local service, that every home should be connected to the essential service of telecommunications. The convergence of telecommunications and informations technologies in the sector of education has created a more complicated infrastructure for access. Card based access has become a reality and different systems were developed concerning the use of debit cards, card based access in wireless services, credit and charge cards leading to a broader societal application of cards.

"A growing number of colleges and universities use debit cards for tuition payments, long-distance phone calls (...). The University of Michigan at Ann Arbor has about 46,000 magnetic stripe cards in circulation which can be used for identification, building access, ATM transactions, campus events, and purchases at about sixty-five merchant locations. The university's card program is part of an alliance with First of America Bank. Only those with First of America accounts can use the cards for ATM and merchant transactions; in return, the bank picked up the cost of the merchant terminals, transaction networks, and transaction processing. Most of these existing debit cards have a limited, "closed-loop" functionality. They are meant for a single type of transaction, like telephone calls or a transit pass, or they can only be used at locations within a set geographical boundary, such as a specific university or state." (**Milton MUELLER: Telecommunications Access in the Age of Electronic Commerce: Toward a Third-Generation Universal Service Policy**", *Federal Communications Law Journal*, April 1997, vol. 49, No. 3, 655-673 at 667). "The conflation of access and usage in card-based telecommunications leads to a change in economic factors of telecommunication: access is priced at zero and costs are recovered entirely through metered usage via debit cards." (ibid. at 670). "Accordingly, it is not the individual user who is taken into account when establishing the costs of the system, because charges are made to cards and not to the account holder of a line. Concerning the benefit of universal service this could mean the affordability of access for less advantaged circles of users."

6.3. EDUCATIONAL INSTITUTIONS AND TECHNOLOGY TRANSFER

Universities and other institutions of higher education may benefit from improved online contacts with the industry and potential users of research. For this purpose models could be developed which:

- inform researchers about the possibilities to protect the results of the research by intellectual property rights,
- inform the industry about research undertaken,
- offer a cooperation with industry,
- offer the exploitation of the results of the research protected by intellectual property rights through licensing.

SUGGESTED RECOMMENDATIONS:

- (1) Establish learning technologies standards that take into account differences in national laws concerning exemptions and limitations from copyright protection, particularly concerning education, research, fair use, libraries, archives, databases and quotations.
- (2) Develop standards for limitations and exemptions concerning exclusive intellectual property rights with regard to the use of protected material for purposes of learning technologies.
- (3) Develop harmonized standards concerning licensing of material for educational purposes.
- (4) Taking into account the huge amount of protected material which is used in learning technologies, standardization of some protection technologies may be recommendable.
- (5) Standardization of technical systems for identification of content and rights management information in online teaching.
- (6) Universities and other institutions of higher education should benefit from improved online contacts with the industry and potential users of research. For this purpose models could be developed which:
 - inform researchers about the possibilities to protect the results of the research by intellectual property rights,
 - inform the industry about research undertaken,
 - offer a cooperation with industry,
 - offer the exploitation of the results of the research protected by intellectual property rights through licensing.
- (7) Development of conditions for the grant of the status of universal service in learning technologies.
- (8) Development of harmonized conditions for certain online courses at schools, high schools, universities, also concerning post graduate courses or lifelong learning.
- (9) Development of standards concerning protection of personal data of students in online courses, including standards for the use of data telecommunications and the telecommunications secrecy.
- (10) Development of standards for the processing of personal data at schools, universities and other educational institutions and establishment of common standards concerning the liability of members of the public services involved in the use of learning technologies.

EXISTING INITIATIVES AND WEBSITES AND DOCUMENTS

In the US:

The American Association of University Professors, Special Committee on Distance Education and Intellectual Property Issues

<http://www.aaup.org/fsiup0324.htm>

The California Master Plan for Educational Technology of 1992, see http://goldmine.cde.ca.gov/ftpbranch/retdiv/ed_tech/programs/Master_Plan.html

Copyright Office: Report on Copyright and Digital Distance Education of May 1999, pursuant to § 403 of the US Digital Millennium Copyright Act of 1998 (see <http://lcweb.loc.gov/copyright/disted>) which contains in the Annexes:

- Copyright Office Program for Distance Education Demonstration of January 1999,
- Marketplace for Licensing in Digital Distance Education, by Isabella HINDS, April 1999,
- Fair Use Guidelines for Educational Multimedia,
- Proposal for Educational Fair Use Guidelines for Distance Learning

ED Initiatives, for example E-Rate Connecting All Classrooms to the Internet, or College Opportunities Online, see <http://www.ed.gov/pubs/EDInitiatives/99/99-06-09.html>

FIPSE Learning Anytime Anywhere Partnerships Program, <http://www.ed.gov/offices/OPE/FIPSE/LAAP/materials/legislat.html>

The Future Networking Technologies for Learning, White Papers see at <http://www.ed.gov/Technology/Futures/toc.html>

InterTrust Commerce 1.0, a product for digital information providers, payment processing companies and commerce infrastructure suppliers which delivers protection, business modelling, usage auditing and payment processing for digital commerce on Internet and other digital media, see http://www.epr.com/press/commerce1.0pr_f.html

Office of Educational Technology, publications see: <http://www.ed.gov/Technology/pubsh.html>

Schools Universal Services, see <http://www.ed.gov/Technology/erateforms/inst470ba.html>

Technology @ Your Fingertips: a Guide to Implementing Technology Solutions for Education Agencies and Institutions, see: <http://nces.ed.gov/pubsearch/pubinfo.asp?pubid=98293XXXXX>

Universal Service Administrative Company (USAC), Schools and Libraries Corporation, see <http://www.sl.universalservice.org/>

In Europe:

<http://www.idc.com/Data/Consumer/content/CSB020999PR.htm>

EU Commission DG XXII, Study Group on Education and Training Report: Accomplishing Europe through Education and Training, part V, Education and Training in the Information Society, pages 61-67

EU Commission's Open Information Interchange service, see <http://www2.echo.u/oii/en/oii-home.html> with a detailed alphabetical index to OII standards and specifications, a concise listing of formal standards bodies and industry consortia developing OII standards and specifications

EU Commission sponsored projects assessing various proposals for copyright protection of electronic data, see OII Guide to Intellectual Property Rights for Electronic Information Interchange, which refers, at page 7, to the following projects with the indication of the relevant Web Site (see <http://www2.echo.lu/oii/en/iprguide.html>): Imprimatur, OPEARMS, CITED, COPICAT, OSPREY, CopySmart, AMIDE, TALISMAN, MUSE, and OKAPI

European Cooperation on School Education,

COMENIUS, see <http://europa.eu.int/en/comm/dg22/socrates/comenius/site/new-tec.html>

Web sites and documents:

- European Schoolnet: European Schoolnet's Copyright Management and Rights Acquisition Guidelines of 15/06/99 see <http://www.eun.org>

- Ann P. BISHOP: "Measuring Access, Use, and Success in Digital Libraries", The Journal of Electronic Publishing, December 1998/vol. 4, Issue 2, with further references, <http://www.press.umich.edu/jep/04-02/bishop.html>

- The Digital Object Identifier System, International DOI foundation (the DOI is an identification system for intellectual property in the digital environment. Developed by the International DOI Foundation on behalf of the publishing industry, its goals are to provide a framework for managing intellectual content, link customers with publishers, facilitate electronic commerce, and enable automated copyright management, see <http://www.doi.org/index.html>)

- Daniel J. GERVAIS: "Electronic Rights Management and Digital Identifier Systems", The Journal of Electronic Publishing, March 1999, vol. 4, Issue 3, with further references, <http://www.press.umich.edu/jep/04-03/gervais.html>

ANNEX:**EXTRACTS FROM INTERNATIONAL TREATIES AND NATIONAL LAWS CONCERNING COPYRIGHT AND NEIGHBOURING RIGHTS OF RELEVANCE TO LEARNING TECHNOLOGIES**

When translation was necessary, it has been attempted to retain the presentation of the law according to the national legal system concerned (use of words and signs for Articles, Sections, Sub-sections, Paragraphs and Su-paragraphs). The texts of national laws follows insofar as possible the texts which have been published by WIPO in the English language. Words or signs in double brackets indicate headlines or spaces left out. It has to be observed that the extracts present only few provisions of national copyright laws. Accordingly, they cannot be presented here within the conceptual framework in which national legislators placed these rules.

BERNE CONVENTION**ROME CONVENTION**

(International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Rome 1961)

Permitted Exceptions: 1. Specific Limitations; 2. Equivalents with Copyright

- (1) Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:
 - (a) private use;
 - (b) use of short excerpts in connexion with the reporting of current events;
 - (c) ephemeral fixation by a broadcasting ((organisation)) by means of its own facilities and for its own broadcasting;
 - (d) uses solely for the purposes of teaching or scientific research.
- (2) Irrespective of paragraph (1) of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organisations, as it provides for in its domestic laws and regulations, in connexion with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this Convention.

WCT

Article 10

Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
- (2) Contracting Parties shall, when applying the Berne Convention, confine any limitations and exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

WPPT

Article 16

Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.
- (2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.

TRIPS

Article 13. Limitations and Exceptions (Copyright)

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

AUSTRIA

Copyright Amending Law of 1996

§ 56b Use of picture or sound carriers in libraries

(1) Institutions open to the public (libraries, collections of picture or sound carriers and the like) may use picture or sound carriers for public recitations, performances and presentations of the work recorded thereon to not more than two visitors to the institution at a time, provided this is not done for commercial purposes. The author shall be entitled to equitable remuneration therefor. Respective claims can only be made by performing rights societies.

(2) paragraph 1 shall not apply if a picture or sound carrier is used which was produced or distributed by violating an exclusive right to reproduce or distribute the work recorded thereon.

§ 56c Public communication during lessons

(1) Schools and universities may, for the purpose of instruction and/or training to the extent justified thereby, publicly perform cinematographic works and related works of music; the right to play feature films, however, shall be restricted to universities.

(2) For a public performance in accordance with paragraph 1 the author shall be entitled to equitable remuneration. Such claims can only be made by performing rights societies.

(3) Paragraphs 1 and 2 shall not be applicable:

1. to cinematographic works which by their nature and designation are destined for use at schools and universities;
2. if a picture or sound carrier is used which was produced or distributed by violating an exclusive right to reproduce or distribute the work recorded thereon.

BELGIUM

Law on Copyright and Neighbouring Rights of 30/06/95

Section 5. Exceptions to the Economic Rights of the Author (Art. 21 to 23)

Art. 22 (1) Once a work has been lawfully published, its author may not prohibit:

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 whole in connection with reports on current events; ((...))
4. reproduction in part or in whole of articles or works of fine art or the reproduction of short fragments of other works fixed on a graphic or similar medium where such reproduction is intended for a strictly private or didactic purpose and does not prejudice the publication of the original work; ((...))
7. free performance of a work during a public examination where the purpose of the performance is not the work itself, but assessment of the performer or performers of the work with a view to awarding them a certificate of qualification, a diploma or other title within the framework of an approved type of teaching.

((Chapter II. Neighbouring Rights (Art. 33 et seq.)

Section 7. Art. 46 to 47, Provisions Common to Sections 1 to 6))

Art. 46. Articles 35, 39, 42 and 44 shall not apply where the acts referred to in those provisions are carried out for the following purposes:

1. short quotations made for the purpose of criticism, polemics or teaching, or in scientific works, in accordance with fair practice and to the extent justified by the purpose, of the performances of the right holders referred to in Sections 2 to 6 of this Chapter;
2. the fixation, reproduction and communication to the public, for an informatory purpose, of short fragments of performances of the right holders referred to in Sections 2 to 6 in connection with reports on current events;
3. free and private performance carried out within the family circle or as part of school activities; (...)
6. free performance of a work during a public examination where the purpose of the performance is not the work itself, but assessment of the performer or performers of the work with a view to awarding them a certificate of qualification, a diploma or other title within a recognised teaching establishment.

Art. 47.

- (1) Performers may not prohibit the lending of phonograms or first fixations of films where the lending is carried out for an educational and cultural purpose by institutions that are recognised or are officially established for that purpose by the public authorities. ((...))
- (3) The institutions referred to in paragraph (1) that have been designated by the King may import

phonograms or first fixations of films that have been the subject of a first lawful sale outside the European Union and have not been distributed to the public in the territory of the European Union, provided that such importation is for the purposes of public lending organised for educational or cultural purposes and does not relate to more than five copies of the phonogram or of the first fixation of the film.

DENMARK

Act on Copyright 1995

((Chapter 2. Limitations on Copyright (Articles 11 to 52)
11, 12, 13, 16, 18, 22, 26-28))

General Provisions

§ 11.

- (1) The provisions of this chapter do not limit the author's rights under § 3, except as provided in § 29.
- (2) 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. If the work is used publicly, the source shall be indicated in accordance with the requirements of proper usage.

Reproduction for Private Use

§ 12.

- (1) Anyone is entitled to make or have made, for private purposes, single copies of works which have been made public. Such copies must not be used for any other purposes.
- (2) The provision of subsection (1) does not provide the right to: ((...))
 - (iv) produce copies in digitised form of other works if the reproduction is made on the basis of a production of the work in digitised form.
- (3) The provision of subsection (1) does not confer a right to engage another person to make copies of:
 - (i) musical works
 - (ii) cinematographic works
 - (iii) works of applied art or
 - (iv) works of art if the copying is in the form of an artistic reproduction
- (4) The provision of subsection (1) does not entitle the user to reproduce copies of musical works and cinematographic works by using technical equipment made available in the public in libraries, in business premises or in other places open to the public.

Reproduction within educational activities

§ 13.

- (1) Photocopying, etc. for educational use may be made of published works and copies may be made by recording of works broadcast in radio and television provided the requirements regarding the extended collective agreement licence contained in § 50 of this Act have been met. The copies thus made may be used only in such educational activities which are covered by the agreement presumed in § 50.
- (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.
- (3) Teachers and pupils may for educational purposes make recordings of their own performances of works. Such recordings may not be used for any other purposes.

Reproduction within archives, libraries and museums

§ 16.

The minister for culture may lay down rules according to which archives, libraries and museums may, on specified conditions, make single copies of works to be used for the purpose of their activities. If the copying is made by way of sound and visual recording or in digital form, the copies may not without the consent of the author be lent or in any other way be made available to the public outside the archives, libraries or museums.

Production of Anthologies for educational use, etc.

§ 18.

- (1) Minor portions from literary and musical works or short works of those categories may be reproduced in composite works consisting of works of a large number of authors compiled for use in educational activities, provided that five years have elapsed from the publication of those works. Works of art and works of a descriptive nature, cf. § 1(2), may be used in connection with the text, provided five years have elapsed from their being made available to the public. The author is entitled to remuneration.
- (2) The provision of subsection 1 does not apply to works prepared for use in educational activities.

Quotations.

§ 22.

A person may quote from a work which has been made public in accordance with proper usage and to the extent required for the purpose.

FINLAND

Copyright Act of 1961 as amended in 1997

Chapter 2. Limitations on copyright (§§ 11 to 26)

Art. 11. (446/1995)

The provisions of this Chapter shall not limit the author's rights under Art. 3 more extensively than as provided in Article 25e.

When a work is used publicly on the basis of the provisions of this Chapter, the source shall be stated to the extent and in the manner required by proper usage. The work shall not be altered more than is necessary for the permitted use without the author's consent.

Reproduction for private use

Art. 12 (446/1995)

Any person may make single copies of a disseminated work for his private use. Such copies may not be used for other purposes.

It is also permitted to engage an outsider to make copies that are intended for the private use of the party ordering them

The provisions of the second paragraph above do not apply to the reproduction of musical works, cinematographic works, utilitarian articles or sculptures, or to the copying of any other work of art by artistic reproduction. The provisions of this Article do not apply to a machine-readable computer program or to the construction of a work of architecture.

Photocopying

Art. 13 (446/1995)

Any person who has received authorization, from an organisation representing a large number of Finnish authors in a certain field, to make copies of published works by photocopying or analogous methods of reproduction also has the right to use the same methods to make copies of published works in the same field by an author not represented by the organisation. The terms of the said authorization shall be observed in the case of such reproduction.

Reproduction in educational activities

Art. 14. (446/1995)

Where an organisation representing a large number of Finnish authors in a certain field has authorized the copying, by radio or video recording on agreed terms, of a disseminated work included in a radio or television broadcast for use in educational activities or in scientific research, the recipient of the authorization may on corresponding terms make copies of another work in the same field, included in a broadcast, by an author not represented by the organisation.

It is permitted, in connection with educational activities, to make copies by direct audio or video recording of a disseminated work performed by a teacher or a student for temporary use in those activities. A copy so made may not be used for any other purpose.

Parts of a disseminated literary work or, when the work is not extensive, the whole work may be incorporated in a test constituting part of the matriculation examination or in any other comparable test. A disseminated work of art may be reproduced in pictorial form for the same purpose.

Reproduction in archives, libraries and museums

Art. 16. (446/1995)

Archives, libraries and museums, as defined by decree, shall have the right to make copies of a work, on conditions specified in the decree, for the purpose of their activities.

The provisions of the Act concerning the Delivery and Deposit of Films in Archives (576/1984) shall govern the right of the Finnish Film Archive to make copies of a work included in a publicly shown Finnish film or in the advertising or other promotional material for such a film

Compilation of works for use in education

Art. 18. (446/1995)

Minor parts of a literary or musical work or, if it is not extensive, the whole work, may be incorporated in a compilation consisting of works by several authors and intended for use in education, provided that five years have passed since the year in which the work was published. A disseminated work of art may be reproduced in pictorial form in connection with the text. The provisions of this Article do not apply to a work created for use in education. The author is entitled to remuneration for use under the preceding paragraph.

Public performance

Art. 21 (446/1995)

A published work may be publicly performed in connection with religious services and education.

A published work may also be publicly performed in events where the performance of such works is not the main feature, provided that no admission fee is charged and the event is not arranged for profit. It may also be publicly performed in connection with public education activities and for charitable or other non-profit purposes, provided that the performers, whether they are one or several, receive no payment for their performance.

The provisions of the first and second paragraphs above do not apply, however, to dramatic or cinematographic works.

Quotations

Art. 22 (446/1995)

A disseminated work may be quoted, in accordance with proper usage, to the extent necessary for the purpose.

Copyright Decree No. 574 of 1995

Copying in archives, libraries and museums

Art. 1.

The following institutions shall have the right, provided for in the first paragraph of Art. 16 of the Copyright Act, to make copies of a work for the purpose of their activities, subject to the conditions laid down in Articles 3 to 6 below:

- (1) collectors of archives as defined in subparagraphs 1 to 3 and 5 of Article 1 of the Archives Act (831/94), the Archives of the President of the Republic, the Archives of the Evangelical Lutheran Church and the archives of the public authorities in the Province of Aaland;
- (2) the Library of Parliament, the libraries of universities and other scientific libraries maintained by the State, the Repository Library, the Central Library of Public Libraries, and the province libraries; and
- (3) State-owned museums.

Art. 2.

The Ministry of Education may grant the right referred to in Article 1 also to an archive, library or museum other than those specified in the said Article.

Art. 3.

An archive, library or museum may, to the extent necessary for reasons of security, make, by means of microphotography or other analogous process, copies of material in their collections.

Material forming part of the above collections which, owing to its fragile character or rarity, cannot be lent to users in its original form may be reproduced by photocopying for the purpose of loans; nevertheless, except where justified by special reasons, or more than two copies may be made.

A protected work belonging to such a collection that has not been disseminated may not be reproduced without the consent of the author.

Art. 4.

It is permitted to use photocopying to make copies of isolated articles contained in compilations and in newspapers and magazines, and of brief portions of other published works, with a view to supplying them, when this is considered expedient, to persons asking to borrow them for purposes of research or study, instead of lending the volume or booklets containing them. Each person seeking a loan shall receive one copy only of each article or each portion of a work.

((Recording by schools and universities may benefit from a re-payment of the levy paid on devices for copying of a work for private use.))

Art. 26a of the Copyright Act

Art. 26a. (442/1984)

Where an audio or video tape, or any other device on which a sound or image can be recorded and which is suitable for the copying for private use of a work broadcast by radio or television or a work on an audio or video recording,

is produced or imported into the country for distribution to the public, the manufacturer or the importer shall pay a levy proportional to the playing time of the device which shall be used to compensate the authors of the said works and for the collective benefit of authors. The compensation shall be paid out to the entitled authors through an organisation representing a large number of Finnish authors in a certain field.

Any person who offers ((...))

Art. 26b. (442/1984)

The levy shall be collected by an organisation representing a large number of Finnish authors and having the approval of the ministry of Education for this task for a fixed period of time not exceeding five years. It shall be a prerequisite of such approval that the organisation undertakes to use a proportion of the proceeds of the levy ((...))

Art. 26e. (41984)

Where an audio or video tape, or any other device on which a sound or image can be recorded and which is suitable for the copying for private use of a work broadcast by radio or television or a work on an audio or video recording, is produced or imported into the country for distribution to the public, the manufacturer or the importer shall pay a levy proportional to the playing time of the device which shall be used to compensate the authors of the said works and for the collective benefit of authors. The compensation shall be paid out to the entitled authors through an organisation representing a large number of Finnish authors in a certain field.

Any person who offers ((...))

Art. 26b. (442/1984)

The levy shall be collected by an organisation representing a large number of Finnish authors and having the approval of the ministry of Education for this task for a fixed period of time not exceeding five years. It shall be a prerequisite of such approval that the organisation undertakes to use a proportion of the proceeds of the levy ((...))

Art. 26e. (442/1984)

Any person who uses or exports a device has the right to receive from the organisation repayment of the levy paid on devices:

- (1) that are exported;
- (2) that are used for professional audio or video recording;
- (3) that are used for the making of audio or video recordings intended for persons with impaired vision or hearing;
- (4) that the Ministry of Education has for an especially important reason exempted from the levy.

Unless such repayment is verifiably requested within three months from the end of the year during which the right to it came into being, the right shall expire.

Copyright Decrees No. 574 of 21/04/95

Art. 30.

Any activity

- (1) that is constant and regular and carried on with gainful intent in which recordings are made in order to be further conveyed to the public;
- (2) for which recording is a prerequisite or to which recording is otherwise important and pertains to the business of the recorder;

shall be regarded as professional audio or video recording for the purposes of item (2) of the first paragraph of Article 26e of the Copyright Act.

Recording by schools and universities in the course of educational activity and scientific research shall also be regarded as professional recording.

FRANCE

Law on Intellectual Property Code (Legislative Part) No. 92-597 of 01/07/92 as last amended by Laws No.s 94-361 of 10/05/94 and 95-4 of 03/01/95.

((Education, Science, Research))

Article L. 122-5 of the French Intellectual Property Code states:

Once a work has been disclosed, the author may not prohibit:

1. ((...))
3. on condition that the name of the author and the source are clearly stated:
 - a) analyzes and short quotations justified by the critical, ((...)) educational, scientific or informative nature of the work in which they are incorporated;
 - b) ((...))

- c) dissemination, even in their entirety, through the press or by telediffusion, as current news, of speeches intended for the public made in ((...)) academic gatherings, ((...))

((Private Use))

Article L. 122-5 No. 2 of the French Intellectual Property Code states:

2. Copies or reproductions reserved strictly for the private use of the copier and not intended for collective use, with the exception of copies of works of art to be used for purposes identical with those for which the original work was created and copies of software other than backup copies made in accordance with paragraph II of Article 122-6-1;

((according to Article 122-6-1 the author of a computer program has the exclusive right to translate, adapt, arrange or alter the software and the reproduction of the results thereof))

GERMANY

Law on Copyright and Neighbouring Rights of 1965 as last amended in 1996

Section VI. Limitations on Copyright (§§ 45-63)

§ 46 Collections for Religious, School or Instructional Use

- (1) Reproduction and distribution shall be permissible where limited parts of works, of works of language and of musical works, individual works of fine art or individual photographs are incorporated after their publication in a collection which assembles the works of a considerable number of authors and is intended, by its nature exclusively for religious, school or instructional use. The purpose for which the collection is to be used shall be clearly stated on the title page or some other appropriate place.
- (2) Paragraph (1) shall apply to musical works incorporated in a collection intended for musical instruction only if the collection is intended for musical instruction in schools that are not schools of music.
- (3) Reproduction may begin only if the intention to exercise the rights afforded by paragraph (1) has been communicated by registered letter to the author or, if his permanent or temporary residence is unknown, to the holder of an exclusive exploitation right, and two weeks have elapsed since dispatch of the letter. If the permanent or temporary address of the holder of the exclusive right is also unknown, the communication can be made by publication in the Official Bulletin ((Bundesanzeiger)).
- (4) The author shall be paid equitable remuneration for the reproduction and distribution.
- (5) An author may prohibit reproduction and distribution if the work no longer reflects his conviction and he can therefore no longer be expected to agree to the exploitation of his work and he has for that reason revoked any existing exploitation right (§ 42). The provisions of § 136(1) and (2) shall be applicable mutatis mutandis.

School Broadcasts

§ 47

- (1) Schools and institutions for the training and further training of teachers may make individual copies of works which are included in a school broadcast by recording the works on a video or audio medium. The same shall apply to youth welfare homes and to the official provincial pictorial materials services or comparable publicly owned institutions.
- (2) The video or audio recordings may be used only for instructional purposes. They must be destroyed not later than the end of the school year following the transmission of the school broadcast, unless equitable remuneration has been paid to the author.

§ 51 Quotations

Reproduction, distribution and communication to the public shall be permitted, to the extent justified by the purpose, where

1. Individual works are included after their publication in an independent scientific work to illustrate its contents;
2. passages from a work are quoted after its publication in an independent work of language;
3. individual passages from a published musical work are quoted in an independent musical work.

§ 52 Public Communication

- (1) The public communication of a published work shall be permissible if the communication serves no gainful purpose on the part of the organiser, spectators are admitted free of charge and, in the case of recitation or performance of the work, none of the performers (§ 73) receive special remuneration. An equitable remuneration shall be paid for the communication. The obligation to pay remuneration shall not apply in respect of events organised by the Youth Welfare Service, the Social Welfare Service, the Old Persons Welfare Service, the Prisoners Welfare Service and for school events, on condition that in accordance with their social or

educational purpose they are only accessible for a specifically limited circle of persons. This shall not apply if the event serves the gainful purpose of a third party; in such case, the third party shall be required to pay the remuneration.

- (2) The public communication of a published work shall be permissible at a religious service or a celebration of the churches or religious communities. However, the organiser shall pay the author an equitable remuneration.
- (3) Public stage performances and broadcasts of a work and public presentations of cinematographic works shall in all cases be permissible only with the consent of the copyright owner.

§ 53 Reproduction for Private and Other Personal Use

- (1) It shall be permissible to make single copies of a work for private use. A person authorized to make such copies may also cause such copies to be made by another person; however, this shall apply to the transfer of works to video or audio recording mediums and to the reproduction of works of fine art only if no payment is received therefor.
- (2) It shall be permissible to make or to cause to be made single copies of a work
 1. for personal scientific use, if and to the extent that such reproduction is necessary for the purpose,
 2. to be included in personal files, if and to the extent that reproduction for this purpose is necessary and if a personal copy of the work is used as the model for reproduction,
 3. for personal information concerning current events, in the case of a broadcast work,
 4. for other personal uses,
 - a) in the case of small parts of published works or individual contributions that have been published in newspapers or periodicals,
 - b) in the case of a work that has been out of print for at least two years.
- (3) It shall be permissible to make or to cause to be made copies of small parts of a printed work or of individual contributions published in newspapers or periodicals for personal use,
 1. in teaching, in non-commercial institutions of education and further education or in institutions of vocational education in a quantity required for one school class or
 2. for State examinations and examinations in schools, universities, non-commercial institutions of education and further education and in vocational education in the required quantity, if and to the extent that such reproduction is necessary for this purpose.
- (4) Reproduction
 - (a) of graphic recordings of musical works,
 - (b) of a book or a periodical in the case of essentially complete copies, shall only be permissible, where not carried out by manual copying, with the consent of the copyright owner or in accordance with paragraph (2) item 2, or for personal use in the case of a work that has been out of print for at least two years.
- (5) Copies may neither be disseminated nor used for public communication. It shall be permissible, however, to lend out lawfully made copies of newspapers and works that are out of print or such copies in which small damaged or lost parts have been replaced with reproduced copies.
- (6) The recording of public lectures, representations or performances of works on video or audio recording mediums, the realisation of plans and sketches for works of fine art, and the reproduction of works of architecture shall only be permissible with the consent of the copyright owner.

Obligation to Pay Remuneration for Reproduction by Means of Video and Audio Recording

§ 54.

- (1) Where the nature of a work makes it probable that it will be reproduced by the recording of broadcasts on video or audio recording mediums or by the transfer from one recording medium to another in accordance with Section 53(1) or (2), the author of the work shall be entitled to payment of equitable remuneration from the manufacturers
 1. of appliances; and
 2. of video or audio recording mediums
 that are obviously intended for the making of such reproductions, in respect of the possibility of making such reproductions that is created by the sale of the appliances and of the video or audio recording mediums. In addition to the manufacturer, any person who commercially imports or reimports such appliances or such video or audio recording mediums into the territory to which this Law applies or who deals therein shall be jointly liable. (...)

Obligation to Pay Remuneration for Reproduction by Means of Photocopying

§ 54a

- (1) Where the nature of a work is such that it may be expected to be reproduced in accordance with § 53(1) to (3) by the photocopying of a copy or by some other process having similar effect, the author of the work shall be entitled to payment of equitable remuneration from the manufacturer of appliances intended for the making of such reproductions, in respect of the possibility created by the sale or other placing on the market of the appliances. In addition to the manufacturer, any person who commercially imports or re-imports such

appliances into the territory to which this Law applies or who deals therein shall be jointly liable. A dealer shall not be liable if he procures less than 20 appliances in one half calendar year.

- (2) Where appliances of such type are operated in schools, universities or vocational training institutions or other educational and further education institutions (educational institutions), research institutions, public libraries or in institutions which have available appliances for the making of photocopies on payment, the author shall also be entitled to payment of equitable remuneration from the operator of the appliance.
- (3) ((...))

Prohibition of Alteration

§ 62

- (1) Where the use of a work is permissible under the provisions of this Section, no alteration may be made to the work ((...))
- (4) In the case of collections for religious, school and instructional use (§ 46), such alterations of works of language shall be permissible as are necessary for religious, school and instructional use, in addition to the alterations permitted under paragraphs (1) to (3). However, such alterations shall require the consent of the author or, after his death, of his successor in title (§ 30) if the latter is a next of kin of the author (§ 60(3)) or has acquired copyright by testamentary disposition of the author. Consent shall be deemed to have been granted if the author or his successor in title does not object within one month of notification of the proposed alteration and if the notification of the alteration has drawn attention of this legal consequence.

Acknowledgement of Source

§ 63

- (1) If a work or part of a work is reproduced pursuant to §§ 45(1), 46 to 48, 50, 51, 58, 59 and 61, the source must in all cases be clearly acknowledged. The same shall apply in the cases referred to in § 53(2) item 1, (3) item 1, with regard to the reproduction of a database. In reproducing complete works of language or complete musical works, the publishing house which published the work must be stated in addition to the author, as also any abridgements or other alterations to the work. There shall be no obligation to acknowledge sources if no source is given either on the copy of the work used or with the reproduction of the work used and if no source is otherwise known to the person entitled to reproduce.
- (...)

GREECE

Copyright, Related Rights and Cultural Matters (Law No. 2121/1993 as last amended in 1996)

Section IV Limitations on the Economic Right ((Art. 18 to 28))

Reproduction for Private Use

§ 18

- (1) Without prejudice to the provisions laid down in the following paragraphs, it shall be permissible for a person to make a reproduction of a lawfully published work for his own private use, without the consent of the author and without payment. The term 'private use' shall not include use by an enterprise, a service or an organisation.
- (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.
- (3) If for the free reproduction of the work technical means are used, such a visual or sound, or audiovisual recording equipment, magnetic tapes or other materials, suitable for the reproduction of sounds or images or of sounds and images, photocopying machines, photocopy paper or computers, an equitable remuneration shall be payable to the author of the work and to any holders of related rights. The remuneration shall be fixed at 6 per cent of the value of visual or sound, or visual and sound, recording equipment and of magnetic tapes or other materials, at 4 per cent of the value of photocopying machines and of photocopy paper and at 2 per cent of the value of computers. In any case, the calculation shall be made at the time of the import, or of the distribution from the factory, or at the time of the wholesale or retail sale. The remuneration shall be paid by the manufacturers or the importers or the vendors of the objects herein specified and shall be noted on the invoice, and collected by the collecting societies, acting for all part of the concerned category of right holders. The collecting societies shall collect the said remuneration and shall choose the debtor. The remuneration collected from the manufacture, import or sale of photocopying machines, photocopy paper and computers shall be shared equally between the authors and the publishers of printed matter. The remuneration collected from the manufacturer, importer or vendor of visual or sound or audiovisual recordings shall be distributed in the

proportion of 55 per cent to the authors, 25 per cent to the performers and 20 per cent to the producers of recorded magnetic tapes or other sound or visual or audiovisual recordings. The necessary details pertaining to the allocation and payment of monies to the various categories, or subcategories of the same category, of right holders can be determined through regulation by the Minister of Culture.

(4) ((...))

Quotation of Extracts

§ 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 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.

School Textbooks and Anthologies

§ 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 Religion 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.
- (2) After the death of the author it shall be permissible to reproduce his works in a lawfully published anthology of literary works of more than one writer, without the consent of the right holders and without payment. The reproduction shall encompass only a small part of the total output of the writers.
- (3) The reproduction as specified in paragraphs (1) and (2), above, shall not conflict with the normal exploitation of the work from which the texts are taken and 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 in the source.

Reproduction for Teaching Purposes

§ 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.

Reproduction by Libraries and Archives

§ 22

It shall be permissible, without the consent of the author and without payment, for a nonprofit-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 nonprofit-making library or archive. The reproduction shall be permissible only if an additional copy cannot be obtained in the market promptly, and on reasonable terms.

Reproduction for Information Purposes

§ 25

- (1) To the extent justified for the particular purpose, the following acts of reproduction shall be permissible without the consent of the author and without payment:
 - (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;
 - (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.
- (2) Wherever possible, the reproduction and communication to the public shall be accompanied by an indication of the source and of the name of the author.

Public Performance or Presentation on Special Occasions

§ 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 students, or persons directly involved in the activities of the establishment.

IRELAND

Copyright Act of 1963

S. 12. General exceptions from protection of literary, dramatic or musical works

- (1) No fair dealing with a literary, dramatic or musical work for purposes of-
 - (a) research or private study or
 - (b) criticism or review, whether of that work or another work, which is accompanied by a sufficient acknowledgement, shall constitute an infringement of the copyright in the work
- (2) No fair dealing with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for the purpose of reporting current events –
 - (a) in a newspaper, magazine or similar periodical, which is accompanied by a sufficient acknowledgement, or
 - (b) by means of broadcasting, or in a cinematograph film.
- (3) (...)
- (4) (...)
- (5) The copyright in a published literary or dramatic work is not infringed by the inclusion of a short passage from it in a collection intended for use in schools, if-
 - (a) the collection is described in its title, and in any advertisement thereof by or on behalf of the publisher, as being so intended,
 - (b) the work in question was not published for use in schools,
 - (c) the collection consists mainly of material in which no copyright subsists,
 - (d) the inclusion of the passage is accompanied by a sufficient acknowledgement, and
 - (e) not more than one other excerpt from works by the author of the passage, being works in which copyright subsist when the collection is published, is contained in that collection or in that collection taken together with every similar collection (if any) published by the same publisher within the period of five years immediately preceding the publication of that collection.
- (6) (...)

S. 14. General exceptions from protection of artistic works

- (1) No fair dealing with an artistic work for purposes of-
 - (a) research or private study, or
 - (b) criticism or review, whether of that work or another work, if accompanied, by a sufficient acknowledgement, shall constitute an infringement of the copyright in the work.

ITALY

Law for the Protection of Copyright and Neighbouring Rights (Law No. 633 of 22/04/41 as amended in 1997)

Art. 15

- (1) The exclusive right to perform, present or recite in public concerns the performance, presentation or recital by whatever means whether without charges or against a payment, of a work of music, of a dramatical work, of a cinematographic work or of whatever other work of a public spectacle and of an oral work.
- (2) The performance, presentation or recital of a work within the normal circles of the family, of a community, school or retirement home shall not be deemed a public performance, if it is done not with the aim to obtain a profit.

Art. 17

- (1) The exclusive right of distribution concerns the right to market, place in circulation or make available to the public, by whatever means and for whatever purpose, a work or copies thereof, and includes, in addition, the

exclusive right to introduce into the territory of the European Union, for distribution, copies of a work made in countries not member of the European Union.

- (2) The free delivery of copies of a work for promotional purposes or for teaching or scientific research, when carried out and authorized by the right holder, shall not be deemed to be exercise of the exclusive right of distribution.

Chapter V. Free Use

Art. 65. Articles of current interest of an economic, political or religious character, published in magazines or newspapers, may be freely reproduced in other magazines or newspapers, or may be broadcast, unless such reproduction is expressly reserved, provided mention is made of the magazine or newspaper from which they are taken, the date and the issue of the magazine or newspaper and, in the case of a signed articles, the name of the author.

Art. 66. Speeches upon matters of political or administrative interest given in public assemblies or in any other public manner may be freely reproduced in magazines or newspapers, or broadcast, provided the source is mentioned, together with the name of the author and the date and place in which the speech was given.

Art. 67 (...)

Art. 68. The reproduction of single works or of portions of works for the personal use of the reader, when made by hand or by a means of reproduction unsuitable for marketing or disseminating the work in public, shall be permitted. The photocopying of works available in libraries, when made for personal use or for the services of the library, shall be permitted.

The distribution of such copies in public and, in general, any use of them that infringes the exploitation rights of the author shall be prohibited.

Art. 69. (1) Loans from libraries and record libraries belonging to the State or to public authorities, made exclusively for purposes of cultural promotion and personal study, shall not require authorization by the right holder, to whom no remuneration shall be due, and shall exclusively concern:

- (a) printed copies of the works, except for operatic and music scores;
- (b) phonograms and videograms containing cinematographic or audiovisual works or sequences of moving images, with or without sound, provided that at least 18 months have elapsed since the first exercise of the right of distribution.

Art. 70. The abridgment, quotation or reproduction of fragments or parts of a work for the purpose of criticism or discussion, or for instructional purposes, shall be permitted within the limits justified for such purposes, provided such acts do not conflict with the commercial exploitation of the work.

In anthologies for school use, reproduction shall not exceed the extent specified in the regulations, that shall also lay down the manner for determining the equitable remuneration for such reproduction.

The abridgement, quotation or reproduction must always be accompanied by a mention of the title of the work and of the names of the author, the publisher and, in the case of a translation, the translator, whenever such mentions appear on the work that has been reproduced.

Art. 71. Musical groups and bands of the armed forces of the State may perform musical pieces or portions of musical works in public without payment of any fees in respect of copyright, provided the performance is not made for profit.

LUXEMBOURG

Law of 29/03/72 on Copyright as last amended in 1997

Section II Exceptions to Copyright

Art. 11. Speeches made in deliberative assemblies, at public hearings of the courts or at political meetings may be freely published and broadcast. Lectures, addresses and other works of the same nature that are delivered in public may be reproduced by the press and broadcast in their original form or in translation when such use is justified by the informatory purpose.

Nevertheless, the author alone shall have the right to make reprints or a collection of the works mentioned in the preceding paragraph.

Art. 12. Official texts of the authorities and official translations thereof shall not give rise to copyright. All other writings produced by the State, municipalities or public establishments shall give rise to copyright, either in favor of such administrations for a term of 70 years following publication or in favour of the author if he has not transferred it to such administrations.

Art. 13. The author's right in a literary or artistic work that had already been lawfully made available to the public shall not preclude the right to make quotations, in the original or in translation, to the extent justified by the purpose, provided that the quotations are compatible with fair practice, including quotations from newspaper articles and periodicals in the form of press review.

The same shall apply to the use of literary or artistic works, to the extent justified by the purpose, by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided that such use is compatible with fair practice.

Any such quotation or use shall be accompanied by a mention of the source and of the name of the author if it appears thereon.

Art. 14. Literary or artistic works seen or heard in the course of a current event may, to the extent justified by the informatory purpose, be reproduced and made available to the public on the occasion of a report on the event by means of photography, cinematography or broadcasting.

Articles published in newspapers or periodicals on current economic, political or religious topics, and broadcast works of the same character, may be reproduced by the press or broadcast, in the original or in translation, where the authors or publishers have not expressly stated, in the newspaper or periodical in which such works appeared, that they prohibit the reproduction or broadcasting thereof; nevertheless, the source must always be clearly specified. In the case of collections, it is sufficient for the prohibition to be made in general terms on the heading of each issue. News of the day and miscellaneous news items having merely incidental character may be freely used.

NETHERLANDS

Copyright Act of the Netherlands of 1912, amended subsequently

§ 6 Limitations on Copyright

Art. 15

1. It shall not be deemed an infringement of copyright to take over news reports, miscellaneous reports or articles concerning current economic, political or religious topics that have appeared in a daily or weekly newspaper or weekly or other periodical or works of the same nature that have been broadcast in a radio or television programme, if:
 - 1st. the taking over is effected by a daily or weekly newspaper or weekly or other periodical in a radio or television broadcast;
 - 2nd. the provisions of Article 25 ((moral rights)) have been taken into account;
 - 3rd. the source is clearly indicated, together with the indication of the author if it appears in the source; and
 - 4th. copyright is not explicitly reserved.
2. In the case of periodicals, a generally worded reservation placed at the head of each issue shall also be deemed an explicit reservation as referred to in paragraph 1 sub 4th.
3. A reservation as referred to in paragraph 1 sub 4th. cannot be made in respect of news reports and miscellaneous reports.
4. The provisions of this article shall also apply where the taking over is in a language other than the original.

Article 15a

1. Quotations in an announcement, criticism, polemic or scientific treatise shall not be deemed an infringement of copyright in a literary, scientific or artistic work where:
 - 1st. the work from which the quotation is taken has been lawfully communicated to the public;
 - 2nd. the quotation is in conformity with that which may be reasonably accepted in accordance with social custom and the number and length of the quoted passages are justified by the purpose to be achieved;
 - 3rd. the provisions of Article 25 ((moral rights)) have been taken into account;
 - 4th. the source is clearly indicated, together with the indication of the author if it appears in the source.
2. In the case of a short work or a work as referred to in Article 10, paragraph 1, sub 6th. ((drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like)), 9th. ((photographic works)), or 11th. ((works of applied art and industrial designs and models)), the entire work may be reproduced for the purpose and under the conditions stated in paragraph 1, if done in such a way that the reproduction differs appreciably in size or process of manufacture from the original work.

3. For the purposes of this Article quotations includes quotations from articles that have appeared in daily or weekly newspapers, weeklies or other periodicals in the form of press reviews.
4. The provisions of this article shall also apply to quotations in a language other than the original.
5. We reserve the right to determine, by Order in Council, what is to be understood in paragraph 1 sub 2nd. by "reasonably accepted in accordance with social custom".

Article 15b

The further communication to the public or reproduction of a literary, scientific or artistic work communicated to the public by or on behalf of the public authorities shall not be deemed an infringement of the copyright in such a work, unless the copyright has been explicitly reserved, either in a general manner by law, decree or ordinance, or in a specific case by a notice on the work itself or at the communication to the public. Even if no such reservation has been made, the author shall retain the exclusive right to have appear in the form of a collection his works which have been communicated to the public by or on behalf of the public authorities.

Article 15c

1. The lending as referred to in Article 12, paragraph 1, sub 3rd., of the whole or part of a work or a reproduction thereof brought into circulation by or with the consent of the rightholder shall not be deemed an infringement of copyright, provided the person doing or arranging the lending pays an equitable remuneration. The first sentence shall not apply to a work referred to in Article 10, paragraph 1, sub 12th. ((computer programs and the preparatory material)), unless that work is part of a data carrier containing data and serves exclusively to make the said data accessible.
2. Educational establishments and research institutes, the libraries attached to them, and the Koninklijke Bibliotheek are exempt from payment of a lending remuneration as referred to in paragraph 1.
3. Libraries funded by the Libraries for the Blind and Visually Impaired Fund are exempt from payment of a remuneration as referred to in paragraph 1 in respect of items lent to blind and visually impaired persons registered with the libraries in question.
4. Payment of the remuneration referred to in paragraph 1 shall not be required if the person liable for payment can demonstrate that the author or his successor in title has waived the right to an equitable remuneration. The author or his successor in title should notify the legal persons referred to in Articles 15d and 15f of the waiver in writing.

Article 15g

Persons required to pay the remuneration referred to in Article 15c, paragraph 1, shall be obliged to submit, by 01 April of every calendar year unless otherwise agreed, to the legal person referred to in Article 15f, paragraph 1, the number of juristic acts as referred to in Article 15c. They shall also be obliged to give the said legal person, on request, immediate access to the documents and other data carriers needed to establish liability and the level of the remuneration.

Article 16

1. The following shall not be deemed an infringement of copyright in a literary, scientific or artistic work:
 - a. the taking over of parts of works in publications or sound or visual recordings made for use as illustrations for teaching purposes, provided:
 - 1st. the work from which was taken over has been lawfully communicated to the public;
 - 2nd. the taking over is in conformity with that which may be reasonably accepted in accordance with social custom;
 - 3rd. the provisions of Article 25 ((moral rights)) have been taken into account;
 - 4th. the source is clearly indicated, together with the indication of the author if it appears in the source; and
 - 5th. an equitable remuneration be paid to the author or his successors in title;
 - b. communication to the public of parts of works by broadcasting a radio or television programme made to serve as an illustration for teaching purposes, provided:
 - 1st. the work from which is taken over has been lawfully communicated to the public;
 - 2nd. the communication to the public is in conformity with that which may be reasonably accepted in accordance with social custom;
 - 3rd. the provisions of Article 25 ((moral rights)) have been taken into account;
 - 4th. the source is clearly indicated, together with the indication of the author if it appears in the source; and
 - 5th. an equitable remuneration be paid to the author or his successors in title.
2. In the case of a short work or a work as referred to in Article 10, paragraph 1, sub 6th. ((drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like)), 9th. ((photographic works)), or 11th. ((works of applied art and industrial designs and models)), the entire work may be taken over for the same purpose and subject to the same conditions.

3. Where the taking over in a compilation is concerned, only short works or short passages of works by one and the same author may be taken over and, in the case of works referred to in Article 10, paragraph 1, sub 6th. ((drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like)), or 9th. ((photographic works)), 11th. ((works of applied art and industrial designs and models)), only a small number of those works and only if they are reproduced in such a way that they differ considerably in size or process of manufacture from the original work, with the proviso that where two or more such works were communicated to the public together, the reproduction of only one of them shall be permitted.
4. The provisions of this Article shall also apply where the reproduction is in a language other than the original.
5. We reserve the right to lay down rules by Order in Council concerning the equitable remuneration to be paid in accordance with paragraph 1 sub a. 5th., and also to determine, by order in Council, what is to be understood in paragraph 3 by "short works or short passages of works".

Article 16b

1. It shall not be deemed an infringement of the copyright in a literary, scientific or artistic work to reproduce it in a limited number of copies for the sole purpose of private practice, study or use of the person who makes the copies or orders the copies to be made exclusively for himself.
2. In the case of a work as referred to in Article 10, paragraph 1, sub 1st. ((books, pamphlets, newspapers, periodicals and all other writings)), including the score or parts of a musical work, the reproduction shall furthermore be limited to a small portion of the work, except in the case of
 - a. works of which it may reasonably be assumed that no new copies will be made available to third parties for payment of any kind;
 - b. short articles, news items or other texts which have appeared in a daily or weekly newspaper or weekly or other periodical.
3. In the case of a work as referred to in Article 10, paragraph 1, sub. 6th. ((drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like)), the reproduction must differ considerably in size or process of manufacture from the original work.
4. The provisions of paragraph 1 concerning a reproduction made to order shall not apply to a reproduction made by fixing a work or part thereof on an object which is intended to play a work or to show it.
5. In the case of a reproduction permitted under this Article, the copies made may not be given to third parties without the consent of the copyright owner, except in connection with judicial or administrative proceedings.
6. We may determine by Order in Council that that, with respect to the reproduction of works as referred to in Article 10, paragraph 1, sub 1st. ((books, pamphlets, newspapers, periodicals and all other writings)) the provisions of one or more of the preceding paragraphs may be departed from for the purposes of the public service and the performance of the tasks with which institutions serving the general interest have been charged. Further rules and conditions may be laid down to this end.
7. The preceding provisions of this Article shall not apply to the imitating of works of architecture.

Article 16c

1. A remuneration is owed to the author or his successor in title for the reproduction in accordance with Article 16b, paragraph 1, for personal practice, study or use, of a work or part thereof by fixing it on an object which is intended to show the images or play the sounds recorded upon it.
2. The manufacturer or importer of the objects referred to in paragraph 1 shall be liable for payment of the remuneration. (...)

Article 17

1. Without prejudice to the provisions of the preceding Article, it shall not be deemed an infringement of the copyright in the works referred to in Article 10 paragraph 1, sub 1st. ((drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like)), to reproduce, on behalf of an enterprise, organisation or other establishment, individual articles, reports or other texts which have appeared in a daily or weekly newspaper or weekly or other periodical, or short passages from books, pamphlets or other writings, insofar as they are scientific works, provided the reproduction is limited to the number of copies which the enterprise, organisation or establishment may reasonably need. Copies may only be given to persons employed by the enterprise, organisation or establishment.
2. The person who makes copies or orders the making of copies shall pay an equitable remuneration to the author of the work thus reproduced or his successors in title.
3. We may lay down rules by Order in Council concerning the maximum number of copies, the maximum size of copies for which no remuneration need be paid.

Neighbouring Rights Acts of the Netherlands of 1993

Chapter II Scope of neighbouring rights (Articles 2-12)

Article 2

1. A performer shall have the exclusive right to authorize one or more of the following acts:
 - a. the recording of a performance;
 - b. the reproduction of a recording of a performance;
 - c. the sale, rental, lending, supply or otherwise bringing into circulation, or the importing, offering or having in stock for such purposes of a recording of a performance or a reproduction thereof;
 - d. the broadcasting, rebroadcasting or communication to the public in any other way of a performance or a recording of a performance or a reproduction thereof. ((...))
2. Where a reproduction of a recording of a performance has been brought into circulation for the first time by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or in a State part to the Agreement on the European Economic Area of 02 May 1992, the acquirer of such reproduction does not infringe that exclusive right by carrying out, with respect thereto the acts referred to in paragraph 1, sub c with the exception of rental and lending.
3. Without prejudice to the provisions of paragraph 2, the lending of a recording of a performance or a reproduction thereof, as referred to in paragraph 2, shall be permitted provided the person doing or arranging the lending pays an equitable remuneration.
4. Educational and research establishments, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of the remuneration as referred to in paragraph 3.
5. Libraries funded by the Libraries for the Blind and Visually Impaired Funds shall be exempt from payment of the remuneration referred to in paragraph 3 in respect of items lent to blind and visually impaired persons registered with the libraries in question.
6. Payment of the remuneration referred to in paragraph 3 shall not be required if the person subject to payment can demonstrate that the holder of the exclusive right has waived the right to an equitable remuneration. The holder of the exclusive right shall notify the legal persons referred to in Articles 15a and 15b of the waiver in writing.
7. With regard to the provisions of paragraph 1, sub d, communication to the public shall also mean a performance that takes place in a restricted circle, except where this is confined to relatives, friends or equivalent persons and no form of payment whatsoever is made for attendance.
8. Performing shall not include any performance which is exclusively for the purposes of education provided on behalf of the public authorities or a non-profit legal person, in so far as such a performance forms part of the school work plan, curriculum or college work plan, or serves a scientific purpose.
9. The rebroadcasting of a programme by the organisation making the original broadcasting shall not be deemed a separate communication to the public.

Article 6

1. A phonogram producer shall have the exclusive right to authorize:
 - a. the reproduction of a phonogram manufactured by him;
 - b. the sale, rental, lending, supply or otherwise bringing into circulation, or the importing, offering or having in stock for such purposes, of a phonogram manufactured by him or a reproduction thereof;
 - c. the broadcasting, rebroadcasting or other communication to the public in any other way of a phonogram manufactured by him or a reproduction thereof. Article 2 paragraphs 6 up to and included 8, shall apply *mutatis mutandis*.
2. Where a phonogram or a reproduction thereof has been brought into circulation for the first time, by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or a State party to the Agreement on the European Economic Area of 02 May 1992, the acquirer of the phonogram or reproduction does not infringe that exclusive right by carrying out, with respect thereto, the acts referred to in paragraph 1, sub b, with the exception of rental and lending.
3. Without prejudice to the provisions of paragraph 2, the lending of a recording of a performance or a reproduction thereof, as referred to in paragraph 2, shall be permitted provided the person doing or arranging the lending pays an equitable remuneration.
4. Educational and research establishment, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of the remuneration as referred to in paragraph 3.
5. Libraries funded by the Libraries for the Blind and Visually Impaired Fund shall be exempt from payment of the remuneration referred to in paragraph 3 in respect of items lent to blind and visually impaired persons registered with the libraries in question.
6. Payment of the remuneration referred to in paragraphs 3 and 4 shall not be required if the person subject to payment can demonstrate that the holder of the exclusive right has waived the right to an equitable remuneration. The holder of the exclusive right shall notify the legal persons referred to in Articles 15a and 15b of the waiver in writing.

Article 7a

1. The producer of the first fixations of films shall have the exclusive right to authorize
 - a. the reproduction of the first fixation of a film manufactured by him or a reproduction thereof;
 - b. the sale, rental, lending, supply or otherwise bringing into circulation, and the importing, offering or having in stock for such purposes, of the first fixation of a film manufactured by him or a reproduction thereof.
2. Where a first fixation or a reproduction has been brought into circulation for the first time, by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or a State party to the Agreement on the European Economic Area of 02 May 1992, the acquirer of said first fixation or reproduction does not infringe that exclusive right by carrying out, with respect thereto the acts referred to in paragraph 1 sub b, with the exception of rental and lending.
3. Without prejudice to the provisions of paragraph 2, the lending of a first fixation or reproduction thereof, as referred to in paragraph 2, is permitted provided the person doing or arranging the lending pays an equitable remuneration.
4. Educational and research establishments, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of a lending remuneration as referred to in paragraph 3.
5. Libraries funded by the Libraries for the Blind and Visually Impaired Fund shall be exempt from payment of the remuneration referred to in paragraph 3 in respect of items lent to blind and visually impaired persons registered with the libraries in question.
6. Payment of the remuneration referred to in paragraphs 3 and 4 shall not be required if the person subject to payment can demonstrate that the holder of the exclusive right has waived the right to payment of an equitable remuneration. The holder of the exclusive right shall notify the legal persons referred to in Articles 15a and 15b in writing of the waiver.

Article 8

1. A broadcasting organisation shall have the exclusive right to authorize one or more of the following acts:
 - a. the rebroadcasting of programmes;
 - b. the recording of programmes and the reproduction of such recordings;
 - c. the sale, rental, lending, supply or otherwise bringing into circulation, and the importing, offering or having in stock for such purposes, of a recording of a programme or a reproduction thereof;
 - d. the communication to the public of a programme, whatever the technical facilities used for that purpose;
 - e. the communication to the public of recordings of programmes or reproductions thereof, whatever the technical facilities used for that purpose.
2. Where a recording of a programme or a reproduction thereof has been brought into circulation for the first time, by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or a State party to the Agreement on the European Economic Area of 02 May 1992, the acquirer of the recording or reproduction does not infringe that exclusive right by carrying out, with respect thereto, the acts referred to in paragraph 1c, with the exception of rental and lending.
3. Without prejudice to the provisions of paragraph 2, the lending of a recording of a programme or a reproduction thereof, as referred to in paragraph 2, shall be permitted provided the person doing or arranging the lending pays an equitable remuneration.
4. Educational and research establishments, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of the remuneration as referred to in paragraph 3.
5. Libraries funded by the Libraries for the Blind and Visually Impaired Fund ((...))
6. Payment of the remuneration referred to in paragraphs 3 and 4 shall not be required if the person subject to payment can demonstrate that the holder of the exclusive right has waived the right to an equitable remuneration. ((...))

Article 10

The acts referred to in Articles 2, 6, 7a and 8 do not constitute an infringement of the rights referred to in those articles, if they are carried out for the purpose of:

- a. Private practice, study or use by a person who records or reproduces a few copies; Article 16b, paragraph 5, and Article 16 up to and included 16g of the Copyright Act shall apply mutatis mutandis.
- b. reporting in public in a photographic, cinematographic, radio or television report on current affairs, provided that this is necessary in order to give a proper account of the current affairs that are the subject of the report and provided that short fragments only are used;
- c. a recording made by or on behalf of a broadcasting organisation that is authorized to broadcast or to have broadcasts made, for the purposes of its own programmes, provided that the recording is destroyed within 28 days after the first broadcast of the programme for which the recording was made, and in any event within six months of its manufacture; Article 17b, paragraph 3, of the Copyright Act 1912 shall apply mutatis mutandis; Article 5 shall be taken into account with regard to the performance of a performer.

- d. quotation in an announcement, criticism, polemic or scientific treatise; Article 15a, paragraph 1, sub 1, 2, and 4 and paragraph 5 of the Copyright Act 1912 shall apply mutatis mutandis; Article 5 shall be taken into account with regard to the performance of a performer.

Article 11.

1. The acts mentioned in Articles 2, 6, 7a and 8 do not constitute an infringement if they are carried out for the purpose of communication to the public parts of performances, phonograms or programmes or reproductions thereof by broadcasting a programme made to serve as illustration for teaching purposes; Article 16, paragraph 1b sub 1, 2 4 and 5, and paragraph 5, of the Copyright Act 1912 (insofar as the last-named paragraph concerns the equitable remuneration to be paid) shall apply mutatis mutandis; Article 5 shall be taken into account with regard to the performance of a performer.
2. The acts mentioned in Articles 2, 6, 7a and 8 do not constitute an infringement if they are carried out for the purposes of the taking over of parts of performances, phonograms, first fixations of films or programmes or reproductions thereof in publications or sound or visual recordings made for use as illustration for teaching purposes illustrations in teaching; Article 16, paragraph 1d, sub 1,2, 4 and 5 and paragraph 5 of the Copyright Act 1912, (insofar as the last-named paragraph concern the equitable remuneration to be paid) shall apply mutatis mutandis; Article 5 shall be taken into account with regard to the performance of a performer.

PORTUGAL

Code of Copyright and Related Rights of 1985 as last amended in 1991

Title II Use of Works, Chapter II Unrestricted Use (Articles 75-82)

Art. 75. Scope

The following uses of a work without the consent of the author shall be lawful:

- (a) reproduction by social communication channels for information purposes of speeches, statements and lectures given in public that do not come within the categories provided for in Article 7, either as excerpts or in the form of summaries; ((...))
- (d) partial or total reproduction by photography or by an analogous process of a work that has previously been made available to the public, provided that such reproduction is carried out by a public library, a non commercial documentation centre or a scientific institution, and that such reproduction and the corresponding number of copies are not for public use and are limited to the requirements of such institutions' activities;
- (e) partial reproduction by the processes referred to in the preceding subparagraph, by educational establishments, provided that such reproduction and the number of copies made are for use exclusively for educational purposes in such establishments and that their use is not profit-making;
- (f) inclusion of quotations or summaries from another author's work, whatever their type or nature, in support of one's own opinions or for purposes of criticism, discussion or teaching;
- (g) inclusion of short excerpts or parts of another author's work in works used for teaching; ((...))

Art. 76. Conditions

- (1) The free use referred to in the preceding Article shall be subject to:
 - (a) mention, where possible, of the name of the author and of the publisher, of the title of the work and other elements enabling it to be identified;
 - (b) in the case referred to in subparagraph (d) of the preceding Article, equitable remuneration to be paid to the author and to the publisher by the body that has carried out the reproduction;
 - (c) in the case referred to in subparagraph (g) of the preceding Article, remuneration to be paid to the author and to the publisher.
- (2) In respect of subparagraphs (a), (e), (f) and (g) of the preceding Article, the works reproduced or quoted shall not be liable to confusion with the works in which they are being used and the reproduction or quotation shall not be so extensive that they prejudice interest in such works.
- (3) The author alone has the right to assemble the works mentioned in subparagraph (a) of the preceding Article in a volume.

Art. 79. Lectures

- (1) Lectures by professors may only be reproduced by third parties with the consent of the authors, even if they are presented under the personal responsibility of the person publishing them.

(2) Unless otherwise specified, publication shall be deemed to be for the use of students.

Art. 81. Other Uses.

The following reproduction shall be permitted:

- (a) one copy, for purposes of exclusively scientific or humanitarian interest, of works not commercially available or impossible to obtain, for the period necessary for their use;
- (b) for exclusive private use, provided that it does not harm normal exploitation of the work nor cause unjustified prejudice to the author's legitimate interests, and that the reproduction is not used for any purposes of public communication or commercialisation whatsoever.

Title III. Related Rights (Art. 176-194)

Art. 176. Definitions

(1) The services of performers, producers of phonograms and videograms and broadcasting organisations shall be protected under this title. ((...))

Art. 189. Unrestricted Use

(1) Protection granted under this Title shall not include:

- (a) private use;
- (b) excerpts from a performance, a phonogram a videogram, or a broadcast program, provided that the use of such excerpts is justified for reasons of information or criticism, or other reasons authorized for quotations or summaries referred to in subparagraph (f) of Art. 75;
- (c) use for exclusively scientific or educational purposes; ((...))

SPAIN

Revised Law on Intellectual Property of 1996

Title III Duration and Limitations. Chapter II Limitations ((Art. 31-40))

Art. 31. Reproduction Without Authorization

Works already disclosed may be reproduced without the author's authorization in the following cases:

- 1st as a consequence of or by way of evidence in a judicial or administrative proceeding;
- 2nd for the private use of the copier, without prejudice to the provisions of Articles 25 and 99(a) of this Law, and provided that the copy is not used for either collective or gainful purposes;
- 3rd for the private use of sightless persons ((...))

Art. 32. Quotations and Summaries

It shall be lawful to include in one's own work fragments of the works of others, whether or 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.

Art. 33. Articles on Topical Subjects

(1) Studies and articles on topical subjects disseminated by the mass communication media may be reproduced, distributed and communicated to the public in any other media of the same type, subject to a mention of the source and of the author if the study was published under a byline and provided that no reserved copyright notice appeared on the original. All the foregoing shall be without prejudice to the author's right to collect the agreed remuneration, or, in the absence of agreement such remuneration as is considered equitable. In the case of a literary collaboration, it shall in all cases be necessary to obtain the due authorization of the author.

(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 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.

Art. 37 Free Reproduction and Lending in Specific Establishments

(1) The owners of copyright may not object to reproductions of works where they are made without gainful intent by museums, libraries, record libraries, film libraries, newspaper libraries or archives which are in public ownership or form part of institutions of cultural or scientific character, and where the reproduction is effected solely for research purposes.

(2) Museums, archives, libraries newspaper libraries, record libraries or film libraries in public ownership or belonging to institutions of general cultural, scientific or educational interest without gainful intent, or to teaching institutions integrated in the Spanish educational system, shall not require the authorization of the owners of copyright or pay remuneration to them for the loans that they make.

Title V. Transfer of Rights. Chapter I General Provisions (Art. 42-57)

Art. 46 Proportional and Lump Sum Remuneration

(1) The transfer granted by the author for a consideration shall entitle him to a proportional share in the proceeds of exploitation, the amount thereof being agreed upon with the transferee.

(2) Nevertheless, the payment of a lump sum to the author may be provided for in the following cases:

(a) in the case of the first or sole edition of the following, previously undisclosed works:

1st dictionaries, ((...))

3rd scientific works, ((...))

SWEDEN

Act on Copyright in Literary and Artistic Works of 1960, last amended in 1995

Chapter 2. Limitations on Copyright ((Art. 11-26i))

General Provisions on Limitations

Art. 11.

The provisions of this Chapter do not limit the author's right under Article 3 ((moral rights)), except as provided in Art. 26c ((which concerns works of architecture))

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 permitted use.

Reproduction for Private Purposes

Art. 12.

Anyone is entitled to make, for private purposes, single copies of works which have been made public. Such copies may not be used for other purposes. The provisions in the first paragraph do not apply to computer programs and do not include the right to construct a work of architecture.

The provision in the first paragraph do not confer the right to engage, for private purposes, another person to 1st make copies of musical works or cinematographic works,

2nd make useful articles or sculptures,

3rd copy another person's artistic work by artistic reproduction ((...))

Reproduction within Educational Activities

Art. 13.

For educational purposes, copies of published works may be prepared by means of reprographic reproduction and recordings made of works broadcast by sound radio or television if an extended collective agreement licence applies under Article 26i. The copies and recordings thus made may be used only in those educational activities which are covered by the agreement forming the basis of the extended collective agreement licence.

The first paragraph does not apply if the author has filed a prohibition against such reproduction with any of the contracting parties.

Art. 14.

Teachers and pupils may, for educational purposes, make recordings of their own performances of works. Such recordings may not be used for other purposes.

Reproduction Within Certain Archives and Libraries

Art. 16

Those archives which are mentioned in the 3rd and 4th paragraphs may make copies of works, with the exception of computer programs,

1st for the purpose of preservation, completion or research,
 2nd of single articles or short extracts of works or of material which, for reasons of security, must not be given away in the original, for delivery to users, or
 3rd for use in reading devices.

Reproduction as mentioned in the first paragraph, items 2 and 3, may be carried out only by means of reprography. The following have the right to make copies according to this Article:

1st government and municipal archival authorities,
 2nd the National Archive for Recorded Sound and Moving Images,
 3rd those scientific and research libraries that are run by public authorities, and
 4th public libraries.

The government may in specific cases also grant certain archives and libraries, other than those mentioned in the third paragraph, the right to make copies under this Article.

Composite Works for Use in Educational Activities

Art. 18.

Anyone who, for use in educational activities, prepares a composite work consisting of works by a comparatively large number of authors may, in that work, use minor portions of literary and musical works or short works of any of those categories, provided that five years have elapsed from the publication of those works. Artistic works may be used in connection with the text, provided that five years have elapsed from their being made available to the public. The authors are entitled to remuneration.

The provisions of the first paragraph do not apply to works which have been created for use in educational activities.

Public Performances

Art. 21.

Anyone may publicly perform published works

1st on occasions when the performance of such works is not the main feature of the event, provided that no admission fee is charged and the event is not for profit, and
 2nd in educational activities ((...))

the provisions of the first paragraph do not apply to dramatic works or cinematographic works and do not confer the right to use works in sound radio or television.

Quotations

Art. 22.

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.

Use of Works of Fine Art and of Buildings

Art. 23.

Works of fine art which have been made available to the public may be used

1st in connection with the text in critical or scientific presentations,
 2nd in newspapers or periodicals in connection with reports on current news events except if the work has been created specifically for reproduction in such a publication.

The provisions of the first paragraph apply only if the use is carried out in conformity with proper usage and to the extent called for purposes of information.

Public Debates, Public Documents, etc.

Art. 26. ((...))

Art. 26a.

Anyone is entitled to use works which form part of the documents mentioned in Art. 9, first paragraph ((which states that copyright shall not subsist in 1st laws and other regulations, 2nd decisions by public authorities, 3rd reports by Swedish public authorities, 4th official translations of texts mentioned under items 1 to 3)), and which are of the kind mentioned in Art. 9, second paragraph, items 2 to 4 ((Article 9, 2nd paragraph, states: However, copyright subsists in works of the following kinds when they form part of a document mentioned in the first paragraph: 1st maps, 2nd works of drawing, painting or engraving, 3rd musical works, or 4th works of poetry)). The author is entitled to remuneration except when the use occurs in connection with

1st the activities of a public authority,

2nd a report of the legal proceedings or case in which the work appears and the work is used only to the extent necessary for purposes of information.

Anyone is entitled to use documents which are prepared by Swedish public authorities but which are not such as are mentioned in Article 9, first paragraphs.

The second paragraph does not apply to

- 1st maps,
- 2nd technical models,
- 3rd computer programs,
- 4th works created for educational purposes,
- 5th works which are the result of scientific research,
- 6th works of drawing, painting or engraving,
- 7th musical works,
- 8th works of poetry, or
- 9th works copies of which are made available to the public through public authorities in connection with commercial activities.

UNITED KINGDOM

Chapter III Acts Permitted in Relation to Copyright Works

Introductory

S. 28 Introductory provisions

- (1) The provisions of this Chapter specify acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; they relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.
- (2) Where it is provided by this Chapter that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.
- (3) No inference shall be drawn from the description of any act which may by virtue of this Chapter be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.
- (4) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

General

S. 29. Research and private study

- (1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) Fair dealing with the typographical arrangement of a published edition for the purposes mentioned in subsection (1) does not infringe any copyright in the arrangement.
- (3) Copying by a person other than the researcher or student himself is not fair dealing if-
 - (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 40 would not permit to be done under section 38 or 39 (articles or parts of published works: restriction on multiple copies of same material), or
 - (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.
- (4) It is not fair dealing-
 - (a) to convert a computer program expressed in a low level language into a version expressed in a higher level language, or
 - (b) incidentally in the course of so converting the program, to copy it, (these acts being permitted if done in accordance with section 50B (decompilation)).

S. 30. Criticism, review and news reporting

- (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.
- (2) ((...))

S. 31. Incidental inclusion of copyright material

Education

S. 32. Things done for purposes of instruction or examination

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying-
 - (a) is done by a person giving or receiving instruction, and
 - (b) is not by means of a reprographic process.
- (2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or sound-tracks, provided the copying is done by a person giving or receiving instruction.
- (3) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions.
- (4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy of the purpose of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose 'dealt with' means sold or let for hire or offered or exposed for sale or hire.

S. 33. Anthologies for educational use

- (1) The inclusion of a short passage from a published literary or dramatic work in a collection which-
 - (a) is intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher, and
 - (b) consists mainly of material in which no copyright subsists, does not infringe the copyright in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgement.
- (2) Subsection (1) does not authorize the inclusion of more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of five years.
- (3) In relation to any given passage the reference in subsection (2) to excerpts from works by the same author-
 - (a) shall be taken to include excerpts from works by him in collaboration with another, and
 - (b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.
- (4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

S. 34. Performing, playing or showing work in course of activities of educational establishment

- (1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment-
 - (a) by a teacher of pupil in the course of the activities of the establishment, or
 - (b) the establishment by any person for the purposes of instruction, is not a public performance for the purposes of infringement of copyright.
- (2) The playing or showing of a sound recording, film broadcast or cable programme before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.
- (3) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

S. 35. Recording by educational establishments of broadcasts and cable programmes

- (1) A recording of a broadcast or cable programme, 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 thereby infringing the copyright in the broadcast or cable programme, or in any work included in it.
- (2) This section does not apply if or to the extent that there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.
- (3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose 'dealt with' means sold or let for hire or offered or exposed for sale or hire.

S. 36. Reprographic copying by educational establishments of passages from published works

- (1) Reprographic copies of passages from published literary, dramatic or musical works may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, or in the typographical arrangement.

- (2) Not more than one per cent of any work may be copied by or on behalf of an establishment by virtue of this section in any quarter, that is, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.
- (3) Copying is not authorized by this section if, or to the extent that, licences are available authorizing the copying in question and the person making the copies knew or ought to have been aware of that fact.
- (4) The terms of a licence granted to an educational establishment authorizing the reprographic copying for the purposes of instruction or passages from published literary, dramatic or musical works 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 under this section.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose 'dealt with' means sold or let for hire or offered or exposed for sale or hire.

Libraries and Archives

S. 37. Libraries and archives: introductory

- (1) In sections 38 to 43 (copying by librarians and archivists)-
 - (a) references in any provision to a prescribed library or archive are to a library or archive of a description prescribed for the purposes of that provision by regulations made by the Secretary of State; and
 - (b) references in any provision to the prescribed conditions are to the conditions so prescribed.
- (2) The regulations may provide that, where a librarian or archivist is required to be satisfied as to any matter before making or supplying a copy of a work-
 - (a) he may rely on a signed declaration as to that matter by the person requesting the copy, unless he is aware that it is false in a material particular, and
 - (b) in such cases as may be prescribed, he shall not make or supply a copy in the absence of a signed declaration in such form as may be prescribed.
- (3) Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him-
 - (a) he is liable for infringement of copyright as he has had made the copy himself, and
 - (b) the copy shall be treated as an infringing copy.
- (4) The regulations may make different provision for different descriptions of libraries or archives and for different purposes.
- (5) Regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) References in this section, and in sections 38 to 43, to the librarian or archivist include a person acting on his behalf.

S. 38. Copying by librarians: articles in periodicals

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.
- (2) The prescribed conditions shall include the following-
 - (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
 - (b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and
 - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

S. 39. Restriction on production of multiple copies of the same material

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.
- (2) The prescribed conditions shall include the following-
 - (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
 - (b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and
 - (c) that person to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

S. 40. Restriction on production of multiple copies of the same material

- (1) Regulations for the purposes of sections 38 and 39 (copying by librarian of article or part of published work) shall contain provision to the effect that a copy shall be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person.
- (2) The regulations may provide-
 - (a) that requirements shall be regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose; and
 - (b) that requirements of persons shall be regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

S. 41. Copying by librarians: supply of copies to other libraries

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply to another prescribed library a copy of-
 - (a) an article in a periodical, or
 - (b) the whole or part of a published edition of a literary, dramatic or musical work, without infringing any copyright in the text of the article or, as the case may be, in the work, in any illustrations accompanying it or in the typographical arrangement.
- (2) Subsection (1)(b) does not apply if at the time the copy is made the librarian making it know, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorize the making of the copy.

S. 42. Copying by librarians or archivists: replacement copies of works

- (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive-
 - (a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it, or
 - (b) in order to replace in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged, without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.
- (2) The prescribed conditions shall include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfil that purpose.

S. 43. Copying by librarians or archivists of certain unpublished works

- (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or any illustrations accompanying it.
- (2) This section does not apply if-
 - (a) the work had been published before the document was deposited in the library or archive, or
 - (b) the copyright owner has prohibited copying of the work and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.
- (3) The prescribed conditions shall include the following-
 - (a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for purposes of research or private study and will not use them for any other purpose;
 - (b) that no person is furnished with more than one copy of the same material; and
 - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

S. 44. Copy of work required to be made as condition of export

If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of copyright to make that copy.

Works in Electronic Form

S. 56 Transfers of copies of works in electronic form

- (1) This section applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.
- (2) If there are no express terms-
 - (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer, or

- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do, anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.
- (3) The same applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.
- (4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

Chapter X. Miscellaneous and General (SS. 163-179)

S. 174. Meaning of 'educational establishment' and related expressions

- (1) The expression 'educational establishment' in a provision of this Part means-
 - (a) any school, and
 - (b) any other description of educational establishment specified for the purposes of this Part, or that provision, by order of the Secretary of State.
- (2) The Secretary of State may by order provide that the provisions of this Part relating to educational establishments shall apply, with such modifications and adaptations as may be specified in the order, in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment.
- (3) In subsection (1)(a) 'school'-
 - (a) in relation to England and Wales, has the same meaning as in the Education Act 1944;
 - (b) in relation to Scotland, has the same meaning as in the Education (Scotland) Act 1962, except that it includes an approved school within the meaning of the Social Work (Scotland) Act 1968; and
 - (c) in relation to Northern Ireland, has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986.
- (4) An order under subsection (1)(b) may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the order.
- (5) In relation to an educational establishment the expressions 'teacher' and 'pupil' in this Part include, respectively, any person who gives and any person who receives instruction.
- (6) References in this Part to anything being done 'on behalf of' an educational establishment are to its being done for the purposes of that establishment by any person.
- (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

PART II. Rights in Performances (Ss. 180-212)

S. 189. Acts permitted notwithstanding rights conferred by this Part

The provisions of Schedule 2 specify acts which may be done notwithstanding the rights conferred by this Part, being acts which correspond broadly to certain of those specified in Chapter III of Part I (acts permitted notwithstanding copyright).

Schedule 2. Rights in Performances: Permitted Acts.

Section 189

1. Introductory

- (1) The provisions of this Schedule specify acts which may be done in relation to a performance or recording notwithstanding the rights conferred by Part II; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.
- (2) ((...))

4. Things done for purposes of instruction or examination

- (1) The rights conferred by Part II are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction
- (2) The rights conferred by Part II are not infringed-
 - (a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination, or
 - (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

- (3) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.

For this purpose 'dealt with' means sold or let for hire, or offered or exposed for sale or hire.

- (4) Expressions used in this paragraph have the same meaning as in section 32.

5. Playing or showing sound recording, film, broadcast or cable programme at educational establishment

- (1) The playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by Part II.

- (2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

- (3) Expressions used in this paragraph have the same meaning as in section 34 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraphs.

6. Recording of broadcasts and cable programmes by educational establishments

- (1) A recording of a broadcast or cable programme, 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 thereby infringing any of the rights conferred by Part II in relation to any performance or recording included in it.

- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes and right conferred by Part II for all subsequent purposes.

For this purpose 'dealt with' means sold or let for hire, or offered or exposed for sale or hire.

- (3) Expressions used in this paragraph have the same meaning as in section 35 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

19. Reception and re-transmission of broadcast in cable programme service

- (1) This paragraph applies where a broadcast made from a place in the UK is, by reception and immediate re-transmission, included in a cable programme service.

- (2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed-

(a) ((...))

(b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided;

but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

- (3) Expressions used in this paragraph have the same meaning as in section 73.

21. Recording of broadcast or cable programme for archival purposes

- (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, any be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.

- (2) In this paragraph 'designated class' and 'designated body' means a class or body designated for the purposes of section 75 and other expressions used in this paragraph have the same meaning as in that section.

NON-MEMBER STATES

CZECH REPUBLIC

Law No. 35 of 25/03/65n of Literature, Scientific and Artistic Works, as lastly amended in 1996

Use of Works

Art. 14

- (1) Unless explicitly permitted by this Law, a work may only be used with the consent of ist author. The author shall give his consent to the use of a work by contract.

- (2) The author's consent in accordance with this Law may not be waived or restricted by an agreement between the parties.

(3) A work may be used without the author's consent only in those cases set out in Article 15, as the result of a court decision under Article 17(2) or of an official decision under Article 18.

Art. 15

(1) the use of an idea contained in another person's work for the creation of a new original work shall not infringe copyright.

(2) the author's consent to use of his work shall not be required and the obligation to pay remuneration shall not apply to a person who

a) for his own personal use, makes a reproduction or a copy of the work already made public, provided that in the case of a work of art, he clearly identifies it as a reproduction or copy and provided that it is not the reproduction or copy of a work of architecture realized by construction or of a computer program; Art. 13(2) shall remain unaffected;

b) quotes excerpts from a published work and mentions that name of the author and the title of the work;

c) includes in a scientific or critical work, to the extent necessary in order to explain the text, or in textbooks or teaching aids, to the extent justified, parts of published works, short published works in their entirety, reproductions or copies of works or of their parts, provided he quotes the name of the author and the source;

d) uses a published work in an individual lecture exclusively for teaching or educational purposes, provided he quotes the name of the author and the title of the work;

e) reprints in a periodical, articles of current interest on economic or political matters that have already been published in other periodicals, provided he quotes the name of the author and the source; however, such reprints shall not be permissible if they have been explicitly prohibited;

f) adapts a work of art located in a public place to other branches of art; photographs of a work of art thus located may also be reproduced and distributed without the consent of the author;

g) prints a picture of a work of art included in a public collection or exhibition in the catalogue of that collection or exhibition;

h) publicly exhibits works of art or photographic works that have been transferred by the author to another person, if such work has been shown free of charge or has been lent free of charge for the exhibition;

i) reproduces or has reproduced for his own personal use or for free distribution, a photographic work which portrays him and which was commissioned for payment;

j) makes a reproduction of a work that is out of print for the documentation of a public library or for the purposes of scientific research;

k) reproduces a published work by means of special technology for the needs of the blind.

(3) The author's consent shall not be required and the obligation to pay remuneration for the use of a work shall not apply in the case of

a) an organization reporting on current events by photography, film, radio or television, if reasonable use is made of the work performed or exhibited in the course of such event;

b) libraries, schools, training establishments, archives, museums and galleries, if they lend originals of published works or reproductions thereof that have been printed or reproduced in any other manner without profit, provided they are not sound, visual or audiovisual recordings, except for non-profit lending of such recordings for the needs of the blind.

(4) ...

Art. 17

(1) An employer may use a scientific or artistic work created by his employee in the fulfillment of his employment duties for conducting tasks belonging to the employer's scope of activity without the authorization of the creator.

(2) An employer whose scope of activity comprises the publication or any other form of disclosing to the public of works shall be entitled to publish or make available to the public a work created by his employee in the fulfillment of his employment duties only if he has the creator's authorization. If the creator refuses to give his authorization without good reasons, the employer may request such consent from the courts.

(3) the author of a work created in the fulfillment of his employment duties may authorize publication of the work or its disclosure to the public in some other way only if he has the consent of his employer. If the employer refuses his consent without good reason, the author may request such consent from the courts.

(4) Any other conditions for using a work created in the fulfillment of employment duties shall be regulated by contract. If not otherwise provided by the contract, the employer shall be entitled to require the creator to pay him a reasonable part of the royalties due to compensate for the costs incurred in creating the work.

(...)

ESTONIA

Chapter IV Limitations of the Economic Rights of the Author (Free Use of Works)

1. Basic Provisions.

Limitations of Author's Economic Rights

Sec. 17.

As an exception to Section 13 of this Law, but the condition that the use of the work and the legitimate interests of the author are not prejudiced, the use of a work without the author's consent and without payment of remuneration shall be permitted only in the cases directly prescribed by Sections 18 to 25 of this Law.

Free Use of Works for Private Purposes

Section 18

(1) A lawfully published work may be reproduced for private purposes (for purposes of scientific research, learning, etc.) without the author's consent and without payment of remuneration.

(2) The following shall not be reproduced for private purposes without the author's consent and without payment of remuneration:

1. works of architecture in the form of buildings and other similar structures;
2. works of fine art of restricted editions;
3. data bases;
4. computer programs, except programs, except for cases prescribed by Sections 24 and 25 of this Law;
5. other works, where such reproduction would conflict with the exploitation thereof or would prejudice the legitimate interests of the author.

(3) An audiovisual work or a sound recording of the work may be used for private purposes in accordance with the provisions of Sections 26 and 27 of this Law.

(4) Paragraph (1) of this Section shall not extend to legal entities.

2. Use of Works Without the Author's Consent and Without Payment of Remuneration

Free Reproduction of Works for Scientific, Educational, Informatory, Legal and Administrative Purposes

Sec. 19

Subject to the obligation to state the name of the author of the work, if it appears in the work, the title (designation) of the work and the source in which the work has been published, it shall be permitted without the author's consent and without payment of remuneration:

1. to abstract or quote lawfully published works in another work to a reasonable extent and under the obligation to communicate accurately the meaning of the work abstract or quoted as a whole, including abstracting and quoting articles of newspapers and periodicals in order to present a report of the press;
2. to use a lawfully published work or parts thereof by way of illustration in publications, radio and television broadcasts, sound and video recordings for teaching purposes to the extent justified by the purposes;
3. to reproduce articles published in newspapers, journals or other periodicals and extracts from published works by reprographic means exclusively for purposes of teaching and scientific research in educational and research institutions the activities of which do not serve direct or indirect commercial gains;

(...)

(5) to communicate information on literary, artistic and scientific works, made available to the public, in the press, by means of the cinema, radio and television, including surveys, annotations, reports and other such documentary forms.

(...)

Free Reproduction of Works by Libraries, Archives and Museums

Sec. 20.

(1) Single copies of a work, stored in the permanent collection of the library, archive or museum may be made without the author's consent and without payment in order to:

1. replace a work or a copy thereof which has been lost, destroyed or rendered unusable or, in case of impending danger, make a copy to guarantee its preservation;
2. replace, in the permanent collection of another library, archive or museum, a work or a copy thereof which has been lost, destroyed or rendered unusable.

(2) The reproduction of a work prescribed by paragraph (1) of this Section shall be permitted, provided the activities of the given library, archive or museum do not serve direct or indirect commercial gain and it is impossible to obtain a new copy of the work.

Free Use of Images of Works Permanently Located in Public Places

Sec. 21.
(...)

Free Public Performance of Works

Sec. 22

Subject to the obligation to state the name of the author of the work and the title thereof if it appears therein, a work may be performed in public at educational institutions, in the course of the educational activities of the institution by the staff and students thereof, without the author's consent and without payment of remuneration, provided that the audience is composed of the staff and students or other persons directly connected with the educational institution where the public performance takes place (parents, guardians, tutors, etc.).

Use of Ephemeral Recordings by Radio and Television Organizations
(...)

Free Use of Computer Programs

Sec. 24

Free Decompilation of Computer Programs

Sec. 25

3. Use of Works Without the Author's Consent but Against Payment of Remuneration

Use of Audiovisual Works for Private Purposes

Sec. 26.

(1) An audiovisual work or a sound recording of a work may be reproduced for personal use (for purposes of scientific research, learning, etc.) without the author's consent. The author, as well as the performer of a work and the producer of a phonogram, shall have the right to receive equitable remuneration for such use of works or phonograms (Sec. 27)

(5) Paragraph (1) of this Section shall not extend to legal entities.

Remuneration for Use of Audiovisual Works and Sound Recordings of Works for Private Purposes.

Sec. 27.

(1) In order to compensate authors, as well as performers and producers of phonograms, for the use of the works, prescribed by Sec. 26, appropriate remuneration shall be paid by producers and importers of technical devices for private reproduction (sound recorders, video recorders, etc.) and devices (tapes, cassettes, etc.) for sound and video recording not being already recorded (blank tapes). The remuneration proceeding from the use of works and phonograms shall be distributed equitably between the authors, performers of works and producers of phonograms.

(3) The Ministry of Culture and Education shall annually establish the amount of remuneration, having previously coordinated it with organizations representing producers and importers of technical devices for recording and devices for sound and video recording.

(4) The remuneration prescribed by paragraph (1) of this Section shall not be collected in respect of technical devices for recording and unrecorded devices for sound and video recording (blank tapes):

1. that have been exported;
2. that are used for professional recording;
3. that are used for making recordings for people with impaired eyesight or hearing;
4. that have been exempted from the remuneration requirement as stipulated by the laws.

(5) the organization representing authors which has been designated the collector of remuneration prescribed by paragraph (1) of this Section shall have the right to obtain from customs and statistics organs, as well as from organizations (enterprises) of production and import, all data required for collecting the remuneration.

HUNGARY

Act No. III of 1969 on Copyright as last amended in 1994

Chapter IV. Free Use

Art. 16. Those uses that are free (Art. 17 to 21) shall entail no remuneration and shall not be subject to authorization by the author.

Art. 17

(1). Any part of a disclosed work may be quoted provided the source and the author shown as such are named. Such quotations shall be true to the original and their scope shall be warranted by the nature and purpose of the work in which they are included.

(2) Any part of a disclosed work, or the whole of a work of a small size, may be reproduced for the purposes of school education – including radio or television courses – and for the propagation of scientific knowledge, provided the source and the author shown as such are named.

Art. 18

(1). Any person may make a copy of a disclosed work provided he does not do so for the purpose of putting it into circulation or with gainful intent and does not prejudice the legitimate interests of the author in any other manner. This shall not apply to works of architecture and engineering structures.

(2) The lending of individual copies of a work – except for computer programs and with the limitation under paragraph (3) – shall constitute a free use.

(3) The lending of copies of cinematographic works and other audiovisual works and of works on phonograms shall be deemed a free use only if done by public libraries operating as budget institutions.

(...)

Art. 21

(1) A work already disclosed may be performed at school celebrations and for other school purposes.

(...)

LATVIA

Law on Copyright and Neighbouring Rights of 11/05/93

Chapter Five. Limitations on the Author's Economic Rights

Art. 17. Reproduction of a Work for Personal Use.

(1) Without the consent of the author and without paying compensation to the author, it is permitted to reproduce another person's published or made available work only for personal use, observing the requirements of Article 27 as well as of paragraph 2 of this Article, on the condition that such reproduction does not do unjustified damage to normal use of the work and does not unreasonably infringe on the lawful interests of the author.

(2) Public lending of published works is permitted without the authorization of the author or copyright owner.

(3) Paragraph 1 of this Article is not applicable to

1. reproduction of architectural works in the form of buildings and analogous structures;
2. works of fine art of restricted edition;
3. reproduction of databases or substantial parts thereof;
4. reproduction of computer programs with the exception of cases mentioned in Article 25 of this Law

(4) The provisions of paragraph 1 of this Article are not applicable to legal persons.

(...)

Article 19. Use of a Work for Educational Purposes.

(1) Observing the conditions that the reproduction of the work does not cause unjustifiable damage to the normal use of the work and does not unreasonably infringe on the lawful interests of the author, the following is permitted, without the author's or copyright owner's authorization:

1. the reproduction of a short part of a published work by way of illustration in writings or sound or visual recordings for teaching purposes, provided that such reproduction is compatible with fair practice and that its extent does not exceed the extent justified by the purpose;

2. the reprographic reproduction, for fact-to-face teaching in nonprofit educational institutions, of a published article or other short work or short extract of a writing, with or without illustrations, provided that the act of reproduction is an isolated one, occurring, if repeated, on separate and unrelated occasions, and there is no collective licence available under which such reproduction can be made.

(2) On any copy made under paragraph 1 of this Article, its source and the name of the author shall be indicated, as far as practically possible.

(3) It is permitted to reproduce works in braille or other special editions for the blind, without profit, except for works created especially for reproduction by such means.

Article 20. Reproduction of Works by Libraries and Archives.

(1) Observing the condition that the reproduction of the work does not cause unjustifiable damage to the normal use of the work and does not unreasonably infringe on the lawful interests of the author, it is permitted, without the author's or copyright owner's authorization for any library or archive, whose activities do not serve direct or indirect profit-making, to make a single copy of a work by reprographic reproduction means:

1. where the work reproduced is a published article or other short work or short extract of a writing, with or without illustrations, and where the purpose of the reproduction is to satisfy the request of a natural person, anticipating that the copy will be used solely for the purpose of study, scholarship or research, and the act of reproduction is an isolated case, occurring, if repeated, on separate and unrelated occasions;

2. where the making of such a copy is in order to preserve a particularly valuable work or to replace a copy of such a work, if it is lost, destroyed or rendered unusable, with another copy, or to replace in the permanent collection of another library or archive a copy which has been lost, destroyed or rendered unusable and it is impossible to obtain such a copy in other reasonable ways and the reproduction is an isolated case, occurring, if repeated, on separate and unrelated occasions.

(...)

Art. 27. Use of a Work without the Authorization of the Author, but upon Payment of Compensation.

(1) It is permitted for natural persons to reproduce an audiovisual work or the sound recording of a work solely for personal use (including use for scientific and research purposes), without the consent of the author, but upon payment of compensation to the author.

(2) Just compensation for the reproduction specified in paragraph 1 of this article shall be paid by the manufacturers or importers of equipment (audio and video tape recorders, and the like) and of recording media (sound and/video tapes and cassettes, laser discs, compact discs, and the like) used for such reproduction.

(3) the determination of the amount of just compensation and the procedures for its collection and payment are done by a tariff commission formed by the government, which is composed of a representative designated by the government or its authorized institution (...)

(7) Just compensation is not paid in those cases, if the equipment and recording media specified in paragraph 2 of this Article are exported or are utilized professionally (such as professional equipment and recording media and dictaphone and cassettes which are used for dictaphones).

NORWAY

Act No. 2 of 12/05/61 Relating to Copyright in Literary, Scientific and Artistic Works etc. as amended in 1995

Chapter 2. Limitations on Copyright

General Provisions.

Sec. 11.

The provisions of this Chapter shall impose no further restriction on the author's rights pursuant to Section 3 than that ensuing from Section 29.

When a work is publicly reproduced pursuant to the provisions of this Chapter, this may be done in the dimensions and form required for the purpose, but without thereby altering or prejudicing the character of the work. When a work is thus reproduced, the source shall always be stated in the manner required by proper usage.

Making Copies for Private Use

Section 12

(1) Provided this is not done for purposes of gain, single copies of a work that has been issued may be made for private use. Such copies may not be used for other purposes.

(2) the provision in the first paragraph shall not confer a right to:

a) copy an architectural work through the construction of a building,

b) make machine-readable copies of computer programs, or

c) make copies of works of art by means of photocopying, taking a cast or impression, or by other similar means of reproduction if the copy may be perceived as an original.

(3) The provision in the first paragraph shall not confer a right to engage outside assistance to reproduce articles of artistic handicraft and applied art, sculpture, pictorial writings or to make artistic reproductions of other works of art. Copies of musical works and cinematographic works may not be made by outside assistants participating for purposes of gain.

Making Copies for Use in Educational Activities

Sec. 13

(1) Any person may for use in his own educational activities, by photocopying or similar means of reproduction, make copies of a published work, as well as make a fixation of a work that is included in a broadcast, if he fulfills the conditions for an extended collective licence pursuant to Sec. 36, first paragraph. Works of pictorial art and photographic works may only be photocopied from a reproduction in a book, periodical, newspaper or similar printed publication. Nor does this provision confer a right to make a fixation of a cinematographic work which must be perceived as also intended for uses other than presentation via television unless only minor parts of the work are used in the broadcast.

(2) Fixation centers which are approved by the Ministry may, for use in educational activities, make fixations as specified in the first paragraph, if the center fulfills the conditions for an extended collective licence pursuant to Sec. 36, first paragraph.

(3) Copies made pursuant to the first and second paragraphs may only be used in educational activities covered by the agreement under Sec. 36.

(4) The King shall issue regulations concerning the storage and use of fixations. The King may decide that schools and other educational institutions may make fixations for time-deferred use free of charge.

(5) Teachers and pupils may make fixations of their own performances of works for educational use. Such fixations shall not be used for other purposes.

Photocopying in Institutions, Commercial Enterprises etc.

Sec. 14.

Public and private institutions, organizations and commercial enterprises may, for use within their own activities, make copies of a published work by photocopying or similar means of reproduction if they fulfill the conditions for an extended collective licence pursuant to Sec. 36, first paragraph. Such copies may only be used within the activity which is covered by the agreement pursuant to Section 36. Works of pictorial art and photographic works may only be copied from a reproduction in a book, periodical, newspaper or similar printed publication.

(...)

Making Copies in Archives, Libraries and Museums

Sec. 16.

The King may issue rules regarding the right of archives, libraries and museums to make copies of works for conservation and safety purposes and other special purposes.

Making Copies for the Disabled.

Sec. 17. (...)

Collective Works for Use in Education, etc.

Sec. 18.

(1) In a collective work intended for use in religious services or in education, and consisting of works by a large number of authors, minor parts of literary or scientific works or musical works or short works of this kind, may be reproduced if five years have elapsed since the expiry of the year in which the particular work was published. In connection with the text of such works, works of art and photographic works may also be reproduced if five years have elapsed since the expiry of the year in which the work was issued. A work created for use in education shall not be reproduced in a collective work compiled for the same purpose.

(2) Copies of a published work may be made for use in a public examination.

(3) The author of the work shall be entitled to remuneration.

(...)

Exhibition of Copies.

Sec. 20.

If a work has been published, or if the author has assigned copies of a work of art or a photographic work, the copies may be publicly exhibited. Copies of issued works of art and of issued photographic works may be publicly exhibited in an educational context. This provision shall not confer a right to exhibit a copy of a work of art or a photographic work in a film or in a broadcast.

Performance in an Educational Context, etc.

Sec. 21.

(1) A published work may be performed publicly at religious services and in an educational context.

(2) A published work may also be performed publicly:

- a) at events where the performance of literary, scientific or artistic works is not the primary feature, provided that the audience is admitted free of charge, and the event is not even indirectly organized for purposes of gain,
- b) at youth meetings that have not been arranged for purposes of gain.

(3) This Section shall not apply to cinematographic works or the stage performance of stage works. Nor shall the Section confer a right to perform a work in a broadcast. The right to perform a work in an educational context shall not apply to performances within the framework of organized concerts.

Quotation

Sec. 22.

An issued work may be quoted, in accordance with proper usage and to the extent necessary to achieve the desired purpose.

(...)

Common Provisions regarding Compulsory Licences, Extended Collective Licences, Commissions, etc.

Art. 35.

(1) Each of the parties may demand that remuneration pursuant to Sec. 17, third paragraph, 18, 23, 30 and 45b shall be determined in a binding manner in accordance with rules prescribed by the King. The King shall lay down rules to the effect that a person who fails to pay remuneration for which he is liable may, on the request of the person entitled thereto, with binding effect be prohibited from making continued use of a work.

(2) The King shall issue rules regarding a commission as referred to in Sec. 34 and 45a, fourth paragraph.

Sec. 36.

(1) When there is an agreement with an organization referred to in Section 38a which allows such use of a work as is specified in sec. 13, 14, 17 fourth paragraph, and 34, a user who is covered by the agreement shall, in respect of right holders who are not so covered, have the right to use in the same field and in the same manner works of the same kind as those to which the agreement (extended collective licence) applies. The provision shall only apply to use in accordance with the terms of the agreement. The provision shall not apply in relation to the rights that broadcasting organizations hold in their own broadcasts.

(2) As regards retransmission of works pursuant to Sec. 34, where negotiations on an agreement as referred to in the first and second sentences of the first paragraph, or negotiations with a broadcasting organization concerning an agreement, are refused or no agreement has been entered into within six months after the commencement of negotiations, each of the parties may demand that permission and conditions for retransmission be determined in a binding manner by a commission pursuant to Section 35, second paragraph. The provisions of the first paragraph shall apply correspondingly in such cases.

Sec. 37.

In connection with the use of works pursuant to Section 36, whatever the agreement, the commission or the organization receiving the remuneration for such use decides with regard to the collection and distribution of remuneration shall also be binding on the right holders who are not represented by the organization. Non-member right holders shall have the same rights as right holders who are members of the organization. Non-member rights holders shall have the same rights as right holders who are members of the organization to share in the funds and benefits that are distributed or largely financed from the remuneration.

Irrespective of the provision in the first paragraph, a non-member right holder who can substantiate that his work has been used pursuant to Section 36 may demand that remuneration for such use shall be paid to him. Such claim may only be directed to the organization which pursuant to Section 36 has collected remuneration. Each party may demand that the amount of the remuneration be determined pursuant to rules laid down by the King.

Sec. 38

Should an agreement pursuant to sections 13, 14 and 17, fourth paragraph, not be concluded, each of the parties may demand mediation in accordance with rules laid down by the King. Where the parties so agree, permission and conditions for making copies may be determined in accordance with the rules prescribed pursuant to Section 35, first paragraph. Such determination shall have the same effect as an agreement pursuant to Section 36, first paragraph.

Where the parties to agreements pursuant to Sections 13, 14 and 17, fourth paragraph, so agree, any dispute concerning the interpretation of an agreement may be decided in a binding manner in accordance with the rules prescribed pursuant to Section 35, first paragraph.

Should an agreement with a broadcasting organization concerning permission to make fixations of the organization's broadcasts for such uses as are covered by Section 13 or 17, fourth paragraph, not be concluded, the provision in the first and second sentences of the first paragraph shall apply correspondingly. In the event of a dispute regarding the interpretation of such an agreement, the provision in the second paragraph shall apply correspondingly.

Where the parties concerned so agree, a dispute regarding the interpretation of an agreement in respect of such retransmission as is specified in Section 34 may in a binding manner be decided by the commission referred to in Section 35, second paragraph.

Sec. 38a.

Agreements intended to have an effect as specified in Section 36, first paragraph, shall be entered into by an organization which represents a substantial part of Norwegian authors in the field, and which is approved by the Ministry. For use in certain specified fields, the King may decide that the organization which is approved shall be a joint organization for the right holders concerned.

The King may issue further provisions regarding the supervision of the organizations and funds which receive remuneration for further distribution.

POLAND

Law of 02/04/94 of Copyright and Neighbouring Rights

Section 3. Lawful Use of Protected Works

Art. 23

(1) It shall be permissible, without the consent of the creator, to make use free of charge, for strictly personal and private purposes, of a work that has already been disclosed. However, this provision shall not authorize the construction of a building based on an architectural work or a work of urban architecture made by another person.

(2) Personal or private use shall extend to use within a circle of persons who are personally related, in particular by blood or marriage, or who entertain social relations.

Art. 24

(1) Works broadcast by satellite or ground signals by a radio or television organization may be distributed by means of a community antenna and a cable network on condition that this entails the simultaneous, complete and charge-free distribution of the radio or television programs concerned, that it is destined for a specific group of persons located in one and the same building or in a group of individual houses capable of accommodating up to 50 homes.

(2) Those in possession of installations serving for the reception of sound or sound and images may, by means of the said installations, receive the works transmitted even if the installations concerned are located in a generally accessible place, provided that the said reception does not serve a profit-making purpose.

(3) Subject to the provisions of paragraph 1, the operators of cable networks may distribute works broadcast by other radio and television organizations that cover a given territory if the distribution by the cable networks occurs at the same time as the original broadcast and incorporates the said broadcast in its entirety. The owners of rights in the works shall be entitled to remuneration.

Art. 25

(1) It shall be permissible to reproduce in the press, on radio and on television, for information purposes:

1.a) reports on current events,

1.b) topical articles and comments on political, economic and social subject,

1.c) photographic pictures in the nature of news reports that have already been disclosed,

2. short extracts from the reports, articles and comments referred to in subparagraph 1.a) and 1.b),

3. comments on disclosed publications and works,

4. speeches and addresses given in the course of public meetings and debates, which shall not however permit the publication of the speeches or addresses of one and the same person,

5. short summaries of disclosed works.

(2) The creator shall be entitled to remuneration for use of the work under the circumstances referred to in subparagraph 1.b) and 1.c) of paragraph (1).

(3) The reproduction of works under paragraph (1) shall be permissible in the original version and in translation.

(...)

Art. 27.

Scientific institutions and public education establishments may, for teaching purposes or for their own research, make use of the original versions or translations of published works, and for the same purposes make copies consisting of fragments of a published work.

Art. 28. Libraries, archives and schools may:

1. make copies of published works accessible free of charge, within the limits of their statutory tasks,
2. make single copies of published works that are unavailable on the market, or cause such copies to be made, in order to complete and protect their collections and make them available to the public free of charge.

Art. 29.

- (1) It shall be permissible to reproduce in the form of quotations, in works that constitute an integral whole, fragments of disclosed works or the entire contents of short works to the extent justified by explanation, critical analysis or teaching or by the laws of the creative genre concerned.
- (2) It shall be permissible, for teaching and scientific purposes, to insert short disclosed works or fragments of more extensive works in manuals and collections of selected pieces.
- (3) The creator shall be entitled to remuneration in the cases referred to in paragraph 2.

Art. 30.

- (1) Scientific and technical information or documentation centers may make and disclose their own adaptations of the works of others for documentary purposes, and also single copies of fragments, not exceeding the equivalent of one folio sheet, of published works
- (2) the creator or the appropriate organisation for the collective administration of the rights of authors or neighbouring rights shall be authorized to collect, from the centers referred to in paragraph (1), remuneration for the making available to the public, for a consideration, of copies of the said works.

Art. 31

It shall be permissible to perform published literary works and published musical works with or without words in public free of charge. This provision, which is not applicable to performances organized for profit-making purposes, relates in particular to occasional public performances associated with the practice of a religious faith, State ceremonies, ceremonies organized at schools and generally accessible events and shows, to the exclusion however of advertising or promotional events and events organized on the occasion of election campaigns.

(...)

Art. 34.

It shall be lawful to make use of works within the recognized limits of use on condition that the creator and the source are expressly mentioned. Their creator shall not be entitled to remuneration unless the law provides otherwise.

Art. 35.

Lawful use shall not be prejudicial to the normal exploitation of the work or to the legitimate interests of the creator.

SWITZERLAND

Federal Law on Copyright and Neighbouring Rights of 09/10/92 as amended in 1994

Chapter 5: Limitations on Copyright

Art. 19. Private Use

(1) Published works may be used for private purposes. Private use shall mean:

- a) any use of a work in the personal sphere or within a circle of persons closely connected to each other, such as relations or friends;
- b) any use of a work by a teacher for teaching in class;
- c) the reproduction of copies of a work in enterprises, public administrations, institutions, commissions and similar bodies for internal information or documentation.

(2) Persons entitled to make copies of a work for use for private purposes may also have them manufactured by other persons; libraries that make copying apparatus available to their users shall also be deemed other persons within the meaning of this paragraph.

(3) The following shall not be permissible outside the private circle:

- a) the complete or extensive reproduction of copies obtainable commercially;

- b) the reproduction of works of fine art;
 - c) the reproduction of graphic representations of musical works;
 - d) the recording of the delivery, performance or presentation of a work on phonograms, videograms or data carriers.
- (4) this article shall not apply to computer programs.

Art. 20. Remuneration for Private Use.

- (1) Use of a work in a private circle under Article 19.1.a) shall not give rise to a right of remuneration, subject to paragraph 3.
2. Any person who reproduces works in any manner for private use under Article 19.1.b) or c) or as another person under Article 19.2, shall be required to pay remuneration to the author.
3. any person who manufactures or imports blank cassettes or other phonograms and videograms suitable for the recording of works shall be required to pay a remuneration to the author for uses of works under Article 19.
4. Claims for remuneration may only be asserted by collecting societies.

(...)

Art. 24. Archive and Backup Copies.

- (1) A copy may be made of a work in order to preserve it. The original or a copy must be stored in archives not accessible to the general public and be marked as an archive copy.
- (2) any person entitled to use a computer program may make a backup copy thereof; this right may not be waived by contract.

Art. 25. Quotations

- (1) Published works may be quoted if the quotation serves as an explanation, a reference or illustration and the extent of the quotation is justified for such purpose.
- (2) The quotation must be designated as such and the source given. Where the source gives the name of the author, that name must also be given.

(...)