

# EU Copyright Law: An Overview

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# Roadmap

## 1. EU competence

## 2. EU copyright law: main features and purposes

## 3. Substantial legal aspects

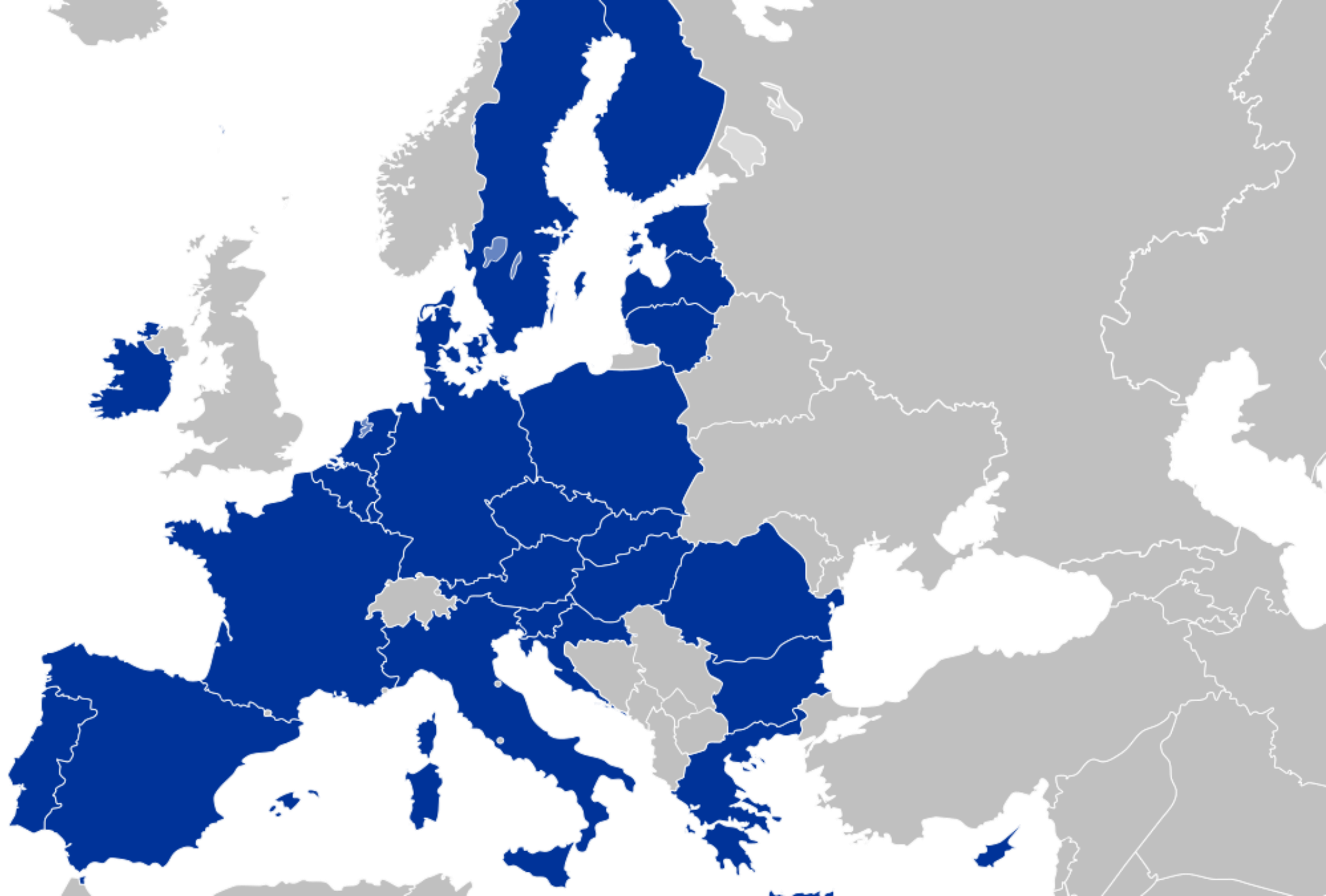
- Subject matter
- Scope of protection
- Duration
- Exceptions & limitations

## 4. Latest developments

- Accommodation impulse
- Online enforcement
- Pursuit of full harmonization

Q&A

# **1. Competence**



- Art.17(2) Charter of Fundamental Rights of EU: ***Intellectual property shall be protected.***
- Art.51 CFREU: Application to EU and national institutions

Since 2011 Treaty of Lisbon – ***shared competence***

Principle of conferral (Art.5 TEU) and **Internal Market** as the main objective (Art.26 TFEU)

- Art.114 TFEU: Approximation of national legal systems
- Art.118 TFEU: EU IP rights (full harmonization)

**Culture and education – *supporting competence***

- Art.167 TFEU: supporting EU competence
- Art.3(3) TEU: obligation to safeguard and enhance Europe’s cultural heritage

## **2. EU copyright law: main features & purposes**

# EU copyright *acquis*

- Database Directive 1996
- **InfoSoc Directive 2001**
- Resale Directive 2001
- (IP Enforcement Directive 2004)
- Rental Directive 2006
- Term Directive 2006 l.a.2011
- Computer Programs Dir 2009
- Orphan Works Directive 2012
- CRM Directive 2014
- Marrakesh Direction & Regulation 2017
- **CDSM Directive 2019**
- Around 200 CJEU copyright rulings
- Since 1971 to date  
(*Deutsche Grammophon; GEMA*)
- Preliminary rulings referrals
- EU Commission Communications and Recommendations
- Impact assessments
- Stakeholder dialogues meetings minutes
- EU Parliament Studies

# Key features

- **Partial harmonization**  
(Directives = obligation of results)  
In turn, some persisting degree of national legal fragmentation
- **High level of protection**
- **Fair balance of rights and interests**

# Key purposes

- Establish the Internal market
- Promote EU global competitiveness
- Fairly remunerate creators
- Attract & protect investments
- Preserve & enhance cultural heritage
- Ensure fair competition in the management of copyrights



## **3. Subject matter**



- International legal obligations:  
**Original literary, artistic, scientific works** (Art.2 Berne Convention)
- EU Directives: “works/subject matter” [silent]
  - Computer programs (Art.1 CP Directive)
  - Original database (Art.3 DB Directive)
- CJEU consolidated case law:  
**Expression of Author’s Own Intellectual Creation** (*Infopaq*, para 35)
  - Reflecting author’s personality - namely, necessary and sufficient that free and independent choices were made by the author (eg *FAPL*, para 98; *Painer*, paras 88-89)
  - Room for creative freedom (no purely technical nature) (*Football Dataco*, para 39)
  - Identifiable with sufficient precision and objectivity (*Levola Hengelo*, para 40)
  - Not necessarily in permanent form (*idem*)
  - Potentially including product designs! (cumulative protection) (*Brompton Bicycle*, para 38)
    - But not if they merely generate a particular aesthetic visual effect (*Cofemel*, para 56)

## SUBJECT MATTER OF RELATED RIGHTS

### AOIC

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Performances;  
Sound recordings and phonograms;  
Broadcasts  
(Rome Convention)

Non-original database (Art 7 DB Directive);  
Press articles (Art 15 CDSM Directive)

## SUBJECT MATTER OF SUI GENERIS RIGHTS

### **3. Scope of protection**

- Full harmonization of some economic rights
  - **Right of reproduction** (Art.2 InfoSoc Directive)
  - **Right of communication to the public** (Art.3 InfoSoc Directive)
  - **Right of distribution** (Art.4 InfoSoc Directive)
  - Right to rent/lend (Art.2 Rental Directive)
  - Related rights (Artt.7-9 Rental Directive)
  - Sui generis database right (Art.8 DB Directive)
  - Sui generis press publishers right (Art.15 CDSM Directive)
  
- **No harmonization of adaptation rights**
- **No harmonization of moral rights**

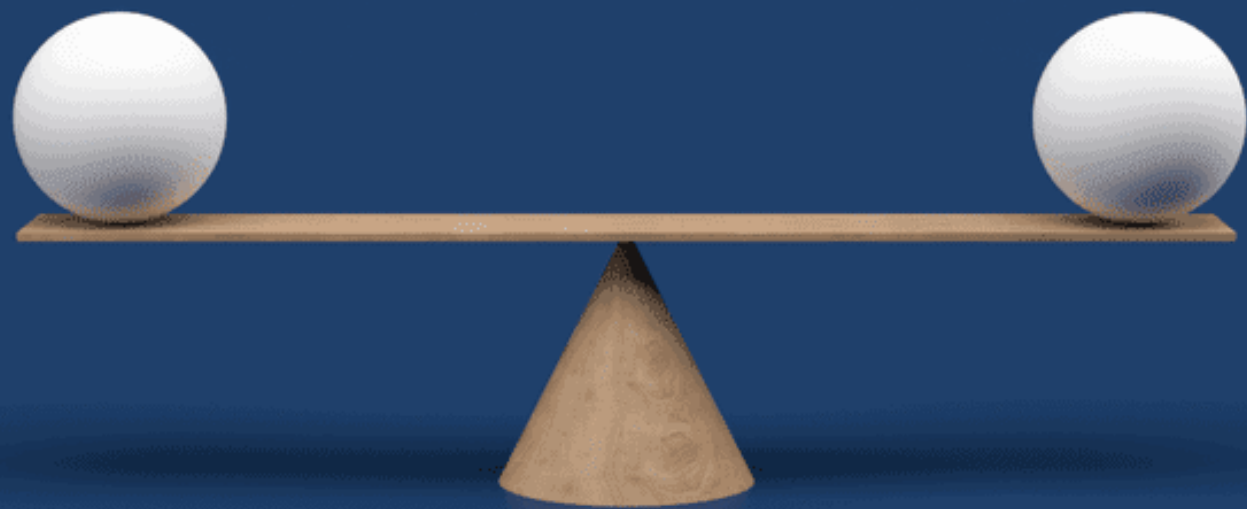
## **3. Duration**

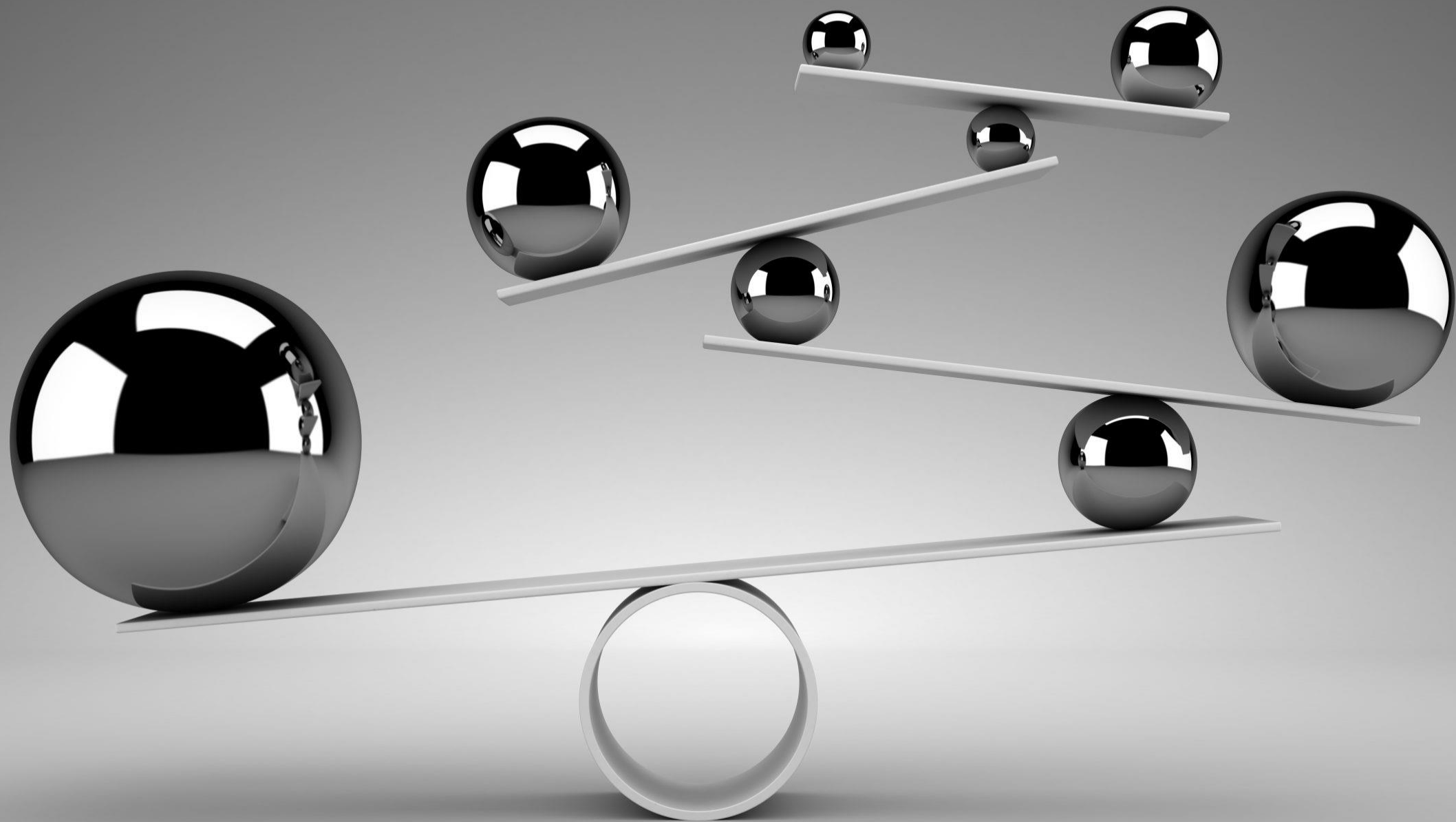
- **70 years *post mortem auctoris*** (Art.1 Term Directive) of economic rights only
- 50 years from date/making available of performance (Art.3)
- 70\* years from fixation phonogram
- 50 years from fixation movie (for producers)
- 50 years from first transmission of broadcast
- Anonymous/pseudonymous: 70 yrs from making available (Art.1(2))
- Numerus-clausus for songs\* (70 yrs pma from death lyricist/composer) and movies (70 yrs from death of director/script writer/dialogue writer/music composer) (Artt.1(7), 2)
- Simple photographs: left to Member States (Art.6)
- **Third countries: country of origin + maximum duration: EU duration (Art.7)**

\*2011 amendment to Term Directive



### **3. Exceptions & limitations**





# Optional copyright exceptions (Art.5 InfoSoc Dir)

## To the right of reproduction

- Reprography\*
- Private copy\*
- Reproduction by cultural institutions
- Ephemeral recording by broadcasters
- Recording by social institutions\*

## To the rights of reproduction and c2p

- Illustration for teaching and scientific research; private study from dedicated terminals
- Uses by/for persons with disabilities
- Press review; news reporting; use of speeches/lectures for informatory purpose
- **Quotation (Art.10(1) Berne Convention)**
- Public security and administrative proceedings; official/religious ceremonies
- Freedom of panorama
- Incidental inclusion
- Art exhibition advertising/sale
- Parody
- Repair of equipment; building reconstruction
- “Grandfather clause”

\* Possible fair compensation scheme

# Mandatory copyright exceptions

## To the right of reproduction

- Temporary transient/incidental reproduction  
(Art.5(1) InfoSoc Dir)
- Text and data mining\*
- Cultural heritage preservation\*  
(Art.6 CDSM Directive)

## To the rights of reproduction and c2p

- Digital teaching activities\*  
(Art.5 CDSM Directive)

\* Contractually non-overridable

Both **optional** and **mandatory** exceptions  
subject to **three-step-test** (Art.5(5) InfoSoc Dir)

- Certain special cases
- Do not conflict with the normal exploitation of work
- Do not unreasonably prejudice the legitimate interests of right holders

## **4. Latest EU copyright legal developments**

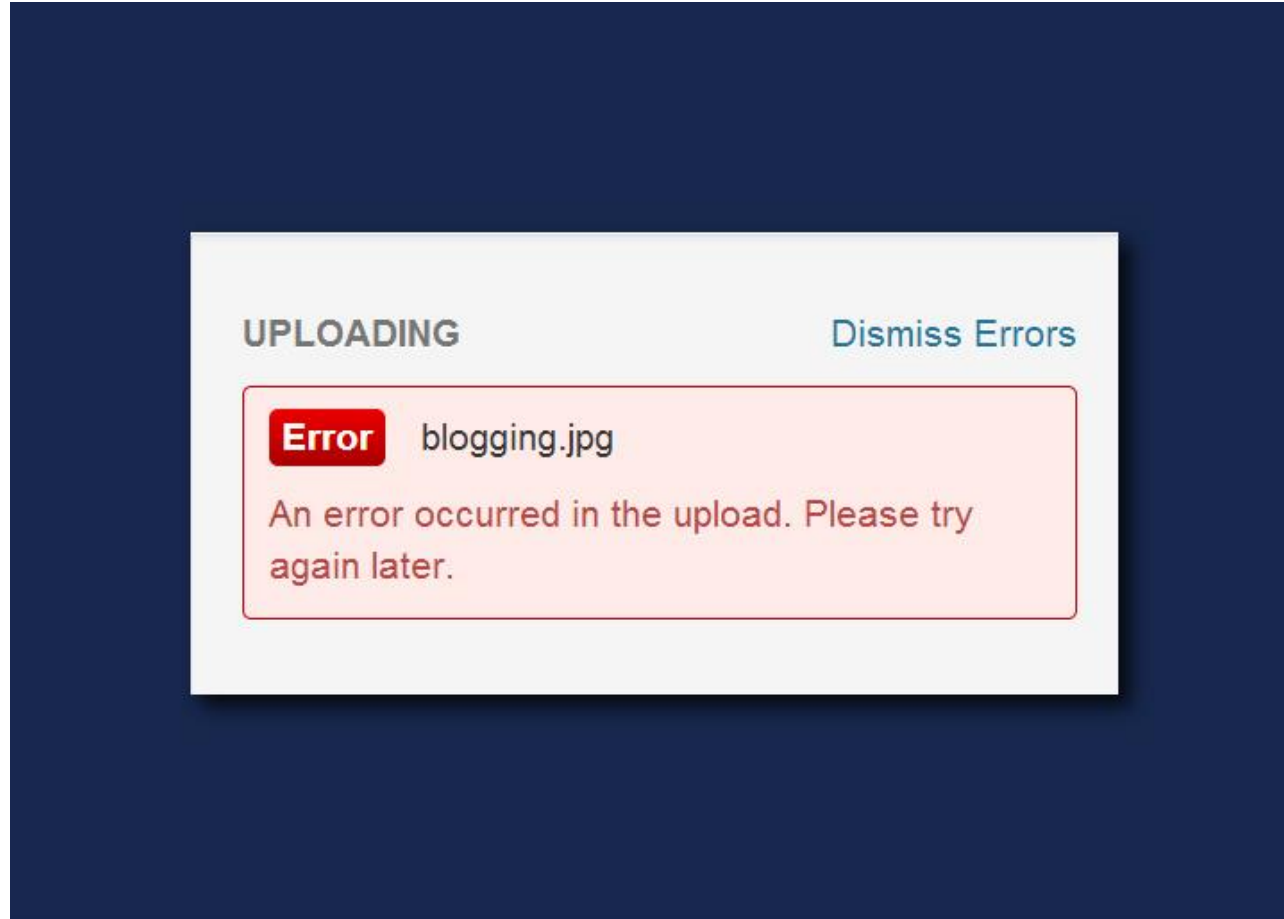
# The digital “accommodation impulse”

- **Right to communication to the public**

- Long line of CJEU referrals
- From hotel rooms (*SGAE; Citadines*), rental houses (*GEMA v GL*), mere presence of transmitting devices on airplanes (*BlueAir Aviation*)
- Up to hyperlinking (*Svensson*), framing (*VG Bild-Kunst*), posting (*Renckhoff*), satellite package service (*Canal+ Luxembourg Sàrl*), digital recording and replay service (*Ocilion*)
- **“New public”** = public that for a specific act of communication was not anticipated by the right holder



# Online/automated enforcement



# Online/automated enforcement

- **Article 17 CDSM Directive**

- **Upload filters**
- Direct liability for Online Content Sharing Service Providers (ie main hosting platforms)
- EU Commission Guidance on implementation
- CJEU *Poland v EU Commission*

- **Clash between copyright and personal data protection**

- Copyright holder's right of information about origin and network of infringement (Art.8 IP Enforcement Directive)
- **Long-standing restrictive interpretation of Art.8** (eg *Bastei Lübbe*; *Mircom*; *Constantin Film Verleih*)
- **Recent u-turn of CJEU** (*La Quadrature du Net II*)

# Pursuing full harmonization

- **Mandatory copyright exceptions**
- **Copyright contract law**
- **EUIPO Observatory on Copyright**
- **Mature doctrinal analyses and debate**

# Thank you

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# Suggested readings

Stamatoudi/Torremans, EU Copyright Law (2<sup>nd</sup> edition EE 2021)

Rosati, Copyright and the Court of Justice of the EU (2<sup>nd</sup> edition OUP 2023)

Rosenmeier/Szkalej/Wolk, EU Copyright Law: Subsistence, Exploitation and Protection of Rights (Wolters Kluwer 2019)

Sganga, Propertizing European Copyright (EE 2018)

Jütte, Reconstructing European Copyright Law for the Digital Single Market (Hart Nomos 2017)