



PropEur (Property Regulation in European Science Ethics and Law) Project

**Controversial copyright regulation in Germany –
protection of commercial exploitation vs free/open access
in science and education**

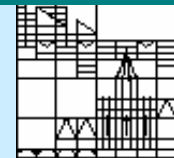
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**Second International Workshop
"Intellectual Property Rights and the Information Society,,**

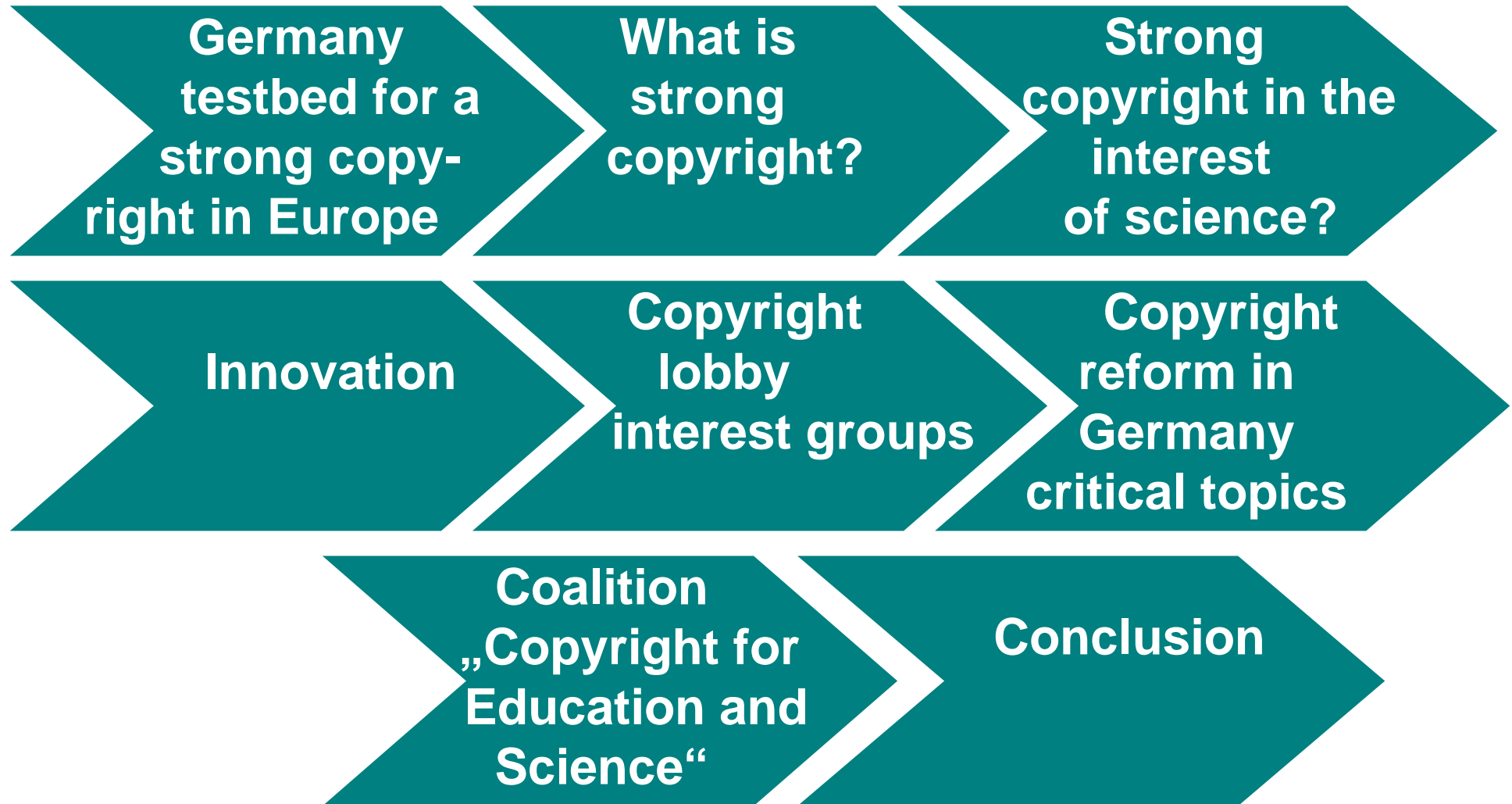
10-11 March 2006 – Sofia, Bulgaria – Serdika hotel



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Content – Topics - Consequences



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Germany testbed for a strong copy- right in Europe



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**Germany
testbed for a
strong copyright**

**Objective:
to create an “education- and science-
friendly copyright regime”**

**Contract for the coalition of the new German
government - 2005**



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Germany
testbed for a
strong copyright

Reality:

There is a large gap between the rhetoric of a political system that preaches the knowledge society and the reality of keeping knowledge and information short resources in the interest of the information industry.



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What is strong copyright/ IPR?



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What is strong copyright/ IPR?

Strong intellectual property rights (IPR) regulations not an official legal term.

but strong IPR means

- exclusive publication and exploitation rights for creators/authors
- strong legal protection of exploitation interests
- IPR law more a trade law rather than a person law
- preference for individualized technical protection and licencing means rather than flat-rate compensation
- legal protection of technical protection means



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What is
strong
copyright/
IPR?

from a global perspective

"Too much protection by copyright, by other forms of IP protection, or by technology may restrict the free flow of ideas on which the further progress of ideas and technology depends. For developing countries, affordable access to works essential for development such as educational materials and scientific and technical knowledge may be affected by unduly strong copyright rules."

Study "Integrating Intellectual Property Rights and
Development Policy"
UK Commission on Intellectual Property Rights 2002



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What is
strong
copyright/
IPR?

in the interest of innovation?

" **Economic theory** tells us that we must **balance** those rights if we are to achieve efficiency, granting intellectual property rights only to the extent necessary to enable creators to cover their average fixed costs. Anything more does harm and no good."

" Because of the **costs adding more and more intellectual property protection** not only has diminishing marginal benefits, but at some point has a net negative impact on innovation, because the strengthening of existing rights stifles more new innovation building on those rights than further expansion encourages.

“

Mark A. Lemley & R. Anthony Reese, *Reducing Digital Copyright Infringement Without Restricting Innovation*, 56 **Stan. L. Rev.** 1345, 1373-79 (2004)



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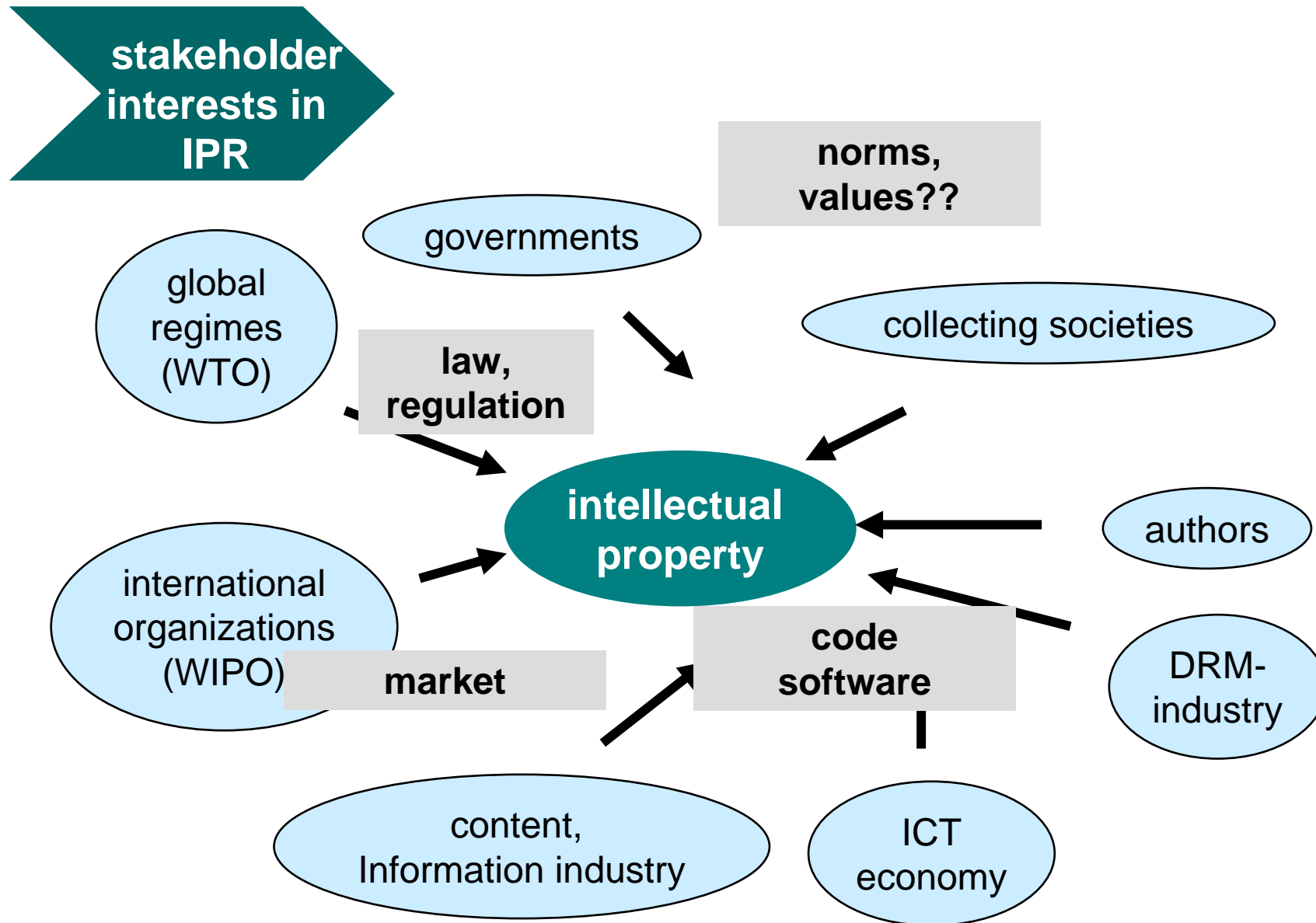


Copyright lobby interest groups



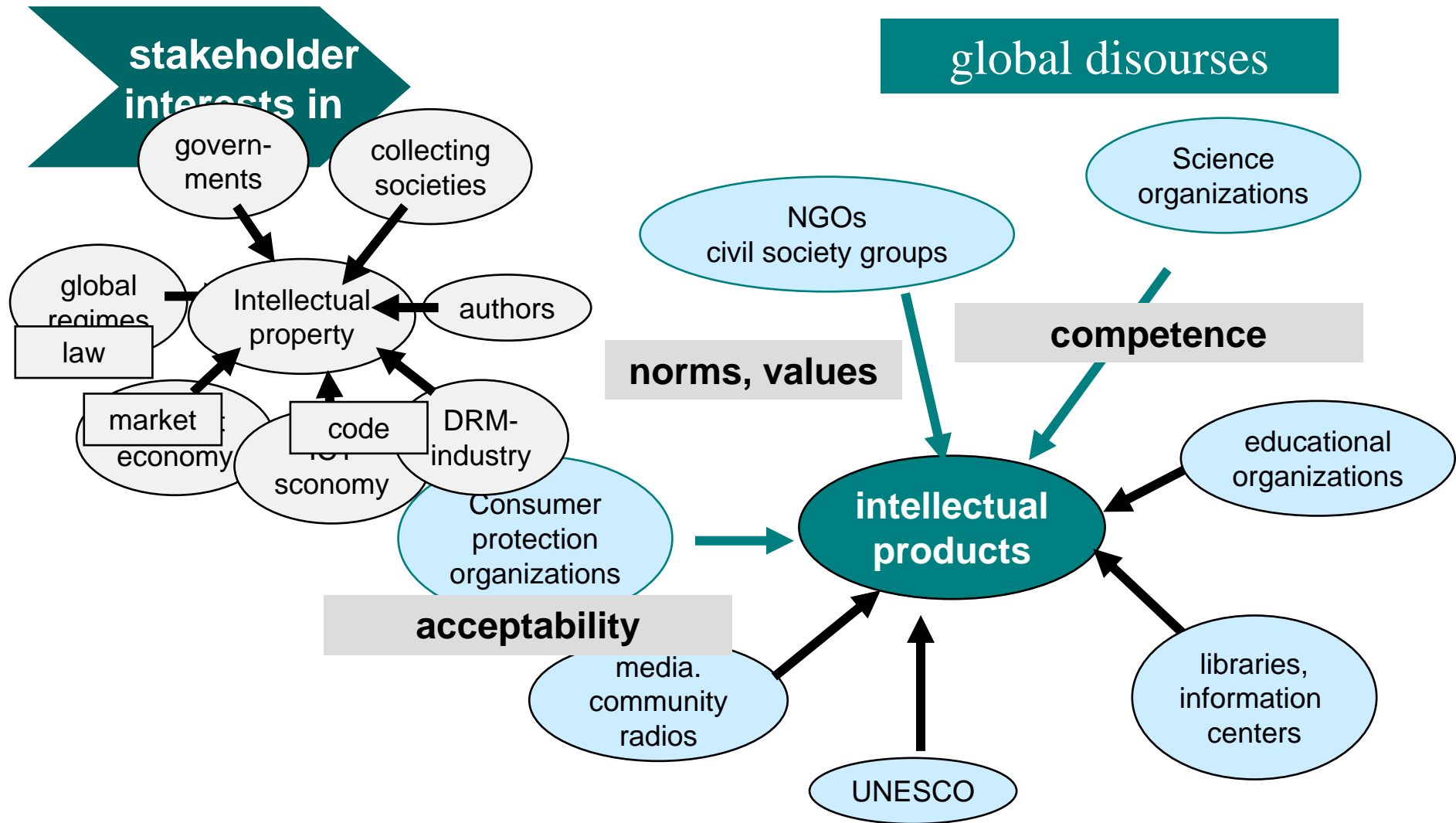
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Copyright reform in Germany critical topics



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Copyright reform in Germany critical topics

§ 52a Exceptions for education and research

only small parts of published work

for the use **in** class room only

limited until the end of 2006

for the use **of** participants of a course only

for the use **of** members of a well-defined (IP address) research group only

without any direct or indirect commercial interest

access in schools only with explicit permit of rightholders

use of movies in schools only after 2 years of regular exploitation in movie theatres

§ 52a: Nicht mehr anzuwenden gem. § 137k (F. 10. September 2003) MWV 1.1.2007

UrhG § 52a Öffentliche Zugänglichmachung für Unterricht und Forschung

1. veröffentlichte Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften zur Veranschaulichung im Unterricht an Schulen, Hochschulen, nichtgewerblichen Einrichtungen der Aus- und Weiterbildung sowie an Einrichtungen der Berufsbildung ausschließlich für den bestimmt abgegrenzten Kreis von Unterrichtsteilnehmern oder

2. veröffentlichte Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften ausschließlich für einen bestimmt abgegrenzten Kreis von Personen für deren eigene wissenschaftliche Forschung

Öffentlich zugänglich zu machen, soweit dies zu dem jeweiligen Zweck gedoten und zur Verfolgung nicht kommerzieller Zwecke gerechtfertigt ist.

(2) Die öffentliche Zugänglichmachung eines für den Unterrichtgebrauch an Schulen bestimmten Werkes ist stets nur mit Einwilligung des Berechtigten zulässig. Die öffentliche Zugänglichmachung eines Filmwerkes ist vor Ablauf von zwei Jahren nach Beginn der üblichen regulären Auswertung in Filmtheatern im Geltungsbereich dieses Gesetzes stets nur mit Einwilligung des Berechtigten zulässig.



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Copyright reform in Germany critical topics

§ 52b Access to published electronic material from libraries

„§ 52b
Wiedergabe von Werken an elektronischen Leseplätzen
in öffentlichen Bibliotheken, Museen und Archiven

Zulässig ist, veröffentlichte Werke ausschließlich in den Räumen öffentlich zugänglicher Bibliotheken, Museen oder Archive, die keinen unmittelbar oder mittelbar wirtschaftlichen oder Erwerbszweck verfolgen, an eigens dafür eingerichteten elektronischen Leseplätzen zur Forschung und für private Studien zugänglich zu machen, soweit dem keine vertraglichen Regelungen entgegenstehen. Für die Zugänglichmachung ist eine angemessene Vergütung zu zahlen. Der Anspruch kann nur durch eine Verwertungsgesellschaft geltend gemacht werden.“

only from special work stations within the library

only without any direct or indirect commercial purpose

use is subject to fees (to be collected by collecting societies)



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Copyright reform in Germany critical topics

§ 53a Document delivery on demand

delivery on demand by public libraries

„§ 53a

Kopienversand auf Bestellung

single orders only

small parts only

delivery via traditional mail or fax

delivery electronically only as image files

(1) Zulässig ist auf Einzelbestellung die Vervielfältigung und Übermittlung einzelner in Zeitungen und Zeitschriften erschienener Beiträge sowie kleiner Teile eines erschienenen Werkes im Weg des Post- oder Faxversands durch öffentliche Bibliotheken, sofern die Nutzung durch den Besteller nach § 53 zulässig ist. Die Vervielfältigung und Übermittlung in sonstiger elektronischer Form ist ausschließlich als grafische Datei und nur dann zulässig, wenn der Zugang zu den Beiträgen oder kleinen Teilen eines Werkes den Mitgliedern der Öffentlichkeit nicht von Orten und zu Zeiten ihrer Wahl mittels einer vertraglichen Vereinbarung ermöglicht wird.

electronic delivery by libraries not allowed when commercial content providers (publishing companies) are active in retail document delivery markets (such as Science Direct/Elsevier)



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Coalition „Copyright for Education and Science“



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Coalition for Action "Copyright for Education and Research" Aktionsbündnis „Urheberrecht für Bildung und Wissenschaft“

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The Göttingen Declaration on Copyright for Education and Research of 5 July 2004

Göttingen Declaration for printout: [\[PDF-file\]](#) [\[RTF-file\]](#) [\[DOC-file\]](#)

Preliminary Remarks

The answer to the question 'How accessible are knowledge and information?' will determine the opportunities for education and development open to every citizen in the information society and the opportunities future generations will have to build on existing knowledge. The legal provisions set out in German copyright law will determine whether open, networked communications structures will continue to develop in our society in the long term. They will also affect the quality of our education system, the inventiveness of the sciences and the innovative capacity of trade and industry. In a global, competitive environment, they play a vital role in promoting social, cultural and economic development and hence in securing the future of our society.

With regard to the implementation of Directive 2001/29/EC in Germany, the legislature has so far mainly addressed the concerns of rightholders regarding the commercial use of digital media and networks as additional distribution channels. The prime concern here has been to minimise the risks related to private copying rather than to encourage exploiting the opportunities afforded by the new technical media to the public at large. The latter point is particularly important for the fields of education and science, because it is here that the information society contains new potential for imparting knowledge and promoting co-operation between scientists. The way these new opportunities are used is a decisive competitive factor on the global stage.

We, the undersigned, undertake to ensure that the full potential of the digital media and communications systems remain open for use by the general public and, in particular, by science, and that these media and systems are not subject to restrictions which primarily serve the commercialisation of information by the private sector.

In a digitised and networked information society, access to global information for the purposes of education and science must be guaranteed at all times from any place.

Goals

Next Relevant Dates

March 21st 2006:
Workshop of the "Information Division of the German Physical Society" during the 70th annual meeting of the German Physical Society in Munich including a focus on accessibility of information. ([more...](#))

March 21 - 24 2006:
95. Deutscher Bibliothekartag; the Coalition for Action will be present in the hall of the DBV ([more...](#))

April 26th 2006:
"Day of the intellectual property" as a town in the "Land of Ideas" in the IKMZ of the BTU Cottbus ([more...](#))

News

January 3rd 2006:
The German Ministry for Justice (BMJ) publishes a new bill for a second revision of the copyright law (Urheberrechtsgesetz) and invites all interested parties to a hearing in Berlin on January 26.

December 27th 2005:
The District Court Munich has given an adjudication (court sentence) in part for the lawsuit "subito-case" of the German Börsenverein of the book handlers and the Stichting STM against the State of Bavaria as responsible body of the University Library of Augsburg on behalf of infringement of copyright while interlending documents [15 Dec. 2005] ([download...](#))

December 19th 2005:
The Institute for Legal Informatics of the University of Hannover announcing a Workshop on "Copyright in the digitized Science and Education". Some of the speakers are from the our Coalition as well as from publishes, ([more...](#))



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Education and research must be allowed unrestricted use of the new ways of disseminating and acquiring knowledge and information. However, the exceptions in German copyright law (particularly sections 52a, 52b and 53, 53a) no longer set out the privileges needed by education and science in a positive, clearly understandable and practicable way.

Coalition
„Copyright for
Education and
Research“

Goals

Education and research

Privileges are subject to considerable **restrictions** which are likely to create uncertainty or even criminalise those working in education and science, instead of offering the legal certainty they require to perform work for the benefit of the general public.



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Schools, universities and colleges have developed and successfully tested, in countless projects, the use of new digital, networked media for disseminating knowledge (eLearning) and for communicating and co-operating with others. A considerable amount of effort has gone into this, supported by funds from federal and state levels.



Coalition
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Education and
Research“

Goals

Schools and universities

In many **schools, universities and colleges**, the use of network-based learning environments now accounts for a significant part of regular curricular activities, and has brought about a lasting improvement in the quality of learning and teaching. The various forms of eLearning also hold enormous potential for vocational qualification programmes and further training schemes.



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Education and
Research“**

Goals

Schools and universities

Hence, in the information society, it is extremely important for teaching staff that their academic freedoms and access to information are not restricted unreasonably, and that both staff and students enjoy the legal protection necessary for them to exploit and develop eLearning to the full in future.



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Science and research use and develop the latest knowledge in a continuous communicative process that involves scientists working in small local teams as well as their exchanging information on a worldwide basis. This flow of information and communication must not be obstructed by restrictive provisions in the copyright law.

Coalition
„Copyright for
Education and
Research“

Goals

Science and research

Free access to knowledge and information ... must be encouraged and maintained. There must be an **unhindered exchange of knowledge** if science is to continue making a productive contribution to society. These are core issues for science and its development.



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Goals

Public information institutions

The duty of **public information institutions**, such as libraries, museums, multimedia centers and archives, to supply society with information must be strengthened and supported so that they can work more efficiently.



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Education and
Research“**

Goals

Public information institutions

This means, above all, sustainable long-term archiving programs and the provision of access to the collections of these institutions using modern digital communications and information systems. Only in this way can the sustainable preservation of our cultural heritage be ensured and global access guaranteed.



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Coalition
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Education and
Research“

Goals

Free but not necessarily cost-free

Free access to information and knowledge does not necessarily mean cost-free. Copyright law should establish **fair and balanced terms and conditions** to ensure remuneration for the use of protected works and unrestricted access for the purposes of education and science.



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Goals

Technological protection

Technological protection measures which restrict access to information in order to maximise commercial profits, which impose far-reaching restrictions that impinge upon the private sphere and make secure, long-term archiving impossible are, therefore, the wrong approach. They hinder the free development of education and science and, consequently, the economic development of our society, too.



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The appropriate remuneration of rightholders through a **system of flat-rate payments** made through **collecting societies** has a long tradition in Germany. This system has worked well for several decades now. Similar systems of collective compensation can also be applied to Internet usage and must be preferred over all restrictions that rely on technological protection measures.



Conclusion

Education and Science need to be protected against the global tendency of progressive and aggressive commodification of knowledge and information



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Conclusion

A copyright regime is needed where **free access and free use** of published information is no longer considered an exception (Schranke) but an indispensable part of information work in education and science



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Conclusion

Free use of information in education and science should not be the exception but the rule.

Commercial exploitation of knowledge should not be the (exclusive) rule but the exception which must not be allowed to interfere with public interest.



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Conclusion

Three-step test (Berne Convention)

Members shall confine limitations and exceptions to exclusive rights [a] to certain special cases which [b] do not conflict with a normal exploitation of the work and [c] do not unreasonably prejudice the legitimate interests of the rights holder.

[TRIPS Art 13]



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Conclusion

Three-step test (reformulated)

... shall confine limitations and exceptions to free and unrestricted access to published knowledge to certain special cases (in the interest of commercial exploitation) which do not conflict with the public interest in free and unrestricted access to knowledge and information and do not unreasonably prejudice the legitimate interests of the authors of knowledge and information



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