

**Copyright & Research & Innovation
European Parliament, 12/11/2013**

Text and Data Mining



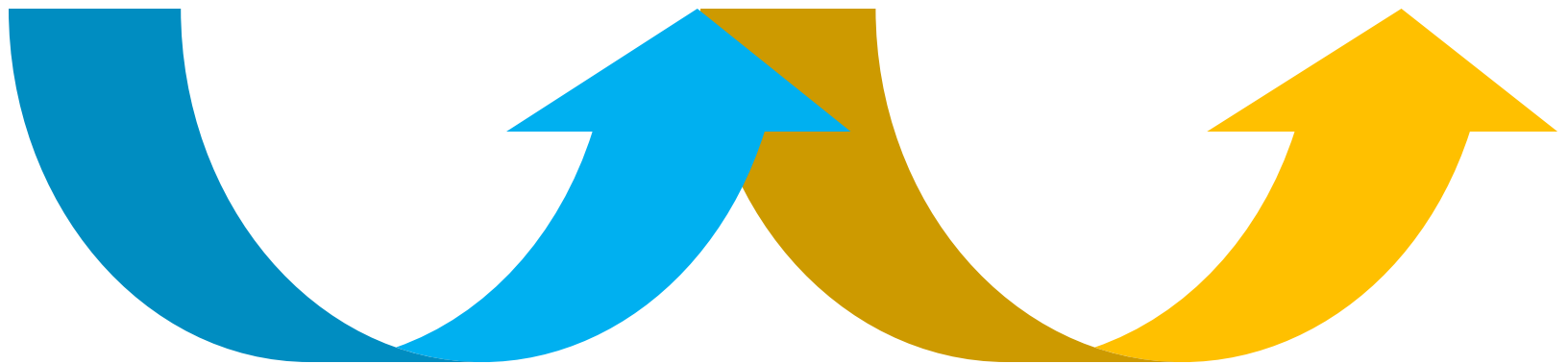
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EU acquis (InfoSoc Directive)

broad
exclusive
rights

exhaustive
enumeration of
exceptions

three-step
test



Art. 5(5) InfoSoc Directive

‘The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall **only be applied in certain special cases** which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.’

Worst case scenario



Comparison: legal traditions

Anglo-America

- open limitations
- factor analysis
- case-by-case approach (judge)
- flexibility
- quick reactions to new developments

Continental Europe

- specific limitations
- fixed requirements
- closed catalogue of limitations (legislator)
- legal certainty
- slow reactions to new developments

EU legal framework

European Union

= worst case scenario

- closed catalogue
 - controlled by open factors
 - no flexibility
 - no legal certainty
 - *very* slow reactions to new developments
- structural problem
 - not only if three-step test in national law (+) (France)
 - but also if three-step test in national law (-) (The Netherlands)

Civil law judges capable of applying open-ended limitation?

Yes, absolutely.

For the time being



Art. 5(3)(a) InfoSoc Directive

‘...use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author’s name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;...’

Competition between national solutions

UK Proposal

‘29A Data analysis for non-commercial research

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The end. Thank you!

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'senftleben' on www.ssrn.com.**



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