

# The flexibilities of the copyright system at the international level

Jørgen Blomqvist  
Honorary Professor  
Centre for Information and  
Innovation Law

UNIVERSITY OF COPENHAGEN



# Overview

- The specific limitations and exceptions established in the Berne and Rome Conventions
- The general rules
- Limitations and exceptions based on the general rules
- Other issues

# The specific limitations and exceptions in the Berne Convention

- Fixation
- Official texts (legislative, administrative and legal)
- Political speeches and speeches in legal proceedings
- Lectures, addresses, delivered in public
- Comparison of terms
- Quotation, illustration for teaching
- Borrowing by the press, news reporting
- Broadcasting, retransmission of broadcast works, ephemeral copies
- Making of phonograms, "cover versions" of published musical works
- Translation, publication and broadcasting under the Berne Appendix

# The specific limitations and exceptions in the Rome Convention

- Private use
- Use of short excerpts in connexion with the reporting of current events
- Ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts
- Use solely for the purposes of teaching or scientific research

# The general rules

- The three-step-test
  - Certain special cases
  - Do not conflict with the normal use
  - Do not unreasonably prejudice the legitimate interests of the rights owner
- The 'minor reservations'
  - Religious ceremonies, military bands, education and popularization
  - Given lightly without invalidating the principle of the rights
- *Ordre public*
- The references from related rights to limitations and exceptions under copyright in works

# Limitations and exceptions based on the general rules

- Fair dealing/fair use
- Private use, compensation systems
- Education, study and research
- Libraries, archives and museums
- Persons with visual and other impairments
- "Right of panorama"
- - and others, as desired by national legislators

# The relation between limitations & exceptions and contracts

- Can such limitations and exceptions be set aside through contract?
  - Matter for national legislation
  - Examples of prohibitions in EU Directives
- If yes, how much does it take to enter a binding contract?
  - One-sided conditions of use, set by the vendor
  - “Click-wrap” contracts
- Interpretation and nullification
  - Interpretation *Contra proferentem*
  - Enforcement of unconscionable contracts

# Technological protection measures

- The protection requirements
  - Adequate legal protection and effective legal remedies
  - against circumvention
  - of effective technological measures used by rights owners [...]
  - that restrict acts which are not authorized [...] or permitted by law
- Exemptions from the protection
  - The protection does not cover "acts [...] permitted by law"
  - The protection must be 'adequate' and provide 'effective legal remedies'
  - Core issue: The dissemination of circumvention tools to the general public



