



WIPO INTERNATIONAL SEMINAR ON COPYRIGHT



Round Table: ROMANIA'S Standpoint Exceptions and Limitations in the Field of Copyright and Access to Culture

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About ROMANIA



- **EU Member State since 1st of January 2007**
- **Borders:** Ukraine, Moldova, Hungary, Serbia, Bulgaria, The Black Sea
- **Superficies:** 238,391 sq km
- **Relief:** 33% mountains (The Carpathians), 33% hills, 33% plains and the Danube Delta
- **Population:** 21,680,974 inhabitants
- **Nationalities:** 89.5% Romanians; 6.6% Hungarians; 2.5% Romany; 1.4% others
- **Capital:** Bucharest (2,100,000 inhabitants)
- **Official Language:** Romanian (Latin origin)
- **National Day:** 1st of December
- **National currency:** Leu
- **Since 1989** democracy has been re-established
- **Form of government:** Semi-Presidential Republic
- **Parliament Bicameral System:** Chamber of Deputies and Senate
- **Free compulsory general education**



Exceptions and limitations



- Part of international agreements and national laws
- Optional systems at the latitude of States
- **Exceptions** – provide immunity from infringements
- **Limitations** – limiting the level of protection
- Providing **de minimis** level of protection
- **Categories** 
 - Exclusive Right
 - Remuneration Right
 - Compensatory remuneration for Private Copy



INTERNATIONAL FRAMEWORK FOR EXCEPTONS/LIMITATIONS

- The Berne Convention for the Protection of Literary and Artistic Works (**Berne Convention**)
- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (**Rome Convention**)
- Agreement on Trade-related Intellectual Property Rights (**TRIPS**)
- WIPO Copyright Treaty (**WCT**)
- WIPO Performances and Phonograms Treaty (**WPPT**)



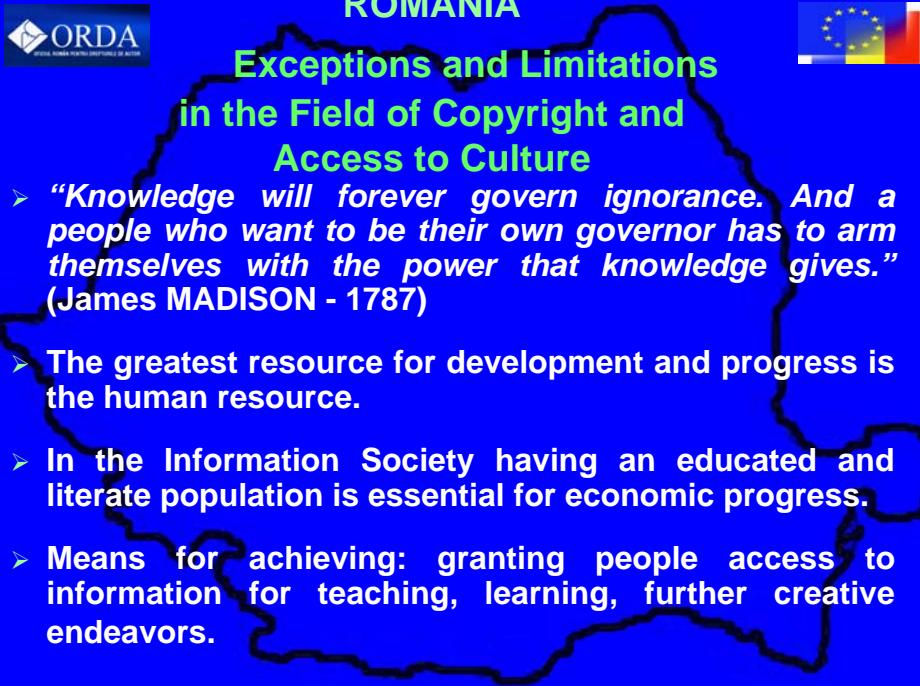
EUROPEAN COMMUNITY FRAMEWORK FOR EXCEPTONS AND LIMITATIONS

- Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society (**Information Society Directive**)
Art.5
- **Single provision mandatory for all EU Member States:** Temporary acts of reproduction which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:
 - a) a transmission in a network between third parties by an intermediary
 - b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right



EUROPEAN COMMUNITY FRAMEWORK FOR EXCEPTIONS AND LIMITATIONS

- **Optionally, Member States may provide for exceptions or limitations any cases from a list of 21 included in Art. 5 paragraphs 2 – 4 (Romania chose almost all the options from the list being among the most generous EU Member State)**
- **The exceptions and limitations shall only be applied by Member States 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 right-holder.**
- **The Software Directive [Art. 5(1)] and the Database Directive (Art. 6) include exceptions that should be considered for aligning with the Art. 5(1) of the Information Society Directive (The case for temporary acts of reproduction)**



ROMANIA

Exceptions and Limitations in the Field of Copyright and Access to Culture

- *“Knowledge will forever govern ignorance. And a people who want to be their own governor has to arm themselves with the power that knowledge gives.” (James MADISON - 1787)*
- **The greatest resource for development and progress is the human resource.**
- **In the Information Society having an educated and literate population is essential for economic progress.**
- **Means for achieving: granting people access to information for teaching, learning, further creative endeavors.**



ROMANIAN LAW FRAMEWORK Brief Copyright History



- 1862: Press Law – *(introduced some copyright rules related to the artistic and literary creations, rules deeply rooted in the French law dating from 1793);*
- 1923: Law no. 126/1923 on literary and artistic property (first modern copyright law in Romania).
- 1956: Decree no.321/1956 on copyright (the normative act regulating the field in Romania during the communist period;
- 1996 - Law no. 8/1996 regarding the copyright and the related rights;
- Subsequent modifications and completions of Law no. 8/1996:
 - ❖ Law no.285/2004 (operational at 30.07.2004),
 - ❖ Law no.329/2006 (operational at 03.08.2006).
- **The same 1996 Copyright law established the national authority in the field of copyright: The Romanian Copyright Office (ORDA)**



ROMANIAN LAW FRAMEWORK Exceptions and Limitations on the Exercise of Copyright



Romanian Copyright and Related Rights Law 8/1996 as amended in 2004 and 2006

(Art. 33-38; Art.112)

(1) Cases of allowed uses without the author's consent and without payment of remuneration of a work already disclosed to public

→ not in conflict with the normal exploitation of the work

→ not prejudicial to the author or to the owners of the exploitation rights



ROMANIAN LAW FRAMEWORK Exceptions and Limitations on the Exercise of Copyright



- Reproduction of a work in connection with judicial or administrative proceedings, to the extent justified by the purpose thereof;
- Use of brief quotations from a work for the purpose of an analysis, commentary or criticism, or for illustration, to the extent justified by use thereof;
- Use of isolated articles or brief excerpts from works in publications, television or radio broadcasts or sound or audiovisual recordings exclusively intended for teaching purposes and also the reproduction for teaching purposes, within the framework of public education or social welfare institutions, of isolated articles or brief extracts from works, to the extent justified by the intended purpose;



ROMANIAN LAW FRAMEWORK Exceptions and Limitations on the Exercise of Copyright



- Reproduction of brief excerpts from works for information or research within the framework of libraries, museums, film archives, sound archives, archives of non-profit cultural or scientific public institutions (*complete reproduction of a copy of a work allowed for the replacement of the sole copy in such an archive or library's permanent collection in the event of the destruction, deterioration or loss thereof;*)
- Specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;
- Representation and execution of a work as part of the activities of educational establishments, exclusively for specific purposes and provided that both the representation or execution and the public's access are free of charge;



ROMANIAN LAW FRAMEWORK

Exceptions and Limitations on the Exercise of Copyright



- Reproduction, to the exclusion of any means involving direct contact with the work, distribution or communication to the public of the image of an architectural work, work of plastic art, photographic work or work of applied art permanently located in a public place, except where the image of the work is the main subject of such reproduction, distribution or communication, and if it is used for commercial purposes;
- Use of works during religious celebrations or official celebrations organized by a public authority;
- Use for the purpose of advertising, of the images of the works presented within exhibitions with public access or sale, of fairs, public auctions of works of art, to the extent necessary to promote the event, excluding any other commercial use.



ROMANIAN LAW FRAMEWORK

Exceptions and Limitations on the Exercise of Copyright



(2) Cases of allowed reproduction, distribution, broadcasting or communication to the public, with neither direct nor indirect commercial or economic advantage
(Subject to conditions previously described)



ROMANIAN LAW FRAMEWORK



Exceptions and Limitations

on the Exercise of Copyright

- Brief excerpts from press articles and radio or televised reportages, for informatory purposes on current events, except those for which such a use is expressly reserved;
- Brief excerpts of lectures, addresses, pleadings and other similar works that have been orally expressed in public, provided that these uses to have the sole purpose of informing on the present;
- Brief excerpts of the works, within information on current events, to the extent justified by the informatory purpose;
- Works, for the sole purpose of illustration for teaching or scientific research;
- Works, for the benefit of people with disabilities, which are directly related to that disability and to the extent required by the specific disability.



ROMANIAN LAW FRAMEWORK



Exceptions and Limitations

on the Exercise of Copyright

- **Excepted from the reproduction right** → temporary acts of reproduction transient or incidental that form an integral and essential part of a technical process
(the sole purpose of which is to enable transfer, in a network between third parties, by an intermediary or the lawful use of another protected object and that should have no separate economic value on their own)
- **Mandatory source indication**, including the author's name
(unless this turns out to be impossible; in case of works of plastic art, photographic or architecture works the place in which the original is to be found has to be indicated)



ROMANIAN LAW FRAMEWORK Exceptions and Limitations on the Exercise of Copyright



- Reproduction of a work, without the author's consent, for **personal use or for use by a normal family circle**, provided that the work has already been disclosed to the public, while the reproduction does not contravene to the normal use of the work or prejudice the author or the owner of the utilization rights.
- Paying a **compensatory remuneration**, in the above mentioned situation, for the media on which sound or audio-visual recordings can be made or on which reproductions of the works graphically expressed can be made, as well as for apparatus dedicated for copying.



ROMANIAN LAW FRAMEWORK Exceptions and Limitations on the Exercise of Copyright



- **Alteration of a work allowed** (*without the author's consent and without payment of remuneration*):
 - ❖ made privately and is neither intended for nor made available to the public;
 - ❖ the result is a parody or caricature, provided that the said result does not cause confusion with the original work and the author thereof;
 - ❖ made necessary by the purpose of the use permitted by the author;
 - ❖ short review of the work by didactic purpose, mentioning the author.



ROMANIAN LAW FRAMEWORK Exceptions and Limitations on the Exercise of Copyright



- For **testing the operation** of their products at the time of manufacture or sale, trading companies engaged in the production or sale of sound or audiovisual recordings, equipment for the reproduction or communication to the public and also equipment for receiving radio and television broadcasts may reproduce and present extracts from works, providing that such acts are performed only to the extent required for testing.
- For **supervising the utilization of their own repertoire** by third parties, the collective management societies can monitor, by any means, the activity of the users, with no authorization from them and no payment, being allowed to request, for this purpose and public interest information held, according to the law, by the competent public institutions.



ROMANIAN LAW FRAMEWORK Exceptions and Limitations on the Exercise of Copyright



- The assignment of the broadcasting right of a work to a radio or television broadcasting organization shall entitle it to **record the work for the needs of its own broadcasts** with a view to a single authorized broadcast to the public.
(A new authorization from the authors shall be required in case of any new broadcast of the work so recorded, against remuneration that cannot be waived. If no such authorization is requested within 6 months as from the first broadcast, the recording must be destroyed.)
- In the case of **ephemeral recording of particular works** made by means of their own facilities by the radio or television broadcasting organizations for their own broadcasts, the preservation of these recordings in official archives is allowed *(on the grounds of their exceptional documentary character)*.
- **NOTE: EXCEPTIONS AND LIMITATIONS PROVIDED FOR COPYRIGHT ARE APPLIED ACCORDINGLY ALSO FOR RELATED RIGHTS (Art.112)**



ROMANIA



Exceptions and Limitations in the Field of Copyright and Access to Culture

- **COPYRIGHT**, on the one hand, as well as **Freedom of expression, Right to information, Right to education** and **ACCESS TO CULTURE**, on the other hand, are **Fundamental Human Rights** (*Provided for in the Romanian Constitution-art. 30-33 as well*)
There is a need to balance them.
- The single mechanism making the copyright work is for Parliaments and Governments to combine the adequate protection of copyright with its exceptions and limitations.



THANK YOU!
MULTUMESC ! (MULTUM EST-Latin)

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