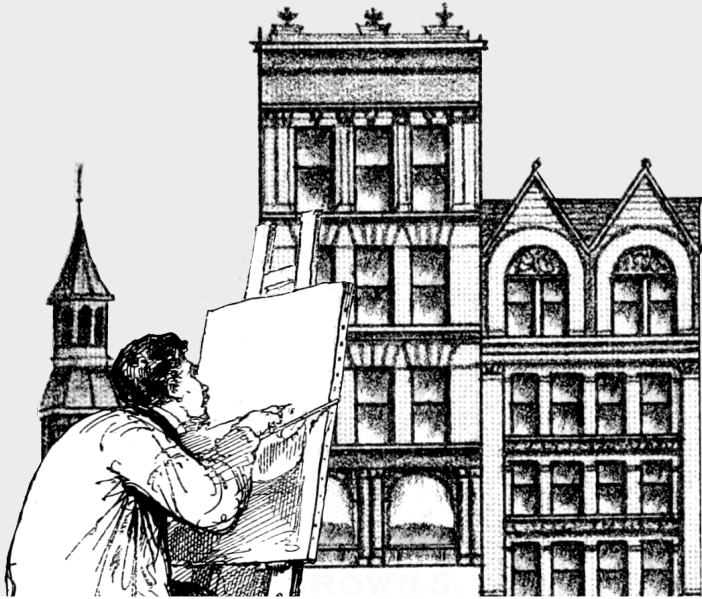


BEST CASE SCENARIOS FOR COPYRIGHT



FREEDOM OF PANORAMA

IN PORTUGAL

Freedom of panorama is a fundamental element of European cultural heritage and visual history.

Rooted in freedom of expression, it allows painters, photographers, filmmakers, journalists and tourists alike to document public spaces, create masterpieces of art and memories of beautiful places, and freely share it with others.

WHAT IS FREEDOM OF PANORAMA?

- 1 Derived from the German word *Panoramafreiheit*, freedom of panorama generally refers to the right to visually document works of architecture, sculptures, street art, or other copyrighted works, as long as they are permanently located in public spaces. In Portugal, the exception covers all sorts of documentation—not only photographs and video footage.
- 2 The exception is justified by freedom of expression and public interest.

HOW DOES IT WORK?

- 1 All uses are exempted: users can share pictures, videos, drawings, or other reproductions of works located in public places. They are also permitted to create and share adaptations—all without infringing rights in the original work.
- 2 All works permanently located outdoors or in public interior spaces can be documented.
- 3 Users may be able to benefit commercially from reproductions and adaptations created under the exception, as long as such uses pass the three-step test (see “limits” on the other page).
- 4 Users must give credit to the authors of the underlying works.

WHO CAN USE IT?

Anyone can benefit from the freedom of panorama exception: citizens, individual artists, organizations, and companies.

IS IT FREE?

Yes, it is free. No remuneration is due to authors or rights holders of the featured work.

WHAT ARE THE LIMITS TO THE FREEDOM OF PANORAMA EXCEPTION?

The three-step test: by law, uses are only exempted if they do not conflict with the normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the rights holder. A correct application of the three-step test requires a fair balance between freedom of expression and the interests of the right holders.

ECONOMIC AND SOCIETAL IMPACT

It is hard to imagine European culture and imagery without documentation of our public art and surroundings. Artists use city skylines, public architecture, and familiar landmarks as the raw materials to express collective and personal identities through painting, photography, and films. Historically, panorama artworks provide invaluable evidence to natural, urban, economic, and societal transformations over the centuries.

EXAMPLES OF USE

1 The Lisbon Municipality runs Galeria de Arte Urbana, a project presenting graffiti, street art and other urban artworks located in public spaces all over Lisbon to the public. GAU includes free publications on street-art made available online at Issuu, a Facebook page, where the Lisbon Municipality and fans alike post new entries regularly, and other social media activities that also promote urban art events.

<https://www.facebook.com/galeriadearteurbana/>

2 Several Portuguese filmmakers and photographers rely on the freedom of panorama to create their own works. For instance, Mónica de Miranda is a Portuguese artist whose work is based on themes of urban archeology and personal geographies.

Her art project “Underconstruction” (2009) includes panoramic photographs, photographs of buildings, and a panoramic video journey across a road in Lisbon, Portugal.

<http://www.monicademiranda.org/military-road/>

LAW

Article 75.º, paragraph 2, point q) of the Portuguese Code of Authors’ Rights and Neighboring Rights (Código do Direito de Autor e dos Direitos Conexos), created by the Decree-Law no. 63/85 of 14 March 1985 (as last amended by the Law no. 49/2015 of 5 June 2015).

The wording is similar to the 2001 InfoSoc Directive: “the use of

works, such as, for instance, works of architecture or sculpture, made to be located permanently in public places” without the author’s consent is permitted.

First introduced in 2004, with the implementation of the InfoSoc Directive.

FURTHER REFERENCE

For details on how the freedom of panorama functions in Portugal, please see the Best Case Scenario for Copyright – Freedom of Panorama in Portugal analysis prepared by Teresa Nobre, LL.M. IP (MIPLC) on behalf of the Communia Association.

Read more at <http://www.communia-association.org/bcs-copyright>.

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BEST CASE SCENARIOS FOR COPYRIGHT



PARODY

IN FRANCE

The parody exception cultivates the French tradition of satire. When the goal is to make people laugh, anybody can freely create a distinctively different mockery of a protected work. This encourages creativity and freedom of expression.

WHAT IS A PARODY EXCEPTION?

- 1 Rooted in ancient Greek, the term “parody” includes works of mockery, as well as quoting or referencing an older work in a modern interpretation of it. In France, parody implies adapting or borrowing from a work with the intention of having fun.
- 2 The exception is justified by freedom of expression.

HOW DOES IT WORK?

- 1 All acts that are necessary to create a parody of a work are exempted. Users can copy, perform, adapt, and transform the protected work.
- 2 The resulting parody can be published, performed, made available online, or otherwise used without infringing the rights in the original work.
- 3 All types of copyrighted works that are publicly available can be used for parody. Parody has also been recognized for trademarks.
- 4 Authors of works of parody are free to benefit from it commercially, as long as their goal is to provoke laughter and/or criticize (see “limits” point 2, on the other page).
- 5 A parody can result in a work that is not original itself and not protected by copyright. It can also result in a protected work of a different genre (for example, a song can be a parody of a play, or an image can be a parody of song lyrics).
- 6 The creator of the parody is not obliged to credit the parodied work.

WHO CAN USE IT?

Anyone can benefit from the parody exception including citizens, individual artists, organizations, and companies.

IS IT FREE?

Yes, it is free. No remuneration is due to the authors or rights holders of the parodied work.

WHAT ARE THE LIMITS TO THE PARODY EXCEPTION?

- 1 **Confusion between the original and its parody** — it is possible to make a parody of an entire work as long as there is no risk the parody work would be confused with the original.
- 2 **Goals different than the humorous intent** — for example, advertising parodies are not exempted, and require authorization from the rights holder of the underlying work because the main goal is to sell products and not to make people laugh.
- 3 **Moral rights and personality rights of the author** — the parody work must not demean or degrade the original work, and must respect its author. It must balance the right to laugh and the rights of the author chosen as the target.

ECONOMIC AND SOCIETAL IMPACT

The Treatment of Parodies under Copyright Law in Seven Jurisdictions study commissioned by the UK Intellectual Property Office in 2013 has shown a positive social and economic impact of the parody exception. Studies show no evidence that parody causes economic harm to the parodied work. It has also shown that works of parody can promote creativity, especially online.

EXAMPLES OF USE

- 1 The French magazine “Charlie Hebdo” often bases its mockery on pop culture figures and topics, as well as widely-known characters such as Batman, or Asterix and Obelix.
- 2 The famous character Tintin has been given a parallel life full of adventures and ironic jokes on current geopolitical events.

LAW

Article L.122-5 of the French Code of Intellectual Property (*Code de propriété intellectuelle*) created by the law of 1 July 1992 (as last amended on 25 April 2016).

The wording is similar to the 2001

InfoSoc Directive: when the work has been disclosed, the author may not prohibit “parody, pastiche and caricature, taking into account the rules of the genre.”

First introduced in 1957.

FURTHER REFERENCE

For details on how the parody exception functions in France please see the Best Case Scenario for Copyright — Parody in France analysis prepared by Alexandra Giannopoulou on behalf of the Communia Association.

Read more at <http://www.communia-association.org/bcs-copyright>.

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BEST CASE SCENARIOS FOR COPYRIGHT



EDUCATION

IN ESTONIA

The education exception benefits teachers, students, and researchers who need access to all types of educational and informational resources that are often protected by copyright. This exception balances the right to education with the rights of authors. Maintaining the balance is never easy, and some issues still await their interpretation in Estonia. Still, Estonia enjoys the widest education exception provisions among all EU member states.

WHAT IS AN EDUCATION EXCEPTION?

- 1 An education exception to copyright relates to cases where protected works of all types are used for educational purposes or scientific research, both offline and online.
- 2 The exception is justified by the public interest of access to education.

HOW DOES IT WORK?

- 1 All acts that are necessary for educational purposes are exempted: users can copy, adapt, translate, and transform protected works.
- 2 All types of copyrighted materials that are publicly available can be used for teaching and study, including films, phonograms, and broadcasts.
- 3 It is possible to use a protected work to the extent required to fulfill the purpose of a particular teaching or scientific activity. If the use of an entire work is necessary, it also falls under the exception.
- 4 It is mandatory to credit the author of the protected work.

WHO CAN USE IT?

- 1 Anyone can benefit from the general teaching and scientific exception, including citizens, organizations, and educational institutions.
- 2 Physical copies of works may be created by educational and research institutions, and by citizens in general for research and private study, under other exceptions.
- 3 Only educational institutions may take advantage of the right to organize recitals, plays, dance shows, etc., based on a protected work, performed in front of an audience. (see “limits” point 3)

IS IT FREE?

It depends. No remuneration is due to the authors or rights holders of the works used for the educational purpose as long as no physical copies of the works are made.

WHAT ARE THE LIMITS TO THE EDUCATIONAL EXCEPTION?

- 1 Educational or scientific purpose is required** — it is possible to use a work in education and scientific research, including in lectures, tests and teaching compilations, as long as it illustrates the process of teaching, learning or research.
- 2 Non-commercial use** — users may not benefit commercially from the fact that they carry out scientific research or illustrate teaching with copyrighted works under the exception.
- 3 For performances, the audience is limited to the school's close social circle** — to benefit from the exception, a performance must be staged by students and staff for the audience consisting of people directly involved with the school, such as parents and caregivers.
- 4 The three-step test** — by law, uses are only exempted if they do not conflict with the normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the rights holder. A correct application of the three-step test requires a fair balance between the public interest in access to education and the interests of the right holders.

ECONOMIC AND SOCIETAL IMPACT

Estonia is one of the most technology-friendly countries in Europe, with widely used e-services for citizens, and excellent Internet access. Many educational institutions, teachers, and researchers collect and share educational resources with their students and colleagues, as well as create online courses. This is a crucial trend in advancing the education in times when computers and mobile devices are becoming the primary point of access to knowledge and literacy. Taking advantage of technology in education is possible because of the wide and flexible education exception.

EXAMPLES OF USE

- 1** Estonian Information Technology Foundation for Education keeps a digital repository of thousands of teaching materials from over 60 vocational schools and universities.
<http://www.e-ope.ee/en/repository>

- 2** An Estonian history teacher runs a blog, where she publishes her students' works for further study and dissemination of knowledge.
http://laagna.tln.edu.ee/?page_id=1337

LAW

§ 19 subsection 2 and 3, and § 22 of the Estonian Copyright Act, adopted on 11 November 1992 (as last amended on 10 April 2016).

The wording of § 2 subsection 2 is similar to the 2001 InfoSoc Directive that has been transposed in Estonia in 2004.

FURTHER REFERENCE

For details on how the educational exception functions in Estonia please see the Best Case Scenario for Copyright — Education in Estonia analysis prepared by Teresa Nobre, LL.M. IP (MIPLC) and Alari Rammo, and on behalf of the Communia Association.

Read more at <http://www.communia-association.org/bcs-copyright>.

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BEST CASE SCENARIOS FOR COPYRIGHT



QUOTATIONS

IN FINLAND

The right to quote is a pivotal element of science, study, critique, and art. By evoking somebody else's words and creations we are able to enter into an intellectual dialog that is a foundation of our culture. Quotations substantiate scientific discourse and discovery of new knowledge. They are used widely in memes that have become a signature feature of social media.

WHAT IS A QUOTATION EXCEPTION?

- 1 A quotation exception to copyright refers to citations or other uses of protected works as a way to support intellectual creation.
- 2 The exception is justified by freedom of intellectual creation.

HOW DOES IT WORK?

- 1 A quoted work may be incorporated in a play, in a book, in audiovisual materials, etc. "Mere" quotations that do not result in a new work are also covered.
- 2 The exception covers all acts of use (reproductions, making available to the public, translations, etc.) and it's technologically neutral, which means that quotations can be made in digital formats and in online contexts.
- 3 All types of copyrighted materials (including images, films, phonograms and broadcasts) can be quoted. Only works that have been made public with an author's permission can be quoted, but it is irrelevant if the copy of the work used for the quotation is a legal source or not.
- 4 The extent of a quote depends on the type of work being quoted and on the context of use. A quotation of an entire work, such as a photograph, may be permitted.
- 5 Authors of works that include quotations are free to benefit from it commercially as long as it is in accordance with proper usage (see point 4 in "limits", on the other page).
- 6 Users must mention the source of the quote and the author's name.

WHO CAN USE IT?

Anyone can benefit from the quotation exception including citizens, individual artists, organizations, and companies.

IS IT FREE?

Yes, it is free. No remuneration is due to the authors or rights holders of the quoted work.

WHAT ARE THE LIMITS TO THE QUOTATION EXCEPTION?

- 1 **Only necessary changes** — a quoted work may be translated or otherwise adapted but the changes must be limited to what is necessary for the quotation.
- 2 **Clear identification of a quote** — quotes need to be clearly marked so that they are not confused with the work in which they are incorporated.
- 3 **The proper usage** — it refers to general ethical standards and is somehow similar to the idea of ‘fair practice’ found in the Berne Convention and in the InfoSoc Directive. For instance, works made entirely from citations or that use citations only to be more appealing are not exempted.

ECONOMIC AND SOCIETAL IMPACT

Culture lives when people reflect on it and find new interpretations of sentences, images and performances by weaving parts of these works into their new creations. Science can only advance when it is based on evidence and quotes substantiate insights and theories that create new knowledge. The right to quote is a foundation of art, science, and — as a result — our civilisation.

EXAMPLES OF USE

- 1 A high school teacher created learning materials for analysing the life of the Finnish singer Juice Leskinen that included quotations of his lyrics. These materials are available online as open educational resources. <http://materiaalit.internetix.fi/fi/opintojaksot/2uskonto/juice/sisalto>
- 2 A university prepared e-learning materials that instruct on various musical styles and artists by using quotes of musical notes and fragments of music recordings.

LAW

Section 22 of the Finnish Copyright Act* (Tekijänoikeuslaki), approved by 8.7.1961/404, amendments up to (155/2016) included.

<http://finlex.fi/en/laki/kaannokset/1961/en19610404>

The wording resembles more art. 10(1) of the Berne Convention than art. 5(3)(d) of the InfoSoc Directive.

First introduced in 1961.

FURTHER REFERENCE

For details on how the quotation exception functions in Finland please see the Best Case Scenario for Copyright — Quotations in Finland analysis prepared by Teresa Nobre, LL.M. IP (MIPLC), based on research by Maria Elisabeth Rehbinder, LL.M., on behalf of the Communia Association.

Read more at <http://www.communia-association.org/bcs-copyright>.

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