

Draft bill prepared by the Federal Government

- Excerpt of the new core provisions –

[Full Text in German available at: <http://www.bundesrat.de/bv.html?id=0312-17>]

Draft of an Act to Align Copyright Law with the Current Demands of the Knowledge-based Society (*Urheberrechts-Wissensgesellschafts-Gesetz* – UrhWissG)

Article 1

Amendment of the Act on Copyright and Related Rights

[...]

17. The following subchapter shall be inserted after section 60:

“Subchapter 4

Lawfully permitted uses for teaching, science and institutions

Section 60a

Teaching at schools and universities

(1) For the purpose of illustrating for teaching in educational establishments, up to 15 percent of a published work may be reproduced, distributed, made available to the public or otherwise communicated to the public on a non-commercial basis

1. for teachers and participants at the respective event,
2. for teachers and examiners at the same educational establishment, and
3. for third persons insofar as this serves to present lessons or lectures or the results of tuition or training or the learning outcomes at the educational establishment.

(2) In derogation from subsection (1), full use may be made of illustrations, isolated articles from the same newspaper or periodical, other small-scale works and out-of-print works.

(3) Subsections (1) and (2) do not authorize the following uses:

1. reproduction (via fixing on video or audio recording mediums) or communication to the public of a work while it is being publicly recited, performed or presented,
2. reproduction, distribution or communication to the public of a work that is exclusively

suitable, intended and labelled for teaching in schools, at schools and

3. reproduction of graphic recordings of musical works, to the extent that such reproduction is not required for making content available to the public in accordance with subsections (1) or (2).

(4) Educational establishments are early childhood educational establishments, schools, universities, vocational schools and other institutions for vocational training and further education.

Section 60b

Media collections for teaching

(1) Producers of media collections for teaching may reproduce, distribute or make available to the public up to 10 percent of a published work for such collections.

(2) Section 60a (2) and (3) shall apply mutatis mutandis.

(3) Media collections for teaching within the meaning of this Act are collections which bring together a significant number of authors and which are exclusively suitable, intended and labelled for the purpose of illustration of teaching at educational establishments (section 60a) on a non-commercial basis.

Section 60c

Scientific research

(1) For the purpose of non-commercial scientific research, up to 15 percent of a work may be reproduced, distributed and made available to the public

1. for a specifically limited circle of persons for their personal scientific research, and
2. for individual third persons insofar as this serves the monitoring of the quality of scientific research

(2) For personal scientific research, up to 75 percent of a work may be reproduced.

(3) In derogation from subsections (1) and (2), full use may be made of illustrations, few individual articles from the same newspaper or periodical, other small-scale works and out-of-print works.

(4) Subsections (1) to (3) do not authorize the recording on video or audio recording mechanisms of public lectures, productions or performances of a work and the subsequent making available to the public of that record.

Section 60d

Text and data mining

(1) In order to enable the automatic analysis of large numbers of works (source material) for scientific research, it shall be permissible to

1. reproduce the source material, including automatically and systematically, in order to create, particularly by means of normalisation, structuring and categorisation, a corpus that can be analysed, and
2. make the corpus available to the public for a specifically limited circle of persons for their joint scientific research, as well as to individual third persons for the purpose of monitoring the quality of scientific research.

In such cases, the user may only pursue non-commercial purposes.

(2) If database works are used pursuant to subsection (1), this shall constitute customary use in accordance with section 55a first sentence. If insubstantial parts of

databases are used pursuant to subsection (1), this shall be deemed consistent with the normal utilisation of the database and with the legitimate interests of the producer of the database within the meaning of section 87b (1) second sentence and section 87e.

(3) Once the research work has been completed, the corpus and the reproductions of the source material shall be deleted; they must not be made available to the public any more. It shall however be permissible to send the corpus and reproductions of the source material to the institutions named in sections 60e and 60f for the purpose of long term storage.

Section 60e

Libraries

(1) Publicly accessible libraries which neither directly nor indirectly serve commercial purposes (libraries) may reproduce a work from their collections or exhibitions for the purpose of making available, indexing, cataloguing, preservation and restoration, including more than once and with technically caused changes.

(2) For restoration purposes, libraries may distribute reproductions of a work from their stocks to other libraries or to institutions named in section 60f. They may lend restored works, as well as copies of newspapers, out-of-print works or damaged works from their collections.

(3) Libraries may distribute reproductions of a work named in section 2 (1) items 4 to 7 insofar as this is done in connection with their public exhibitions or with the documentation of the library's collections.

(4) Libraries may make a work from their collections available to their users for personal research or private studies at terminals on their premises. They may enable users, for non-commercial purposes, to reproduce up to 10 percent of a work per session and to make reproductions of few illustrations, articles from the same newspaper or periodical, other small-scale works and out-of-print works.

(5) In response to individual orders, libraries may for non-commercial purposes transmit reproductions of up to 10 percent of a published work to users, as well as reproductions of individual articles that have appeared in newspapers and periodicals.

Section 60f

Archives, museums and educational establishments

(1) For archives, film or audio heritage institutions as well as publicly accessible museums and educational establishments (section 60a (4)) which neither directly nor indirectly serve commercial purposes, section 60e shall apply *mutatis mutandis* with the exception of subsection (5).

(2) Archives which also act in the public interest may reproduce a work in order to include it as archival material in their collections, if the agency submitting the work deletes any reproductions in its possession without delay.

Section 60g

Lawfully permitted use and contractually authorized use

(1) Agreements restricting or prohibiting uses which are permitted in accordance with sections 60a to 60f to the detriment of persons entitled to such use may not be invoked by the rightholder.

(2) In derogation from subsection (1), agreements that deal exclusively with the making available of content at terminals in accordance with section 60e (4) and

section 60f (1), or with the transmission of reproductions in response to individual orders in accordance with section 60e (5), shall have priority over lawful permission.

Section 60h

Equitable remuneration of lawfully permitted uses

(1) For uses in accordance with this subchapter, the author shall be entitled to equitable remuneration. Reproductions shall be remunerated in accordance with sections 54 to 54c.

(2) In derogation from subsection (1), the following uses shall not be subject to remuneration:

1. communication to the public for the benefit of members of educational establishments and their families in accordance with section 60a (1) items 1 and 3 and section 60a (2) with the exception of making the content available to the public,
2. reproductions for the purpose of indexing, cataloguing, preservation and restoration in accordance with section 60e (1) and section 60f (1).

(3) Flat-rate remuneration shall be sufficient, as shall usage-related calculation of the appropriate remuneration based on a representative sample of usage. This shall not apply to uses pursuant to sections 60b and 60e (5).

(4) The claims to equitable remuneration may only be asserted through a collecting society.

(5) If the user is acting on behalf of an institution, only the latter shall be subject to pay remuneration. For reproductions that, pursuant to subsection (1) second sentence, are remunerated in accordance with sections 54 to 54c, only these provisions shall be applicable.”

[...]

Article 2

Amendment of the Act on the German National Library

The Act on the German National Library of 22 June 2006 (Federal Law Gazette I p. 1338), which was amended by Article 15 (62) of the Act of 5 February 2009 (Federal Law Gazette I p. 160), shall be amended as follows:

1. The following section 16a shall be inserted after section 16:

“Section 16a

Permitted uses under copyright law

(1) For its own and other collections of mandatorily deposited copies, the Library may reproduce and transmit media works in immaterial form, including automatically and systematically, without charge. This shall only apply where the media works are either unrestrictedly available to the public, in particular meaning available to everyone and free of charge, or are made available for retrieval by the Library. Reproductions made pursuant to sentences 1 and 2 may subsequently be used like other works from the collections.

(2) The Library may, at the request of a user, reproduce works or other materials protected under the Copyright Act and make them available to the public at a permanently unchanging internet address in order to facilitate citations for non-commercial scientific research. This shall only apply where the works and other protected materials are unrestrictedly available to the public, in particular meaning available to everyone and free of charge, and where their accessibility is not guaranteed in the long term.”

2. The following second sentence shall be added to section 21:

“For the institutions designated under Land law for the legal deposit of media works, section 16a shall apply mutatis mutandis.”

[...]