

Exceptions for education and libraries

European Copyright Society Conference - EU Copyright, quo vadis

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Séverine Dusollier

Assessment of exceptions proposed for education and library exceptions

Consistency with existing acquis

Harmonisation and cross-border impact

Effectiveness for users and flexibility

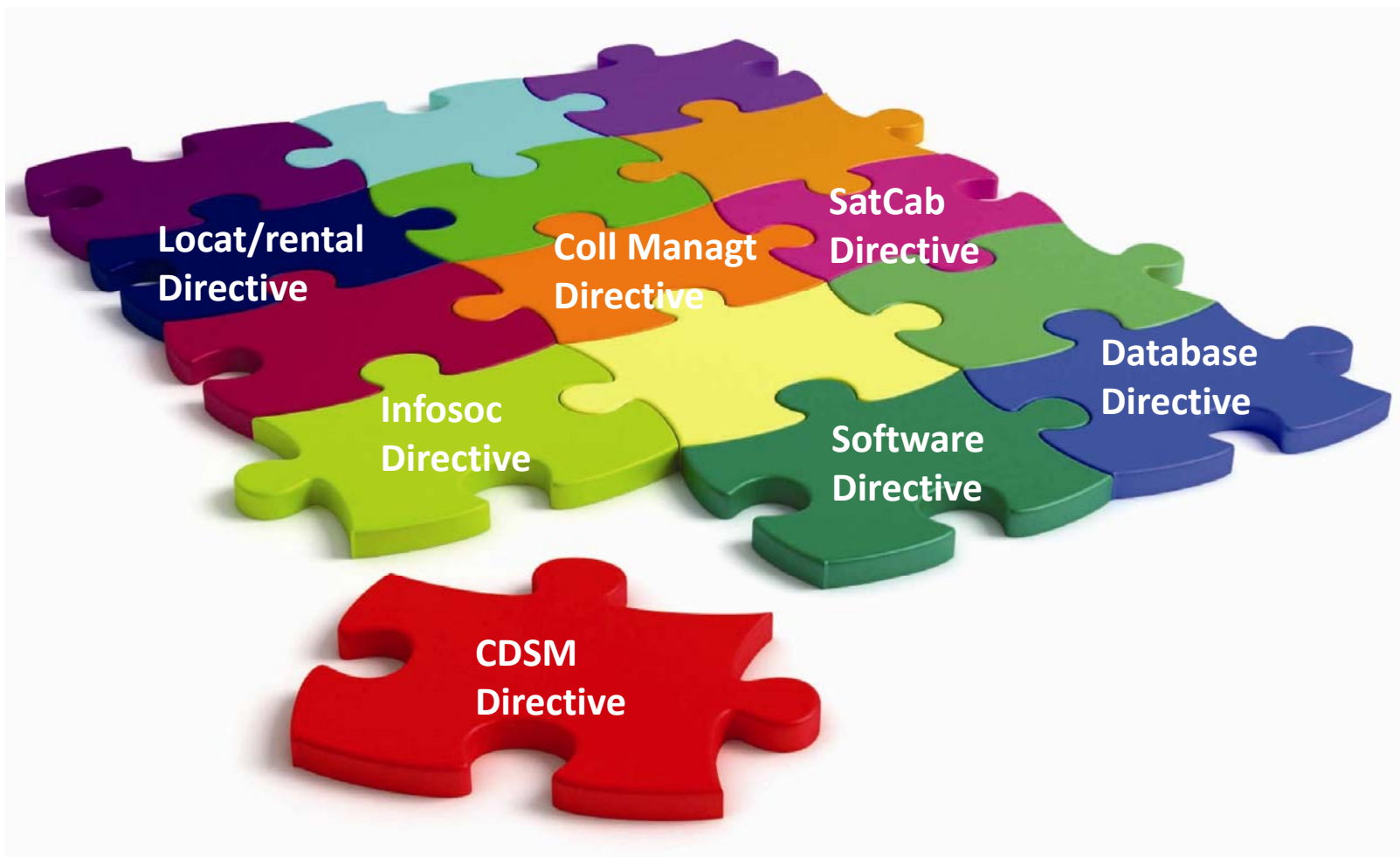


Illustration for teaching (art.4)

- Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the **digital use of works and other subject-matter** for the **sole purpose of illustration for teaching**, to the extent justified by the non-commercial purpose to be achieved, provided that the use:
 - (a) takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;
 - (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.

Illustration for teaching (art. 4)

- Member States may provide that the exception adopted pursuant to paragraph 1 **does not apply** generally or as regards specific types of works or other subject-matter, **to the extent that adequate licences authorising the acts described in paragraph 1 are easily available** in the market.
- The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall **be deemed to occur solely in the Member State where the educational establishment is established**
- Member States **may** provide for **fair compensation** to rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.

Consistency with existing acquis



Art. 5(3) a
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;



digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, **provided that the use:**

- (a) takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;
- (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.

Effectiveness for users

- Member States may provide that the exception adopted pursuant to paragraph 1 **does not apply** generally or as regards specific types of works or other subject-matter, **to the extent that adequate licences authorising the acts described in paragraph 1 are easily available** in the market.
- Recital 17: equivalence with exception

**Contracts trump a public-interest exception
What about harmonisation ?**

Effectiveness for users and flexibility

- Recital 16: use of parts or extracts of works only
What about visual works ? Short works ?
Need to show the whole work for a relevant illustration
- Closed networks: MOOCs are excluded

Harmonisation and cross-border impact

- The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall **be deemed to occur solely in the Member State where the educational establishment is established**

Inter-establishments online courses ?

Necessary for other exceptions with cross-border effect ?

Preservation of works by cultural heritage institutions (art. 5)

- Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting **cultural heritage institutions**, to **make copies** of any works or other subject-matter *that are permanently in their collections*, **in any format or medium**, for the **sole purpose of the preservation** of such works or other subject-matter and to the extent necessary for such preservation.
- Art. 2(3): libraries, archives, museums, film and audio heritage institutions (recital 11a: libraries within *educational establishments and public broadcasters*)

Consistency with existing acquis



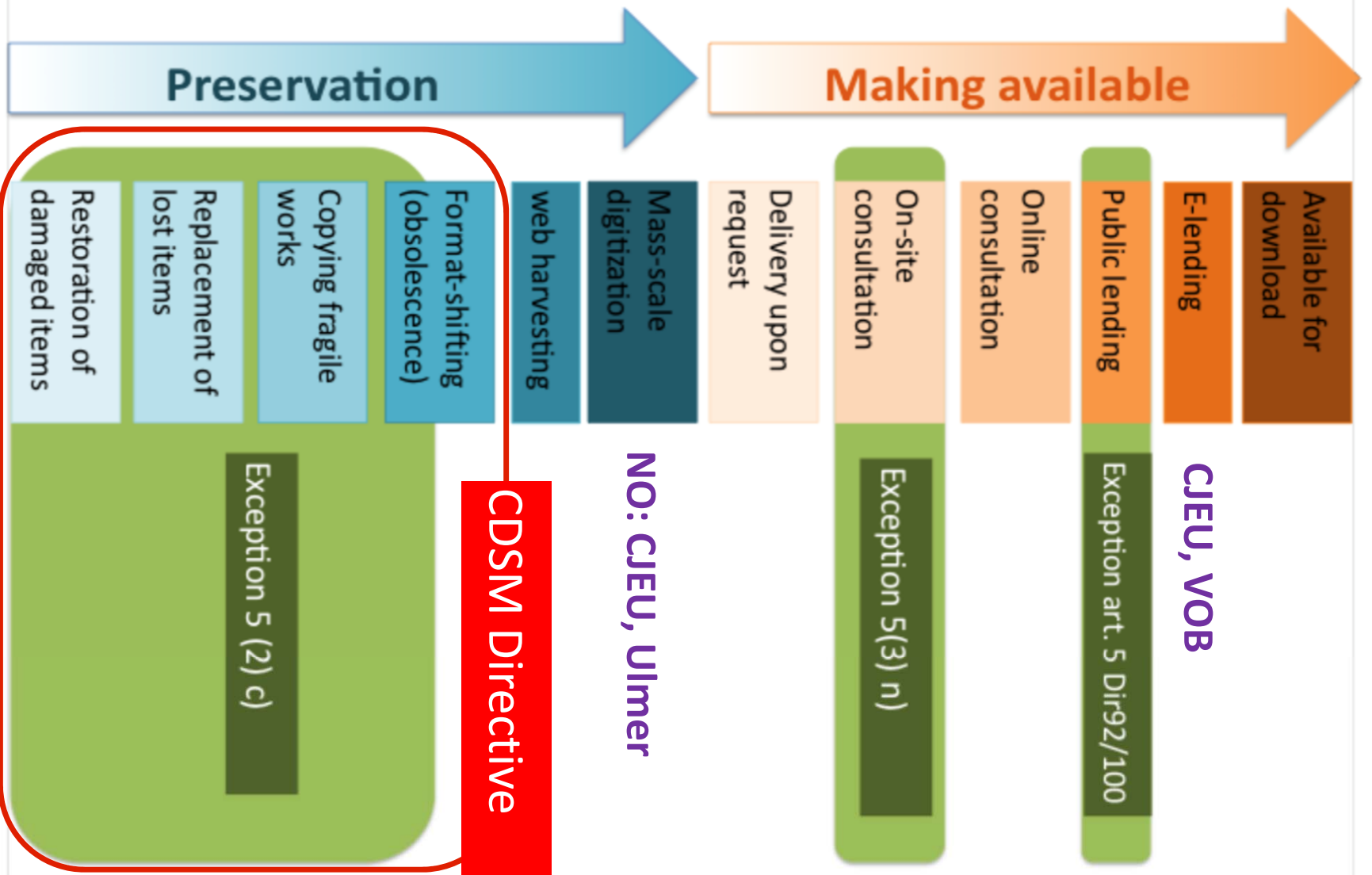
Art. 5(2) c
in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage

Art. 5(3)n : the narrow exception for on-site consultation



to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation

Effectiveness for users and flexibility



Effectiveness for users and flexibility

- Recital 20 : preservation purposes, **for example to address technological obsolescence or the degradation of original supports.** Such an exception should allow the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required for preservation purposes.
- In **any format or medium**
- NOT for Acts of reproduction undertaken by cultural heritage institutions **for purposes other than the preservation** of works.

Effectiveness for users

TDM, teaching and libraries

- Art. 6(1): Any contractual provision contrary to the exceptions provided for in Articles 3, 4(1) and 5 shall be unenforceable.
- Art. 6(2). Article 5(5) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to Articles 3, 4(1) and 5 of this Directive.
- Recital 7: use of technological measures : Article 6(4) of Directive 2001/29/EC (voluntary measures/Member States measures), **including where works and other subject-matter are made available through on-demand services.**

Revision of 6(4) Dir 2001 for online services ?

Consistency with existing acquis

Out-of-commerce works (art. 7, 8, 9)

- Key principles:
 - Non-commercial uses by cultural heritage institutions : reproduction, making available, distribution
 - Definition of out-of-commerce
 - Authorisation granted by CMO + extended collective licensing (with opt-out)
 - Member States flexibility
 - Cross-border dimension
 - Publicity measures : Role of EUIPO
 - Stakeholders dialogue



Thanks for your attention