

# 7th Scientific Symposium

## Copyright and information supply within academic institutions

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# Copyright and information

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- Information is free
- Defined number of IP rights
- Scientific Knowledge protected by copyright if it is put into a particular form

# Copyright and academic institutions

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- Academic institutions are prime sources for works protected by copyright
- At the same time prime users of works protected by copyright
- Intermediaries necessary
  - Who takes which responsibility?
  - What price are we able or willing to pay?

# Legal exceptions to copyright

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- Author (or his assignee) has full control over what may be done with his work
- Statutory limitations balance interests between authors, end users and their intermediaries
- Three-Step-Test, e.g. Art. 5(5) of Directive 2001/29/EC
- New provisions in recent amendment to German Copyright Act – „Second Basket“

# We`d like to ...

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§ 17 II	Read on the premises
§ 53	Copy on the premises
§ 53a I 1	Document Delivery via Mail/Fax
§ 17 II	Lend an original copy

**Analog**

On the spot consultation	§ 52 b
Scan on the premises	§ 53
Document Delivery via E-Mail	§ 53 I 2, 3
Making available for teaching/research	§ 52 a

**Digital**

# On the spot consultation

## § 52b UrhG

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- On the premises of publicly accessible libraries, museums, non-commercial archives
- Designated terminals, number equals number of original copies
- Purpose of research or private study
- No purchase or licensing terms prohibiting such use
- Educational establishments are NOT privileged  
⇔ Art. 5(3)(d) of Directive 2001/29/EC

# Document Delivery (Mail / Fax)

## § 53 a I 1 UrhG

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- Public library
- Journal articles / small portions of books
- customer would be allowed under § 53 UrhG to make a copy, in particular:
  - § 53 II 1 Nr. 1 UrhG (scientific use)
  - § 53 II 1 Nr. 4 UrhG (other own use)
- Deliveries to commercial customers allowed (disputed)

# Document Delivery (E-Mail)

## § 53 a I 2, 3 UrhG

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- Requirements of § 53 a I 1 UrhG complied with
- Graphic file
- Sole purpose of illustration for teaching or scientific research
- Non-commercial purpose
- What is copied is not contractually made available to the public
  - obviously
  - on adequate terms



# „Obviously“

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- Bundestag`s Legal Commission: The source is obvious if a database jointly administered by libraries and publishers lists it.
- Federal Government: It is expected that library personnel will within a short timeframe be familiar with the publishers` online products and will then be able to check without research in each individual case
- But: it is not only the publishers` online offers that count

# „On adequate terms“

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- § 32 II 2 UrhG: What is common and fair in a business relationship with regard to all circumstances and the extent of the use
- No compulsory purchase of packages or subscriptions
- Permanent and dependable way of use
- All boils down to three-step-test

# Interlibrary Lending

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- No explicit legal exemption in favour of interlibrary lending exists
- Mail/Fax:           § 17 II UrhG (original copies)  
                          § 53 a I 1 UrhG (copies)  
                          Customary right (OLG Munich)
- E-Mail:             § 53 a I 2, 3 UrhG
- § 53 UrhG applicable to export and import
- Need to mind the other country's law if exporting or importing

# Collecting Societies

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- DocDel, On the spot consultation, Illustration for teaching/research: Statutory claim for an adequate license fee
- May only be claimed by collecting societies
- VG WORT and others
- General Contracts by KMK
- Time crunch until 1 Jan 2008: set aside reserves
- Problem: Amount of license fee unknown

# The Third Basket to come?

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- Both chambers noted further need for reform when passing the Second Basket
- Statutory fallback of rights in works based on publicly funded research?
- Statutory limitation of exclusive licenses in works based on publicly funded research?