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## **Law Via The Internet**

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### **Open Access and Legal Exceptions to Copyright: towards a General Fair Use Standard?**

Copyright rights are probably the most important obstacles to open access of legal information. Actually, almost every source of legal information is protected by copyright, with the only exception of law texts and judgements texts. Last but not least, legal materials are often organized in databases, which are protected by copyright or sui generis rights, and which are made accessible to the public only under contractual agreements and payment of fees.

The European system provides for some exceptions to protection of copyright. A list of these exceptions can be found in art. 5 of the 2001/28/EC on the protection of copyright in the information society. The enumeration of these exceptions is considered exhaustive. On the other hand, Member States are not obliged to provide for these exceptions in their national systems. The European system doesn't provide for a general fair use exception, under which a free use of legal material for research purposes could be provided.

In the European system, an important exception is provided by art. 5.3.b of the directive. According to this article, Member States may provide for exception to reproduction, communication and distribution right "for the sole purpose of illustration for teaching or scientific research [...] to the extent justified by the non-commercial purpose to be achieved". This rule seems to be rather wide, and can be interpreted as providing for a general fair use exception in the field of research. Unfortunately, this rule is not mandatory for the Member States, and in some systems it has been implemented in a rather restrictive perspective. According to the Italian system, for example, only reproduction of excerpts or parts of copyrighted material is allowed.

The Italian system (and other similar European systems) is not incompatible with the European directive: as European rules about free use are not mandatory. Nevertheless, it should be considered that such rules probably hinder scientific research in the field of law. It seems especially strange that according to patent law a general free use for research purposes is provided, whereas no such use is provided in the field of copyright. On the other hand, use of legal texts is essential for legal research, and the cost to get access to these texts is the main cost that legal research must afford. For these reasons, hindering public access to legal texts could hinder research in the legal field, and a general rule should be introduced, according to which access to legal texts for research purpose should be made free: at least to the extent that these texts have been legally acquired by public libraries or institutions, or to the extent they rise from public funded research. This free access should probably be not extended to distribution of physical copies of copyrighted works, and could be limited to electronic copies of copyrighted works, which should be made available only in the circles of researchers and students of universities and other educational institutions.