

UiO : **Department of Private Law**
University of Oslo

The Right To A Reasonable Exploitation Concretized

Reconstructing Rights Symposium, Brussels, 26. September 2016

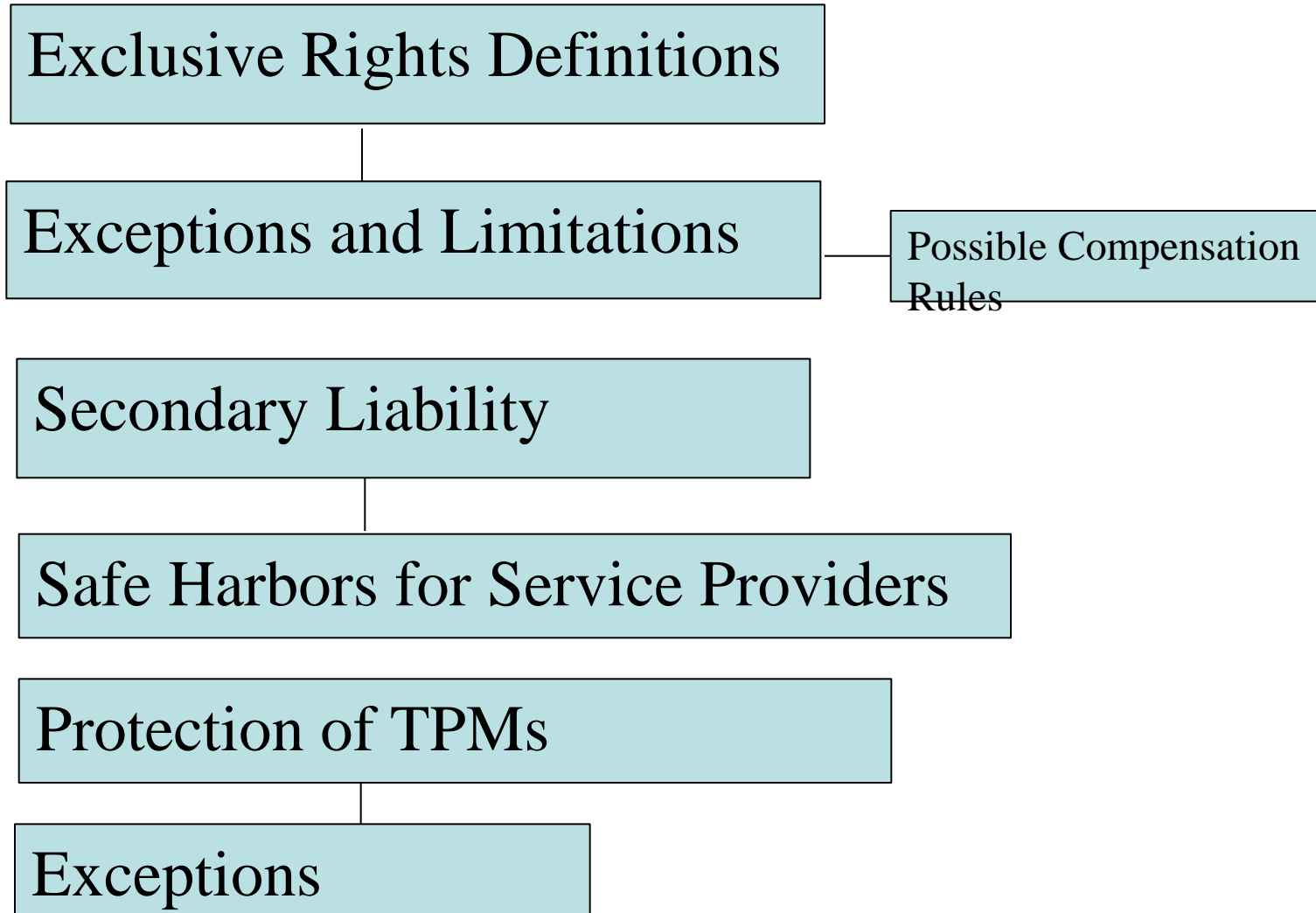
Professor dr. juris Ole-Andreas Rognstad



Previous article

Ole-Andreas Rognstad, «Restructuring the Economic Rights in Copyright – Some Reflections on an ‘Alternative Model’», 62 J. *Cop. Soc. USA* (2015) 503

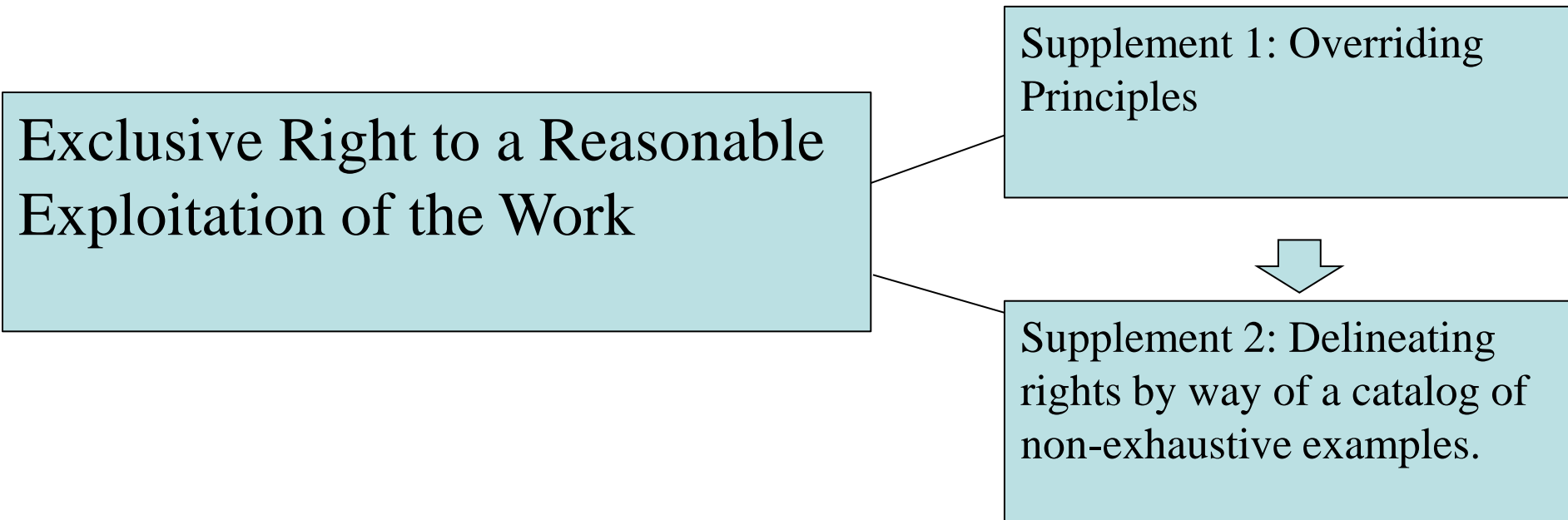
The Present Structuring of Economic Rights: The Big Picture (Six Step-Structure)



Concerns (not exhaustive)

- (1) The present structure is extremely complex/complicated
- (2) Too much time/effort are spent on defining the exclusive rights
- (3) The exclusive rights concepts are not designed to reflect tradeoff of interests
- (4) The concepts fit poorly with the technological development
- (5) So does also the «individual use based approach»
- (6) The main rule vs. exceptions kind of structure is prejudicial in favor of right holders

An Alternative Model: 'One-Step Structure'



Concretization of the Model

- Guiding Principles
 - Efficiency; Proportionality; Dignity; Public Domain; Freedom of Expression; Market Integration
 - Method: ‘Filtering Through’ Efficiency Considerations (instead of the ‘Balancing Exercise’)
- ‘Operating Principle’
 - Right to control the use of the work to the extent necessary to secure current or future exploitation opportunities for the right holder
- Catalog of Examples
 - Examples that reflect the Guiding and Operating Principles. Bases for analogies

Basic Message

- Do not believe in Utopia, but ...
- Need for a more consistent (and simpler) copyright regime
- Difficult to unite ‘ontology based’ and ‘effect based’ approaches
 - Recent CJEU decisions confirm that
 - Recent legislative proposals add to the problem
 - Eg.: Extension of the ‘Sat Cab’ Rights Clearance System for ‘Retransmissions’