De geschiedenis leert dat liberalisatieprojecten niet altijd de gewenste effecten sorteren. Er kan dus niet voetstoots vanuit worden gegaan dat de markt zelf alle problemen oplost. Daarom is de vraag legitiem of het nieuwe collectief beheer naast competitief ook doelmatig zal zijn. Deze vraag is door velen ontkennend beantwoord, omdat het te hoge culturele kosten met zich mee zou brengen: lokaal repertoire zou in de verdrukking komen, omdat het beheer ervan te duur zou worden. Hoewel op dit argument het een en ander valt af te dingen, blijven er wel andere bezwaren overeind. Zo zou het één-loket-systeem (met het gebruiksgemak van dien) eenvoudig kunnen verdwijnen als muziekauteurs het beheer bij verschillende organisaties onderbrengen. Ook is een marktimplosie niet ondenkbaar, waardoor een vrije markt zou kunnen ontaarden in een oligopolistische of monopolistische markt. Verder lijkt de Commissie nog geen visie te hebben ontwikkeld op de lange termijn. Als technologische ontwikkelingen ertoe leiden dat de inkomsten uit offline-beheer verder afnemen, zullen kleinere rechtenorganisaties wellicht omvallen. Het is niet duidelijk welke toekomst voor lokaal toezicht de Commissie in dat geval voor ogen staat.

De opgedeelde markt voor collectief beheer is zonder twijfel aan hervorming toe. De strakke, nationale grenzen voor leden en licenties zijn steeds moeilijker te verdedigen. Het voornemen om deze grenzen op te heffen, is een begrijpelijk antwoord, maar daarmee nog niet adequaat. Zolang het collectief beheer nog niet wordt beheerst door uniforme, Europese wetgeving, bijvoorbeeld met betrekking tot tarifering, regels van goed bestuur en mechanismen voor geschilbeslechting,[45] is liberalisering mogelijkerwijs prematuur. Door het gebrek aan dit juridische kader mist het debat soms richting: een nieuw model voor het collectief beheer, behoeft vaak ruime, additionele wetgeving. Mogelijke voorzetten, zoals gecentraliseerde licentieverstrekking, hebben daardoor een embryonaal karakter. Het welslagen van een effectief rechtenbeheer op communautair niveau, zal dus waarschijnlijk nog veel inspanningen van de Europese wetgever vergen. De oplossing die nu, bijna veertig jaar na de GEMA-zaak,[46] door de Commissie is gepresenteerd, valt voornamelijk op in eenvoud. Er mag voor worden gevreesd dat hierin tevens de zwakte schuilt.

45 Zoals ook geuit door de Europese Commissie in een Mededeling aan de Raad, het Europees Parlement en het Europees Economisch en Sociaal Comité over het beheer van auteursrechten en naburige rechten in de interne markt, COM/2004/0261.

46 In deze zaak was voor het eerst competitievervalsing in het collectief beheer aan de orde. Zie de Beschikking van de Europese Commissie van 20 juni 1971 (*GEMA I*) *PbEG* L134/15.

European Copyright Code

Introduction

The *European Copyright Code* is the result of the Wittem Project that was established in 2002 as a collaboration between copyright scholars across the European Union concerned with the future development of European copyright law. The project has its roots in an International Network Program run by three Dutch universities (Radboud University of Nijmegen, University of Amsterdam and Leiden University), and sponsored by the government-funded Dutch ITeR Program.

The aim of the Wittem Project and this Code is to promote transparency and consistency in European copyright law. The members of the Wittem Group share a concern that the process of copyright law making at the European level lacks transparency and that the voice of academia all too often remains unheard. The Group believes that a European Copyright Code drafted by legal scholars might serve as a model or reference tool for future harmonization or unification of copyright at the European level. Nevertheless, the Group does not take a position on the desirability as such of introducing a unified European legal framework.

The Code was drafted by a Drafting Committee composed of seven members.[1] Each chapter of the Code was originally drafted by one or two members of the Drafting Commit-

1 Members of the Drafting Committee:
- Prof. Lionel Bently, Centre of Intellectual Property and Information Law, University of Cambridge; Emmanuel College, Cambridge;
- Prof. Thomas Dreier, Institut für Informations- und Wirtschaftsrecht, Zentrum für angewandte Rechtswissenschaft, Karlsruhe Institute of Technology (KIT);
- Prof. Reto Hilty, Max Planck Institute for Intellectual Property, Competition and Tax Law, Munich;
- Prof. P. Bernt Hugenholtz, Instituut voor Informatierecht, Universiteit van Amsterdam;
- Prof. Antoon Quaedvlieg, Radboud Universiteit Nijmegen;
- Prof. Alain Strowel, Facultés universitaires Saint-Louis, Bruxelles ;
- Prof. Dirk Visser, Universiteit Leiden.

tee, acting as rapporteurs. The rapporteurs for each chapter were: Prof. Quaedvlieg (Chapter 1: Works), Prof. Hugenholtz (Chapter 2: Authorship and ownership), Prof. Strowel (Chapter 3: Moral rights), Prof. Visser (Chapter 4: Economic rights) and Professors Dreier and Hilty (Chapter 5: Limitations).

Each draft Chapter, accompanied by an explanatory memorandum, was discussed in a plenary session with the members of the Wittem Advisory Board[2] and other experts that were invited ad hoc. The proceedings of these plenary sessions were fed into the second versions of each chapter, and thereafter redacted and integrated into a final consolidated version by the Drafting Committee. Although discussions with the Advisory Board and experts have greatly influenced the final product, responsibility for the Code lies solely with the Drafting Committee.

While drafted in the form of a legislative instrument and thereby exceeding the level of detail normally associated with common principles of law, this Code is not comprehensive. It concentrates on the main elements of any codification of copyright: subject matter of copyright (Chapter 1), authorship and ownership (Chapter 2), moral rights (Chapter 3), economic rights (Chapter 4) and limitations (Chapter 5). The Code does not, for instance, treat such remuneration rights as public lending right and droit de suite, nor does it deal with the legal protection of technical measures. Also, the Code does not contain rules on copyright liability or enforcement, nor does it touch upon neighbouring (related) rights and database right.

This Code is not a recodification of EU copyright law *tabula rasa*. Since European copyright law must operate within the confines of the international commitments of the European Union and its Member States, the Code takes account of the substantive norms of the Berne Convention and the TRIPs Agreement. Also, the members of the Group have found it hard to ignore the *aqcuis communautaire* in the form of seven Directives that the European legislature has produced in this field since 1991. However, the Code does on occasion deviate from the *acquis*, and therefore cannot be considered a mere restatement or consolidation of the norms of the directives.

The members of the Wittem Group hope that this European Copyright Code will contribute to the establishment of a body of transparent and consistent copyright law that protects the moral and economic interests of creators, while serving the public interest by promoting the production and dissemination of works in the field of literature, art and science.

The European Copyright Code is available at www.copyrightcode.eu.

Preamble

The Wittem Group

Considering

- that the establishment of a fully functioning market for copyright protected works in the European Union, as necessitated in particular by the Internet as the primary means of providing information and entertainment services across the Member States, requires common rules on copyright in the EU that reflect and integrate both the civil and common law traditions of copyright and authors' right respectively;
- that twenty years of harmonization has brought only partial harmonization on certain aspects of the law of copyright in the Member States of the EU;
- that the consistency and transparency of the harmonized rules on copyright in the EU ought to be improved;
- that copyright law in the EU should reflect the core principles and values of European law, including freedom of expression and information as well as freedom of competition;

Recognizing

- that copyright protection in the European Union finds its justification and its limits in the need to protect the moral and economic interests of creators, while serving the public interest by promoting the production and dissemination of works in the field of literature, art and science by granting to creators limited exclusive rights for limited times in their works;
- that copyright legislation should achieve an optimal balance between protecting the interests of authors and right holders in their works and securing the freedom to access, build upon and use these works;
- that rapid technological development makes future modes of exploitation and use of copyright works unpredictable and therefore requires a system of rights and limitations with some flexibility;

2 Members of the Wittem Advisory Board:
- Prof. Jon Bing, Institutt for rettsinformatikk, Universitetet i Oslo;
- Prof. Robert Clark, University College Dublin;
- Prof. Frank Gotzen, Centrum voor Intellectuele rechten, Katholieke Universiteit Leuven;
- Prof. Ejan Mackaay, Université de Montréal;
- Prof. Marco Ricolfi, Università degli Studi di Torino;
- Prof. Elzbieta Traple, Uniwersytet Jagiellonski w Krakowie;
- Prof. Michel Vivant, Université Montpellier 1;
- Prof. Raquel Xalabarder, Universitat Oberta de Catalunya.

Believing

- that the design of a European Copyright Code might serve as an important reference tool for future legislatures at the European and national levels;

Taking note

- of the norms of the main international treaties in the field of copyright that have been signed and ratified by the EU and its Member States, in particular the Berne Convention, the TRIPs Agreement and the WIPO Copyright Treaty, and of the harmonized standards set by the EC directives in the field of copyright and related rights;

Proposes the following European Copyright Code:

Chapter 1: Works

Art. 1.1 – Works

(1) Copyright subsists in a work,[3] that is to say, any[4] expression[5] within the field of literature, art or science[6] in so far as it[7] constitutes its author's own[8] intellectual creation.[9]
(2) The following in particular are regarded[10] to be within the field of literature, art or science within the meaning of this article:

a. Written or spoken words,
b. Musical compositions
c. Plays and choreographies,
d. Paintings, graphics, photographs and sculptures,
e. Films,
f. Industrial and architectural designs,
g. Computer programs,
h. Collections, compilations and databases.

(3) The following are not, in themselves,[11] to be regarded as expressions within the field of literature, art or science within the meaning of this article:[12]

a. Facts, discoveries, news and data[13];
b. Ideas and theories;
c. Procedures, methods of operation and mathematical concepts.[14]

Art. 1.2 – Excluded works

The following works are not protected by copyright:

a. Official texts of a legislative, administrative and judicial nature, including international treaties, as well as official translations of such texts;
b. Official documents published[15] by the public authorities.[16]

Chapter 2: Authorship and ownership

Art. 2.1 – Authorship

The author of a work is the natural person or group of natural persons who created it.[17]

Art. 2.2 – Moral rights

(1) The author of the work has the moral rights.
(2) Moral rights cannot be assigned.

Art. 2.3 – Economic rights

(1) The initial owner of the economic rights in a work is its author.
(2) Subject to the restrictions of article 2.4, the economic rights in a work may be assigned,[18] licensed[19] and passed by inheritance, in whole or in part.

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3 The term 'work' is used throughout this Code as a general term to denote subject matter protected by copyright as defined in this article. It does not cover subject matter protected by what is usually referred to as neighbouring or related rights.
4 'Any' denotes 'whatever may be its mode or form of expression or its merit'. There is no requirement of fixation. An adaptation of a work may qualify as a work itself.
5 The term 'expression' indicates the traditional requirement that works be the result of the author's personal expression.
6 The term 'literary, artistic or scientific expressions', which is inspired by art. 2(1) BC, circumscribes the domain of copyright, and serves as 'Oberbegriff'.
7 'In so far as' indicates that the requirement of constituting 'its author's own, intellectual creation' is not merely a condition for the existence of copyright, but also defines its limits.
8 The Code does not use or define the term original, but in practice it might still be used to indicate that the production qualifies as a (protected) work.
9 The term 'the author's own intellectual creation' is derived from the acquis (notably for computer programs, databases and photographs). It can be interpreted as the 'average' European threshold, presuming it is set somewhat higher than skill and labour. This is possible if emphasis is put on the element of creation. For factual and functional works, the focus will be more on a certain level of skill (judgement) and labour, whereas for productions in the artistic field the focus will be more on personal expression.
10 The categories listed here are merely examples and should not be taken to be exhaustive. The exemplary list indicates 'core' areas of copyright.
11 The term 'as such' has built up a lot of jurisprudence under the EPC art. 52, and is therefore avoided here.
12 Whereas art. 1.1(3) designates subject matter that as a matter of principle does not fall within the domain of copyright, art. 1.2 deals with works that do fall within the domain of copyright, but are excluded from copyright protection.
13 Cf. art. 10(2) TRIPs: such protection shall not extend to the data or material itself; see also art. 3(2) Database Directive.
14 Cf. art. 9(2) TRIPs.
15 The term 'published' does not imply that a work must formally have been published in an Official Journal or equivalent. However, secret or confidential information can not be considered as 'published'.
16 As to 'official' works by private authors, these will be protected until they become 'official'. Also, questions of moral rights could still arise despite the exclusion.
17 In case of films such co-authors include the director, the author of the screenplay and the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work; see art. 2(2) Term Directive.
18 The term 'assignment' indicates a cession of economic rights; ownership of the rights is transferred to another person.
19 The term 'license' indicates an act of authorisation (permission) to use the work.

(3) If the author has assigned economic rights, he shall nonetheless have a right to an adequate part of the remuneration on the basis of the provisions in articles 5.2, 5.3, 5.4 and 5.5.
(4) An assignment is not valid unless it is made in writing.

Art. 2.4 – Limits

If the contract by which the author assigns or exclusively licenses the economic rights in his work does not adequately specify (a) the amount of the author's remuneration, (b) the geographical scope, (c) the mode of exploitation and (d) the duration of the grant,[20] the extent of the grant shall be determined in accordance with the purpose envisaged in making the grant.[21]

Art. 2.5 – Works made in the course of employment

Unless otherwise agreed, the economic rights in a work created by the author in the execution of his duties or following instructions given by his employer[22] are deemed to be assigned to the employer.

Art. 2.6 – Works made on commission

Unless otherwise agreed, the use of a work by the commissioner of that work is authorized to the extent necessary to achieve the purposes for which the commission was evidently made.[23]

Chapter 3: Moral rights

Art. 3.1 – General

The moral rights in a work are the rights of divulgation, attribution and integrity, as provided for in articles 3.2, 3.3 and 3.4.

Art. 3.2 – Right of divulgation

(1) The right of divulgation is the right to decide whether, and how the work is disclosed for the first time.
(2) This right shall last for the life of the author.[24]

Art. 3.3 – Right of attribution

(1) The right of attribution comprises:
a. the right to be identified as the author,[25] including the right to choose the manner of identification,[26] and the right, if the author so decides, to remain unidentified.
b. the right to require that the name or title which the author has given to the work be indicated.
(2) This right shall last for the life of the author and until [...] years after his death.[27] The legal successor as defined by the laws on inheritance[28] is entitled to exercise the rights after the death of the author.

Art. 3.4 – Right of integrity

(1) The right of integrity is the right to object to any distortion, mutilation or other modification, or other derogatory action in relation to the work, which would be prejudicial to the honour or reputation of the author.
(2) This right shall last for the life of the author and until [...] years after his death. The legal successor as defined by the laws on inheritance[29] shall be entitled to exercise the right after the death of the author.

Art. 3.5 – Consent

The author can consent[30] not to exercise his moral rights.[31] Such consent must be limited in scope,[32] unequivocal[33] and informed.[34, 35]

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20 The term 'grant' is used here as an overarching term encompassing both assignment and license.
21 Art. 2.4 is meant to protect authors against overbroad grants of rights. It does so by giving a primary rule and a subsidiary (default) rule. The primary rule requires adequate specification in the granting contract of the core features of such a contract: remuneration, geographical scope, modes of exploitation and duration of the grant. Failure to comply with the rule of specificity will not however nullify the grant, but will result in the default rule becoming operational. Under the default rule any grant of copyright is to be interpreted in accordance with the grant's underlying purpose (purpose-of-grant rule).
22 The scope of the assignment will therefore largely depend on the contract of employment between the author and the employer, as determined by applicable law. The general rules on assignment of art. 2.3 and 2.4 do not apply here.
23 Such purposes must have been known to, or obvious to the author, for example, from the terms of the commissioning agreement.
24 It was generally felt by the members of the group that not all moral rights merit the same term of protection, and that the right of divulgation might expire following the death of the author, whereas other moral rights could remain protected for a certain period post mortem. Note however that general rights of privacy might still prevent unauthorized publication post mortem of unpublished works.
25 The existence of the right of attribution cannot depend on any condition, such as a claim or assertion by the author.
26 The manner the author chooses to be identified should take into account the constraints resulting from the type of work involved and the customary practices regarding attribution in his field.
27 See note 22.
28 As determined by the laws of inheritance, either the heirs or a person especially appointed by the author can exercise these moral rights.
29 Id.
30 Consent by the author to waive his moral right must be certain. This consent can result from a written instrument or may be implied if no other interpretation of the author's will can be deduced from the written instrument or from the particular circumstances of the case.
31 If the author consents not to exercise his moral rights, the action consented to will not constitute an infringement
32 General waivers are not possible, but an author may consent to particular uses.
33 Consent in writing should be regarded as evidence that the consent was unequivocal.
34 Consent is only informed where full information is disclosed to the author (or a representative or agent thereof) as to the way in which the work will be used, including details of works which will be used in association with the work. The waiver may result from a collective negotiation by third parties representing the interests of the authors, such as an author's union.
35 The condition of informed consent will weigh particularly heavy in cases of *standard contracts* stipulating a far reaching consent of the author not to exercise moral rights.

Art. 3.6 – Interests of third parties

(1) The moral rights recognised in article 3.1 will not be enforced in situations where to do so would harm the legitimate interests of third parties[36] to an extent which is manifestly disproportionate to the interests of the author.[37, 38]
(2) After the author's death, the moral rights of attribution and integrity shall only be exercised in a manner that takes into account the interests in protecting the person of the deceased author, as well as the legitimate interests of third parties.

Chapter 4: Economic rights

Art. 4.1 – General

(1) The economic rights in a work are[39] the exclusive rights to authorise or prohibit the reproduction, distribution, rental,[40] communication to the public and adaptation of the work, in whole or in part,[41] as provided for in articles 4.2, 4.3, 4.4, 4.5 and 4.6.
(2) The economic rights expire [...] years[42] after the year of the author's death.

Art. 4.2 – Right of reproduction

The right of reproduction is the right to reproduce the work in any manner or form, including temporary reproduction insofar[43] as it has independent[44] economic significance.[45]

Art. 4.3 – Right of distribution

(1) The right of distribution is the right to distribute to the public the original of the work or copies thereof.
(2) The right of distribution does not apply to the distribution of the original or any copy that has been put on the market by the holder of the copyright or with his consent.[46]

Art. 4.4 – Right of rental

(1) The right of rental is the right to make available the original of the work or copies thereof for use for a limited period of time for profit making purposes.
(2) The right of rental does not extend to the rental of buildings and works of applied art.

Art. 4.5 – Right of communication to the public

(1) The right of communication to the public is the right to communicate the work to the p,ulic, including but not limited to[47] public performance,[48] broadcasting,[49] and making available to the public of the work in such a way that members of the public may access it from a place and at a time individually chosen by them.
(2) A communication of a work shall be deemed to be to the public if it is intended for a plurality of persons, unless such persons are connected by personal relationship.

Art. 4.6 – Right of adaptation

The right of adaptation is the right to adapt, translate, arrange or otherwise alter the work.

Chapter 5: Limitations[50]

Art. 5.1 Uses with minimal economic significance

The following uses with minimal economic significance

36 The notion of 'interests of third parties' covers interests of any private party, such as a publisher, as well of the public in general which, for instance, has a legitimate interest in improving the access to the work.
37 For example, particularly the integrity right would be attenuated in relation to works of low authorship.
38 This '*abus de droit*' principle also applies to economic rights. If it is specifically mentioned here, this is because, unlike the case of the economic rights, the principle is not already elabourated in a body of limitations.
39 This article comprises an exhaustive (closed) list of the economic rights. Note, however, that 'communication to the public' is an open concept, and art. 4.5 comprises a non-exhaustive (open) list of acts falling under that concept.
40 As explained in the Introduction, the public lending right and the artists' resale right (droit de suite) are not included here, because these are remuneration rights that do not qualify as exclusive economic rights and as such remain outside the scope of the Code.
41 The phrase 'in whole or in part' implies that the use of a part of a protected work constitutes a restricted act or, as the case may be, an infringement, if this part in and by itself qualifies for copyright protection.
42 It was generally felt by the members of the Group that the current term of protection of the economic rights is too long. However views diverged as to the appropriate term.
43 The phrase 'insofar as it has independent economic significance' only refers to temporary reproductions.
44 The term 'independent' means independent from a permitted use (i.e. permitted either by law or authorised by the right holder).
45 This carve-out absorbs the rule of art. 5(1) InfoSoc Directive. Note that it does not determine the burden of proof whether or not the reproduction in question is or is not temporary and/or has no independent economic significance.
46 This rule of exhaustion has to be interpreted coherently with the same concept in the law of industrial property.
47 The right of communication to the public is divided into three main categories, but the list is open-ended and non-exhaustive.
48 Public performance also includes public recitation, 'public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images [of the broadcast of the work]' (art. 11*bis* (1)(iii) BC) and public display (i.e. on a screen).
49 The term 'broadcasting' includes rebroadcasting and retransmitting, by wireless and wired (cable) means.
50 For the sake of clarity, limitations have been brought together under several categories. The categories do not however prejudice as to the question, what interests do, or should, in a particular case or even in general, underlie the limitation. In practice, this might be a mixture of several of the interests indicated. The weakness in a particular case of the interest under which the applicable limitation has been categorized does not prejudice as to the (non-)applicability of the limitation. However, the concrete examples enumerated under those categories do have a normative effect, since art. 5.5 extends the scope of the specifically enumerated limitations by permitting other uses that are similar to any of the uses enumerated, subject to the operation of the three-step test. In this way, Chapter 5 reflects a combination of a common law style open-ended system of limitations and a civil law style exhaustive

are permitted without authorisation, and without remuneration:[51]

(1) the making of a back-up copy of a work by a person having a right to use it and insofar as it is necessary for that use;
(2) the incidental inclusion of a work in other material;
(3) use in connection with the demonstration or repair of equipment, or the reconstruction of an original or a copy of a work.

Art. 5.2 Uses for the purpose of freedom of expression and information

(1) The following uses for the purpose of freedom of expression and information are permitted without authorisation and without remuneration, to the extent justified by the purpose of the use
(a) use of a work for the purpose of the reporting of contemporary events;
(b) use of published articles on current economic, political or religious topics or of similar works broadcast by the media, provided that such use is not expressly reserved;
(c) use of works of architecture or sculpture, made to be located permanently in public places;
(d) use by way of quotation of lawfully disclosed works;[52]
(e) use for the purpose of caricature, parody or pastiche.
(2) The following uses for the purpose of freedom of expression and information are permitted without authorisation, but only against payment of remuneration and to the extent justified by the purpose of the use:
(a) use of single articles for purposes of internal reporting within an organisation;
(b) use for purposes of scientific research.

Art. 5.3 – Uses Permitted to Promote Social, Political and Cultural Objectives

(1) The following uses for the purpose of promoting social, political and cultural objectives are permitted without authorisation and without remuneration, and to the extent justified by the purpose of the use:
(a) use for the benefit of persons with a disability, which is directly related to the disability and of a non-commercial nature;
(b) use to ensure the proper performance of administrative, parliamentary or judicial proceedings or public security;[53]
(c) use for the purpose of non-commercial archiving by publicly accessible libraries, educational establishments or museums, and archives.[54]
(2) The following uses for the purpose of promoting important social, political and cultural objectives are permitted without authorisation, but only against payment of remuneration, and to the extent justified by the purpose of the use:
(a) reproduction by a natural person for private use, provided that the source from which the reproduction is made is not an obviously infringing copy;
(b) use for educational purposes.

Art. 5.4 –Uses for the purpose of enhancing competition

(1) The following uses for the purpose of enhancing competition are permitted without authorisation and without remuneration, to the extent justified by the purpose of the use:
(a) use for the purpose of advertising public exhibitions or sales of artistic works or goods which have been lawfully put on the market;[55]
(b) use for the purpose of reverse engineering in order to obtain access to information, by a person entitled to use the work.
(2) Uses of news articles, scientific works, industrial designs, computer programs and databases are permitted without authorisation, but only against payment of a negotiated remuneration,[56] and to the extent justified by the purpose of the use, provided that:
(i) the use is indispensable to compete on a derivative market;
(ii) the owner of the copyright in the work has refused to license the use on reasonable terms, leading to the elimination of competition in the relevant market and
(iii) the use does not unreasonably prejudice the

enumeration. On the one hand, the extension to similar uses provides the system with a flexibility which is indispensable in view of the fact that it is impossible to foresee all the situations in which a limitation could be justified. On the other hand, the possibility of flexibility is narrowed down in two ways. Firstly, the extension applies to uses 'similar' to the ones expressly enumerated. Thus, a certain normative effect is bestowed on these examples; the courts can only permit uses not expressly enumerated insofar as a certain analogy can be established with uses that are mentioned by the Code. Secondly, such similar uses may not conflict with the normal exploitation of the work and not unreasonably prejudice the legitimate interests of the author or rightholder, taking account of the legitimate interests of third parties.

51 With regard to the question, whether a limitation permits the use act in question or not, the Code does not distinguish between analogue and digital uses. However, a distinction might be made in respect of the amount of remuneration due for certain uses; see note 57.

52 Although quotations normally will only imply partial use of a work, it may in certain cases be permitted to quote the entire work.

53 The reporting of administrative, parliamentary or judicial proceedings is covered by art. 5.2(1)(a).

54 See art. 5(2)(c) Information Society Directive. It is understood that the exception only covers reproductions made in order to preserve documents, but not any subsequent commercial exploitation of the works that have been archived.

55 The means of advertising as mentioned in art. 5.4(1) should be normal and proportionate for the business.

56 The term 'negotiated remuneration' means that the compulsory license fee is to be negotiated in individual cases, and therefore does not imply a role for collective rights management.

legitimate interests of the owner of the copyright in the work.

Art. 5.5 – Further limitations

Any other use that is comparable to the uses enumerated in art. 5.1 to 5.4(1) is permitted provided that the corresponding requirements of the relevant limitation are met and the use does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author or rightholder, taking account of the legitimate interests of third parties.[57]

Art. 5.6 – Relation with moral rights

(1) Uses under this chapter are permitted without prejudice to the right of divulgation under article 3.2.[58]
(2) Uses pursuant to articles 5.2, 5.3, 5.4 and 5.5 are permitted without prejudice to the right of attribution under article 3.3, unless such attribution is not reasonably possible.
(3) Uses pursuant to articles 5.1, 5.2, 5.3 and 5.5, are permitted without prejudice to the right of integrity under article 3.4, unless the applicable limitation allows for such an alteration or the alteration is reasonably due to the technique of reproduction or communication applied by the use.

Art. 5.7 – Amount and collection of remuneration

(1) Any remuneration provided for under this chapter shall be fair and adequate.[59]
(2) A claim for remuneration according to articles 5.2(2) and 5.3(2) can only be exercised by a collecting society.

Art. 5.8 – Limitations prevailing over technical measures[60]

In cases where the use of copyright protected works is controlled by technical measures, the rightholder shall have an obligation to make available means of benefiting from the uses mentioned in articles 5.1 through 5.5 with the exception of art. 5.3(2)(a), on condition that

(a) the beneficiary of the limitation has lawful access to the protected work,
(b) the use of the work is not possible to the extent necessary to benefit from the limitation concerned, and
(c) the rightholder is not prevented from adopting adequate measures regarding the number of reproductions that can be made.

57 See note 48. Note that art. 5.5 does not allow new limitations by blending the criteria of articles 5.1 to 5.3.

58 This provision does not prejudice as to the direct application of the fundamental right of freedom of expression. It is however understood that only in highly exceptional cases, such as quotation in the press of important secret documents, there could be a ground for such a correction.

59 While no distinction of analogue and digital use acts shall be made with regard to the question of the permission of the use act as such, it seems appropriate to differentiate the amount of remuneration due depending on the economic significance of the use act to the user. It should be noted that the use can be made by a third party on behalf of beneficiaries of these limitations, but that in such cases the remuneration to be paid may be higher than if it is made by the privileged individual itself.

60 Note that the Code does not otherwise deal with the legal protection of technical protection measures.