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EU copyright, quo vadis?

Exceptions for research and education: The new German © law compared to the © DSM proposal

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Act on the adaptation of copyright to the current needs of the knowledge society of 1 September 2017

- English translation: https://www.gesetze-im-internet.de/englisch_urhg/
- Entered into force on 1 March 2018 and is limited in time until 1 March 2023

§ 60a German CA: **Teaching in educational establishments** compared to Art. 4, 6 ©DSM as of 17 May 2018:

- German CA = ©DSM
 - Purpose: illustration for teaching
 - Only non-commercial purposes
 - Indication of source required
 - Beneficiaries: educational establishments
 - Exception trumps contract (→ Art. 6(1), 4(2) ©DSM)
 - MS may provide for fair compensation
 - Discretion as regards proportion of works that may be used (recital 16, in Germany 15 % and single articles, small-scale and out-of-commerce works)
- ©DSM > German CA
 - Cross-border teaching (Art. 4(3) ©DSM)
 - Computer programs covered
 - Exception is enforceable against TPM online (Art. 6(2) s. 2 ©DSM)
- German CA > ©DSM
 - Analogue uses, distribution

§ 60d German CA: **Text and data mining** compared to Art. 3, 3a, 6 ©DSM

- German CA = ©DSM
- Purpose: not for profit scientific research
- Covered uses: reproduction and extraction of databases
- Lawful, secure access required
- Exception trumps contract (→ Art. 6(1) ©DSM)
- ©DSM > German CA
- Commercial TDM unless it has been reserved by rightholders (Art. 3a ©DSM)
- No compensation/remuneration
- Exception is enforceable against TPM online (Art. 6(2) s. 2 ©DSM)
- German CA > ©DSM
- Beneficiaries: anyone pursuing non-commercial TDM, not only research organizations and cultural heritage institutions
- Unconditional, permanent storage of the corpus in cultural heritage institutions (cf. Art. 3(1a) ©DSM)

§ 60e(1) and § 60f German CA: **Libraries, archives, museums and educational establishments** compared to Art. 5, 6

©DSM

- German CA = ©DSM
- Purpose of preservation
- Digital and non-digital copies
- Exception trumps contract (→ Art. 6(1) ©DSM)
- ©DSM > German CA
- Publicly accessible cultural heritage institutions pursuing commercial purposes (?, cf. Art. 2(1) and 2(3) ©DSM)
- Computer programs covered
- No compensation/remuneration (?, arg. Art. 4(4))
- Exception is enforceable against TPM online (Art. 6(2) s. 2 ©DSM)

Further exceptions: German CA > ©DSM

- Non-commercial, publicly accessible cultural heritage institutions may reproduce, distribute and/or make available works from their holdings or exhibitions for purposes of
 - Indexing, cataloguing,
 - Restoration (also distribution)
 - Documentation of exhibitions
 - Terminals on their premises
 - Transmission of reproductions to users
- Producers of media collections for teaching may reproduce, distribute or make available to the public up to 10 per cent of a published work for such collections.
- Personal and collective scientific research beyond TDM
- → Art. 5(2)(c), Art. 5(3)(a), 5(3)(n) InfoSocDir

Concluding question:

Does full harmonization of fragments of copyright foster legal certainty in the internal market?