

General Report – Part A

National Provisions Relating to Private Copying

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All countries responding have reported statutory regulation of private copying. The degree of regulation varies dramatically. The analysis below suggests two approaches to evaluating the different regulatory regimes.

One method of categorization considers a given country's regulatory regime as lying along a spectrum that ranges from structured to open-ended.

Structured	Open-ended
E.g., Germany, Sweden, Finland	E.g., Australia, Canada, Greece

The structured approach to private copying defines *ex ante* such limits as the number of private copies, permitted and excluded subject matter, and the appropriate uses for the resulting copies. Structured regimes vary in level of detail.¹

In contrast, the open-ended approach provides general statutory language to guide a court's *ex post* analysis as to whether a given use is "fair" or "equitable." These provisions may designate categories of proper purposes for private copying, such as "research" or "criticism," or they may operate to generally protect the "legitimate interests" of the copyright holder. Like the structured regimes, open-ended approaches to private copying also vary in detail and complexity.²

Identifying a particular regime of private copying as structured or open-ended is analytically useful at a general level. Structured regimes appear to emphasize certainty, while open-ended regimes place a premium on flexibility. However, one must take care not to push the distinction too far. Even open-ended regimes tend to exclude specific types of private copying by subject matter,³ while the statutes of structured regimes will still require a court's interpretation.

¹ Compare, for example, Finland to Germany.

² Compare, for example, Canada to Ireland.

³ See Sweden's caselaw interpreting the limits of "a few copies for colleagues at a working site."

Another method of categorizing various regimes identifies whether and to what extent a default private copying privilege explicitly exists. That is, whether the national law sets out a private copying privilege of general application, from which some categories or works or uses may be excluded, or whether national law instead extends the author’s exclusive rights to all copying, but then exempts certain limited kinds of copying from the scope of the exclusive right.

Broad explicit privilege (with exceptions)	Narrow explicit privilege
E.g., Hungary, Finland, Denmark	E.g., Italy, United States, Australia

Along this analytical spectrum, countries range from providing a general private copying privilege applicable to most categories of works (with exceptions), to an explicit private copying privilege attaching only to a narrow band of works, such as audio-visual works. This method of categorization does not directly equate to the previous one. For example, countries with narrower explicit privileges may have implicit private copying privileges embodied in the “fair dealing” type of provision found in the open-ended regimes.⁴ However, another open-ended regime may provide a general, rather than a narrow, default private copying privilege.⁵

The attached Appendix classifies national laws according to whether they afford a general private copying privilege, or rather specific exemptions (or, as is the case with several countries, both); whether the private copying regime is structured or open-ended; and, for those countries whose laws include an explicit private copying privilege, whether the privilege covers a broad or a narrow scope of works.

⁴ For example, Australia and the United States.

⁵ For example, Greece and Hungary.

This chart does not attempt to capture the full complexity of each country's regulatory approach to private copying. Rather these highlights collected from Part A of the questionnaire are meant to serve as a reference tool. For further detail, please see the full report. Please note also that many countries reported general provisions as specific, and vice versa. This chart rearranges some of those answers for the sake of consistency.

Country	(1) specific	(2) general	Structured or Open-ended?	Explicit Private Copying Privilege – Broad or Narrow Categories of Protected Works?
Australia	<p>§ 111 – no infringement in broadcast to record broadcast, but doesn't apply to underlying work (limited practical application)</p> <p>§ 248A(1) “exempt recording” – recording of broadcast of a live performance, solely for “private or domestic use” of recorder</p> <p>§ 284D – NOT “private or domestic” use: sound recording/film made for purpose of</p> <ul style="list-style-type: none"> – selling, letting or barter; – distributing (for trade or otherwise); – by way of trade exhibiting in public; – broadcasting; – or causing film/recording to be seen or heard in public 	<p>§§ 40 and 103(c) – fair dealing for purposes of “research or study”</p> <ul style="list-style-type: none"> – case law gives dictionary meaning to “research,” “study” – essentially, development of knowledge fairness factors – purpose/character of dealing – nature of work – possibility of obtaining work w/in reasonable time at an ordinary commercial price – effect of dealing on potential market or value – amount and substantiality of the part copied in relation to the whole 	Open-ended	Narrow

Country	(1) specific	(2) general	Structured or Open-ended?	Explicit Private Copying Privilege – Broad or Narrow Categories of Protected Works?
Belgium	<p>Article 22 of the law of June 30, 1994 when a work has been legally published, the author cannot prohibit: reproductions of the sound and audio-visual works carried out in the family circle and reserved for that use</p>		Structured	Narrow
Canada	<p>Art. 30.3: teaching establishment, museum, library, archive doesn't violate copyright if:</p> <ul style="list-style-type: none"> – work reproduced on photocopy machine – machine installed by establishment to be used by teachers/pupils, or personnel, or uses of libraries, archives, museums – legal warning posted according to law <p>Art 30.3 Library, teaching establishment, museum, archive can use the machine</p> <ul style="list-style-type: none"> – if they have signed an agreement with the management organization of the copyright holder to grant licenses. <p>Art 30.6 – permissible copies of software:</p> <ul style="list-style-type: none"> – to conform w/computer requirements – make a backup copy. 	<p>Art 29: Equitable use for purposes of private study or research, not a violation</p> <p>Art 30.2: Library, Museum, archives, copying within framework of Art 29 and 29.1, (equitable use) not a violation</p>	Open-ended	Narrow

<p>Canada, cont'd</p>	<p>Art. 32(1) – reproductions for the handicapped (except for films) for the benefit or at the request of someone with ‘perceptual weakness’, unless a version of the work intended for those affected by the perceptual weakness is available on the market.</p>		
<p>Denmark</p>	<p>Defined in explanatory memorandum: private copying covers physical person who makes the copy, members of the family, and friends. Relevant criterion is the personal tie between the copier and the persons to whom a copy is given, with greater limitations on digital copying</p> <p>§ 12 – Anyone is entitled to make or have made for private purposes, single copies of works which have been made public, if this is not done for commercial purposes. Such copies may not be used for any other purpose</p> <p><i>Exceptions</i></p> <p>this private right does not apply to:</p> <ul style="list-style-type: none"> – construct a work of architecture – copy a work of art in a manner implying the copy is an original – computer programs in digitized form – digital copies of digital databases – digital copies of non computer programs and databases, unless exclusively for personal use of copier or household <p>Private right does not permit right to engage another person to make copies of</p>	<p>Structured</p>	<p>Broad</p>

Country	(1) specific	(2) general	Structured or Open-ended?	Explicit Private Copying Privilege – Broad or Narrow Categories of Protected Works?
Denmark, cont'd	<ul style="list-style-type: none"> – musical works – cinematographic works – works of applied art or works of art if the copying is in the form of artistic reproduction Private right does permit copying of musical works and cinematographic works using public technical equipment (e.g., libraries, business premises) <ul style="list-style-type: none"> – no private right to copy illegally gained works 			
France	A restrictive list of exceptions to the general rights of French Copyright, strictly interpreted Art L.122-5: Once a work is ‘divulged’ or ‘disclosed’, author may not prohibit: <ul style="list-style-type: none"> – 2° copies/reproductions strictly reserved for “private use of the copyist and not intended for collective use” <i>Exceptions:</i> <ul style="list-style-type: none"> – works of art intended to be used for ends identical to those for which the original work was created – Software, except for back-up copies per § II of Art. L.122-6-1 – Electronic databases Art. L211-3 2° – similar rule for ‘neighboring rights’ to copyright		Structured	Broad

Finland	<p>Art 12, Finnish Copyright Act 16.11961/404</p> <ul style="list-style-type: none"> - any person may make single copies for private use. Such copies may not be used for other purposes. - Amanuensis of the private copier is protected (i.e. you can hire someone to make your single private copy), except: <ul style="list-style-type: none"> - musical works - cinematographic works - utilitarian articles or sculptures - copying of any other work of art by artistic reproduction <p>Exceptions to the single private copy rule:</p> <ul style="list-style-type: none"> - machine-readable computer program (executable program?) - computer readable copy of a computer readable database - construction of a work of architecture 		Broad
Germany	<p>Extremely detailed regime</p> <ul style="list-style-type: none"> - private copying as a subset of 'own use' (which is not necessarily private) <p>Art 53, P1: private copying</p> <ul style="list-style-type: none"> - single copies of a work for private use - amanuensis ok, but only for transfer to "video or audio recording carrier" and "to reproduction of fine art" only if no payment is received therefore <p>Art 53, PP 2, 3: single copies for own use permitted if:</p> <ul style="list-style-type: none"> - for own scientific use, if and to the extent reproduction is necessary for that purpose 	<p>No Fair use or Fair dealing. Exceptions are to be narrowly interpreted, without regard to technological advance, except for recent judicial decisions on Art 53:</p> <ul style="list-style-type: none"> - if limitation/exception for benefit of author under a broader interpretation, the broader interpretation is justified. 	Broad
		Structured	Highly structured

Country	(1) specific	(2) general	Structured or Open-ended?	Explicit Private Copying Privilege – Broad or Narrow Categories of Protected Works?
Germany, cont'd	<ul style="list-style-type: none"> – to be included in own archive, to the extent reproduction necessary and one's own copy is used for reproduction – for own information concerning current events, such as broadcast work – for other uses: <ul style="list-style-type: none"> • small parts of published works or individual contributions published in newspapers/ periodicals or • work out of print at least 2yrs <p>GREATER quantity: reproductions of small excerpts or individual contributions in journals or newspapers</p> <ul style="list-style-type: none"> – non commercial ed institutions or vocational ed in a quantity for one school class – exams: (state exams, school exams) ‘in the required quantity’ – for both: if and to the extent such reproduction is necessary for this purpose <p>Restrictions on 1–3 (single copies for private & own use)</p> <p>Art 53.4 – absent rightholder consent copies:</p> <ul style="list-style-type: none"> – musical scores – essentially complete copies of books or periodicals, – UNLESS, reproduction is made by copying manually, integration into own archive, or for own use if work out of print at least two years 			

Germany, cont'd	<p>Art 53.5 – single copies for private & own use doesn't apply to databases whose elements are individually accessible through electronic means, except for scientific use, provided that use is not for commercial purposes</p> <p>Art 53.6 – copies can't be disseminated, but may be lent out if works are out of print or copies where small damaged or lost parts have been replaced by reproduction</p> <p>Art 53.7 – prohibits</p> <ul style="list-style-type: none"> – recording of public lectures, performances – realization of plans and sketches of works of fine art or – reproductions of works of architecture 			
Greece	<p>Greek Copyright Law N. 2121/1993, Art. 18: “Reproduction for private use,” the first of a range of Articles in Chapter 4, entitled “Limitations of the pecuniary rights”</p> <ul style="list-style-type: none"> – no direct definition, but performance or representation shall be deemed public when the work becomes accessible to a circle of persons wider than the narrow circle of the family and the direct social circle of the author, regardless of whether the persons of this wider circle are at the same or at different locations private use shall not include use by an enterprise, service, or an organization 	<p>Art 18, § 2: freedom to make a reproduction for private use shall not apply when the act of reproduction is likely to conflict with normal exploitation of the work or to prejudice the author's legitimate interests and notably:</p> <ul style="list-style-type: none"> – when reproduction of architectural work is in the form of a building or similar construction – when technical means are used to reproduce a fine art work which circulates in a restricted number of copies, or when the reproduction is a graphical representation of a musical work. <p>Exception: no reproduction of electronic databases.</p>	Open-ended	Broad

Country	(1) specific	(2) general	Structured or Open-ended?	Explicit Private Copying Privilege – Broad or Narrow Categories of Protected Works?
Hungary	<p>Art. 34 of Act No. LXXXVI. of 1999</p> <ul style="list-style-type: none"> – anyone may make a copy of a work for private purposes if it is not designed for earning or increasing income even in an indirect way – doesn't apply to architectural works, engineering structures, software, and electronic databases, as well as to the fixation of the public performance of a work on video or sound carrier – Complete book and whole of periodical or daily may be copied for private purpose only by handwriting or typing – having a work copied by someone else by a computer or on an electronic data carrier, even if this is done for private purpose, shall not be considered as falling within scope of free use 	<p>P2 of Art. 33: The use under the provisions allowing free use of works is only permitted and not subject to the payment of remuneration if it does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, if it is in compliance with the requirements of fairness, and if it does not serve any purpose incompatible with the purpose of free use</p>	Open-ended	Broad
Italy	<p>Recently modified effective Apr 29 2003, Law N° 633 of Apr 22, 1941 and inserts rules on private copying contained in Law 93/1992</p> <ul style="list-style-type: none"> – specific to private copying of phonograms and video-grams, as well as reprography onto paper of books and magazines 		Middle ground	Narrow

Italy, cont'd.	<p>71-spties, 71-octies, 71-nonies</p> <ul style="list-style-type: none"> - natural person may privately reproduce phonograms and video-grams, with sole purpose of personal use and provided that it has not a gainful intent, nor does it have direct or indirect commercial purposes. Copies must comply with technological protection measures <p>Art. 68</p> <ul style="list-style-type: none"> - reproductions of single works or portions of works for the personal use of readers, when made by hand or by means of reproduction unsuitable for circulation of the work in public is free. <p>Private copying by reprography is permitted provided that they do not exceed 15% of the volume or issue. 15% limit does not apply to copies of rare out of print works.</p> <p>Copy shops or other public premises of reproduction, even if for free, must pay a remuneration to authors and publishers based on number of copies made. Libraries must pay a lump sum annually for copying activity</p>			
Ireland	<p>59-70 – certain copying by libraries and archives</p> <p>80 – software exceptions</p> <ul style="list-style-type: none"> - backups ok - copying for reasons of interoperability, translations, adaptations or for testing or studying functions 	<p>Chapter 6, § 50 – Fair dealing for purposes of research or private study not to infringe copyright in literary, dramatic, musical artistic works, sound recordings, films, broadcasts, cable, non-electronic original databases and typogra-</p>		

Country	(1) specific	(2) general	Structured or Open-ended?	Explicit Private Copying Privilege – Broad or Narrow Categories of Protected Works?
Ireland, cont'd.	<p>83 – person who has a right to use an original database to do anything necessary for the purposes of access to or use of contents (Ireland also has a separate database right, § 321)</p> <p>87 – transient, incidental copying non infringing where it is technically required for viewing or listening to the work by member of the public to whom a copy of the work is lawfully made available</p>	<p>phical arrangements of published editions</p> <p>50(4) – definition of Fair Dealing</p> <p>– use of copyright “for a purpose and to an extent which will not unreasonably prejudice the interests of the owner of a copy-right”</p> <p>50(5) – exclusion from FD</p> <p>– a) converting a computer program expressed in a low level computer language into a version expressed in a higher level computer language; or (b) copying a computer program in an incidental manner in the course of converting that program</p> <p>51 – criticism/review</p> <p>– fair dealing with a work for purposes of criticism or review when accompanied by sufficient acknowledgement</p>		

<p>Ireland, cont'd</p>	<p>52 “incidental inclusion of copy-right material” – provided interests of owner not unreasonably prejudiced. Quotations and extracts permitted with sufficient acknowledgment</p> <p>329 Fair dealing for research or private study in non-electronic databases that are protected by database right (as opposed to the general fair dealing exception applying to original non electronic databases which are protected by a true copyright)</p>		
<p>Netherlands</p>	<p>Art. 16b Copyright Act – “to reproduce a work in a limited number of copies for the sole purpose of private practice, study or use of the person who makes the copies or orders the copies to be made exclusively for himself”</p>	<p>art. 16b Copyright Act architecture and computer programs cannot be copied for private use at all.</p>	<p>Broad</p>
<p>Sweden</p>	<p>No general exception for fair use or fair dealing</p>	<p>Preparatory document (prop 1992/93:214) reproduction for private use defined: – reproduction for one's own needs, closest circle of family and friends, also a few copies for colleagues at a working site – e.g., 30 copies for distribution to administrations in a municipality was too much</p> <p>§ 12(1) literary or artistic work</p>	<p>Broad</p>

Country	(1) specific	(2) general	Structured or Open-ended?	Explicit Private Copying Privilege – Broad or Narrow Categories of Protected Works?
Sweden, cont'd.	<p>§ 49a(4) photographic work – may be reproduced in single copies for private use, but copies may not be used for other purposes</p> <p>Exceptions:</p> <ul style="list-style-type: none"> – construction of a building, – computer programs or digital copies of a digital compilation (e.g., database) – No engaging another to make copies of musical or cinematographic works – No useful articles or sculptures out of protected works – No third party copying by ‘artistic reproduction’ of another author’s artistic work 			
Spain	<p>Specific rules in Spanish CR act (LPI)</p> <ul style="list-style-type: none"> – Basic regulations, 31.1.2 – defines limits on private copying – 25 LPI establishing and regulating remuneration on private copying – Art 155.2, amount collected for private copying is allocated by management entities to activities and services relating to the assistance, training and promotion of authors and artists 	<p>Art. 40 bis, LPI, provides a 3-step test that is designed to limit divergent application of the exceptions.</p>	Highly structured	Broad

<p>Spain cont'd</p>	<ul style="list-style-type: none"> - Art 34.2.b – Special rules on databases - Art 135.1 – sui generis rights - Art 99.a, 25.3 – computer programmes <p>Also, Royal Decrees, or regulations deriving from the provisions. Then there is a preliminary draft to reform the LPI [BALPI] which may change the system if it goes through the legislative system</p> <ul style="list-style-type: none"> - Disseminated works may be reproduced without the permission of the author, with limitations: - For the private use of the copier, providing that the copy is not put to 'collective' or 'lucrative' use - Generally, a right of remuneration for private copying, though not all works enjoy this right <p>Exclusions, such as electronic databases, computer programs, are found in multiple provisions.</p>		
<p>Switzerland</p>	<p>Arts 19 and 20 of Federal Law on Copyright.</p> <p>Use of the work for private ends:</p> <ul style="list-style-type: none"> - private use of a divulged work is authorized. - All use for personal ends or, in a circle of closely tied people, such as relatives, or friends <p>Also: all use of the works by a schoolteacher and his or her students for pedagogical ends.</p>	<p>Open-ended</p>	<p>Broad</p>

Country	(1) specific	(2) general	Structured or Open-ended?	Explicit Private Copying Privilege – Broad or Narrow Categories of Protected Works?
Switzerland cont'd	<p>Institutional documents for internal communication or documentation purposes. Copier may get a third party to do so, and libraries that place photocopies in public use, are also considered a third party in this sense.</p> <p>Limitations:</p> <ul style="list-style-type: none"> – works on the market – works of fine art – parts of musical works – recording of interpretations 			
USA	<p>17 U.S.C. § 108(f) shields libraries and employees from liability for unsupervised use of copy machines located on the premises, provided equipment displays a notice that making a copy may be subject to copyright law</p> <p>17 U.S.C. § 108(D) which allows for limited copying by libraries of individual articles or portions of copyrighted works at the request of users under specific terms in the statute</p> <p>Other scheme: 17 U.S.C. § 1201(k) Manufacturers modifying equipment to give rights holders the ability to prevent private copying of certain television broadcasts</p> <p>Audio Home Recording Act, Chapter 10 of Title 17 – noncommercial analog copying</p>	<p>17 U.S.C. § 107 – Fair use</p> <ul style="list-style-type: none"> – Fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use) scholarship or research, is not an infringement of copyright – Four factors considered 	Open-ended	Narrow