

# Exceptions and limitations in copyright

In copyright there are some provisions that take effect in exceptional cases. In this summary you will find all the important information to answer your questions on usage, limitations and exceptions.

What is understood by limitations and exemptions in copyright? ▼

As an ownership right, copyright is subject to the social obligation. The limitation provisions contained in the German Copyright Act are restrictions on the exclusive rights of the author for the benefit of the general public. The intention is to make it easier for users to gain access to copyrighted works subject to certain conditions.

In the European countries, the limitations are based on an EU Directive and have to be finally transposed into national law. As exceptions to the rule, they generally require narrow interpretation. Unlike in the USA, where the courts decide on new limitations within the scope of the "fair use" doctrine, great importance is attached to legal and planning certainty in Europe. New limitations would have to be introduced by the European legislator.

What exemptions are there and how are they regulated? ▼

The limitations on copyright are specified in Articles 44a ff. UrhG (German Copyright Act). Important provisions are:

## Royalty-free usage

Reporting of current events	§ 50 UrhG	<a href="http://www.gesetze-im-internet.de/urhg/_50.html">http://www.gesetze-im-internet.de/urhg/_50.html</a>
Quotation right under copyright law	§ 51 UrhG	<a href="http://www.gesetze-im-internet.de/urhg/_51.html">http://www.gesetze-im-internet.de/urhg/_51.html</a>
Freedom to reproduce catalogue illustrations	§ 58 Abs. 2 UrhG	<a href="http://www.gesetze-im-internet.de/urhg/_58.html">http://www.gesetze-im-internet.de/urhg/_58.html</a>
Works in public places	§ 59 UrhG	<a href="http://www.gesetze-im-internet.de/urhg/_59.html">http://www.gesetze-im-internet.de/urhg/_59.html</a>

## Usage subject to royalties

Private copying	§ 53 UrhG	<a href="http://www.gesetze-im-internet.de/urhg/_53.html">http://www.gesetze-im-internet.de/urhg/_53.html</a> (obligation to pay remuneration pursuant to Articles 54 ff. UrhG: levy on hardware and blank media)
Schoolbook privilege	§ 46 UrhG	<a href="http://www.gesetze-im-internet.de/urhg/_46.html">http://www.gesetze-im-internet.de/urhg/_46.html</a>
Press review	§ 49 UrhG	<a href="http://www.gesetze-im-internet.de/urhg/_49.html">http://www.gesetze-im-internet.de/urhg/_49.html</a>
Making available of works by libraries, museums or archives at electronic reading places	§ 52b UrhG	<a href="http://www.gesetze-im-internet.de/urhg/_52b.html">http://www.gesetze-im-internet.de/urhg/_52b.html</a>

What uses are possible within the scope of the exemption for reporting of current events? ▼

The intention of the ruling on the use of a work within the scope of Art. 50 UrhG is to facilitate graphic reporting of current events. It covers documentations of events of the day in the form of video, audio or newspaper reports on a scale consistent with the intended purpose. Individual works can be shown for newspaper and television reports on a concert, for example. A period of up to six weeks before and up to six weeks after the event is used as a guideline for the topicality of the report.

What is the quotation right? ▼

Under Art. 51 UrhG, use of a published work for inclusion in another work without consent or any obligation to pay royalties is possible for the purposes of the quotation. In this case, it must be noted that this copyright exemption differs from the scientific quotation. The copyright quotation is only permitted, if the so-called purpose of the quotation is fulfilled. Mere mention of the source is not sufficient. What is much more important is that the work quoted is intended as evidence of own statements and as a basis for discussion. The quotation should be used to justify, intensify and ensure understanding of what has been presented. Utilisation of a quotation is not permitted, when it is only given as an example. The quotation must be incorporated into the new work and an "internal link" should be established between both works.

Are there any particularities to be observed when referring to pictures? ▼

The scope of the quotation must be justified by the purpose. For the use of works of fine art this means that the works are to be reproduced completely, but as small as possible. If pictures are reproduced in colour, the colours should if possible also be the subject of discussion in the text. Purely illustrative pictures without any confirmatory function cannot be used free of charge.

What is the freedom to reproduce catalogue illustrations? ▼

Under Art. 58 par. 2 UrhG, it is permissible to reproduce and distribute works in directories, which are associated with an exhibition or serve as documentation of inventory. This means that it is possible for public libraries, educational establishments or museums, for example, to include illustrations of works of art in exhibition catalogues and directories, if the works in question are displayed in the exhibitions. The exemption can also apply to inventory catalogues of museums and collections that do not exceed a particular print run.

What uses are possible for the freedom to reproduce catalogue illustrations?

Free distribution of catalogues without authorisation is only permitted for the duration of the exhibition and within the exhibition. No independent gainful purpose may be pursued by such distribution/reproduction. If part of the print run of the catalogue enters the

bookselling trade or its sale is continued after the end of the exhibition, the reproduction rights must be obtained for this part of the print run. In the case of inventory catalogues, a print run to be agreed with VG Bild-Kunst (as a rule 2,000) may not be exceeded, because it would then have to be assumed that the catalogue served a purpose of gain. Distribution over the Internet is not covered by the freedom to reproduce catalogue illustrations either. A fee must be paid for photographer's rights, if the photographs are not the items being exhibited.

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Is presentation of works for advertising purposes possible for an exhibition? 

As a general rule, yes. It is permissible to reproduce and distribute exhibited works or works intended for public auction and to make them available to the public (Art. 58 par. 1 UrhG). This may be carried out by the organiser only for advertising purposes and only as necessary to promote the event. The timing and content of the advertising must have a bearing on the exhibition and be oriented on it. Examples of permissible uses are the presentation of works in advertisements, commercial spots, advertising leaflets, catalogues, invitation cards, leaflets and on posters. A presentation of works for advertising purposes is also possible in the Internet on the museum's website – up to five works may be used and they must be deleted no later than four weeks after the end of the exhibition. The advertising material may not handed over in return for a fee.

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Is it possible to reproduce works in public places by means of photographs or drawings? 

It is permitted for a work that is permanently located in a public place to be reproduced in two dimensions (Art. 59 UrhG). This includes uses within the scope of painting, graphics, photography or cinematography for any purpose whatsoever (including commercial purposes). Sculpted copies of works of art, on the other hand, are not allowed. Neither does the exemption apply to works of art that are assembled for only a temporary period, as part of an exhibition for instance. In the case of works of architecture, the exemption applies only to reproductions of the exterior that is freely visible from public places.

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What uses are exempt from authorisation as private copying? 

Under Art. 53 UrhG, reproduction of a work (music, film, text, pictures, etc.) is permissible for private use within the scope of a private copy. Individual copies are permitted, but no more than seven copies. Another condition is that the master copy used for the reproduction was not made by obviously unlawful means. Reproduction may take place on any carriers, for example by photocopying, scanning, burning on CD or DVD or by video recordings of television broadcasts.

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What uses are not subject to the exemption of private copying? 

It is important to note that the copies are permitted solely for private use. The private copying limitation does not cover distribution of copies and their use for communication to the public. This means that copies may not be distributed or offered to anyone or everyone. In the same way, it is not permitted to publish the copied work in the Internet on a website or to reprint it in a magazine without obtaining a licence from the author.

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What is it important to note if one of the exemptions take effect? 

In the case of the limitations that enable a work to be used outside your own four walls, e.g. the quotation right, the author of the reproduced work must be clearly named and the moral rights – in particular the integrity of the work - granted. This means that the works may be used only in unchanged form. Without the permission of the author there may no trimming, no changes to colours, no reproduction of extracts, etc. Every change made to the work of art affects the moral rights of the author and must therefore be agreed with the author in good time. Unauthorised "arrangements" can give rise to cease-and-desist, destruction and compensation claims.

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What must I do if I am not sure whether an exemption applies? 

The exemptions described here as limitations on the exclusive rights of the author must be regarded as special cases. Consequently, care should be taken when examining them – only experts are in a position to understand and follow up with the extensive court rulings, so that in cases of doubt it is recommendable to make enquiries with the rights owners or their collecting society.

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