

Consuming Digital Goods: A Subject-Matter of Copyright?

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The ways of distributing and consuming copyrighted works have radically changed. In the emerging "digital economy", which is especially fostered by a wide availability of broadband-technologies and cloud-computing services, it becomes more and more common to distribute digital copies of works not only on tangible media, but also via online accessible platforms. This development is corresponding to modern user habits. Nowadays, users "buy" and more often "consume" digital goods online. Solid copies of digital works are losing their carrier function and, finally, their specific importance. From a copyright perspective, new means of distribution, like downloading or streaming, do not offer the familiar (tangible) reference, like an old fashioned CD does --- especially in terms of exhaustion and private copying. Furthermore, the classical "analogue-world-approach", which considers the private consumption of works as an intellectual process that is not covered by copyright, will not offer sufficient solutions for online scenarios. We have to face the paradigm-shift from an ownership- to an access-culture, where users just gain access to --- not ownership in --- digital goods. Against this Background, we will analyse recent case law of the European Court of Justice (ECJ) and examine legal principles referring to the private consumption of online-distributed digital goods. We will discuss recent decisions of the ECJ regarding a) the scope of the private use exception within a digital environment (ECJ C-435/12, ACI Adam); b) the reselling of digital goods (ECJ C-128/11, UsedSoft) and c) hyperlinking to copyrighted material in the WWW (ECJ C-466/12, Svensson). This paper is based on comparative and doctrinal legal research. It will deal with the system of exclusive rights and the relevant limitations and exceptions in the new media environment.

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