

# BEST CASE SCENARIOS FOR COPYRIGHT

## QUOTATIONS IN FINLAND

By Teresa Nobre

Based on research by Maria Elisabeth Rehbinder

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**Best Case Scenarios for Copyright** is an initiative by COMMUNIA, presenting best examples of copyright exceptions and limitations found in national laws of member states of the European Union. We believe that, by harmonizing copyright exceptions and limitations across Europe, using as a model these best examples that are permitted within the EU law, the EU would reinforce users' rights in access to culture and education.


Read more at <http://www.communia-association.org/bcs-copyright>

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The **COMMUNIA International Association** on the public domain is a network of activists, researchers and practitioners from universities, NGOs and SME established in 10 Member States. COMMUNIA advocates for policies that expand the public domain and increase access to and reuse of culture and knowledge. We seek to limit the scope of exclusive copyright to sensible proportions that do not place unnecessary restrictions on access and use.

 Dedicated to the [PUBLIC DOMAIN](#)

# INTRODUCTION

In the European Union, exceptions and limitations to copyright — including the quotation one — are regulated by the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (“InfoSoc Directive”).

All member states exempt quotations, but several national legal provisions that embody the quotation exception have some sort of drawback<sup>1</sup>. The main problems found in national legal provisions are the following: the legal provision specifies the kinds of works that can be quoted, this way excluding the quotations of the remaining protected works (namely quotations of audiovisual works); the legal provision is construed in a way that does not allow the quotation of entire works (e.g. entire images or entire short works); the legal provision specifies the context within which a quotation can be made; the wording used is not neutral with regards to technology, excluding quotations made in digital formats and/or online quotations; the legal provision lists the acts of exploitation (e.g. reproduction) that can be made under the exception, this way excluding other important acts, such as translations or communication to the public (an act that is essential to make quotations in online contexts); the exception requires or implies that the quoted work is included or somehow used in a new work, not exempting quotations that do not result in a new work (e.g. “mere” quotations done in the context of face-to-face teaching activities).

In the Nordic countries the quotation exception is presented as a “relatively open rule of reason”<sup>2</sup>. The Nordic quotation exception is a norm that is flexible and open as to acts of exploitation and technological means, kinds of works and extent of quotation, beneficiaries, and purposes. In these countries, the quotation exception is not subject to strict conditions: the only requirement is that the quotation is made “in accordance with proper usage”. This reference to ethical standards is in line with art. 5(3)(d) of the InfoSoc Directive, which refers to “fair practice”.

The main difference between the Nordic quotation exception and the EU quotation exception is that the latter lists two examples of the context within which quotations can be made: criticism or review<sup>3</sup>. Uses for purposes that are comparable

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<sup>1</sup> See Teresa Nobre, 2014, for a comparative analysis of the quotation exception in Europe.

<sup>2</sup> Hugenholtz and Senftleben, 2011: 15. The authors make a reference here to Ole-Andreas Rognstad, *Opphavsrett*, Universitetsforlaget 2009, p. 241-252.

<sup>3</sup> “(Q)uotations for purposes of criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author’s name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose”.

to criticism or review are, nevertheless, understood as also falling within the scope of the EU quotation exception<sup>4</sup>.

The fact that the Nordic exception is embodied in a relatively abstract norm that permits a relatively broad spectrum of unauthorized uses (including of a transformative nature) that “exceed the traditional connotation of ‘citation’”<sup>5</sup>, makes the Nordic quotation exception the best example of a quotation exception in Europe. The three Nordic countries that are part of the EU — Denmark, Finland and Sweden — have identically worded quotation exceptions. We have selected Finland for this study due to practical reasons only.

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<sup>4</sup> Hugenholtz and Senftleben, 2011: 15. See also Xalabarder, 2009: 108.

<sup>5</sup> Hugenholtz and Senftleben, 2011: 15.

# QUOTATIONS IN FINLAND

## 1. Text of the copyright exception or limitation

Except as otherwise noted, all provisions mentioned herein are from the Finnish Copyright Act (Tekijänoikeuslaki), approved by 8.7.1961/404, amendments up to (155/2016) included.

The original version of the Act can be found here:

<http://www.finlex.fi/fi/laki/ajantasa/1961/19610404#L2P22>

An English version of the Act (with amendments up to 608/2015) can be found here:

<http://www.finlex.fi/en/laki/kaannokset/1961/en19610404>

### 1.1. Main legal provision

The quotation exception was first introduced in Finland in 1961, and the wording has remained unchanged ever since. Its wording resembles art. 10(1) of the Berne Convention<sup>6</sup>.

In the current version of the Finnish Copyright Act, the quotation exception is embodied in Section 22. This legal provision only refers to works protected by copyright; nevertheless, it is applicable to subject matter protected by related rights, by means of references to this legal provision throughout the Act<sup>7</sup>:

**22 § (24.3.1995/446)**

**Sitaatti (22.5.2015/607)**

Julkistetusta teoksesta on lupa hyvän tavan mukaisesti ottaa lainauksia tarkoituksen edellyttämässä laajuudessa.

**22 §**

#### **Quotation**

A work made public may be quoted, in accordance with proper usage to the extent necessary for the purpose.

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<sup>6</sup> “It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form or press release”.

<sup>7</sup> Section 22 is applicable to performances of literary or artistic works or folklore [see Section 45 (7)], sound recordings [Section 46(3)], video recordings [Section 46a(3)], sound recordings and music recordings containing images [Section 47], radio and television transmissions and any other programme-carrying signal [Section 48(4)], a substantial part of a catalogue, a table, a program or any other product in which a large number of information items are compiled or of a database the obtaining, verification or presentation of which has required substantial investment [Section 49(3)], and to photographic pictures [Section 49a(3)].

## 1.2. Other relevant legal provisions

Although Section 22 does not limit the categories of works that can be quoted without permission of the author, being virtually applicable to all types of works, without restriction, it is worth mentioning that Section 25 covers reproductions of works of art in pictorial form:

### **25 § (24.3.1995/446)**

#### **Julkistetun tai luovutetun taideteoksen käyttäminen (22.5.2015/607)**

Julkistetuista taideteoksista saa ottaa tekstiin liittyviä kuvia:

- 1) arvostelemaan tai tieteelliseen esitykseen; sekä
- 2) sanomalehteen tai aikakauskirjaan selostettaessa päivätapahtumaa, edellyttäen ettei teosta ole valmistettu sanomalehdessä tai aikakauskirjassa toisinnettavaksi. (14.10.2005/821)

### **25 §**

Use of a work of art that has been made public

(1) Works of art made public may be reproduced in pictorial form in material connection with the text:

1. in a critical or scientific presentation; and
2. in a newspaper or a periodical when reporting on a current event, provided that the work has not been created in order to be reproduced in a newspaper or a periodical.

Section 8 of the Finnish Copyright Act provides for a definition of a work “made public”. This definition is also applicable in context of subject matter protected by related rights<sup>8</sup>:

### **8 §**

#### **Julkistaminen ja julkaiseminen (22.5.2015/607)**

Teos katsotaan julkistetuksi, kun se luvallisesti on saatettu yleisön saataviin. Julkaistuksi teos katsotaan, kun sen kappaleita tekijän suostumuksella on saatettu kauppaan tai muutoin levitetty yleisön keskuuteen. (31.7.1974/648)

### **8 §**

Made public and publishing

(1) A work shall be considered to have been made public when it has lawfully been made available to the public.

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<sup>8</sup> Section 8 is applicable to performances of literary or artistic works or folklore [Section 45 (7)], sound recordings [Section 46(3)], video recordings [Section 46a(3)], radio and television transmissions and any other programme-carrying signal [Section 48(4)], a substantial part of a catalogue, a table, a program or any other product in which a large number of information items are compiled or of a database the obtaining, verification or presentation of which has required substantial investment [Section 49(3)], and to photographic pictures [Section 49a(3)].

(2) A work shall be regarded as published when copies thereof have, with the consent of the author, been placed on sale or otherwise distributed to the public.

Unauthorized uses made under Section 22 and Section 25 are subject to the conditions specified in Section 11 of the Finnish Copyright Act. This section is also applicable to subject matter protected by related rights<sup>9</sup>:

#### **11 § (14.10.2005/821)**

##### **Yleiset säännökset (22.5.2015/607)**

Tämän luvun säännöksillä ei rajoiteta tekijälle 3 §:n mukaan kuuluvaa oikeutta laajemmin kuin 25 e §:stä johtuu.

Jos tämän luvun säännöksen nojalla teoksesta valmistetaan kappale tai teos saatetaan yleisön saataviin, tekijän nimi ja lähde on mainittava siinä laajuudessa ja sillä tavoin kuin hyvä tapa vaatii. Teosta ei saa tekijän suostumuksetta muuttaa enempää kuin sallittu käyttäminen edellyttää.

Tässä luvussa säädetyn tekijänoikeuden rajoituksen nojalla valmistetun teoksen kappaleen saa rajoituksen mukaisessa tarkoituksessa levittää yleisölle ja kappaletta käyttää julkiseen esittämiseen.

Mitä 3 momentissa säädetään, sovelletaan vastaavasti myös sopimuslisenssin nojalla tapahtuvaan käyttämiseen.

Tässä luvussa säädetyn tekijänoikeuden rajoituksen nojalla ei saa valmistaa kappaleita sellaisesta teoksen kappaleesta, joka on valmistettu tai saatettu yleisön saataviin 2 §:n vastaisesti tai jota suojaava tekninen toimenpide on 50 a §:n 1 momentin vastaisesti kierretty. Mitä tässä momentissa säädetään, ei kuitenkaan koske teosten käyttämistä 11 a, 16, 16 a–16 c tai 22 §:n tai 25 d §:n 2 tai 5 momentin nojalla.

#### **11 §**

##### **General provisions**

(1) The provisions of this Chapter<sup>10</sup> do not limit the rights conferred to the author by section 3 to a larger degree than as provided in section 25 e.

(2) If a work is reproduced or made available to the public under the provisions of this Chapter, the author's name and the source must be indicated to the extent and in a manner required by proper usage.

The work may not be altered without the author's consent more than necessitated by the permitted use.

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<sup>9</sup> Section 11 is applicable to performances of literary or artistic works or folklore [Section 45 (7)] and photographic pictures [Section 49a(3)]. Section 11 (2-5) is applicable to sound recordings [Section 46(3)], video recordings [Section 46a(3)], radio and television transmissions and any other programme-carrying signal [Section 48(4)], and to a substantial part of a catalogue, a table, a program or any other product in which a large number of information items are compiled or of a database the obtaining, verification or presentation of which has required substantial investment [Section 49(3)].

<sup>10</sup> Chapter 2 — Limitations on copyright and provisions concerning extended collective license (14.10.2005/821).

(3) A copy of a work made by virtue of a limitation on copyright as provided in this Chapter may be, for the purpose determined in the limitation, distributed to the public and used in a public performance.

(4) The provisions of subsection 3 shall correspondingly apply to use by virtue of extended collective licence.

(5) A limitation on copyright as provided in this Chapter does not permit the reproduction of a copy of a work which has been made or made available to the public contrary to section 2 or whose technological measures have been circumvented in violation of section 50a(1). The provisions of this subsection shall not, however, pertain to the use of works under sections 11a, 16, 16a–16c or 22 or under section 25d(2) or (5).

Section 11 of the Finnish Copyright Act states that the moral rights of the author conferred by Section 3 cannot be limited by the legal provisions dealing with unauthorized uses:

### 3 §

#### **Moraaliset oikeudet (22.5.2015/607)**

Kun teoksesta valmistetaan kappale tai teos kokonaan tai osittain saatetaan yleisön saataviin, on tekijä ilmoitettava sillä tavoin kuin hyvä tapa vaatii. Teosta älköön muutettako tekijän kirjallista tai taiteellista arvoa tahi omalaatuisuutta loukkaavalla tavalla, älköönkään sitä myöskään saatettako yleisön saataviin tekijää sanotuin tavoin loukkaavassa muodossa tai yhteydessä. Oikeudesta, joka tekijällä on tämän pykälän mukaan, hän voi sitovasti luopua vain mikäli kysymyksessä on laadultaan ja laajuudeltaan rajoitettu teoksen käyttäminen.

### 3 §

#### **Moral rights**

(1) When copies of a work are made or when the work is made available to the public in whole or in part, the name of the author shall be stated in a manner required by proper usage.

(2) A work may not be altered in a manner which is prejudicial to the author's literary or artistic reputation, or to his individuality; nor may it be made available to the public in such a form or context as to prejudice the author in the manner stated.

(3) The right conferred to the author by this section may be waived by him with binding effect only in regard of use limited in character and extent.

## 2. Analysis of the scope of the exception or limitation

### 2.1. Acts

This exception is silent about the acts covered by the exception. This silence must be interpreted as including any acts of exploitation: reproduction, distribution, communication to the public and making available to the public, as well as translations and other adaptations<sup>11</sup>.

The legal provision is technologically neutral, allowing quotations made in digital formats, as well as quotations made in online contexts. In a case dealing with quotations of music, the Finnish Copyright Council<sup>12</sup> noted that it does not matter whether the quotation is done using wav, streaming, audio or mp3 format, as long as the general conditions set for the legitimate use of a quotation are met<sup>13</sup>. In another opinion, where the Council analysed the possibility of using quotations of video clips for educational purposes on a teaching website, this entity considered that online uses of quotations are covered by the exception<sup>14</sup>.

### 2.2. Object

The Finnish Copyright Act allows quotations of all categories of copyrighted works, as well as of all types of subject matter protected by related rights (performances of literary or artistic works or folklore, sound and video recordings, sound a music recordings containing images, radio a television transmissions and other broadcasts, compilations, databases protected by sui generis rights, and photographic pictures<sup>15</sup>).

Only works or other subject matter that have been lawfully made available to the public can be subject of a quotation. Lawfully shall be deemed to refer to the fact that the work was made public with the author's or right holder's permission<sup>16</sup>. The

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<sup>11</sup> This is how art. 10(2) of the Berne Convention, which, similarly, does not specify the rights covered by the exception, is interpreted by Prof. Raquel Xalabarder. See Xalabarder, 2009: 18.

<sup>12</sup> The Finnish Government appoints a Copyright Council, composed of representatives of the major right holders and users of protected works, to assist the Ministry of Education and Culture in copyright matters and to issue opinions on the application of the Copyright Act. Anyone can request an opinion to the Copyright Council. The opinions are non-binding. See

<http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/index.html?lang=en>

<sup>13</sup> See Copyright Council Statement 2002:11 issued on 20.08.2002.

<sup>14</sup> See Copyright Council Statement 2002:16 issued on 5.11.2002, in which the Council states that “*storing a copyright protected work somewhere on the web server is a copyrighted relevant operation, namely an act of reproduction, which is part of the author's exclusive right and requires his permission, unless that measure is permitted, for example, by the exception for quotation in the Copyright Act 22 §*” (translation by Maria Rehbinder).

<sup>15</sup> Photographs that are not considered photographic works protected by copyright, because they do not reach the originality required of works, are protected by a right related to copyright, under which the photographer has the exclusive right to decide on the use of the photo, with or without modification, by reproducing and making it available to the public.

<sup>16</sup> See Copyright Council Statement 2002:16 issued on 5.11.2002.



means through which the work has been made (publication or otherwise) are irrelevant.

Provided that the work has been made public, it is also irrelevant if the quotations are made from a legal or illegal source (see 11§ 5 mom. of the Finnish Copyright Act). The author's consent is only required for disclosing the work to public for the first time; the copy of the work then used to make the quotation can be a copy made available without such consent.

The extent to which a work can be quoted is determined on a case-by-case basis, since there are no general rules on the length or the amount of quotations<sup>17</sup>. The Finnish Copyright Council has noted that the permitted scope and use of quotations vary depending on the type of work in question and on the context of the use<sup>18</sup>. For instance, with regards to photographs, the opinion of the Council is that there are no obstacles to the quotation of entire photographs, but that in those cases the exception must be interpreted with restraint<sup>19</sup>. For cinematographic works, the length of the quotation is generally viewed by the Council to be a few seconds long clip from a movie<sup>20</sup>. It should be noted, however, that the opinions of the Council are not binding. One should also keep in mind that reproductions of whole works of art in pictorial form can also be done in scientific or critical presentation according to section 25 § 1 mom. of the Copyright Act.

### 2.3. Purposes

The Finnish quotation right is not subject to any "context requirement". In other words, the Copyright Act does not specify or even exemplify the context within which quotations are legitimate. The InfoSoc Directive, on the contrary, prescribes that quotations can be made for purposes *such as* criticism or review. Uses for purposes that are comparable to criticism or review are, nonetheless, understood as falling within the scope of the EU quotation exception<sup>21</sup>.

The only condition imposed by the Finnish Copyright Act is that the quotations are made "in accordance with proper usage". Proper usage refers to general ethical standards and is somehow similar to the idea of 'fair practice' found in art. 10(1) of the Berne Convention and in art. 5(3)(d) of the InfoSoc Directive.

According to the Finnish Copyright Council, the "right to quote is intended primarily as a way to support intellectual creation, not as a way to take advantage of works or other protected items as materials to a new work or for the creation of multimedia components"<sup>22</sup>.

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Hugenholtz and Senftleben, 2011: 15.

<sup>22</sup> See Copyright Council Statement 2002:16 issued on 5.11.2002 (translation by Maria Reh binder).

It should be noted that the language of the Finnish quotation exception does not require or imply that the quoted work must be used or incorporated in a subsequent “work”. “Mere” quotations (e.g. in face-to-face teaching activities) which do not result in a new work are also covered by this legal provision. If the quoted work is incorporated in a new work, the relationship between the quotations and the final result is, according to the Finnish Copyright Council, essential to determine whether it is permissible to use the quotation right<sup>23</sup>. For this entity, it is clear that a product consisting purely of quotations cannot be allowed under the quotation exception<sup>24</sup>. The Council has also held the opinion that quotations are not permitted if their aim is only to make the new work appear more interesting<sup>25</sup>.

On a recent opinion of the Copyright Council, regarding the use of quotations in a book, the Council considered that the quotations were not in accordance with the law because they were not marked and because no credits were given to the author; the fact that the book was published and commercially distributed was not pointed out by this entity as being a problem<sup>26</sup>. It should be noted that commercial purposes are not expressly excluded in Section 22, which means that, provided that the commercial use is in accordance with proper usage, it should be permitted. Some Finnish scholars consider, however, that “in accordance with proper usage” should be interpreted as meaning that uses for advertising or other commercial purpose are not allowed<sup>27</sup>.

#### 2.4. Beneficiaries

Section 22 does not exclude any types of beneficiaries, which means that any individual or entity can make unauthorized quotations under this exception.

#### 2.5. Remuneration

Quotations are not subject to remuneration.

#### 2.6. Other conditions

Users must indicate the author's name and the source to the extent and in a manner required by proper usage.

The work may not be altered without the author's consent more than necessitated by the permitted use. This means that translations and other transformative uses are permitted as long as they are needed in the context of the quotation and provided they are in accordance with proper usage.

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> See Copyright Council Statement 2015:13 issued on 1.12.2015.

<sup>27</sup> Harenko, Niiranen and Tarkela, 2006: 175.

### 3. Analysis of the impact of the exception or limitation

There are no studies on the social or economic impacts of the quotation exception in Finland.

### 4. Examples of use

#### I. Opera that quotes large amounts of text without identifying the sources

[Lapualaisooppera](#) (1996) is a notable new opera by Arvo Salo, which consists of a radical performance that was critical of the existing society and expressed a political viewpoint. In this play, Arvo Salo made quotations of large amounts of the literary work “Kolme kuukautta Kosolassa” (1931) by Artturi Vuorimaa, without naming the source. Nevertheless, the Supreme Court of Finland judged the quotations legal<sup>28</sup>.

#### II. E-learning materials that quote musical notes and music recordings

A university prepared e-learning materials with quotations of musical notes and fragments of music recordings, with the aim to explain different musical works or artists or different musical styles. The Finnish Copyright Council held the opinion that the use was legal<sup>29</sup>.

#### III. Open educational resources that quote song lyrics

A High School teacher made learning materials analysing the life of the Finnish singer [Juice Leskinen](#) as reflected by his work, and included quotations of his song lyrics while analysing the same. These materials were [published in the Internet as open educational resources](#) intended for high school use. The Finnish Copyright Council considered that the use was permitted<sup>30</sup>.

### 5. Notes

Case Law

[Supreme Court decision 1971 II 44](#), 11.05.1971

Copyright Council Statements

[Tekijänoikeusneuvoston lausunto 1998:17](#) issued on 10.11.1998

[Tekijänoikeusneuvoston lausunto 2002:11](#) issued on 20.08.2002

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<sup>28</sup> See Supreme Court 1971 II 44, 11.05.1971.

<sup>29</sup> See Copyright Council Statement 2002:11 issued on 20.08.2002.

<sup>30</sup> See Copyright Council Statement 1998:17 issued on 10.11.1998.

[Tekijänoikeusneuvoston lausunto 2002:16](#) issued on 5.11.2002

[Tekijänoikeusneuvoston lausunto 2015:13](#) issued on 1.12.2015

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