Copyright, Technology and the CJEU
An Empirical Study

Tito Rendas
1. Background
2. Research questions
3. Empirical study
4. Conclusions
1. Background
technology-enabled uses
scope of rights + exceptions
EU framework of rights and exceptions

i) Economic rights with broad scope
ii) Broad interpretation of rights
iii) Rule-like exceptions
iv) Strict interpretation of exceptions
v) Closed catalogue of exceptions
vi) Restrictive three-step test
critique
lack of flexibility
technological innovation
yet courts decide flexibly
Vorschaubilder I
“simple consent”
Megakini v. Google Spain
caching
good faith
+ abuse of rights
+ *ius usus inocui*
no “absurd” conclusions
strict interpretation
“liberal”
2. Research questions
Research question #1:
What is the relative prevalence of infringing and non-infringing outcomes?
Research question #2:
Is the CJEU abiding by the constraints or is it deciding flexibly?
3. Empirical study
research sample
Criterion #1:
Decisions on the lawfulness of technology-enabled uses
Criterion #2: Decisions that turn on at least one of the six constraints
21 cases

27 tech-enabled uses
InfoSoc (17)
Software (3)
Rental & Lending (1)
reproduction (11)
communication (10)
public lending (1)
methodology
Content analysis
coding
infringing vs. non-infringing
infringing vs. non-infringing

(11) (16)
Infringing

Non-infringing

CJEU AG

41% 56% 59% 44%
flexible vs. inflexible

(71%) vs. (29%)
Narrow interpretation of right

Broad interpretation of exception(s)

No/summary assessment of three-step test

Creation of exception / users' right
4. Conclusions
legal certainty
fair use
the end.

tito.rendas@gmail.com