

# CATÓLICA LAW REVIEW

VOLUME VII  
n.º 2  
mai. 2023

## DIREITO PRIVADO

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CATÓLICA

RESEARCH CENTRE  
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LISBOA · PORTO

*The shape of things to come:  
exceptions, limitations, and user rights  
in EU copyright law*

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Tito Rendas' *Exceptions in EU Copyright Law. In Search of a Balance Between Flexibility and Legal Certainty* was released in 2021. It is a revised and updated version of the Author's doctoral thesis successfully defended the previous year.

The main objective of the book is twofold. The first is to assess the EU system of copyright exceptions and limitations – with a special focus on Article 5 of the InfoSoc Directive 2001/29 – and consider the extent to which such a system promotes flexibility and legal certainty. It is remarkable that Rendas considers the two not as antithetic goals – as it has been instead and regrettably the case in a lot, if not most, of the public discourse around EU copyright reform over the past several years – but rather as complimentary objectives, both of which are necessary to achieve.

At the end of this first part, the Author concludes that the status quo is unsatisfactory. This conclusion is not particularly surprising, as most of the academic commentators have criticized the structure and content of Article 5 of the InfoSoc Directive. What is more interesting is the thus the second objective of Rendas' inquiry, notably how to reform the EU system of copyright exceptions and limitations in such a way that it allows for greater flexibility and legal certainty. In a nutshell, what should be done is introducing a three-tier system comprising: an exhaustive catalogue of mandatory rule-like exceptions; a quasi-exhaustive catalogue of optional exceptions; and a subsidiary standard-like exception partly inspired by the US fair use doctrine.

Overall, Rendas' book is the result of a rigorous and compelling investigation into EU copyright. May I also add that, unlike (several) other works that have focused on exceptions and limitations, it is also a *serious* investigation? Indeed, the Author does not start from any ideological standpoint: he approaches his inquiry without undue pre-conceived ideas or even ideological bias. It is clear that flexibility is not a goal in itself and should not be conflated with the different concept of fairness. To achieve the latter, legal certainty is also needed. This is a welcome and not at all banal starting point.

Other Commentators have already reviewed this book (see, for example: R Arnold, 'Guest Book Review: Exceptions in EU Copyright Law: In Search of a Balance Between Flexibility and Legal Certainty' (21 December 2021) The IPKat, available at <https://ipkitten.blogspot.com/2021/12/guest-book-review-exceptions-in-eu.html>; G Priora, 'Understanding, assessing and rethinking copyright exceptions in the EU' (2021) 16(12) JIPLP 1415). I cannot but agree with them

that Tito Rendas' book makes an excellent addition to the library of any *serious* (can I say that again?) copyright researcher, policymaker, and – why not – also lobbyist. I will therefore not repeat their assessment.

I would however like to take the opportunity to highlight two parts of the book that I have particularly appreciated and are testimony to Rendas' analytical and intellectual skills. The first is his discussion of 'exceptions' and 'limitations' and what the similarities and differences between them might be. The second is his consideration of exceptions in Article 17 DSM Directive 2019/790 as rights of users, well before the Court of Justice of the European Union called them precisely this way in its 2022 judgment in *Poland*, C-401/19.

In sum, and to conclude: this book is much more than a re-elaboration of a PhD thesis. It displays a depth of analytical thinking and originality of thought that well exceed what is expected of such a work. All this also indicates that we should expect to see much more from Rendas in the coming years. I cannot but say that I look forward to his continued contribution to building a healthy and balanced EU copyright regime.



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## RECENSÃO

«O concurso de responsabilidade civil – Ensaio sobre o concurso das modalidades delitual e obrigacional de responsabilidade civil», por António Barroso Rodrigues \ **Ana Isabel Afonso**

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