

# On Uploading and Downloading copyrighted works: The potential legality of the users' Interest in engaging in such acts - The case of the EU and the US paradigm

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## Abstract

Two acts of interest to copyright law take place in the context of peer-to-peer networks (P2P file-sharing), namely the acts of 'uploading' and 'downloading' copyrighted works. If file-sharing is categorized as uploading, which will infringe the communication to the public right (and possibly the reproduction right since the uploader makes a remote and a temporary copy in the course of uploading), and downloading, which will infringe the reproduction right, then the question is to what extent the copyright exceptions could apply to P2P file-sharing. The application of the private copy exception in the case of downloading works from P2P networks has been confirmed by some EU Member States while it has been rejected by others. Uploading works to P2P networks has been almost always considered an infringement of the make available exclusive right by the EU Member States. In the case of uploading, the protection of users' privacy has been raised as a possible users' defense. In the US, recently, the requirement of 'actual distribution' of the work was introduced according to which making copyrighted works available for possible download through P2P networks is by itself not enough to violate the US distribution right (which, if interpreted properly, encompasses the make available right). Overall, this work examines to what extent the copyright exceptions could and should be enforced against the exclusive rights of authors and whether the copyright balance between exclusive rights and copyright exceptions could be safeguarded in the digital environment, in particular, in the context of P2P networks.