

e-law, sample questions for written test including norm answers

Essay questions

1. The (ab)use of ICTs challenges fundamental rights and principles of EU law. Mention three fundamental rights or principles and explain (by using an example) why legal protection is necessary to safeguard them.
➔ *Please refer to lecture A (introduction) slide 6 for fundamental rights and principles and corresponding examples*
2. In 1995 European rules were introduced on the processing of personal data. Nevertheless, there are major differences between the privacy rules that are in force among the European Member States. Please explain how this is possible and why these differences will disappear from May 25th, 2018.
➔ *The 1995 rules were designed as a European directive. This means that every member State had to implement those rules into its national legal system. This is called minimum harmonisation. Member States are free to implement stricter rules, and Member States have some degrees of freedom in how to interpret and implement those rules, so, differences are obvious. The 2018 rules (GDPR) is designed as a European Regulation. This means that the rules have direct effect in the Member states; no implementation needed, the European rules in the regulation replace the existing national law rules ("full harmonisation").*
3. Article 4 of the WIPO Copyright Treaty states that "Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression." Please explain that the meaning of this clause has slightly changed because of the SAS Institute Inc. vs World Programming Ltd case ("C-406/10").
➔ *Art. 4 of the WIPO Copyright Treaty does not define what exactly is meant by 'the mode or form of the expression of a computer program'. As the language implies that any 'mode or form' of the expression of computer programs is protected, one might have interpreted this language in such a way that for example also the functionality of a computer program is a mode or form of the expression of a computer program, meaning that copying functionality by creating new software would constitute a copyright infringement. However, the European court in the SAS/WPL case made clear that neither the functionality of a computer program nor the programming language and the format of data files used in a computer program in order to exploit certain of its functions constitute a form of expression of that program and, as such, are not protected by copyright in computer programs for the purposes of that directive. The source code itself does constitute a form of expression of the computer program, so, copying the source code without permission of the copyright owner could establish a copyright infringement.*
4. Currently, robots do not have legal personality. Please explain why recognizing robots as 'legal actors' might solve some legal problems in (future) daily life.
➔ *Question not covered by study materials any more. However, complications may be: robot unable to pay monetary damages (although just like corporations, a legal fiction may be introduced in order to allow robots to have a bank account, insurance etc, but not every robot*

will be able to generate income...), no effective punishing (jailing seems to be ineffective), en the incentive for robot developers to design the robot in a 'moral' way would disappear if not the developer but the robot itself would be liable as an electronic legal person.

5. In *Public Relations Consultants v Newspaper Licensing Agency (e.a.) (C-360/13)*, the court decided that the copies on the user's computer screen and the copies in the internet 'cache' of that computer's hard disk, made by an enduser in the course of viewing a website, may – under 'certain conditions' - be made without the authorization of the copyright holders. In which article of which directive / regulation can these 'certain conditions' be found?
- ➔ *Article 5 (1) and 5 (5) of 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.*

Multiple choice questions

6. Which of the following statements concerning e-lawmaking is correct?
- I. Traditionalists are cautious to introduce new e-law rules because of the qualitative changes caused by ICT developments
 - II. Renewers claim that new problems demand for new legal solutions
- a) Only statement 1. is correct.
 - b) Only statement 2. is correct.**
 - c) Both statements are correct.
 - d) Both statements are incorrect.
7. Which of the following is an advantage of techno-regulation in comparison with written (traditional) regulation
- a) Legitimacy
 - b) Cross border application**
 - c) Possibility of ex post enforcement
 - d) None of the above
8. In the *Lex informatica*, the framework of 'architecture standards' relates to the framework of 'law' in *Legal regulation*, just like 'configuration' in the *Lex informatica* compares to
- a) Court expressions
 - b) Contracts**
 - c) Courts
 - d) User choice
9. According to Leal (2014), the proposed EU rules on net neutrality
- a) provide a clear definition of net neutrality
 - b) will increase legal certainty
 - c) confirm that some bits are 'more equal than others'**
 - d) may lead to less choice for consumers

10. If a database gains legal database protection under directive 96/9/EC, the holder of such database right shall have
- a) the non-exclusive right to reproduce substantial parts of a database
 - b) the exclusive right of alteration of the database**
 - c) the non-exclusive right to reproduce the whole database
 - d) all rights mentioned above