## Table of Contents

Abbreviatio	ns		13			
Introduction	n anc	research questions	15			
Chapter I:	Dig	Digital restrictions – A case of consumer detriment				
Chapter II:	Leg	l nature of digital content products				
	2.1	Classification of digital content products 2.1.1 Digital content according to the means of	31			
		<ul><li>access</li><li>2.1.2 Digital content according to the counter- performance provided by the consumer</li></ul>	31 32			
	2.2	Legal status of digital content products	33			
	2.3	European legislation	35			
	2.4	National legislation	41			
81+	2.5	First conclusion	46			
Chapter III:	Leg digi	al regimes applicable to Business-to-Consumer tal contracts	47			
	3.1	Introduction: Consumer law and copyright law – Two parallel universes?	48			
	3.2	EU copyright law	49			
		<ul><li>3.2.1 Introduction</li><li>3.2.2 The three-step test and exceptions and limitations protecting the consumer's use of</li></ul>	49			
		digital content products 3.2.3 Limitations on consumer uses emerging	54			
		from the Copyright Directive	69			
		3.2.3.1 Digital exhaustion	69			
		(TPM)	74			

9

	3.2.4	Exercising control over copyrighted content:						
		Drotect	on Measures	greenients and reeninear	79			
	225	The cas	of the priva	te conveycention	85			
	276	The per	v Directive o	n Copy exception	05			
	3.2.0	Digital	Single Marke	et	97			
2 2	EII -	0	1		102			
3.3	EUC		law D. 1		105			
	3.3.1	The Consumer Rights Directive						
		3.3.1.1	Pre-contract	ual information	107			
			3.3.1.1.1 Fo	ormal requirements and	100			
			tra	ansparency obligations	109			
			3.3.1.1.2 In	formation concerning				
			pa	ayment obligations	110			
			3.3.1.1.3 In	formation provided in				
			l11	mited space or time	110			
			3.3.1.1.4 Ti	ming and framing	111			
		3.3.1.2	The right of	withdrawal for digital				
			content pro	ducts	113			
		3.3.1.3	Digital cont	ent not supplied in				
			exchange of	a monetary price	114			
	3.3.2	The Unfair Contract Terms Directive						
		(UCTD	)		117			
		3.3.2.1	The UCTD	unfairness test	118			
			3.3.2.1.1 Fo	ormal assessment	120			
			3.3.2.1.2 Su	ibstantive assessment	122			
		3.3.2.2	Indicative li	st of unfair contract				
			terms		124			
		3.3.2.3	Relationship	o of the UCTD with				
			copyright la	W	126			
		3.3.2.4	Application	of the fairness test to				
			EULAs		127			
			3.3.2.4.1 In	nbalance of the parties'				
			ri	ghts and obligations	127			
			3.3.2.4.2 C	onsumer detriment	132			
			3.3.2.4.3 C	ontrary to the				
			re	quirement of good faith	133			
	3.3.3	The Unfair Commercial Practices Directive						
		(UCPD	)		137			
		3.3.3.1	Application	of the UCPD fairness				
			test to techn	ical restrictions	138			

			3.3.3.2	Misleading actions and omissions on the application of TPM as an unfair	
				practice	139
		3.3.4	The Co	mmission's proposal for a Common	
			Europe	an Sales Law	142
			3.3.4.1	The politics of EU contract law	144
			3.3.4.2	Guarantee rights for digital content	
				products	146
			3.3.4.3	Unfair contract terms for the supply	
				of digital content under the CESL	1 5 1
			2211	The fairness test under the CESI	121
			3.3.4.4	proposal	152
		<b>m</b> 1 D			152
	3.4	The D	)irective	on Digital Content and Digital	154
		Servic	es (DC)		154
		3.4.1	Scope	of application	159
		3.4.2	Confo	frmity of the digital content and	1()
		2 1 2	Light	its of the trader and consumer	162
		5.4.5	reme		167
		344	Relati	onship of the DCDSD with copyright	107
		5.1.1	law	onship of the DODOD with copyright	168
			2011		
Chapter IV:	A Ba	alancin	ng Test o	of Conflicting Interests	171
	4.1	The E	U princ	iple of 'balancing'	171
	4.2	The E	U princ	iple of protection of the weaker party	181
	4.3	Fairne	ess benc	hmarks to assess user restrictions	189
	1.0	431	Consui	ners' legitimate expectations	189
		1.5.1	4.3.1.1	The "auid" in the protection of the	10/
			101111	consumers' expectations	190
			4.3.1.2	How to define what the consumers'	
				legitimate expectations in a digital	
				content contract are?	191
		4.3.2	Justific	ation used for the restriction	198
	4.4	Secon	d concl	usion	202

## Table of Contents

Chapter V:	Proposal for an integrative approach			
	5.1	Interpretative approach 5.1.1 The role of Copyright law 5.1.2 The role of Consumer law	206 208 209	
	5.2	Regulatory approach	213	
		<ul> <li>5.2.1 Regulatory approach within EU copyright law</li> <li>5.2.2 Regulatory approach within EU consume</li> </ul>	t 213	
		law	216	
	5.3	Final conclusions	218	
EU Legal Ac	cts		220	
Proposals for EU Legal Acts			223	
Case law of the CJEU			224	
Advocate Generals' opinions			228	
Bibliograph	у		229	