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**Summary 2012/213**

**Annual reports to the IFLA CLM committee, Singapore 2013**

This summary is a collection of issues reported in the country reports. For more detailed informations, please consult the original report of the respective country.

## **Copyright**

### **New and proposed legislation / rulemaking**

#### *General copyright issues:*

In Canada, a new Bill was introduced, which, if it comes into force, could harmonize Canadian legislation with the ACTA. In the USA, the House of Representatives Judiciary Committee announced that it will conduct a comprehensive review of U.S. copyright law over the coming months. The committee, will hold a comprehensive series of hearings on U.S. copyright law in the months ahead with the goal of updating of copyright law to accommodate new technologies.

#### *Works protected by copyright:*

In the Netherlands, a proposal to limit copyright protection to original creative works in on the way. In South Africa, a new Protection of State Information Act was passed by the National Assembly. This Bill (dubbed the “Secrecy Bill”) is seen to undermine the right to access information of public interest.

#### *Orphan & Out-of-Print Works / Digitization:*

European Union: Corresponding to directive 2012/28/EU, member states have to implement legislation for the digitization of orphan works. Privileged institutions are only libraries, archives and other facilities conserving cultural heritage. The orphan works – after diligent search in resources listed in the directive’s annex - can only be used for non-commercial purposes. The orphan work status can be terminated by later appearing rightsholders. In this case, they can claim an appropriate remuneration for the use. Apart from orphan works, the directive allows national legislators to adopt rules for the use of *out of commerce* works In Croatia, Finland, Latvia and Netherlands new legislation has yet to be enacted in order to implement the EU. It seems that in Finland the critical issue is the identification of sources of data needed for diligent search; in Croatia the identification of an adequate collective management organization; in the Netherlands the Ministry of Security and Justice and Ministry of Education are preparing a proposal for the implementation of the Directive and are working on a list of resources to be consulted in conducting a diligent search. In Germany, new legislation on OW and out-of-print works was adopted.

In Finland, a new paragraph on extended collective licensing would give the newspaper publishers a right to conclude agreements with a rights holder organisation on the use of their own archives. The effects of such agreements are by law extended also to those individual rights holders that are not members of any organisation. In the Netherlands, CMOs and cultural heritage institutions are working together to introduce extended collective licenses to Dutch legislation.

In the USA, comments on orphan works and digitization were sought by the US Copyright Office. The Copyright Office is interested in identifying legislative, regulatory, or voluntary solutions. The Digital Public Library of America was officially launched in 2013 as a counterpart of Europeana. In Russia, amendments to the Civil Code have been announced: They will allow legal deposit libraries to digitize scholarly and academic books 10 years after the publication.

*Exceptions for research and studies:*

In the USA, Corresponding to Digital Millennium Copyright Act Section 1201 Rulemaking, the Librarian of Congress granted an exception for Motion pictures and other audiovisual works on DVDs or distributed by online services, for the purpose of research to create DVD players capable of rendering captions and descriptive audio for persons who are blind, visually impaired, deaf, or hard of hearing.

In Germany, the term of restricted § 52a UrhG, an exception which permits making available parts of copyrighted material to seminar participants or research groups online, was extended until 2014/12/31

*Other exceptions:*

*Parody:* In Hong Kong, the Government of the HK Special Administrative Region issued a consultation document in July 2013 to consult the public for three months on how to deal with parody in the Hong Kong copyright regime. The following three options are provided to strike a balance between copyright protection and freedom of expression: a) Clarification of existing provisions for criminal sanction under the Copyright Ordinance, b) Introduction of a criminal exemption for parody, c) Introduction of a fair dealing exception for parody

*Print disabled persons, USA* Copyright office rulemaking 2012: Literary works distributed electronically, to permit blind and other persons with print disabilities to use screen readers and other assistive technologies

*Data mining:* In Latvia, an exception allowing data mining is expected to be introduced in the Copyright Act.

*Open Access to research publications:*

In the USA, the Fair Access to Science and Technology Research Act of 2013 was introduced in both the House of Representatives and the Senate. It is the fifth attempt at legislation that would expand the open access mandate for publicly funded research. In Germany, legislation on researcher's mandatory right to use his work, after 12 month "embargo", has been adopted. It allows researchers to make their works in their own manuscript version, as long as they are (more than half) publicly funded, available to the public, e.g. on institutional repositories. But this does *not* apply to researchers working at universities. In Croatia, a Declaration on Open Access was initiated and published by the academics supporting the EU decision to make research funded from public funds available by open access. In Russia, the law on mandatory open access

to qualification and graduation papers at universities is prepared. In South Africa, OA has been strongly supported and discussed among the academics

*Re-use of public information:*

In Croatia, a new Act on Public Access to Information (FOI) was adopted to harmonize national law with the EU Directive on the re-use of public sector information. In the Netherlands, a review is on the way

*CMOs:*

In Moldova, the Regulation on collective management of copyright and related rights was prepared in 2012 but has not yet entered in force. In Namibia, the government and civil societies help establish CMOs. In the Netherlands, a law aimed at a stronger supervision of CMOs and improved transparency of their activities entered into force in July 2013. A body was established in order to monitor and supervise both statutory and voluntary CMOs in the country. In Latvia, regulation on levies on data carriers was changed; levies for new carriers, like USB drives were introduced, but not for mobile phones as was expected by rights holders.

*Legal deposit:*

A new Legal deposit law is being prepared in Latvia, but there is a major disagreement between publishers and librarians about the number of copies to be deposited and the submission of electronic material. The Library law of Croatia is going to be amended and legal deposit is a critical issue.

*Public Lending Right:*

In Latvia, a proposal of remuneration schemes is on the way: Publishers should become beneficiaries, along with authors.

*TMP/DRMs:*

In Namibia, the law on Technical Protection Measures (TPM) stipulates that a person infringes copyright if he: a) manufactures or imports for sale or hire any device designed or adapted to circumvent any device that is intended to prevent or restrict a reproduction of a work or impair the quality of the copies so made; b) removes or alters any electronic rights management information without the consent of the owner of the copyright; c) distributes, imports or communicates to the public an infringing work from which the (electronic) rights management information has been removed and while knowing or having reason to know that such information has been removed from the work in question.

*Piracy / Enforcement:*

In Ghana, the focus on copyright is skewed towards enforcement. The reason is the influx of local and foreign pirated works on the streets and market has made it urgent to involve all stakeholders in training programmes. Bulgaria was included in the Special 301 Report (Watch List) prepared annually by the Office of the US Trade Representatives, Bulgaria was not presented in this list (known here also as the Blacklist) since 2007; The stated reason for this step - internet piracy in Bulgaria (including big torrent trackers); Recently was started a campaign for the stoppage of one famous Bulgarian website (chitanka.info) known also as My Library, On this site are uploaded many books (of Bulgarian and foreign authors including copyrighted ones), This is the biggest Bulgarian website for free access to literature and the issue with chitanka.info has a very long

background, However, recently was filed a signal by the Association "Bulgarian Book" before Bulgarian Police authorities regarding this website; Following this signal, the owners of the website have stopped the access to books of US authors (the action is manifested to be a sign of protest against the expected campaign for stoppage of the website); 4) In a recent Report of European Commission Bulgaria was mentioned as taking the third place as a source of counterfeiting products entering EU Market; According to this report 5,2 % of the seized counterfeited goods in EU came from Bulgaria (on the first place is China with 87%).

#### *Liability:*

In Moldova, a modification of the mechanism used to ensure rights in the online environment is on the way. It takes into account the technical possibilities, not to prejudice any rights to any of the parties. In particular, the amendments concern exemption from liability internet-providers, considering that they only facilitates access to internet without the physical possibility to control, restrict, block traffic and / or interfere with changes in the information.

#### **Legal Matters:**

##### *Privacy:*

In Finland, a draft of the new data protection regulation is prepared and heads of memory institutions sent a letter to Minister of Justice expressing concern over certain parts of the draft, especially the part concerning the right to be forgotten and right to erase information. The German Privacy Ombudsman sent a letter of concern to Google CEO Larry Page concerning its non-transparent collection of private data without agreement of persons concerned. In South Africa, the Protection of Personal Information Bill has been tabled in the Parliament. It should bring South African citizens in line with international data protection legislation.

##### *Moral rights*

In Croatia, the new Criminal Code entered into force in 2013 with sanctions for moral rights infringements (earlier moral rights were protected by the Copyright Act only).

##### *Traditional knowledge:*

In Namibia, an Intellectual Property Amendment Bill which would place traditional knowledge under copyright is still pending. Opinions are voiced that sui generis treatment would be more adequate. In South Africa, the Intellectual Property Amendment Bill launched by the Department of Trade and Industry in 2009 has met with opposition and has not yet been adopted. Amendments would include certain forms of traditional knowledge under copyright protection. An alternate Protection of Traditional Knowledge Bill was published for public comment; it provides sui generis legislation to protect traditional knowledge.

#### **Advocacy/Lobbying:**

In Canada, the Association of Universities and Colleges of Canada adopted a "fair dealing" policy. In Russia, workshops and seminars on copyright were organized during Crimea and Libcom international conferences and at national conferences. A new PR project "Read legally" aimed at promoting copyright awareness among the young has started.

#### **WIPO Activities**

In Hong Kong, the Government commissioned a marketing research company to develop a survey on public awareness of IP. The results reveal a high degree of awareness of the IP issues among Hong Kong business sector and the general public. Namibia is a strong member of the Africa Group in WIPO and is currently involved in discussions on the draft WIPO Treaties. In the Netherlands, FOBIID supported the activities of the organizations of the visually impaired to promote the WIPO Treaty for the Blind and similar international and national developments. In South Africa, presentations on copyright were given at various fora and conferences in the country and abroad. TLIB, Treaty for the Blind and other draft treaties to be presented at WIPO were supported. In the US, the Library Copyright Alliance (LCA) worked with the US government in the course of negotiations on the WIPO Treaty for the Blind. It regularly participates in meetings of the WIPO/SCCR, the Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore and the Committee on Development and Intellectual Property representing the interests of the US library community and the public.

#### **Educational activities:**

Croatian Library Association has organized lectures and workshops related to digitization, copyright and e-books. In Hong Kong, a new Copyright Committee of the Joint University Librarians Advisory Committee was nominated responsible to the Heads of Universities Committee. In Moldova, copyright in the context of the mass digitization was the topic of a round table organized by the National Library and State Agency on IP in Moldova. Training courses on copyright in libraries have been offered by the National Library of Latvia. A possibility to develop and publish a handbook on copyright for librarians in Latvian has been discussed. Copyright information-sharing seminars and workshops at higher-education institutions in Namibia were organized for both students and lecturers within the annual public awareness programme. Also training has been organized for officials from law enforcement institutions on issues of piracy and counterfeiting. The Dutch FOBIID gave a presentation on digitization and copyright at the anniversary of the national digitization programme. In South Africa, workshops on copyright for students and staff were organized.

#### **Strategic plans for the future:**

In Latvia, there are plans to launch a pilot project on e-book lending. In Moldova, the National Strategy for the development of Information Society “Digital Moldova 2020” was proposed to the Moldovan parliament for approval. Also the National Intellectual Property Strategy until 2020 and the Action Plan for the Implementation of the Strategy for 2012-2014 were developed and approved by the government.

#### **Law cases**

##### *Works protected by copyright:*

Canada: Keatley Surveying Ltd. v. Teranet Inc., 2012 ONSC 7120. In this ruling, an Ontario court found that a format conversion is not a “translation” and is therefore not an infringement of copyright.

Germany, 2013/5/5: Munich Provincial Court. No copyright protection for porn: In a filesharing case (LG München, 7 O 22293/12), the court could not find enough creative performance in 2 films.

##### *First Sale/ Exhaustion for digital content:*

USA, *Supap Kirtsaeng v. John Wiley & Sons*. On March 19, 2013 the U.S. Supreme a decision, holding that the first-sale doctrine applies to copies of copyrighted works lawfully made abroad. The issue at stake was whether the first sale doctrine applies only to copies manufactured in the

United States. An adverse decision in this case would have affected libraries' right to lend books and other materials manufactured abroad.

Germany, 2013/3/05, Bielefeld Provincial Court (Az. 4 O 191/11): E-books are no books. Exhaustion doesn't apply. The court doesn't see any contradiction to ECJ "usedsoft" decision (2012), because of different interpretation of the two underlying EU directives: The exhaustion principle in the "usedsoft" directive is based on the software directive, which doesn't correspond to the exhaustion principle of the "infosoc"-directive.

*Fair use for research and study:*

USA, AIME v. UCLA. On November 20, 2012 the U.S. District Court for the Central District of California, ruling on the Defendants' Motion to Dismiss the Second Amended Complaint, dismissed the case with prejudice. The plaintiffs alleged that UCLA's practice of streaming digitized video through its course management system constituted copyright infringement. Plaintiffs allege that, using Video Furnace system, Defendants copied programs owned and licensed to AVP and streamed them on university intranet. The case is fundamentally about interpretation of contractual terms with respect to streaming as a public performance, but is relevant to the interpretation of fair use and of exclusive rights as they are implicated in streaming. An amended complaint was filed.

Germany, 2012/9/20, Superior Court (BGH I ZR 69/11): In its procedure on works made available on dedicated terminals in the reading room (see report 2011), the court decided to bring the case to ECJ for interpretation of the underlying copyright directive. Among other, the ECJ now has to answer the question, if the directive allows copying / printing of materials made available on such terminals.

*Digitization:*

USA, Authors Guild v. HathiTrust. On October 10, 2012 the U.S District Court for the Southern District of New York issued its decision, representing a victory for HathiTrust. The court found that the retention and use of books digitized for purposes of preservation, text search, and accessibility for the visually impaired were within the limits of fair use. The ruling is important for the continued existence of HathiTrust and will be helpful in future evaluations of fair use in the context of libraries, education, and research.

USA, Settlement between Association of American Publishers and Google. On October 4, 2012 the Association of American Publishers (AAP) and Google announced a settlement agreement that will provide access to publishers' in-copyright books and journals digitized by Google for its Google Library Project. The dismissal of the lawsuit ended seven years of litigation that commenced in October 2005. Under the agreement, books scanned by Google in the Library Project can now be included by publishers. Further terms of the agreement are confidential. This settlement is the result of negotiations between Google and the AAP. It does not affect Google's current litigation with the Authors Guild or otherwise address the underlying questions in that lawsuit.

USA, Authors Guild v. Google. On July 1, 2013 the Second Circuit Court of Appeals vacated the Southern District of New York's order certifying the class in *The Author's Guild, Inc. et al. vs. Google Inc.*, holding that such certification was premature,

Spain: Collecting societies have denounced two universities for copyright infringement and the case is now remanded to the district court for consideration of Google's fair use defense.. Collecting societies claim for uses through internal websites (intranet) in educational

environments. Universities claim that not all material available via intranet copyrighted protected and collecting societies cannot claim for the whole material kept in the repository. The final decision is very important because it will introduce a new copyright fee in the universities and educational area.

### *Copyright Arbitration*

Russia. On July 3, 2013 was signed the Presidential Decree on the nominative assignment for all 15 judges to rule at the new *intellectual* arbitrary judicial authority.

### *Remuneration:*

Netherlands: In November 2012, the Supreme Court gave its ruling regarding whether an extension of a loan of a copyrighted work qualifies as an independent loan that give entitlement to a higher lending fee. The Supreme Court decided that this is not the case as 'lending' is an act by which a work is ceded for a limited period of time. The period of extension falls under 'the limited time' during which a user is entitled to the work.

Netherlands: The Association of Dutch Public Libraries has initiated a procedure to get clarification of the European Court of Justice (ECJ) regarding the question whether the public lending right payments system in the EU, and the Rental and Lending Rights Directive also applies to e-books. This in relation to the judgment of the ECJ in the UsedSoft case.

### *Privacy/ Moral rights:*

Germany, 2013/5/14: Superior Court decided that Google has to take down offensive (autocomplete-) search suggestions after notice. A company claimed that Google connected the search with "Scientology" and "Fraud". Also, the former federal President's wife had claimed that her name was autocompleted with words like "escort" and "red light".

### *Secondary liability for Wi-Fi operators:*

Germany, 2012/11/15, Superior Court (Bundesgerichtshof, Az.: I ZR 74/12): Parents don't have to observe their children's internet behavior to prevent secondary liability for copyright infringements.

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