



International Federation of  
Library Associations and Institutions

## Summary of 2009 CLM Country Reports

The country reports from Canada, China, Croatia, Denmark, Finland, Germany, Israel, Lithuania, Moldova, the Netherlands, Nigeria, Poland, Russia, South Africa, Spain, Sweden, USA were perused in order to find the common issues of concern and/or the issues considered to be important in the field of copyright in those countries. The issues have been described in brief; more detailed information can be traced back to the reports. The issues of concern appear to be:

### Public Lending Right

In some developing countries and/or East European states, there is no exclusive lending right for rights holders. In Croatia, the introduction of the public lending right scheme has been foreseen in the Copyright Act (2003), but the scheme has yet to be implemented. In Moldova, conform to a new draft law, libraries without commercial interest have been exempted from the payment. In South Africa, the national Authors' Association is proposing a public lending right including royalty payment for academic authors.

### Revision of Copyright law

Revision and a deep change of copyright law is discussed in different countries and also at the EU level (Green Paper "copyright in the knowledge economy", COM (2008) 466/3). The Google Book search program seems to have strengthened the parties who propose new models. For example, in the Netherlands, in June 2009 the Parliamentarian Working Group on Copyright published its copyright report. It recommends a renewal of copyright itself and a development of a vision regarding copyright which in a European context can be used to convince European member States to choose solutions of the same tenor. Not waiting for Brussels but take its own initiative! Different ideas, for example penalization of downloading without the rights holders' consent and modification of levies for private copies are part of the report. On the other hand, it contains a proposal for Open Access licensing.

### Exceptions and Limitations

In Lithuania and Russia, enlargement of the public domain is on the way: in Lithuania, a regulation of reproduction rights for personal use and people with disabilities has been currently discussed. A royalty and obligation to compensate by means of the collection society is given for remunerated copying services – including libraries. The Parliament discusses a compensation obligation of producers and importers of reproduction devices. In Russia, there is no explicit legal provision of fair use, but it is recognized by the highest court: claims on copyright infringement shall not be accepted any more if it is obviously a "fair use" of the Work. Committee for Culture of the Russian State Duma (Parliament) is promoting copyright exceptions, primarily in the fair use rule legitimation and the possibility of creating digital reserve copies by libraries.

## **DRM**

As provided in World Copyright Treaty and the EC Directive on Copyright in the Information Society, rules for the protection of technological measures for the protection of digital works have already been introduced in many national copyright laws. In Croatia, the legislation on the protection has been amended in 2007. The new Moldovan draft law is designed to prevent unauthorized use of copyright work in a way which would amount to an infringement of copyright. In the USA, library organizations are requesting an expansion of the exception to the anti-circumvention provision concerning audio-visual works used in compilations for educational uses.

## **Orphan Works**

Dealing with Orphan Works is one of the most important developments for the enhancement of digitization of library holdings. In some states, there already exist laws which provide conditions for legally digitizing "orphan works" and making them publicly available. In other countries, agreements between libraries and collection societies substitute a legal framework. In Denmark and Sweden, the copyright acts authorize "extended collective license agreements" between collecting societies and rights owners' organizations. This instrument is designed to solve orphan works problems and to be used in other cases when individual clearing of rights is impracticable or impossible.

In Sweden, the extended collective license only allows making available extracts and articles. The National Library is pushing for a revision in order to make it possible to make complete works available to the public.

Canada has created a supplemental licensing scheme that allows licenses for the use of published works to be issued by the Copyright Board of Canada on behalf of the copyright owners who cannot be located, after a prospective licensor has made "reasonable efforts to locate the owner of the copyright". 226 such licenses have been issued by the Board as of August 2008.

Bibliothèque et Archives nationales du Québec (BAnQ) is embarking on an ambitious project to digitize periodicals from Quebec. It will place a lump sum in trust with Copibec, the provincial reprographic rights agency to deal with orphan works. This sum is based on a set fee per page scanned. BAnQ has submitted this set fee per scanned page to the Copyright Board for certification.

In the Netherlands efforts have been made to support mass digitization, but no amendments of the law. A Committee ("Digiti@e ") was set up to elaborate the policy and agreements concerning the works that libraries or other cultural heritage institutions would like to digitize. The arrangements simplify arrangements about digitization and availability of the digitized material between cultural heritage institutions and the relevant collecting societies.

In the USA, legislation on orphan works failed twice and is still pending.

## **Libraries and Privacy**

Privacy concerns are getting more important with respect to online – databases and introduction of RFID. In Israel, e.g., the director of Israel's major online court decision database has closed the database, previously open to public search to non-subscribers, to limit the possibility of an invasion of privacy of parties to legal disputes. In the Netherlands, in March 2009 a workshop on Libraries and privacy was organised. The topics on the agenda were: libraries and RFID, a privacy policy for libraries and privacy in relation to the developments of social networks. The workshop will have a follow up in the beginning of 2010. In Russia, the Personal Data Act became effective on January 1, 2010. It stipulates stricter requirements for personal data protection. For libraries, for instance, it means the obligation to introduce data protection systems for users and circulation databases, as well as for personnel information.

## Open Access

In the USA, legislative procedure and discussion about open access mandates is vivid: The *Fair Copyright in Research Works Act* (H.R. 801), introduced in the House of Representatives in February, 2009, would prohibit federal open access mandates, thus reverse the NIH Public Access Policy and forbid other federal agencies from putting similar policies into place. On the other hand, the *Federal Research Public Access Act* (S. 1373), introduced in the Senate on June 25, 2009, would expand the open access mandate for publicly funded research beyond NIH requirements. This is a reintroduction of the “Federal Research Public Access Act of 2006” (S. 2695) of May 2006, requiring Federal agencies with research expenditures of over \$1 million to develop federal research public access policies. Agencies would ensure free online access to manuscripts no later than 6 months after publication in peer-reviewed journals. Library and public interest groups strongly support this proposed legislation.

In **Nigeria**, Creative Commons license is currently being developed.

## Law Cases and Advocacy

***Authors Guild et al v. Google.*** The controversial lawsuit has broad implications for the future of library and public access to millions of books digitized under the Google Library Project. The lawsuit is important for the USA, but also for the other countries throughout the world.

In October 2008 Google, the Authors Guild, and the Association of American Publishers announced the Settlement. *The Settlement was amended on November 13, 2009, after the court has demanded to redraft the settlement. Current information about the settlement:* [http://www.googlebooksettlement.com/r/home?cfe\\_set\\_lang=1&hl=en](http://www.googlebooksettlement.com/r/home?cfe_set_lang=1&hl=en)

### ***Golan v Gonzales***

The Center for Internet and Society at Stanford Law School filed a lawsuit on behalf of a University of Denver, Colorado conductor and others, seeking to have the Copyright Term Extension Act (CTEA) and the Uruguay Round Agreements Act (URAA) declared unconstitutional. The case is ongoing, and raises interesting questions pitting U.S. obligations under the Berne Convention against U.S. constitutional law.

## Advocacy

The Library Copyright Alliance has advocated on behalf of the USA and North American libraries in Washington on major copyright issues affecting libraries and educational institutions. LCA and the American Library Association Office for Information Technology Policy also continue to advocate for USA libraries at the international level. Three international copyright advocates appointed by LCA participate in meetings of the World Intellectual Property Organization’s Standing Committee on Copyright and Related Rights (SCCR), the Intergovernmental Committee on Intellectual Property and Genetic Resources (IGC), Traditional Knowledge and Folklore, and the Committee on Development and Intellectual Property (CDIP), representing the interests of the U.S. library community and the public.

LCA Joined IFLA and Electronic Information for Libraries (EIFL) in drafting a joint *Statement of Principles on Copyright Exceptions and Limitations*, presented at the WIPO SCCR in May 2009. The Statement of Principles addresses the urgent need to increase copyright exceptions and limitations for library services and access to knowledge, and asks WIPO Member States to adopt a set of 12 principles to guide the formulation of copyright exceptions and limitations in national laws.

The American Library Association convened a working conference in November 2008 to bring together members of the library and cultural heritage communities to clarify key issues for a statement of principles to guide libraries in collecting, making available, and preserving works of Traditional Cultural Expression, and to frame positions representing the U.S. library community in international discussions at the WIPO IGC. A draft Statement of Principles, entitled *Librarianship and Traditional Cultural Expressions: Nurturing Understanding and Respect*, is currently available for comment at ALA's website devoted to Traditional Cultural Expression and Libraries, at <http://wo.ala.org/tce/>.

### **Denmark**

In the fall of 2008 the Danish branch of IFPI succeeded in getting a court order to have telecommunication providers to block access from Denmark to the Swedish internet site Pirate Bay before Pirate Bay was deemed illegal by the Swedish court.

We will probably see more cases like this. When Danish right holders cannot stop infringing activities because the servers are outside national jurisdiction, injunctions may be brought forward to have the connections interrupted.

### **Germany**

*Subito case:* The Subito (electronic document delivery by libraries) case has been decided by the Court of Appeal in Munich in May 2007. Both parties brought the case before the Supreme Court. But after the implementation of a new article 53a (document delivery by libraries) into the German copyright act (in force since January 1, 2008), and after Subito and the Publishers Association signed a much criticized licence contract, they decided in October 2008 to withdraw their motions. So the decision by the Court of Appeal is final and binding.

<http://www.bibliotheksurteile.de/?p=33>

#### *Darmstadt university library case (making works available by dedicated terminals)*

Since the beginning of the year 2008 German copyright law (art. 52b) allows libraries to digitize their collections and to give access inside their premises. The new article is an almost word by word implementation of art. 5 (3) n of the European directive 2001/29/EC: *“use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections.”* Following this new copyright regulation the Darmstadt university library digitized its collection of teaching books and made them available by terminals inside the library. From the very beginning the German publishers association tried to block this new information source for students. In a summary proceedings decision the court of first instance (Landgericht) in Frankfurt decided in May 2009 that the university library does not violate copyright law (<http://tinyurl.com/kl43ms>).

The library must only prevent digital copies on USB sticks. The case will continue, as both parties went into revision. The publishers label the case again as a test case.

### **Trade and International Copyright**

Negotiations continue on the **Anti-Counterfeiting Trade Agreement (ACTA)**, a proposed international treaty that would establish a stronger framework for global enforcement of intellectual property rights, with a scope covering counterfeit trademarked goods and pirated copyright goods. The United States, a major player in the drafting of this treaty, has justified the non-transparent negotiation process as necessary for reasons of national security. Efforts by several U.S. public interest organizations to obtain copies of the treaty drafts under the Freedom of Information Act have led to release of documents such as meeting agendas and

communications, some heavily redacted, but no draft of the treaty text. On January 16, 2009 and March 10, 2009, letters from the Office of the U.S. Trade Representative made clear that drafts of the trade agreement and related materials are information “properly classified in the interest of national security pursuant to Executive Order 12958.”

## **USA**

On April 6, 2009 the Office of the United States Trade Representative (USTR) released a six-page summary of the proposed treaty, which could introduce higher standards of protection, stricter laws on criminalization of activity involving use and distribution of copyrighted works over Internet, heightened customs activity at borders, and monitoring of Internet communications by Internet Service Providers. The proposed treaty raises serious concerns for civil liberties, privacy, and fair use of copyrighted works. Canada confirmed its participation to ACTA June 12<sup>th</sup> 2009.

## **Russia**

In connection with planned Russia’s accession to WTO and in pursuance of the state control over the implementation of copyright and intellectual property rights legislation, government authorities pursue a hard line in battling non-legitimate copies of software products, videos and published works. Non-licensed software disks have almost completely disappeared. Special workshops held at various institutions explain how to legally deal with published works.

## **Strategic Plans**

### **Canada:**

Riggs, Craig. 2008. Audiobook and eBook Publishing in Canada. Library & Archives Canada <http://www.collectionscanada.gc.ca/iela/005002-2100-e.html>

### **Croatia**

Lectures on libraries and copyright will be organized throughout the country in order to increase awareness of copyright issues among librarians and hopefully among a larger population of users. Attention of legal experts should be attracted, since the Copyright and Related Rights Act is very vague about the use of digital works, digitisation, Web, technological protection of books, etc. The legal profession should clarify those issues for libraries. It is up to the Croatian Library Association to get involved and help lawyers in finding adequate solutions.

### **Finland**

On the national level the most important project is the National Digital Library that was launched by the Ministry of Education in August 2008. The aim of this project is to establish one national access point to digital resources and services of libraries, archives and museums. In addition, this project aims at creating a common infrastructure for long-term preservation of digital cultural heritage materials.

### **Russia**

Parliamentary hearings on partial amendment of the copyright law restrictions for libraries are planned for the next year. Special round tables with participation of legislators and library management are planned at a number of major professional library journals.

Meetings and discussions between lawyers and librarians are planned for professional events to be held in 2009-2010, including the above-mentioned conferences and special meetings.

In 2010, major libraries will gain access to databases on foreign legislation that are maintained by the information service of the RF Ministry of Foreign Affairs.