

## **Country Report FINLAND**

Annual report to the IFLA CLM committee  
Quebec Canada 2008

### **1. Copyright**

The Finnish Copyright Act was revised at the beginning of 2006. The main purpose of these changes was to implement Directive 2001/29/EC into national law. All in all Finland was quite compliant in implementing the Directive.

The amendments concerned also a number of national issues, such as the prohibition of private importation of pirate recordings. Most relevant provisions for libraries are included in Sections 16, 16a-6d. For the most part the amendments entered into force on January 1<sup>st</sup>, 2006.

#### ***Reproduction for internal purposes***

According to Section 16 archives, libraries and museums which are open to the public may make copies of a work in its own collections:

- 1) for the purpose of preserving material and safeguarding its preservation;
- 2) for the purpose of technically restoring and repairing material;
- 3) for the purpose of administering and organising collections as well as for other internal purposes required by the maintenance of the collection;
- 4) for the purpose of supplementing a deficient item or completing a work published in several parts if the necessary complement is not available through commercial distribution or communication.

So, also digital copies are allowed for internal use in these institutions. -This Section has been criticised because it totally excludes some communal libraries. Since they are not mentioned in the Government Decree relating to the law, these libraries may not make digital copies (for example of sound recordings), not even for preservation purposes.

#### ***Reproduction of works for the public***

According to Section 16a an archive or a library open to the public, to be determined in a Government Decree, may also:

- 1) make copies of a work in its collections which is susceptible to damage by photocopying or by corresponding means and make them available to the public through lending if the work is not available through commercial distribution or communication;
- 2) where seen appropriate, make copies by photocopying or by corresponding means of individual articles in composite literary or artistic works, newspapers or periodicals and of short passages in other published works to be handed over to the borrowers for their private use in lieu of the volumes and booklets wherein they are contained.

This Section has been criticized because it allows reproduction by *photocopying or by corresponding means* only. The library may not make any digital copies for an individual end-user (see the Opinion of the Finnish Copyright Council below).

The second subsection states that an archive, library or museum open to the public may communicate a work which it has in its collections, to a member of the public for purposes of research or private study on a device reserved for this purpose on the premises of the institution. This is permitted with the provision that other forms of digital reproduction and further communication to the public is prevented.

### **Orphan works**

Section 16d of the Copyright Act gives libraries the possibility to make copies and communicate works (also digital) to the public by virtue of the so-called extended collective licence. This means that libraries can negotiate directly with collecting societies on the terms of use of protected material. According to Section 26 of the Finnish Copyright Act the effects of a collective license are by law extended also to those rights-holders that are not members of the collecting society in question.

So far no collective licenses have been concluded, based on this new legal provision. A year ago Ministry of Education published a memorandum on the future development of copyright law. This memorandum posed some questions relating also to the future development of extended collective licensing in Finland.

Some suggest that this so-called Nordic model might even be a solution to the "orphan works" problem that is now so acute at the European level.

## **2. New law on Legal deposit**

The new law on legal deposit entered into force on January 1<sup>st</sup>, 2008. This *Act on Deposit and Preservation of Cultural Material (1433/2007)* has respectively some references to copyright legislation.

### **The scope of the new Act**

The Act is generic and it covers different genres of cultural heritage. It covers all material published in Finland or in Finnish, if it is meant to be distributed in Finland.

The aim of the new Act was to cover long term preservation of all cultural heritage to serve the needs of researchers and others. The new legislation also includes national television and radio programs and web-based material. The Act replaced previous separate legislations concerning deposit of print material and films. It also covers a wide variety of electronic resources, including the Finnish part of the web.

The National Library of Finland collects all printed material and delivers it to other legal deposit libraries around Finland. The National Library has a special administrative role, with additional duties and privileges. The National Library can for example give a release from obligation, if the financial costs for the supplier are deemed to be unreasonable.

### **Harvesting the Web**

Section 16b of the Copyright Act already entered partly into force at the beginning of 2006. The National Library has since that date had the right to *make copies of works* made available to the public in an open information network, for inclusion in its collections.

In practice the National Library had already collected material from the web before this revision of the Copyright act came into force. The tough legal question now is what the Library can do with this part of its web archive.

For the most part the provisions in Section 16b§ entered into force when the legal deposit legislation was passed, on January the 1st, 2008. These provisions gave the National Library the right to *communicate a work* in its collections to be used in its own premises or in the premises of other Legal Deposit libraries and in the National Audiovisual Archive. Thus, a kind of intranet between these libraries was created, in accordance with provisions 5. 3 (n) of the InfoSoc Directive. The law provides, however, that other forms of digital reproduction of the work are prevented and also the further communication of the work has been prevented. In practice the only way to assure this is by technological means.

### **Internet resources**

The law on legal deposit and preservation of cultural heritage includes the following provisions concerning internet resources:

- Scope of application (2 §): resources included in servers situated in Finland and other internet resources that are meant for the public in Finland;
- Definition (3 §): internet resources are materials available in information networks;

Chapter 3 of the law concerns internet resources and the following makes a general summary of the proposed provisions:

- Web-harvesting and deposit: The National Library shall gather/harvest and deposit internet resources from the net. The material shall make a representative and many-sided picture/sample of all material that is made available for the public in the net at different times;
- The information provider needs to enable the harvesting of material or deposit the material himself, if harvesting through technical means is not possible (the information provider has thus a secondary liability for deposit);
- Special provisions apply to material that cannot technically be deposited;
- The Ministry of Education and Culture shall confirm the plan of the Finnish National Library concerning the volume and frequency of harvesting and the conditions of delivery

As already mentioned, the National Library has in practice harvested material from the net since 2000. Extensive harvesting takes place once a year; moreover special collections on selected topics are gathered. More than 50 million resources are harvested annually.

The aim of the Finnish National Library is to harvest the following internet resources:

- All internet resources made available on Finnish sites, independent of the domain name (it can be fi, com, net, org or anything else);
- All Finnish language sites anywhere on the net;
- All sites that include information about Finland.

It may be worth noting that Section 19 of the new Act gives the National Library (but the National Library only) a limited privilege to circumvent also the technical protection measures.

### ***Evaluation of the new law***

Despite of criticism the general attitude seems to be that the new law has been working quite well. At the moment, the Ministry of Education is drafting a Decree that will hopefully solve some problems related to the practical application of the new law.

### **3. Law cases**

The Finnish Government appoints a special organ called Copyright Council to assist the Ministry of Education in copyright matters and to issue opinions on the application of the Copyright Act. The opinions of the Council are not legally binding as such, but they have broad authority. The Council is composed of representatives of the major right holders and users of protected works. The opinions are usually unanimous; however lately the Council has voted on some cases relating specifically to libraries.

In the case 7:2006 the Council discussed, whether the private use exemption (Sec. 12 of Copyright Act) could be applied to libraries. In practice the question was whether the library can make digital copies of articles and send them directly to individual customers as pdf-files (cf. Subito-case in Germany). The majority of the Council was of the opinion that private use exemption cannot be applied in these cases and the reproduction is allowed with the preconditions specified in library provisions 16, 16a only (*lex specialis*).

In the case 10:2007 the question was what constitutes a "loan" in copyright law. Specifically the question was how the exemption in Section 17 should be interpreted. The majority of the Council was of the opinion that reproduction and delivering of sound books to visually impaired persons

was not within this exemption, since the library could not effectively control that the copies were destroyed by end-users after use. This meant that an equitable remuneration for the rights-holders had to be paid.

### **3. Other issues**

#### ***Public lending rights***

According to the previous law, both public and scientific libraries were exempted from paying copyright royalties. This was compensated with a national grants agreement that was financed by the Ministry of Education and distributed to authors with a connection to Finland.

After some objections issued by the Commission, Finland had to revise Section 19 of its Copyright Act. Since the beginning of the year 2007 the public libraries were excluded from this exemption. However, scientific libraries are still exempted from copyright royalties – at least for the time being.

#### ***Privacy***

So far we in Finland have had no problems with our national Data Protection Ombudsman, relating to harvesting of the web archive and privacy issues. However, considering the Danish experiences, the Finnish National Library has already entered into discussions with data protection officials.

Some companies (like Nokia) have expressed concerns that their business secrets would leak to competitors via our web archive.

#### ***Lobby activities***

Finnish library organizations and the National Library of Finland have been actively lobbying against the extension of the term of copyright of the sound recordings from 50 years to 95 years.

In the USA the extension is already in force. In Europe the EU's Internal Market Commissioner Charles McCreevy has proposed an extension of the copyright protection of sound recordings from the present 50 years to 95 years. We find that it is important that library associations react and oppose this proposal as early as possible through their representatives in the European Commission and in the European Parliament. This stand has been sent to the Finnish Members of the European Parliament and many of them have already answered they will oppose this proposal when it comes to the EU Parliament.

#### ***Educational activities***

During the last few months the Finnish sector has been discussing the ethical challenges of their profession. The Finnish library organizations have set up a joint working group with the assignment to formulate a common ethical code for libraries. This code might give some guidelines in contentious cases, when legal rights of different parties (for example patrons and right-holders) collide.