

Country Report Netherlands

Annual report to the IFLA CLM committee
Quebec Canada 2008

Introduction

This report is a short account of the activities of the FOBID legal committee (FJC). The FOBID Legal Committee is one of the permanent committees of the Netherlands Library Forum, the national umbrella organisation for co-operation between Dutch library organisations.

Copyright

Orphan works

FJC actively tries to find solutions for the problem of mass digitisation. As was reported last year FJC organised several meetings and seminars about this subject and the subject of orphan works. The activities of FJC resulted in a Letter of Intent which was signed on 22 April 2008 by FOBID, the National Library Forum, and the Dutch Foundation for Copyright Interests, representing Dutch organisations for copyright holders. The Letter of Intent outlines the collaboration between cultural institutions and collecting societies on the digitisation of collections in libraries, archives and museums. As a result of this Letter of Intent libraries will be able to digitise their collections on the condition of concluding an agreement for each project with the relevant copyright holders' organisations regarding the specific project. The agreement will hold provisions regarding the works which are eligible to digitisation, the procedure to make available digitally these works, and the fee eventually owed to the right holders.

FJC has worked intensively to initiate this Letter of Intent. Several meetings with representatives of the collective societies were held to sketch the framework and to provide the structure for joint consultations in which agreements can be made.

For libraries the starting point for conducting the agreements are the '10 building blocks for an agreement between libraries, archives, museums and other cultural and educational institutions on the one hand and various collecting societies on the other hand'. These building blocks are part of a statement on mass digitisation which places the subject of orphan works and works out of print in a broader context and which offers practical solutions which allow mass digitisation and access to the preserved works. The 10 building blocks are attached to this report. The statement can be found at

<http://www.sitegenerator.bibliotheek.nl/fobid/img/docs/10%20building%20blocks%20for%20an%20agreement%20between%20libraries.pdf>

Legal matters

The Act Authority to require personal data

In 2006 FJC wrote guidelines (so called Ten Commandments) to assist libraries in dealing with requests of judicial authorities on the basis of The Act Authority to Require Personal Data which Act came into effect on January 1st 2006. This Act gives police and the judicature the authority to require personal data from public institutions or companies if deemed necessary for tracing criminal offences.

The guidelines supply information to deal with those requests. The guidelines were updated in 2008. Reason for this update was the advice of the Dutch Data Protection Authority. The advice led to sharper formulations of the text of some of the commandments.

Educational activities

In November 2007 FJC presented its manifesto at the yearly conference of librarians. At the same conference FJC gave a presentation on Creative Commons licences and how they can be used by cultural institutions.

In April 2008 the Amsterdam World Book City Copyright symposium took place. The chair of FJC Nol Verhagen was one of the organisers of this well visited and interesting symposium.

In June 2008 FJC gave a presentation on the position of scientific libraries and public lending rights and.

Contacts

FJC keeps up regular contacts with relevant organisations like the Ministry of Justice and Education, the Dutch consumer organisation, the Dutch Publishers Association and the national UNESCO Committee.

Issues in the meetings with the ministries are most of the time privacy, the scope of copyright, Digital Rights Management (DRM), public lending right and orphan works.

FJC participates in several working groups. FJC also has a representative in the Expert Group on Information Law of EBLIDA.

For every meeting the FJC secretariat prepares a collection of paper cuttings giving an overview of news items and articles on the field of libraries and archives.

Prepared by Wilma Mossink
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10 building blocks for an agreement between libraries, archives, museums and other cultural and educational institutions on the one hand and various collecting societies on the other hand:

1. The arrangement regulates the digital multiplication and the on line dissemination of all out of print works, including possible orphan works, by libraries, archives and other not for profit cultural institutions from their own collections.
2. The institutions mentioned have the right to digitise without formal individual permission all works within their collections and to disseminate those digitised works on an open accessible network for cultural and educational purposes only.
3. The institutions are obliged to deliver a list of works that they intend to digitise to an appropriate collective society or its delegate. These works must be out of print or otherwise no longer commercially available to the best knowledge of the institution.
4. The relevant collective society has the right within a reasonable period of time (e.g. two months) to prohibit the digitisation of works on the list, but only on the basis of their commercial availability.
5. Institutions and collective societies establish a list of fees (taking into account the nature and the size of the works), to be paid by institutions for the digitisation of a work. The Collective Societies re-distribute the fees to their members within the framework that they would normally apply.
6. Individual Creators may on the basis of their moral rights demand that their works are withdrawn from the digitised collection, even if they have transferred their copyright to other parties.
7. The copyright holders retain their copyright. Exceptions and exemptions in the national copyright legislation apply to the digitised works.
8. The institutions take reasonable efforts to ensure the proper and rightful use of the digitised works and to prevent unauthorised use.
9. A copyright holder may demand withdrawal of certain works from the digitised collection, when he is intending to reuse the work for commercial purposes and can make a plausible case that the intended reuse is hampered by the availability of the work in the collection.
10. For all reuse of the works in other instances than the digitised collection and for other purposes than indicated the permission of the rights holder is required.