

Country Report Norway

Annual report to the IFLA CLM committee
Quebec Canada 2008

Copyright

The Norwegian Library Association has since the beginning of the 1990's had a strong focus on analysis of copyright questions related to library activities and user rights. From 1994 there was a close contact with EBLIDA concerning library and copyright activities (Emanuella Giavarra). In 1996 the association established a permanent copyright committee which has been engaged on a regular basis in consultations and lobby activities.

The association was working closely with EBLIDA before, under and after the WIPO copyright conference in December 1996 which endorsed the WIPO copyright treaty. This copyright treaty later was implemented – as is well known - in EU legislation as EU directive 2001/29/EF of 22 May 2001 (the so-called “Infosoc” directive). EU members later implemented this directive in their legislation and as Norway, Iceland and Liechtenstein are part of the EEA treaty (European economic agreement) these countries have to implement the copyright in the same manner as full EU-members. (http://www.europarl.europa.eu/factsheets/6_3_2_en.htm)

The Norwegian government conducted a hearing process in 2003 and in February 2005 published their proposal (<http://www.regjeringen.no/nb/dep/kkd/dok/regpubl/otprp/20042005/Otprp-nr-46-2004-2005-.html?id=396411>) for the full implementation of the EU-directive in Norwegian legislation. The parliament should make the final decisions based on the proposal in the spring of 2005.

One important part of the government proposal was a new section on extended collective licensing in libraries (section 16a – see attachment 1) which was supported by the library association. No concrete agreements with right holders under this new section 16a have been negotiated yet but it is expected that negotiations will start for higher education institutions in the fall of 2008. The library interests in Norway have already obtained valuable information about the Danish experience of extended collective licensing (Harald von Hielmcrone).

The Norwegian Library Association took very active part in the lobby work in the parliament and in the media (<http://www.norskbiotekforening.no/article.php?id=1018>) and managed to change the final result on four arenas for the libraries. These four arenas are:

1. The analogue print-out from legally digitised material in libraries is allowed contrary to the proposal and actions of the government.
2. The legal circumvention of the technical protection systems for libraries in special cases – especially for the national library with legal depository needs – contrary to the proposal and actions of the government.
3. The collective agreements - summing up of library activities which shall represent income for rights holders shall not comprise activities which are already in the free (public domain) or are paid for in other connections - contrary to the proposal and actions of the government.
4. Free access for the end users – the library association managed to get an unanimous support for free access library services for the end users in public libraries

There were very fierce attacks in the media against the Norwegian Library Association from the government and the right holders on these very specialised and minor arenas of the implementation of the EU directive in the Norwegian copyright law. But the library association managed to get support in the parliament from a majority of parliamentarians.

The Norwegian way of handling the legal circumvention of the technical protection systems for libraries in special cases might be interest.

The library association made two suggestions for amendments in the relevant sections: § 53a and b.

The suggestions were adopted by the parliament.

The adopted sections now have the following wording:

§ 53a

It is prohibited to circumvent effective technological protection measures that the right holder or others he has given permission employs to control the copying or making available to the public of a protected work. It is also prohibited to:

- a. sell, rent or in any other way make available,
- b. manufacture or import for the making available to the public;
- c. advertise for sale or rental,
- d. possess for commercial purposes, or
- e. offer services in connection with devices, products or components that are offered for the purpose of circumventing effective technological protection measures, (or) that have only a limited commercial use for other purposes, or that have been developed mainly for the purpose of enabling or simplifying such circumvention.

The provisions of this section shall not hinder research into cryptology. Nor shall the provision in the first paragraph hinder private users in gaining access to legally acquired works on that which is generally understood as relevant playback equipment. For technical devices for the protection of computer programs the provisions in section 53c apply instead.

The provisions in the first paragraph shall not hinder copying pursuant to section 16."

§ 53b

Right holders shall ensure that beneficiaries who have legal access to a protected work, without hinder by an effective technological protection measure, can use the work, hereunder produce new copies, pursuant to sections 13a, 15, 16, 17, 17a, 21, 26-28 and 31.

If the right holder after a petition from a beneficiary of a section listed above fails to provide access as described in the first paragraph, he can, on the beneficiary's petition, be ordered to provide such information that is necessary to enable the work to be used in accordance with the objective. The petition shall be addressed to the Board established by the Ministry pursuant to regulations the King may issue. The Board can in addition to orders as mentioned, rule that the beneficiary without hinder under section 53a can circumvent the applied technological protection measures if the right holder fails to adhere to the time limit imposed by the Board to comply with the order.

Copies of works that are encompassed under the Act No. 32 of 9 June 1989 relating to the legal deposit of generally available documents, shall nonetheless always be equipped with the information necessary to ensure that circumvention of technological protection measures to enable the legal copying is possible.

The provisions in this section do not apply where a protected work on agreed terms by transmission is made available to the public in such a way that the individual can choose the time and place of access to the work.

The provisions in this section do not apply to computer programs. The King may decide that some institutions in the sector of archives, libraries and museums automatically shall receive the information necessary to ensure that circumvention of technological protection measures to enable the legal copying is possible.

In 53a it is the last sentence which was suggested as an amendment by the library association:
"The provisions in the first paragraph shall not hinder copying pursuant to section 16."

And section 16 comprises the legal copying in libraries based on exceptions.

Then in 53 b our amendments were the following:

"Copies of works that are encompassed under the Act No. 32 of 9 June 1989 relating to the legal deposit of generally available documents, shall nonetheless always be equipped with the information necessary to ensure that circumvention of technological protection measures to enable the legal copying is possible." which is connected to legal deposit and also this last sentence:

"The King (the government) may decide that some institutions in the sector of archives, libraries and museums automatically shall receive the information necessary to ensure that circumvention of technological protection measures to enable the legal copying is possible."

These amendments which are now law in Norway, should as far as we can see secure good working conditions for libraries in the foreseeable future concerning legal circumvention of DRMs.

There was also a very significant aspect in this fight:

The attacks and discussion from the right holders changed from normal arguments and discourse (as has been normal through the nineties and the first years of the 21st century) towards falsifications and spin-doctor activities which had a significant impact on the process as these people had close contacts with academics, media, political circles and government offices.

Especially the organisation “The Norwegian Non-Fiction Writers and Translators Association” <http://www.nffo.no/english.htm> and “Norwegian Writers for Children” <http://www.nbuforfattere.no/pub/nbu/English/?&mid=89> were responsible for this distorted version of decent public debate. “The Norwegian Non-Fiction Writers and Translators Association” is one of the main organisations behind the umbrella organisation Kopinor: <http://www.kopinor.org/>

In November 2007 the government decided on more detailed regulations of the copyright law so that the process of implementation of the EU directive of 2001 is completed (<http://www.regjeringen.no/en/dep/kkd/Press-Centre/pressemeldinger/2007/Lettere-a-digitalisere-litteraturarven-.html?id=491681>).

The result also means that the Norwegian Library Association is very content with the final implementation and believes that the libraries and their users will have no major problems in acting inside the legal framework with the Norwegian implementation of the EU directive.

Attachment 1

“Extended collective licence for the use of works in archives, libraries and museums

§ 16a. *Archives, libraries and museums as described in section 16 first paragraph can make copies of published works in the collections and make such works available to the public if the conditions of the extended collective licence pursuant to section 36 first paragraph are fulfilled.”*

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