



## **Country report Netherlands**

Annual report to the IFLA CLM committee  
Singapore 2013

This report is a short account of the activities of FOBID Legal Committee (FJC). 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.

In the reporting year a growing collaboration regarding copyright matters is to be seen between the library sector and the cultural heritage sector. Representatives of those institutions regular met and formulated collective responses to Dutch and European (internet) consultations.

### **Copyright**

#### ***New legislation***

##### Collective Management Organisations

The Senate has approved a bill for a broader and stronger supervision of the organisations engaged in the collection, management and distribution of remunerations for copyrighted works. The bill introduces a review of unilateral tariff increases by the 'College of Toezicht' in advance, in combination with an individual review by an arbitration committee or the courts afterwards. The bill has entered into force on 1 July 2013. The new law creates a tight quality framework and hopefully will lead to more transparency in the activities of collecting societies.

The 'College of Toezicht' currently examines five statutory collective management organisations. As a result of the bill the College can also monitor organisations which voluntarily collect or remunerate fees.

FOBID participated in the consultation regarding the EU Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market. FOBID stressed the importance of rules for better governance and transparency of collecting societies and the ability to submit disputes for settlement. FOBID also remarked that collecting societies should be obliged to give information about their services. Also information on standard licences and fees should be supplied by the collecting societies. FOBID brought forward that some of the provisions of the proposed directive (such as international choice of collecting societies) complicate the diligent search for the right holders of out-of-commerce or orphan works. FOBID expressed the wish that a list of works with unidentified owners can be required from collecting societies.

##### Orphan Works

The Ministries of Security and Justice, and Education are preparing a proposal for the implementation of the Directive on certain permitted uses of orphan works. The Ministries are working on a list of resources that need to be consulted when conducting a diligent search. The umbrella organisation of Dutch collecting societies formulated a list of relevant resources to start with. Libraries, museums and archives will be asked to respond at a later stage.

#### ***Proposed legislation***

The Ministry of Security and Justice has proposed a amendment to the Copyright Act that will abolish the protection of works without originality. Currently directories, catalogues, schedules, theatre programs are protected by copyright; although by a weaker form.

As the government wants to modernise copyright to enhance creativity and innovation it is important that only true creative works are protected. The protection of non-original writings which are not

creative achievements fall into the category of competition law rather than copyright law. Libraries and cultural heritage institutions reacted positively to the proposal. They see the abolition as a first step towards a more modern and flexible copyright. Cultural heritage institutions will be able to perform their core tasks online as well as offline. They are facilitated by removing hindrances for creative re-use and innovation. The disclosure of collections will improve because more factual and contextual information can be offered to the users.

A proposal for implementation of the Directive on re-use of Public Sector Information circulates among the relevant ministries.

### ***Pending legislative issues***

The 'wet Auteurscontractenrecht' (Author Contract law) increases the ability for authors to benefit from the revenue generated from their work. The bill aims to provide that a fair share of the revenues of a copyrighted work reaches the person who has created the work. The bill protects the weaker party in negotiations. An extensive consultation resulted in many changes. A significant one that only natural persons can benefit from the clauses about the weaker party in a negotiation.

## **Legal Matters**

### ***New legislation***

A review of the existing European Directive on the re-use of public sector will bring libraries into the scope of the Directive. FOBIID has, in line with EBLIDA / Information sans Frontières ventilated its concerns about the retrospective nature of the proposal and the public-private partnerships in the context of digitisation, which could be affected by the EU Directive. Cultural institutions sources should be able to re-use resources freely after the duration of the copyright term. Digitised works should not be locked again under the terms and conditions of public-private partnerships contracts.

### **Law suits**

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.

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.

### **Advocacy/Lobbying activities**

FJC met with representatives of the Ministries of Education, and Security and Justice several times. FJC also responded to a number of national and international developments and proposals, such as the WIPO Treaty on Exceptions for Blind and Visually Impaired. FJC supported the actions of the organizations of the visually impaired for improved facilities and cooperated with the Dutch organization (Viziris) in the drafting of letters and petitions.

### **Educational activities**

FJC gave a presentation on digitisation and copyright 'Digitisation: a six-steps test' at the anniversary of the national program on digitisation.

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

In order to undertake targeted the balancing of interests, the chair of FJC presented a memo to the FOBIID Board under the title: 'FOBIID: representative or action group? " In this memo the (dis)advantages of both positions were identified. FOBIID choose to act as a representative and leave the stronger actions to the action groups.

## **Other issues**

The mandate of the Digiti©E committee ended April 2013 after five years. The termination of the Digiti©E committee was commemorated with a seminar where publishers, right holders, authors and libraries explained their ideas of the future of copyright.

In the context of plans for developing a national digital library a study on the legal possibilities for e-lending under the present public lending right provisions at both national (i.e. Dutch) and European level was sent to Parliament. The study defines "e-lending" as the digitally and temporarily making available of e-books by public libraries by way of an online lending facility, through downloading, streaming or comparable transmission methods.

The legal part of the study analysed whether the existing public lending right system of the Dutch Copyright Act (Auteurswet) and the European framework cover e-lending by public libraries. The study makes clear that neither Dutch nor the EU legal framework seems to leave room for e-lending without right holder permission.

Digitisation of collections of cultural heritage institutions led to friction between collecting societies and the institutions. To overcome the difficulties both parties drafted a position paper in which several principles to take into account at digitisation projects were outlined.

Collecting societies and cultural heritage institutions are working together to get a system of extended collective licensing introduced in Dutch legislation.

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