



Summary of CLM country reports for 2010

The country reports from Australia, Canada, China, Croatia, Germany, Hong Kong, Lithuania, Moldova, Netherlands, South Africa, Spain, Sweden, and USA were read carefully 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:

Revision of copyright legislation

Consultations on updating of copyright legislation have started in Canada.

In China the Copyright Act has been amended. This is the second amendment since it was enacted in 1990. The revision aims to bring the copyright protection further in line with the goals outlined in China's National IPR Strategy and to bring it fully in accord with WTO requirements.

A revision of the German copyright act has started. According to the federal Minister of Justice copyright needs an ongoing adjustment to the digital revolution. Hearings with stakeholders have started and the issues discussed include a claim for the introduction of an ancillary copyright for publishers to be collected by collecting societies, open access, collective licensing and orphan works.

In Hong Kong distribution of infringing copies of copyrighted works in four types of printed works (newspapers, magazines, periodicals and books) has been deemed illegal if made by business end-users under certain specified conditions.

The Copyright Act of Lithuania dating from 1999 has been amended. Articles on the resale price of works of art and on supervision of collecting societies were revised. The amendments of articles on the reproduction of works for personal use and reprographic reproduction are still pending for revision.

In Moldova a draft of a new Law on Copyright and Related Rights was approved by the Parliament in July 2010, but its publishing in the Official Gazette is still pending.

In the Netherlands a proposal for regulating author's contracts with publishers and other content producers was issued by the Ministry of Justice and an online consultation was opened. The proposal strengthens the position of authors and performers and introduces the possibility for them to decide about the exploitation of their works again after a period of five years. FOBID believes that the proposal will lead to more uncertainty regarding the ownership of copyright and will hamper the work of libraries when

searching for the owner to ask permission to use the work. In addition the distribution of rights amongst many potential or temporary owners will increase the number of orphan works.

In the USA a new copyright regulation for college campuses was introduced aiming at decreasing copyright infringement among students. Alternatives to illegal downloading have been envisaged.

New legislation

The introduction of the *Copyright Modernization Act* was announced in Canada. The stated goal of this act is to harmonize Canadian copyright legislation with international treaties.

In Germany individual states (Länder) have started adopting acts on libraries.

In China a new regulation requiring libraries to ask for the permission from the rights holders when reproduce and distribute protected works through the information network was adopted. Also, a new round of consultations on public libraries legislation has started and reports on various aspects of library work have been delivered to the Ministry of Culture in charge of public libraries.

In the USA two new bills were introduced in the House of Representatives: the *Federal Research Public Access Act* (H.R.5037), which expands the National Institutes of Health (NIH) Public Access Policy, that requires public access to taxpayer-funded research and *Fair Copyright in Research Works Act* which prohibits federal open access mandates. Libraries are opposed to the latter. Another bill *Preserving the American Historical Record Act* was introduced in the US Senate. This bill would authorize a grant program to states to support projects which would ensure essential care of documents and historical records in both paper and electronic format. *Performance Rights Act* was passed in 2010 by the Senate Judiciary Committee which would force AM and FM radio stations to compensate artists for use of their sound recordings. There is a companion bill of the same name pending in the House of Representatives, introduced in 2009.

ACTA

Several rounds of ACTA negotiations took place in 2009 and 2010. The negotiating countries issued a *Consolidated Text for Public Release* in March 2010. In April 2010 LCA joined other non-profit organizations and sent a letter expressing concerns regarding the *Consolidated Text*. The first US Intellectual Property Enforcement Coordinator, likely to play a key role for the US in ACTA negotiations, was appointed by the US President in September 2009. An Intellectual Property Enforcement Committee has recently been established in the USA to report on IP enforcement issues.

In the Netherlands a consultation on ACTA initiated by the Ministry of Justice has started. FOBIID asks for more transparency and an appropriate forum (WIPO) to discuss the agreement published in 2010.

Treaty for the Blind

In South Africa the South African National Council for the Blind has focused its efforts on the development and adoption of the Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons. Several workshops were organized and attended by the representatives of the government, publishers, libraries, academia, authors, etc. A proposal of the Treaty was prepared for WIPO.

Levies

In Australia a new resale royalty scheme for visual art works was established under the Resale Royalty Right for Visual Artists Act. A new levies contract on document delivery was introduced in Germany.

Strategies, projects, public consultations, etc.

Consultations on Digital Economy Strategy and related access to public sector information and crown copyright have been conducted in Canada.

The State Council in China promulgated and implemented a national program entitled *Outline of the National Intellectual Property Strategy* in 2008. Since then the implementation of the Strategy has resulted in a remarkable number of documents (regulations, policies, norms, etc.) on IP. Protection of IP has been intensified and more cases of piracy sanctioned.

The National Strategy of Intellectual Property for the period 2010-2012 was adopted by the State Institute for Intellectual Property in Croatia. Among other issues the Strategy focuses on the training on IP issues.

Following a public consultation the Hong Kong Government has published proposals on how best to strengthen copyright protection in the digital environment. The proposals recognize copyright owners' right to communicate their works through any mode of electronic transmission, with criminal sanctions against infringement, introduce a statutory limitation of liability regime for online service providers in dealing with online piracy, introduce a copyright exception for temporary reproduction of copyright works by OSPs, prescribe additional factors for considering the award of additional damages and introduce a media shifting exception for sound recordings. Meetings with the representatives of the university and the library sector have been organized.

In South Africa two projects have recently been done with the aim to investigate and determine the present inadequacies in the SA Copyright Act: *The Open Review*, a project of the Shuttleworth Foundation includes in the final report recommendations on exceptions and limitations, orphan works and strengthening the public domain and parallel import. The second project is the *African Copyright & Access to Knowledge (ACA2K) Project* which involved research in 8 African countries. The results have been published as a book under a CC license. The Department of Trade and Industry has drafted the Intellectual Property Policy Framework for South Africa and will be

publishing this sometime in September 2010 for public comment. It will then commence drafting proposals to amend the Copyright Act No. 98 of 1978.

Mass digitization and orphan works

Opinion voiced in the report from the Netherlands is that diligent search regarding orphan works is not the adequate solution for mass digitization. In a letter to the European Commission FOBID explained why it would not sign the Memorandum of Understanding on Diligent Search Guidelines for Orphan Works.

Spain is planning to regulate orphan works issue in the frame of the EU regulation. The use of extended collective licensing for mass digitization performed by libraries and archives has been envisaged in Sweden.

e-books

The use of e-books in public libraries is a topic discussed in the Dutch Parliament. The lending of e-books qualifies as making available, which is subject to the permission of the right holder. Pilots have started regarding the introduction of e-books. The issue of concern is their possible multiple use, which is not allowed by publishers at present.

Public Lending Right

A new regulation concerning the remuneration of authors is being prepared in Spain. Moldova has exempted libraries from paying the remuneration.

Legal Deposit

A new law on legal deposit has been in preparation in Spain and new legal deposit regulation is envisaged in Sweden. Changes proposed relate to the establishment of an Internet archive in Spain and the expansion of legal deposit to include web publishing in Sweden.

DRM

An expansion of the anti-circumvention exemption was introduced in the USA for creation of film clip compilations for classroom and educational use. The expansion includes uses for documentary filmmaking and non-commercial videos.

Education and Training

Australian Digital Alliance and Australian Libraries Copyright Committee have compiled a user's guide to help librarians in interpreting a section of the Copyright Amendment Act (2006). The section pertains to libraries, educational institutions and cultural institutions and has been meant to allow for easier and more flexible dealing, but is open to interpretation. The user's guide provides guidance and suggestions for institutions.

The State Institute for Intellectual Property of Croatia has adopted a document entitled *The National Strategy of Intellectual Property* in which training of the Institute's staff in

the IP and the establishment of an academy for IP as a separate organizational unit of the Institute has been envisaged.

In Lithuania a panel session on Open Access was organized at the international conference *Innovation and Creativity in e-Learning*, in November 2009. An international workshop on copyright in collaboration with eIFL will take place in September 2010 in Vilnius.

In Moldova the *eIFL Handbook on Copyright and Related Issues* was translated into Romanian. An international seminar on Copyright and access to information in libraries was organized in the end of 2009.

The Society of American Archivists issued *Orphan Works: Statement of Best Practices*, a report that provides what professional archivists consider the best methods to use when attempting to identify and locate copyright holders.

Collecting societies

New tariffs for collective licences for schools and colleges in Canada have been negotiated.

Copyright Agency Limited in Australia was appointed as the collecting society to administer the new resale royalty scheme for visual art works for a five-year period.

In Croatia collecting societies have been required to redirect a part of their income to the cultural heritage institutions. Remuneration for private copying for publishers has been introduced and a new collecting society appointed. More transparency is needed in collective rights management organizations. Also in the Netherlands FOBIID emphasises the importance of transparency in collective rights management by the appropriate organisations.

Creative Commons

In Lithuania a public presentation of translated and adopted CC licenses was held.

Traditional knowledge

Since 2008 the Department of Trade and Industry of South Africa has tried to push the Intellectual Property Amendment Bill which would include traditional knowledge as a category of protected works in copyright legislation. Libraries and other stakeholders have had a number of serious comments including absence of limitations and exceptions for research, education, libraries and persons with sensory disabilities and a vague definition of traditional knowledge works and indigenous communities. The Parliament public hearings have been postponed several times and the Department of Trade and Industry has decided to revise the Bill before it proceeds further.

Law cases

Germany

The Court of Appeals has decided on the use of dedicated terminals in the university library reading room. According to the court the library must prevent users to make

copies; USB-ports at the dedicated terminals are not allowed and the library cannot connect the terminals with printers.

The Federal Supreme Court of Justice decided in 2 cases that an online archive, which contained articles with persons recognizable by name or picture was not liable for removal of those articles, one of the arguments being that the archive was not indexed by search engines.

The Constitutional Court has decided that the German law of data retention is unconstitutional since access providers are neither committed nor allowed to store traffic data. The Court has specified the modifications that have to be included in a new law.

The Supreme Court has decided that a person who runs a Wi-Fi Router at home can be liable for copyright infringements committed by the others, if the access to the router's service has not been impeded by password.

The Netherlands

The Court in The Hague has decided that renewal of lending is not a new act of communication to the public. This means that no fee for the lending right is required when lending is renewed.

China

A Chinese writer Wang Shen (pseudo.Mian Mian) sued Google (i.e. Google Information Technology and Beijing Guxiang Information Technology Co Ltd, the actual operator of Google.cn, both companies located in China) for scanning and disseminating online her book "The Hydrochloric Acid Lover". The defendants deny scanning and state that the scanned files have not been saved on their servers. The case is pending.

USA

Cambridge University Press et al. v. Georgia State University has been considered the first lawsuit to be filed over electronic course packs. The complaint cited numerous copyrighted works made available to students for downloading, viewing and printing without permission from copyright holders. In the meantime the University has changed its copyright policy. Both sides have now filed motions for summary judgment. The judge's ruling on the motions is still pending.

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