



Country Report <Germany>

Annual report to the IFLA CLM committee
Helsinki Finland 2012

Copyright

New conventions with RRO's VG Wort and VG Bild Kunst on levies for exceptions for libraries and research:

In Nov. 2011, there was concluded a convention on the levies for the exception for making available works within the library's reading rooms by dedicated terminals (§ 52 b UrhG, resp. to Art. 5 par.3n "Infosoc"-dir. 2001/29/EC). With respect to the convention, the cost for each work made available is 46.5 % of the printed edition. The libraries have to report each work to the VG Wort.

In Nov. 2011, there was also concluded a convention on levies for the delivery of copies for inter-library-loan. The cost for sending 1 article is 1,50 EUR.

Librarian's "Open Data":

More and more libraries offer their whole catalogues for download and "waive" their database rights by CC0 licenses. The CC0 is attached to the download button. Examples for "Open Data" are the Bavarian State Library and the "Hochschulbibliothekszenrum" (North Rhine Westphalia Library Union): <http://opendata.hbz-nrw.de/>

Reformation of copyright:

Provisions that presumably will be installed until middle of 2013:

Extension of the term of § 52a UrhG, which settles the exception for making available works for research and instructions within a determined group. Corresponding to the current language, § 52a will get ineffective after 2012.

Ancillary copyright for press publishers. Corresponding to the initiative, search engines will have to pay levies for implementing snippets of newspaper articles in their service (e.g. Google News)

Orphan Works: Depending on the adoption of the EU directive, there will be introduced a national language. Currently, the ministry of justice is consulting stakeholders, especially on the issues "diligent search" and "remuneration".

Position papers of political parties on copyright reformation:

- Secretary of Justice (liberals): In an official press release, the secretary of justice refused deep-packet-inspection or censure of internet communication. Also, she objected models of „Kulturflatrate“ for internet use, which would, for everybody, allow the (non-commercial) exploitation of all copyright protected works for lump-sum payment to the RRO's.
- CDU (Christian Democrats): Refuse „Kulturflatrate“; stimulate Open Access of public research by promoting a mandatory right of the authors to communicate their works to the public in case of exclusive licencing to publishers; digitization of cultural heritage shall be promoted by new rules for orphan and out-of-commerce-works; there shall be warning hints for internet copyright infringers, but no deep-packet-inspections (filtering the complete internet communication) by access providers or blocking of internet access in case of copyright infringements.
- Grüne (Green Party): Limitation of copyright terms; Kulturflatrate
- SPD (Social Democrats): No Kulturflatrate, but also no deep-packet inspection, warnings or blocking of internet access; stimulate Open Access of public research by promoting a mandatory right of the authors to communicate their works to the public in case of exclusive licencing to publishers; broader exceptions for education and research; regulation for making available orphan and out-of-commerce-works

- Piraten (Party, which recently, surprisingly successful, entered some German state's (Länder-) parliaments with an internet- and copyright focused agenda): Limitation of copyright term (10 years after death), remuneration-free use of media within research and education institutions; facilitating remixes and mashups; abolishing DRM and TPM's; more limits to exclusive rights and promoting of new business models instead (Micropayment, Crowdfunding und –Investing); remuneration for authors through individual contracts and levies should be improved.
- Die Linke ("The Left"): Enable distribution of E-Books and MP3; support Open Access for research; reduction of copyright terms; no deep-packet inspection, warnings or blocking of internet access; The Fraction of "Die Linke", in November 2011, presented an initiative for the mandatory exhaustion for downloaded music, e-books, games and films in order to equate the situation of these immaterial works with tangible media.

Legal matters

Facebook – use of public institutions (also libraries) and businesses: Data Protection Officer of the German State ("Land") Schleswig – Holstein warned public institutions and businesses to install facebook - fan- sites or even "like" – buttons on their own websites, because, by this doing, personal data of website visitors are communicated to the social network. In February, Schleswig Holstein Chamber of Commerce has brought this warning to trial at the regional administrative court.

Law cases

Exhaustion of distribution right:

Stuttgart Provincial Court: No exhaustion of distribution right (first sale doctrine) with downloads of audio books (2011/11/3). The court excluded downloaded audio books from the exhaustion, because the exhaustion principle applies only to tangible copies.

European Court (2012/7/3) - usedsoft: Exhaustion with software download

The principle of exhaustion of the distribution right applies not only where the copyright holder markets copies of his software on a material medium (CD-ROM or DVD) but also where he distributes them by means of downloads from his website.

Illegal streaming portal:

Leipzig Court (2011/12/7): Administrator of illegal streaming portal convicted to 3 years prison; The admin of the portal "Kino.to" uploaded at least 23.000 pirate copies of films on their servers; altogether, Kino.to provided access to 1,1 million illegally copied films.

Making works available for education:

Stuttgart Provincial Court (OLG Stuttgart): "Communication to the public" for Student seminars; the court had to decide about the legitimacy of e-learning practice at open university Hagen. Corresponding to the judgement, the underlying § 52a copyright code does not allow to make available 91 pages of a 533 page book. But, in general, it is permitted to communicate it to the whole class, even if it comprises 4000 participants. (2012/4/4)