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Country Report <Germany>

Annual report to the IFLA CLM committee
Singapore 2013

Copyright

1. 2012/12/17: The term of the restricted § 52a UrhG, an exception which permits making available parts of copyrighted material to seminar participants or research groups online, was extended until 2014/12/31

2. 2013/7/2: The protection term for the ancillary copyright of media producer has been extended from 50 to 70 years after edition. This law (§ 85 III UrhG) was implemented from Directive 2011/77/EU on the term of protection of copyright and certain related rights

Reformation of copyright:

1. 2013/5/14: An ancillary copyright on press products passed German parliament (§ 87 f UrhG). The “anti-google” – law establishes an exclusive right for press editors to disallow press articles or parts of it in the internet. Thus, search engines cannot communicate them in services like “Google News” without permission of the editors. This law is very controversial because of the difficulties to define “media product” and to differentiate this right to already copyright protected parts of articles. Motivation for this legislation is the desire of the editors to participate in the revenues Google generates with this service. Google reacted with the establishment of an opt-in procedure: Editors who like to be included in Google News have to give their permission.

2. 2013/6/27: Based on EU Directive 2012/28/EU on certain permitted uses of orphan works, the German parliament passed a new legislation on this issue. The new §§ 61 – allow libraries, museums and other cultural institutions to digitize and display their “orphan” holdings online after a diligent search for rightsholders. The search means are fixed in an annex to the law. At the same time, the new law on out-of-print-works was adopted. §§ 13 d/e UrhWahrnG allows collecting societies to grant rights to third parties for public display. This law only adopts to print holdings of libraries and other cultural institutions published before 1966. As it seems to be less laboriously to discover out-of-print works than to comply with the conditions of the diligent search, libraries probably will first digitize out-of-print works. In both cases, only noncommercial use is permitted and later appearing rightsholders can prohibit the use.

Legal matters

Privacy

2012/10/10: Google and privacy: The connection of personal data is a big issue. E.g., on Oct. 10, 2012, the German Privacy Ombudsman, Peter Schaar, wrote a letter to Google-CEO Larry Page, where he claimed that Google’s collection and linkage of personal data of different services is unacceptable, because of intransparency, lack of agreement and missing possibility to opt out.

2013/4/23: A German Regional administrative court decided, that German privacy law is not applicable for the data collected by Facebook. As the European Facebook Head Office is situated in Ireland, Irish law has to be applied. The Privacy Ombudsman of the German region of Schleswig –Holstein had claimed that Facebook’s pressure to use clear names is illegal.

Liability:

2013/6/5: The Economic Committee of German Parliament refused the initiative of the social democrats to limit liability of operators of Wifi networks. Corresponding to the initiative, certain requisitions and limits of due diligence for operators should be defined by law.

Law cases

2013/5/2013: Munich Provincial Court: No copyright protection for porn: In a filesharing case (LG München, 7 O 22293/12), the court could not find enough creative performance in 2 films.

2013/5/14: Az.: The Provincial administrative court of Baden-Württemberg (Az. 10 S 281/12) decided that the German constitutional court can not concede its decisions including special "documentation" of the judges exclusively to one database operator (In this case: "juris") but has to give it also to competitors. This case is of importance, because Juris has been monopolist in the quick publication of these sentences in documented form.

2013/5/14: German Superior Court decides that Google has to take down offensive (autocomplete-) search suggestions after notice. A company claimed that Google connected the search with "Scientology" and "Fraud". Also, the former federal President's wife had claimed that her name was autocompleted with words like "escort" and "red light".

Germany, 2012/9/20, Superior Court (BGH I ZR 69/11): In its procedure on works made available on dedicated terminals in the reading room (see report 2011), the court decided to bring the case to ECJ for interpretation of the underlying copyright directive. Among other, the ECJ now has to answer the question, if the directive allows copying / printing of materials made available on such terminals