



Summary of CLM Country Reports for 2011

A summary of the CLM country reports for Australia, China, Croatia, France, Germany, Hong Kong, Jamaica, Latvia, Lithuania, Moldova, the Netherlands, South Africa and the US has been made. The report of EBLIDA/EGIL covering the copyright developments in the EU has been included. The issues of concern in individual countries have been mentioned very briefly, for more details one has to go back to the original reports. The issues of concern appear to be:

Revision of copyright legislation

Copyright legislation is under revision in Australia, Hong Kong and Latvia. An initiative for its changing has been started in Jamaica. Revisions are mainly related to the status of Internet providers (establishment of safe harbours), online infringements and e-learning. A new Copyright and Related Rights Act came into force in 2011 in Moldova.

In the Netherlands the intention to modernise copyright was announced by the responsible Ministry. Modernisation would include advancement of new legal services in the creative sector, making downloading of movies and music illegal (but no three-strikes legislation), and introducing fair use exception which would stimulate and encourage the creative re-use of content.

In China a proposal has been made for the third amendment of the Copyright Act (1991; amended in 2001 and 2010) that would concern the period of protection for photographic works, licences for the use of photographs and the droit-de-suite for visual art works. It is expected that the revised draft will be completed at the end of 2011.

In Croatia, the Copyright Act was slightly amended to allow collecting societies from other EU countries to obtain the authorization from the State Institute for IP to represent Croatian authors. Up-to-now only Croatian-based collecting societies could obtain the authorization.

Mass digitization

The French government has secured 750 million € for digitization of old books, manuscripts, French books in public domain, French press from 1780 to 1940, 78 rpm and LP-records, photography and pictures before WW2 through public-private partnership. A call for projects will be closed in October 2011.

In the Netherlands two prominent agreements related to the digitization by libraries and archives were closed. The agreements allow digitization and making available of newspapers held by the National Library and photographs in the collection of the National Archive and are of limited duration.

Orphan Works

A bill on orphan works is drafted in France.

In the US LCA issued a statement encouraging the copyright reform to address orphan works. The Library of Congress recommended further updating of copyright law for digital preservation.

In the Netherlands a consultation regarding the proposed Directive on certain permitted uses of orphan works was opened by the Ministry of Justice. In response FOBID (Netherlands Library Forum) with some other organizations prepared a draft reaction which can be used by the individual institutions as a response during consultations. FOBID believes that the proposal is not suitable for mass digitization. Extended collective licensing seems to be a better solution.

Latvian National Library joined the ArrowPlus Project and hoped to be a key player in building and connecting publishers and collecting society databases in order to help identify and locate authors.

Out-of-print works

In France a framework agreement was signed by the Minister of Culture, the National Library of France, French publishers and the collective society representing authors. According to the agreement half a million of out-of-print books of the 20th c. will be digitized and the rights cleared through a collective society. It is expected that a separate law on out-of-print works will be issued.

The chairman of EBLIDA/EGIL was a spokesman for libraries at the Stakeholder Dialogue on Out-of-Commerce Works organized by the Copyright Office of the EC. The dialogue was on about the definition of those works, the extension of the agreement to cover authors who are not members of the collecting society and the cross border access to digital libraries within the EU.

CMO

The Dutch Ministry of Justice wants to improve the supervision of collective management organizations. The objective is to create a one-stop shop which users can address regarding negotiations on the use of works and the respective fees.

DRM

In Australia an additional exception to allow circumvention of technological protection for certain educational purposes has been under consideration.

In the US the Librarian of Congress broadened the anti-circumvention exception for creation of film clip compilations for classroom and educational use to all college and university professors regardless of academic discipline.

ACTA

Australia and the US report on the participation of their governments in the negotiations for the ACTA. EBLIDA/EGIL reports on the EU participation in the negotiations and is satisfied with the EU insistence on the rules of the E-Commerce Directive. According to the Directive intermediaries cannot be held liable except in cases of gross negligence.

Open Access has been discussed and debated in Germany mainly related to the possibility for copyright falling back to authors after a work has been published i.e. as an article in a periodical.

The America COMPETES Reauthorization Act of 2010 has come into force in 2011. It contains two open access-related initiatives.

Public Lending Right (PLR)

In South Africa a draft PLR document is on the Academic and Non-Fiction Authors' Association of SA website. There has been no wider public discussion about PLR and libraries are not in favour of its introduction.

The new Moldovan Copyright and Related Rights Act makes an exception for libraries, which do not have to pay remuneration.

Legal deposit

In France a decree on the implementation of the legal deposit of web pages is expected by the end of 2011.

In China, two amended regulations concerning legal deposit of publications and AV materials were issued.

In Croatia, National and University Library began to harvest web pages in August 2011. The material will be made available on the Library premises only.

In Latvia the current legal deposit law is undergoing revision. The number of copies to be deposited is going to decrease. A proposal made by the National Library to collect electronic versions of printed works was rejected by the publishers.

e-books and e-lending

In the US two new task force groups were formed by ALA to address the issues related to e-books.

EBLIDA/EGIL connects e-lending and its consequences to the shift of control over acquisition from libraries to publishers. This is, literally, not a copyright issue, but it is of deep political significance for the future of libraries.

Library Acts

Some of the German states have started adopting library acts, since they have legislative competence for culture and science.

Privacy

Data Retention Law in Germany has been declared as partly unconstitutional. There is a debate going on on reforms.

In the US a four-year extension of the US Patriot Act was signed as a law; "the library records provision" has remained unchanged.

Public Access to Information

In Croatia the Act on the Revision and Amendment of Public Access to Information was promulgated in June 2011.

The Dutch FOBIID has formulated a position according to which data mining and text mining and re-use of public sector information should be possible.

In the US the Federal Research Public Access Act (H.R. 5037) which would expand public access to federally funded research was introduced in the House of Representatives in 2010, but has not yet become a law.

In South Africa the IP Rights from Public Financed Research and Development Act has been passed. The IP Amendment Bill (Traditional Knowledge) is still subject to discussion and debate.

EBLIDA/EGIL reports on a proposal for a Virtual Schengen Border made by the Law Enforcement Working Party. According to this proposal the Internet Service Providers would have to block the illicit content listed on the EU "black-list". Members of the EGIL are strongly opposed to the idea on behalf of library users and their right to freedom of information.

Lobbying

LCA advocates for US library community and the public participating in the meetings of WIPO and other international meetings.

The representatives of the Croatian Library Association met with the Director of the State Institute for IP to discuss the problems libraries are confronted with when trying to digitize protected works.

Education and training

All library science curricula in Germany include copyright classes.

Apart from being taught at LIS departments copyright training is a part of continuing education of librarians in Croatia. Lectures on copyright were delivered by members of the Croatian Library Association for the librarians in Bosnia and Herzegovina and Monte Negro.

Copyright courses are regularly delivered at the Vilnius and Klaipeda Universities in Lithuania as well as public lectures and workshops for practicing librarians.

Copyright awareness workshops are offered on many universities and school campuses in South Africa.

National strategies, yearbooks, white papers, etc.

In China, a promotion Plan for the Implementation of the National IP Strategy in 2011 was issued. The key elements of the plan cover promotion of copyright and IP rights, strengthening of protection, expanding IP services, organizing education and training on IP, promoting cultural development, etc.

A new edition of *China Copyright Yearbook* was published as an authoritative reference source on the development of copyright and a new edition of the *Library's Yearbook* is expected. *White Paper on 2010 China's IPR Protection Status* was also released.

In the US, the Annual Report of US IP Enforcement Coordinator was issued. Also the Whitepaper on IP Enforcement was issued by the White House with specific recommended legislative changes designed to increase the effectiveness of enforcement efforts. The Library of Congress released a 2010 Report on Preserving our Digital Heritage.

The South Africa Department of Trade & Industry is in the process of drafting a comprehensive IP Policy for the whole country. It will review and where necessary amend and update the IP laws. It will also focus on orphan works, mass digitization, digital preservation and DRM.

Court Cases

Australia: Roadshow Films Pty Ltd v iiNet Limited

The Federal Court had to decide about the responsibility of an Internet Service Provider who allegedly allowed copyright infringement of its subscribers by failing to take reasonable steps to prevent peer-to-peer file sharing over its network. The Court did not find authorisation of infringement, but aspects of the judgment might be encouraging for copyright owners.

Phonographic Performance Company of Australia Limited & Ors v. Commonwealth of Australia & Ors

The constitutional validity of certain sections of the Copyright Act (1968) have been challenged by the phonographic and music companies. The respective sections allow radio stations to broadcast sound recordings without infringing the copyright of the phonograph producers, but another section of the Act envisages the equitable remuneration to be paid to record companies.

China:

The Supreme People's Court found that the Internet cafes as access providers are responsible for copyright infringement.

Germany:

Court of appeals, OLG Frankfurt, Darmstadt University Library case.

The library must prevent library users to make copies: USB-Ports at the dedicated terminals are not allowed, the library is not permitted to connect the terminals with printers (see country report 2010). The dispute parties applied for revision at the Federal Supreme Court (Bundesgerichtshof).

Copyright in abstracts (short summaries), Federal Supreme Court, BGH.

The Federal Supreme Court concretized the copyright protection for abstracts: in general, it presumes protection.

Secondary Liability of Internet cafés as Access providers, Hamburg District Court, LG Hamburg.

The court declares Internet-Cafés as responsible for customer's copyright infringements, if the operator doesn't take any measures (like reducing upload volume or port-blocking).

Secondary liability of hotel operators as access providers, Frankfurt District Court LG Frankfurt a. M.

The court declares hotels as not responsible for customer's copyright-infringements if access is restricted by code.

Latvia:

A privately owned digital library has been sued by some authors and publishers for illegal digitizing and making available their works. The case is still pending.

The Netherlands:

The Court of Appeal in Leeuwarden decided that a remuneration fee has to be paid when a collection of press clippings is made. Another court decided that a renewal of lending is not a new act of communication to the public and therefore does not count in PLR.

US:

The *Google Book Settlement* was rejected and the parties involved must revise the settlement. The court's ruling in the case *Cambridge University Press et al. v. Georgia State University* is still pending and is likely to have a great impact on e-reserve policies and use of copyrighted works in higher educational institutions worldwide. *Costco v. Omega*, although not directly related to libraries is likely to have an effect on library lending policies, since it centers on the first sale doctrine. LCA issued a position paper in support of libraries which lend foreign books.

Golan et al. v. Holder case challenges the constitutionality of copyright restoration in foreign works that were previously public domain in the US. The case raises interesting questions related to the US obligations under the Berne Convention and US constitutional law.

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