

CENL Copyright Working Group



CENL Copyright Working Group Newsletter

Issue 11, April 2014

Welcome to the 11th issue of the CENL Copyright Working Group's newsletter which presents a digest of interesting copyright and licensing stories from around Europe and beyond.

COPYRIGHT

Extended Collective Licensing

Swedish copyright law was updated in November 2013 with a number of augmentations to existing ECL provisions which are [summarised in this article](#). The changes will mean that actors, government organisations and companies will be able to benefit from extended collective licensing in qualifying situations. The update also implemented the term directive on sound recordings.

User Generated Content

The 2013 Commission programme "Licences for Europe" considered user generated content. [This piece advises](#) on the copyright and use implications of material posted to social media platforms. The UK's Intellectual Property office has also released [guidance on the use of digital material](#).

[This video](#) demonstrates software which uses semantic technology to manage copyright in user generated content. For those interested in User Generated Content the Canadian Government has amended its laws to create an exception for UGC. [Further information can be found here...](#)

Exhaustion Principle in Law and Libraries

Re-Digi has a business reselling MP3 files and was sued in the USA by Capitol Records for infringement which claimed the first sales doctrine or principle of "exhaustion" as it is called in Europe only applies to physical goods. Initially the courts found in Re-Digi's favour but on appeal sided with Capitol that transfer of a file required a reproduction and was therefore an infringement. -[This article includes](#) a brief interview with Re-Digi's CEO.

This issue is important for libraries because the lending of books etc by libraries in part depends on the exhaustion principle. This forms an important plank of IFLA and EBLIDA's work on the "Right to eRead".

In this context it is worth referring back to the 2012 EUJC case *UsedSoft GmbH v Oracle International Corp* which found it permissible to resell a used software licence. [The case is summarised in this article.](#)

LICENSING

[This blog post from IPKitten](#) offers a thorough analysis by law professor Javier Ramirez of the Copydan-Bandkopi case C463/12 and why this may prove to be the landmark case on the question of setting copyright levies – an issue which the Commission has not offered any clear direction on to date although there is a catalogue of EUCJ cases dealing with copyright levies. Denmark has asked for clarification on its compliance with the InfoSoc Directive, particularly around how to measure what level of harm to a rightsholder requires counterbalance by a levy and the role of TPMs in mitigating copying.

WIPO's Committee on Copyright and Related Rights met in December with a proposed international instrument on library exceptions and limitations top of the agenda. A summary of all the issues discuss can be [read here](#). ILFA's summary of the meeting can be [read here](#) which reports on disappointment amongst the international library community at the EU's sole focus on licensing over copyright reform via the Licences for Europe process.

The recent [CJEU case Svensson vs Retriever Sverige](#) found that it is not illegal to link to freely accessible content provided the site offering the link does not enable the user to bypass technical protection measures or paywalls. The decision confirms that a hyperlink in itself is not a communication to the public and reinforces the difference between the internet and other communication methods and cultural products, thus as this article expresses it 'saving the internet.' NB liability for linking to illegal or infringing content of course is a separate issue not considered in this judgement. The judgement's reference to a lack of "new public" is particularly important in the library / research sector arguments for data mining which centre on researchers' [legal](#) access to the journals they wish to mine that they already have lawful access to.

INFRINGEMENT & PRIACY

[Torrent Freak published a report](#) on the increasing number of takedown requests received by Google. The largest proportion of request came from entertainment industry groups such as BPI and Twentieth Century Fox. Google takes no action in the case of approx. 9% of requests, being careful not to mistakenly remove non-infringing websites.

Academic research has demonstrated that 3-strikes legislation is no deterrent to piracy. The use cases are based on French internet users in response to the HADOPI law. 16% of those surveyed who had engaged in piracy has been contacted by HADOPI. The full report can be [read here](#) or a [digest here](#).

[The Dutch High Court has overturned an "ineffectual" block](#) placed on two web subscription services which permitted subscribers to Pirate Bay. This liberal finding is quite different to findings in other EU jurisdictions which have required ISPs to block infringing sites

DIGITAL LIBRARIES

[This paper](#) gives some information on the Swedish-Finnish collaborative project to digitise a range of 19th and 20th Century Finnish newspapers clandestinely printed in Sweden either due to press restrictions in Finland or to serve the immigrant Finnish community. Primarily a preservation project it is an opportunity for the two national libraries to collaborate on digitisation experiences and techniques.

EU

Licences for Europe

In mid-November the final session of the Licences For Europe forum was held at which the attending Commissioners gave speeches reviewing and reflecting on the process. [Neelie Kroes recognised the limitations and flaws in the process](#) and acknowledged the lack of user buy in to the text and data mining solution suggested by the publishing community.

[Androulla Vassiliou spoke from a more positive position](#) on the audio visual working group which concluded with an MOU (full text available [here...](#)) and a set of pledges to work from. However she recognised the complexity of the TDM debate and the need for a combination of market-led and legislation driven solutions.

[The IP Kitten blog](#) offers some reflections from an attendee of the final session on UGC. The article suggests that the forum was little more than a talking shop for publishers offering pre-prepared licensing solutions and no attempts for any common ground to be negotiated between the different interest groups.

A directive has been passed to facilitate licensing for cross border music streaming services.

The rapporteur Marielle Gallo announced that the directive demonstrates copyright's role in the digital economy. The directive is intended to improve availability of licences for multi-territory music streaming products by requiring efficiency on the part of CMOs and placing obligations on CMOs to represent repertoire from another territory on another CMO's behalf while also ensuring that rightsholders can choose suitable representation for each territory through opt outs and complaints procedures.

The directive on collective management of copyright and related rights and multi-territorial licensing was published in February. [This document](#) is the Commission's summary and collective licensing and the purpose of the directive while [this shorter piece](#) from UK lawyers McDermott, Will & Emery summarises the key points.

Although the Licences for Europe process had limited positive outcomes for the library sector, a consultation on amending the Copyright Directive was undertaken at the beginning of 2014 with a closing date of March. It is expected this will result in a white paper this year.

Recent CJEU cases

In January [the CJEU made its ruling on the case Nintendo vs PCBox](#) and the question of the circumvention of TPMs. The case centres around devices installed to play Nintendo games on non-Nintendo consoles. PCBox claims this in itself is not an infringing act as users are legally using the game, simply on a device of their choice. The court agreed finding that circumvention of a TPM may be lawful depending on the purpose of the circumvention and the proportionality of the TPM. The full judgement can be [read here](#).

A judgement on [Case C-117/13 Verlag Eugen Ulmer vs Technische Universität Darmstadt](#) is currently awaited. The German court asked for clarification on whether the library exception enshrined in the InfoSoc directive permitted the library of to scan an in-copyright book and make the e-copy available via specific terminals despite the publisher having offered the library the opportunity to purchase an e-book edition. The case will be an important decision on the future for library scanning activities.

MISCELLANEOUS

[An EU pilot project was launched in December](#) to open up underlying data from EU funded research as part of the Horizon 2020 programme potentially making €3bn worth of research data openly available. It is also mandatory for H2020 funded publications to be available via an open access repository within 6 months.

As well as moves towards author-paid / Gold Open Access for publicly funded research, [the UK 2013's Finch Report also recommended](#) that the resulting publications be made available via public libraries for the benefit of small businesses and "citizen scholars" and a 2 year pilot launched in early February 2014. Publishers including their repertoire include Springer, Sage, Nature and Elsevier.

In 2015, Anne Frank's Diary and Mein Kampf will enter the public domain – fears exist that both texts might be exploited by the far right. [The Bavarian State had been preparing an annotated and edited edition of](#) the latter – currently restricted in Germany but this has been dropped, its publication seeming to be at odds with a ban on the full text. It will be interesting to see if public domain activists will accept this as necessary.

Konstanz University has cancelled its subscriptions with Elsevier on cost-benefit basis. This furthers the mass boycott that took place in 2012 when many universities rebelled at increasing prices. [The university's press release states](#) pricing is 3 time higher the next most expensive.

Newsletter compiled by Rachel Marshall(British Library). If you have interesting stories to share with the CENL Copyright community please email cenl-copyright@bl.uk