Contracts and copyright

Lucie Guibault, IFLA/CLM/EBLIDA satellite conference
Double Feature Program
(Individual) Licences for use of works
  □ How imperative are the exceptions?
(Mass-digitization) Extended collective licensing
  □ How to make them work cross-border!
Program feature 1
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What about the exceptions in the law?

- At EU level, only 2 sets of limitations are imperative:
  - Back-up copy & decompilation of computer programs;
  - Right to use database according to intended purpose;
- All other limitations are not expressly imperative; some expressly default;
At national level?

- Exceptions declared mandatory in four Member States:
  - Belgium, Ireland, Portugal and the UK

- In other Member States:
  - Assessment made by the judge;
  - Depends on objectives pursued by the copyright regime;
  - Depends on the circumstances prevailing at the time of concluding the contract
Jurisdiction issues

- What if a licence limits the user’s possibility to exercise the exceptions in the law?
- Is this restriction valid?
Validity of contractual clause?

- Case 1: Choice of law clause in contract
  - Assessment according to chosen law
- Case 2: No choice of law clause
  - Assessment according to law of the ‘country of residence of the principal actor carrying out the contract’
Program feature 2
Extended Collective Licensing (ECL) – how does it work?

- Collective Management Organisation (CMO) and users conclude an agreement on the basis of free negotiations (sets price and conditions of use).
- Agreement allows to legally use all materials covered by the license, without fear of receiving individual claims from outsiders or having to face criminal sanctions.
ECL – how does it work? .../2

- The agreement is by law made binding on non-represented rights holders.
- Non-represented rights holders have a right to:
  - Claim individual remuneration on the basis of the use made of their works.
  - Prohibit the use of their works (opt-out)
ECL – its advantages for mass-digitization

- Takes the interests of rights owners and users into consideration;
- Includes the possibility of payment of remuneration to the rights holders;
- Limits the obligation to engage in a diligent search;
ECL today?

- Loi sur les œuvres indisponibles (France)
- Enterprise and Regulatory Reform Act (UK)
- Gesetze zur Nutzung verwaister und vergriffener Werke (Germany)
- Existing ECLs in Denmark, Sweden, Finland and Norway
Factors to take into consideration

- Representativity of organisation;
- Collection (tarification) and distribution of moneys;
- Opt-out system;
- Determining who qualifies as a ‘user’; and
- Determining the scope of the licence;
How to make it work cross-border?

- ECL system per country only cover the works first published in that country;
- Rights cleared via ECL in the country of first publication to be recognized as valid in other Member States; and
- A register is set up to keep record of which works are digitized and made available, by whom and under which conditions.
Thank you for your attention!

More information:
L.Guibault@uva.nl