Orphan Works

compared internationally

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Joint IFLA CLM & EBLIDA Satellite Meeting, 13–14 August 2014, Strasbourg

Copyright and beyond: Libraries in the public sphere
„Orphan Works“ are about copyright protected works
For the use of copyright protected works, you (normally) need the rightsholder’s agreement
For the use (?) of „Orphan Works“, you don´t need rightsholder´s agreement.

The use of „orphan“ works can be permitted as a copyright exception (or...?)
Out-of-print-works

Orphan works
- German National Library: 30-50%
- British Library: 40%
The Nordic Model
ECL Scandinavia

- Since the 1960`s
- Agreement between Collective Society and rightsholders
- Agreement between Collective Society and users
- *Representativity* of the agreement: Rightsholders of a *particular area*: „Outsiders“ included for certain use
- „Outsiders“ may have Veto
Canada: 1985
Canada

Art.77 Copyright Act („Owners who cannot be located“)

„Reasonable efforts“

Copyright Board: Approval

Broad area of discretion

Licensing in advance: Legal certainty

Problem: Effectivity ?

Rightsholder cannot be found / due diligence
Licensing at Agency for Cultural Affairs
‘security money`
Also foreign Works
Use only within Japan
Hungary: 1999, 2009
Hungary

High Standard of search criteria
Announcement in newspapers
Licensing at patent office
High standards difficult to meet?
USA: Proposal 2006
USA

(Section 514 Copyright Act)
good faith, reasonably diligent search
No fixed requirements
No prior control or approval necessary
No prior licensing required
Problem: No legal certainty?
EU Directive 2012
EU Directive

- Only libraries, archives and other cultural institutions privileged
- Print, cinematographic, audiovisual
- Only materials first published in the institution’s own country
- Reasonable search: Sources listed in Annex
- Permitted use: Copy and making available
- Rightsholder can end open works status
- Fair Remuneration
- Mutual recognition
- Deadline for implementation: Oct 29, 2014
Germany 2013
Implementation in Germany

Orphan Works
- 1st January 2014
- Library (et al.) holdings
- No licensing („insurance“) at CMO required
- Register of orphan works at patent authority
- **Out-of-Print-Works:**
  - Only Printt works before 1966
  - „Kind of“ ECL: CMO can include „outsiders“
  - Registration at patent authority required (cost 1 €)
  - Objection of rightsholder before making available (6 week term)
- Permanent opt-out option
France 2014
France

Art. 134 Code de la propriété intellectuelle:

- l'exploitation numérique des livres indisponibles
- Licensing of out of print works
- No special regulation on orphan works (?)
UK 2014
UK

Into force in October:

• **Copyright and Rights in Performances (Extended Collective Licensing) Regulations** – only 5 year Licence

• **The Copyright and Rights in Performances (Certain Permitted Uses of Orphan Works) Regulations 2014** is the instrument that *transposes the EU OW Directive into UK law* > No Licensing (or „insurance“) required

• **Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014** is the instrument that creates the government’s scheme for licensing OWs in the UK after a diligent search
World
WIPO: Proposal EiFL and IFLA

• 1) Libraries and archives shall be permitted to reproduce, make available to the public and otherwise use any work, or material protected by Related rights, for which the author or other rightholder cannot be identified or located after reasonable inquiry.

• 2) Contracting Parties may provide that, subject to Article 7 of this Treaty, should the author or other rightholder subsequently identify him or herself to the library or archive that used the copyright work or material protected by related rights, he or she shall be entitled to claim equitable remuneration for future use, or require termination of the use.
Critical points / differences

- What works included?
- Only published works
- Reasonable search: Definition / Sources
- Who is rightsholder?
- Licensing required?
- „Licensing“ or „Case by Case“ – System?
- Practicability? Instruments? Connection between technical and legal
- Relation between orphans and licensing of out of print works
International Aspects

• Making available world wide (Mutual Recognition)
• International standards ?
• Use of „foreign“ orphan works ?
end