



### Digital Rights Managements in Poland

By Barbara Szcepanska, EBLIDA Expert Group on Information Law (EGIL)

The debate on technological measures is presently one of the most significant ones in the field of intellectual property. The fact that copyright holders have obtained so many rights has caused the rise of the author monopoly at the expense of exceptions and restrictions existing in international agreements, as well as, in European law and legislations of individual countries.

In 2004, Poland's accession to the European Union brought about a reform of the Act on Copyright and Related Rights. The implementation of the reform came as a consequence of the Copyright Directive. Among other modifications, the Act introduced the concept of technological measures, effective technological measures, as well as, digital rights management information. The law entitles the copyright holder to bring claims against the person involved in unlawful and intentional removal or circumvention of technological protection measures. The Act fails to mention the beneficiaries of statutory licenses, including libraries, schools and research institutions. The only trace of reference to the particular case of these institutions can be found in the statement asserting that civil claims can be brought against subjects acting with pre-meditation to use the work illegally. In this declaration, the policy makers have acknowledged that subjects authorised to use works on the basis of statutory licenses are entitled to the circumvention of technological protective measures without the consent of copyright holders. However, falling in with the spirit and the actual wording of the Act, policy makers introduced penalties for producing, owning and storing devices or components used in unlawful removal or circumvention of effective technological protections. Therefore, the removal of technological protections is allowed (although this cannot be concluded directly from the Act), but the possession of equipment necessary to carry out these activities is forbidden!

It has been acknowledged that, since the new law has been in effect, it is bound to undergo another transformation, also in terms of technological measures and DRM information.

In January 2006, the Ministry of Culture announced on its web site a project of reform of the Copyright Law, which includes the modification of Art. 79 of the Act. The reform introduces the need to obtain permission to remove technological protections upon each individual use of a work. The project includes a listing of entities (among others, research and educational centres, libraries, information

centres and the disabled community) permitted to acquire necessary means to use protected work. If the producer does not remove the protection, it will be possible to address the matter in court. The court is given three days to consider the petition for access to necessary technological means that will enable the use of work.

In its response to the planned reforms, the library community has petitioned to incorporate certain solutions into the law that will exclude a number of beneficiaries from the requirement of obtaining permission to eliminate protections upon each use. The need to obtain permission to remove (to circumvent) protections upon each individual use, as well as, any possible legal actions arising from the process will pose a serious inconvenience to libraries. For this reason, librarians also asked that the rights of persons using the works be represented in court proceedings or in mediation processes by a proper state-appointed entity. Furthermore, the library community also proposed that the responsibility of ensuring access to unprotected content be shifted to copyright holders. Therefore, these would be obligated to manufacture and distribute unprotected copies so that, at the time of their acquisition, they would be free of any protections. Regardless of the accepted final solutions, it was underlined that the National Library should receive a special access code to all works published on protected mediums, as part of its status as a legal deposit institution. It will enable copying works regardless of the decisions of copyright owners and thus, it will ensure the possibility of preserving the national heritage.

After a year of discussion amongst stakeholders and several changes of the proposal, in July 2007, the plan of legal reform was submitted to the Polish Parliament. However, again after a big public debate on the proposal with the participation of various stakeholders, officials and citizens Parliament had decided to recall the proposal and asked the Ministry of culture to prepare a completely new one.

It is difficult to predict what will be the final form of the Act on Copyright and Related Rights. Nevertheless, the library community should be aware of the dangers resulting from the application of DRM systems, which can effectively restrict the statutory functions of libraries.

### International Copyright Advocates to Defend 'Balance' in World Community

By Andy Bridges, ALA Washington Office  
14 December 2007

WASHINGTON— Last week, the American Library Association's Office for Information Technology Policy (OITP) met

with three librarians recently appointed to become ALA's first International Copyright Advocates, to represent library interests on the world copyright stage.

The International Copyright Advocate initiative was established this year to broaden library representation at international copyright meetings, where copyright activities have intensified. It is one of several copyright activities made possible through a generous grant from the John D. and Catherine T. MacArthur Foundation.

"International forums like the World Intellectual Property Organization (WIPO) are dominated by commercial interests and historically focused on developing treaties that strengthen copyright law in the interests of rights holders," said OITP Copyright Specialist Carrie Russell. "Commercial interests reign over public interest in part because they are financially able to send representatives to the international meetings."

"Libraries are often the sole defenders for 'balanced' copyright in these arenas, arguing that the law cannot be effective without certain limits to the copyright monopoly."

The three International Copyright Advocates are:

- ◆ *Lori Driscoll*: Associate University Librarian & Chair, George A. Smathers Libraries, University of Florida;
- ◆ *Jonathan A. Franklin*: Associate Law Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law; and
- ◆ *Janice T. Pilch*: Associate Professor of Library Administration, Slavic and East European Library, University of Illinois at Urbana-Champaign.

"These Advocates were picked from a strong field of competitors for their proficiency in the copyright arena," said Dr. Alan Inouye, OITP Director. "They will now accompany other experienced library negotiators to international copyright-related meetings of WIPO and the Organisation for Economic Co-operation and Development (OECD), and develop position statements to advance fair and equitable access to information."

"In this way, they will become experienced and capable representatives of the library community over the long term and increase the capacity of the ALA to respond in the international arena," added OITP Advisory Committee Chair Dottie Hiebing.

The term for each advocate is two years. Depending on funding, OITP hopes to extend the initiative and broaden participation in the future.

## Mitigation of VAT Rates to encourage the European Information Society

### Letter from the Frankfurt Group to Mr László Kovacs, European Commission

We are writing you on behalf of the Frankfurt Group, a European Forum, representing key players in the information chain. The Frankfurt group is a unique platform for progressive discussions between representatives of organisations involved in the publication and distribution of aca-

demical and research information in Europe. Members of the Group include representatives of authors, publishers and booksellers, libraries, information and research centres, rights organisations, subscription agents and intermediaries.

One of the issues, which is of great concern to our members, is the damaging effect that the imposition of VAT has on the purchase and delivery of electronic information. Within the European Union, regarding taxation, printed and electronic publications are treated differently. Whereas printed publications are subject to a reduced rate of VAT, electronic publications in most countries are charged with the highest rate.

We are fully aware of *Article 98(2) of the VAT Directive 2006/112/EC*. Its content on the other hand should be altered. Europe is in need of a more uniform tax system. Even the existing directives on taxation seem contradictory. Whereas Article 98(2) exempts electronic publications from a reduced VAT rate, the same reduced rate for publications is encouraged with Category 6 of *Annex H to the 6th VAT Directive (77/388/EEC)*. To differentiate between publications based on their form of publication, be it electronically or printed, seems anomalous and illogical to us. The policy of the European Union is to encourage education, scientific research and good citizenship. Removing an administrative arrangement which obstructs this policy would be a welcome achievement.

The report of the Frankfurt Group "Survey on the Impact of VAT on libraries and the scientific publication market" carried out by das Soziologisches Forschungsinstitut Göttingen showed that VAT inhibits the switch to electronic publications in the majority of European libraries in non-VAT exempt countries.

This is contrary to the stated aims of the European Commission and most national governments. It also affects the development of science in the EU compared to countries without VAT charges on electronic publications such as the United States, where a zero rate favours the purchase of electronic resources, and thus may lead to competitive advantages for US research and education.

The Frankfurt Group considers VAT issues as a key problem in the current development of the framework of scientific publications and the economic development in the EU. It has negative effects on market position of European information providers and the access to information. The development of a real and comprehensive European Digital Library can only be realised if major obstacles, including the VAT rate on electronic information, will be reduced.

The members of the Frankfurt Group would be pleased to discuss with you this important issue and to contribute to solving this impediment to the full dissemination of electronic information and fair international scientific competitiveness.

*The Frankfurt Group*

<http://www.sub.uni-goettingen.de/frankfurtgroup/>