



Country Report Germany

By Harald Müller, EBLIDA Copyright Group

◆ New copyright law in force

At the beginning of the year 2008 the so called 'second basket' for German copyright law came into force. The German Libraries Association (DBV) had put a lot of work in lobbying activities during the last two years. In July 2007 the bill passed German parliament and in October 2007 the German federal council (*Bundesrat* = states council) with minor changes, resulting mainly from combined efforts by the DBV and the Coalition for Action 'Copyright for Education and Research'. Several changes have been implemented into copyright law, but for libraries the most interesting part of the amendment are two new regulations.

The first new article regulates the communication to the public of works through electronic terminals in libraries open to the public.

Art. 52b

It is permissible to make available published works exclusively in the rooms of libraries open to the public, museums or archives at specially installed electronic terminals for research purposes or private studies, as long as there is no opposing contract and for ends that are neither directly nor indirectly commercial. Basically it is only permissible to make available as many copies at electronic terminals as the collection of the institution possesses. A fair remuneration has to be paid. This can only be claimed by a collecting society.

The new regulation implements art. 5 (3) n of the European directive 2001/29/EC into German copyright law and opens the way for digitisation projects in libraries. Since 2003 art. 53 (2) n. 2 copyright law allows the digitisation of library collections for archival and preservation purposes. The new art. 52b now defines the use of digitized archival items.

The other new article deals with document delivery.

Art. 53a Sending copies on demand

(1) The reproduction and transmission via mail or fax by public libraries of single articles published in newspapers and journals as well as small parts of published works is permissible for single orders as long as the use by the client is allowed by art. 53. The reproduction and transmission in other electronic form is permissible exclusively as a graphic file and for illustration of instruction or for scientific

research purposes, as far as this is justified for non-commercial purposes. The reproduction and transmission in other electronic form is permissible further only, if access to the articles or small parts of a work is obviously not possible for members of the public on a contractual base under reasonable conditions from places and at times of their choice.

(2) The copyright owner shall receive a fair remuneration for the reproduction and transmission. This right can be claimed only through a collecting society.

For the first time in history, German copyright law offers a legal base for document delivery by libraries. As document delivery is traditionally part of Interlibrary Loan (ILL) the details of remuneration have to be discussed between the German states (responsible for cultural activities) and the collecting society. The publishers are only involved, if an electronic copy should be sent.

◆ New model license (*Rahmenvertrag*) by Subito

Subito and its member libraries have a great interest to send copies in electronic format. As Subito some time ago signed (July 2006) a model licence for document delivery to clients outside of Germany, it now signed an additional license contract (Key issues of addendum no. 1 to the general agreement between publishers and Subito http://www.stm-assoc.org/storage/Key_Issues_Addendum_No.1_English_180108.pdf) for document delivery inside of Germany. This new licence produced some discussions among German libraries, as it is in parts very restrictive. German libraries must now develop new ways for document delivery.

◆ Subito case now before the Federal High Court

On 10 May 2007, the Court of Appeal, the Oberlandesgericht Munich ("OLG"), rendered a decision in the case of the German publishers association ("the plaintiff") against Subito and the university library in Augsburg. The subject of the case was the document delivery service by Subito libraries. As both parties are not satisfied with the decision, they both brought the case before the Federal High Court (*Bundesgerichtshof*). A decision should be issued in two years.

◆ Lobby activities

The German Libraries Association (DBV) had regular discussions with the publishers' association (*Börsenverein*). In 2007 the main topics were orphan works and out of print works.

During these discussions an agreement was signed by the Börsenverein, which allows libraries to use parts of works for the purpose of catalog enrichment. The Börsenverein permits libraries to enrich their catalogs with tables of contents, registers, bibliographies, cover text from books and journals. Another agreement was signed with the collecting society for images and art (*VG Bild Kunst*) allowing libraries to enrich their catalogs with images of book covers

Information about further activities of the DBV law commission can be found under <http://www.bibliothekerverband.de/ko-recht/index.html>.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Creative Content Online in the Single Market

By Andrew Cranfield

At the end of 2007 the European Commission issued a communication on content online within the European community asking all stakeholders to contribute through an open consultation and by answering a number of questions. The communication identifies four main challenges – availability of creative content, multi-territory licensing for creative content, interoperability and transparency of DRMs and legal offers and piracy – which merit action at the EU-level. From a reading of the document it is obvious that the European Commission is concerned about the relative inertia in creating a strong vibrant online market in Europe, stating that “some right holders prefer to protect existing revenue streams rather than actively licensing their rights on new platforms”.

The issue of orphan works, a hot topic for EBLIDA over the last year or so, is also addressed and the problem of rights clearance is underlined – “Efforts for identification are costly and time consuming. Hence, in many cases, orphan works cannot be exploited and yield no financial benefit to the (unknown or not locatable) author so they are unproductive both in economic and social terms”. This is very much in line with the thinking of many in the library sector and hopefully can serve as a platform for further discussions with right holders and collecting societies.

Another issue of importance is the use of DRMs (Digital Rights Management systems) to protect works in copyright (and in some instances probably also works outside of copyright). DRMs are not negative in themselves, but problems of interoperability and complex licensing agreements can limit the fair use of creative content and create unnecessary antagonism between right holders and users or as the Communication states “...putting the existing balance between copyright holders and user interests at risk”

EBLIDA is preparing an answer to this Communication, which will be published in EBLIDA News once it has been sent to the Commission. In the meantime we would urge our members to study this Communication and under the auspices of national associations take action and ensure

that the viewpoints of the European library sector are firmly established.

The Communication is available at http://ec.europa.eu/avpolicy/docs/other_actions/col_en.pdf.

EBLIDA/CENL meeting

On the 19th of January 2008 Toby Bainton of the EBLIDA Executive Committee and Andrew Cranfield, EBLIDA Director, met with Elisabeth Niggemann, Vigdis Moe Skarstein and Andres Vilks of the CENL Executive Committee to discuss items and concerns of common interest.

Not surprisingly the European Digital Library was high on the agenda and the importance of creating and giving access to European users remains a fundamental aim of both organizations. Much focus over the last year has been on the digitization for preservation issue, so it is positive that the debate – also within the European Commission – seems to have moved on to how to create vibrant and relevant online content within the framework of Europe.

Meeting of the EBLIDA/LIBER Joint Expert Group on Digitization and Online Access (JEGDO)

On the 25th of January this year the JEGDO held its first meeting at the offices of JISC (Joint Information Systems Committee) in London.

As written about in EBLIDA News Issue 18-2007, the two organizations have drafted a set of recommendations concerning digitization which have been forwarded to Commissioner Reding and her staff. These recommendations will define much of the work of the JEGDO in 2008 as we attempt to seek influence at the European level and bring together the views of both European research libraries and European library and documentation associations.

From CEG to EGIL

Last year the Copyright Expert Group (CEG) and the Trade and Libraries Expert Group merged and at the last meeting of the CEG in Vienna last November it was agreed to change the name of the group to Expert Group on Information Law (EGIL) to reflect the broader range of issues to be discussed in this forum. The group also welcomes two new members, Jerker Ryden (Sweden) and Pekka Heikkinen (Finland).

Items discussed in November included the status on the proposed Directive on criminal measures aimed at ensuring the enforcement of Intellectual Property Rights (IPRED 2); the outcomes of the Stakeholders Seminar organized by the High Level Group/Copyright Sub-Group of the European Digital Libraries Initiative (EDL), held in Brussels on 14 September last year and the last meeting with the Federation of European Publishers (FEP) in Amsterdam on 27 June 2007.

The next meeting of the EGIL will be held in Paris on the 15th and the 16th of April 2008.