

Country Report Finland

By Pekka Heikkinen, EBLIDA Expert Group on Information Law (EGIL). Special thanks Ms Tarja Koskinen-Olsson for her help in translating the Legal Deposit Act provisions.

The last few years have been, from a legal point of view, quite dynamic in Finland. The Copyright Act has been revised in several stages and the new Legal Deposit Act has been drafted.

1. Copyright Legislation

The Finnish Copyright Act was revised at the beginning of 2006. The main purpose of these changes was to implement Directive 2001/29/EC into national law. All in all Finland was quite compliant in implementing the Directive. The amendments concerned also address a number of national issues, such as the prohibition of private importation of pirate recordings. Most relevant provisions for libraries are included in Sections 16, 16a-6d. Most part the amendments entered into force on January 1st, 2006.

Reproduction for internal purposes

According to Section 16 archives, libraries and museums which are open to the public (to be determined in a Government Decree), may make copies of a work in its own collections:

1. for the purpose of preserving material and safeguarding its preservation;
2. for the purpose of technically restoring and repairing material;
3. for the purpose of administering and organising collections as well as for other internal purposes required by the maintenance of the collection;
4. for the purpose of supplementing a deficient item or completing a work published in several parts if the necessary complement is not available through commercial distribution or communication.

So also digital copies are allowed for internal use in these institutions. -This Section has been mainly criticised because it totally excludes some communal libraries. Since they are not mentioned in the Government Decree relating to the law, these libraries may not make digital copies (for example of sound recordings), not even for preservation purposes.

Reproduction of works for the public

According to Section 16a an archive or a library open to the public, to be determined in a Government Decree, may also:

1. make copies of a work in its collections which is susceptible to damage by photocopying or by corresponding means and make them available to the public through lending if the work is not available through commercial distribution or communication;
2. where seen appropriate, make copies by photocopying or by corresponding means of individual articles in composite literary or artistic works, newspapers or periodicals and of short passages in other published works to be handed over to the borrowers for their private use in lieu of the volumes and booklets wherein they are contained.

This Section has been criticized because it allows reproduction by *photocopying or by corresponding means only*. The library may not make any digital copies for an individual end-user (see the Opinion of the Finnish Copyright Council below).

The second subsection states that an archive, library or museum open to the public may communicate a work which it has in its collections, to a member of the public for purposes of research or private study on a device reserved for this purpose on the premises of the institution. This is permitted with the provision that other forms of digital reproduction and further communication to the public is prevented.

Legal praxis relating to the revised law

The Finnish Government established a special organ called the Copyright Council to assist the Ministry of Education in copyright matters and to issue opinions on the application of the Copyright Act. The opinions of the Council are not legally binding as such, but they have broad authority.

The Council is composed of representatives of the major right holders and users of protected works. The opinions are usually unanimous; however lately the Council has voted on some cases relating specifically to libraries.

In the case 7:2006 the Council discussed, whether the private use exemption (Sec. 12 of Copyright Act) could be applied to libraries. In practice the question was whether the library can make digital copies of articles and send them directly to individual customers as PDF-files (cf. Subito-case in Germany). The majority of the Council was of the opinion that private use exemption cannot be applied in these cases and the reproduction is allowed with the preconditions specified in library provisions 16, 16a only (*lex specialis*).

In the case 10:2007 the question was what constitutes a “loan” in copyright law. Specifically the question was how the exemption in Section 17 should be interpreted. The majority of the Council was of the opinion that reproduction and delivering of sound books to visually impaired persons was not within this exemption, since the library could not effectively control that the copies were destroyed by end-users after use. This meant that an equitable remuneration for the rights-holders had to be paid.

Some new initiatives

Section 16d of the Copyright Act gives libraries the possibility to make copies and communicate works (also digital) to the public by virtue of the so-called extended collective licence. This means that libraries can negotiate directly with collecting societies on the terms of use of protected material. According to Section 26 of the Finnish Copyright Act the effects of a collective license are by law extended also to those rights-holders that are not members of the collecting society in question.

So far no collective licenses have been concluded, based on this new legal provision. A year ago Ministry of Education published a memorandum on the future development of copyright law. This memorandum posed some questions relating also to the future development of extended collective licensing in Finland.

Some suggest that this so-called Nordic model might also be a solution to the “orphan works” problem that is now so acute at the European level.

2. Legal Deposit Legislation

In the implementation process of the Information Society Directive the relevant provisions concerning deposit copies were included in the copyright law, and the date of coming into force of some provisions were to be prescribed by a decree, to coincide with the entry into force of the legal deposit legislation.

The new law on legal deposit entered into force on January 1st, 2008. The new Act has respectively some references to copyright legislation.

The scope of the new Act

The Act (Act on Deposit and Preservation of Cultural Material 1433/2007) is generic and it covers different genres of cultural heritage. The Act covers all material published in Finland or in Finnish, if it is meant to be distributed in Finland.

The aim of the new Act was to cover long term preservation of all cultural heritages to serve the needs of researchers and others. The new legislation also includes national television and radio programs and web-based material.

The Act replaced previous separate legislations concerning deposit of print material and films. It also covers a wide variety of electronic resources, including the Finnish part of the web.

The National Library of Finland collects all printed material and delivers it to 6 other legal deposit libraries around Finland. The National Library has a special administrative role, with additional duties and privileges. The National Library can for example give a release from obligation, if the financial costs from the supplier are deemed to be unreasonable.

Harvesting the Web

Section 16b of the Copyright Act already entered partly into force at the beginning of 2006. The National Library has since that date had the right to *make copies of works* made available to the public in an open information network, for inclusion in its collections.

In practice the National Library had already collected material from the web before this revision of the Copyright act came into force. The tough legal question now, is what the Library can do with this part of its web archive?

For the most part the provisions in Section 16b§ entered into force when the legal deposit legislation was passed, on January the 1st, 2008. These provisions gave the National Library the right to *communicate a work* in its collections to be used in its own premises or in the premises of other Legal Deposit libraries and in the National Audiovisual Archive. Thus, a kind of intranet between these libraries was created, in accordance with provisions 5. 3 (n) of the InfoSoc Directive. The law provides, however, that other forms of digital reproduction of the work are prevented and also the further communication of the work has been prevented. In practice the only way to assure this is by technological means.

Internet resources

The law on legal deposit and preservation of cultural heritage includes the following provisions concerning internet resources:

- ◆ Scope of application (2 §): resources included in servers situated in Finland and other internet resources that are meant for the public in Finland;
- ◆ Definition (3 §): internet resources are materials available in information networks.

Chapter 3 of the law concerns internet resources and the following makes a general summary of the proposed provisions:

- ◆ Web-harvesting and deposit: The National Library shall gather/harvest and deposit internet resources from the net. The material shall make a representative and many-sided picture/sample of all material that is made available for the public in the net at different times;
- ◆ The information provider needs to enable the harvesting of material or deposit the material himself, if harvesting through technical means is not possible (the information provider has thus a secondary liability for deposit);
- ◆ Special provisions apply to material that cannot technically be deposited;
- ◆ The Ministry of Education and Culture shall confirm the plan of the Finnish National Library concerning

the volume and frequency of harvesting and the conditions of delivery

As already mentioned, the National Library has in practice harvested material from the net since 2000. Extensive harvesting takes place once a year; moreover special collections on selected topics are gathered. More than 50 million resources are harvested annually.

The aim of the Finnish National Library is to harvest the following internet resources:

- ◆ All internet resources made available on Finnish sites, independent of the domain name (it can be fi, com, net, org or anything else);
- ◆ All Finnish language sites anywhere on the net;
- ◆ All sites that include information about Finland.

It may be worth noting that Section 19 of the new Act gives the National Library (but the National Library only) a limited privilege to circumvent also the technical protection measures.

Evaluation of the new law

Despite of criticism the general attitude seems to be that the new law has been working quite well. At the moment, the Ministry of Education is drafting a Decree that will hopefully solve some problems related to the practical application of the new law.

So far, we in Finland have had no problems with our national Data Protection Ombudsman, relating to harvesting of the web archive and privacy issues. However, considering the Danish experiences, the Finnish National Library has already entered into discussions with data protection officials.

Some companies (like Nokia) have expressed concerns that their business secrets would leak to competitors via our web archive.

3. Other questions with relevance to libraries

According to the previous law, both public and scientific libraries were exempted from paying copyright royalties. This was compensated with a national grants agreement that was financed by the Ministry of Education and distributed to authors with a connection to Finland.

However, after some objections issued by the Commission, Finland had to revise Section 19 of its Copyright Act. Since the beginning of the year 2007 the public libraries were excluded from this exemption. However, scientific libraries are still exempted from copyright royalties – at least for the time being.

During the last few months, the Finnish library sector has been discussing the ethical challenges of their profession. The Finnish library organizations have set up a joint working group with the assignment to formulate a common ethical code for libraries. This code would, at least, give guidelines in contentious cases, when legal rights of different parties (for example patrons and right-holders) collide.

LIBER/EBLIDA meeting with the Commission By Andrew Cranfield, Director EBLIDA

Following on from the set of recommendations formulated at the LIBER-EBLIDA workshop in Copenhagen last year Paul Ayriss, Bas Savenije and Andrew Cranfield met with Viviane Hofmann and Javier Hernandez-Ros of the Directorate for Information Society and Media on June 2nd in Brussels. We started the meeting by summarizing the recommendations and expressing our concern about the lack of a European framework for digitization and while the Commission agreed that this is good idea, they did not want to engage in a top-down process where this is planned at the European level, but rather wanted to provide the context and platforms for the member states to act on.

All present agreed that while the libraries were, on the whole, able to provide the technological structure and delivery of metadata, other cultural institutions are more fragmented and not as well organized as the library sector. It remains a big task to ensure the delivery of digital content from museums, archives, galleries etc to ensure a truly cross domain Europeana.

The LIBER and EBLIDA representatives also thought it important to have a more differentiated stakeholder approach, as at present we feel that European is too focused on the national libraries. It is important that research libraries, public libraries and library associations are part of the process in creating digital library content across Europe.

Andrew Cranfield stressed that it was important to also think beyond the framework of the current Europeana, in that digitization in Europe must be seen in a wider context.

We also discussed the issue of funding for digitization activities in Europe and that there is no, or very little, central European funding for these activities. It seems unlikely that this policy will change in the future, but Javier Hernandez-Ros talked about public-private partnerships and that the Commission will very soon publish a report looking at successful models and good practice in this area. EBLIDA and LIBER expressed some concerns about these models, as they may impose restrictions on content and remove material from the public domain under exclusive contracts. The Commission was aware of this and though there may be some restrictions of access for a limited period to recoup investment, there should not be long-term barriers to access of material that had been digitized in the framework of public-private partnerships.

Viviane Hoffman expressed concern about long term preservation policies for cultural material and that this has to be a concern to the different sectors and for libraries and this cannot just be left to the national libraries.

It is important that all stakeholders and the members of LIBER and EBLIDA discuss this at the national level and help facilitate analysis and investigation as to the total costs of long term preservation.

We concluded the meeting by agreeing that EBLIDA and LIBER would formulate a paper outlining a project which could address some of the challenges of European digitization and could complement the work of Europeana. This work will be further discussed at the next meeting of the LIBER/EBLIDA Joint Expert Group on Digitisation and Online access at its next meeting in September.

Advocacy and Libraries in Amsterdam By Andrew Cranfield, Director EBLIDA

This year the format of the EBLIDA Annual Council meeting was somewhat different from previous years. On the 8th of May the EBLIDA Council held its usual business meeting in the new wing of the Peace Palace in The Hague. On the 9th we moved to Amsterdam to co-host a one day conference in association with the Dutch Library Association (VOB) and the Dutch Library Association.



Andrew Cranfield, EBLIDA Director

Photo taken by Marian Koren

The focus of the conference was firstly to look at some of the challenges which libraries are facing at present and how we can use these challenges to advocate for libraries to decision makers at all levels, and secondly to put this in a more historical perspective. EBLIDA president, Gerald Leitner, started the proceedings by asking the question of whether Europe has or needs a common library policy. He pointed out that the i2010 initiative has, to some extent, given libraries a new platform and a renewed mission in a European framework, but that digitization activities are only a small, if vital, part of the modern library agenda.

So how to change this in the future?

Gerald Leitner thought it very unlikely that we will see pan European legislation in this field, such as a library directive, but underlined the importance of working towards a situation where there is direct library legislation in each of the 27 member states and while legislation is no guarantee for better libraries, it does provide a legal framework for the development of libraries.

Gerald Leitner proposed that EBLIDA concentrate its activities on formulating and promoting a white paper that describes the role of libraries in the European knowledge economy and to do this in partnership with other associations and with our partners in NAPLE.

The morning session included contributions from Rolf Hapel (Denmark) and Bert Mulder (The Netherlands) who both looked at how society is changing, users have new requirements and how technology can be and is being harnessed by libraries to position themselves in relation to these changes.

Prof. Hugenholtz of the Institute for Information Law in Amsterdam talked about some of the main problems facing libraries in the field of intellectual property rights and the problems of mass scale digitization of large library collections. While the InfoSoc directive permits digital preservation, access is only via on-site networks and this limits the potential for libraries to disseminate their collections to a multitude of user groups. For in-print works with a commercial perspective libraries will have to develop business models which can satisfy the commercial interests of right holders and the expectations of library users, but for material that is either out-of-print or orphan other solutions should be found, such as extended collective licensing.

Hugenholtz also addressed the question of exceptions and limitations which have not really been harmonized by the InfoSoc directive and which creates obstacles to community-wide library services. He ended by suggesting that EBLIDA might consider codifying a basic set of exceptions and limitations for libraries, which would be a useful lobbying tool at the national level.

In the afternoon proceedings took a more historical approach and as part of the celebrations of the 100th anniversary of the Dutch Library Association a number of international library historians has been invited to look at the development of libraries during this period. Chairing this session was Alistair Black and with 5 colleagues from the field of library history the discussion focused on the different roles of libraries in society – information, education, culture, reading and forum. While there have obviously been huge changes in the library sector over the past century, we can also reflect that the fundamentals are still in place.

The invited historians had also contributed essays to the newly published "Working for Five Star Libraries – International perspectives on a century of public library advocacy and development" which was presented to EBLIDA president Gerald Leitner by the director of the Dutch Library Association, Jan-Ewout van der Putten, at the end of the day. All delegates also received a copy of the book.

And so ended a most enlightening day at the new public library in Amsterdam. Looking out from the terrace of the 7th floor with a magnificent view of Amsterdam bathed in spring sunshine, one can with optimism hope that the next century of library development will be as successful as the last.

Next year's EBLIDA Annual meeting will be held in Vienna and will follow the same format as this year, comprising a business meeting of the association and a joint conference in cooperation with our Austrian colleagues.

We look forward to seeing you in May 2009.