

## WIPO European perspectives

I'm Helle Brink from the State and University Library in Aarhus, Denmark. Only a few weeks ago I agreed to deliver updates on the WIPO and copyright situation in Denmark and Europe. I have experience in these matters in my daily work, but I could not have talked to you about it, without the help from my colleague, Mr Hielmcrone, our expert on copyright. And I owe him.

In the past I have worked in the public library section, but for the last five years I have worked in the State and University Library in Aarhus. We are the legal deposit library for lending Danish materials, where the Royal Danish Library has the archive obligation. We serve the University in Aarhus and function as last resort for small research libraries, educational libraries and the public libraries in Denmark. I'm working as head of Danish Loan Center with about 90,000 ILL requests a year and special responsibilities for service and contact to the public libraries.

In short I want to update you on this map on Denmark, Scandinavia, Europe and The European Community.

The EU is about to be 25 national states with:

- EU commission, which is kind of European Government
- EU Council, represent the national governments of member states
- The Parliament (direct election, limited power, but on copyright matters there has to be a compromised solution with the council.)

This is a short overview on the EU directives, in connection with WIPO and those of the directives which is most important to the libraries.

I shall come back to each of them in short, but I will draw your attention to EBLIDA, the European Bureau of Library, Information and Documentation Associations, whose work and lobbying has had a great influence on the results on copyrights.

For libraries one of the most important issues according to WIPO is the fact that authors' rights to control the communication to the public is NOT exhausted when their works are published electronically. Which means that you in fact need the authors permission every time you want to access an electronic version.

What is at stake with digital resources?

1. General public shall have freedom/right to access published information
2. Libraries and archives shall have the right to preserve the cultural heritage of digitally published work
3. published work
4. Historical research on the basis of original resources can be guaranteed.

The EU made the following attempts to harmonise on the issues:

### **The directive on rental and lending rights 1992**

To repeat, the authors right to control distribution is not exhausted, when the work is distributed and libraries survive because “member states may restrict authors right to control public lending provided authors are remunerated”.

### **The directive harmonising the term of protection 1993**

The main rule is that literary and artistic works are protected during lifetime and 70 years after the death of the author.

### **The directive on legal protection of databases 1996**

Since 1961 there has been protection of databases in the Nordic countries. Not of the data, but of the collection and sorting of data. Duration for the protection is 15 years after production of a substantial update. For libraries it is important that in this field contractual agreements which extend the producers rights are null and void. This is not implemented in WIPO. It has been postponed twice and there seems no serious interest outside Europe.

### **The directive on harmonisation and certain aspects of copyright and related rights in the Information Society**

This directive was adopted in the EU in May 2002 and, in short, the EU attempts to strengthen and harmonise the author’s rights according to WIPO. The only obligatory exception to the author’s rights is:

#### **a. Use of their work with respect to reproductions**

The exception from the “authors exclusive right to authorise or prohibit direct or indirect reproduction” is a note on temporary acts of reproduction, which states, that

1. transmission in a network between third parties by an intermediary OR
2. lawful use

This, till now has saved libraries. However, these copies must not be used in ILL electronically so within my library we make paper copies and send them to other libraries. We have to solve this problem by extended collective licensing which we are working on. Unfortunately not all member states in the EU allow for extended collective licensing and this might cause serious problems for those libraries.

This was the one obligatory exception, but there are 21 different exceptions in the directive, for the member states. This list of exceptions is now closed and future changes must be within the law of each member state or obtained by collective licensing.

#### **b. Communication with the public by electronic means**

It says in the directive that: “Member states shall provide authors with the exclusive rights ... which shall not be exhausted by any act of communication to the public.” This was proposed and accepted into the WIPO and it is now obliged to be incorporated into national law when ratifying the treaty. But there are 21 exceptions – nationally – and the list demonstrates that the public right is not harmonised giving the member states the option of maintaining their existing exceptions.

However, three articles in this directive enable: “libraries to digitise their collection and provide access ON the library premises” – an exception like this in the Danish law has proven valuable as it seems to cover most library needs.

What remains here is for member states to implement legal deposit regulations for works published in databases – an issue of the utmost importance.

And for technical protection, member states may force right owners to allow digital reproduction of works in digital format but they do not have to, which leaves libraries and other interested parties to argue their case on a national level – not to be regretted as it is often easier to influence national politicians.

#### **And on distribution the rules concerning**

1. National consumption
2. International consumption

The interest of a small Nordic country is favoured by international consumption but the EU opted for regional consumption, which means that if a book is published in any member state the rights will be exhausted for the whole community. This gives publishers a very strong position and prevents consumers from neutralising unreasonable prices by parallel import – and the interests of the consumers are disregarded.

I have made 2 brief conclusions for the overview. And just to end up with something very concrete I was told just before we left for Australia that the library authority in Denmark has made an agreement with the rightholders for Denmark, which means that we can hopefully use the electronic way for our ILL – it will cost per article but not as much as it does right now.

Thank you.