



Country Report Netherlands

Annual report to the IFLA CLM committee
Gothenburg Sweden 2010

This report is a short account of the activities of the FOBID Legal Committee (FJC). The FOBID Legal Committee is one of the permanent committees of the Netherlands Library Forum, the national umbrella organisation for co-operation between Dutch library organisations.

Copyright

Mass digitisation

The chair and legal adviser of FJC (Verhagen and Mossink) participate in Digit@e, the committee that was set up by the organisations of right owners and FOBID to elaborate the policy and agreements concerning the works that libraries or other cultural heritage institutions would like to digitise and make available. Digit@e met regularly to discuss progress of the pilot projects and other matters arising. As mentioned earlier there is an agreement in place that enables libraries to digitise their collections, provided that digitised works are no longer commercially available. However they may make these digitised works available only within the premises of the library or the institution. For wider dissemination a separate permission is needed and remuneration must be paid. Several proposals for remuneration were being discussed, but no agreement has been reached yet.

Mass digitisation is a frequently occurring topic on the agenda of FJC. FJC does not think the results of the debates in Europe on orphan works were very satisfying, because FJC believes that a diligent search is not the solution for mass digitisation. Therefore FJC wrote a letter to the European Commission in which FJC explained that it would not sign the Memorandum of Understanding on Diligent Search Guidelines for Orphan Works because a diligent search is not a solid solution for the problems libraries encounter when digitising and making available orphan works.

E-books

In Parliament questions were asked about the introduction of e-books in public libraries. A motion to do the utmost for a timely and proper introduction was accepted by the Government. Promises were made to mediate between publishers and writers to solve potential problems regarding copyright in this area.

Pilots have started regarding the introduction of e-books. The Government believes that multiple uses should be the starting point for e-books. Publishers now restrict the lending of e-books to one copy at the time because of fear for loss of income when a more generous policy would be in place. The solution to overcome this is to negotiate agreements with individual right holders. The legislator is not willing to introduce an exception for e-books. This would be incompatible with European legislation. The lending of e-books qualifies as making available, which is subject to the permission of the right holder.

Revision of copyright law

Many of the recommendations of the report 'Copyright: a report' of the parliamentary Working group on Copyright (Committee Gerkens) which was published in June last year, were taken further by the Government. Levies for making a copy for private use will be phased out. Instead a

provision for penalisation for downloading material without the consent of the copyright owner will be introduced. At the same time the monitoring of collecting societies will be sharpened.

New legislation

In June 2010 the Ministry of Justice issued a proposal for regulating author's contracts with publishers and other content producers. The proposal strengthens the position of authors and performing artists. It introduces the possibility for makers to decide about the exploitation of their works again after a period of five years. Transfer of copyright during the lifetime of the author or performing artist will be prohibited, like in Germany. Furthermore the proposal introduces a legal right for the author for fair remuneration when issuing an exclusive licence, brings in a disproportionality rule (the maker can request a judge to raise the fee if the fee is not accordingly to the proceeds of the exploitation of a work), and adopts the non usus rule (termination of the licence agreement is possible when the licensee doesn't exploit the work to the full extent). The Ministry of Justice has opened an internet consultation about the proposal which will be closed September 1st 2010. FJC observes that the proposal will lead to more uncertainty regarding the ownership of copyright and therefore will hamper the work of libraries when searching for the owner to ask permission to use the work. In addition the distribution of rights amongst many potential or temporary owners will increase the number of orphan works.

Legal matters

Content Online

FJC reacted to the consultation of the European Commission (DG Information Society and media, and DG Internal market) regarding the Commissions' paper 'Creative Content in a European Digital Single Market: Challenges for the future'. FJC associated itself with the reaction of EBLIDA (<http://www.eblida.org/uploads/eblida/10/1261582085.pdf>) but added some side-notes in which FJC welcomed legislation in the area of 'extended collective licensing' as a solution for the problem of digitising and making available orphan works. Furthermore FJC emphasised the importance of transparency in collective rights management by the appropriate organisations.

ACTA

The Ministry of Justice recently started a consultation on ACTA. Stakeholders are invited to give a reaction to the consolidated text of the agreement published in April. FJC met with the Dutch digital rights organisation Bits of Freedom, which focuses on privacy and communications freedom in the digital age, to discuss its reaction. FJC merely echoes the IFLA statement and pleas for more transparency and an appropriate forum (WIPO) to discuss the agreement.

Law cases

In May 2009 the Court in The Hague sentenced that a renewal of a lending is not a new action of communication to the public. This judgment means that no fee for the lending right is required when renewing a lending, as Dutch organizations of right owners had claimed.

The judgment in Dutch can be read at

<http://www.boek9.nl/?/Een+verlenging+is+geen+nieuwe+openbaarmaking/////25211/>

Lobby activities

FJC keeps up regular contacts with relevant organisations like the Ministry of Justice, the Ministry of Education, the Dutch consumer organisation, Creative Commons Netherlands, the Dutch digital rights organization, the Dutch Publishers Association and the national UNESCO Committee.

FJC signed Copyright for Creativity – A Declaration for Europe.

In September 2009 FJC participated in a forum discussion about the way orphan works should be handled: buy off or track down.

In April 2010 the chair of FJC took part in a public debate on the proposals made in the report 'Copyright: a report'.

Strategic plans for the future

As new topics keep appearing on the agenda of FJC because of the (inter)national developments FJC launched a wide ranging review of the arena FJC is working in. FJC concluded that the committee has to concentrate on legal topics which are not being taken care of by other organisations in the field, with regard to the whole library and documentation environment. FJC has two areas of focus for the coming time. FJC would like to intensify the contacts with Dutch members of the European Parliament in co-operation with EBLIDA, and invest more heavily in contacts within the Dutch Government.

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