



## Country Report Netherlands

Annual report to the IFLA CLM committee  
San Juan Puerto Rico 2011

This report is a short account of the activities of FOBID Legal Committee (FJC). 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

#### *Revision/changes in existing law or regulations*

#### *New legislation*

##### *Modernisation of copyright*

In April 2011 the Ministry of Justice published its intention to modernise copyright. In its letter 'Copyright 20@20' the Ministry laid out its spearhead actions.

To advance new legal services in the creative sector, rightholders will get more possibilities to enforce civil actions to parties which disturb the market with illegal copies. Downloading has been illegal for long for games and software and will be extended to movies and music. Downloading of these works from illegal sources will be unlawful but not non actionable. The Ministry has however no intention to introduce three-strikes-legislation.

Furthermore the Ministry wants to improve the supervision of collective management organisations. More clarification is needed on how the collected money for re-use is redistributed and spent. It is the Ministry's objective to create a one-stop-shop which users can address regarding negotiations about the use of a work and the applicable fees. If rightholders fail to come with an initiative the Minister will publish a bill.

Another initiative is the strengthening of the position of authors and performers. A bill has been sent to the Council of State for commentary.

Lat but not least the Minister calls for a 'fair use' exception in the Copyright Directive which would stimulate and encourage the creative re-use of content. In order to lose no time the Minister has asked its advisory body to examine the possibility of including a 'fair use' exception in the Dutch Copyright Act.

##### *Orphan Works*

The Ministry of Justice opened a consultation regarding the proposed Directive on certain permitted uses of orphan works. FJC in collaboration with the National Library, National Archive, Knowledge land and Digital Heritage Netherlands prepared a draft reaction which can be used by the individual institutions as an example to react to the consultation. Next to detailed comments on the proposed articles the reaction to the governmental consultation explains that the proposal is not workable for mass digitisation. The signatories advocate for the possibility of extended collective licensing to make digitisation and communication to the public a feasible solution.

##### *Mass digitisation*

Two major, prominent agreements were closed regarding the digitisation of library and archival material: one by the National Library regarding the digitisation and the making available of newspapers and one by the National Archive on the subject of digitisation and making available of photographs. The first agreement lasts for 10 years and has to be renegotiated after this period. The second agreement lasts much shorter: the National Archive only has the permission to make available the photographs for a period of three years. The agreements were explained in

more detail but are not fully disclosed.

#### *Author contract right*

In 2010 FJC reacted to a consultation regarding the position of authors and performers. It observed that the proposal will lead to more uncertainty regarding ownership of a work which would hamper the mass digitisation activities of libraries. The text of the bill will become public when the bill is sent to Parliament together with the advice of the Council of State.

### **Legal matters**

#### ***Revision/changes in existing law or regulations***

#### ***New legislation***

#### *PSI Directive*

FJC answered the on-line survey of the European Committee on the Public Sector Information (PSI) Directive. According to FJC especially the possibilities of re-use should be amended in such a way that text mining and data mining should be possible. Public sector information which is already publicly accessible should be re-usable because through feedback the quality of data would improve and new or unexpected research might be possible. Re-use for research and education should not be charged.

#### *ACTA*

FJC forwarded the opinion of European Academics on ACTA <http://www.statewatch.org/news/2011/jul/acta-academics-opinion.pdf> to its contact person at the Ministry of Justice for information...

### **Law cases**

On July 26 2011, the Leeuwarden Court of Appeal determined that in future a fee for making a collection of news paper cuttings has to be paid. A Dutch governmental organisation regularly produced a collection of newspaper cuttings which it distributed among its employees. The news paper cuttings contain a selection of articles from national and regional newspapers and magazines. The Court based its decision on article 15 of the Dutch Copyright Act which assumes that no reservation for re-use can be made for news articles. The daily and weekly press, however, suggested that the articles attract copyright and that therefore the press can actually stop freely copying.

The Court made its ruling in the context and objectives of the Copyright Directive. The high level of protection for the right holders which is laid out in the explanation of the Directive requires a strict interpretation of the Copyright Act. The limitations and exceptions should not undermine the principle of the Directive that right holders should receive a fair compensation. The defense of the organisation involved that there is no commercial exploitation could not succeed: compensation should be paid for the use of copyrighted work.

Better news brought the ruling on the public lending right. Last year I reported that the Hague Court ruled that a renewal of lending is not a new action of communication to the public and no additional remuneration is required for the renewal period. The collective management organisation involved (Lending Rights Foundation) appealed and again the Court ruled that the subsequent loan period for the same work by the same user does not count as a new communication to the public.

### **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.

#### *WIPO Treaty*

FJC supported the Dutch organisations for the visually impaired in their lobby aimed at the ministries of Justice and Education regarding the WIPO Treaty for the Blind.

### **Educational activities**

In April 2011 FJC together with several other cultural heritages institutions organised a seminar to 'rescue the 20<sup>th</sup> century of oblivion'. Copyright, cultural heritage and internet were the main topics as copyright is seen as the main impediment to access to cultural heritage still. In the seminar information was given concerning the legal aspects of digitisation and making collections available on the internet and the way institutions are dealing with copyright to overcome the hindrances. FJC gave a short overview of memorandum of Understanding on de digitisation of works that are out of commerce which was being discussed in the meetings of the so-called Stakeholder Dialogue.

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