



Country Report Netherlands

Annual report to the IFLA CLM committee
Helsinki Finland 2012

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

New legislation

Author contract law

In June 2012 the Ministries of Security and Justice, and Education, Culture and Science, introduced a proposal to secure the position of authors and performers regarding their exploitation rights in relation to publishers, record companies and film producers.

In 2010 FOBID reacted on a public consultation regarding the initial proposal. This proposal hindered the transfer of copyright to publishers and multimedia media producers. FOBID welcomed the possibilities for authors to better influence the exploitation of their works on the one hand, but on the other hand argued that strengthening the position of authors would be detrimental for libraries because it thwarts the search for right holders when digitising their collections.

In the final proposal copyright remains transferable but should be combined with a fair remuneration. Organisations of authors together with organisations of publishers or producers can ask the Minister to set the amount of the remuneration.

An exclusive licence will need a deed in the future just as a transfer of rights requires this now. The initial proposal contained a provision that an exclusive licence could be terminated after five years. In the final proposal this provision is not maintained. Regarding the termination of an exclusive licence after five years FOBID observed that it would introduce even more uncertainty for libraries because libraries could not know which licences were terminated and could not determine who the copyright owner would be.

Mass digitisation

In 2011, FOBID devoted much time and attention to the problems of mass digitization. Chair and Legal Counsel continued their participation in Digit@E. The attention focused on the so-called fee basis, for which FJC drafted a 'manual' that can be used by libraries and archives in their not always smooth contacts with organisations of right holders. Digit@E met in three occasions. The mandate of the commission has been extended by two years until April 2013. Legal Counsel and Chair deliberated several times with an informal advisory group of (copyright) experts and representatives of archives and cultural heritage institutions.

This informal advisory group took the initiative to establish a Working Group on Copyright in which cultural heritage institutions, Knowledge Land, the National Archive and the National Library are represented.

Legal matters

New legislation

ACTA

Regarding ACTA FJC took the view that libraries are 'law abiding' organisations that should respect copyright and accept this as a basis for their actions and their relationships with copyright owners whether these are publishers or individual authors. FJC does well not to be associated with organisations that legitimise illegal practices under the guise of the right to information, freedom of expression and/or protection of privacy. FJC followed in this the reasoning of the chair of the Expert Group on Information Law of EBLIDA (EGIL) outlined in his paper 'Thoughts on

ACTA'. FJC agreed that ACTA imposes no requirements on libraries that they currently do not have.

The Dutch Minister of Economic Affairs, Agriculture and Innovation informed EU Commissioner Kroes of the latest developments on ACTA in the Netherlands. In accordance with the vote of Parliament the Netherlands will not proceed to sign or ratify ACTA unless it is universally accepted that the treaty is in line with fundamental rights. This judgment must be granted by the Court of Justice, which is expected in 2012.

E-books

FJC remarked that publishers sometimes refuse to make available e-books to libraries. They argue that publishers and libraries don't have an agreement yet on the financial and other conditions under which libraries could lend e-books. A reason that may play a role is that publishers themselves could take over the function of the library offering end users short lendings'. The latter obviously can not be banned, but it should not mean that libraries are hindered in the exercise of their core task, namely providing information to their own choice to the public. FJC advises the Netherlands Library Forum to aim for a legal provision in the form of a compulsory or statutory licence. Right owners must allow libraries to use e-books for a reasonable fee.

Law cases

Lending Right

In September 2011 the Stichting Leenrecht (Foundation Lending Right) appealed the ruling of the Supreme Court regarding the question whether a renewal constitutes a new lending for which a fee must be paid.. A judgment is expected in October 2012.

In June 2011 the Court in The Hague ruled in the procedure between the Stichting Leenrecht and the Public Library Association that a renewal of the lending term is not a new lending for which a remuneration should be paid.

Lobby activities

FJC reacted to several national and European (online) consultations. On a European level FJC completed the survey on the Re-use of Public Sector Information. FJC contributed to the Consultation on the Green Paper on digital distribution of Audiovisual Media. On a national level FJC urged the ministries of Education, Culture and Science, and Security and Justice to agree on the WIPO treaty regarding access and reading for the visually impaired. To the same ministries FJC expressed its concerns about the proposal for the Orphan Works Directive.

Educational activities

In April 2012 FJC organised a seminar about the possibilities of buying off the remuneration for the use of works in mass digitisation projects. Representatives of diverse archives and libraries talked about their experiences regarding working with collective management organisations. The outcome of the seminar gave the members of FJC represented in DigitieE reasons to give the relationships between cultural heritage institutions and collective management organisations a prominent place on the agenda of the committee.

Strategic plans for future

The coming year the lending of e-books will be on the agenda of FJC.

30 July 2012