

Assessing Copyright and Related Rights Systems

Copyright Law

Report on Piloting in Finland



The logo for Cupore, consisting of the word "cupore" in a white, lowercase, sans-serif font, centered within a solid red rectangular background.

Assessing Copyright and Related Rights Systems: Copyright Law. Report on Piloting in Finland.

This report is the result of the first pilot study implementing Description Sheet 5 – *Copyright Law*, one of the 37 indicators constituting a methodology framework for assessing the operation of national copyright and related rights systems. The methodology framework has been developed at the Foundation for cultural policy research (Cupore) in Finland as part of a project financed by the Finnish Ministry of Education and Culture. The pilot study is based on desktop research conducted by Antti-Pekka Manninen, student at the Faculty of Law at the University of Turku, as part of an internship at Cupore between February and June 2013. This work was supervised by Assistant Professor Tuomas Mylly (University of Turku), the steering group of the project, as well as the core project team. The report was revised by the core project team together with experts from the Finnish Ministry of Education and Culture in spring 2014. The results were first published in October 2014 on the website of Cupore.

A handbook presenting the methodology framework is available on the website of Cupore at www.cupore.fi.

Cupore webpublications 39:9

Kulttuuripoliittisen tutkimuksen edistämissäätiö (Cupore)

Foundation for Cultural Policy Research (Cupore)

© Authors and Foundation for Cultural Policy Research

Cover illustration: Oy Graaf Ab

ISBN 978-952-5573-81-7

ISSN 1796-9263

May 2016

Executive summary

This document presents data collected in application of a methodology framework to assess the operation of copyright and related rights systems. More precisely, the information and analysis below correspond to the fifth description sheet presented in the methodology handbook, titled "Copyright Law". The national copyright legislation has been analyzed thoroughly.

The Finnish copyright legislation is embodied in national laws, which are based on international treaties and the Constitution of Finland. The laws are interpreted mainly by the Supreme Court. Opinions of the Copyright Council are also important in determining the copyright legislation's interpretation and scope.

The Finnish copyright legislation is a result of a high level of Nordic, European and international cooperation. Finland is a Member State of the European Union which has issued several directives in the field of copyright harmonization and enforcement. These directives require modifications in national laws of Member States to be implemented. Many directives and judgments of the Court of Justice of the European Union (CJEU) are binding in the context of the Finnish copyright system. Furthermore, Finland has concluded bilateral agreements aiming at organizing reciprocal promotion of investments, in which intellectual property rights are considered as investments. Finland is also bound to a large number of free trade agreements concluded by the European Union which include sections aiming at ensuring adequate and effective protection of intellectual property rights between the contracting parties. All of these international aspects have had their impact on the Finnish copyright legislation.

The Finnish copyright law grants economic rights to make copies of the work and to make the work available to the public. It also grants moral rights. Right of paternity and right of respect are expressly included in the Copyright Act.

Limitations to the exclusive rights can be divided into limitations allowing the use of a work without permission or compensation and limitations under a statutory license. They concern, *inter alia*, exhaustion of right of distribution, reproduction for private use, quotation right, current topics and events in newspapers and periodicals, reproduction of works of art in pictorial form in connection with a text in a critical or scientific presentation, use of copyrighted works in libraries, archives and museums, use of copyrighted works for educational activities and scientific research, the availability of works to persons with disabilities, literary or artistic works of compilation used in education and public lending.

The Finnish law has some special features compared to many other countries. Extended collective licensing for instance is a unique way of organizing the use of copyright. Ultimately, the international orientation of the Finnish copyright system results in the same level of protection as the copyright systems in most other countries.

As authors' economic rights are regarded as property rights, they may be transferred freely. However, moral rights cannot be transferred with a binding effect. Legal entities can become right holders to a work by assignment or transfer of rights. The Copyright Act does not include, except for computer programs and databases, provisions on the transfer of rights in cases of works made within employment relationships. The general rule in labor law is that the employer has the right to the results of an employee's work, whereas the main rule in the Copyright Act is that the author is the person who has created the work.

Table of contents

EXECUTIVE SUMMARY	3
INTRODUCTION.....	6
A. Context of the pilot study	6
B. Presentation of the indicator	6
C. Methods	7
RESULTS.....	8
Section 1. Legislative context	8
A. The hierarchy of legal norms.....	8
B. History of the Finnish copyright legislation.....	9
Section 2. Criteria for protection	10
A. Protected works	10
B. Originality	10
C. Expression	11
Section 3. Exclusive rights.....	12
A. Economic rights	12
B. Moral rights.....	13
C. Neighboring rights /related rights.....	13
D. Term of protection	14
Section 4. Limitations	14
A. Limitations that allow the use of a work without permission or compensation	15
▪ Exhaustion of right of distribution	15
▪ Reproduction for private use	15
▪ Quotation right	15
▪ Parody	16
▪ Current topics and events in newspapers and periodicals	16
▪ Reproduction of works of art in pictorial form in connection with a text in a critical or scientific presentation.....	16
▪ Use of copyrighted works in libraries, archives and museums.....	16
▪ Use of orphan works	16
▪ Radio and television transmissions.....	17
▪ Temporary reproduction.....	17
▪ Computer programs and databases.....	17
▪ Use of copyrighted works for educational activities and scientific research, and other similar limitations.....	17
▪ Reproduction in certain institutions	17
▪ Other limitations to copyright.....	18
B. Limitations under a statutory license.....	18
▪ Availability of works to persons with disabilities	18
▪ Literary or artistic works of compilation used in education	18
▪ Distribution of copies of a work: Public lending	18
Section 5. Extended collective license.....	19
Section 6. Remuneration and compensation	20
Section 7. Ownership and transfer of rights.....	20
A. Authorship.....	20
B. Transfer of rights	21
C. Employer’s rights to works made by employees	21
Section 8. Protection of technological measures and DRM	22

CONCLUSIONS.....	23
A. Analysis and summary of the results	23
B. Methodological findings	24
▪ Limitations	24
▪ Guidelines for future research.....	24
APPENDICES.....	25
A. Description sheet	25
B. List of limitations on copyright and provisions concerning extended collective license in the Copyright Act.....	27
C. Information sources	29

Introduction

A. CONTEXT OF THE PILOT STUDY

A methodology framework for assessing the operation of national copyright and related rights systems has been developed at the Foundation for Cultural Policy Research (Cupore) in Finland. It is a collection of tools for achieving a systematic assessment of the functioning, performance and balanced operation of national copyright and related rights systems.

In the methodology, the assessment of the copyright and related rights system is determined through a framework consisting of so-called description sheets and methodology cards. The description sheets constitute guidelines to produce a comprehensive presentation and description of a country's copyright and related rights system and its operating environment. The methodology cards propose the collection of specific sets of data, either quantitative, descriptive or qualitative, that will be used as indicators of the functioning, performance and balanced operation of the system. Description sheets and methodology cards are accompanied by detailed information on the data to be collected, as well as analysis guidelines that will help connect them to each other.

The methodology framework is envisaged to be continuously improved through application feedbacks. For more information, see the Cupore website, www.cupore.fi/copyright.php.

This report presents data collected in application of Description sheet 5 of the methodology framework, titled "Copyright law". It is the result of the first pilot study applying this indicator in Finland.

This study is based on desktop research conducted by Antti-Pekka Manninen, student at the Faculty of Law at the University of Turku, as part of an internship at the Foundation for Cultural Policy Research between February and June 2013. This work was supervised by Assistant Professor Tuomas Mylly (University of Turku), the steering group of the project, as well as the core project team. The report was revised by the core project team together with experts from the Finnish Ministry of Education and Culture in spring 2014.

B. PRESENTATION OF THE INDICATOR

The indicator implemented here is intended to describe in detail one of the copyright system's elements. It is part of the second pillar of the methodology framework, "Functioning and performance of the elements of the copyright system", and its first area, "Law, policy and public administration". It is a description sheet which presents national copyright laws in order to support the analysis of the operation of the national copyright and related rights system.

As explained in the methodology handbook, copyright law, together with copyright policy, form the ground on which the other elements of the copyright system are founded. The functioning of copyright policies, strategies and law should be continuously assessed with respect to changes in the working environment.

A first necessary step in assessing the functioning of the copyright laws and policies is a thorough description of the legal copyright system. This description aims at clarifying the general functioning of the copyright system, and identifies public measures taken to regulate it. This description sheet provides a basis for the interpretation of the functioning and performance indicators presented in the methodology handbook, and will additionally offer an international understanding of the national copyright systems.

This information is connected to the descriptive information specified in Pillar I of the methodology handbook, especially the information concerning the international treaties and regional agreements on copyright protection (Description sheet 2 – *International and regional context*).

This report presents an overview of the Finnish copyright law on the basis of topics listed in the description sheet. It describes the legislative context, criteria for protection, the exclusive rights and their duration, limitations to copyright, provisions on transfer of rights and on remuneration and compensation, protection of technological measures and DRM, as well as certain national characteristics such as provisions on extended collective license.

The description sheet presenting the indicator can be found in Appendix A of this report.

C. METHODS

The information collected for this indicator was found through available national and international information sources, consisting mainly of legislative texts, legal praxis and relevant literature. The method chosen was therefore desktop studies. Lists of national and international information sources used for this pilot study can be found in the Appendices.

Results

SECTION 1. LEGISLATIVE CONTEXT

Finnish copyright legislation includes the following acts and government decrees:

- The Copyright Act¹
- The Copyright Decree².

Other legal documents relevant to the field of copyright are:

- The Criminal Code, Chapter 49³
- Act concerning the safeguarding of evidence in cases of intellectual property disputes⁴
- Act on Provision of Information Society Services⁵
- Decree on the Application of the Copyright Act in Certain Cases to Protected Items Originating in States Belonging to the European Economic Area⁶.

Other sources of law are the legal praxis, especially judgments of the Supreme Court and the Court of Justice of the European Union, and the non-binding and non-enforceable opinions of the Copyright Council⁷: in a number of cases, the opinions of the Copyright Council have provided guidance in the interpretation of rules concerning copyright. Preparatory works are also used to interpret the meaning and scope of a particular legislation. As the current Copyright Act is a result of Nordic cooperation aimed at harmonizing Nordic copyright legislation, the parliamentary committee reports concerning the respective acts in other Nordic countries can also be used as interpretation guidelines in specific cases.

A. THE HIERARCHY OF LEGAL NORMS

Finland is bound by several international conventions and treaties. In particular, Finland is a party of all WIPO treaties on copyright and a member of the World Trade Organization (WTO). Accordingly, Finland is bound by the WTO agreements such as the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and subject to the process and opinions of the (WTO) Dispute settlement body. Besides the international treaties, the legislation adopted in the European Union is of an increasing importance. The Directives which have the harmonizing effect and have thus affected the national copyright legislation are listed in Description sheet 2. In accordance with the principle of EU law's

¹ Tekijänoikeuslaki. Act nr. 404/1961 and its amendments. Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>. Visited on 4.5.2013.

² Tekijänoikeusasetus. Decree nr. 574/1995 and its amendments. Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1995/19950574>. Visited on 4.5.2013.

³ Rikoslaki. Act nr. 39/1889 and its amendments. Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1889/18890039>. Visited on 4.5.2013. Enforcement and sanctions are described in more detail in the pilot reports concerning Description sheets 8 and 9 and Methodology card 7.

⁴ Laki todistelun turvaamisesta teollis- ja tekijänoikeuksia koskevissa riita-asioissa. Act nr. 344/2000. Text in Finnish available at: <http://www.finlex.fi/fi/laki/ajantasa/2000/20000344>. Visited on 4.5.2013.

⁵ Laki tietoyhteiskunnan palvelujen tarjoamisesta. Act nr. 458/2002. Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/2002/20020458>. Visited on 4.5.2013.

⁶ Asetus tekijänoikeuslain soveltamisesta eräissä tapauksissa Euroopan talousalueeseen kuuluvista valtioista peräisin oleviin suojan kohteisiin. Decree nr. 575/1995. Text in Finnish available at: <http://www.finlex.fi/fi/laki/alkup/1995/19950575>. Visited on 4.5.2013.

⁷ See the pilot report implementing DS 7 – *Public administration of copyright* for more information regarding the Copyright Council

primacy, Finnish legislative acts conflicting with EU norms must be interpreted in the light of the EU norms. Where this is not possible, Finnish law must be set aside in favor of directly effective EU norms. Finland is also bound by the decisions of the Court of Justice of the European Union.

The Constitution of Finland represents the supreme form of legislation in Finland.⁸ The Constitution is the cornerstone of all legislation and exercise of public power.⁹ According to section 15 of the Finnish Constitution, the property of everyone is protected. This can be seen as the constitutional basis for copyright protection. Even though the constitution does not specifically mention intellectual property, it is covered by the general protection of property.¹⁰ The national legislator and the courts of law must weigh relevant fundamental rights when drafting new legislation and deliberating judgements.

B. HISTORY OF THE FINNISH COPYRIGHT LEGISLATION

The first law concerning copyright in Finland, namely The Act on Copyright to Intellectual Products (174/1927) was passed in 1927. The Act was a result of the objective to meet the requirements of the Berne Convention, which was adopted in 1886 and to which Finland acceded in 1928.¹¹ In the same year, an Act on the Rights to Photographs (175/1927) was also passed.

The current Copyright Act (404/1961) was passed in 1961. The Act was prepared together with Swedish, Norwegian and Danish legislators, which explains the similarity of copyright legislation between Nordic countries. The title of the Copyright Act was originally “the Act on Copyright to literary and artistic works”, but it was abbreviated to “Copyright Act” by the Amendment 442/1984. The Act has been amended a number of times and according to many experts it has therefore become incoherent. The amendment to the Act made in 1991 (Act on the amendment of Copyright Act - 34/1991) was an important phase in the history of the Finnish copyright legislation as it added the provisions concerning the protection of computer programs. This was the result of the European Commission’s proposal on the directive on the legal protection of computer programs on 12 April 1989 which led to the 1991 Council Directive on the legal protection of computer programs (91/250/EEC).¹²

Finland has entered into six international copyright treaties, all of which have been brought into the Finnish legislation by specific Acts or Government Decrees in line with the dualistic tradition.¹³ After their implementation in legislation (mainly in the Copyright Act), the provisions of these treaties have become part of the national legislation. After Finland became a Member State in the European Union, the legislation and case law adopted in the EU has had increasing importance.

⁸ Unofficial translation in English available at: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf>. Visited on 4.5.2013

⁹ <http://web.eduskunta.fi/Resource.phx/parliament/relatedinformation/constitution.htm>

¹⁰ See Statements of the Constitutional Committee of the Parliament, nr. 13/2007 and nr. 15/2006.

¹¹ Government Bill 89/1926 vp., p. 2 – 3

¹² Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs is a codified version of Directive 91/250/EEC.

¹³ See Description Sheet 2 – *International and regional context* for more information regarding the International treaties.

SECTION 2. CRITERIA FOR PROTECTION

A. PROTECTED WORKS

Section 1 of the Copyright Act provides that literary and artistic works enjoy protection under copyright and provides a list of categories of works enjoying copyright protection. According to the Government Bill this list is not exhaustive.¹⁴

“A person who has created a literary or artistic work shall have copyright therein”

This provision suggests that the two main categories of protected works are literary and artistic works. Literary works may be fictitious, scientific or descriptive literature in written or spoken form. Computer programs can also be considered as literary works when reaching the level of a work according to the Copyright Act section 1, paragraph 2. In legal practice, even the standard contract terms of an online store have been deemed to enjoy copyright protection as a literary work.¹⁵

The category of artistic works includes all other kinds of works of which section 1 provides a non-exhaustive list of examples. They include musical and dramatic works, and also works of architecture and industrial arts or works expressed in some other manner.

Works of compilation, i.e. works made by combining two or more works, are protected. Derivative works, e.g. adaptations or translations (more about this in the following section on limitations to copyright), enjoy protection as well.

The Berne Convention provides that copyright protection is not to be dependent upon any formalities such as registration. Therefore, copyright to a work automatically subsists as a result of the creation of the said work. For example, no copyright notice is required to achieve protection for the work, although it can be used to clarify the legal status. No fees or registration payments are paid.

Section 9 of the Copyright Act lists the works which are exempted from protection. These include laws and decrees and other official documents made or commissioned by public authorities or other public bodies. This is consistent with section 25c, which states that oral or written statements made by a public representational body, before an authority or at a public consultation on a matter of public interest may be reproduced or communicated to the public without the author's consent. This may be done only to the extent necessary for the purposes of such reporting.

B. ORIGINALITY

The Copyright Act does not explicitly provide the criteria for evaluating the originality requirement. The preparatory works indicate that internationally accepted requirements are to be followed. A work must be independently created, i.e. not copied, and a result of creative expression of the author. The required creation of a work in the Copyright Act can be described as analogous to the originality requirement outlined in the court praxis of the CJEU. The CJEU has interpreted originality as “the author’s own

¹⁴ Government Bill 161/1990, p. 12

¹⁵ E.g. Decision 2007:3 of the Appellate Court of Turku.

intellectual creation”¹⁶. This concept has been considered to encompass all subject matter that is eligible for copyright protection.¹⁷

In order for a work to be copyright protected, it is required that a natural person has independently created a ‘work’. Thus the concept of a work is an imperative aspect in deeming whether copyright protection is accorded. In order to qualify as a protected work, the requirement of originality must be met. In legal literature, the originality requirement is considered to have been fulfilled when the work is a result of the author’s creative effort, which somehow represents his personality. Another aspect of this test is the assumption that no other potential author would have been able to create a work resulting in a similar manifestation.¹⁸

If another party modifies a copyrighted work to such extent, that the secondary work succeeds in being sufficiently original, the work is considered to be an independent and copyrighted work on its own.

If a work is translated, adapted or converted for example into some other literary or artistic form, the person making an original yet a derivative work, shall have copyright in the derivative work in that particular new form, but shall not have the right to control his derivative work in a manner which infringes copyright in the original work. Mere mechanical work for example transcription shall not reward the worker with copyright of any degree.

The level of required originality in practice may depend on the category of the work; for example, works of applied arts have a higher requirement of originality due to the fact that e.g. certain shapes of functionalities are necessary to be included in the product in question and thus the creative freedom of the designer may be limited. By contrast, literary works tend to have a lower requirement of originality, because even a short piece of writing may be deemed to contain an author’s original expression.

C. EXPRESSION

Copyright protects only the form of expression, but not ideas, procedures, methods of operation or mathematical concepts as such.¹⁹

If the end-result is reached through a mechanical process or by copying existing works, no creativity of the author can be deemed to be manifested.²⁰ The quality of the work as such is not relevant in this consideration. The work does not need to be fixed in any medium in order for it to be eligible for copyright protection.

¹⁶ See e.g. Case C-5/08 Infopaq A/S v Danske Dagblades forening [2009].

¹⁷ In subsequent CJEU cases the originality concept has been further developed as involving “creative freedom” (C-403/08 and C-429/08 Murphy), “personal touch” (C-145/10 Painer) and “free and creative choices” C-604/10 Football Dataco).

¹⁸ Sorvari 2007, p. 41–42 and Haarmann & Mansala 2012, p. 89

¹⁹ For example in its opinions 2011:15 and 2010:14, the Copyright Council has stated that business ideas or ideas for a new game cannot be protected by copyright. These decisions are based on the WIPO Copyright Treaty, Section 2 which states the following: “Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.”

²⁰ Supreme Court 2005:43 and Copyright Council 2009:10: Glossaries for example in form of textbooks enjoy protection as they are not constructed mechanically, but require original input from the author.

Copyright Council 2011:11: The goal of making a stuffed animal was to be as close as possible to the natural animal, therefore the work was not deemed original even though the process used to achieve this was unique.

SECTION 3. EXCLUSIVE RIGHTS

The Berne Convention, the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the Directives of the European Union largely define the rights of the copyright owners. The Court of Justice of the European Union has further defined these and their interpretation in its case law.

Copyright grants the author exclusive rights on the work. These privileges can be divided into economic rights (or financial/exploitation rights) and moral rights.

A. ECONOMIC RIGHTS

Copyright holder has an exclusive right to control the work by *making copies thereof* and by *making it available to the public*.

Exclusive right to make copies of a work subject to copyright covers all kinds of reproduction in the original or altered form or by any technique, in whole or in part, directly or indirectly, temporarily or permanently. If no exception or limitation stated in the Copyright Act applies, even copying short sections of protected works is regarded as infringing acts.²¹

A work can be made available to the public by four different means, specified in section 2 subsection 3.

A work is made available to the public when:

- 1) it is communicated to the public by wire or wireless means, including communication in a way which enables members of the public to access the work from a place and at a time individually chosen by them;*
- 2) it is publicly performed to an audience present at a performance;*
- 3) a copy thereof is offered for sale rental or lending or it is otherwise distributed to the public; or*
- 4) it is publicly displayed without the aid of a technical device²².*

All acts of distribution of tangible copies of a work are regarded as making available to the public, including sale, loan, rental, donation etc.

Although, not commonly mentioned as an author's economic right, it may have economic significance that the author of a work of fine art has the non-transferable right to receive a remuneration for all acts of resale involving an art market professional as a seller, a buyer, or an intermediary. However, the right does not extend to acts of resale by a private person to a museum open to the public. The right to receive remuneration for the sale of a work of fine art shall come into effect when the author or his successor in title has sold or otherwise permanently transferred a work of fine art or copies of a work made in limited numbers by the artist himself or under his authority. The resale right shall subsist for the term of copyright protection.²³

²¹ SC 1980 II 46: Photocopying of an article released in a newspaper was deemed to be making of a copy of the said work without the author's permission.

²² It should be noted, that the concepts used in the Copyright Act differs from the concepts used in directive 29/2001/EC. There is no equivalent in the directive for the general concept of making available used in the Finnish Copyright Act. The making available-right used in the directive corresponds to the concept of communication to the public on demand in the Copyright Act.

²³ See Chapter 2 b, Subsections 26 i - 26 m of the Copyright Act.

B. MORAL RIGHTS

Besides the economic rights, the subject-matter of copyright includes moral rights of the author. The moral rights are specified in the section 3 paragraphs 1 and 2 of the Copyright act. Paragraph 1 defines the *right of paternity*, according to which the name of the author shall be stated in a manner required by proper usage in all cases where copies of a work are made or the original work itself is made available to the public. Paragraph 2 concerns the *right of respect*, which states that others do not have permission to modify the work in a manner that violates its literary or artistic value or is prejudicial to the author's reputation. It can be also seen as the right to object derogatory treatment.

The right of access regarding authors of fine art (section 52 a) and protection of literary and artistic works from a treatment violating cultural interests (section 53), and the repentance right (originates from general principles of contract law, specified in the section 36 regarding publishing agreements), are not expressly included in the list of moral rights, but they can be considered as moral rights.

The author of a work of fine art shall have the right of access to see the work he has transferred to another party, unless this causes unreasonable detriment to the owner or holder of the work, and provided this is necessary for the author's artistic activity or for the purpose of exercising his economic rights (as described above in subsection A).

The repentance right enables the author to redeem already manufactured copies of the work before they are published, if the author has experienced for example a change of faith or ideology and thus wants to prevent the publication. The author also has a right to slightly modify or make additions to new publications of his work.

Protection of literary and artistic works from a treatment violating cultural interests holds that after the death of the author, if a literary or artistic work is publicly treated in a manner which violates cultural interests such as distorting or truncating the work, such action may be prohibited notwithstanding that the copyright therein is no longer in force, or that copyright has never existed.

The Copyright Act also contains a few sections providing protection similar to trademarks; a literary or artistic work may not be made available to the public under such a title, pseudonym or pen name that the work or its author may easily be confused with a work previously made public or its author.

In order to distinguish original work of art from a forgery, the name or signature of the author may be inscribed on a copy of a work of art by another person only when so instructed by the author. The name or signature of the author shall not be inscribed on a copy of a work of art in such a manner that the copy could be confused with the original work. Whoever makes or distributes to the public a copy of a work of art shall mark the copy in such a manner that the copy cannot be confused with the original work. Copyright may co-exist with other intellectual property rights; notwithstanding the registration of a work as a design under other applicable statutes, its author may have copyright therein.

C. NEIGHBORING RIGHTS /RELATED RIGHTS

Besides literary and artistic works, the Copyright Act also protects rights related to copyright (so-called neighboring rights). Neighboring rights have their legal basis in international conventions protecting other types of subject matter besides works, including performances of works, first fixations of phonograms and the protection of transmission signals. Although neighboring rights have a distinct legal basis, many provisions related to copyright are applicable to neighboring rights. These rights are specified in Chapter 5 of the Copyright Act and include the following:

- Rights of performing artists
- Producers' rights
- Broadcasters' rights on radio and television transmissions
- Catalogues and databases
- Photographs
- Press reports

D. TERM OF PROTECTION

The exclusive rights of an author have a term of protection starting from the creation of the work and continuing until 70 years following the year of author's death. Neighboring or related rights on the other hand have varying terms of protection and varying starting points thereof such as the moment of production or performance.

- Music records and performing artists: 50 or 70 years from the year when the work was first fixed (depending on whether or not the record or copies thereof are published);
- Photographers (photographs which are not regarded as works i.e. sufficiently original): 50 years from production of the photograph;
- Catalogues and Databases: 15 years from completion of the catalogue or database.

SECTION 4. LIMITATIONS

The Copyright Act includes a list of limitations to copyright protection. A distinction can be made between

- those cases where the use of a work does not require the right holder's permission or compensation, and
- those cases where a work can be used without the right holder's permission but the right holder has a right to compensation (a statutory license).

In addition to limitations, in certain situations of mass use where the use of works is necessary and there is a public policy interest to simplify the licensing process, stipulations on extended collective licensing have been provided.²⁴

The use of exceptions and limitations is governed by a three-step test presented in the Infosoc Directive 2001/29/EC²⁵, which states in Article 5, paragraph 5 that:

"The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder."

²⁴ For more information on the extended collective license see section 5 of this report.

²⁵ The three-step test was first introduced in the 1967 revision of the Berne Convention. Where in the Berne Convention it applies to exceptions and limitations to the right of reproduction only, in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) it concerns exceptions and limitations to any exclusive right associated with copyright. See also Article 10 of the WIPO Copyright Treaty (WCT) and Article 16 of the WIPO Performances and Phonograms Treaty (WPPT).

Chapter 2 of the Copyright Act contains the limitations to the exclusive rights conferred to authors. Finnish copyright law does not contain a 'fair use' -doctrine like the common law systems do. Applicable limitations of copyright are solely those specified in the law.

According to section 11, paragraph 3 of the Copyright Act, a copy of a work made by virtue of these limitations on copyright may be, for the purposes determined in those provisions, respectively, distributed to the public and used in public performance. The limitations stated in Chapter 2 do not restrict the author's moral rights, with the exception of alterations to buildings and utilitarian articles. Therefore the author's name and the source must be indicated to the extent and in the manner required by proper usage. Moreover, the work may not be altered without the author's consent more than necessitated by the permitted use.

A full list of limitations on copyright and provisions concerning extended collective license in Copyright Act can be found in Appendix B of this report.

A. LIMITATIONS THAT ALLOW THE USE OF A WORK WITHOUT PERMISSION OR COMPENSATION

▪ EXHAUSTION OF RIGHT OF DISTRIBUTION

Sections 19 and 20 concern the exhaustion of the right of distribution. By definition, exhaustion means that when a copy of a work has been sold or permanently transferred with the consent of the author, it may be further distributed. Exhaustion applies only to the tangible copy of a work. In the Finnish legislation exhaustion means the European Union-wide exhaustion: the right of distribution exhausts only within the European Economic Area.

▪ REPRODUCTION FOR PRIVATE USE

Another limitation to the economic rights conferred by the Copyright Act is reproduction for private use. Section 12 provides the permission to make *a few copies for private use* of a work that has been made public. According to paragraph 4 this does not apply to computer programs. Section 25j on the other hand provides the permission to make back-up copies of legally acquired programs, if deemed necessary for the use of the program. Private use means non-commercial activities in the private sphere, and the copy shall not be used to any other purposes. Copyright levy²⁶ is a means used to adequately compensate authors for the use of their works. The making of private copies can, with regard to certain types of work, be assigned to an external party.

▪ QUOTATION RIGHT

Quotation of works is allowed, provided the requirements specified in the section 22 are fulfilled:

“A work made public may be quoted, in accordance with proper usage to the extent necessary for the purpose.”

Quotation right applies to all kinds of works and also to most of the neighboring rights. The requirement of proper usage means that the quotation must not be the dominant feature of the new work. On the other hand, in the context of criticism, for instance, a greater amount of quoted text is allowed.

²⁶ See Pilot report on Description Sheet 1. *The national context.*

▪ **PARODY**

The Finnish Copyright Act does not explicitly mention parody. However, parody is mentioned in international agreements and also mentioned in the preparatory works of the Finnish Copyright Act. The Infosoc Directive²⁷ grants the possibility to enable exceptions from the exclusive rights concerning caricatures, parodies and pastiches.

A parody necessarily has similarities to its source of inspiration. Nevertheless, it may be interpreted as an independent work if it meets the aforementioned originality requirement. The legal interpretation in Finland has been based on the old Supreme Court case SC: 1971-II-44, which handled the distinction between allowed parody and illegal copy.

▪ **CURRENT TOPICS AND EVENTS IN NEWSPAPERS AND PERIODICALS**

Section 23 provides a limitation regarding exclusive rights concerning current topics and events in newspapers and periodicals. It applies only to articles on current religious, political and economic events. These kinds of articles may be included in other newspapers and periodicals unless reproduction is prohibited.

▪ **REPRODUCTION OF WORKS OF ART IN PICTORIAL FORM IN CONNECTION WITH A TEXT IN A CRITICAL OR SCIENTIFIC PRESENTATION**

Section 25(1) provides the permission to reproduce works of art in pictorial form in connection with a text in a critical or scientific presentation, or in a newspaper or a periodical, when reporting on a current event. The use of the pictorial work should be grounded in the necessity to clarify or illustrate the presentation.²⁸ The Copyright Council has considered this in its statement 2011:13:

The three drawings published in a book were not allowed to be cited as a whole in an article concerning the book, because a genealogy-related article was not a scientific or critical presentation. Also, the pictures were not in a sufficient context to the text of the article.

▪ **USE OF COPYRIGHTED WORKS IN LIBRARIES, ARCHIVES AND MUSEUMS**

Section 16 and the following sections 16 a – 16 d regulate the permitted use of copyrighted works in libraries, archives and museums open to the public. Those institutions can make copies of works residing in their collections, unless the purpose is to produce financial gain, in order to preserve, safeguard, restore, or repair the material or for the purpose of administering and organizing the collections.

▪ **USE OF ORPHAN WORKS**

In section 19, paragraph 4 of the Copyright Act, a reference is made to the Act on the Use of Orphan Works (763/2013)²⁹ that provides more detailed provisions on the use of orphan works:

- in public libraries, museums and educational organizations;
- in archives, film and sound recording archives; and
- in public service television and radio companies.

The Act contains an exhaustive list of the materials to which it applies.

²⁷ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

²⁸ Government Bill 287/1994 p. 27–28

²⁹ The Act comes into force on October 29th 2014.

▪ **RADIO AND TELEVISION TRANSMISSIONS**

Section 25f regulates original radio and television transmissions³⁰ and section 25 i concerns must carry obligation to transmit programmes.

▪ **TEMPORARY REPRODUCTION**

According to the section 11a, the author's economic rights do not cover temporary reproduction:

- which is transient or incidental;
- which is an integral and essential part of a technological process;
- the sole purpose of which is to enable a transmission of a work in a network between third parties by an intermediary or a lawful use of a work; and
- which has no independent economic significance.

The aforementioned provision shall not apply to a computer program or to a database.

▪ **COMPUTER PROGRAMS AND DATABASES**

Special provisions concerning computer programs and databases are covered in sections 25 j and 25 k.³¹

▪ **USE OF COPYRIGHTED WORKS FOR EDUCATIONAL ACTIVITIES AND SCIENTIFIC RESEARCH, AND OTHER SIMILAR LIMITATIONS**

Section 14(2) of the Copyright Act allows the audio or video recording of a work performed by a teacher or a student for temporary use for educational purposes. A copy thus made may not be used for other purposes. According to section 14(3), parts of a literary work that has been made public or, when the work is not extensive, the whole work, may be incorporated into a test constituting part of the matriculation examination or into any other corresponding test.

According to section 21, a published work may be publicly performed in divine services and as part of educational activities.³²

Section 14 (1) provides for a possibility to use extended collective licensing for the use of works in educational activities and scientific research.³³

▪ **REPRODUCTION IN CERTAIN INSTITUTIONS**

Section 15 of the Copyright Act allows copying of works made public and included in radio and television transmissions by audio and video recording for temporary use in hospitals, senior citizens' homes, prisons and other similar institutions.

³⁰ See also section 5 below discussing extended collective license.

³¹ According to the section 25j (1), whoever has legally acquired a computer program may make such copies of the program and make such alterations to the program as are necessary for the use of the program for the intended purpose.

Based on section 25k (1), the reproduction of the code of a program and the translation of its form shall be permissible if these acts are indispensable for obtaining information by means of which the interoperability of an independently created computer program with other programs can be achieved and that certain conditions are met.

³² Section 21 does not, however, apply to dramatic or cinematographic works.

³³ See section 5 below.

▪ OTHER LIMITATIONS TO COPYRIGHT

Other limitations to copyright concern the use of works of art for secondary purposes³⁴, presentation of a current event³⁵, altering of buildings and utilitarian articles³⁶, the use of works for internal communication³⁷, public documents and administration³⁸, and performance of a musical work with text in a concert programme or a corresponding leaflet³⁹.

B. LIMITATIONS UNDER A STATUTORY LICENSE

▪ AVAILABILITY OF WORKS TO PERSONS WITH DISABILITIES

According to section 17 of the Copyright Act, copies of published literary works, musical works or works of fine art may be made by means other than recording sound or moving images for the use by people with visual impairments or other disabilities. Institutions entitled to making these copies are designated by a Government Decree.⁴⁰

▪ LITERARY OR ARTISTIC WORKS OF COMPILATION USED IN EDUCATION

Section 18 concerns the right to use minor parts of a literary or artistic work or, if the work is not extensive, even the work entirely in works of compilation which are intended for use in education. The provisions apply only after five years have elapsed after the publication and shall not apply to works created specifically for use in education.

▪ DISTRIBUTION OF COPIES OF A WORK: PUBLIC LENDING

Section 19 allows the author to get remuneration for the lending of copies of a work to the public. The section only concerns lending that has taken place within the last three calendar years. The right to remuneration however excludes products of architecture, artistic handicraft and industrial art, and doesn't concern the lending taking place in libraries serving research or educational activities.

³⁴ See section 25(2) of the Copyright Act.

³⁵ See section 25b of the Copyright Act.

³⁶ According to section 25e of the copyright Act buildings and utilitarian articles may be altered by the owner without the consent of the author, if required by technical or practical reasons.

³⁷ Use for internal communication is permitted in Section 13a of the Copyright Act.

³⁸ See sections 9, 25c and 25d of the Copyright Act.

³⁹ Section 24 of the Copyright Act states that when a musical work is performed with text, the text may be made available to the audience in a concert programme or a corresponding leaflet produced by printing, photocopying or by corresponding means.

⁴⁰ See Copyright Decree (574/1995) on the application of the Copyright Act, Sections 7 and 7a (Making works available for the handicapped (15.12.2005/1036)).

SECTION 5. EXTENDED COLLECTIVE LICENSE

The system of extended collective licensing (*sopimuslisensijärjestelmä*) was developed in 1950s especially for the protection of users against demands from non-represented authors in the field of use of musical works. The introduction of extended collective licensing clarified the process of rights clearance for mass use of certain works.

The foundations of extended collective licensing are expressed in section 26 of the Copyright Act. Extended collective licensing is used only in cases where special grounds for it exist. These include cases of mass use of works where the amount of works used and single acts of use is high, or where only a small portion of works from an extensive repertoire is incidentally used. In large repertoires of works there are always more or less works from domestic and foreign right holders whom the collective management organization does not represent. In these kinds of cases it is in practice impossible to license works individually or in such a way that all right holders are represented by the collective management organization.

Extended collective license system is administered by certain collective management organizations approved by the Ministry of Education and Culture. These collective management organizations represent authors and other right holders of certain categories of works and exercise their exclusive rights or rights to remuneration. Collective management organizations act as a contracting party in relation to users of works and collect and distribute the royalties to the authors they represent.

The extended collective licensing scheme provided by the Copyright Act extends the application of the terms of a contractual arrangement between a collective management organization and a user also to works whose right holders that are not directly represented by the collective management organization. Such a third-party right holder may always claim an individual remuneration from the said use, payable by the licensing collective management organization, even if the organization does not provide individual remuneration for the right holders directly represented by the organization.

In summary, the right holders are able to negotiate via the collective management organization how the foreseeable use of their works shall be remunerated. Also the user's interests are considered by blanket agreements without the risk of claims from non-represented right holders and criminal sanctions.⁴¹

The Finnish Copyright Act provides for extended collective licensing in the following cases:

- photocopying (section 13)
- use for internal communication (section 13 a)
- use of works for educational activities and scientific research (section 14)
- use of works in archives, libraries and museums (sections 16 d and 16 e)
- use of works of art in catalogues and in information and pictorial representation of a building (section 25 a)
- use in original radio and television transmissions (section 25 f)
- a new transmission of a television programme stored in archives (section 25 g)
- retransmission of a radio or television transmission (section 25 h)

⁴¹ Section 5 is based on article "Extended Collective Licensing – A solution for facilitating licensing of works through Europeana, including orphans?" by Anna Vuopala (2013). Available at: http://www.copyrightsociety.fi/ci/Extended_Collective_Licensing.pdf. Visited on 14 February 2014.

SECTION 6. REMUNERATION AND COMPENSATION

Chapter 2a of the Copyright Act concerns the fair compensation to be provided for authors for the reproduction for private use, and Chapter 2b of the Copyright Act defines the right to resale remuneration.

According to the section 26a, a levy shall be paid by manufacturers and importers of any device on which sound or image can be recorded and which to a substantial extent is used for the reproduction of a work for private use (*yksityisen kopioinnin hyvitysmaksu*). Resellers of said devices have the burden of proof in demonstrating that the levy is paid. The amount of this fair compensation is based on the playing time or the recording capacity of the device. The collected levy is further paid out to the authors and other right holders of copied works.⁴²

Sections 26b to 26h concern the organization which is approved by the Ministry of Education to collect and manage the levies.⁴³

According to the Chapter 2b, the author of a work of fine art has the right to receive remuneration for all acts of resale involving an art market professional as a seller, a buyer, or an intermediary. This right does not concern the resale by a private person to a museum open to the public.

Section 57 states that anyone who, in violation of the Copyright Act, uses a work or imports a copy of the work into the country, or brings a copy of the work onto the territory of Finland for transportation to a third country, is obliged to pay a reasonable compensation to the author.⁴⁴

SECTION 7. OWNERSHIP AND TRANSFER OF RIGHTS

A. AUTHORSHIP

According to section 1 of the Copyright Act, a person who has created a work shall have copyright therein. The author in this context means a natural person: for instance legal persons, animals or machines cannot be regarded as authors. Section 7 presents the presumption rule concerning the authorship of the person whose name is indicated in connection with the work. Persons who have created a work together combining their individual creative decisions and whose contributions do not constitute independent works may exploit their copyright only together (section 6).

Pursuant to section 5, the copyright in a compilation belongs to the person who has created the compilation by combining works or parts of works. This protection is without prejudice to the rights of the authors of the original works.

⁴² Copyright levies as a compensation mechanism and the amounts of levies are discussed in the pilot report on Description sheet 1 – The national context.

⁴³ More information can be found in the report on piloting Description sheet 13. *Collective management of rights and rights to remuneration and compensations.*

⁴⁴ The illegal reproduction of a work for private use is subject to compensation only if the maker of the copy knew or should have known that the material had been made available to the public in violation of the Copyright Act. If the work is used willfully or out of negligence, the infringer shall also pay damages for any other loss, including mental suffering and other detriments.

The law on the use of orphan works⁴⁵ shall enter into force on October 29, 2014. After the implementation of the Directive the Finnish legislation shall contain regulations regarding the use of orphan works, i.e. works whose right holders cannot be identified or located.

B. TRANSFER OF RIGHTS

As author's economic rights are regarded as property rights, they may be transferred freely. However, moral rights cannot be transferred with a binding effect. Legal entities can become right holders to a work by assignment or transfer of rights.

Sections 30-40 in the Copyright Act concern the transfer of copyright in certain situations. These include contracts on public performance, publishing contracts, and film contracts. The provisions are non-mandatory, and apply only if the same subject-matter has not been agreed upon in a contract.

Pursuant to section 41, after the author's death, the rules governing marital rights to property, inheritance and wills apply to copyright. Moral rights are also transferred to the heirs. In accordance with section 42, copyright cannot be a subject to foreclosure, for example in the event of distraint or bankruptcy. Only the copies of works or royalties may be taken in execution in the usual manner.

C. EMPLOYER'S RIGHTS TO WORKS MADE BY EMPLOYEES

The general rule in labor law is that the employer has the right to the results of an employee's work, whereas the main rule in the Copyright Act is that the author is the person who has created the work. Based on these starting points, and unless otherwise has been specifically agreed between the parties, it has been considered that the copyright to a work created within an employment relationship is transferred to the employer to the extent appropriate, based on an assessment of the facts in each case. The rights may be transferred exclusively or non-exclusively, in whole or in part, depending on the circumstances. Due account should be taken of the purpose of the employment relationship, the tasks of the employee, the field of activities of the employer and the established practice in the relevant field regarding the scope of the transfer of rights. As a rule of thumb it has been considered that the rights are transferred non-exclusively, unless indications to the contrary.

The general rule on transfer of rights in cases of works made within employment relationships has not been codified⁴⁶. It can be said to be based on a theory of implied agreements⁴⁷.

According to section 40b, the rights to computer programs, databases and works directly associated with them, created within the scope of duties of an employment relation, shall be transferred to the employer. This does not apply to computer programs or databases created by an author engaged in teaching or research in an institution of higher education, with the exception of institutions of military education.

⁴⁵ Act nr. 764/2013 implements Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works

⁴⁶ In 2008-2009, the Ministry of Education prepared a Government Proposal with the aim of codifying and clarifying the general rule on works made within employment relationships. The proposal was never submitted to the Parliament.

⁴⁷ An implied agreement (or implied contract) is an agreement founded upon the actions or behavior of the parties.

SECTION 8. PROTECTION OF TECHNOLOGICAL MEASURES AND DRM

Chapter 5a of the Copyright Act concerns the protection of technological measures and electronic rights management information. Section 50a prohibits the circumvention of an effective technological measure protecting a work. The term *effective technological measure* has been seen as ambiguous. In paragraph 2 it is defined as a technology, a device or a component which is designed to prevent or restrict acts in respect of the work without the author's or other right holder's authorization and by means of which the protection objective is achieved. In the preparatory works, the protection objective is considered achieved when the circumvention cannot happen accidentally.

This prohibition does not apply if the measure is circumvented in the course of research or education relating to cryptology. Circumvention is also allowed if done in order to be able to listen to or view a lawfully obtained work. These provisions do not apply to computer programs.

According to section 50c, a person who has acquired the work lawfully is also entitled to use the work in accordance with the legal limitations laid down in the definition of exclusive rights. The author is obliged to offer these possibilities, if they are made impossible due to the technological measures in use. Section 50b incorporates a prohibition to produce and distribute devices for circumventing technological measures.

Section 50d concerns electronic rights management information. Paragraph 1 states that such information which identifies the work, the author or some other right holder or which provide information about the terms of governing the use of the work shall not be removed or altered.

Conclusions

A. ANALYSIS AND SUMMARY OF THE RESULTS

The Finnish copyright legislation is embodied in national laws (the Copyright Act and the Penal Code), which are based on international treaties, European Union directives and the Constitution of Finland. The laws are interpreted mainly by the Supreme Court. Although not enforceable as such, opinions of the Copyright Council are also important in determining the copyright legislation's interpretation and scope.

The Finnish copyright legislation is strongly affected by the Directives of the European Union. Several European Union Directives have been enacted in the field of copyright law harmonization and copyright enforcement. The implementation of these Directives may require modifications in national laws of the Member States.⁴⁸ In addition, the judgments of the Court of Justice of the European Union (CJEU) are binding in the context of the Finnish copyright system.

To be protected by copyright, a work must be:

- Original (creative)
- Independently created

The rights specified in the Finnish copyright legislation are:

- Economic rights:
 - Right of reproduction (making copies of a work)
 - Right of making the work available to the public (includes communication to the public, public performance, distribution, and public display)
 - Right of resale remuneration for authors of works of fine art
- Moral rights⁴⁹:
 - Right of paternity
 - Right of respect

Limitations to the exclusive rights can be divided into two categories:

- a) Limitations allowing the use of a work without permission or compensation include (selection; for a full list of limitations on copyright see Appendix B of this report):
 - exhaustion of right of distribution,
 - reproduction for private use,
 - quotation right,
 - current topics and events in newspapers and periodicals,
 - reproduction of works of art in pictorial form in connection with a text in a critical or scientific presentation,
 - the use of copyrighted works in libraries, archives and museums, and
 - the use of copyrighted works for educational activities and scientific research.
- b) Limitations under a statutory license concern
 - the availability of works to persons with disabilities,
 - literary or artistic works of compilation used in education and
 - public lending.

⁴⁸ For an overview of the European legislation on copyright, see pilot report DS2 – *International and regional context*

⁴⁹ In addition, the following moral rights are not expressly included in the Copyright Act:

- Right of access
- Right of repentance
- Protection from a treatment violating cultural interests

Extended collective licensing system is a special feature of the Finnish copyright system, applied for organizing the copyright clearance for mass use of certain works. The Finnish Copyright Act provides for extended collective licensing in certain specified cases.

B. METHODOLOGICAL FINDINGS

▪ **LIMITATIONS**

This study is limited to national context and should not cover topics that will be analyzed in details in the studies based on other indicators of the methodology framework. The data should be analyzed in order to offer a thorough but focused source of background information on the country context. The main challenge therefore is in the balance between gathering enough information to meet all future needs when piloting the methodology, and the need to remain sufficiently compact.

▪ **GUIDELINES FOR FUTURE RESEARCH**

In the case of Finland, data on national legislation was easily available. Since the methodology is designed to be internationally applicable, it is important to use sources which are official or widely recognized. All sources should be listed and, as much as possible, widely available for consultation by international researchers.

The time needed for this pilot study will depend for each country on the availability of data. The task consists mainly in gathering information; relatively little analysis work is necessary. In the case of Finland, where most of the data was easily accessible, the workload for collecting data and drafting this report could be evaluated at 5 weeks of full-time work.

Appendices

A. DESCRIPTION SHEET

Description sheet 5, as modified on the basis of version 20.12.2013 of the Methodology Handbook.

Description sheet 5. Copyright law

Description of the national copyright laws (consider all copyright-related provisions in all branches of national law):

- Legislative acts and government decrees that form national copyright legislation and other legal documents relevant to the field of copyright
- Exclusive rights and their duration

Consider the following topics:

- Protected works,
- Criteria for protection,
- Rights guaranteed (economic rights, moral rights⁵⁰, related/neighborhood rights)
- Term of protection

When relevant, consider the following actors separately: authors, performers, producers of phonograms, producers of films, broadcasters, database producers, photographers, other

- Exceptions and limitations to copyright

Consider the following topics:

- Fair use / fair dealing / private use⁵¹
- Exhaustion of copyright,
- Reproduction for private use,
- Quotation right,
- Rights concerning caricatures, parodies and pastiches,
- Current topics and events in newspapers and periodicals,
- Reproduction of works of art in pictorial form in connection with a text in a critical or scientific presentation,

⁵⁰ Examples of moral rights:

- Right to attribution (requirement to acknowledge or credit the author of a work which is used or appears in another work) or right to claim authorship
- Right to the integrity of the work (forbids any alternation, distortion or mutilation of the work that may detract from the artist's relationship with the work)
- Right to the respect of the author's honor and reputation (forbids for instance the use of one's name on any work the author did not create or on a work distorted, altered or mutilated in a way that would be prejudicial to the author's honor or reputation)
- Right to have a work published anonymously or pseudonymously.

⁵¹ A detailed phrasing of limitations and exceptions in the copyright law is typical to civil law countries. The fair use doctrine is used in some countries such as the United States. It is a set of broader guidelines that are not predefined for specific purposes. It can also be accompanied by more specific limitations and exceptions. Fair dealing provisions are another restriction to the exclusive right of the copyright holder that allow use that is generally considered fair. Common law jurisdictions have fair dealing provisions in their copyright law that permit users engaging in certain activities without a permission of the right holder or under the condition of mentioning the source of the material.

<ul style="list-style-type: none"> - Use of copyrighted works in libraries, archives and museums, - Use of copyrighted works for educational activities, scientific research, and other similar limitations - Use of copyrighted works by persons with disabilities; - Re-broadcasting; - Must carry; - Other exceptions and limitations <ul style="list-style-type: none"> - Provisions on transfer of rights and copyright contracts <ul style="list-style-type: none"> - Authorship, - Transfer of rights - Ownership of copyright on works made by employees - Other legislative solutions facilitating the licensing of rights - Provisions on remuneration and compensation <ul style="list-style-type: none"> - Remuneration rights - Provisions on fair compensation - Adaptability and neutrality of the copyright system to new technologies <p>Consider the following topics:</p> <ul style="list-style-type: none"> - Legal provisions concerning digital works - Legal protection on the use of Technological Measures (TM), Digital Rights Management (DRM) and Rights Management Information (RMI) - Internet service providers' liability provisions <ul style="list-style-type: none"> - Provisions concerning traditional cultural expressions and/or folklore - Other <p>The information can be complemented with the following data:</p> <ul style="list-style-type: none"> - Brief history of the national copyright legislation - Hierarchy of legal norms: Consider for example the division of the sources of law⁵² (from the courts' perspective) into strongly binding, weakly binding and informative sources. 		
Guidelines for data collection	The information can be collected as a desktop study through available national and international information sources consisting of legislative texts, court decisions, treaties and conventions.	
Definitions	<i>Limitations, exceptions, exemptions</i>	<i>Provisions in copyright law which allow for copyrighted works to be used without a license from the copyright owner</i>

⁵² Possible sources of law to consider:

- Acts,
- Government Decrees,
- Customary law,
- Precedents of the Supreme Court,
- Government Bills,
- Parliamentary Committee Statements,
- Other institutional sources,
- Legal literature, and
- Arguments of comparative law.

	<i>Equitable remuneration</i>	<i>Copyright owners are entitled to receive “equitable remuneration” in some cases where legal provisions provide for the use of their works without them granting individual licenses when negotiating these would not be practical (for example, cases of statutory licenses). This right is usually exercised through CMOs⁵³.</i>
	<i>Fair compensation</i>	<i>Copyright owners shall receive “fair compensation” in some cases where their works are used in application of a copyright limitation, exception or exemption (for example, in cases of private use). The compensation is usually ensured by imposing levies.</i>
	<i>Levies for private copying</i>	<i>A private copying levy is a public scheme in which a special tax or levy is charged on purchases of recordable media in order to compensate copyright holders for the use of their works in application of the private copy exemption.</i>
	<i>Technological measures, Digital Rights Management and Rights Management Information</i>	<i>Technological measures designed to prevent or restrict acts not authorised by the right holders of any copyright, rights related to copyright or the sui generis right in databases.</i>
Limitations of the indicator	<ul style="list-style-type: none"> - The description is limited to national context and should be mirrored to information on regional legislation and international agreements. - Another challenge concerns the decision of the depth of both the description and the interpretation of the information collected. There should be a balance between gathering a relevant amount of information and remaining sufficiently compact. 	

B. LIST OF LIMITATIONS ON COPYRIGHT AND PROVISIONS CONCERNING EXTENDED COLLECTIVE LICENSE IN THE COPYRIGHT ACT⁵⁴

- *General provisions (14.10.2005/821)*
Section 11 (14.10.2005/821)
- *Temporary reproduction (14.10.2005/821)*
Section 11a (14.10.2005/821)
- *Reproduction for private use (24.3.1995/446)*
Section 12 (24.3.1995/446)
- *Photocopying (14.10.2005/821)*
Section 13 (14.10.2005/821)
- *Use for internal communication (14.10.2005/821)*
Section 13a (14.10.2005/821)
- *Use of works for educational activities and scientific research (14.10.2005/821)*
Section 14 (14.10.2005/821)

⁵³ See for a thorough definition: Brennan, D., “What is Equitable Remuneration for Intellectual Property Use”, 2005. Available at <http://www.oiprc.ox.ac.uk/papers/EJWP0105.pdf>. Visited on 4.11.2013.

⁵⁴ Copyright Act (404/1961, amendments up to 307/2010 included), Chapter 2: Limitations on copyright and provisions concerning extended collective license (14.10.2005/821). Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>. Visited on 24.6.2014.

- *Reproduction in certain institutions* (24.3.1995/446)
Section 15 (24.3.1995/446)
- *Reproduction in archives, libraries and museums* (24.3.1995/446)
Section 16 (14.10.2005/821)
- *Reproduction of works for the public and communication of works to the public* (14.10.2005/821)
Section 16a (14.10.2005/821)
- *Use of works in libraries preserving cultural material* (28.12.2007/1436)
Section 16b (28.12.2007/1436)
- *Use of works in the National Audiovisual Archive* (28.12.2007/1436)
Section 16c (28.12.2007/1436)
- *Use of works in archives, libraries and museums by virtue of extended collective license*
(14.10.2005/821)
Section 16d (14.10.2005/821)
- *Further provisions concerning the use of works in archives, libraries and museums*
(14.10.2005/821)
Section 16e (14.10.2005/821)
- *Making works available to persons with disabilities* (14.10.2005/821)
Section 17 (14.10.2005/821)
- *Literary or artistic works of compilation used in education* (24.3.1995/446)
Section 18 (14.10.2005/821)
- *Distribution of copies of a work* (24.3.1995/446)
Section 19 (24.3.1995/446)
Section 19a (22.12.2006/1228)
- *Display of a copy of a work* (14.10.2005/821)
Section 20 (14.10.2005/821)
- *Public performance* (24.3.1995/446)
Section 21 (14.10.2005/821)
- *Quotation* (24.3.1995/446)
Section 22 (24.3.1995/446)
- *An article on a current topic* (24.3.1995/446)
Section 23
- *Concert programmes* (24.3.1995/446)
Section 24 (14.10.2005/821)
- *Use of works of art* (14.10.2005/821)
Section 25
- *Use of works of art in catalogues and in information and pictorial representation of a building*
(14.10.2005/821)
Section 25a (14.10.2005/821)
- *Presentation of a current event* (24.3.1995/446)
Section 25b (24.3.1995/446)
- *Use of public statements* (24.3.1995/446)
Section 25c (24.3.1995/446)
- *Public documents and administration of justice* (24.3.1995/446)
Section 25d (24.3.1995/446)

- *Altering of buildings and utilitarian articles* (24.3.1995/446)
Section 25e (24.3.1995/446)
- *Original radio and television transmissions* (14.10.2005/821)
Section 25f (14.10.2005/821)
- *A new transmission of a television programme stored in archives* (14.10.2005/821)
Section 25g (14.10.2005/821)
- *Retransmission of a radio or television transmission* (14.10.2005/821)
Section 25h (24.3.1995/446)
- *Retransmission of programmes based on the must carry obligation to transmit programmes*
(14.10.2005/821)
Section 25i (14.10.2005/821)
- *Special provisions concerning computer programs and databases* (3.4.1998/250)
Section 25j (24.3.1995/446)
Section 25k (24.3.1995/446)
- *Extended collective license* (24.3.1995/446)
Section 26 (14.10.2005/821)

C. INFORMATION SOURCES

International:

▪ **Legislation**

- Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works. *Official Journal L 299, 27/10/2012 P. 0005 – 0012*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:299:0005:0012:EN:PDF>.
- Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs. *Official Journal L 111, 5/5/2009*, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0024>.
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. *Official Journal L 167, 22/06/2001 P. 0010 – 0019*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:PDF>.
- Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs. *Official Journal L 122, 17/05/1991 P. 0042 – 0046*. (*Finnish special edition: Chapter 17 Volume 1 P. 0111*).

▪ **Legal praxis**

- The Court of Justice of the European Union. Case C-604/10 Football Dataco Ltd v Yahoo! UK Ltd & Others, 1 March 2012.
- The Court of Justice of the European Union. Case C-145/10 Eva-Maria Painer v Standard VerlagsGmbH and Others, 1 December 2011.
- The Court of Justice of the European Union. Case C-403/08 FA Premier League v QC Leisure, 4 October 2011.
- The Court of Justice of the European Union. Case C-429/08 Karen Murphy v Media Protection Services Limited, 4 October 2011.

- The Court of Justice of the European Union. Case C-5/08 Infopaq A/S v Danske Dagblades forening, 16 July 2009.

- **Other**

- Text of the WIPO Copyright Treaty, <http://www.wipo.int/treaties/en/ip/wct/>.

Finland:

- **Legislation**

- Laki orpoteosten käyttämisestä (764/2013) (*implements Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works*). Text in Finnish available at: <http://www.finlex.fi/fi/laki/alkup/2013/20130764>.
- Laki tekijänoikeuslain muuttamisesta (763/2013). Text in Finnish available at: <http://www.finlex.fi/fi/laki/alkup/2013/20130763>.
- Act on Provision of Information Society Services (*Laki tietoyhteiskunnan palvelujen tarjoamisesta*) (458/2002 and its amendments). Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/2002/20020458>.
- Laki todistelun turvaamisesta teollis- ja tekijänoikeuksia koskevissa riita-asioissa (*Act to Safeguard the Evidence in Civil Actions Concerning Intellectual Property Rights*) (344/2000). Text in Finnish available at: <http://www.finlex.fi/fi/laki/ajantasa/2000/20000344>.
- The Constitution of Finland (*Suomen perustuslaki*) (731/1999, amendments up to 1112 / 2011 included). Unofficial translation in English available at: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf>. Visited on 4.5.2013
- Asetus tekijänoikeuslain soveltamisesta eräissä tapauksissa Euroopan talousalueeseen kuuluvista valtioista peräisin oleviin suojan kohteisiin (*Decree on the Application of the Copyright Act in Certain Cases to Protected Items Originating in States Belonging to the European Economic Area*) (575/1995). Text in Finnish available at: <http://www.finlex.fi/fi/laki/alkup/1995/19950575>.
- Copyright Decree (*Tekijänoikeusasetus*) (574/1995, amendments up to 1004/2008 included). Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1995/en19950574.pdf>
- Copyright Act (*Tekijänoikeuslaki*) (404/1961, amendments up to 307/2010 included). Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>.
- Act on the Rights to Photographs (Laki oikeudesta valokuviin) (175/1927 and its amendments).
- Act on Copyright to Intellectual Products (Laki tekijänoikeudesta henkisiin tuotteisiin) (174/1927 and its amendments).
- Criminal Code (*Rikoslaki*) (39/1889, amendments up to 927/2012 included). Unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1889/18890039>.

- **Legal praxis**

- The Copyright Council. Opinion 2011:15. Tekijänoikeussuoja internetpeliin ja sen ideaan. 15 December 2011.
- The Copyright Council. Opinion 2011:13. Sitaatiooikeus kirjan kuvitukseen. 4 October 2011.
- The Copyright Council. Opinion 2011:11. Upphovsrätt till uppstoppade djurfigurer. 6 September 2011.
- The Copyright Council. Opinion 2010:14. Tekijänoikeussuoja liiketoimintamalliin. 5 October 2010.

- The Copyright Council. Opinion 2009:10. Nykysuomen sanakirja. 12 May 2009.
- Opinions of the Copyright Council available in Finnish at http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston_lausunnot/index.html.
- Appellate Court of Turku. Decision 2007:3, 20 February 2007, <http://www.finlex.fi/fi/oikeus/ho/2007/tho20070315>.
- Supreme Court. 2005:43, 30 March 2005, <http://www.finlex.fi/fi/oikeus/kko/kko/2005/20050043>.
- Supreme Court. 1980-II-46, 20 May 1980, <http://www.finlex.fi/fi/oikeus/kko/kko/1980/19800046t>.
- Supreme Court. 1971-II-44, <http://www.finlex.fi/fi/oikeus/kko/kko/1971/19710044t>.

▪ **Other**

- Bruun, Niklas: Intellectual Property Law in Finland. Helsinki 2001.
- The Constitutional Committee of the Parliament. Statement 13/2007 vp. Text in Finnish available at: [http://www.eduskunta.fi/triphome/bin/thw.cgi/trip/?\\${APPL}=utpvm&\\${BASE}=faktautpvm&\\${THWIDS}=0.0/1403865060_294649&\\${TRIPPIFE}=PDF.pdf](http://www.eduskunta.fi/triphome/bin/thw.cgi/trip/?${APPL}=utpvm&${BASE}=faktautpvm&${THWIDS}=0.0/1403865060_294649&${TRIPPIFE}=PDF.pdf).
- The Constitutional Committee of the Parliament. Statement 15/2006 vp. Text in Finnish available at: [http://www.eduskunta.fi/triphome/bin/thw.cgi/trip/?\\${APPL}=utpvm&\\${BASE}=faktautpvm&\\${THWIDS}=0.57/1403864997_405856&\\${TRIPPIFE}=PDF.pdf](http://www.eduskunta.fi/triphome/bin/thw.cgi/trip/?${APPL}=utpvm&${BASE}=faktautpvm&${THWIDS}=0.57/1403864997_405856&${TRIPPIFE}=PDF.pdf).
- Haarmann, Pirkko-Liisa: Tekijänoikeus ja lähioikeudet. Helsinki 2005.
- Haarmann, Pirkko-Liisa & Mansala, Marja-Leena: Immateriaalioikeuden perusteet. Helsinki 2012.
- Länsineva, Pekka: Perusoikeudet ja varallisuussuhteet. Jyväskylä 2002.
- Ministry of Education and Culture, Finland (http://www.minedu.fi/OPM/Tekijaenoikeus/lait_ja_saeaedoekset/?lang=en).
- The Parliament of Finland (<http://web.eduskunta.fi/Resource.phx/parliament/relatedinformation/constitution.htx>).
- Sorvari, Katariina (ed.): Tekijänoikeusneuvosto 25 vuotta. Helsinki 2011.
- Sorvari, Katariina: Tekijänoikeuden loukkaus. Helsinki 2007.
- Virolainen, Jyrki & Martikainen, Petri: Tuomion perusteleminen. Talentum, 2010.
- Vuopala, Anna: Extended Collective Licensing – A solution for facilitating licensing of works through Europeana, including orphans?. FCS Articles and Studies No 2, January 2013. Available at: http://www.copyrightsociety.fi/ci/Extended_Collective_Licensing.pdf

Assessing Copyright and Related Rights Systems: Piloting of the methodology framework in Finland

Cupore webpublications 39:1	<i>National Context. Report on Piloting in Finland.</i>
Cupore webpublications 39:2	<i>International and Regional Context. Report on Piloting in Finland.</i>
Cupore webpublications 39:3	<i>Technological Development. Report on Piloting in Finland.</i>
Cupore webpublications 39:4	<i>Macroeconomic Importance of Copyright Industries. Report on Piloting in Finland.</i>
Cupore webpublications 39:5	<i>Markets for Copyrighted Products and Services – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:6	<i>Volume of Domestic Production of Copyrighted Products and Services. Report on Piloting in Finland.</i>
Cupore webpublications 39:7	<i>Volume of Exported and Imported Copyrighted Products and Services. Report on Piloting in Finland.</i>
Cupore webpublications 39:8	<i>Development of Digital Business Models and Income Based on Digital Distribution. Report on Piloting in Finland.</i>
Cupore webpublications 39:9	<i>Copyright Law. Report on Piloting in Finland.</i>
Cupore webpublications 39:10	<i>Copyright Policy. Report on Piloting in Finland.</i>
Cupore webpublications 39:11	<i>Public Consultation on Law Proposals. Report on Piloting in Finland.</i>
Cupore webpublications 39:12	<i>Use of Impact Assessment and Research in Policy Development. Report on Piloting in Finland.</i>
Cupore webpublications 39:13	<i>Public Administration of Copyright. Report on Piloting in Finland.</i>
Cupore webpublications 39:14	<i>Enforcement by Public and Private Actors – Focus: Public Authorities. Report on Piloting in Finland.</i>
Cupore webpublications 39:15	<i>Enforcement by Public and Private Actors – Focus: Private Actors. Report on Piloting in Finland.</i>
Cupore webpublications 39:16	<i>Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland.</i>
Cupore webpublications 39:17	<i>Application of Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland.</i>
Cupore webpublications 39:18	<i>Availability of Alternative Dispute Resolution Mechanisms. Report on Piloting in Finland.</i>
Cupore webpublications 39:19	<i>Use of Alternative Resolution Mechanisms for Solving Copyright Disputes. Report on Piloting in Finland.</i>
Cupore webpublications 39:20	<i>Individual Exercise of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:21	<i>Collective Management of Rights. Report on Piloting in Finland.</i>
Cupore webpublications 39:22	<i>Efficiency of Collective Management Organizations. Report on Piloting in Finland.</i>
Cupore webpublications 39:23	<i>Copyright-related Information Activities. Report on Piloting in Finland.</i>
Cupore webpublications 39:24	<i>Copyright-related Education for the Public in General. Report on Piloting in Finland.</i>
Cupore webpublications 39:25	<i>Public Awareness of the Rights. Report on Piloting in Finland.</i>
Cupore webpublications 39:26	<i>Copyright-related Education as Part of the Education of Professionals for Creative Industries. Report on Piloting in Finland.</i>
Cupore webpublications 39:27	<i>Research on Copyright-related Topics. Report on Piloting in Finland.</i>
Cupore webpublications 39:28	<i>Copyright-related Research and Study Programs in Universities and Research Institutes. Report on Piloting in Finland.</i>
Cupore webpublications 39:29	<i>Efficiency of Copyright as an Incentive to Create and Invest in Creative Works – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:30	<i>Access to Copyrighted Works by the Public. Report on Piloting in Finland.</i>
Cupore webpublications 39:31	<i>Access to Copyrighted Works for Follow-on Creation.</i>
Cupore webpublications 39:32	<i>Transaction Costs in Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:33	<i>Terms for Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:34	<i>Unauthorized Use of Copyrighted Works in Physical Form. Report on Piloting in Finland.</i>
Cupore webpublications 39:35	<i>Unauthorized Use of Copyrighted Works in Digital Form. Report on Piloting in Finland.</i>
Cupore webpublications 39:36	<i>Analysis of Stakeholders' Opinions on the Copyright System – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:37	<i>Analysis of Stakeholders' Opinions on the Copyright System – Focus: End-users. Report on Piloting in Finland.</i>