

Copyright Committee Working Meeting

25 July 2018

Agenda

1. Copyright duration and exceptions – discussion of key themes
2. Using printed music in online readers for education (led by Dutch colleagues)
3. Copyright at WIPO – overview and update
4. EU Digital Single Market – overview and update

Copyright duration and exceptions as they apply to printed music and sound recordings

Australia	Austria
Belgium	Canada
Croatia	Czech Republic
Estonia	Germany
Greece	Hong Kong
Hungary	Japan
Netherlands	New Zealand
Poland	Russia
Slovakia	Spain
Sweden	Switzerland
UK	USA

Duration - Published musical works

- Mostly life + 70 years, EXCEPT:
 - Canada, Hong Kong, New Zealand: Life + 50
 - Spain: life + 80 for authors who died before 1987
 - USA: for works of **corporate authorship** 95 years from publication or 120 years from creation. Also many complexities for earlier works. See <https://copyright.cornell.edu/publicdomain>

Published anonymous musical works

- Generally mirrors the duration for known-author works, but the clock starts ticking from the date the work was published EXCEPT
 - Canada: seventy-five years after the creation of the work (if this is earlier than 50 years after publication)

Unpublished musical works

- Generally mirrors duration for published works EXCEPT:
 - Australia: protection is perpetual (but from 1 January 2019 will be life + 70)
 - Hong Kong: protected until 2057(?)
 - Ireland: protection is perpetual
 - UK: Where the author died before 1st January 1969, and the work was unpublished by 1st August 1989, copyright expires on 31 December 2039.

Unpublished anonymous musical works

- Generally mirrors unpublished known-author musical works (substituting date of death with date of creation) EXCEPT for the UK:
 - Works created, and first made available to the public, before 1 January 1969 copyright expires on 31 December 2039.
 - Created before 1 January 1969, but first made available to the public after that date, copyright expires 70 years after the work was made available to the public.
 - Created after 1 January 1969 copyright expires 70 years after creation, or 70 years after the work was made available to the public (if within 70 years of creation).
 - Created after 1 January 1969 and never made available to the public copyright expires on 31 December 2039.

Critical / scientific editions

- Austria: 25 years after publication
- Belgium: 70 years after death of scientific author
- Czech Republic 50 years after publication
- Germany: 25 years from publication or first performance
- Estonia, Poland: 30 years from publication
- Greece: 50 years after the last edition of the work

Typographical arrangement

- Australia, Hong Kong, New Zealand, Spain, UK: 25 years

Published sound recordings

- Mostly 70 years after publication EXCEPT:
 - -Hong Kong , New Zealand, Russia, Switzerland: 50 years
 - -USA: 70 years after death of author, or if work of corporate authorship the shorter of 95 years from publication / 120 from creation if corporate authorship. Works published prior to 15 Feb. 1972 are subject to state common law protection and enter the public domain on 15 Feb. 2067

Unpublished sound recordings

- Mostly 50 years after fixation (if not communicated to the public – e.g. broadcast on the radio), or 70 years after communication to the public EXCEPT
 - Australia: protection is perpetual (but from 1 January 2019 will be life + 70)
 - Hong Kong: recordings made after 12 Dec 1972, subsists until 2057
 - New Zealand: 50 years after first made available to the public
 - Russia , Switzerland: 50 years (even after communication to the public)
 - UK: Copyright in an unpublished sound recording made between 1 June 1957 and 31 July 1989 that has never been made available to the public expires on 31 December 2039.
 - USA : Works created prior to 15 Feb. 1972 are subject to state common law protection. The soonest anything enters the public domain is 15 Feb. 2067

Research/private study/personal use

- Do these terms have the same meaning everywhere?
- In Switzerland private use is defined “a) any personal use of a work or use within a circle of persons closely connected to each other, b) any use of a work by a teacher and his class for educational purposes, c) copying of a work in enterprises, public administrations, institutions, commissions and similar bodies for internal information or documentation”
- Is there a differentiation between private study and personal use?
- Copying of sound recordings for personal use
- Reprographic v non-reprographic
- Out of print

Illustration for Instruction

- Scope of instruction
- Instruction outside of the context of an educational establishment?

Criticism/review/quotation

- Often subject to fairness, not excessive, and acknowledge source

Parody /satire

- No exception: Croatia, Greece, Hong Kong, Japan, New Zealand
- Some have fair dealing requirement
- Necessity not to be confused for the original work

Disability

- All respondents had some kind of provision for making copies for people with disabilities BUT New Zealand doesn't have provision for copying of sheet music into Braille

Text and data mining

- Fewer than half of respondents had an exception for text and data mining

Preservation

- All respondents had some form of exception for preservation copying
- Varying levels of restriction (e.g. whether it applies to all kinds of library, whether it can apply to any collection item or only those for reference, number of copies permitted, whether digital copies can be made available outside the premises etc.)

Copying by librarians for users

- NOT permitted by Australia, Croatia, Estonia, Greece, Hungary, Spain, USA
- LIMITED: Austria (only out of print scores, and doesn't apply to sound recordings) New Zealand, Sweden (doesn't apply to sound recordings)

Copying to provide another library

- Some confusion responses – relates to making a copy which you can provide to another library for them to keep permanently (not where the requesting library is acting as an intermediary to a request from a library user).
- E.g. Library A provides Library B with a copy because Library B's original has been lost or damaged.

Orphan Works

- EU countries have a mandatory exception
- Hong Kong and New Zealand - may copy anonymous or pseudonymous works where it is reasonable to assume copyright has expired, but not works where you just cannot locate the copyright owner.
- Switzerland – no exception, the rights for exploiting certain orphan sound recordings have to be claimed through authorized collecting societies
- USA and Canada – no exception

User generated content

- Exception in Canada
- First country in the world to implement it

Technological Protection Measures

- New Zealand - A “qualified person” including a librarian may use a TPM circumvention device on behalf of the user of a TPM work.

Music in Educational Readers

1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.
2. The distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.
- Article 5
- Exceptions and limitations
1. Temporary acts of reproduction referred to in Article 2, which are transient or incidental [and] an integral and essential part of a technological process and whose sole purpose is to enable:
- (a) a transmission in a network between third parties by an intermediary, or
 - (b) a lawful use
- of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.
2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:
- (a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet **music**, provided that the rightholders receive fair compensation;
 - (b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;
 - (c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;
 - (d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;
 - (e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.
3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:
- (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;
 - (b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;
 - (c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informative purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;
 - (d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;
 - (e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;
 - (f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informative purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;
 - (g) use during religious celebrations or official celebrations organised by a public authority;
 - (h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;
 - (i) incidental inclusion of a work or other subject-matter in other material;
 - (j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;
 - (k) use for the purpose of caricature, parody or pastiche;
 - (l) use in connection with the demonstration or repair of equipment;
 - (m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;
 - (n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;
 - (o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.
4. Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.
5. 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

WIPO – Overview and update



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WIPO

- **191 Members, UN Body**
- **Focus on copyright, patents, trademarks, design rights, geographical indications, and traditional knowledge and cultural expression.**
- **Ability to negotiate Treaties, such as Marrakesh**
- **Extensive training programme**

SCCR

Crews Studies

Eleven themes:

- Preservation
- Reproduction
- Lending
- Legal Deposit
- Parallel Importation
- Cross-Border Access
- Orphan and Out of Commerce Works
- Limitations on Liability
- Contract Override
- Technological Protection Measures
- Translation

But what objective?



Some approved actions

- Three regional seminars to analyze the situation in the region and explore areas for action
- An international conference to consider the opportunities and challenges provided by various international solutions as appropriate
- The development of a classification to better visualize and understand existing exceptions and limitations
- A brainstorming exercise with professionals and relevant stakeholders

Copyright in the Digital Single Market

The story so far

- September 2016 - The European Commission presented a legislative package for the modernisation of the EU copyright rules, including a new directive on copyright in the digital single market.
- General objective is to adapt EU copyright rules to the digital environment.

Key Provisions – article 3 text and data mining

- Would grant a mandatory exception in order for research organisations to reproduce works to which they have lawful access in order to carry out not-for-profit research by text and data mining

Key Provisions – article 5 preservation

- A mandatory exception allowing preservation (including digital) of materials in a library's permanent collection.
- It works for cross-border preservation networks
- Reproduction of public domain works can't be subject to copyright

Key Provisions – article 7-9 Out of commerce works

- Aimed at enabling cross border use of out of commerce works (including those that were never in commerce e.g. manuscripts)
- Would allow cultural heritage institutions to make such works from their collections available online so that they can be accessed from everywhere within the EU

Key Provisions – article 6 functioning of exceptions

- Concerning
- “Access to content covered by an exception provided in this directive does not entitle the user to make another use under another exception”
- So for example it wouldn't be permitted to data mine from preservation copies

Key Provisions – article 11 linking to news publications

- The “link tax”
- Applies to “press publications”, introducing a new publication right lasting 20 years
- Press publishers could charge fees to link to their content
- Already exists in Germany and Spain. Hasn’t been popular.
- Silver lining – excludes scientific and academic journals

Key Provisions – article 13 filtering of user generated content uploads

- Online sharing services will have to introduce filters for content uploaded by users.
- Information service providers will have to collaborate with rights holders to use technologies such as content recognition tools
- Definition of online content sharing providers **excludes** “providers of online services where the content is uploaded with the authorisation of all concerned rightholders, such as educational or scientific repositories” So while that means repositories won’t have to put filters in place it means that repositories will now have to ensure all permissions are obtained before upload.

July 5th 2018 European Parliament plenary vote

- 318 MEPs rejected
- 278 MEPs voted in favour
- 31 MEPs abstained

Next steps

- All 751 MEPs will have a chance to table amendments before the original proposal and amendments are put to a vote
- Next plenary vote will be during week of 10 September

What can you do?

- Read the [Report](#) that is being voted on
- Write to your MEPs with any concerns you may have
- But also let them know which articles you support – we don't want to lose the positives!