



ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE

ALAI
2021
Madrid



ALAI CONGRESS 2021, 29 Sept. – 1st Oct. 2021, Madrid

COPYRIGHT, COMPETITION AND INNOVATION

QUESTIONNAIRE – NATIONAL REPORT OF FINLAND

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Notes: This questionnaire aims at collecting information of law, caselaw and practices available in each country.

Please refer to the ALAI2021 program for further explanation on the Sessions and Panels.

Please, keep your answers short and factual.

Please send national report to rxalabarder@uoc.edu.
Deadline: 15 August 2021.

1. INTERNAL ADJUSTMENTS IN COPYRIGHT LAWS

Identify and explain any specific instances where market competition and innovation concerns haven't been specifically addressed by copyright law or caselaw in your country. This may include by means of:

1.1.- Defining (or interpreting) the scope of exclusive rights to account for competition and innovation concerns.

- The scope of copyright in the Finn Cop Act is in reality quite narrow. The scope is determined by exhausting listings of separate (economic) rights in section 2 and free adaptations in section 4 as well as the enumerative listing of exceptions to copyright. A certain balance between the interests of competition is strived for in this whole legal basis.

1.2.- Defining (or interpreting) the scope of exempted uses (E&L) on account of competition and innovation concerns.

- The limitations are to be interpreted narrowly, because these are exceptions to exclusivity of economic rights. Sometimes this is criticized in the late discussions, but we find it logic and fair so far.

1.3.- Imposing licensing conditions (statutory licensing, compulsory licensing, compulsory collective management, ECL, etc) or "joint-tariffs", "one-stop-shops" ... and explain their impact in the market

- Of course some regimes (e.g. compulsory collective management) can have an impact on markets (economic impact) especially in copyright markets; this has been evaluated by national competition authorities as well; EU has had an impact by regulating the market in this field as well.

1.4.- Explain any relevant licensing practices existing in your country that favor market competition and innovation. Please refer to any copyright markets (i.e., software, publishing, news, audiovisual. ...)



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- **Copyright as such is already an instrument in competition.**

1.5.- By any other means?

2. A STUDY CASE: DATA ECONOMY

Data is called the “new oil” for our economy, as it is being used to develop new products and services. To the extent that this data includes copyrighted works, we want to identify how copyright laws and caselaw are addressing this issue and how different national solutions may have a different impact in the market. In the EU, this activity concerns the exceptions and limitations on Text & Data Mining as well as the regulation on Public Sector Information reuse (PSI)

Notice: we are not only talking about corpuses specifically prepared for TDM purposes (i.e., electronic journals, databases, etc), but also about processing (machine reading) of works, in general, (texts, images, etc) available either online, in digital form or in analogue form.

2.1.- Is “machine reading” an act of reproduction? If so, is it being exempted (excluded) under an E&L or as fair use? Is it subject to licensing (if so, what kind of licensing)?

- If protected content is downloaded into a machine, we find that this is formally an act of reproduction; Finn Cop Act section 11 a contains a provision, according to which temporary reproduction by the machine probably can be allowed without any permission whatsoever, provided the reproduction here is transient or incidental and provided there is act is an integral and essential part of technological process and provided the sole purpose of the act is to enable a transmission of a work and if the act has no economic significance. It is possible, that free use on the basis of this section is not possible in case of machine reading activities within different AI systems, because these can strive for economic gain, or be other that incidental and transient.

- Using simply information as such, as object for reproduction, is not to be regarded an infringement to copyright.

- The future limitations under the EU DSM -directive for data and text mining could be applied. The contents of the national provisions on this, however, are not yet enacted by the Parliament.

2.2.- Please provide any examples (laws, caselaw, licensing) regarding the development of databases, search engines, apps, services, etc based on reusing data produced by the Public sector.

- E.g. weather and land register information which are produced by public authorities...

- In the private sector, e.g. the collective rights management organization of rights of performers and producers of phonograms is using metadata information from VRD (performers) and RdX (producers).

2.3.- Is there any evidence of how these measures (law, caselaw, licensing) are fostering or deterring the development of new services and products and of downstream markets?

- There is new legislation to introduce new provisions on open data (to implement the EU directive on open data); this Act concerns especially also public information data; industrial



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property and copyright are to be respected despite the “openness” of data, which merely refers to something else than purely publications.

- The essence of the newly accepted Act is the definition of (open) PSI –data, it does not cover scientific publications or articles.

- The metadata services referred to above foster greatly the respective collective management of rights. Developing of such services is subject to high level of competence and knowledge and use of technology.

3. EXTERNAL ADJUSTMENTS: ANTI-TRUST AND BEYOND

Please provide examples (law, caselaw, market practices) of how anti-trust law, unfair competition or any other legal adjustments apply to copyright licensing markets (offline and online). For instance, provide examples regarding the following scenarios:

3.1.- “Essential facilities” doctrines to foster the development of downstream markets

3.2.- Vertical integration of markets (producers/distributors); tying sales (e. g. exclusive sale of decoders by pay-TV platforms)?

3.3.- Bundling of rights/means of exploitation (cable, satellite, internet, cellphones): upstream and downstream competition issues.

3.4.- Licensing prices (also under collective licensing) deemed unfair, discriminatory, anti-competitive by courts; arbitration or mediation procedures to set prices; government price-setting ...

- All sub-questions under 3: no observations of phenomena / developments listed in the questions

4. ONLINE MARKETS: “VALUE GAPS” (ONLINE PLATFORMS)

Notice that complete and valuable information resulting from the stakeholders’ dialogue and written consultations currently launched by the EU Commission will be available at the time of the Congress. https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=68591

<https://ec.europa.eu/digital-single-market/en/news/directive-copyright-digital-single-market-commission-seeks-views-participants-stakeholder>

Please include only information that is specific to your country.

4.1.- Is there any norms and/or relevant caselaw addressing the value gap issue, as applied to UGC platforms?

If you are an EU country, have you addressed the transposition of Art. 17 CDSM Directive?

No, we have not implemented so far the DSM directive; there is no draft available until the 8 September, 2021.

4.2.- Is there any norms and/or relevant caselaw or licensing addressing news aggregation?



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If you are an EU country, have you addressed the transposition of Art. 15 CDSM Directive?

No – see above.

4.3.- Is there any norms and/or relevant caselaw addressing other value gaps?

For instance, regarding cloud storage and compensation for private copying

No such norms / caselaw.