

Karin Ludewig: Copyright and the Research Sector – Activities in Germany and Beyond.

Presentation held at a Meeting at the British Library 28 September 2009

Dear Ben! Ladies and gentlemen!

I am very pleased to be here with you today and I feel very honoured to have been given the opportunity to talk to you on the premises of the British Library – one of the largest and most highly regarded libraries in the world.

I want to present three ongoing initiatives to you, two of which are national activities in the field of copyright for the education and research sector in Germany. First, we will look at the *Coalition for Action* “Copyright for Education and Research”, and then move on to an infrastructure project for the German research community called IUWIS. The third activity I would like to present to you extends beyond Germany and reaches out to the pan-European network of interest groups concerned with copyright in the education and research sectors; it’s called ENCES, which is the abbreviation for *European Network for Copyright in Support of Education and Science*.

Coalition for Action “Copyright for Education and Research”

The *Coalition for Action* “Copyright for Education and Research” is the German lobby group which represents the interests of scholars and educators in Germany with regard to copyright matters.¹

The basis of the *Coalition for Action* is the so-called *Göttingen Declaration*. Its main message reads:

“In a digitised and networked information society, access to global information for the purposes of education and science must be guaranteed at all times from any place.”²

The *Göttingen Declaration* has been signed by most science-related organisations in Germany and by more than 7,000 individuals – mainly scholars, university professors and librarians. The subscribers include universities, libraries, archives, learned societies and university publishers. The following six members are the most prominent of the Alliance of German Science Organisations’ ten member base:

¹ A recent self-description from the amicus curiae brief to the U.S. District Court for the Southern District of New York: “The Coalition “Copyright for Education and Science” (CCES) represents the interests of scholars and educators in Germany with respect to copyright.” To be retrieved at (last visited on 8 March 2010): <http://www.urheberrechtsbuendnis.de/docs/letter-settlement-final-AB.pdf>

² The Göttingen Declaration on Copyright for Education and Research of 5 July 2004. To be retrieved from (last visited on 8 March 2010): <http://www.urheberrechtsbuendnis.de/index.html.en>

- Fraunhofer Society
- Helmholtz Association of German Research Centres
- Association of Universities and other Higher Education Institutions in Germany
- Leibniz Association
- Max Planck Society
- German Science Council

Due to the EU Directive³ dating from 2001 on copyright in the information society there have been two amendments made to German copyright law: the first amendment⁴ came into force on 13 September 2003⁵. The second amendment⁶ became effective on 1 January 2008.⁷ There is still another one likely to be passed during the next legislative period.

The first two amendments are said to lack consideration for the needs of the education and research sectors – even the Federal Council (Bundesrat) has criticized them in this way⁸. This is a particularly important point as education policy rests within the responsibility of the federal states. The Federal Council accepted the 2nd amendment to copyright law in 2007 but strongly recommended passing a 3rd amendment which would improve the conditions for Open Access publications of research outputs⁹ – a task that was postponed by the government until the next electoral period, which will start in October of 2009.

³ Directive 2001/29/EC of the European Parliament and of the Council of 22. May 2001 on the harmonization of certain aspects of copyright and related rights in the information society. OJ L 167, 22 May 2001.

⁴ the so-called "1st Korb"

⁵ Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft vom 10. September 2003. To be retrieved at <http://www.bmj.bund.de/files/-/2653/Gesetz%20zur%20Regelung%20des%20Urheberrechts%20in%20der%20Informationsgesellschaft.pdf>

⁶ the so-called „2nd Korb“

⁷ Zweites Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft vom 26. Oktober 2007. To be retrieved at http://www.bmj.bund.de/files/-/2547/bgbl_urheberrecht.pdf

⁸ Stellungnahme des Bundesrates zum Entwurf eines Zweiten Gesetzes zur Regelung des Urheberrechts in der Informationsgesellschaft, 19 May 2006, p. 1: „Der Bundesrat hält es [...] für dringend geboten, im Rahmen des "Zweiten Korbs" ein bildungs- und wissenschaftsfreundlicheres Urheberrecht zu schaffen, das auch den Erfordernissen der durch das Grundgesetz besonders geschützten und nicht kommerziell ausgerichteten Einrichtungen in Bildung, Wissenschaft und Kultur sowie dem Grundrecht auf Informationsfreiheit der Bürger weit stärker als bisher Rechnung trägt.“ To be retrieved from (last visited on 8 March 2010):

<http://www.bmj.bund.de/files/-/1249/BRat%20Stellungnahme%20UrhG.pdf>

⁹ Beschluss des Bundesrates zum Zweiten Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft, 21 September 2007, p. 1: „Der Bundesrat spricht sich darüber hinaus dafür aus, nach der Verabschiedung des "Zweiten Korbes" möglichst rasch die Arbeiten an einem "Dritten Korb" für die Belange von Bildung, Wissenschaft und Forschung in der Wissens- und Informationsgesellschaft aufzunehmen.“ To be retrieved from <http://www.urheberrecht.org/topic/Korb-2/bmj/0582-07B.pdf>. (Last visited on 8 March 2010.)

Also the Committee for Education, Research and Technology Assessment (Ausschuss für Bildung, Forschung und Technikfolgenabschätzung) of the German Parliament states the necessity of a 3rd amendment that would have to focus on the demands of education and research in the knowledge and information society: „Die Schaffung eines bildungs- und wissenschaftsfreundlichen Urheberrechts für die sich herausbildende globale Wissens- und Informationsgesellschaft bleibt ein zentrales bildungs- und forschungspolitisches Ziel. [...] Notwendig ist ein dritter Korb zur Novellierung des Urheberrechtes – ein Bildungs- und Wissenschaftskorb –, der die spezifischen Anforderungen von Bildung, Wissenschaft und Forschung in der Wissens- und Informationsgesellschaft sowie der zunehmend wissensbasierten Wirtschaft stärker in den Mittelpunkt rückt. Im Mittelpunkt dieses dritten Korbes müssen die rasanten technologischen Entwicklungen im IuK-Bereich sowie die Rahmenbedingungen für die neuen Lehr- und Lernplattformen (beispielsweise e-Learning, Distance

In the course of the implementation of the Directive 2001/29/EC the *Coalition for Action* came into being when some scholars from the *German Initiative for Network Information (DINI)*¹⁰ were invited to a hearing by the Federal Ministry of Justice to express the point of view of the research sector on copyright in 2003. In July 2004 the *Göttingen Declaration* was published, and the *Coalition for Action* became an independent organisation consisting of the subscribers to the *Göttingen Declaration* and their steering committee, which is made up of 6 representatives of the 6 research organisations, six representatives of institutional subscribers and 6 personal subscribers. Every year at the annual general meeting a steering committee, a spokesperson and two deputy spokespersons are elected.

Ever since the debating of the first amendment to German copyright law, the *Coalition for Action* has lobbied for a copyright law that is favourable to scholars and serves the interests of higher education institutions and the research sector.

What are the aims of the *Coalition for Action* and what actions does it try to implement to exert influence on German copyright legislation?

- Those working in education and research need legal certainty and will not face threats of criminalization from an incomprehensible or restrictive copyright regime.
- Schools, universities and colleges need legal protection for the unlimited use of e-learning systems.
- Public information institutions such as libraries, museums and archives which have guaranteed the preservation of, and access to, our cultural heritage must be supported by copyright law; this affects, above all, long-term archiving programs and the provision of access to the collections of these institutions. Electronic inter-library loans and document delivery services should also be permitted.
- Scientists should be guaranteed the right to publish their publicly financed research outputs OA on the internet, even if they've already published them elsewhere.
- Copyright law should establish fair and balanced terms and conditions to ensure remuneration for the use of protected works on the one side and unrestricted access for the purposes of education and research on the other. The system of remuneration should be

Teaching, Online Instructioning usw.) stehen.“ Deutscher Bundestag Drucksache 16/5939 16. Wahlperiode 04. 07. 2007, p. 26. To be retrieved from <http://dip21.bundestag.de/dip21/btd/16/059/1605939.pdf>. (Last visited on 8 March 2010.)

¹⁰ The German Initiative for Network Information (DINI) was founded in order to coordinate and to foster the handling of the changes of the information infrastructures of higher education institutions and other research institutions required by the development of modern information and communication technologies. DINI is committed to developing information infrastructures and thus improving the information and communication services in institutions of higher education and in learned societies, namely regionally and supra-regionally. Cf. <http://www.dini.de/english/> (Last visited on 8 March 2010.)

transparent and easily understood. The appropriate remuneration of right-holders should be achieved by a system of flat-rate payments made through collecting societies. Technological protection measures such as DRM are the wrong way.

This, according to the *Coalition for Action*, is what should be done in Germany to enable the German education and research sector to get the maximum profit out of the advanced technologies of the information society. In our opinion it is an absolute necessity for us to keep up with international development, not only in terms of scientific progress, but also with regard to economic prosperity which in the “knowledge society” will be brought about more than ever through the advance of education and research.

To enforce these aims there have been quite a few activities conducted by the *Coalition for Action* - especially in connection with the past election campaign – for example:

- The *Coalition for Action* submitted a response to the European Commission's Green Paper on Copyright in the Knowledge Economy.¹¹ In this response the *Coalition for Action* demanded the introduction of a special copyright law for the education and research sector.
- The *Coalition for Action* entered into negotiations with both *Google* and *VG Wort* on the issue of the Google Book settlement and offers to represent the interests of all German researchers in the worldwide visibility of their research outputs with regard to the Google Book Settlement. At the beginning of September the *Coalition for Action* sent an amicus curiae brief to the Supreme Court of the United States which will rule on the Google Book Settlement and state its view on Google Book Search.¹²
- During the election campaign the *Coalition for Action* asked political parties and candidates for the German parliamentary elections about their opinions on copyright. What would they do to resolve a certain number of problems copyright law in the information society is facing right now if they were elected Member of Parliament? The answers to the enquiry were to be published as key points to the elections on the web to assist people with their voting decision.¹³

One major focus of attention for the *Coalition for Action* in the near future will certainly be on influencing as intensively as possible the 3rd amendment of German copyright law to make it an education and research-friendly law; another focus may be intervening with the Google Book Settlement, but this will have to be organized by ENCES on a pan-European level (see below).

What else could there be done to improve the situation of scholars in Germany?

¹¹ Green Paper, Copyright in the Knowledge Economy. Commission of the European Communities, Brussels, 16 July 2008. The response of the Coalition for Action can be retrieved from <http://www.urheberrechtsbuendnis.de/docs/gruenbuch-stellungnahme-AB-final251108.pdf> (Last visited on 8 March 2010.)

¹² All letters to the court are published on <http://news.justia.com/cases/featured/new-york/nysdce/1:2005cv08136/273913/>. (Last visited on 8 March 2010.)

¹³ The questionnaire is published at <http://www.urheberrechtsbuendnis.de/docs/Wahlpruefsteine-Bundestagswahl-2009.pdf> (Last visited on 8 March 2010.) The answers remained unpublished because they arrived only hours before the closing of the ballots.

IUWIS

On the one hand, there is growing uncertainty in the German research community on everything that is related to copyright issues – the two amendments to copyright law in consequence of the EU Directive which have already been approved do not seem to facilitate the situation.¹⁴

On the other hand, as already mentioned before, the law didn't exactly become more scholar-friendly; mainly the interests of publishers and the information industry were taken into account by government when the law was amended.

To deal with the situation, there is a newly established project named "IUWIS" – IUWIS being the abbreviation for "copyright infrastructure for research and education". It is financed by the German Research Foundation (DFG) and it is an infrastructure project, which means it is not dedicated to producing research outputs, but to helping other researchers carry out their work in a better way. It runs from May 2009 to April 2011, and may be extended until April 2012. The aim of IUWIS is to provide the German research community with an integrated information and communication platform on anything concerning copyright issues that might be of interest to them – to reduce their uncertainty about what they are allowed to do when publishing or teaching, to help them to find the best way of publishing their own research outputs, and last but not least, to enable them to express their needs and problems with regard to the actual copyright regime. We aim to have a vital network of copyright experts such as lawyers and other professionals affected by copyright legislation such as librarians and information specialists. We hope that politicians and journalists will also join the discussion and air their copyright concerns on an internet platform that is still to be built. The internet platform will make use of the newest communication tools of web 2.0; and it will also integrate different databases and other sources of knowledge concerning the topic of copyright and provide the network partners with all the information they need to argue for a better and more research-friendly legislation. IUWIS as an internet platform intends to be, by the end of the project runtime, the pivotal access point for any questions on copyright issues in the education and research sector in Germany, also the main base for political action and lobbying on any of these questions. We'll have to develop a business model to keep it in existence after the funding period has expired.

The project leader is Prof. Dr. Rainer Kuhlen, professor of information science at the University of Konstanz, who, with the aid of the director of the Berlin School of Library and Information Science, Prof. Michael Seadle, PhD, established the project at the Humboldt-University of Berlin. IUWIS is based in Berlin and the platform prototype can be visited at <http://www.iuwis.de>.

Feedback as to the usability of the services of IUWIS is very welcome. Please understand that as IUWIS is a national infrastructure project mainly concerned with German copyright law issues an English translation will not be provided on the IUWIS website.

¹⁴The articles 38, 52a, 52b, 53, 53a of the German copyright specify the exception for education and research. Cf Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz). Vom 9. September 1965 (BGBl. I S. 1273). Zuletzt geändert durch Gesetz v. 26.10.2007 (BGBl I S. 2513), §§ 38, 52a, 52b, 53, 53a. An English translation of German copyright law, unfortunately the outdated version published on 9 September 1965 and last amended on 8 May 1998 can be retrieved at: <http://www.iuscomp.org/gla/statutes/UrHG.htm> (last visited on 8 March 2010).

ENCES

The difficult political situation (no majority for a research-friendly copyright in the German parliament) on the one hand, as well as the obviously unfavourable consequences of the EU-induced amendments to German copyright law on the other hand made us think about whether the problem might have to be addressed – at least in part – on an international level.¹⁵ We wondered whether our colleagues in the higher education and research sector of other European countries had the same (growing) difficulties in getting easy and fast access to information in the digital information age.

So the idea of ENCES was born. ENCES (European Network for Copyright in Support of Education and Science) was conceived – similar to the *Coalition for Action* – as a network of experts on copyright and of organisations from the education and research sector. Its aim is to analyse the status quo of copyright regulations in all European member states, especially in regard to education and research. ENCES is meant not only to be a project conducting scientific research on the subject of copyright legislation all over Europe but – similarly to the *Coalition for Action* – also to act as a loose lobby group in support of the interests of education and research on an EU level.

To facilitate its launch we organized a workshop in 2008 that brought together the Academies of Sciences of all EU member states, as well as the most important legal institutes investigating EU copyright law, e.g., the *Institute for Information Law (IViR)* of the University of Amsterdam and others that were known to us as being engaged in promoting an education and research-friendly copyright law. The workshop took place in Berlin in November 2008 at the Green Party Foundation's *Heinrich-Böll-Stiftung* residence. The Green Party, along with the German Research Foundation (*DFG*) provided funding for the workshop.¹⁶ At the end of the workshop participants agreed that further co-operation supporting the interests of education and research in the EU would be necessary and beneficial. Unanimously they decided to continue with the initiatives for founding a network ENCES and a common statement was drafted, but up to now it has not been open to subscription.¹⁷

How shall we go on?

The future of ENCES fundamentally depends on our success in fundraising – certainly, we can, even without financial support from any funding organization, make use of the technical infrastructure we are going to develop and deploy for IUWIS; so the ENCES website will be hosted on the IUWIS server, we'll set up networking tools on the webpage and as long as there is a room in the University of Berlin for IUWIS, ENCES will have its office there, too.

¹⁵ Cf Kuhlen, Rainer and Ludewig, Karin, "ENCES – A European Network for Copyright in support of Education and Science – one step forward to a science-friendly copyright in Europe." First publ. in: *Information – Wissenschaft und Praxis* 60 (2009), 5, pp. 259-264.

¹⁶ For further information about the proceedings of the workshop please visit the ENCES website at <http://www.ences.eu> or cf Kuhlen, Rainer and Ludewig, Karin, *ibid.*

¹⁷ "Towards a European Network for Copyright in support of Education and Science (ENCES)", Berlin, 15 November 2008. To be retrieved at http://www.ences.eu/fileadmin/important_files/Documentation_WS08/DocumentationoftheWorkshop_PDFs/towards%20a%20foundation%20of%20ENCES121108-97.pdf (Last visited on 8 March 2010.)

However, the core of the network consists of people from different EU member states meeting and having face-to-face discussions about what they need from copyright legislation in their daily work – in my opinion intensive communication on this issue is a necessity to getting “the EU to tackle its complicated patchwork of copyrights”¹⁸ in a sustainable way.

Our idea for the future of ENCES is to have a series of international and national workshops, the former concentrating on the improvement of EU copyright legislation, international directives and treaties – the latter to foster national debate on the question of copyright in the education and research sectors of particular countries and to connect these national debates to the pan-European discussion. The *Library of the Hungarian Academy of Sciences* as well as the *Budapest Business School* are prepared to continue the work started in Berlin in 2008 with a follow-up workshop in Budapest, which, for several reasons, had to be postponed until March 2010. The *Estonian Academy of Sciences* will also host a workshop in Tallinn, in the second half of May 2010.

Therefore I sincerely invite you to become a member of ENCES and to collaborate with us wherever you deem it appropriate. We’d very much appreciate a closer networking relationship with the UK, to facilitate the exchange of experiences with copyright research projects and to start common political activities that strengthen copyright exceptions for education and research across the EU – it *would* be fantastic, if the British Library, maybe in collaboration with another UK institution present at this meeting would host one of the next ENCES workshops!

Thank you very much!

¹⁸ Honor Mahony, Google online books scheme raises concerns in Europe. A statement by the EU commission on Monday called for a legislative framework. In: Euobserver.com, Brussels 8 September; to be retrieved at <http://euobserver.com/9/28625/?rk=1> (Last visited on 8 March 2010.)