

**Dr. phil. Karin Ludewig, Humboldt-Universität zu Berlin:**

**European Network for Copyright in Support of Education and Science (ENCES) – State and Perspectives – Talk at the ENCES Workshop - Library of the Hungarian Academy of Sciences – Budapest, 23rd March 2010**

**ENCES – the past**

Ladies and Gentlemen!

This is the third ENCES workshop in a series created in 2008 for several reasons. The most important of these is that 80% of Germany's laws are made in Brussels<sup>1</sup> - and most likely this is also true for laws in Hungary.

In response to the EU Directive<sup>2</sup> dating from 2001 on copyright for the information society, up to now there have been two amendments made to German copyright law: the first amendment<sup>3</sup> came into existence on 13 September 2003<sup>4</sup>. The second amendment<sup>5</sup> became effective on 1 January 2008.<sup>6</sup>

These two amendments are said to be lacking in thought of the needs of the education and research sector. Even the Federal Council (Bundesrat) has criticized them in this way<sup>7</sup>. The latter is particularly important because education policy lies within the responsibility of the federal states. The Federal Council finally accepted the 2<sup>nd</sup> amendment to copyright law in 2007 but strongly recommended the passing of a 3<sup>rd</sup> amendment which would improve the conditions for Open Access publications of

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<sup>1</sup> The contemporary German poet and writer Hans Magnus Enzensberger recently stated on television: "80 Prozent unserer Gesetze werden heute schon in Brüssel gemacht und nicht mehr in unserem Parlament." In: Mike Lingenfeller, Florian Heinhold, *Ein Spitzelsystem gegen Raucher? Die EU-Regulierungswut*. Television broadcast, ARD 08.03.2010; retrieved at <http://www.br-online.de/das-erste/report-muenchen/report-muenchen-nichtraucherschutz-ID1267788592989.xml> (last visited 10 March 2010).

<sup>2</sup> 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.

<sup>3</sup> the so-called "1<sup>st</sup> Korb"

<sup>4</sup> 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>

<sup>5</sup> the so-called „2nd Korb“

<sup>6</sup> 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](http://www.bmj.bund.de/files/-/2547/bgbl_urheberrecht.pdf)

<sup>7</sup> 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: <http://www.bmj.bund.de/files/-/1249/BRat%20Stellungnahme%20UrhG.pdf>

research outputs<sup>8</sup> – a task that was postponed by the previous government to the following electoral period, which started in October 2009.

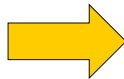


## Article 52b



- EU-Directive article 5 (3) n):

... **on the premises of establishments referred to in paragraph 2(c) ...**

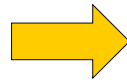


- § 52b German Copyright Law:

... **ausschließlich in den Räumen der jeweiligen Einrichtung ...**

- EU-Directive article 5 (2) c):

... **publicly accessible libraries, educational establishments or museums, or ... archives ...**



... **öffentlich zugängliche[] Bibliotheken, Museen oder Archive ...**

Due to the above mentioned EU-directive, article 52b was passed into German copyright law, which allows libraries, museums and archives to publish digitized works from their holdings on dedicated terminals *on their premises*.<sup>9</sup> This is why German researchers, even researchers employed by the university, are not allowed to read digitized works from the collections of their own university's library on their computers in their offices – let alone at home or somewhere else – they will have to

<sup>8</sup> 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>. 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 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>.

<sup>9</sup> This expression is obviously taken from the InfoSoc Directive; OJ L 167, 22 May 2001, article 5, 3 (n).

walk over to the library to read them there. Obviously, this is not what working conditions should be like for researchers in a technically advanced information society. Even so, if German parliament agreed with the complaints of German researchers on this point, there would be no way of changing this law, as the text is taken from a catalogue of possible exceptions to copyright as defined in the EU InfoSoc-Directive.

Right now there is a struggle in Germany for a 3<sup>rd</sup> amendment to copyright law to be passed which would be favourable to scholars. On the one hand, a research- and education-friendly copyright law cannot be achieved in Germany as long as Brussels does not improve its directives. On the other hand, Brussels needs feedback from EU member states, and the opportunity to learn what sort of copyright regulations scholarship organisations and their national representatives need to be provided with good working conditions.

The obviously unfavourable results of EU-induced amendments to German copyright law led to the question of whether the problem might have to be addressed – at least in part – on an international level.<sup>10</sup> The initiators of ENCES also wondered whether their colleagues working in the higher education and research sectors 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 as a network of experts on copyright from legal research institutes and organisations from the education and research sector qualified to represent the scholarship community. ENCES' aim is to analyze the status quo of copyright regulations in all European Member States, especially in regard to exceptions made for education and research. ENCES was meant not only to be a project conducting scientific research on the subject of copyright legislation all over Europe, but also to act as a loose lobby group in support of the interests of education and research across the EU.

ENCES came into being with a workshop organized in 2008 that brought together the Academies of Sciences of all EU member states as well as important legal institutes investigating and promoting EU copyright law that was education and research-friendly. The workshop took place in Berlin in November 2008 at the Green Party Foundation's *Heinrich-Böll-Stiftung* building. The Green Party Foundation, along with the German Research Foundation (*DFG*) provided funding for the workshop.<sup>11</sup> At the end of the workshop the 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 initiative and created the ENCES network.<sup>12</sup>

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<sup>10</sup> 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.

<sup>11</sup> For further information about the proceedings of the workshop please go to the website of ENCES at <http://www.ences.eu> or cf Kuhlen, Rainer and Ludewig, Karin, *ibid*.

<sup>12</sup> „Towards a European Network for Copyright in support of Education and Science (ENCES)”, Berlin, 15 November 2008. To be retrieved from [http://www.ences.eu/fileadmin/important\\_files/Documentation\\_WS08/DocumentationoftheWorkshop\\_PDFs/towards%20a%20foundation%20of%20ENCES121108-97.pdf](http://www.ences.eu/fileadmin/important_files/Documentation_WS08/DocumentationoftheWorkshop_PDFs/towards%20a%20foundation%20of%20ENCES121108-97.pdf) (Last visited on 8 March 2010.)

## ENCES – present state

ENCES will sustain itself through a series of international and national meetings, the former concentrating on the discussion of possible improvements to EU copyright legislation and international directives and treaties – the latter to foster national debates on the question of copyright in the education and research sector in particular countries and to connect these debates on a national level to the pan-European discussion.

The next workshop was hosted by the *Institute for Information Law (IViR)* of the University of Amsterdam in February 2010; it was a joint workshop with OAPEN, a project in Open Access publishing for monographs in the humanities and social sciences, which was co-funded by the EU. The topic for discussion were the legal questions regarding Open Access book publishing when one tries to establish a standard workflow for the publication of Open Access books in a European network of publishers.




In Amsterdam ENCES participants decided to seek out legal status for ENCES as a legal person. This was considered beneficial for three reasons:

- a) ENCES as a network would exist independently from individual members;
- b) ENCES would gain more political impact as a lobby group if it had accreditation in Brussels; a formal structure would make it possible to appoint a spokesperson to represent the interests of the group vis-à-vis EU bodies in a legally binding way;
- c) ENCES would be able to apply for funding as an entity and handle its own budget;

As a result ENCES would be a legally empowered entity.

In a restaurant on the evening of the Amsterdam workshop the participants agreed on ENCES becoming an international, non-governmental, not-for-profit association in accordance with the German Civil Code. Hopefully there will be many members to join!



- Kick-off workshop: Berlin, November 2008   
(funded by DFG and Heinrich-Böll-Stiftung)
- Amsterdam, February 2010 (IViR, University of Amsterdam, in collaboration with OAPEN) 
- Budapest, March 2010 (Library of the Hungarian Academy of Sciences and Budapest Business School) 

The *Library of the Hungarian Academy of Sciences* as well as the *Budapest Business School* kindly agreed to continue the series started in Berlin in 2008 with a follow-up workshop in Budapest in March 2010.

## ENCES - perspectives

Having arrived at this point – how shall ENCES go on? What is ENCES aiming at and what can it achieve?

This is a twofold question – it can be seen as a question with regard to the organizational structure of ENCES and also as a question asking for its focus of attention. What is the scope of interest that ENCES is concerned with?

To answer the first question:

The future of ENCES depends on its success in fundraising – however, the initiators of ENCES hope to be able to make use of the technical infrastructure they are actively developing for IUWIS.

## Excursus: IUWIS

**iuwis**

infrastruktur urheberrecht für wissenschaft und bildung

Due to the two amendments made to German Copyright Law in reaction to the EU Directive there is a growing uncertainty in the German research community about anything related to copyright issues.<sup>13</sup> Scholars no longer know what they are allowed to do when they engage in the communication of their research outputs or in teaching.

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<sup>13</sup>The 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 as last amended on 8 May 1998 can be retrieved at: <http://www.iuscomp.org/gla/statutes/UrHG.htm> (last visited on 8 March 2010).



- National infrastructure project: May 2009 – April 2011 (- April 2012)
- Funded by German Research Foundation (Deutsche Forschungsgemeinschaft DFG)
- information and communication platform on copyright issues for the German research community

To deal with this situation, a project called “IUWIS” (“copyright infrastructure for research and education”) was established in Germany. 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 itself, but to improving the infrastructure for researchers in Germany. The aim of IUWIS is to provide the German research community with an information and communication platform to reduce their uncertainty on copyright matters, to help them in publishing their own research outputs, and to enable them to express their needs and problems in regard to the actual copyright regime.

IUWIS also aims at establishing a vital network of copyright experts such as lawyers, librarians, information specialists, politicians and journalists, who will discuss copyright concerns – and foster the growth of this conversation on a platform using the tools of web 2.0; IUWIS will also integrate different databases and other sources of knowledge and provide network partners with 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, as well as the main base for political action and lobbying on any of these questions.

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. The prototype of the platform can be visited at <http://www.iuwis.de>.

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

## ENCES – perspectives

ENCES will use the IUWIS platform. The ENCES website is already hosted on the IUWIS server, ENCES will be using the networking tools developed by IUWIS and as long as there is room in the Humboldt-University of Berlin for IUWIS, ENCES will have its office there, too. As long as there is no budget for ENCES, its partners can communicate via internet. This will help save money, ensure everyone can participate and enable the development of an effective movement.

In order to facilitate discussions on EU copyright issues among us, and to spread news concerning copyright matters all over Europe, a mailing list for all ENCES partners has been created. Anyone interested in EU copyright matters can join by sending a short message to [info@ences.eu](mailto:info@ences.eu).

However, the core activity of the ENCES network still occurs at its meetings. Representatives of the education and research sector of all EU Member States have face-to-face discussions about what scholars need from copyright legislation to enhance their daily work. Intensive communication on this issue is a necessity in order to get “the EU to tackle its complicated patchwork of copyrights”<sup>14</sup> in a sustainable way.

This leads us to the second aspect of the question of what ENCES will be in the future.

What can be done, either at face-to-face meetings or via telecommunication tools? First of all, the existing problems of the scholarship sector have to be identified, so that they can be addressed and discussed; then, possible solutions to the problems can be proposed. ENCES would like to address the EU Commission and Members of the EU Parliament, in order to gain their support for our needs and purposes. Examples for special topics to be discussed are:

- a) The orphan work discussion – there are rumours to be heard that the EU is preparing an EU Directive for orphan works; ideally ENCES should take part in the process of drafting.
- b) Legal questions for Open Access: what legal framework do repositories and Open Access publishers need? This question was thoroughly discussed in Amsterdam a month ago.
- c) Digitizing and preserving Europe’s cultural heritage by libraries, archives and museums: what legal framework would be helpful?
- d) Cross-border research or e-learning projects: what do they need from EU copyright?
- e) ...?

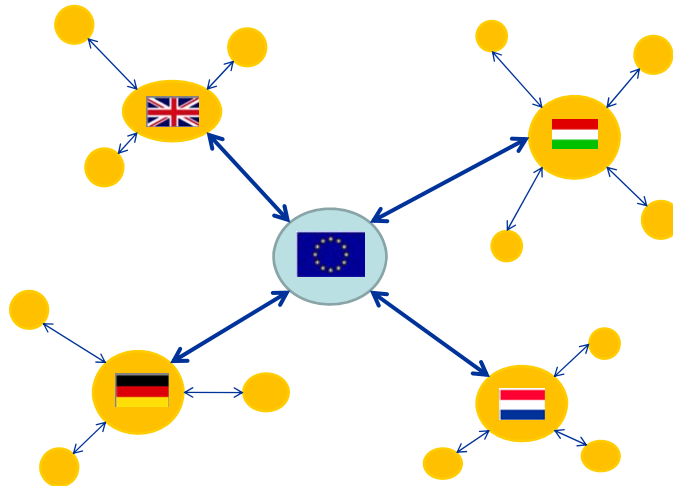
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<sup>14</sup> Honor Mahony, Google online books scheme raises concerns in Europe. A statement by the EU commission on Monday called for a legislative framework. In: Euobserver.com, Brussels 8 September; to be retrieved at <http://euobserver.com/9/28625/?rk=1> (Last visited on 8 March 2010.)

The Hungarian scholarship community should define their own needs with regard to copyright in Hungary. The workshop in Budapest is a perfect platform for defining and deepening THEIR special questions of copyright for the scholarship sector.

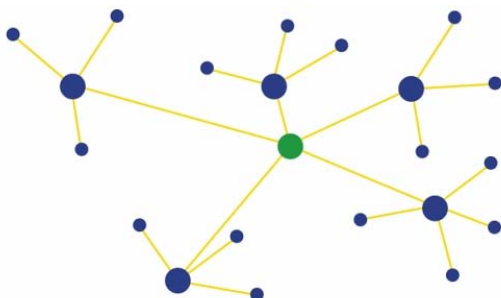


ENCES Structure



13 | Berlin School of Library and Information Science | HUMBOLDT-UNIVERSITÄT ZU BERLIN |

There are networks on national levels in Germany, the Netherlands and the UK, but ENCES wants to foster activities in all European Member States. ENCES would be grateful to learn about existing networks or initiatives on national levels which are concerned with improving the copyright conditions for the scholarship sector. ENCES aims to be the international representation of the interests of scholars of all European Member States with regard to these issues. In order to concentrate energies ENCES should be an international network of national networks:



Therefore, ENCES would appreciate it if this workshop incited the Hungarian research community to hold a regular exchange of ideas and to create their own network for a national discussion on Hungarian copyright law and the interests of the Hungarian research and education community.



A Hungarian Network will keep the discussion of this important topic on a national level; and it might become a member of ENCES and collaborate with its European partners whenever it deems it appropriate.



Thank you very much!