

ENCES – A European Network for Copyright in support of Education and Science – one step forward to a science-friendly copyright in Europe

Rainer Kuhlen and Karin Ludewig, Berlin

The German legislator, in updating the German copyright law (Urheberrecht) to the WIPO treaties and EU directives in 2004 and 2007, seems to have failed in taking into account the interests of actors in the area of research and education. As national legislation nowadays is mainly determined by international treaties, the authors of this article state the political necessity of a – theoretical and practical – revision of the EU copyright policy. In order to foster an international debate and strengthen the voice of researchers all over Europe they initiated a network called ENCES by organizing an international workshop in Berlin in Nov 2008. The workshop was the opening of a pan-European discussion of the exceptions and limitations to copyright for the education and research sector. ENCES will have to continue to make its aims realized.

ENCES – Ein europäisches Netzwerk für Urheberrecht im Sinne von Bildung und Wissenschaft – ein Schritt in Richtung auf ein wissenschaftsfreundliches Urheberrecht in Europa

Der deutsche Gesetzgeber hat bei der Anpassung des deutschen Urheberrechts an die WIPO-Verträge und die EU-Richtlinien in den Jahren 2004 und 2007 die Interessen von in Bildung und Wissenschaft beschäftigten Akteuren nicht ausreichend berücksichtigt. Da die nationale Gesetzgebung heutzutage hauptsächlich durch internationale Abkommen bestimmt wird, besteht die Notwendigkeit einer Revision der EU-Urheberrechtspolitik. Um eine internationale Debatte zu fördern und die Stimme der Wissenschaftler in ganz Europa zu stärken, initiierten die Autoren das Netzwerk ENCES, indem sie einen internationalen Workshop organisierten, der im November 2008 in Berlin stattfand. Auf diesem Workshop wurde eine pan-europäische Diskussion der Ausnahmen und Beschränkungen vom Urheberrecht für den Bereich Bildung und Wissenschaft eröffnet. ENCES muss weitermachen, um die gesteckten Ziele zu erreichen.

Authors' and readers' rights in the information society – has recently become a widely discussed subject, present in the mass media, all over the world. All kinds of arguments are exchanged; often they express either a general rejection of or a strong commitment to free publishing, copying and sharing of texts in the web. In science and education in particular, this debate, sometimes even fight, raises the question whether knowledge, particularly as produced in publicly financed organizations such as universities, should be considered a commons demanding that everyone be given free access or be reclaimed as a private good both in the interest of the original right holders (the authors) and, predominantly, of the derivative right holders (publishers or content providers in general).

The Starting Position:

Copyright in Education and Science

In Germany, the adaptation of copyright to the digital environments has been discussed at the governmental level ever since the national legislative body was called upon to adjust German copyright law to the framework given in the EU-Directive of 2001 “on the harmonization of certain aspects of copyright and related rights in the information society”¹. It did so by passing the so-called “1st Korb” (2004) and the “2nd Korb” (2007), two “bundles” which specify existing

¹ 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, 22.6.2001

norms and create new norms in German copyright (Urheberrecht), making it compatible with the European Directive. In the same process the German Parliament confirmed the last two 1996 amendments of the WIPO, the UN-Copyright Organization.

During the coming election period (starting in fall 2009) the German Parliament will debate and presumably decide on a third set of changes to copyright law. The necessity of a “3rd Korb” became obvious at the end of the process creating the “2nd Korb” in Parliament, because the majority of parliamentarians seemed to feel “guilty” about having strongly disregarded the interests of education and science in German copyright law. The “3rd Korb” is intended to open the debate about copyright as an enabling or disabling tool in science and education.

What are the interests of education and research in regard to copyright legislation in digital environments? Why are education and research combined to form one interest group? And why were their claims not heard, or only very reluctantly, during the recent amendments to copyright? Who represents the interests of science and education in a research- and education- friendly copyright law, anyway?

Since 2004 the Coalition for Action “Copyright for Education and Research” (in German: Aktionsbündnis „Urheberrecht für Bildung und Wissenschaft“), an initiative of subscribers of the Göttingen Declaration on copyright for education and research of 5 July 2004, represents the copyright-related interests of people working in the fields of education and research. Subscribers are individuals who work in the fields of education or research, but also learned societies, federations, institutions on the one hand and organizations of the Science Alliance in Germany on the other, in particular the Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V., the Helmholtz-Gemeinschaft Deutscher Forschungszentren e.V., the Hochschulrek-

torenkonferenz, the Max-Planck-Gesellschaft, the Wissenschaftsgemeinschaft Gottfried Wilhelm Leibniz e.V. and the Wissenschaftsrat.

Up to now (July 3rd 2009) 372 institutions and 7069 personal subscribers have gathered in the Coalition for Action. The very fact that there are so many members and that the participating scientific organizations are some of the most important ones in Germany backs the assumption that the Coalition for Action actually does represent the prevailing interests of the German research and education sectors in a copyright that is beneficial to them – both the authors and the users of published knowledge.

The Coalition for Action participated in the hearings for the amendment of copyright legislation in the German Parliament. Though its speaker, the co-author of this article, tried to make the voice of education and research heard, the German legislators favored the interests of the derivative right holders (publishers) in a copyright law which was originally touted as transferring the publishing situation of the Gutenberg-galaxy into the digital world and fix it there. But – according to the majority of people in science and education – it failed to do so.

There are many reasons for this failure: For example, § 53a of German copyright law (in effect as of 2008) drastically restricts the rights of libraries to deliver digital copies of articles electronically to their users or even makes this delivery completely impossible when commercial providers offer an equivalent document delivery or access service. Today libraries or delivery public services such as subito need to negotiate with the publishers in order to continue the electronic service on a license base – under conditions which are far away from open and free access, although the latter is not only possible technically but – according to the expectations of most library users – should also be self-evident.

Another reason is § 52b of German copyright law, which allows libraries to digitize works in their holdings, but only lets users read e-books at dedicated terminals inside their premises – thereby limiting the number of concurrent readers to the number of copies of the work in the library's stock. The researcher or student who wants to avoid the traditional lending procedure and rather prefers to read library material in the electronic medium will have to go to the library of his university to have a look at the book there – several years ago he would have been allowed to borrow the book and take it to his office for reasons of research. Now, if there happens to be another colleague of

his who also needs to read the same electronic version of a book they'll have to agree on who reads it first. And they are not allowed to make an electronic copy of the material or to print it for future study. Why should the use of knowledge in the electronic environment be more difficult and more restrictive than it was in analogous times? Shouldn't it be just the opposite? Wouldn't it be easily possible today to organize this so much more economically and in a more science-friendly way? Why can't I – this is what the young scientist who has been grown up with digital media might think – why can't I download the e-book to my own computer and read it wherever I want to or at least inside the campus intranet?

There are more reasons for the failure of a copyright regulation which ignores the needs and practices in science and education. But in this article we do not intend to focus on the German copyright law but rather to show how this science-unfriendly situation has originated in the EU and thus can only (or mainly) be overcome on the European level.

The EU-Directive of 2001

The important fact is that the introduction and the specifications of paragraphs such as 52b and 53a into German copyright law by the legislator could not be avoided because they appear to be prescribed by the EU-Directive 2001/29/EC, which was – as its name says – intended to harmonize the common market. The Directive is the obligatory framework that all national legislators of the EU member states have to observe within a certain time span by reformulating their national copyright laws if necessary.

With the Directive of 2001 the EU regulates copyright legislation in Europe and reconfirms and specifies the exclusive rights of right holders guaranteed by international contracts, treaties and agreement such as the Berne Convention, TRIPs as part of the World Trade Organization, and the recent WIPO agreements²: for example, the reproduction right³, the right of communication to the public and of making available to the public⁴ and the distribution right⁵. It

2 The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). To be retrieved at www.wipo.int/treaties/en/ip/wct/ and www.wipo.int/treaties/en/ip/wppt/. In more detail cf Rainer Kuhlen: *Erfolgreiches Scheitern – Eine Götterdämmerung der Urheberrechts? Schriften zur Informationswissenschaft*; Bd. 48. vvh - Verlag Werner Hülsbusch: Boizenburg 2008, 101 pp.

3 Directive 2001/29/EC, *ibid.*, Chapter II, Article 2.

4 *Ibid.*, Article 3.

5 *Ibid.*, Article 4.

also suggests twenty one optional exceptions and limitations to these rights (of which only one is mandatory). Accordingly, these twenty optional exceptions can be voluntarily adopted by national legislation. Two of these exceptions are especially relevant to all work in the fields of education and research. Copyright law in the Gutenberg-galaxy had these exceptions, too, e.g. the possibility to copy texts and use them for teaching purposes. Library work and teaching and research only exist today in the way we know. These exceptions are to be cited here in the wording of the Directive:

“Art. 5.2: Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases: [...]

(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; [...]

Art. 5.3: 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; [...]

(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.”⁶

The German legislator could, but was not obliged to, consider these exceptions and transfer them into national legislation. Had he not considered them, researchers and teachers working in education would have been left without the legally approved certainty of being allowed, under certain circumstances, to reproduce and use the texts of other authors as needed. Of course, there were already exceptions and limitations in existing copyright law, also in Germany, but, because they were formulated in a time of analogous knowledge production and usage, they could not sufficiently take into account the dramatic changes in the electronic world changing with respect to all processes of producing, distributing, and using knowledge and information.

So to answer the question of whether the Coalition for Action could have improved the paragraphs 52b and 53a of German copyright law by using a more effective way of lobbying? Well, it probably could not have, because not even the German

6 *Ibid.*, Article 5.

legislator can go beyond the framework which is constituted by the formulation of the exceptions and limitations in the Directive without coming into conflict with legally binding European directives.⁷

How did other EU member states implement the exceptions to copyright written down in the Directive of 2001 in their national law? Did legislation in England, France, Spain ... or in Poland, Hungary, the Czech Republic ... succeed in finding better solutions to the challenges of digital age? There are some reports available which analyze the pertinent national copyright laws, but it is still very difficult to achieve an EU-wide overview.

And if there are different solutions in European countries, how can the existing diversity of national implementation of copyright law be brought into agreement with the aim of harmonization of the common market in the EU? What is the impact of this assumed divergence on international research projects, international e-learning-groups etc.?

If – comparing the national copyright laws – the situation of education and research in other member states of the EU should turn out to have worsened by the adaption of copyright to the needs of the knowledge society, would it not then be necessary to find a common approach and course of action for all European education and research associations especially when it comes to revising the legal framework for EU legislation? Agreeing on this would of course be a real challenge because of the cultural diversity and different national historical backgrounds, also in copyright. But science can overcome this diversity and these barriers. There is a need to express and to represent the transnational interests in a research-friendly communication space called Europe.

European Workshop on “Copyright Regulation in Europe – An Enabling or Disabling Factor for Science Communication”

Driven by such considerations we are putting out feelers to all EU member states, trying to get in touch with members of research groups and institutes specialized in (European) copyright, with researchers whose interests focus on the possibilities and limits of contemporary science communication, with representatives of cultural heritage institutions like libraries and museums, and last but not least with members of the Academies of Sciences and other large research foundations and organizations all over Europe.

On 14-15 November 2008 we held a workshop entitled “Copyright Regulation in Europe – An Enabling or Disabling Factor for Science Communication”, which was funded by the German Research Foundation (DFG) and the Heinrich-Böll-Stiftung and which took place in the newly built headquarter of the Heinrich-Böll-Stiftung in Berlin.

Talks were given by one of the authors of this article, Rainer Kuhlen, chair of information science at the University of Konstanz, by Lucie Guibault from the Instituut voor Informatierecht, University of Amsterdam, by Séverine Dusollier from the Centre de Recherche Informatique et Droit (CRID) of the University of Namur, by Stevan Harnad, professor of cognitive science of the University of Southampton and at

⁷ Obviously § 52 b observes the wording of the exception 5.3 (n) as formulated in the Directive “... by dedicated terminals on the premises of establishments referred to in paragraph 2(c) ...”; the German version of the Directive says: “auf eigens hierfür eingerichteten Terminals in den Räumlichkeiten der genannten Einrichtungen; –”

the Institut des Sciences Cognitives of the University of Montreal (connected from Montreal by video), by H el ene Bosc, Science Publishing Workgroup of Euroscience and by Paul Ayris, Chair of the UNICA (Network of Universities from the Capitals of Europe) Scholarly Communication Group and Director of University College London Library Services as well as UCL Copyright Officer. (The scheduled talk by Gerhard Fr ohlich, professor of science studies of the University of Linz unfortunately had to be cancelled because of illness of the speaker.) Statements on the situation of scientific communication in particular EU member states by the representatives of the respective Academies of Sciences during the panel discussions completed the event⁸.

Seven years after the Directive of 2001 coming into effect, the speakers detailed the existing problems in European education and research. Against this analytical background panel discussions were held to evaluate the aim of the recently published Green Paper "Copyright in the Knowledge Economy"⁹ and to determine the reaction of research organizations to the questions asked therein by the European Commission.

- In his opening talk the initiator of the workshop and co-author of this article, Rainer Kuhlen, spoke on "Copyright and science – demands and aims". He gave a survey of the historical situation of copyright and a detailed analysis of the interests of right holders and the public in a free flow of information. Describing the situation of researchers in Germany against the background of international treaties, he concluded that copyright nowadays has unfortunately developed into an impeding factor rather than an enabling factor for scientific communication.
- Lucie Guibault criticized the possibility to override the exceptions formulated in the Directive by contracts; she drew attention to the primacy of a set of obligatory limitations over private contracts which normally favour mar-

ket interest. She stated that the aim of harmonizing copyright law in the internal EU market has been reached in a very limited way only and that therefore transnational projects in the EU were still facing many difficulties.

- S everine Dusollier also pointed out that on the one hand the limited number of exceptions in European copyright and their scarce flexibility in practice has to be seen critically and that on the other hand the failure of harmonization of exceptions in Europe produces an uncertainty in regard to legal problems, especially when it comes to transnational e-learning projects. Therefore Dusollier called for a system of exceptions that does not discriminate different types of users but depends on the intended purpose of each use. So as a cluster of purposes of use the exceptions for libraries, museums and archives as well as for education and research should be integrated and form the domain of a specialized copyright. The question whether a general principle of limitations comparable to the "fair use principle" in the Anglo-Saxon countries could be introduced into European law was discussed during the panel.
- Stevan Harnad elaborated his view that free online access („Open Access", OA) to all articles published every year in the 25.000 most important journals worldwide was necessary and inevitable. He insisted on the objective of depositing all articles of all researchers directly after their acceptance to publication on OA servers – thus explaining the principle of the "mandate deposit". In his opinion, a review of copyright and a comprehensive reform of publication structures in general could follow later. He claimed that the precedence of copyright reforms as a condition for mandate deposit is unnecessary as well as a big strategic mistake.
- Harnad's strict and radical way of putting it, namely insisting on mandates to foster the Open Access green road paradigm, was not shared by all participants of the workshop, because – so they claimed – there would remain copyright problems in European member states even if the mandate deposit was realized.
- H el ene Bosc estimated that about 90% of the worldwide research is funded publicly; that is why in her opinion research has to be considered a common good. At least the publicly funded research outputs should be deposited on the server of the researcher's institute in order to provide access for users all over the world – this would especially make sense for users in less developed countries whose institutional libraries cannot afford to pay the

subscription prices of the expensive scientific journals which the articles were originally published in.

- Paul Ayris reported on his advocacy for OA as a copyright officer of UCL Library: the effort was successful, though it took him five years to convince UCL to publish the entire research output according to the OA paradigm. As far as the "institutional mandate" is concerned, Ayris claimed that researchers should decide by themselves whether and where they wanted to publish OA. Ayris said he would appreciate an EU copyright that helped to simplify and harmonize the publication process. Regarding the European copyright legislation he asked: "Now the future of publication is being discussed. Why do politicians support old-fashioned ways of publishing?"

A great deal of time was spent discussing the question raised by Harnad as to what extent the labor of searching for a research-friendly copyright law is made obsolete by mandated OA publication of research output. Most participants in the workshop rather agreed on the idea of having to improve copyright in Europe, while at the same time insisting on an increase of "mandate deposits" in the OA sphere, because the situation of research in Europe is not totally comparable to the situation in the US and Canada. For instance, a German researcher's right to publish wherever he wants is guaranteed by German law protecting the freedom of research – at least according to the majority of judges, politicians and law experts. This is why German research institutions up to now do not really "mandate" their employees to deposit their research outputs OA but only seriously recommend that they do so. Still, there is a discussion about the legal situation concerning employed researchers going on in Germany.

The panel discussion also focused on how European research organizations should react to the questions raised by the Green Paper. The participants of the workshop decided not to aim at a common statement because of the shortage of time. But the results of the discussions – mediated by the participants of the workshop – would flow into the statements every particular Academy of Science would submit to the EU by 30 November 2008, they declared. The EU made all statements publicly available on the Web (cf. below).

Formation of ENCES

As the result of the final panel discussion, a common resolution was drafted,

8 A documentation of the workshop is accessible on the website of ENCES at the URL <http://www.ences.eu/index.php?id=30>.

9 Green Paper, Copyright in the Knowledge Economy. Commission of the European Communities, Brussels, 16.7.2008. In this Green Paper the European Commission opened a public debate on certain difficulties left by the Directive of 2001. Glossary of the EU: "Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers." To be retrieved from http://europa.eu/scadplus/glossary/green_paper_en.htm.

in order to get ENCES, the European Network for Copyright in support of Education and Science, get on its way.

Towards a European Network for Copyright in support of Education and Science (ENCES)

Berlin, Nov 15th 2008

There is currently no organized group representing European interests in furthering a science- and education-friendly copyright. One way to change this situation is by developing an EU-wide network of organizations and individuals in science and education who share the view that knowledge in science and culture in general is a socially valuable construct which should not be fully privatized (as private property) but rather should stay in the commons as common property.

Let us remember that the primary objective of copyright is to promote the progress of science, education, and culture as part of the commons. The private appropriation of knowledge, in particular in science, education and culture, has never been considered a means in itself but is only justified when it serves fundamental rights, such as freedom of expression and the right to education. These rights are crucially dependent on access to published knowledge under fair conditions. Access to knowledge is a fundamental right in open information societies and a fortiori for science and education, where it is indispensable.

Why is there a need for an interest group, for a European network in support of a science- and education-friendly copyright? Is copyright still an appropriate means for achieving public goals in education and science? Should we not rather turn to open access, an initiative which stems from science itself and is on its way to becoming the dominant scientific publishing model, making possible free access to knowledge for all, for a solution to the current access crisis?

Currently regulation via copyright is more a disabling than an enabling tool for science and education. For this reason it is essential that we work towards a better balance between private and common/public property rights in the foreseeable future. Let us consider, for instance, making copyright a means to protect science and culture as common properties and giving commercial exploiters license rights which will not hamper free access to knowledge. To this purpose we believe that there is a need for coordinating existing European interest groups and initiatives working towards a copyright in the public interest. The voice of science and education will only be heard if and when it is legitimized by as many science organizations and individual scientists as possible.

This legitimization cannot be achieved by the members of the Berlin workshop in Nov 2008 alone. But the Berlin workshop can be a first step towards ENCES, a European Network for Copyright in support of Education and Science which can provide a platform for organizations and individuals working towards a new commons-based

understanding of copyright. ENCES can be a means both for concrete lobbying work at the EU level and for supporting comparable national efforts in EU member countries. What is really needed is a fundamental change, a paradigm shift in the way all aspects of the production, dissemination, and usage of knowledge and information are organized in the information society. ENCES can be a platform for the development of a commons-based understanding of knowledge and culture.

ENCES is supposed to develop into a new Europe-wide research network and at the same time into a coalition for the elaboration and representation of the pan-European interests of researchers and teaching staff in a copyright legislation that would allow them to use the new possibilities of developing, providing and consuming knowledge by means of digital media in an unrestricted way.

All participants unanimously considered the workshop to be very important for the further discussion of copyright in the fields of education and science. The participants agreed on meeting again to continue the initiated exchange of ideas on an education- and research-friendly copyright in Europe. As an outcome of the kick-off-meeting ENCES plans a series of one-day workshops in European capitals on the subject of "Status Quo and Perspectives of Research-Friendly Copyright Legislation in Particular EU Member States". A first workshop will take place in Budapest as of spring 2010 and will be locally organized by the Library of the Hungarian Academy of Sciences and the Budapest Business School.

Discussion of the Green Paper

The evaluation of the process of revision of the Directive of 2001, which was released by the Green Paper „Copyright in the Knowledge Economy“, will be at the center of attention of future activities of ENCES. As already mentioned, by the end of November 2008 a total of 374 organizations, institutions, associations and corporations have handed in a statement to the European Commission.¹⁰ A complete analysis of this input from the EU Commission is not yet provided. The next step in the process of amendment of the law in the EU might be a White Paper, which would integrate the content of the comments to official proposals of action.¹¹

10 The replies to the public consultation are published at the URL http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/copyright_neighbouring/consultation_copyright&vm=detailed&sb=Title.

11 Glossary of the EU, "Commission White Papers are documents containing proposals for Community action in a specific area. In some cases they follow a Green Paper published to launch a consultation process at European

Though the extension of the exceptions for public libraries, educational establishments, museums and archives on the one hand and for teaching or scientific research on the other would have suggested itself, the Green Paper focused its questionnaire on alternatives. Should there be encouragement, guidelines or model licenses for contractual arrangements between right holders and users ...? Should libraries, educational establishments, museums and archives enter into licensing schemes with the publishers? In other words: would it not be enough to solve the problems of copyright in the knowledge economy/society if the involved actors came to terms negotiating their own agreements? The Green Paper reveals a tendency to solve the problem of failure of public access to knowledge in the information society by transferring the responsibility to the realm of (private) contract law instead of striving for an up-to-date amendment of copyright law.

In their statement the German Coalition for Action "Copyright for Education and Research" drew attention to the fact that the market is characterized by a double monopolistic structure – "the one of the

Tagung, Rechtsfragen, Urheberrecht, Information, Wissen, Politik, Europäische Union, Forschung, Wissenschaft, ENCES

suppliers and then the one of products themselves"¹² -, so that the idea of freely negotiated contracts is not appropriate. German library associations and other associations of institutions that care for the conservation of the culture heritage argue in their statements to the Green Paper that publishers are not the right owners of all digital objects of knowledge and that even if they were, they could not provide access to those objects in the same way as libraries or museums or archives do, because editors would only publish with the prospect of realizing a profit.

Digitization and publication of objects of knowledge for the sake of the conservation of our cultural heritage can only be guaranteed by means of publicly financed institutions and public mandates. Even if contracts may offer solutions

level. When a White Paper is favourably received by the Council, it can lead to an action programme for the Union in the area concerned." To be retrieved from http://europa.eu/scadplus/glossary/white_paper_en.htm.

12 Aktionsbündnis „Urheberrecht für Bildung und Wissenschaft“, Stellungnahme zum Grünbuch „Urheberrechte in der wissensbestimmten Wirtschaft“, 25. November 2008; p. 3.

DIE AUTOREN

Prof. Dr. Rainer Kuhlen



Forschungs- und Lehrschwerpunkte: Information Retrieval, Hypertext, Informationsmarkt, Informationsethik, -politik/-recht; kollaboratives Wissensmanagement im e-Learning, Commons-Theorien. Professionelle Funktionen: Seit 1980 Lehrstuhl für Informationswissenschaft, Universität Konstanz; Mitglied des Fachausschusses „Kommunikation und Information“ der Deutschen UNESCO-Kommission (DUK); Deutscher UNESCO Chair in Communications (ORBICOM); Vorsitzender des Vereins Nethics e.V. (Informationsethik im Netz); Mitglied im Vorstand des Hochschulverbandes für Informationswissenschaft (HI); Sprecher des Aktionsbündnisses „Urheberrecht für Bildung und Wissenschaft“; Sachverständiger für verschiedene Bundestagsausschüsse und Enquête-Kommissionen; Mitglied zahlreicher Beiräte/Kommission für BMBF, DFG, EU sowie in Österreich und der Schweiz. Letzte Buchpublikationen: Konsequenzen von Informationsassistenten (1999); Informationsethik (2004); Erfolgreiches Scheitern - Götterdämmerung des Urheberrechts (2008)

Universität Konstanz – Fachbereich Informatik und Informationswissenschaft
rainer.kuhlen@uni-konstanz.de · www.kuhlen.name

Dr. phil. Karin Ludewig



Studium der Philosophie, Anglistik, Soziologie und Musikwissenschaften an den Universitäten Freiburg und Barcelona; derzeit Akademische Mitarbeiterin im DFG-geförderten Projekt IUWIS am Institut für Bibliotheks- und Informationswissenschaft der Humboldt-Universität zu Berlin. Schwerpunkte: Kritische Theorie, Poststrukturalismus, Museumsdokumentation, Urheberrecht, Sacherschließung.

karin.ludewig@ibi.hu-berlin.de

to singular problems now and then – in general it should be granted that more extensive freedoms for cultural institutions as formulated in the exceptions to copyright will not be overridden. Consequently *The National Archives of the UK* demand in their statement: “The Information Society directive should therefore be amended to include an article declaring null and void any contractual clause which seeks to limit or exclude the operation of an exception ...”¹³

ENCES will observe and watch attentively the process initiated by the Green Paper until the ultimate amendment of the Directive of 2001. Up to now a tendency can be noted in the statements of representatives of education and research: they demand a special copyright for the purposes of teaching and research, because equal treatment with other important areas of copyright protection such as the entertainment markets does not seem reasonable to them.

The Coalition for Action states that the situation of authors in education and research is different from the situation of authors who publish on the public entertainment markets, e.g. in the music industry. Unlike in other sectors of produc-

tion of intellectual property in the fields of education and research a separation between producer and user of knowledge simply does not make sense: “Authors in education and research are at all times users of published knowledge.”¹⁴ This is why in education and research the classical construction of a copyright that seeks to balance the supposedly contrary interests of authors and users is not appropriate from the beginning. Therefore, the Coalition for Action suggests – thereby going beyond the framework of the Green Paper’s questionnaire – drafting a specific copyright for education and research or even introduce a special privilege for education and research, a positive limitation to limitations.¹⁵ The *Allianz der deutschen Wissenschafts- und Wissenschaftsförderorganisationen* (Alliance of the German Research and Research Funding Organizations)¹⁶ and the *Arbeitsgemeinschaft der Kanzlerinnen und Kanzler der Fachhochschulen Deutschlands* (Consortium of Chancellors of the Universities of Applied Sciences of Germany)¹⁷ also support this demand.

If financial means for such an event can be found, there will be a second EU-wide conference on the consequences of the Green Paper and the many suggestions made to improve copyright with respect to the needs in science and education. Will the interests of education and research be taken into account this time? ENCES watches the evolution of copyright in the knowledge society keenly and will strengthen all efforts to make copyright a real enabling tool in digital environments, particularly to foster the development of the arts and of science but also to contribute to an open society in general where access to knowledge is considered a commons, and not primarily a commercial good. This is not a utopia but a necessity.

13 The National Archives of the United Kingdom, European Commission Green Paper: Copyright in the Knowledge Economy. Comments by the National Archives of the United Kingdom, p. 7.

14 Aktionsbündnis „Urheberrecht für Bildung und Wissenschaft“, *ibid.*, p. 2.

15 *Ibid.*, p. 3.

16 Allianz der Wissenschaftsorganisationen, 2008, p. 3.

17 Arbeitsgemeinschaft der Kanzlerinnen und Kanzler der Fachhochschulen Deutschlands, Stellungnahme zu dem geplanten Grünbuch „Urheberrecht in der wissensbestimmten Wirtschaft“; Münster 2009, p. 2.