

EUROPEAN LIBRARIES AND THE INTERNET

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Copyright and Extended
Collective Licences

Rán TRYGGVADÓTTIR



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European Libraries and the Internet: Copyright and Extended Collective Licences
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*To my mother, the librarian and booklover, who inspired me to start,
and to my granddaughter, who inspired me to finish.*

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FOREWORD

This is the second book to be published in the newly established series launched by the KU Leuven Centre for IT & IP Law (CiTiP). As was the case with the first book¹, this publication is very timely as the European legislator is in the process of discussing possible new provisions as regards extended collective licenses (ECL) in its forthcoming new Directive on Copyright in the Digital Single Market.² The mechanism of ECL has for many decades been successfully applied in a number of European Member States, most notably in Nordic countries. Yet, and despite the assurance in paragraph 18 of the Information Society Directive preamble stating that “this Directive is without prejudice to the agreements in the Member States concerning the management of rights such as extended collective licensing”, the application of ECLs remains controversial in certain areas of copyright law.

New provisions need a clear and well-argued understanding. That is precisely what the author seeks – and successfully accomplishes in this book, that contains the results of the doctoral research that the author carried out at CiTiP in the period 2012–2017. With her Nordic (Icelandic) background as well as a residence in Brussels for many years, the author of this book was the right person in the right place to research the topic of ECL. The research is driven by the author’s concern that libraries should continue to fulfil their role of custodians of the cultural heritage in the online digital environment. The book provides valuable insights into the many challenges libraries encounter. Its ultimate goal is to propose a legal environment in which libraries are able to make works from their collections available online with cross-border effect.

The book reads as a novel. The author takes the reader on a journey through the legal framework of exclusive copyrights, looking for answers in the system of exceptions and limitations to these rights, ploughing through problems of international private law that arise because of the cross-border dimension of online use as well as the territorial nature of copyright and flying over the landscape set by the different laws on ECL in the Nordic countries. At the core of this exploratory expedition lies an in-depth and rigorous quest for answers as

¹ Niels Vandezande, *Virtual Currencies: A Legal Framework*, KU Leuven Centre for IT & IP Law Series, Intersentia, 2018.

² Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market, COM(2016)593.

regards the compatibility of ECL agreements with the EU and international legal copyright framework.

As all the mentioned legal issues are presented and analyzed in a thoroughly structured manner I am certain that this book will constitute a useful tool. It will certainly help specialists in copyright to better understand the system of extended collective licensing. The author concludes that the ECL system can address the need to make in-copyright works available in a way that affords flexibility and legal certainty to users, such as libraries, and is at the same time not unacceptably intrusive on the exclusive rights of rightholders.

Certainly, it will not convince everyone and I can already hear some reservations. The conclusions, which specify the ‘hybrid’ nature of the extension effect of the ECL system are indeed complex, but they certainly have merit and are very valuable in the discussion over the nature of an extended collective license. Indisputably, the book adds some useful pieces to the jigsaw puzzle of European copyright law in a period when European copyright law is under construction.

For me personally, it has been a rewarding experience and a true pleasure to serve as the promotor of this research.

Prof. dr. Marie-Christine JANSSENS
Head of Unit KU Leuven Centre for IT & IP law (CiTiP)

5 September 2018

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ACRONYMS AND ABBREVIATIONS

ALAI	Association Littéraire et Artistique Internationale
ALRC	Australian Law Reform Commission
ARROW	Accessible Registries of Rights Information and Orphan Works
ASA	Amended Settlement Agreement (USA)
BA	The Norwegian Bokhylla Agreement
CDPA	Copyright and Designs Patents Act (UK)
CEIPI	Centre for International Intellectual Property Studies, University of Strasbourg, France
CISAC	International Confederation of Societies of Authors and Composers, France
CJEU	Court of Justice of the European Union (formerly the European Court of Justice, ECJ)
CMO	Collecting Management Organisation
CNA	Competent National Authority
CRPR	Copyright and Rights in Performances (Extended Collective Licensing) Regulations (SI 2014/2588) (UK)
CULT	EP Committee on Culture and Education
DCA	Danish Copyright Act
DLF	Digital Library Federation
DSM proposal or DSMP	<i>Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market, COM(2016) 593 final.</i>
EBLIDA	European Bureau of Library, Information and Documentation Associations
ECL	Extended Collective Licences
EEA	European Economic Area
EFTA	European Free Trade Association
EIPR	European Intellectual Property Review
EP	European Parliament
ERR Act	Enterprise and Regulatory Reform Act 2013 (UK)
EU	European Union
EUIPO	European Union Intellectual Property Office
FA	Framework Agreement (used for the German “Rahmenvertrag zur Nutzung von vergriffenen Werken in Büchern”)
FCA	Finnish Copyright Act

FCIP	The French Code of Intellectual Property
FNGA	Finnish National Gallery Agreement
FSA	The First Settlement Agreement (Google, USA)
GCA	The German Copyright Act
GCAA	The German Copyright Administration Act
GDPR	General Data Protection Regulation
HLG	High Level Expert Group on Digital Libraries
ICA	Icelandic Copyright Act
IFLA	International Federation of Library Associations and Institutions
IFRRO	International Federation of Reproduction Rights Organisations
IIC	International Review of Industrial Property and Competition Law
IMCO	EP Committee on the Internal Market and Consumer Protection
IPO	Intellectual Property Office (UK)
IPRs	Intellectual Property Rights
IPQ	Intellectual Property Quarterly (Sweet & Maxwell, UK)
ITRE	EP Committee on Industry, Research and Energy
IVIR	Instituut voor Informatierecht (Institute for Information Law, University of Amsterdam, The Netherlands)
JIPITEC	Journal of Intellectual Property, Information Technology and E-Commerce Law
MoU	Memorandum of Understanding
NCA	Norwegian Copyright Act
NCB	Nordisk Copyright Bureau
NIR	Nordiskt Immateriellt Rättsskydd (Nordic Intellectual Property Law Review)
NNL	Norwegian National Library
NNLA	The Norwegian National Library Agreement for delivery of digital copies to end-users
OBR	Online Broadcasting Regulation: Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, COM(2016) 594 final, 14 September 2016.
PP	Portability Proposal: COM(2015) 627, <i>Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market</i> , 9 Dec 2015.
REPROBEL	The Belgian RRO
RIDA	Revue Internationale du Droit d'Auteur (France)
RROs	Reproduction Rights Organisations
SCA	Swedish Copyright Act

SDNY	Southern District of New York (Court)
SNL	Swedish National Library
SOFIA	Société Française des Intérêts des Auteurs de l’Ecrit (The French CMO for text)
TEU	Treaty on European Union
TFEU	Treaty on the functioning of the European Union
TORB	Tijdschrift voor onderwijsrecht en onderwijsbeleid (Belgian Journal of Education Law and Education Policy)
TRIPs	Agreement on the Trade-Related Aspects of Intellectual Property Rights of 15 April 1994 (WTO)
UNESCO	United Nations Educational, Scientific and Cultural Organization
USCO	United States Copyright Office
VG Bild-Kunst	Verwertungsgesellschaft Bild-Kunst (The German CMO for images)
VG-Wort	Verwertungsgesellschaft WORT (The German CMO for text)
VIP Treaty	The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization
ZUM	Zeitschrift für Urheber- und Medienrecht (Germany)

