

Assessing Copyright and Related Rights Systems

# Access to Copyrighted Works for Follow-on Creation

Report on Piloting in Finland





cupore

**Assessing Copyright and Related Rights Systems: Access to Copyrighted Works for Follow-on Creation. Report on Piloting in Finland.**

This report is the result of the first pilot study implementing Methodology Card 17 – *Access to Copyrighted Works for Follow-on Creation*, one of the 37 indicators constituting a methodology framework for assessing the operation of national copyright and related rights systems. The methodology framework has been developed at the Foundation for cultural policy research (Cupore) in Finland as part of a project financed by the Finnish Ministry of Education and Culture. The pilot study was conducted by Project Researcher Jukka Kortelainen together with the core project team (Tiina Kautio and Nathalie Lefever) between June and December 2015. The results were first published in January 2016 on the website of Cupore.

*A handbook presenting the methodology framework is available on the website of Cupore at [www.cupore.fi](http://www.cupore.fi).*

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## Executive summary

This document presents data collected in application of a methodology framework to assess the operation of copyright and related rights systems. More precisely, the information and analysis below correspond to Methodology Card 17 presented in the methodology handbook, titled “Access to Copyrighted Works for Follow-on Creation”. The goals of this report are to provide an overview of the public regulations, policies and other measures on follow-on creation, as well as to present opinions of authors and performers, members of the public at large and researchers on the topic.

Copyright protects literary and artistic expressions which are original. Therefore, ideas, procedures, methods of operation and mathematical concepts, the results of mere mechanical work and expressions not meeting the threshold of originality can be freely used in follow-on creation. Copyright-protected works fall into the public domain 70 years after the death of the last surviving author. In addition, audio recordings, video recordings, performances, radio and television broadcasts, catalogues and databases, photographs and press reports are protected as a whole and in part by neighboring rights and have specific criteria for protection.

The preparatory works of the Finnish Copyright Act acknowledge the importance of the common cultural heritage in the creation of new works. Therefore, Section 4 (2) of the Copyright Act provides an opportunity to use existing works to support the creation of new and independent works. Derivative works such as translations, adaptations and compilations are protected by their own copyright under sections 4 (1) and 5. Publishing these works requires permissions from the original copyright holders. The limitations to copyright include reproduction for private use, quotation, reproduction of works of art in pictorial form, reproduction of a permanently sold or transferred work and inclusion of a work in a news broadcast. These limitations allow follow-on use of copyrighted works under certain circumstances.

On the online platforms of social networking, citizen journalism and blogs, streaming services and multi-user gaming, users provide the services with a non-exclusive license allowing use and distribution of the user-generated content (UGC) uploaded to the services. Open knowledge and remix communities are based on open licensing allowing users to freely use, modify and distribute the content uploaded to the services.

Opinions of authors and performers on the access to copyrighted works for follow-on creation were examined through a case example concerning sampling in Finnish hip-hop music. The results show that there is uncertainty in the interpretation of copyright rules of digital sampling among hip-hop-producers. It is common for producers to consider songs including small segments of sounds as new works clearly reaching the originality threshold. When using longer segments under certain circumstances, the producers would be willing to attribute and/or remunerate the original copyright holders but there is uncertainty about the scope of the quotation right and the licensing practices are considered very complicated with low chances of succeeding.

The opinions of the Finnish Competition and Consumer Authority (FCCA) and the European Copyright Society (ECS) were analyzed in order to understand the views of the public at large regarding access to copyrighted works. These organizations highlight the importance of providing sufficient legal framework for user-generated content (UGC) in new social online platforms. The ECS emphasizes UGC’s relationship with the freedom of expression guaranteed by the EU Charter of Fundamental Rights.

Major copyright-related challenges in research at the moment are not related to conducting research as such, but to preservation and distribution of research data and results. The current problems mainly relate to uncertainties in the interpretation of the copyright rules, use of text and data mining (TDM) in human sciences and publishing of audio-visual works for verification of research results. In general, researchers are not well aware of copyright issues and there would be a need for additional education and training.

## Table of contents

<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>INTRODUCTION.....</b>	<b>6</b>
A. Context of the pilot study .....	6
B. Presentation of the indicator .....	6
C. Methods .....	8
<b>RESULTS .....</b>	<b>9</b>
Section 1. Public policies and regulations concerning follow-on creation.....	11
A. Copyrighted works and the public domain .....	11
B. The Copyright Council's interpretation on the originality of individual works in opinions issued between 2010 and 2015 .....	12
▪ The Copyright Council's opinions concerning the threshold of originality.....	12
▪ The Council's opinions concerning the originality of works using elements from the works of others .....	14
C. Limitations to copyright allowing the use of copyright-protected works in follow-on creation .....	14
▪ Reproduction for private use .....	15
▪ Quotation .....	15
▪ Reproduction of works of art in pictorial form in connection with a text in a critical or scientific presentation.....	16
▪ Reproduction of a permanently sold or transferred work in a photograph, film and television program .....	16
▪ Inclusion of a work in a news broadcast.....	16
D. Provisions or measures safeguarding the rights of follow-on creators .....	16
Section 2. Terms and conditions concerning the licensing of user-generated content.....	17
▪ Social networking.....	17
▪ Blog services and citizen journalism .....	18
▪ Audiovisual creative practices.....	18
▪ Open knowledge communities .....	19
▪ Multi-user gaming.....	20
Section 3. Opinions related to the access to copyrighted works for follow-on creation.....	22
A. Opinions of authors and performers .....	22
▪ A case example: Sample-based hip-hop music in Finland .....	23
B. Opinions of the public at large .....	23
▪ Finnish Competition and Consumer Authority .....	24
▪ European Copyright Society.....	24
C. Opinions of researchers .....	24
▪ Legal uncertainty.....	25
▪ Researchers' level of knowledge on copyright-related issues.....	25
▪ New research methods.....	25
▪ Problems with specific research materials .....	25
Section 4. Suggestions for questions in future surveys.....	26
<b>CONCLUSIONS .....</b>	<b>27</b>
A. Analysis and summary of the results .....	27
▪ Public regulations and policies on follow-on creation.....	27
▪ Other provisions and measures facilitating the follow-on creation .....	27
▪ Opinions on issues related to the access of copyrighted works for follow-on creation.....	28
▪ General analysis .....	28
B. Methodological findings.....	30
▪ Limitations.....	30
▪ Guidelines for future research .....	30

**APPENDICES ..... 31**  
A. Methodology card.....31  
B. Information sources .....32  
C. Questionnaires (proposal) .....35

## Introduction

### **A. CONTEXT OF THE PILOT STUDY**

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A methodology framework for assessing the operation of national copyright and related rights systems has been developed at the Foundation for cultural policy research (Cupore) in Finland. It is a collection of tools for achieving a systematic assessment of the functioning, performance and balanced operation of national copyright and related rights systems.

In the methodology, the assessment is determined through a framework consisting of so-called description sheets and methodology cards. The description sheets constitute guidelines to produce a comprehensive presentation and description of a country's copyright and related rights system and its operating environment. The methodology cards propose the collection of specific sets of data, either quantitative, descriptive or qualitative, that will be used as indicators of the functioning, performance and balanced operation of the system. Description sheets and methodology cards are accompanied by detailed information on the data to be collected, as well as analysis guidelines that will help connect them to each other.

The methodology framework is meant to be continuously improved through application feedbacks. For more information, see the Cupore website, [www.cupore.fi/copyright.php](http://www.cupore.fi/copyright.php).

This report presents data collected in application of Methodology card 17 of the methodology framework, titled "Access to copyrighted works for follow-on creation". It is the result of the first pilot study applying this indicator in Finland.

This study was conducted by Project Researcher Jukka Kortelainen together with the core project team (Tiina Kautio and Nathalie Lefever), between June and December 2015.

### **B. PRESENTATION OF THE INDICATOR**

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As an exclusive right, copyright may create barriers to the creation of new works. One aspect in a copyright system's operation is the ability of the system to encourage follow-on creation while at the same time protecting rights to existing works. The access to protected works for follow-on creation is also closely connected with freedom of expression. This indicator aims at evaluating whether the level of access to protected works and the copyright system sufficiently encourages follow-on creation.

On a legal point of view, the access to protected material for follow-on creation is affected by a number of factors. Firstly, it is influenced by whether the **scope of protection** clearly distinguishes between expressions that can be protected (provided that they reach the threshold of originality) and information and ideas that remain free for all to use<sup>1</sup>. A second factor is the setting of an appropriate **term of protection**, after which even protectable elements of a work are free for all to use in follow-on creation. A third influencing factor is the availability of exceptions and/or limitations that allow quotations, reporting, parodies and other similar uses of protectable expression even during the term of protection. Such limitations, together with an appropriate scope of copyright protection, should permit follow-on uses of protected material that do not compete with original works. A proper regulation of

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<sup>1</sup> The scope of protection will be considered narrow when only nearly identical works could infringe the rights on the original work. In other cases, the protection (of a work that is not only original but also objectively unique) is wider and a broader range of works might be considered to infringe the rights of the original right holder.

these three factors should ensure that copyright promotes rather than hinders freedom of expression and the availability of information.<sup>2</sup>

The first parameter of this indicator aims at providing descriptive information on public policies and regulations in the country to facilitate access for follow-on creation, in particular various provisions in the copyright law aimed at enhancing the robustness of the public domain. It also includes a description of other arrangements made in the country to facilitate creative activities based on existing works such as arrangements supporting or promoting open licensing and the use of open access models<sup>3</sup> (for more discussion on these topics, see Methodology Card 4). The level of development of CMO's services, which is primarily assessed in the area *Management of Rights* (Pillar II), also has a role to play in this issue. Other relevant policy areas include cultural policies aimed at maintaining and promoting cultural heritage; artists' freedom to use and reinterpret traditional cultural expressions (TCE) and/or folklore as part of their creative work could be considered in the analysis. The impact of other relevant non-copyright policy areas such as competition policy, consumer protection and specific regulations on freedom of expression should also be considered.

Another situation where copyright might limit the access is the case where a potential user is unable to obtain a license over a particular work. This can be the result of ineffective exercise of rights and a sign of malfunction of the licensing system. This question is dealt with through the second parameter of this indicator, which proposes to consult the opinions of authors and performers, members of the public at large engaging in follow-on creation as well as researchers using copyrighted material in their scientific work. These issues are also discussed in the areas *Management of Rights* (Pillar II) and *Licensing Markets* (Pillar III). Another related issue is situations where the copyright holders of the work are unknown or cannot be contacted. The problem in this setting is, on the one hand, that it prevents the right holder from benefitting from the work, and on the other hand that the work cannot be used in follow-on creation due to the risk of infringing copyright.<sup>4</sup> The services of CMOs to facilitate the identification of copyright holders and right holder databases are examined in Methodology Card 16 – *Access to Copyrighted Works by the Public*.

A methodology card presenting the indicator can be found in Appendix A of this report.

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<sup>2</sup> For an analysis on the effect of the copyright law for freedom of expression, see for example Graham Smith, *Copyright and freedom of expression in the online world*, Journal of Intellectual Property Law & Practice, 1/2010; 5 (2), pages 88-95.

<sup>3</sup> Public domain, open access and open licenses enable access and the possibility to use works without separately agreeing on, and without paying for each use. In the copyright field, the public domain traditionally refers to subject matter which is excluded from protection, and thus may be accessed and used without permission. A work becomes part of public domain after the term of copyright has ended or when an author has assigned his work for free use. Open access denotes a policy derived from the open access movement in academia. It aims for the scholarly publications or public interest data to be accessible to anyone to read and to use free of charge and without restrictions on the internet. Open licensing is one way for right holders to enable access to a work and in some cases the modification of the work with certain reservations cited in the license.

<sup>4</sup> According to Rufus Pollock, "Access and preservation of older copyrighted works is a significant problem and should be addressed. This could be done in several, potentially complementary ways, including introduction of a registration requirement, orphan works provisions, and a reduction in copyright term." (The Value of the Public Domain, Cambridge University & the Open Knowledge Foundation, published by the UK's Institute for Public Policy Research (2006), available at [http://www.rufuspollock.org/economics/papers/value\\_of\\_the\\_public\\_domain.html](http://www.rufuspollock.org/economics/papers/value_of_the_public_domain.html)).

The UK's *Review on Intellectual Property and Growth* by Professor Ian Hargreaves (2011) recommends that "The Government should legislate to enable licensing of orphan works. This should establish extended collective licensing for mass licensing of orphan works, and a clearance procedure for use of individual works. In both cases, a work should only be treated as an orphan if it cannot be found by search of the databases involved in the proposed Digital Copyright Exchange." (page 8). The review is available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32563/ipreview-finalreport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32563/ipreview-finalreport.pdf). Visited on 6.12.2015.

### ***C. METHODS***

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The information for this indicator was collected through national and international information sources. The method chosen was therefore a desktop study. A list of national and international information sources used for this report can be found in Appendix B.



## Results

Copyright protects literary and artistic works *created* by an author. When considering the definition of follow-on creation, it is first essential to acknowledge the differences in the interpretation of the concept of creating. The dictionary definitions of a word “*create*” often include, among others, the connotation of “*forming out of nothing*”<sup>5</sup>. The Romantic vision of an authorship, highlighted for example by some writers and poets of the 18<sup>th</sup> and 19<sup>th</sup> centuries, perceives the author as a sole creator of something profoundly new. The Romantic vision has been questioned by some contemporary scholars who have argued that creating is fundamentally built upon the common cultural heritage and nothing is created from nothing.<sup>6</sup> This argument can be supported by the roots of the word “*create*” in the Latin verb “*creāre*”, which has, among others, included the connotations of “*producing*” and “*making something grow*”<sup>7</sup>.

In this study, **follow-on creation** is used as an umbrella term including all kinds of creations using any elements of existing works to support the creation of new works. Therefore, the “follow-on creation” referred to in this study can either result in a new and independent work or a derivative works subject to the rights of the original copyright holders. New and independent works are protected under sections 1 and 4 (2) of the Copyright Act, whereas the term derivative works refers to translations and adaptations protected under Section 4 (1), and compilations protected under Section 5 of the Copyright Act.

In order for follow-on creation to be protected as new and independent, it needs to reach a certain level of originality. The Copyright Act does not explicitly provide the criteria for evaluating the originality of works, but the preparatory works of the Act indicate that internationally accepted requirements are to be followed. A work must be independently created and a result of creative expression of the author. The importance of the common cultural heritage in the creation of new works is acknowledged in the preparatory works. According to the preparatory works, the details of literary or artistic works are largely comprised of a common property or borrowed materials<sup>8</sup>. Therefore, according to Section 4 (2), if a person, in free association with a work, creates a new and independent work, his copyright shall not be subject to the right in the original work.<sup>9</sup> In Finnish legal literature, parodies, for example, have been traditionally seen as works falling into the category defined in this section<sup>10</sup>.

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<sup>5</sup> See the definition in the Oxford Dictionaries, available at <http://www.oxforddictionaries.com/definition/english/create>. Visited on 21.9.2015.

<sup>6</sup> See the following articles on the copyright and nature of authorship

- Peter Jaszi, *Toward A Theory of Copyright: The Metamorphoses of “Authorship”*, Duke Law Journal (1991), pages 455–502. Available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3150&context=dlj>. Visited on 30.12.2015.
- Jessica Litman (1990), *The Public Domain*, Emory Law Journal 39:965 (1990). Available at [http://law.duke.edu/pd/papers/litman\\_background.pdf](http://law.duke.edu/pd/papers/litman_background.pdf). Visited on 30.12.2015.
- Martha Woodmansee, *On the Author Effect: Recovering Collectivity*, Faculty Publications, Paper 283 (1997). Available at [http://scholarlycommons.law.case.edu/faculty\\_publications/283/](http://scholarlycommons.law.case.edu/faculty_publications/283/). Visited on 30.12.2015.
- Tuomas Mylly, *Tekijänoikeuden ideologiat ja myytit*, Lakimies (2/2004), pages 228–254.

<sup>7</sup> See the following websites on the etymology of the Latin word “*creare*” (visited on 30.12.2015):

- <http://www.etymonline.com/index.php?term=create>
- <http://www.myetymology.com/latin/creatura.html>
- <https://en.wiktionary.org/wiki/creo>
- <http://english.stackexchange.com/questions/124226/etymological-root-and-usage-of-create>

<sup>8</sup> See the page 50 of the preparatory works of the Copyright Act (KM 1953:5).

<sup>9</sup> Source: Unofficial translation of the Copyright Act, available at <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>. Visited on 21.8.2015.

<sup>10</sup> See Toivo Mikael Kivimäki, *Undet tekijänoikeus- ja valokopialait*, Werner Söderström osakeyhtiö, Porvoo and Helsinki (1966), page 47. Analyzing parodies only from the viewpoint of Section 4(2) has been however criticized for being too narrow in scope. See Herkko Hietanen, *Pelleily sallittu – Parodia tekijänoikeuden rajoituksena*, Defensor Legis (1/2009), available at <http://www.turre.com/wp-content/uploads/2015/07/Pelleily-Sallittu-Hietanen.pdf>. Visited on 30.12.2015.

**Derivative works**, such as translations, adaptations and compilations are protected under sections 4 (1) and 5 of the Copyright Act. The persons making derivative works do not have a right to control the works in a manner infringing the copyright in the original works. Therefore, publishing derivative works require permissions from original copyright holders. The threshold of originality is applied to derivative works as well. Therefore, mechanically produced word-for-word translations, for example, are not protected by copyright<sup>11</sup>.

According to the preparatory works, there are no specific criteria to determine whether the follow-on creation is protected as new and independent work under Section 4 (2) or as derivative work under Section 4 (1) or Section 5. Disputes in this area are considered by courts on a case-by-case basis<sup>12,13</sup>

**User-generated content (UGC)** has become a popular term for describing “any form of content such as blogs, wikis, discussion forums, posts, chats, tweets, podcasting, pins, digital images, video, audio files, advertisements and other forms of media that was created by users of an online system or service, often made available via social media websites”<sup>14</sup>. A comprehensive presentation of the different kinds of user-generated content can be found in the Table 3 (page 15) of the OECD’s report “*Participative web: user-generated content*” (2007)<sup>15,16</sup>

Section 1 of this report starts by discussing the characteristics of copyright-protected works and the subject matter available for follow-on creation in the public domain. The Copyright Council’s opinions published between 2010 and 2015 are then analyzed to get an overview on the council’s interpretations on the threshold of originality<sup>17</sup>. The section continues with presentation of copyright limitations allowing certain uses of copyright-protected works in follow-on creation. The second section of the report presents copyright-related terms and conditions in services based on user-generated content. The third section takes a look at the opinions of authors and performers, members of the public at large and researchers on the access to copyrighted works for follow-on creation. Finally, the fourth section presents suggestions for questions in possible future surveys directed to the public at large, to authors and performers, as well as to researchers and research institutes.

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<sup>11</sup> Source: Pirkko-Liisa Haarmann, *Tekijänoikeus ja läbioikeudet*, Talentum, Helsinki (2005), pages 89-90.

<sup>12</sup> Source: The preparatory works of the Copyright Act (KM 1953:5, 50).

<sup>13</sup> In the Finnish Supreme Court’s case SC 1979 II 64, the painting using a photograph as a model was considered as a new and independent work and therefore not as derivative work subject to the rights of the original work. In the following two cases, the Supreme Court has also touched upon the subject: SC 1964 II 59 and SC 1971 II 44. Source: Jukka Jäske, Kohti vapaampaa muuttamisoikeutta? – Tekijänoikeudella suojattujen teosten vapaa muuttaminen ja suoja-ajan ulottuvuus. Edilex, 2014.

<sup>14</sup> Source: Wikipedia, [https://en.wikipedia.org/wiki/User-generated\\_content](https://en.wikipedia.org/wiki/User-generated_content). The quoted text is originally from the book *Mining User Generated Content*, edited by Tat-Seng Chua Chapman and Hall/CRC (2014).

<sup>15</sup> The report is available at <http://www.oecd.org/sti/38393115.pdf>. Visited on 19.8.2015.

<sup>16</sup> Axel Bruns has described communities based on user-generated content as “produsage” communities, which illustrates the blurring borders between producing and using. According to Bruns, the activities of the “produsage” communities are characterized by the following four principles: (1) Open participation, communal evaluation, (2) Fluid heterarchy, ad hoc meritocracy, (3) Unfinished artefacts, continuing process, (4) Common property, individual rewards. Definitions and articles on “produsage” can be found at <http://produsage.org>. Visited on 6.7.2015.

<sup>17</sup> The Copyright Council operates within the administrative field of the Ministry of Education and Culture. The Council’s role is to provide non-binding but authoritative opinions on the interpretation of copyright law in specific cases. For more information on its role, see the pilot report on Description sheet 8 – *Enforcement by public and private actors*, available at <http://www.cupore.fi/DS8.php>.

## SECTION 1. PUBLIC POLICIES AND REGULATIONS CONCERNING FOLLOW-ON CREATION

### A. COPYRIGHTED WORKS AND THE PUBLIC DOMAIN

The characteristics of copyright-protected works and the public domain are here discussed to figure out the scope of the subject matter freely available for follow-on creation.

In order for a work to be copyright-protected, it is required that a natural person has independently created a 'work'. Thus the concept of a work is an imperative aspect in deeming whether copyright protection is accorded. In order to qualify as a protected work, the requirement of originality must be met. In legal literature, the originality requirement is considered to have been fulfilled when the work is a result of the author's own intellectual creation. Another aspect of this test is the assumption that no other potential author would have been able to create a work resulting in a similar manifestation. The protection starts from the creation of the work and continues for 70 years following the year of the author's death. In addition, audio and video recordings, photographs, performances, databases and catalogues are protected as a whole and in part by neighboring rights<sup>18</sup>. The originality requirement is not applied to the subject matters protected by neighboring rights, which have their own specific criteria for protection instead.

The public domain refers to a non-protected area defined by the Copyright Act; works which are part of the public domain are available for follow-on creation without restriction<sup>19</sup>. The public domain consists of literary and artistic expressions not meeting the threshold of originality, works other than literary and artistic works, works whose term of protection have expired, ideas, procedures, methods of operation and mathematical concepts, the results of mere mechanical work and official documents. Table 1 provides an overview of the copyrighted works and the subject matter in the public domain.<sup>20</sup>

Table 1. Subject matter in the public domain: Overview	
Subject matter protected by copyright	Public domain
Original (creative) and independently created literary and artistic expressions (works) whose last surviving author has passed away less than 70 years ago, including:  <u>Literary works</u> e.g. fiction novels and scientific presentations, computer programs, maps and other descriptive drawings or graphically or three-dimensionally executed works  <u>Artistic works</u> e.g. musical or dramatic works, cinematographic works, photographic works or other works of fine art,	Literary and artistic expressions not meeting the threshold of originality  Ideas, procedures, methods of operation and mathematical concepts, the results of mere mechanical work  Works other than literary and artistic works  Official documents such as laws, decrees, resolutions, stipulations, international treaties and conventions, decisions and statements issued by public authorities or other public bodies  Works whose last surviving author has passed away

<sup>18</sup> Databases, photographs and press reports may however be protected by copyright too, if the originality requirement is met.

<sup>19</sup> Restrictions may be however imposed by other legislations as well. For example, the use of content or information may be restricted by the Patents Act, the Trademarks Act or the Personal Data Act. Legislations are not mutually exclusive either. For example, innovations as such are not protected by copyright, but patent applications can be protected as literary works. As another example, graphical works can be protected simultaneously by the Copyright Act and the Trademarks Act. Source: Haarmann (2005), pages 50 and 85. This report focuses only on the protection provided by the Copyright Act.

<sup>20</sup> Information of the table was collected from the following sources:

- The Copyright Act, the unofficial translation is available at <http://www.finlex.fi/fi/laki/kaannokset/1961/en19610404.pdf>. Visited on 30.12.2015.
- The pilot study applying Description Sheet 5 - *Copyright Law*, available at <http://www.cupore.fi/DS5.php>. Visited on 3.8.2015.
- Pirkko-Liisa Haarmann, *Tekijänoikeus ja lähioikeudet*, Talentum, Helsinki (2005), pages 50–100.

products of architecture, artistic handicraft, industrial art and works expressed in other manners	more than 70 years ago
<b>Neighboring rights (term of protection)</b>	<b>Public domain</b>
Producers of audio recordings (70 years) <sup>21</sup> Producers of video recordings (50 years) <sup>22</sup> Performing artists (70 or 50 years) <sup>23</sup> Radio or television broadcasts (50 years from the year of transmission) <sup>24</sup> Catalogues and databases (15 years) <sup>25</sup> Photographs (50 years) <sup>26</sup> Press report received from abroad (12 hours) <sup>27</sup>	Audio recordings, video recordings, performances, catalogues and databases, photographs and press reports whose term of protection have expired  Performances other than literary or artistic works or folklore  Catalogues and databases which do not involve large number of items compiled or which have not required substantial investment  Individual pieces of information in catalogues and databases

### ***B. THE COPYRIGHT COUNCIL'S INTERPRETATION ON THE ORIGINALITY OF INDIVIDUAL WORKS IN OPINIONS ISSUED BETWEEN 2010 AND 2015***

The Copyright Council is an expert body whose role is to provide non-binding but authoritative opinions on the interpretation of copyright law in specific cases. The Council operates within the administrative field of the Ministry of Education and Culture.<sup>28</sup>

#### **▪ THE COPYRIGHT COUNCIL'S OPINIONS CONCERNING THE THRESHOLD OF ORIGINALITY**

The Copyright Council's opinions published between 2010 and 2015<sup>29</sup> were analyzed to get an overview of the Council's interpretations on the application of the threshold of originality. Because expressions not meeting the originality requirement can be freely used in follow-on creation, it is worthwhile to examine what kinds of expressions have been considered by the Copyright Council as protected by copyright. The Copyright Council examines the protection of individual works on a case by case basis and therefore the results of these analyses should not be considered as an indication of copyright protection (or lack of protection) of different categories of works or expressions as such.

The originality of specific works has been considered in 57 of the 84 opinions published during the examined time period. Further analysis of these opinions show that altogether 17 opinions concerned the originality of applied arts. Other popular topics have been related to formal or short written expressions, buildings and technical drawings, photographs and teaching materials. The following table

<sup>21</sup> See Section 46 of the Copyright Act.

<sup>22</sup> See Section 46a of the Copyright Act.

<sup>23</sup> See Section 45 of the Copyright Act.

<sup>24</sup> See Section 48 of the Copyright Act.

<sup>25</sup> See Section 49 of the Copyright Act.

<sup>26</sup> See Section 49a of the Copyright Act.

<sup>27</sup> See Section 50 of the Copyright Act.

<sup>28</sup> For more information on its role, see the pilot report on Description sheet 8 – *Enforcement by public and private actors*, available at <http://www.cupore.fi/DS8.php>.

<sup>29</sup> Opinions are available at [http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston\\_lausunnot/?lang=fi](http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston_lausunnot/?lang=fi). Visited on 21.8.2015.

summarizes the findings. In the opinions whose reference was presented in bold and underlined shadowed and underlined opinions, the council considered (at least some of the) works protected by Section 1 of the Copyright Act. Some of the opinions considered several works and are therefore included in several categories of the table.

<b>Table 2. Copyright Council's Interpretation on the application of the originality requirement in opinions published between 2010 and 2015</b> <i>(In the opinions referenced in bold and underlined, the works were considered protected by copyright)</i>					
<b>Applied arts</b>					
a pearl rosary 2014:12	a lamp 2014:2, <b><u>2012:7</u></b> 2011:5, <b><u>2010:15</u></b>	a fishing wobbler 2013:20	tableware series <b><u>2013:15</u></b>	a lantern frame 2013:12	a sports car 2013:10
a faucet 2013:7	souvenir magnets <sup>30</sup> <b><u>2012:13</u></b>	jewelry 2012:12	a door handle and a key hole 2012:9	stuffed animal figures 2011:11	a stool 2011:4, <b><u>2010:13</u></b>
a vase <b><u>2010:10</u></b>					
<b>Studies, reports and descriptive texts</b>					
a fish research report <b><u>2015:5</u></b>	licentiate's thesis <b><u>2014:15</u></b>	an interview <b><u>2014:5</u></b>	explanatory notes of a patent application 2014:1 <sup>31</sup>	annual reports <b><u>2011:6</u></b>	a project presentation 2010:12
product descriptions in an online store 2010:5					
<b>Messages, sentences, words</b>					
individual messages in Internet forums <b><u>2015:3</u></b>	short expressions in a monolog 2013:21	a song title, a book title or a film title 2013:16, 2011:3 2011:2, 2010:1	an aphorism <b><u>2013:2</u></b>	a sentence 2010:11, <b><u>2010:2</u></b>	text in internet pages <b><u>2010:3</u></b>
<b>Buildings, technical drawings, 3D computer animation models, maps</b>					
3D computer animation models in movies <b><u>2015:6</u></b>	technical drawings 2015:4, 2011:12	a building or a construction drawing 2014:10, 2014:6 2012:8 <b><u>2010:4</u></b>	maps 2014:7, 2013:14		
<b>Logos, trademarks, business models</b>					
a trademark 2014:13	a logo 2014:9, 2011:7, <b><u>2010:3</u></b>	a concept 2011:2	a business model 2010:14		
<b>Other</b>					
teaching materials <b><u>2015:9</u></b> , <b><u>2013:19</u></b> , <b><u>2013:6</u></b> , 2012:6, 2012:1	photographs <sup>32</sup> 2014:5, <b><u>2013:3</u></b> , <b><u>2011:9</u></b> ,	drawing in a poster <b><u>2013:17</u></b>	plot and individual pieces of information in a biography 2013:13	horse racing entries 2013:8 <sup>33</sup>	a collection of slide shows <b><u>2012:1</u></b>
Internet game 2011:15	websites 2011:10, 2010:8 2010:3				

<sup>30</sup> Some of the magnets were considered protected and others not.

<sup>31</sup> The notes were considered to be protected by copyright, but the use of official documents are allowed under section 9 of the Copyright Act.

<sup>32</sup> Protected under 1§ of the Copyright Act.

<sup>33</sup> The entries were however protected as a database (Section 49).

▪ **THE COUNCIL'S OPINIONS CONCERNING THE ORIGINALITY OF WORKS USING ELEMENTS FROM THE WORKS OF OTHERS**

According to Section 4 (2) of the Copyright Act, if a person, in free association with a work, creates a new and independent work, his copyright shall not be subject to the right in the original work.<sup>34</sup> The Copyright Council has interpreted the applicability of Section 4 (2) five times during the examined time period between 2010 and 2015. In four of these opinions, the Council considered the works sufficiently new and independent and therefore not subject to the rights of other copyright-protected works. These opinions concerned:

- A book using information from an interview (2014:5)
- A play using short expressions from a monolog (2013:21)
- A play using information and stories from a biography (2013:13)
- Theatrical property resembling an artwork (2012:3)

In the fifth opinion, concerning a parody of a website (2010:3), the Council interpreted that the new work was subject to the rights of the original work and therefore the use required permissions from the original copyright holders.

During the time period from 2010 to 2015, the Copyright Council has considered the originality of derivative works protected under Section 4 (1) in two opinions:

- (1) In an opinion regarding subtitles transcribed from the Finnish-language speech for deaf and hearing impaired (2014:11), the Council interpreted that the subtitles did not meet the originality requirement and were not protected by copyright.
- (2) In an opinion regarding two separate Finnish-language translations of a doctoral thesis (2010:6). Both translations were considered original by the Copyright Council.

The Copyright Council has also issued four opinions considering the use of photographs<sup>35</sup> in follow-on creation:

- (1) A drawing from a photograph was not considered subject to the original photographer's rights (2014:17)
- (2) A painting from a photograph. The council did not take a position in this case (2014:16)
- (3) An altered photograph was considered subject to the rights of the original photographer. (2011:8)
- (4) The scanning of a painting added on top of a photograph was not considered to require permission from the original photographer (2010:7)

***C. LIMITATIONS TO COPYRIGHT ALLOWING THE USE OF COPYRIGHT-PROTECTED WORKS IN FOLLOW-ON CREATION***

The limitations to copyright allow certain kinds of follow-on uses of copyright-protected works without permissions from the original copyright holders. Table 3 and the text below provide an overview of the limitations allowing the use of copyrighted works in follow-on creation.

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<sup>34</sup> Source: Unofficial translation of the Copyright Act, available at <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>. Visited on 21.8.2015.

<sup>35</sup> Protected by neighboring rights (Section 49 a of the Copyright Act).

<b>Table 3. Limitations to copyright allowing the use of copyright-protected works in follow-on creation</b>			
<b>Limitation in the Finnish Copyright Act</b>	<b>Applies to</b>	<b>Preconditions</b>	<b>Examples of the follow-on uses</b>
<b>Reproduction for private use (Section 12)<sup>36</sup></b>	non-commercial private activities	reproduction of few copies in the private sphere (family members and closest circle of friends)	hobbies, learning, private research
<b>Quotation (Section 22)<sup>37</sup></b>	reasoning, demonstrating, clarifying one's views  criticizing the views of others	quotation with a proper connection to the original work and limited to the extent necessary for the purpose	science, criticism, art
<b>Reproduction of works of art in pictorial form (Section 25 (1))<sup>38</sup></b>	critical or scientific presentation	reproduction for clarification or illustration purposes with a proper connection to a specific scientific presentation or current event	science, criticism
<b>Reproduction of a permanently sold or transferred work of art in photographs, films and television programs (Section 25 (2))<sup>38</sup></b>	photograph, films and television programs	secondary role of the reproduced work	art works in the background of a scene in a television program or a film
<b>Inclusion of a work in a news broadcast (Section 25b)<sup>39</sup></b>	television and radio broadcasts, films	secondary role of the reproduced work	news reporting on art exhibition openings

#### ▪ REPRODUCTION FOR PRIVATE USE

Section 12 of the Copyright Act allows making a few copies of a work that has been made public for private use. Private use means non-commercial activities in the private sphere, and the copy shall not be used to any other purposes. The private sphere is considered to include family members and the closest circle of friends<sup>40</sup>. The limitation allows reproduction of works for purposes such as learning, private research and non-commercial hobbies<sup>41</sup>.

#### ▪ QUOTATION

According to Section 22 of the Copyright Act, a work made public may be quoted in accordance with proper usage to the extent necessary for the purpose. Quotation is not restricted to any specific techniques or work categories. Therefore, the scope is not limited to text citations only, but includes

<sup>36</sup> In Finnish: Teosten kappaleiden valmistaminen yksityiseen käyttöön

<sup>37</sup> In Finnish: Sitaatti

<sup>38</sup> See Section 25 concerning the use of works of art that have been made public or transferred, in Finnish: Julkistetun tai luovutetun taideteoksen käyttäminen

<sup>39</sup> In Finnish: Teoksen sisällyttäminen uutislähettykseen

<sup>40</sup> Source: Government proposal 28/2004, available at <http://www.finlex.fi/fi/esitykset/he/2004/20040028>. Visited on 29.6.2015.

<sup>41</sup> Source: Government proposal 70/1980.

audiovisual materials as well<sup>42</sup>. To be permitted, the quotation must have a proper connection with the original work. In legal literature, reasoning, demonstrating and clarifying one's ideas and views through quotes have been considered permitted. Criticizing the views of others has been allowed too. When quoting, the author must be mentioned in a manner required by proper usage.<sup>43</sup>

▪ **REPRODUCTION OF WORKS OF ART IN PICTORIAL FORM IN CONNECTION WITH A TEXT IN A CRITICAL OR SCIENTIFIC PRESENTATION**

Section 25 (1) of the Copyright Act allows reproduction of works of art in pictorial form. Works of art made public can be reproduced in (1) a critical or scientific presentation in any form in all scientific fields and (2) a newspaper or a periodical when reporting on a current event.<sup>44</sup> The images must be used for clarification or illustration purposes and they must have a proper connection with the scientific presentation or current event in question.<sup>45</sup>

▪ **REPRODUCTION OF A PERMANENTLY SOLD OR TRANSFERRED WORK IN A PHOTOGRAPH, FILM AND TELEVISION PROGRAM**

According to Section 25 (2) of Copyright Act, a work of art which has been permanently sold or transferred may be incorporated to a photograph, film or television program if the reproduction is of a subordinate nature.

▪ **INCLUSION OF A WORK IN A NEWS BROADCAST**

Section 25 b § allows to include a work visible or audible in a current event to radio and television broadcasts and films. The reproduction must be limited to the extent necessary for the purpose of reporting. The work must be in a secondary role and the current event cannot be the performance of the visible or audible work itself. The limitation allows, for example, including visible artworks to the broadcasts when reporting on openings of art exhibitions<sup>46</sup>

**D. PROVISIONS OR MEASURES SAFEGUARDING THE RIGHTS OF FOLLOW-ON CREATORS**

Section 15 of the Constitution of Finland (731/1999) guarantees the protection for property. According to the general interpretation, copyrights and other intellectual property rights are covered by this section<sup>47</sup>.

Section 12 of the Constitution guarantees the freedom of expression for everyone. "*Freedom of expression entails the right to express, disseminate and receive information, opinions and other*

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<sup>42</sup> Source: Opinion 1997:9 of the Copyright Council, available at

[http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston\\_lausunnot/?lang=fi](http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston_lausunnot/?lang=fi). Visited on 13.8.2015.

<sup>43</sup> Source: Opinions TN 1997:9, TN 1996:13, TN 2002:11 of the Copyright Council, available at

[http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston\\_lausunnot/?lang=fi](http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston_lausunnot/?lang=fi). Visited on 29.6.2015.

<sup>44</sup> Source: Haarmann (2005), pages 206-207.

<sup>45</sup> Source: Government proposal 287/1994, available at <http://www.finlex.fi/fi/esitykset/he/1994/19940287>. Visited on 30.6.2015.

<sup>46</sup> Source: Haarmann (2005), page 217.

<sup>47</sup> See the Constitutional Law Committee's statement (7/2005) concerning the Government proposal (28/2004), available at

[https://www.eduskunta.fi/FI/vaski/Lausunto/Documents/pevl\\_7+2005.pdf](https://www.eduskunta.fi/FI/vaski/Lausunto/Documents/pevl_7+2005.pdf). The Article 27 (2) of the Universal Declaration of Human Rights adopted by the United Nations General Assembly also provides "protection of the moral and material interests resulting from any scientific, literary or artistic production". The Declaration is available at <http://www.un.org/en/universal-declaration-human-rights/>. Visited on 6.12.2015.



*communications without prior prevention by anyone.*"<sup>48</sup> The Act on the Exercise of Freedom of Expression in Mass Media (460/2003)<sup>49</sup> includes more detailed provisions in this area.

The freedom of science, arts and higher education is guaranteed by Section 16 of the Constitution<sup>50</sup>. Fundamental rights guaranteed by the Constitution of Finland are to be reconciled with each other.

## **SECTION 2. TERMS AND CONDITIONS CONCERNING THE LICENSING OF USER-GENERATED CONTENT**

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The development of digital technology has led to the rise of user-generated content on the Internet. The terms and conditions of different Internet-based services are analyzed in this section from the perspectives of copyright and the licensing of user-generated content. The following categories of services and service providers are covered in the overview:

- Social networking (Facebook, Google+, Twitter, Instagram, LinkedIn)
- Open knowledge communities (Wikipedia, OpenStreetMap)
- Audio-visual creative practices (CCMixer, YouTube, SoundCloud)
- Multi-user gaming (The Sims, The Habbo)
- Blogs and citizen journalism (Uusi Suomi, Blogger, WordPress, Slashdot).

### **▪ SOCIAL NETWORKING**

Social networking services have quickly become integral tools in sharing the events of daily life. *"Most social network services are web-based and provide means for users to interact over the Internet, such as e-mail and instant messaging. Social network sites are varied and they incorporate new information and communication tools such as mobile connectivity, photo/video/sharing and blogging."*<sup>51</sup>

Users of social networking services (such as Facebook<sup>52</sup>, Google+<sup>53</sup>, Twitter<sup>54</sup>, Instagram<sup>55</sup>, LinkedIn<sup>56</sup>) provide services with a worldwide non-exclusive license to use and distribute the contents uploaded to the services. All the examined services provide users with privacy settings where they are able to control the access to the uploaded content. In most of the services, the license is valid with some limitations until the account or the uploaded content is deleted from the service<sup>57</sup>. The terms and conditions of Google are exceptional in two areas. Firstly, the uploaded content is licensed to Google's partners as

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<sup>48</sup> The unofficial translation of the Constitution of Finland can be found at <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>. Visited on 5.8.2015.

<sup>49</sup> The unofficial translation of the Act on the Exercise of Freedom of Expression in Mass Media can be found at <http://www.finlex.fi/en/laki/kaannokset/2003/en20030460>. Visited on 5.8.2015.

<sup>50</sup> The relationship between freedom of arts and the copyright system is examined in the study *Taiteen vapaus perusoikeutena* by Pauli Rautiainen, Arts Council of Finland, Research reports no. 33 (2007), pages 110-118. The study can be found at <http://www.taike.fi/documents/10921/0/Rautiainen+33+97.pdf>. Visited on 30.12.2015.

<sup>51</sup> Source: Wikipedia, available at [https://en.wikipedia.org/wiki/Social\\_networking\\_service](https://en.wikipedia.org/wiki/Social_networking_service). Visited on 28.9.2015.

<sup>52</sup> Facebook's terms of service can be found at <https://www.facebook.com/legal/terms>. Visited on 21.8.2015.

<sup>53</sup> Google's terms of service can be found at <http://www.google.com/intl/en/policies/terms/>. Visited on 21.8.2015.

<sup>54</sup> Twitter's terms of service can be found at <https://twitter.com/tos>. Visited on 21.8.2015.

<sup>55</sup> Instagram's terms and conditions can be found at <https://help.instagram.com/478745558852511/>. Visited on 21.8.2015.

<sup>56</sup> The user agreement of LinkedIn is available at [https://www.linkedin.com/legal/user-agreement?trk=hb\\_ft\\_userag](https://www.linkedin.com/legal/user-agreement?trk=hb_ft_userag). Visited on 21.8.2015.

<sup>57</sup> Example of such limitation concerning Twitter: after the account is deleted, Twitter does not delete the tweets that have been retweeted by other users with a comment on their own.

well. Secondly, the license limited to the purposes of operating, promoting, and improving services, and to develop new ones is valid even after the user stops using the services of Google<sup>58</sup>.

The copyright infringement policies of the different social networking services are very similarly expressed. All of the services provide contact persons for copyright infringement reporting required by the Digital Millennium Copyright Act (DMCA) of the United States of America. Most of the services provide other tools such as fillable forms as well. The infringement report usually results in a take-down of the content from the service.

Most of the services provide questions and answers on copyright issues and links to copyright-related information sources. Facebook and Instagram provide links to the website of the World Intellectual Property Organization (WIPO) and Google and Twitter to the United States Copyright Office. Other links provided include the Digital Media Law Project (dmlp.org), chillingeffects.org and eff.org.

#### ▪ **BLOG SERVICES AND CITIZEN JOURNALISM**

Blogging has become an integral part of daily communication as well. Blogs are maintained by private persons, commercial actors, experts and politicians on all kinds of topics from daily events to complicated scientific issues. Citizen journalism is user-driven news reporting based on editorial independence.

The terms and conditions of the blog service WordPress<sup>59</sup> are very similar to those of Facebook's. Blogger is subject to Google's general terms and conditions. Uusi Suomi<sup>60</sup> provides a blog platform for both its professional journalists and for the general public. Copyrights of the employees' blogs are owned by Uusi Suomi and the rights of the users' blogs are retained with the authors. However, when users' blogs are published in the online newspaper, copyrights are transferred to Uusi Suomi. The terms and conditions related to the use of images are negotiated separately.

Slashdot<sup>61</sup> is an online platform of citizen journalism. Its terms and conditions are very similar to other publishing platforms, such as Facebook, but because of its nature as an online newspaper, the license provided to the service is irreversible and perpetual.

#### ▪ **AUDIOVISUAL CREATIVE PRACTICES**

Audio and video mashups and remixes are becoming increasingly popular in social online platforms. Mashups are creative combinations of existing audio and video clips, while remixes are new versions of existing musical or audiovisual works.

CCMixer<sup>62</sup> is a community where musicians can freely use and remix Creative Commons-licensed<sup>63</sup> songs and samples made by other musicians. The terms and conditions of tracks and samples are

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<sup>58</sup> Some of Google's services however provide the possibility for users to remove the content or narrow the scope of Google's use of content.

<sup>59</sup> The terms of service of Wordpress can be found at <https://en.wordpress.com/tos/>. Visited on 21.8.2015.

<sup>60</sup> The terms of service of Uusi Suomi blog can be found at <https://oma.uusisuomi.fi/kayttoehdot>. Visited on 21.8.2015.

<sup>61</sup> The terms of service of Slashdot can be found at <http://slashdotmedia.com/terms-of-use/>. Visited on 21.8.2015.

<sup>62</sup> The terms of service of ccMixer are available at <http://ccmixter.org/terms>. Visited on 21.8.2015.

<sup>63</sup> "Creative Commons (CC) is a non-profit organization devoted to expanding the range of creative works available for others to build upon legally and to share. The organization has released several copyright-licenses known as Creative Commons licenses free of charge to the public. These licenses allow creators to communicate which rights they reserve, and which rights they waive for the benefit of recipients or other creators. An easy-to-understand one-page explanation of rights, with associated visual symbols, explains the specifics of each Creative Commons license. Creative Commons licenses do not replace copyright, but are based upon it. They replace individual negotiations for specific rights between copyright owner (licensor) and licensee." Source: Wikipedia, available at [https://en.wikipedia.org/wiki/Creative\\_Commons](https://en.wikipedia.org/wiki/Creative_Commons). Visited on 29.10.2015.

determined by the chosen Creative Commons license. Attribution is a minimum requirement in all Creative Commons licenses. YouTube<sup>64</sup> and SoundCloud<sup>65</sup> are streaming services hosting contents created by both amateurs and professionals. A high amount of mash-ups and remixes are published on these platforms. The contents uploaded to these services can be voluntarily licensed with Creative Commons licenses, but it is not required in any way.

YouTube provides an audio library including both music and sound effects available for free, and ad-supported music that can be incorporated into user videos under conditions selected by copyright holders on the basis of options determined by YouTube. YouTube also provides an opportunity for creators of cover song videos to monetize their creations and share revenues with the copyright holders of original songs.<sup>66</sup>

YouTube and SoundCloud have Content ID systems that compare all tracks and videos uploaded to the services with the database comprised of the reference files provided by copyright holders. When matches are detected, they are either removed from the services or reported to the copyright holders who may decide on the further actions. In addition, the services provide other reporting tools, such as fillable web-forms, dedicated DMCA contact persons and “report” buttons. YouTube provides comprehensive information on copyright issues, whereas SoundCloud offers a link to the website of the World Intellectual Property Organization (WIPO).

#### ■ OPEN KNOWLEDGE COMMUNITIES

Open knowledge communities, such as Wikipedia and OpenStreetMap, are based on shared information resources, which can be extended, edited and updated continuously by all users of the services. Wikipedia was founded in 2001 and has become one of the most used online encyclopedias in the world<sup>67</sup>. OpenStreetMap, founded in 2004, is a service based on user-generated open map data<sup>68</sup>.

Creative Commons Attribution ShareAlike licenses are used by both Wikipedia<sup>69</sup> and OpenStreetMap<sup>70</sup>. These licenses allow users to freely alter, transform and build upon the materials, even commercially, as long as the changes made are indicated, original authors are attributed and new works are licensed similarly. The documents of Wikipedia are licensed with the GNU Free Documentation License allowing anyone to copy and distribute verbatim copies of the documents.<sup>71</sup> The data in the OpenStreetMap is licensed with the Open Data Commons Open Data License<sup>72</sup> which allows copying, distributing and producing works from the database. The open knowledge communities have copyright infringement policies very similar to the other social online platforms; the contact details of dedicated DMCA persons are provided for reporting on alleged infringements.

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<sup>64</sup> YouTube’s terms of service are available at <https://www.youtube.com/static?template=terms>. Visited on 21.8.2015.

<sup>65</sup> SoundCloud’s terms of service are available at <https://soundcloud.com/terms-of-use>. Visited on 21.8.2015.

<sup>66</sup> For more information, see YouTube’s website, available at <https://support.google.com/youtube/answer/3376882>. Visited on 7.12.2015.

<sup>67</sup> Source: Wikipedia.org, available at [https://en.wikipedia.org/wiki/History\\_of\\_Wikipedia](https://en.wikipedia.org/wiki/History_of_Wikipedia). Visited on 24.9.2015.

<sup>68</sup> Source: Wiki.openstreetmap.org, available at [http://wiki.openstreetmap.org/wiki/History\\_of\\_OpenStreetMap](http://wiki.openstreetmap.org/wiki/History_of_OpenStreetMap). Visited on 24.9.2015.

<sup>69</sup> Wikipedia uses Creative Commons Attribution - ShareAlike 3.0 Unported license and OpenStreetMap Creative Commons Attribution - ShareAlike 2.0 Generic license. Wikipedia’s terms of service can be found at [https://wikimediafoundation.org/wiki/Terms\\_of\\_Use](https://wikimediafoundation.org/wiki/Terms_of_Use). Visited on 21.8.2015.

<sup>70</sup> Openstreetmap’s terms of service can be found at <https://www.openstreetmap.org/copyright>. Visited on 21.8.2015.

<sup>71</sup> The license can be found at <https://www.gnu.org/copyleft/fdl.html>. Visited on 7.8.2015.

<sup>72</sup> The license is available at <http://opendatacommons.org/licenses/odbl/summary/>. Visited on 7.8.2015.

▪ **MULTI-USER GAMING**

An increasing number of games both online and offline are based on user-generated content, which increases these games’ lifespan and provides users with an opportunity to contribute to the community’s common property or at least take advantage of the contents made by other users. The Sims<sup>73</sup>, a life simulation video game, is one example of a game based on user-generated content. According to some estimations, about 90 percent of the game’s content has been created by users.<sup>74</sup> The game allows users to freely create and share elements with other users on the Sims website<sup>75</sup>. Habbo<sup>76</sup> is a Finnish-based game and a social networking service aimed at teenagers. User-generated content in the game is primarily comprised of wall posts, messages and reviews, but users may also create their own “Habbo artworks”.

The users of the Sims provide the game’s developer EA Games, its licensors and other users with a license to freely use and modify the content uploaded to the service. In Habbo’s terms of service, a non-exclusive and perpetual license to use, modify and distribute the content is provided only to the service.

Habbo’s game developer Sulake Oy has its head office in Finland, but copyright policy of the service is defined in accordance with the Digital Millennium Copyright Act (DMCA) and the US copyright office is provided as a primary source for copyright information on the service’s website.

Table 4 provides a summary of different policies concerning the licensing of user-generated content. Some of the columns provide service specific information, while others present general remarks regarding all the services analyzed.

<b>Table 4. Terms and conditions related to copyright and the licensing of user-generated content in certain Internet-based services</b>					
	<b>User-generated content is licensed to</b>	<b>License terms</b>	<b>License period</b>	<b>Users’ rights</b>	<b>Copyright Infringement policies and procedures</b>
<b>Social Networking</b>	the service (Facebook, Instagram, Twitter, LinkedIn) <i>or</i> the service and partners (Google+)	a non-exclusive worldwide license to use the content (Instagram and Facebook) <i>or</i> a non-exclusive worldwide license to use, modify and distribute the content (Twitter, LinkedIn, Google+)	until the account or content is deleted from the service (Facebook, LinkedIn, Instagram) <i>or</i> perpetual <sup>77</sup> (Google+) <sup>78</sup>	the user can usually control the access to content in privacy settings <i>and</i> contents can be deleted from some services	fillable forms/ legal request tools <i>and/or</i> DMCA contact persons

<sup>73</sup> EA Games terms of service can be found at <http://tos.ea.com/legalapp/WEBTERMS/US/fi/PC>. Visited on 21.8.2015.

<sup>74</sup> Source: Axel Bruns, *Probusage: Towards a Broader Framework for User-led Content Creation*, Paper presented at Creativity & Cognition conference, Washington D.C., USA, 13-15 June 2007. The article is available at <http://probusage.org/node/6>. Visited on 30.12.2015.

<sup>75</sup> The website is available at <http://www.thesims3.com/>. Visited on 7.8.2015.

<sup>76</sup> Habbo’s terms of service are available at <https://help.habbo.com/entries/23027093-Terms-of-Service>. Visited on 21.8.2015.

<sup>77</sup> The right is limited to the purpose of operating, promoting and improving services, and to develop new ones.

<sup>78</sup> The information was not found concerning Twitter.

<p><b>Blogs and citizen journalism</b></p>	<p>the service (Slashdot, Uusi Suomi, WordPress) <i>or</i> the service and partners (Blogger)</p>	<p>a worldwide non-exclusive license to use, modify and distribute the content (Slashdot, WordPress, Blogger) <i>or</i> a non-exclusive license to publish the content (Uusi Suomi)</p>	<p>until the content is deleted (WordPress) <i>or</i> until the content is deleted. If a blog is published in the online newspaper, copyrights are transferred to the service (Uusi Suomi) <i>or</i> perpetual (Blogger<sup>79</sup>, Slashdot)</p>	<p>the user can control the access to content in privacy settings <i>and/or</i> contents can be deleted from some services</p>	<p>legal request tool (Blogger) <i>and/or</i> contact person (Blogger, WordPress, Slashdot, Uusi Suomi)</p>
<p><b>Audio-visual creative practices</b></p>	<p>the service and voluntarily to the general public (YouTube, SoundCloud) <i>or</i> to the general public (CCMixer)</p>	<p><u>to the service:</u> a worldwide non-exclusive license to use, modify and distribute the content <u>to the general public:</u> Creative Commons-licenses allowing other users to use, modify and distribute content</p>	<p><u>for the service:</u> until the content is deleted from the service <u>for the general public:</u> perpetual</p>	<p><u>concerning the service:</u> contents can be deleted from the services <u>concerning the general public:</u> users may select a CC-license with suitable terms</p>	<p>content ID tools for copyright holders (YouTube and SoundCloud) <i>and/or</i> DMCA contact persons (CCMixer, YouTube, SoundCloud)</p>
<p><b>Open knowledge communities</b></p>	<p>to the general public</p>	<p>Creative Commons share-alike licenses allowing altering, transforming and building upon <i>or</i> GNU Free Documentation allowing copying and distributing verbatim copies (Wikipedia) <i>or</i> Open Data Commons Open Data License allowing alteration and distribution of databases (OpenStreetMap)</p>	<p>perpetual</p>	<p>attribution <i>and/or</i> new contents must be licensed similarly</p>	<p>DMCA contact persons</p>
<p><b>Multi-user gaming</b></p>	<p>the service (The Sims, Habbo) and other users of the service (The Sims)</p>	<p>a worldwide non-exclusive license to use, modify and distribute the content (The Sims, Habbo) <i>and/or</i> a license to other users to use, modify and distribute content within the service (The Sims)</p>	<p>perpetual</p>	<p>some contents can be deleted from the services</p>	<p>DMCA Contact persons</p>

<sup>79</sup> The right is limited to the purpose of operating, promoting and improving services, and to develop new ones.

## SECTION 3. OPINIONS RELATED TO THE ACCESS TO COPYRIGHTED WORKS FOR FOLLOW-ON CREATION

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This section presents opinions of authors, performers, members of the public at large and researchers on the access to copyrighted works for follow-on creation. The opinions of these groups are examined in this section through (1) a case example focusing on digital sampling in Finnish hip-hop music, (2) the opinions of the Competition and Consumer Authority and the European Copyright Society regarding copyright issues of user-generated content and (3) the opinions of researchers collected through interviews performed in 2013 in the course of an earlier pilot study conducted as part of the project<sup>80</sup> and while conducting a pilot study applying WIPO's ESCIA guidelines. The study "*Copyright and Research – a Study on Researchers' views*"<sup>81</sup> (2014) by Aalto University, the University of Helsinki, the IPR University Center, the University of Arts Helsinki and Kapiosto was also used to supplement the findings.

### A. OPINIONS OF AUTHORS AND PERFORMERS

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The use of existing works in the creation of new works has played a central role in the history of arts. William Shakespeare, Ludwig van Beethoven, Pablo Picasso, Marcel Duchamp, Andy Warhol are some famous examples of artists borrowing existing works in their arts. In the recent decades, the development of new art forms based on copying, borrowing or imitation of other works such as copy art (or Xerox art), photorealism, digital poetry and sample-based hip-hop, electronic and pop music has fostered debate on the relationship between copyright and follow-on creativity.<sup>82</sup> The following case example presents the opinions of Finnish hip-hop producers on authorship and copyright.

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<sup>80</sup> The pilot studies applying Methodology card 12 – *Copyright-related research and study programs in universities and research institutes* and Description sheet 15 – *Research on copyright-related topics* are available at <http://www.cupore.fi/Pilotreports.php>. Visited on 11.12.2015.

<sup>81</sup> The study is available at [http://www.iprinfo.com/julkaisut/verkkojulkaisut/ipr-series-b/fi\\_FI/tekijänoikeus\\_tutkimus/](http://www.iprinfo.com/julkaisut/verkkojulkaisut/ipr-series-b/fi_FI/tekijänoikeus_tutkimus/). Visited on 28.8.2015.

<sup>82</sup> For further reading on authorship in arts and copyright see the following:

#### Authorship and copyright in general:

- Peter Jaszi, *Toward A Theory of Copyright: The Metamorphoses of "Authorship"*, Duke Law Journal (1991), pages 455–502.
- Martha Woodmansee & Peter Jaszi (ed.), *The Construction of Authorship – Textual Appropriation in Law and Literature*, Duke University Press, Durham & London (1994).
- Jessica Litman, *The Public Domain*, Emory Law Journal 39:965 (1990), available at [http://law.duke.edu/pd/papers/litman\\_background.pdf](http://law.duke.edu/pd/papers/litman_background.pdf). Visited on 30.12.2015.
- Tuomas Mylly, Juha Lavapuro & Marko Karo (ed.), *Tekemisen vapaus: luovuuden ehdot ja tekijänoikeus*, Gaudeamus, Helsinki (2007).

#### Authorship in the field of literature:

- Martha Woodmansee, *On the Author Effect: Recovering Collectivity*, Faculty Publications, Paper 283 (1997). Available at [http://scholarlycommons.law.case.edu/faculty\\_publications/283/](http://scholarlycommons.law.case.edu/faculty_publications/283/). Visited on 30.12.2015.
- Giancarlo F. Frosio, *Rediscovering Cumulative Creativity From the Oral Formulaic Tradition to Digital Remix: Can I get a Witness*, 13 J. Marshall Rev. Intell. Prop. L. 341 (2014). The article is available at <http://repository.jmls.edu/cgi/viewcontent.cgi?article=1325&context=ripl>. Visited on 30.12.2015.

#### Authorship in the field of music:

- Arewa Olufunmilayo, *From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context*. Case Legal Studies Research Paper No. 04-21. North Carolina Law Review. Vol. 84 (2006). Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=633241](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=633241). Visited on 30.12.2015.
- Peter Burkholder, *The Uses of Existing Music: Musical Borrowing as a Field*, Second Series, Vol. 50, No. 3 (1994), pages 851-870.
- Paul D. Miller (ed.), *Sound Unbound – Sampling Digital Music and Culture*, The MIT Press, Cambridge & London (2008).

#### Authorship in the field of visual arts:

- Marko Karo, Kuriton Kuva, in T. Mylly, J. Lavapuro & M. Karo, *Tekemisen vapaus - Luovuuden ehdot ja tekijänoikeus*, Gaudeamus, Helsinki (2007).

## ▪ A CASE EXAMPLE: SAMPLE-BASED HIP-HOP MUSIC IN FINLAND

The master's thesis on sample-based hip-hop-music in Finland (2015)<sup>83</sup> conducted by the researcher of this report examines the opinions of seven Finnish hip-hop-producers who use existing sound recordings in the creation of new commercially distributed works. This fundamental practice of hip-hop music roots back to the late 1970s when early hip-hop DJs of New York started to loop danceable drum breaks by using double copies of LP-records with two turntables. In the beginning of the 1980s, digital samplers allowed the same practice in the digital form and the art of hip-hop-sampling started to develop. Since the beginning of 1990's, hip-hop artists have been sued for sampling in the United States of America. Some courts have considered sampling as Fair Use, while others have held it to constitute copyright infringement.

Examining the opinions of the Finnish hip-hop producers show that there is uncertainty about the rules of digital sampling among producers. The producers do not necessarily know what kind of uses are allowed by the Copyright Act or require permissions from the original copyright holders. The acquisition of permissions is common only in high budget productions. Artists in the same major record labels may also use music of each other by agreement.

The producers' willingness to attribute and/or remunerate the original copyright holders depends on how strongly the new works are defined by the musical contexts of the original songs. When using small segments of existing works, it is common for producers to approach existing sounds as their compositional instruments. The producers see this process as clearly reaching the originality threshold - some of the interviewees argue that no other potential author would be able to create a work resulting in a similar manifestation. Therefore, it is common for them to approach hip-hop beats composed of these small sections as their own compositions and therefore not subjects to the rights of the original copyright holders.

The producers do not consider the level of their independent efforts to be linked with the aesthetic qualities of hip-hop songs in any way. It is therefore common for producers to use longer segments of existing records as well. In these cases, the use may be also characterized by intertextuality. When using longer segments in certain circumstances, the producers would be willing to attribute and/or remunerate the original copyright holders, but there is uncertainty about the scope of the quotation right and licensing of copyrighted works for sampling purposes is considered very difficult with low chances of succeeding.

The results of the study show that the legal uncertainty and difficulties in licensing may have negative impacts on the creative process of some hip-hop producers. In practice, this is indicated in the reduced use of sampling, avoidance of certain records, unpublished songs and the use of various methods, such as editing and replays, for avoiding copyright problems.

## ***B. OPINIONS OF THE PUBLIC AT LARGE***

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Access to copyrighted works by the public at large for follow-on creation is analyzed through the opinions issued by the Finnish Competition and Consumer Authority (FCCA) and the European Copyright Society (ECS) on the copyright-related questions of user-generated content (UGC).

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<sup>83</sup> Jukka Kortelainen, *Sample-pohjainen biphop-tuottaminen kuluttamisen ja tuottamisen rajapinnoilla – suomalaisten biphop-tuottajien käsitykset sämpläyksestä ja tekijänoikeudesta*, Master's thesis, University of Jyväskylä (2015).

## ▪ FINNISH COMPETITION AND CONSUMER AUTHORITY

In 2009, the Finnish Competition and Consumer Authority (FCCA) issued an opinion<sup>84</sup> regarding the European Commission's *Communication on Copyright in the Knowledge Economy and Creative Content in a European Digital Single Market: Challenges for the future*<sup>85</sup>. In the section concerning user-generated content, the FCCA highlights that since its establishment, the international copyright system has been based on the principle that new works are created upon the existing cultural heritage. The FCCA highlights that Section 4 (2) of the Finnish Copyright Act guarantees that when new and independent works are created from existing works, permissions of original copyright holders are not needed.

The FCCA acknowledges that the demarcation between derivative and new and independent works is often difficult, especially in the digital environment. Internationally, this has led to negative side-effects such as court cases against musicians using existing works in their follow-on creations.

## ▪ EUROPEAN COPYRIGHT SOCIETY

The European Copyright Society (ECS) was established in 2012 by a group of copyright academics with the aim of creating an independent platform for scholarly thinking on European Copyright Law. The ECS issued an opinion to the EC Consultation on the review of the EU copyright rules in 2014.<sup>86</sup> The ECS highlights “*that shift to a participatory online culture allows users to express their individual views and opinions without dependence on content selection mechanisms of traditional news and media providers*”. The ECS recalls that freedom of expression is guaranteed in the EU Charter of Fundamental Rights and therefore, the negotiations in this area should not be left only to the content industry and online distribution platforms.

According to the ECS, the legal uncertainty in the area of user-generated content is problematic at the moment. Because copyright rules are not tailored for user-generated content, it is virtually impossible for users to know whether certain kinds of uses fall within the scope of national limitations. The legal uncertainty may also slow down the development of new online platforms and favor large providers who can afford the risk of potential infringement proceedings. The ECS therefore hopes for more specific and reliable regulation in this area.

## **C. OPINIONS OF RESEARCHERS**

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The data presented here is based on five interviews conducted with researchers in previous pilot studies conducted as part of the project on assessing the operation of national copyright and related rights systems<sup>87</sup>, as well as on group discussions held while conducting a pilot study applying WIPO's Guidelines on Assessing the Economic, Social and Cultural Impact of Copyright on the Creative Economy

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<sup>84</sup> The opinion is available at [http://www.kkv.fi/globalassets/kkv-suomi/ratkaisut-aloitteet-lausunnot/aloitteet-ja-lausunnot/lausunnot-kuv-2004-10/2009-kuv/091125lausunto\\_2.pdf](http://www.kkv.fi/globalassets/kkv-suomi/ratkaisut-aloitteet-lausunnot/aloitteet-ja-lausunnot/lausunnot-kuv-2004-10/2009-kuv/091125lausunto_2.pdf). Visited on 19.8.2015.

<sup>85</sup> The communication is available at [http://ec.europa.eu/internal\\_market/copyright/docs/copyright-info/20091019\\_532\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-info/20091019_532_en.pdf). Visited on 19.8.2015.

<sup>86</sup> The opinion is available at <http://infojustice.org/wp-content/uploads/2014/03/ECS-answer-to-EC-consultation-on-copyright-Review.pdf>. Visited on 19.8.2015.

<sup>87</sup> In 2013, five professors and researchers were interviewed while conducting the pilot study applying Description Sheet 15 – *Research on copyright-related issues* and Methodology Card 12 – *Copyright-related research and study programs in universities and research institutes*. Three of the interviewees were professors specialized in intellectual property issues. The other two interviewees were a professor of communication and an information technology researcher.



(ESCIA)<sup>88</sup>. The study “*Copyright and Research – a Study on Researchers’ views*”<sup>89</sup> (2014) by the Aalto University, the University of Helsinki, the IPR University Center, University of Arts Helsinki and Kopiostory was used to supplement the findings.

The conditions of conducting research are changing rapidly due to technological development and internationalization of research projects. Copyright-related challenges imposed by these developments are not primarily related to conducting research as such, but to the preservation and distribution of research data and results. The following challenges were brought up in the group discussions and interviews.

#### ▪ **LEGAL UNCERTAINTY**

According to the group discussions conducted as part of the pilot study applying the WIPO ESCIA Guidelines, there is uncertainty about the copyright rules among researchers. The unclear areas have been related to copyrightability of specific materials, quotation right and the threshold of originality. The interviewees and participant of the group discussions have also experienced uncertainty regarding the rights of researchers and universities in the following areas:

- Rights to store, distribute and or conduct follow-on research with the research data collected by research group
- Rights in different kinds of employment relationships between universities and researchers

In worst cases, the studies are not conducted at all because of the legal uncertainty. At the international level, research groups may prefer locating in certain countries providing legal certainty in copyright questions

#### ▪ **RESEARCHERS’ LEVEL OF KNOWLEDGE ON COPYRIGHT-RELATED ISSUES**

The group discussions and interviews show that researchers have a low knowledge on copyright issues. This finding was confirmed in the study “*Copyright and Research – a Study on Researchers’ views*”<sup>90</sup>. There are not enough education and training on the research-related copyright issues at the moment.

#### ▪ **NEW RESEARCH METHODS**

Technological development has given a birth to new methods in the exploitation of Big Data<sup>91</sup>, such as text and data mining (TDM). TDM is used especially in the fields of humanities, social sciences and information technology but is becoming more frequent in other fields too.

#### ▪ **PROBLEMS WITH SPECIFIC RESEARCH MATERIALS**

The interviewees and participants of the group discussions have experienced copyright-related problems or uncertainty regarding research data in the following areas:

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<sup>88</sup> A draft version of the ESCIA guidelines (September 2013) is available at <http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/escia.pdf> (visited on 12.8.2015). More information on the piloting process can be found (in Finnish only) at <http://www.cupore.fi/WIPOnsuuntaviivattekijanoikeussaantelynvaikutustenarviointiin.php>.

<sup>89</sup> The study is available at [http://www.iprinfo.com/julkaisut/verkkojulkaisut/ipr-series-b/fi\\_FI/tekijanoikeus\\_tutkimus/](http://www.iprinfo.com/julkaisut/verkkojulkaisut/ipr-series-b/fi_FI/tekijanoikeus_tutkimus/). Visited on 28.8.2015.

<sup>90</sup> IPR University Center, *Tekijänoikeus ja tutkimus – selvitys tutkijoiden näkemyksistä*, available at [http://www.iprinfo.com/julkaisut/verkkojulkaisut/ipr-series-b/fi\\_FI/tekijanoikeus\\_tutkimus/](http://www.iprinfo.com/julkaisut/verkkojulkaisut/ipr-series-b/fi_FI/tekijanoikeus_tutkimus/). Visited on 30.12.2015.

<sup>91</sup> “Big data refers to diverse collections of data, the utilization of which requires advanced data processing and analysis methods”. Source: website of the Finnish Ministry of Transport and Communications, available at <http://www.lvm.fi/pressreleases/4418044/big-data-applications-have-export-potential>. Visited on 24.9.2015.

- Publishing audio-visual materials (e.g. video commercials) as report attachments for verification purposes
- Studying literature databases with text and data mining (TDM) methods

The major copyright-related challenges in research at the moment are not related to conducting research as such, but to preservation and distribution of research data and results. Problems that have occurred have been mainly related to the legal uncertainty in the interpretation of the copyright rules, use of text and data mining (TDM) in human sciences and the publication of audio-visual works for verification purposes. Researchers are not well aware of copyright issues and there would be a need for additional education and training.

#### **SECTION 4. SUGGESTIONS FOR QUESTIONS IN FUTURE SURVEYS<sup>92</sup>**

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In order to get a comprehensive set of subjective information on the issues at hand, the information collected here through desktop research could be complemented with survey data. The survey data would provide information especially regarding to the Methodology card's parameter 2 which covers the opinions on issues related to the access to copyrighted works for follow-on creation.

Proposals for questionnaires directed to the public at large, to authors and performers, as well as to researchers and research institutes are presented in Appendix C of this report. The questions are based on a separate toolkit of questionnaires, and they concern the following issues:

Questionnaire directed to the public at large:

- The use of works made by others or part of them (music pieces, pictures...) in creation of new works; were permissions for the use sought from the original copyright holders (see questions 6 and 7)
- The situations in which the user is not sure is he or she allowed to use a certain work online (see question 8)
- The copyright system's ability to respect the rights of the user of copyrighted works (see question 9)

Questionnaire directed to authors and performers:

- Difficulties in identifying copyright holders (see questions 5, 6 and 7)
- Use of copyrighted works for follow-on creation (see questions 8, 9, 10 and 11):
  - o respondent's use of works made by others or parts of them in follow-on creation
  - o permissions sought for these uses
  - o the copyright systems impacts on the access to copyrighted works in follow-on creation
  - o legal difficulties in building upon previous copyrighted material

Questionnaire directed to researchers and research institutes:

- The use and licensing of materials used in research (see questions 7, 8 and 9 )
- The system's effects on the access to copyrighted works for the purposes of scientific research; legal difficulties (see questions 10 and 11)
- The problems in providing a license for the reuse of content created by the researchers (see question 12)
- Difficulties in identifying copyright owners (see questions 13 and 14)

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<sup>92</sup> See also the full proposals for questionnaires in Appendix C.

## Conclusions

### **A. ANALYSIS AND SUMMARY OF THE RESULTS**

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#### **▪ PUBLIC REGULATIONS AND POLICIES ON FOLLOW-ON CREATION**

Copyright protects literary and artistic expressions meeting the originality requirement. Therefore, ideas, procedures, methods of operation and mathematical concepts, the results of mere mechanical work and expressions not meeting the threshold of originality can be freely used in follow-on creation. Copyright-protected works fall into the public domain 70 years after of the death of the last surviving author. Audio recordings, video recordings, performances, catalogues and databases, photographs and press reports are protected as a whole and in part by neighboring rights and have specific criteria for protection. Section 4 (2) of the Copyright Act provides an opportunity to use copyright-protected works in support of creating new and independent works. Derivative works, such as translations, adaptations and compilations are protected under sections 4 (1) and 5 of the Copyright Act.

The Copyright Council's opinions concerning the protection of individual works published between 2010 and 2015 were analyzed to understand the council's interpretations on the application of the threshold of originality. The analysis show that the questions examined by the Council have been primarily related to the originality of applied arts, formal or short written expressions, buildings and technical drawings, photographs and teaching materials. The Council has considered the applicability of Section 4 (2) five times during the examined time period. The works were considered new and independent in four opinions. The originality of derivative works have been considered in two opinions. The subtitles transcribed from the Finnish language for deaf and hearing impaired were not considered to be copyright-protected, whereas two separate translations of the same doctoral thesis were both considered to meet the originality requirement. The use of photographs protected by neighboring rights have been considered in four opinions with different outcomes.

Certain kinds of follow-on uses of copyrighted works are allowed by the limitations of the Copyright Act. These limitations include reproduction for private use, quotation, reproduction of works of art in pictorial form, reproduction of a permanently sold or transferred work and inclusion of a work in a news report. Certain preconditions must be met for follow-on uses to be allowed by these limitations.

Section 15 of the Constitution of Finland guarantees protection for property. According to the general interpretation, copyrights and other intellectual property rights are covered by this section. Sections 12 and 16 of the Constitution safeguards the rights of follow-on creators by guaranteeing the freedom of expression, science and arts. These fundamental rights guaranteed by the Constitution are to be reconciled with each other.

#### **▪ OTHER PROVISIONS AND MEASURES FACILITATING THE FOLLOW-ON CREATION**

The development of digital technology and has led to the rise of user-generated content on the Internet. In the services of social networking, citizen journalism, blogs and streaming services, copyrights of UGC are usually retained with the user who provides the services with a non-exclusive license to use and distribute the content under certain circumstances. The uploaded contents can be usually removed from the services and the user is able to control the access in the privacy settings. Regarding alleged copyright infringements, some services, such as YouTube and SoundCloud, provide automatic Content ID systems which compare all uploaded contents with the reference files provided to the system's database by copyright holders. The services also provide fillable web forms and contact information for reporting on alleged copyright infringements.

Creative Commons licenses, GNU Free Documentation licenses and Open Database Licenses are used in open knowledge communities and remix communities to provide other users with broad rights to use, modify and distribute the content uploaded to the service. These licenses usually require attribution and licensing of follow-on creations similarly. The contents uploaded to the YouTube and SoundCloud can be also licensed with Creative Commons licenses, but it is not required in any way. YouTube, however, provides an opportunity to use copyright-protected music in user videos under circumstances determined by copyright holders.

#### ▪ **OPINIONS ON ISSUES RELATED TO THE ACCESS OF COPYRIGHTED WORKS FOR FOLLOW-ON CREATION**

The opinions of authors and performers on the access to copyrighted works for follow-on creation were examined through a case study of digital sampling in Finnish hip-hop music. The results of the study show that there is uncertainty about the copyright rules of digital sampling among hip-hop-producers. The producers do not necessarily know what kind of uses are allowed by the Copyright Act or require permissions from original copyright holders. The acquisition of permissions is common only in high budget productions.

It is common for hip-hop producers to consider songs including small segments of sounds as their own compositions. When using longer segments of sounds under certain circumstances, the producers would be willing to attribute and/or remunerate the original copyright holders, but there is uncertainty about the scope of the quotation right and the licensing practices are considered very complicated with low chances of succeeding. The results of the study show that the legal uncertainty and difficulties in licensing may have negative impacts on the creative process of some hip-hop producers. In practice, this is indicated in the reduced use of sampling, avoidance of certain records, unpublished songs and the use of various methods, such as editing and replays, for avoiding copyright problems.

Access to copyrighted works by the public at large was analyzed through the opinions issued by the Finnish Competition and Consumer Authority (FCCA) and the European Copyright Society (ECS) on copyright-related questions of user-generated content. The FCCA highlights that the international copyright system has been built upon the principle that new works are created upon the common cultural heritage. The FCCA however acknowledges that in the digital environment demarcation between derivative works and new and independent works can be particularly difficult. According to the ECS, it is virtually impossible for users to know whether certain kinds of uses fall within the scope of the national limitations. The ECS hopes for more specific regulation in this area.

Major copyright-related challenges in the research field at the moment are not related to conducting research as such, but to the preservation and distribution of research data and results. The problems that have occurred have been mainly related to the uncertainty in the interpretation of the copyright rules, use of text and data mining (TDM) in human sciences and publishing of audio-visual works as attachments of research reports. Researchers do not generally have a good knowledge on copyright issues and there would be a need for additional education and training.

#### ▪ **GENERAL ANALYSIS**

Copyright law and the copyright system can have both positive and negative effects on follow-on creation. The copyright system aims at providing incentive for authors to create works, which, in turn, may stimulate follow-on creativity of future authors.<sup>93</sup> Copyright may have positive effect on freedom of expression as the system emancipates authors from the preferences and ideologies of political decision

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<sup>93</sup> WIPO, *The Economics of Copyright and the Internet: Moving to an empirical assessment relevant in the digital age*, Economic Research Working Paper No. 9 (page 3) available at [http://www.wipo.int/export/sites/www/econ\\_stat/en/economics/pdf/wp9.pdf](http://www.wipo.int/export/sites/www/econ_stat/en/economics/pdf/wp9.pdf). Visited on 30.12.2015.

makers, patrons and financiers<sup>94</sup>. Some scholars even argue that “*creativity flourishes best not under complete freedom, but rather under a moderate amount of restriction.*”<sup>95</sup>

On the other hand, there has been criticism towards the copyright system’s negative impacts on the development of contemporary art forms and amateur creativity<sup>96</sup>. Some scholars argue that by defining the allowed and non-allowed uses of works, the copyright system easily favors some art forms over others. According to this criticism, copyright hardly allows any creative use of existing works without complicated license negotiations<sup>97</sup>.

The length of the protection term has been criticized as well. According to this criticism, the protection term, often lasting over hundred years, imposes unnecessary restrictions for the use of old works in follow-on creation.<sup>98</sup> The latest developments in this area are reflected in the European Union’s directive extending the protection term of recorded performances and phonograms from 50 to 70 years which came into force in Finland in 2013.<sup>99</sup>

The pilot study applying Methodology Card 7 – *Application of Sanctions and Remedies for Copyright Infringement*<sup>100</sup> shows that a significant majority of the copyright-related cases in Finnish courts between 2008 and 2012 have been related to the application of Section 60 a of the Copyright Act (disclosure of contact information). Therefore, it seems that disputes regarding follow-on creation are not frequent in Finnish courts. This could be explained by both the efficient operation of the system and the small markets of Finland. It can be also explained by the fact that in many small disputes, stakeholders prefer to consult Copyright Council, which is free.

Seen from this angle, the major challenges are related to the legal uncertainty in the use of existing materials, especially in the digital environment. As the results of this pilot study show, legal uncertainty is present in the activities of all three examined stakeholder groups (authors and performers, members of the public at large and researchers). Because the majority of the copyright rules are not originally tailored for the digital environment, it is often impossible for members of these groups to know how the rules are applied to the follow-on creation.

The copyright system should try to reach a fair balance between interests of follow-on creators and holders of copyright on pre-existing works. Because the follow-on uses of protected materials are not often competing with the original works, the uses can be beneficial for both parties and provide new works for the society. Providing this access is also important in the implementation of the fundamental

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<sup>94</sup> Source: T. Mylly, J. Lavapuro & M. Karo (2007), pages 12 and 164.

<sup>95</sup> See Joseph P. Fishman: *Creating Around Copyright*, Draft July 25, 2014, Harvard Law Review, forthcoming 2015). Available at [https://www.law.berkeley.edu/files/Fishman\\_Joseph\\_IPSC\\_paper\\_2014.pdf](https://www.law.berkeley.edu/files/Fishman_Joseph_IPSC_paper_2014.pdf)

<sup>96</sup> For more information on the contemporary art forms and copyright, see the following books and articles:

- T. Mylly, J. Lavapuro & M. Karo (ed.), *Tekemisen vapaus: luovuden ehdot ja tekijänoikeus*, Gaudeamus, Helsinki (2007).
- Tuomas Mylly, *Tekijänoikeuden ideologiat ja myytit*, Lakimies (2/2004), pages 228–254.
- Laura Leppämäki, *Tekijänoikeuden oikeuttaminen*, Doctoral Dissertation, University of Jyväskylä (2006), pages 29-39 and 46.

For foreign literature, see:

- Lawrence Lessig, *Remix – Making Art and Commerce Thrive in the Hybrid Economy*, Bloomsbury, London (2008). The book is available at <https://archive.org/details/LawrenceLessigRemix>
- Giancarlo F. Frosio, *Rediscovering Cumulative Creativity from the Oral Formulaic Tradition to Digital Remix: Can I Get a Witness?* 13 J.Marshall Rev. Intell. Prop. L. 341 (2014). The article is available at <http://repository.jmls.edu/cgi/viewcontent.cgi?article=1325&context=ripl>. Visited on 24.8.2015.

<sup>97</sup> Source: T. Mylly, J. Lavapuro & M. Karo (2007), pages 14-15, 26 and 232-262.

<sup>98</sup> Source: T. Mylly (2004), pages 236-237.

<sup>99</sup> See the report on the extension at the website of the Ministry of Education and Culture, available at <http://www.minedu.fi/OPM/Tiedotteet/2013/06/tekijanoikeus.html?lang=fi>. Visited on 2.9.2015.

<sup>100</sup> The pilot study is available at <http://www.cupore.fi/MC7.php>. Visited on 24.8.2015.

rights such as freedom of science and arts, as well as freedom of expression guaranteed by the Constitution of Finland<sup>101</sup>. On the other hand, to maintain sufficient incentive to create, the system must secure the copyright holders' rights to fully exploit the commercial potential of the works without unnecessary disturbances.

All in all, it seems that there are some problems concerning the access to copyrighted works for follow-on creation. These problems have not resulted in a high number of copyright-related disputes in Finnish courts, but are rather reflected as legal uncertainty influencing the work of follow-on creators. Legal certainty could be improved in various ways by developing copyright policies and legislation, licensing schemes and information activities.

## **B. METHODOLOGICAL FINDINGS**

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### **▪ LIMITATIONS**

This first section of this study provides an overview on the public regulations and policies on follow-on creation. The opinions issued by the Copyright Council in 2010 to 2015 were analyzed for supplementary information on the interpretation of the regulations. The application of copyright limitations were not analyzed in this context. For the full picture on the Copyright Act's relationship to different forms of follow-on creation, court cases and older opinions of the Council should be analyzed as well. The second section of this study focused on the copyright-related terms and conditions of user-generated content in online services. Only two Finnish companies were part of the analysis as the vast majority of the services based on user-generated content are currently located in the United States of America.

The opinions of authors and performers on the access to copyrighted works for follow-on creation was studied through a case example focusing on digital sampling in Finnish hip-hop music. In order to get a broad overview of opinions of authors and performers, other art forms should be analyzed as well. Survey data on the opinions of members of public at large was not found. Therefore, the analysis included only opinions of two organizations representing the interests of the public at large. The Section 3 of this report includes a suggestion of collecting survey data based on the questions presented in the appendix C.

### **▪ GUIDELINES FOR FUTURE RESEARCH**

Different work categories have their own unique copyright-related questions and they should be therefore analyzed separately. Court cases could be analyzed to provide information on the case law. The Finnish copyright system could be compared also to systems of other countries having fair use exemptions in order to provide information on alternative solutions in the regulation of follow-on creation.

The services of CMOs concerning the identification of copyright holders and right holder databases were examined as part of the pilot study applying Methodology card 16 – *Access to copyrighted works by the public*. The CMOs' services to follow-on creators seeking permissions for derivative works were briefly covered in the study. Future studies applying Methodology card 17 could include a more detailed analysis of these services. Statutory licenses in the national legislation concerning the use of protected works in follow-on creation could also be covered in this context.

In the case of Finland, the workload for collecting data and drafting this report could be evaluated at 12 weeks of full-time work.

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<sup>101</sup> On the freedom of arts and copyright, see the pages 110-118 of the study *Taiteen vapaus perusoikeutena* by Pauli Rautiainen, Arts Council of Finland, Research reports no. 33 (2007), The study can be found at <http://www.taike.fi/documents/10921/0/Rautiainen+33+97.pdf>. Visited on 27.8.2015.

## Appendices

### A. METHODOLOGY CARD

Methodology card as presented in the Methodology Handbook, draft version 1.12.2015.

Aspect: Access	Methodology card 17. Access to copyrighted works for follow-on creation
Key questions	Does the copyright system ensure the access to protected works for follow-on creation while at the same time protecting the rights of authors, performers and other copyright holders? How does the copyright system affect the creation of follow-on works?
Type of data	<i>objective and subjective data</i>
Description	Evaluation of the effects of the copyright system on the freedom to create through the description of public regulations and policies aiming at facilitating the access to protected works for follow-on creation and through an assessment of the opinions of creators on the availability of protected works for follow-on creation.
Parameters to measure	<p><b>1. Description of public regulations, policies and other measures facilitating the access to protected works for follow-on creation</b></p> <p>Consider for example:</p> <ul style="list-style-type: none"> <li>- Scope of protection: effective implementation of the idea/expression dichotomy in copyright law, and the required level of originality</li> <li>- Term of protection</li> <li>- Limitations and exceptions in copyright law and/or jurisprudence allowing transformative uses (such as quotations, news reporting and parodies)</li> <li>- Limitations and exceptions in copyright law and/or jurisprudence facilitating the use of copyrighted material in scientific research</li> <li>- Legislative solutions and other measures to facilitate the licensing of protected works for follow-on creation (for example, compulsory, statutory or extended protected licenses, services of CMOs, etc.)</li> <li>- Cultural policies aimed at maintaining and promoting traditional cultural expressions (TCE) and/or folklore, and the extent to which they affect authors' freedom to reinterpret and build on such heritage</li> <li>- Provisions or other measures to address any abuses of copyright by copyright holders, including measures taken in other relevant policy areas (such as regulations and measures regarding freedom of expression, consumer protection and competition)</li> <li>- Other provisions or measures to facilitate follow-on creation (such as arrangements supporting or promoting open licensing and open access)</li> </ul> <p><b>2. Opinions on issues related to the access to copyrighted works for follow-on creation</b></p> <p>Consider for example the following topics:</p> <ul style="list-style-type: none"> <li>- Do authors and performers always acquire licenses when necessary for the re-use of copyrighted works for follow-on creation?</li> <li>- Are there particular difficulties (such as difficulties in identifying copyright owners, in contacting them, in negotiating licenses) when seeking to acquire licenses for follow-on creation?</li> <li>- What are the difficulties faced by researchers when using copyrighted material as part of their scientific research?</li> </ul>

Guidelines for data collection	<p>The information for the first parameter can be by the means of a desktop study. Some of the information can be taken from Description sheet 5 in Pillar II.</p> <p>Information for the second parameter can be collected through focus group studies, surveys and/or interviews. Consider distinguishing different categories of authors using copyrighted material for follow-on creation, for instance professional authors or performers (monetizing their creation), members of the public at large engaging in creation limited to the private sphere, etc.</p> <p>Depending on the objectives of the study, the focus can be on different types of copyrighted subject matter or on different copyright-based industries<sup>102</sup>.</p>	
Definitions	<i>Follow-on creation</i>	<i>Umbrella term including all kinds of creations using any elements of existing works to support the creation of new works.</i>
	<i>Abuse of copyright</i>	<i>Use of copyright by the copyright holder in order to cause intentional harm</i>
Limitations of the indicator	<p>Some stakeholder groups might be difficult to identify in order to conduct a survey study.</p> <p>The concept of follow-on creation is difficult to define precisely.</p>	

## ***B. INFORMATION SOURCES***

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### **International:**

#### ▪ ***Legislation***

- Universal Declaration of Human Rights, available at <http://www.un.org/en/universal-declaration-human-rights/>

#### ▪ ***Literature***

- Bruns A., *Prodsusage: Towards a Broader Framework for User-Led Content Creation*, Paper presented at *Creativity & Cognition conference*, Washington D.C., USA, 13-15 June (2007), available at <http://prodsusage.org/node/6>
- Burkholder P., *The uses of Existing Music: Musical Borrowing as a Field*, Second Series, Vol. 50, No. 3 (1994)
- European Commission, *Communication on Copyright in the Knowledge Economy and Creative Content in a European Digital Single Market: Challenges for the Future*, available at [http://ec.europa.eu/internal\\_market/copyright/docs/copyright-info/20091019\\_532\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-info/20091019_532_en.pdf)
- European Copyright Society, *Opinion to the EC Consultation on the Review of the EU Copyright Rules*, available at <http://infojustice.org/wp-content/uploads/2014/03/ECS-answer-to-EC-consultation-on-copyright-Review.pdf>
- Fishman J. P., *Creating Around Copyright* (Draft July 25, 2014), Harvard Law Review, forthcoming (2015), available at [https://www.law.berkeley.edu/files/Fishman\\_Joseph\\_IPSC\\_paper\\_2014.pdf](https://www.law.berkeley.edu/files/Fishman_Joseph_IPSC_paper_2014.pdf)
- Frosio, G. F., *Rediscovering Cumulative Creativity from the Oral Formulaic Tradition to Digital Remix: Can I get a Witness*, 13 J. Marshall Rev. Intell. Prop. L. 341 (2014), available at <http://repository.jmls.edu/cgi/viewcontent.cgi?article=1325&context=ripl>
- Hargreaves I., *Digital Opportunity – A Review of Intellectual Property and Growth* (2011), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32563/ipreview-finalreport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32563/ipreview-finalreport.pdf).

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<sup>102</sup>The study can focus on those industries deemed as copyright-based. Alternatively, other definitions such as cultural or creative industries, or a more focused approach including only core or primary copyright industries, or major or direct activities related to copyright can be used. For the WIPO definition of core copyright industries, see Appendix 3.



- Jaszi P., *Toward A Theory of Copyright: The Metamorphoses of "Authorship"*, Duke Law Journal, 455–502 (1991), available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3150&context=dlj>
  - Lessig L., *Remix – Making Art and Commerce Thrive in the Hybrid Economy*, Bloomsbury, London (2008), available at <https://archive.org/details/LawrenceLessigRemix>.
  - Litman J., *The Public Domain*, Emory Law Journal 39:965 (1990), available at [http://law.duke.edu/pd/papers/litman\\_background.pdf](http://law.duke.edu/pd/papers/litman_background.pdf)
  - Miller P. D. (ed.), *Sound Unbound – Sampling Digital Music and Culture*, The MIT Press, Cambridge & London (2008).
  - OECD, *Participative Web: User-generated Content. Working party of the Information Economy* (2006), available at <http://www.oecd.org/sti/38393115.pdf>
  - Olufunmilayo A., *From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context*, Case Legal Studies Research Paper No. 04-21. North Carolina Law Review. Vol. 84. P 547 (2006), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=633241](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=633241)
  - Pollock R., *The Value of the Public Domain*, IPPR (2006), available at [http://rufuspollock.org/papers/value\\_of\\_the\\_public\\_domain.html](http://rufuspollock.org/papers/value_of_the_public_domain.html).
  - Smith G., *Copyright and Freedom of Expression in the Online World*, Journal of Intellectual Property Law & Practice, 1/2010; 5 (2): 88-95.
  - Woodmansee M., *On the Author Effect: Recovering Collectivity*, Faculty Publications, Paper 283 (1997), available at [http://scholarlycommons.law.case.edu/faculty\\_publications/283/](http://scholarlycommons.law.case.edu/faculty_publications/283/)
  - Woodmansee M. & Jaszi P. (ed.), *The Construction of Authorship – Textual Appropriation in Law and Literature*, Duke University Press, Durham & London (1994).
  - World Intellectual Property Organization, *The Economics of Copyright and the Internet: Moving to an empirical assessment relevant in the digital age*, Economic Research Working Paper No. 9 (2013), available at [http://www.wipo.int/export/sites/www/econ\\_stat/en/economics/pdf/wp9.pdf](http://www.wipo.int/export/sites/www/econ_stat/en/economics/pdf/wp9.pdf)
  - World Intellectual Property Organization, *ESCIA guidelines*, available at <http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/escia.pdf>
- **Other online materials**
- English Language & Usage Stack Exchange, available at <http://english.stackexchange.com/>
  - GNU Free Documentation License, available at <https://www.gnu.org/copyleft/fdl.html>
  - MyEtymology website, available at <http://www.myetymology.com/>
  - Online Etymology Dictionary, available at <http://www.etymonline.com>
  - Open Data Commons Open Data License, available at <http://opendatacommons.org/licenses/odbl/summary/>
  - Oxford Dictionaries, available at <http://www.oxforddictionaries.com>
  - Probusage.org, available at <http://probusage.org>
  - The Sims 3 Community website, available at <http://www.thesims3.com/>
  - Terms of service of ccMixter, available at <http://ccmixter.org/terms>
  - Terms of service of EA Games, available at <http://tos.ea.com/legalapp/WEBTERMS/US/fi/PC>.
  - Terms of service of Facebook, available at <https://www.facebook.com/legal/terms>
  - Terms of service of Google, available at <http://www.google.com/intl/en/policies/terms/>
  - Terms of service of Habbo, available at <https://help.habbo.com/entries/23027093-Terms-of-Service>
  - Terms of service of Instagram, available at <https://help.instagram.com/478745558852511/>
  - Terms of service of LinkedIn, available at [https://www.linkedin.com/legal/user-agreement?trk=hb\\_ft\\_userag](https://www.linkedin.com/legal/user-agreement?trk=hb_ft_userag)
  - Terms of service of OpenStreetMap, available at <https://www.openstreetmap.org/copyright>

- Terms of service of Slashdot, available at <http://slashdotmedia.com/terms-of-use/>
- Terms of service of SoundCloud, available at <https://soundcloud.com/terms-of-use>
- Terms of service of Twitter, available at <https://twitter.com/tos>
- Terms of service of Uusi Suomi, available at <https://oma.uusisuomi.fi/kayttoehdot>
- Terms of service of Wikipedia, available at [https://wikimediafoundation.org/wiki/Terms\\_of\\_Use](https://wikimediafoundation.org/wiki/Terms_of_Use)
- Terms of service of WordPress, available at <https://en.wordpress.com/tos/>
- Terms of service of YouTube, available at <https://www.youtube.com/static?template=terms>
- Wikipedia, available at [https://en.wikipedia.org/wiki/Web\\_2.0](https://en.wikipedia.org/wiki/Web_2.0)
- Wiktionary.org, available at <https://en.wiktionary.org/wiki/creo>

## Finland:

### ▪ **Legislation**

- Act on the Exercise of Freedom of Expression in Mass Media, unofficial translation available at <http://www.finlex.fi/en/laki/kaannokset/2003/en20030460>
- Constitution of Finland, unofficial translation available at <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>
- Constitutional Law Committee's statement (7/2005) concerning the Government proposal (28/2004), available at [https://www.eduskunta.fi/FI/vaski/Lausunto/Documents/pevl\\_7+2005.pdf](https://www.eduskunta.fi/FI/vaski/Lausunto/Documents/pevl_7+2005.pdf)
- Copyright Act, unofficial translation available at <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>
- Government proposal 70/1980.
- Government proposal 287/1994, available at <http://www.finlex.fi/fi/esitykset/he/1994/19940287>.
- Government proposal 28/2004, available at <http://www.finlex.fi/fi/esitykset/he/2004/20040028>.
- Preparatory works of the Copyright Act, KM 1953:5.

### ▪ **Literature**

- Copyright Council's opinions, available (in Finnish) at [http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston\\_lausunnot/?lang=fi](http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston_lausunnot/?lang=fi)
- Finnish Competition and Consumer Authority, *Opinion regarding European Commission's Communication on Copyright in the Knowledge Economy and Creative Content in a European Digital Single Market: Challenges for the Future*, available at [http://www.kkv.fi/globalassets/kkv-suomi/ratkaisut-aloitteet-lausunnot/aloitteet-ja-lausunnot/lausunnot-kuv-2004-10/2009-kuv/091125lausunto\\_2.pdf](http://www.kkv.fi/globalassets/kkv-suomi/ratkaisut-aloitteet-lausunnot/aloitteet-ja-lausunnot/lausunnot-kuv-2004-10/2009-kuv/091125lausunto_2.pdf)
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- Hietanen H., *Pelleily sallittu – parodia tekijänoikeuden rajoituksena*, Defensor Legis N:o 1/2009, available at <http://www.turre.com/wp-content/uploads/2015/07/Pelleily-Sallittu-Hietanen.pdf>.
- IPR University Center, *Tekijänoikeus ja tutkimus – selvitys tutkijoiden näkemyksistä*, available at [http://www.iprinfo.com/julkaisut/verkkojulkaisut/ipr-series-b/fi\\_FI/tekijanoikeus\\_tutkimus/](http://www.iprinfo.com/julkaisut/verkkojulkaisut/ipr-series-b/fi_FI/tekijanoikeus_tutkimus/)
- Jäske J., *Kohti vapaampaa muuttamisoikeutta? Tekijänoikeudella suojattujen teosten vapaa muuttaminen ja suoja-ajan ulottuvuus*, Edilex (2014).
- Kivimäki T.M., *Uudet tekijänoikeus- ja valokuvailait*, Werner Söderström osakeyhtiö, Porvoo and Helsinki (1966).
- Kortelainen, J., *Sample-pohjainen hiphop-tuottaminen kuluttamisen ja tuottamisen rajapinnoilla*, Master's thesis, University of Jyväskylä (2015).

- Leppämäki, L., *Tekijänoikeuden oikeuttaminen*. Doctoral Dissertation, University of Jyväskylä (2006), available at <https://jyx.jyu.fi/dspace/handle/123456789/13397>
  - Mylly T., Lavapuro J. & Karo M. (ed.), *Tekemisen vapaus - Luovuuden ehdot ja tekijänoikeus*. Gaudeamus, Helsinki (2007).
  - Mylly T., *Tekijänoikeuden ideologiat ja myytit*. Lakimies 2/2004.
  - Rautiainen P., *Taiteen vapaus perusoikeutena*. Arts Council of Finland, Research reports no. 33 (2007), available at <http://www.taike.fi/documents/10921/0/Rautiainen+33+97.pdf>.
- **Other online materials:**
- Ministry of Education and Culture: <http://www.minedu.fi/>
  - Ministry of Transport and Communications: <http://www.lvm.fi/>

### C. QUESTIONNAIRES (PROPOSAL)

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*The following questionnaires are based on a set of exemplary questions for surveys, interviews and focus group studies that can be found in a separate toolkit of questionnaires.*

## QUESTIONNAIRE FOR THE PUBLIC AT LARGE

BACKGROUND INFORMATION
------------------------

1. Please select your age group

- 15 - 24 years
- 25 - 34 years
- 35 - 44 years
- 45 - 54 years
- 55 - 64 years
- 65 years or more

2. Please select your gender

- Male
- Female

3. Please define the size of your annual taxable gross income

**Alternative question:** Please define the annual taxable gross income of your household

- income group 1
- income group 2
- income group 3
- income group 4

<p><b>Instruction for the researcher:</b> The income groups need to be defined for each country separately. The question to be asked can be chosen from the two alternatives.</p>
---

4. Please define your occupation
- Full-time employee
  - Part-time employee
  - Entrepreneur or self-employed person
  - Student or at school
  - Pensioner/retiree
  - Unemployed
  - Other
5. Please define the level education you attained
- Primary school
  - Secondary school
  - Professional-level education
  - University degree
  - Post-graduate degree

**Instruction for the researcher:** The education levels available need to be defined for each country separately. This question will be useful as a preliminary for a research concerning the area "Awareness and Knowledge".

CONSUMERS' EXPERIENCES AS USERS OF MATERIAL PROTECTED BY COPYRIGHT

6. Have you used works made by others or parts of them (music pieces, pictures...) to make a work of your own (such as a new piece of music, a short film, a website or an internet blog, etc. – whether for a professional or scientific work, or for leisure activities)?
- Yes
  - No

If your answer was yes: What kind of works have you used? What kind of works have you created? Have you made the works you created available to the public (on the internet for example)? Please tick the appropriate boxes in the tables below.

	Works I have used	Works I have created	Works I have made available to the public
Music	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Films and video recordings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Audio material (voice recordings, radio programs, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pictures, images, photographs etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Computer programs or parts of them	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Website or internet blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other – Please describe:.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. *If applicable:* Did you seek a permission to make use of these works?
- Yes
  - In this case: Did you have problems with getting a permission or license for the use?
    - Yes

- In this case, please describe the main problem(s): .....

- No
- No (even though the use required a license)
- No, the use did not require a license
- No (I didn't know that the use required a license)

8. Have you encountered situations where you did not know whether or not you were allowed to use a certain work online? (for example you could not identify the creator of the work, you could not detect whether the work was made available legally, or you were not sure whether or not the work could be freely used)

- Yes
- In this case, please describe: .....
- No

9. In your opinion, are your rights or privileges as a user of copyrighted works respected in general?

- Yes
- No
- In this case: what rights or privileges you consider not respected and in what way?.....

**Instruction for the researcher:** The question can be replaced by a list of users' rights or privileges, or exceptions and limitations to copyright, depending on the copyright system of the country in question (such as the possibility to make quotations from copyrighted works and the possibility to make private copy). Certain fundamental rights could also be considered separately.

## QUESTIONNAIRE FOR AUTHORS AND PERFORMERS

### BACKGROUND INFORMATION

1. Please select the option(s) that best describe the product of your creative activities

- Music
- Films
- Radio and TV programs
- Books
- Content for other printable media (articles, photographs, etc.)
- Games
- Computer programs / software
- Visual arts, crafts and design
- Performing arts in music
- Performing arts in theatre, dance or circus
- Other performing arts
- Other (please describe): .....

If you represent artists or performers, what is the size of your clientele?

.....

**Instruction for the researcher:** The list of options above can be replaced by more detailed categories, such as genres or other types of subject matter, in particular when the data collection focuses on a particular industry.

2. What were your sources of revenue (income or turnover) based on copyright (examples of different generic revenue types mentioned in brackets) last year?

- Royalty (based on individual licensing, e.g. writer's royalty from a publisher)
- Salary (e.g. journalist's salary paid by a newspaper publisher)
- Fee (e.g. photographer's fee for the use of a photograph in a magazine)
- License (e.g. exclusive or non-exclusive permission to use a photograph or work of art in a calendar)
- Adaptation rights (e.g. use of a literary work in an audiovisual work)
- Rights licensed by CMOs (e.g. rights for public performance of phonograms)
- Other remuneration (e.g. public lending rights, private copying compensation), please describe:

.....

Which sources of revenue are most important for you? (Please select 1-3 main sources of revenue from the options listed above):

.....

What other types of revenue, such as grants, prizes and teaching or performance fees, did you get from your work as an author / performer last year? (income or turnover)? (Please select 1-3 main sources of revenue):

.....

3. Please estimate the size of your yearly taxable gross income (individual artists and performers)

..... OR, alternatively, the size of your yearly turnover (organizations) .....

4. Please estimate what proportion of your yearly total income or turnover is direct copyright revenue (the sources of direct copyright revenue are specified in question 2) ..... %

DIFFICULTIES IN IDENTIFYING COPYRIGHT OWNERS
--

5. Have you ever encountered problems in identifying the copyright owners of material you sought to use?

- Yes  
- In this case, please describe: .....
- No

<b>Instruction for the researcher:</b> The options <i>Yes</i> and <i>No</i> can be replaced by a scale [ <i>very often, somewhat often, rather seldom, very seldom</i> ]
--

6. Have you used material whose copyright owner is unknown?

- Yes  
- In this case, please describe the type and the origin of the material:  
.....
- No

7. Could you propose public actions that would facilitate the identification of copyright owners?

.....

USE OF COPYRIGHTED WORKS FOR FOLLOW-ON CREATION

8. Have you used works made by others or parts of them to make a work of your own?  
 Yes  
 No

If your answer was yes: What kind of works have you used? What kind of works have you created? Have you made the works you created available to the public (on the internet for example)? Please tick the appropriate boxes in the tables below.

	Works I have used	Works I have created	Works I have made available to the public
Music	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Films and video recordings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Audio material (voice recordings, radio programs,...)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pictures, images, photographs etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Computer programs or parts of them	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Website or internet blog		<input type="checkbox"/>	<input type="checkbox"/>
Other – Please describe:.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. *If applicable:* Did you seek a permission to make use of these works?  
 Yes  
 - In this case: Did you have problems with getting a permission or license for the use?  
 Yes  
 - In this case, please describe the main problem(s): .....  
 No  
 No (even though the use required a license)  
 No, the use did not require a license  
 No (I didn't know that the use required a license)

10. How do you think the current copyright system affects the access to copyrighted works for reuse in your own creations? (Please use the following scale where 1 = very little, 5 = very much)?
- |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1                        | 2                        | 3                        | 4                        | 5                        |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

11. Have you faced legal difficulties when building upon previous copyrighted material?  
 Yes  
 - In this case, please describe:  
 .....  
 No

12. How do you think the current copyright rules affect the availability of copyrighted material to be used in follow-on creation?
- |  |                          |  |                          |   |                          |
|--|--------------------------|--|--------------------------|---|--------------------------|
| Copyright rules limit the availability |                          | Copyright rules have no effect on the availability |                          | Copyright rules increase the availability | Don't know               |
| 1                                      | 2                        | 3  | 4                        | 5   |                          |
| <input type="checkbox"/>               | <input type="checkbox"/> | <input type="checkbox"/>                           | <input type="checkbox"/> | <input type="checkbox"/>                  | <input type="checkbox"/> |

**Instruction for the researcher:** If considered relevant, the availability of digital products and services can be asked separately.

13. Could you propose public actions that might improve the availability of copyrighted material for follow-on creation?

.....

## QUESTIONNAIRE FOR RESEARCHERS AND RESEARCH INSTITUTES

### BACKGROUND INFORMATION

1. **Optional:** What are the name and location of your institution or the unit you represent?

.....

*In the following questions, the term "institution" is used to cover either the organization or the unit you represent.*

2. What are your name (optional), position and responsibilities in the institution you represent?

.....

3. Is your institution

a university or a university-based research institution

- if yes, is your faculty/school ..

a faculty/school of law

a faculty/school of business

a faculty/school of social sciences

What is the number of students in your faculty/school? (please give an estimate)

.....

other research institution

- if yes, please describe the field(s) in which your institution is specialized:

.....

4. Is your institution

a public institution

a private institution (either commercial or non-commercial)?

5. What is the number of researchers (in equivalent full time) in your institution? .....

**Instruction for the researcher:** This question can be replaced by the following question:

What is the number of researchers (members of personnel engaged in research activities for over 50 % of their working hours) in your institution?



6. How does your institution deal with copyright issues?
- Individually for each copyrighted material
    - In this case, for what percentage of the material used for research purposes in your institution does it need to negotiate a license itself (material whose rights are not exhausted or limited in its favor)?
    - Estimation: ..... %
  - Don't know
  - Through a collective license (a license arranged through collective management organizations or through other organizations managing a collection of rights from different authors)
    - In this case, what percentage of your institution's need to use material is covered by the collective license? ..... %
  - There is no need to deal with copyright issues.
    - In this case, this is because of ...
      - The term of copyright has ended
      - Limitation or exception for the benefit of research
      - Creative Commons license (the author gives the permission to use and spread the work for free under certain conditions)
      - Use of open data or data in open access
      - Other reason, what?
    - .....
    - In this case, what percentage of your institution's need to use material is covered by this option? ..... %

7. Do the researchers in your institution have access to research material online / in digital form?
- Yes
    - In this case, how is the compliance to copyright rules arranged for this material? (example: through an agreement with the service providing the material)
    - .....
  - No

8. *If applicable:* can you describe some recurrent problems encountered in getting access to copyrighted material (for instance, during copyright licenses negotiations)? .....

9. How do you think the current copyright system affects the access to copyrighted material for use for the purposes of scientific research?

The system limits the access		No effect		The system enhances the access	Don't know
1	2	3	4	5	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- Please explain: .....

10. Have researchers in your institution faced legal difficulties when building upon previous copyrighted material in the course of research?
- Yes
    - In this case, please describe: .....
  - No

COPYRIGHT OF MATERIAL CREATED BY RESEARCHERS

11. Has your institution faced problems when asked to provide a license for the reuse of content created by the researchers in your institution? (questions of multiple owners of copyrights, etc.)

Yes

- In this case, please describe: .....

No

DIFFICULTY IN IDENTIFYING COPYRIGHT OWNERS

12. Have the researchers in your institution ever encountered problems in identifying the copyright owners of material you sought to use?

Yes

- In this case, please describe:.....

No

**Instruction for the researcher:** The options *Yes* and *No* can be replaced by a scale [*very often, somewhat often, rather seldom, very seldom*]

13. Have you or one of your researchers used material whose copyright owner is unknown?

Yes

- In this case, please describe the type and the origin of the material:

.....

No



**Assessing Copyright and Related Rights Systems: Piloting of the methodology framework in Finland**

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