

Assessing Copyright and Related Rights Systems

Public Administration of Copyright

Report on Piloting in Finland





cupore

Assessing Copyright and Related Rights Systems: Public Administration of Copyright. Report on Piloting in Finland.

This report is the result of the first pilot study implementing Description Sheet 7 – *Public Administration of Copyright*, 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 Antti-Pekka Manninen, student at the Faculty of Law at the University of Turku, as part of an internship at the Foundation for Cultural Policy Research between February and June 2013. The work was supervised by Assistant Professor Tuomas Mylly (University of Turku), the steering group of the project, as well as the core project team. The results were first published in December 2013 on the website of Cupore.

A handbook presenting the methodology framework is available on the website of Cupore at www.cupore.fi.

Cupore webpublications 39:13

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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 Description sheet 7 presented in the methodology handbook, titled “Public Administration of Copyright”.

The description sheet provides guidelines to map and analyze the relevant public authorities and their responsibilities on the field of copyright.

Finland does not have a single agency responsible of copyright matters. The responsibilities are shared between different actors, namely:

- the Ministry of Education and Culture, responsible mainly for copyright law development and international cooperation in the field
- the Copyright Council, composed of representatives of different copyright stakeholder groups. The Copyright Council offers opinions on the interpretation of copyright law which are not legally binding but generally respected by public authorities.
- the Regional State Administrative Agencies, responsible for the monitoring of obligations relating to the payment of certain remunerations based on Copyright Act (levies and the control of resale).

The Copyright Council in particular is an agency unique to Finland. It can be seen as a system of alternative dispute resolution.

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Introduction

A. CONTEXT OF THE PILOT STUDY

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 of the copyright and related rights system 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 envisaged to be continuously improved through application feedbacks. For more information, see the Cupore website, www.cupore.fi/copyright.php.

This report presents data collected in application of Description sheet 7 of the methodology framework, titled "Public administration of copyright". It is the result of the first pilot study applying this indicator in Finland.¹

This study was conducted by Antti-Pekka Manninen, student at the Faculty of Law at the University of Turku, as part of an internship at the Foundation for Cultural Policy Research between February and June 2013. The work was supervised by Assistant Professor Tuomas Mylly, University of Turku, the steering group of the project, as well as the core project team.

B. PRESENTATION OF THE INDICATOR

The indicator implemented here is intended to present one of the copyright system's elements. It is part of the second pillar of the methodology framework, "Functioning and performance of the elements of the copyright system", and its first area, "Law, policy and public administration". It is a description sheet which presents the work of government agencies in public administration of copyright in order to support the analysis of the operation of the national copyright and related rights system.

As explained in the methodology handbook, a full assessment of the elements of the copyright system should include public administration by government agencies, understood as the number and quality of public agencies in charge of applying the copyright system. Government agencies in question could be government departments or agencies responsible for copyright matters, copyright board or equivalent organ working on disagreements, a registration body or other public agency involved in public administration of copyright, etc. Regional governments are included in the definition.

¹ The study was conducted based on the draft version of the Methodology Handbook, dated 19.7.2012. This report is modified from the original report to better correspond to the version of the Methodology Handbook dated 20.12.2013.

Describing these administrations is a key step in describing the copyright system as a whole and assessing its functioning. This description is related to the description of copyright law and policy (Description sheets 5 and 6). The government agencies and their tasks should be clearly defined and cover the application of all legislative measures. This description will facilitate the identification of organizational loopholes in the enforcement of legal measures, as well as provide key information for the purposes of international benchmarking.

During the indicator development process propositions were made to use the public expenditure on public administration of copyright and the number of full time equivalents (FTEs) working in public administration of copyright as possible indicators of the effectiveness of the public administration of copyright. They cannot, however, be considered valid to answer the question of functioning of the element as the proposed indicators tell nothing on the use of these resources. However, the administrative capacity to apply the system can be assessed through the number of trained people among government officials and the level of their training.

The description sheet presenting the indicator can be found in Appendix A of this report.

C. METHODS

The information collected for this indicator can be found through available national information sources. The method chosen was therefore desktop studies. This data was complemented by expert interviews.

Lists of national and international information sources used for this report can be found in the Appendices.

Results

There are no public agencies specifically responsible for copyright questions in Finland. The following public bodies are responsible of different aspects of copyright system:

- The Ministry of Education and Culture
- The Copyright Council
- Regional State Administrative Agencies

Other relevant actors that must be taken into account to grasp the full understanding of the Finnish execution of copyright legislation are handled in the Description Sheet 8 concerning enforcement by public authorities and in the Description Sheet 12 concerning Collective Management Organizations.

A. MINISTRY OF EDUCATION AND CULTURE²

The Ministry of Education and Culture has a wide array of responsibilities regarding copyright. It is part of the Finnish Government.

Copyright matters coming under the responsibility of the Ministry of Education and Culture include:

- the development of copyright legislation
- participation in the preparation of EU legislation
- negotiations concerning international copyright treaties
- agreements on copying in educational institutions and the central government, and on recording of radio and television programs in educational institutions
- tasks relating to the administration of copyright, such as the amount of compensation for private copying to authors, and the approval of copyright organizations for certain functions
- copyright issues in the remit of the World Intellectual Property Organization WIPO and other international organizations (WTO, OECD, UNESCO, Council of Europe)
- Nordic cooperation in the copyright field

Section 1 of the Government Decree on the Ministry of Education and Culture³ states that copyright issues are among the responsibilities of the Ministry of Education and Culture.

For the purposes mentioned in the Copyright Act, the Ministry approves and monitors the copyright collective management organizations, which govern the rights of their members. The Ministry may approve the copyright collective management organization to take charge of specific tasks laid down by law. Even in these cases, the collective management organization is not a public authority in the sense of public law.

The Ministry has a copyright policy team, working for total of 4+ person-years. All officials in the team are lawyers by profession. Person-years are counted in respect of the collective wage costs, and the amount of work directed to copyright matters is not separated.

² The website providing information of copyright-related activities of the Ministry of Education and Culture is located at the following address: <http://www.minedu.fi/OPM/Tekijaenoikeus/?lang=en>. Visited on 17.6.2013.

³ Valtioneuvoston asetus opetus- ja kulttuuriministeriöstä (310/2010), text in Finnish available at Finlex: <http://www.finlex.fi/fi/laki/alkup/2010/20100310>. Visited on 9.7.2013.

B. THE COPYRIGHT COUNCIL

The Copyright Council was established in 1986 in line with the legislation passed in 1984. The Copyright Council is tasked to assist the Ministry of Education and Culture in copyright questions by dealing with issues and by giving opinions on application of copyright law. The Copyright Council gives opinions on the application of copyright law but abstains from giving opinions on contracts or questions concerning evidence possibly affiliated to the case in question. The opinions are not enforceable as such. Regulative basis of the Council and its functions is stipulated by the Copyright Act and the Copyright Decree. The Government determines the composition of the Council for consecutive three-year periods, most recently as of 2012.

The Council consists of representatives of the key right holders and of copyright users. The Chairman, Vice-Chair and at least one member shall be appointed from outside these groups. The Council may, if necessary, consult outside experts (for example, in technology-related issues). If the merits of the case so require, the party requesting the opinion or any other party may be heard orally at the meeting. Otherwise, the parties submit only a written response or statement.

The Council hands down about 15-20 opinions a year and all the opinions are published (opinions given after 1996 can be found on the webpages of the Ministry of Education and Culture). The legal status of the Council is a bit ambiguous, as there are only few legal provisions on the Copyright Council in the Copyright Act and Copyright Decree. Although the Council's opinions are not legally binding, they are relevant in interpreting copyright legislation. This is indicated by the fact that many public authorities have referred to the opinions of the Council as the basis for their decisions. Nevertheless, the Copyright Council is not a court of law in the hierarchy of Finnish courts and the courts can take the opinions into consideration to the extent they see fit.

C. REGIONAL STATE ADMINISTRATIVE AGENCIES⁴

Regional State Administrative Agencies (Aluehallintovirasto, AVI) are regional administrative organizations representing the central government of the state. The six agencies took over some of the tasks of the earlier Provinces of Finland, which were abolished in 2010. The duties mostly consist of basic public services and legal permits and can be summarized to the following:

- public services
- legal permits
- occupational safety and health
- environmental permits
- emergency services and preparedness, as well as the police.

The agencies are responsible for the monitoring of obligations relating to the payment of certain remunerations based on Copyright Act. The Regional State Administrative Agencies have a broad authority to enforce the copyright law, especially in regard of the levy imposed on blank discs and other recordable devices and the control of resale.

The Regional State Administrative Agencies carry out inspections on manufacturers and distributors, as well as on the sellers of artistic works. Inspections are carried out on either Teosto's or Kuvasto's request⁵. For the above organizations, assistance has been given for checking accountings as the said

⁴ The website of Regional State Administrative Agencies is located at the following address: <http://www.avi.fi>. Visited on 14.6.2013.

⁵ Teosto and Kuvasto are collective management organizations responsible for the collection and distribution of levies. For a description of Finland's collective management organizations, see the report on Description Sheet 12 – *Collective management of rights*

collective management organizations themselves do not have the right to inspect accountings. The representative of a collecting society has participated in the audit mainly as an expert and an assistant. The South-West Finland's Regional State Administrative Agency, which was consulted for the research, does not have separate human resources assigned on copyright tasks.

Conclusions

A. ANALYSIS AND SUMMARY OF THE RESULTS

Finland does not have a single agency responsible of copyright matters. The responsibilities are shared between different actors, namely:

- the Ministry of Education and Culture, responsible mainly for copyright law development and international cooperation in the field
- the Copyright Council, composed of representatives of different copyright stakeholder groups. The Copyright Council offers opinions on the interpretation of copyright law which are not legally binding but generally respected by public authorities.
- the Regional State Administrative Agencies, responsible for the monitoring of obligations relating to the payment of certain remunerations based on Copyright Act (levies and the control of resale).

The Copyright Council in particular is an agency unique to Finland. It can be seen as a system of alternative dispute resolution.

B. METHODOLOGICAL FINDINGS

▪ LIMITATIONS

Concerning the Regional State Administrative Agencies, their duties in copyright-related issues are only a small part of their activities and therefore difficult to describe separately.

▪ GUIDELINES FOR FUTURE RESEARCH

The time needed for this pilot study will depend for each country on the availability of data. The task consists mainly in gathering information and in some cases, relatively limited analysis when facing country specific agencies, organizations or bodies such as the Copyright Council. In the case of Finland, the workload for collecting data and drafting this report could be evaluated at 2 weeks of full-time work.

Appendices

A. DESCRIPTION SHEET

Description sheet as presented in the Methodology Handbook, version 20.12.2012.

Description sheet 7. Public administration of copyright		
<p>Description of Government departments, government agencies and other public actors responsible for the public administration of copyright matters or otherwise involved in the public administration of copyright matters: For each department, agency or other actor define</p> <ul style="list-style-type: none"> - their responsibilities and main operations regarding copyright, - the authorities they are accountable to, - their relations to other relevant departments, agencies and other public actors, - the services they offer, and - when possible, the extent to which their services are used. <p>Availability of public information on the repertoire:</p> <ul style="list-style-type: none"> - Description of registration or recordation bodies and systems used in the country?⁶ 		
Guidelines for data collection	The information can be collected through available, mostly national information sources as a desktop study. This data can be complemented by expert interviews.	
Definitions	<i>Public actors</i>	<i>Actors with responsibilities in public governance of copyright-related matters at the national and other administrative levels (such as regions, provinces or states)</i>
	<i>Registration / recordation body</i>	<i>Public body recording or registering the creation of copyrighted works in order to establish evidence of authorship</i>
Limitations of the indicator	As such, the description sheet doesn't tell about the functioning or effectiveness of the public administration of copyright.	

B. INFORMATION SOURCES

- WIPO's collection of National Intellectual Property Offices, <http://www.wipo.int/directory/en/urls.jsp>
- *Regulations of audio-visual markets: information in the country profiles of the Study on "Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive"* - SMART 2009/0001 http://ec.europa.eu/avpolicy/info_centre/library/studies/index_en.htm
- Sorvari, Katariina (ed.) – *Tekijänoikeusneuvosto 25 vuotta*. Helsinki 2011.
- *Valtioneuvoston asetus opetus- ja kulttuuriministeriöstä (310/2010)*, text in Finnish available at Finlex: <http://www.finlex.fi/fi/laki/alkup/2010/20100310>.

⁶ For more information on registration and recordation systems in WIPO Member States, see WIPO summary of the responses to a questionnaire for survey on copyright registration and deposit systems (2010), http://www.wipo.int/export/sites/www/copyright/en/registration/pdf/registration_summary_responses.pdf. Visited on 7.11.2013.

C. CONSULTED PARTIES

- Staff of the Ministry of Education and Culture including Jorma Waldén, Tiina Kautio and Anna Vuopala (18.4.2013)
- Copyright Council: Anniina Huttunen (15.4.2013)
- South-West Finland's Regional State Administrative Agency: Inspector Joonas Rinne (10.4.2013)

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Cupore webpublications 39:1	<i>National Context. Report on Piloting in Finland.</i>
Cupore webpublications 39:2	<i>International and Regional Context. Report on Piloting in Finland.</i>
Cupore webpublications 39:3	<i>Technological Development. Report on Piloting in Finland.</i>
Cupore webpublications 39:4	<i>Macroeconomic Importance of Copyright Industries. Report on Piloting in Finland.</i>
Cupore webpublications 39:5	<i>Markets for Copyrighted Products and Services – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:6	<i>Volume of Domestic Production of Copyrighted Products and Services. Report on Piloting in Finland.</i>
Cupore webpublications 39:7	<i>Volume of Exported and Imported Copyrighted Products and Services. Report on Piloting in Finland.</i>
Cupore webpublications 39:8	<i>Development of Digital Business Models and Income Based on Digital Distribution. Report on Piloting in Finland.</i>
Cupore webpublications 39:9	<i>Copyright Law. Report on Piloting in Finland.</i>
Cupore webpublications 39:10	<i>Copyright Policy. Report on Piloting in Finland.</i>
Cupore webpublications 39:11	<i>Public Consultation on Law Proposals. Report on Piloting in Finland.</i>
Cupore webpublications 39:12	<i>Use of Impact Assessment and Research in Policy Development. Report on Piloting in Finland.</i>
Cupore webpublications 39:13	<i>Public Administration of Copyright. Report on Piloting in Finland.</i>
Cupore webpublications 39:14	<i>Enforcement by Public and Private Actors – Focus: Public Authorities. Report on Piloting in Finland.</i>
Cupore webpublications 39:15	<i>Enforcement by Public and Private Actors – Focus: Private Actors. Report on Piloting in Finland.</i>
Cupore webpublications 39:16	<i>Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland.</i>
Cupore webpublications 39:17	<i>Application of Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland.</i>
Cupore webpublications 39:18	<i>Availability of Alternative Dispute Resolution Mechanisms. Report on Piloting in Finland.</i>
Cupore webpublications 39:19	<i>Use of Alternative Resolution Mechanisms for Solving Copyright Disputes. Report on Piloting in Finland.</i>
Cupore webpublications 39:20	<i>Individual Exercise of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:21	<i>Collective Management of Rights. Report on Piloting in Finland.</i>
Cupore webpublications 39:22	<i>Efficiency of Collective Management Organizations. Report on Piloting in Finland.</i>
Cupore webpublications 39:23	<i>Copyright-related Information Activities. Report on Piloting in Finland.</i>
Cupore webpublications 39:24	<i>Copyright-related Education for the Public in General. Report on Piloting in Finland.</i>
Cupore webpublications 39:25	<i>Public Awareness of the Rights. Report on Piloting in Finland.</i>
Cupore webpublications 39:26	<i>Copyright-related Education as Part of the Education of Professionals for Creative Industries. Report on Piloting in Finland.</i>
Cupore webpublications 39:27	<i>Research on Copyright-related Topics. Report on Piloting in Finland.</i>
Cupore webpublications 39:28	<i>Copyright-related Research and Study Programs in Universities and Research Institutes. Report on Piloting in Finland.</i>
Cupore webpublications 39:29	<i>Efficiency of Copyright as an Incentive to Create and Invest in Creative Works – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:30	<i>Access to Copyrighted Works by the Public. Report on Piloting in Finland.</i>
Cupore webpublications 39:31	<i>Access to Copyrighted Works for Follow-on Creation.</i>
Cupore webpublications 39:32	<i>Transaction Costs in Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:33	<i>Terms for Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:34	<i>Unauthorized Use of Copyrighted Works in Physical Form. Report on Piloting in Finland.</i>
Cupore webpublications 39:35	<i>Unauthorized Use of Copyrighted Works in Digital Form. Report on Piloting in Finland.</i>
Cupore webpublications 39:36	<i>Analysis of Stakeholders' Opinions on the Copyright System – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.</i>
Cupore webpublications 39:37	<i>Analysis of Stakeholders' Opinions on the Copyright System – Focus: End-users. Report on Piloting in Finland.</i>