

Assessing Copyright and Related Rights Systems

Use of Impact Assessment and Research in Policy Development

Report on Piloting in Finland



The logo for Cupore, consisting of the word "cupore" in a white, lowercase, sans-serif font, centered within a solid red rectangular background.

Assessing Copyright and Related Rights Systems: Use of Impact Assessment and Research in Policy Development. Report on Piloting in Finland.

This report is the result of the first pilot study implementing Methodology Card 6 – *Use of Impact Assessment and Research in Policy Development*, 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 between July and September 2014. The work was supervised by Professor Anita Kangas (University of Jyväskylä), the steering group of the project, as well as the core project team. The results were first published in December 2014 on the website of Cupore.

A handbook presenting the methodology framework is available on the website of Cupore at 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 6 presented in the methodology handbook, titled “The Use of Impact Assessment and Research in Policy Development”. This report presents data on impact assessment regarding the Finnish copyright legislation and use of research in policy development.

The “*Bill Drafting Instructions*” (2004) and supplementary “*Guidelines for Impact Assessment in Legislative Proposals*” (2007) provide guidelines for impact assessment in the Finnish legislative drafting process. The documents present the categories of economic impact, impact on public administration, environmental impact and social impact. Impact assessment regarding copyright law in Finland in the 2000s has been conducted primarily by officials at the Ministry of Education and Culture while other ministries, public authorities, experts and representatives of different stakeholder groups have been consulted during the processes. The comprehensiveness and quality of the impact assessment procedures have varied according to the available time and resources.

The Ministry of Education and Culture uses its extensive contact network of experts and researchers when commissioning studies. In the 2000s, compensation fees for researchers have been considered case by case and have varied between a few thousand to 15 000 euros, depending on the complexity of the issue and comprehensiveness of the study. Officials at the ministry use several kinds of existing research findings as background material in developing copyright policy and legislation. Information sources include studies, reports and communications published by European Union bodies, international organizations and governments, as well as academic monographs, theses and articles produced in universities.

This pilot study included a case example focusing on impact assessment and research used in the legislative drafting process regarding the prevention of unauthorized file-sharing. The analysis focused on a background study report “*Assessing Means for Diminishing Unauthorized File-sharing*”, (“*Luvattoman verkkojakelun vähentämiskeinojen arvointia; Selvitykset lainvalmistelun tueksi*”) published by the Ministry of Education and Culture in 2013 to support the decision making process. The impacts described in the report’s “Impact Assessment” section are consistent with the categories defined in the impact assessment guidelines of the Ministry of Justice: the economic impacts are evaluated in the background study especially from the perspectives of telecom operators and right holders. The impacts on public administration mainly cover the duties and procedures, personnel and organization, the administrative procedures and costs of the Finnish Communications Regulatory Authority and courts. The social impacts are related to topics such as fundamental rights, due process rights, attitudes and values, and ICT-infrastructure. Different kinds of domestic and foreign information sources were used in the background study including 11 survey studies, 3 other studies, 4 academic articles or theses, 11 policy documents, 10 news/articles/websites and one statistics report. These studies were used primarily to demonstrate and assess the extent of unauthorized file-sharing and its impacts, the availability of legal online services, consumers’ attitudes and values, as well as policies and legislation related to unauthorized file-sharing in Finland and abroad.

When considering the results of this pilot study it can be concluded that in the case of Finland impacts have been routinely assessed in the 2000s but the comprehensiveness and quality of the assessment has varied between the initiatives analyzed. Both domestic and foreign studies have been used by officials to support policy development.

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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 Methodology card 6 of the methodology framework, titled "The use of impact assessment and research in policy development". It is the result of the first pilot study applying this indicator in Finland.

This study was conducted by Project Researcher Jukka Kortelainen between July and September 2014. The work was supervised by Professor Anita Kangas (University of Jyväskylä), the steering group of the project, as well as the core project team.

B. PRESENTATION OF THE INDICATOR

The indicator implemented here 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". The indicator is described in a methodology card specifying the topics to be studied, and it aims at examining the extent to which impact assessment studies and research are used in policy development.

As explained in the methodology handbook, the assessment of the impacts of copyright law and policy, and the use of research in the development of copyright policy are essential aspects of a well-functioning copyright system. The information collected using this Methodology card will, together with Methodology card 5 (*Public consultation on law proposals*), tell about the scope of the preparation of law proposals and the development of copyright policies. These sets of information will help to analyze the degree to which objective evidence is taken into account when preparing law proposals or changes to law, or when adopting new policies, strategies and programs. This information will also provide indications on the compliance to generally recognized good governance principles, such as equity and inclusiveness, participation, consensus orientation, transparency and strategic vision.

The first part of this indicator discusses the impact assessment studies regarding copyright policy and copyright law. The existence of impact assessment studies will tell about commitment to seek balanced

outcomes that are of public interest. Regularly undertaking impact assessments will help to foresee effects that might counteract the purposes of legislative and policy choices and such studies are therefore important tools in the hands of legislators and policy makers. The quality and comprehensiveness of impact assessment is not considered in this indicator, as quality is difficult to assess and collecting such data is generally not feasible. However, the existence of impact assessment will underline the authorities' commitment in carefully planning legislations and evaluating legislative systems. In any case, the impact of law proposals and policy changes for all relevant stakeholder groups should be studied in order to seek a well-balanced copyright system. The impacts of the established structures and legislations already in force profit from being re-evaluated on a regular basis considering the changes in society, the context in which the copyright system operates and the evolution of the markets.

The second part of the indicator focuses on the use of research in policy development. It proposes to study the number of academic papers and other studies referenced as sources in public copyright policy documents. This can be studied by analyzing official documents in order to identify research references and possibly listing them or describing them by their amount and their extent. The purpose is to assess whether research from external sources is commonly used as an information source when drafting copyright policy. This data will tell about the use of different types of research in policy development, to complement the information on the preparation of law proposals provided by Methodology card 5.

The results of this indicator could be interpreted with the support of the description of the copyright law and policies (Description sheets 5 and 6). Conducting frequent impact assessment and using research as the basis of the development of law and public policies tell about the thoroughness of the legislative process. Impact assessment studies can also be seen as a tool in informing the public in general as well as different interest groups about the reasons for, and the outcomes of different policy choices (see Methodology card 10 – *Public awareness of the rights*).

The needs for scientific research and impact assessment will depend on the legislative and policy agenda and the topics of possible law proposals under preparation, which will require different levels of research-based justification or ex-ante impact assessment. Therefore, the types of impacts studied and the use of academic papers and other studies as references should be interpreted according to the needs case by case, for each of the copyright policy or legislative initiative separately. One limitation of the indicator concerns its scope: even though the indicator focuses on studies commissioned or used by the government, there may be relevant research commissioned by other actors such as industry representatives. The results of parameter 2 are likely to depend on the general availability of scientific and other relevant publications. Research on copyright-related issues made in universities and research institutions is the topic of Description sheet 15 and Methodology card 12.

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

C. METHODS

The information collected for this indicator was found through available national information sources. The method chosen was therefore desktop studies. This data was complemented by interviewing officials of the Ministry of Education and Culture. The study includes a case study focusing on the impact assessment and research used in the legislative drafting process regarding prevention of unauthorized file-sharing.

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

SECTION 1. IMPACT ASSESSMENT ON COPYRIGHT LEGISLATIVE INITIATIVES

This section focuses the level of impact assessment on copyright legislative initiatives by first studying the Finnish and European guidelines for impact assessment, and secondly, by presenting as an example the impacts assessed in the case of a specific legislative initiative on the prevention of unauthorized file-sharing.

A. GUIDELINES FOR IMPACT ASSESSMENT IN LEGISLATIVE PROPOSALS

▪ GUIDELINES OF THE FINNISH GOVERNMENT

The Finnish Government adopted the current **Bill Drafting Instructions**¹ for ministries upon a presentation by the Ministry of Justice in 2004. The instructions superseded the earlier *“Instructions on the Drafting of Government Proposals”* (1992). It is stated in the instructions that *“all relevant impacts should be considered in Bill drafting. (...) The objective is that, where necessary, a separate impact assessment report is published while the Bill is being drafted; in this event, only a summary of the report need to be presented in the Bill itself.”* According to the instructions, impacts should be assessed in different categories such as economic impact, impact on the activities of the authorities, environmental impact and societal impact. The instructions propose an assessment of impacts from the following perspectives: short and long term effects, direct and indirect effects, positive and negative effects, singular or recurring effects, and temporary or permanent effects.²

To supplement the Bill Drafting Instructions, the Government has adopted the **“Guidelines for Impact Assessment in Legislative Proposals”**³ after a presentation by the Ministry of Justice in 2007. The Guidelines replaced the previous instructions given in the Government resolutions on economic impacts assessment (1998), environmental impact assessment (1998), business impact assessment (1999) and regional development impact assessment (2003). *“The Guidelines describe, sector by sector, what kinds of impact may be involved, how the impact may be assessed, and what methods and information sources are available for this purpose. (...) The Impact Assessment Guidelines are applicable to legislative drafting and, in so far as appropriate, also in the drafting of subordinate regulation, that is, Decrees and other norms as referred to in section 80 of the Constitution. The Manual should likewise be applied in the national impact assessment relating to the preparation and adoption of EU norms and to the implementation of international obligations.”*⁴

¹ “Hallituksen esitysten laatimisohteet” in Finnish. The Bill Drafting Instructions are available in English at <http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/20063billdraftinginstructions.html> and in Finnish at <http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/20044hallituksenesitystenlaatimisohteet.html>. Visited on 4.7.2014.

² Source: pages 1 and 16 of the Bill Drafting Instructions.

³ “Säädöshdotusten vaikutusten arviointi” in Finnish. The “Guidelines for Impact Assessment in Legislative Proposals” document is available in English at http://oikeusministerio.fi/material/attachments/om/julkaisut/6FiopyBT5/nettiversio_60_s.pdf and in Finnish at <http://www.oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/200706saadosehdotustenvaikutustenarviointi.ohteet.html>. Visited on 4.7.2014.

⁴ Source: “Foreword” section and page 15 of the “Guidelines for Impact Assessment in Legislative Proposals”.

Different kinds of information sources, such as statistics, research reports and expert or stakeholder consultations can be used in the assessment of legislative initiatives. *“The selection of methods should be based on an evaluation of what is the most cost-effective means for procuring the information needed for the impact assessment. There are a number of different quantitative and qualitative methods of impact assessment. In the event that the impact cannot be assessed quantitatively or precisely, it is nonetheless important to assess the direction and magnitude of the impact and the various causal chains that may arise. Especially in the case of projects with a significant and complex impact, under conditions of inadequate reliable information on the impact, there is reason to consider whether to commission a separate impact assessment report from an external expert.”*⁵

The guidelines present the different categories of impact and methods for data collection. The categories of impacts are summarized in the following table.

Table 1. The categories of impact as presented in the “Guidelines for Impact Assessment in Legislative Proposals” (2007, Ministry of Justice)⁶	
Categories of impact	Targets of the impact
Economic impact	households
	businesses
	public finances
	the economy
Impact on Public Administration	inter-authority relationships
	the duties and procedures of the authorities
	personnel and organization
	administrative procedures and costs
Environmental Impact	human health, living conditions and comfort
	the soil, water, air, climate, vegetation, animals and natural diversity
	community structure, the built environment, landscapes, cityscapes and cultural heritage
	the use of natural resources
	the interrelationships of the aspects referred to above
Social Impact	the status of the citizens and the functioning of the democratic society
	social affairs and health
	equality, children and gender equality
	employment and the working life
	crime prevention and security
	social affairs and health
	the Information Society

The Ministry of Education and Culture uses the guidelines of the Ministry of Justice as a framework when assessing the impacts of the copyright-related legislative initiatives. The comprehensiveness and quality of the impact assessment in the 2000s have varied between the initiatives depending on the available time and resources. Impact assessments have been conducted regarding copyright-related initiatives, but the evaluation has not been systematic. The assessment is usually conducted by officials at the Ministry of Education and Culture; third party researchers are rarely commissioned for this

⁵ Source: Page 17 of the “Guidelines for Impact Assessment in Legislative Proposals” document, available online at http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/200804impactassessmentinlegislatedrafting.guidelines/Files/OMJU_2008_4.pdf. Visited on 2.12.2014.

⁶ Source: Pages 18-44 of the “Guidelines for Impact Assessment in Legislative Proposals” document, available online at http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/200804impactassessmentinlegislatedrafting.guidelines/Files/OMJU_2008_4.pdf. Visited on 2.12.2014.

purpose. However it is common for the Ministry of Education and Culture to commission studies from third parties before the actual legislative drafting stage in order to clarify the state of affairs and to identify different legislative options in a specific area.⁷

▪ GUIDELINES OF THE EUROPEAN COMMISSION

The European Commission conducts impact assessments in the context of all the projects in its legislative working program.⁸ These may include legislative proposals, non-legislative initiatives (such as white papers, action plans, financial programs and guidelines for international agreements), implementation measures and delegated acts.⁹ The impact assessments are based on the Commission's guidelines published on 15 January 2009¹⁰. The six key analytical steps of the guidelines are:

- (1) What is the problem?
- (2) What are the policy objectives?
- (3) What are the policy options?
- (4) What are the likely economic, social and environmental impacts?
- (5) How do the options compare?
- (6) What are the arrangements for future monitoring and evaluation?

As part of the European Commission's impact assessment procedures, stakeholders are consulted and the final impact assessment reports are made public¹¹.

B. CASE EXAMPLE: IMPACT ASSESSMENT REGARDING THE LEGISLATIVE INITIATIVE ON THE PREVENTION OF UNAUTHORIZED FILE-SHARING

Impact assessment of the copyright legislative initiative regarding the prevention of unauthorized file-sharing was analyzed in this study to get an overview of the use of the Ministry of Justice's guidelines in practice. This analysis focused on one initiative only which was the object of particularly extensive impact assessment, and therefore it cannot be considered representative of impact assessment generally conducted at the Ministry of Education and Culture. The case however provides an example on how the instructions of the Ministry of Justice are applied in practice.

The Program of Prime Minister Jyrki Katainen's Government¹², published on 22.6.2011, states that *"Illegal use of creative material will be restricted by means of dissemination of information and by developing legislation and more effective implementation thereof."* The Ministry of Education and Culture started the legislative drafting process regarding to the prevention of unauthorized file-sharing in October 2013. However, the means for preventing unauthorized file-sharing and promoting the

⁷ The information was provided by Anna Vuopala, Jukka Liedes and Viveca Still, Ministry of Education and Culture (interviewed on 16.6.2014).

⁸ Source: Page 15 of the "Guidelines for Impact Assessment in Legislative Proposals" document, available in English at http://oikeusministerio.fi/material/attachments/om/julkaisut/6FiopyBT5/nettiversio_60_s.pdf. Visited on 4.7.2014.

⁹ Source: Website of the European Commission, available in English at http://ec.europa.eu/smart-regulation/impact/index_en.htm. Visited on 2.9.2014.

¹⁰ European Commission's Impact assessment guidelines are available in English at http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf. Visited on 2.9.2014.

¹¹ Source: Website of the European Commission, available in English at http://ec.europa.eu/smart-regulation/impact/index_en.htm. Visited on 2.9.2014.

¹² See the program in English at <http://valtioneuvosto.fi/tietoarkisto/aiemmat-hallitukset/katainen/hallitusohjelma/pdf/en.pdf>. Visited on 7.7.2014.

operation of legal markets have been addressed since the branch talks in 2008¹³. The background study “*Assessing means for diminishing unauthorized file-sharing*” (“Luvattoman verkkojaketun vähentämiskeinojen arvointia; Selvitykset lainvalmistelun tueksi”) published by the Ministry of Education and Culture in 2013 to support decision making in the legislative drafting process. The study evaluates four different legal options for preventing unauthorized file-sharing which have been proposed at different stages of the process. These include notification procedures¹⁴, access blocking¹⁵, slowing down injunctions and domain closure. The report comprises 143 pages and presents unauthorized file-sharing related research, current legislation and actions taken in Finland and abroad, as well as prospective future options in eliminating unauthorized file-sharing.

The background study includes a section (35 pages) on impact assessment¹⁶ covering in depth assessment of each of the four legislative options¹⁷. Each of the legislative options is analyzed within the framework of six categories of impact: Impact on fundamental rights, impact on procedural law, social impact, economic impact, impact on public administration, technical and other impacts. The impacts evaluated within these categories were further analyzed in this study and divided into the categories defined in the guidelines of the Ministry of Justice¹⁸ presented in the Table 1 of this report. The relevance of the different categories of impacts presented in the guidelines varies between legislative proposals. For example, the area of environmental impacts is not relevant in the impact assessment of the legislative initiative regarding unauthorized file-sharing reviewed here. There are also sub-categories

¹³ “In autumn 2008 Finland conducted branch talks led by Mr. Arne Wessberg in order to find means for promoting electronic commerce in creative content and reducing illicit file-sharing over the internet. The parties to the branch talks comprised representatives of the film, music and games industries, internet service providers, content business companies and authorities.” The discussions concluded that previously mentioned goals would be best achieved by (1) ensuring better access by developing legal services, (2) ensuring the conditions for rapid intervention against illicit file-sharing of creative content and (3) by disseminating knowledge to consumers on multiple forums. (...) Source: Legislative means for eliminating illicit file-sharing, available in Finnish (summary in English) at <http://www.minedu.fi/export/sites/default/OPM/Julkaisut/2009/liitteet/tr21.pdf?lang=fi>. Visited on 7.7.2014.

¹⁴ As follow-up to the branch talks in 2008, the Ministry of Education appointed a committee to look into and prepare legislative means for eliminating illicit file-sharing. In the report “Legislative means for eliminating illicit file-sharing”, published on 19.8.2009, the committee proposed a notification letter procedure as a means for preventing illicit file-sharing. The bill concerning the notification procedure lapsed in 2010 in the Parliament of Finland.

Sources:

- Assessing means for diminishing unauthorized file-sharing (2013), available in Finnish at http://www.minedu.fi/OPM/Julkaisut/2013/Luvaton_verkkojakelu.html. Page 69. Visited on 8.7.2014.
- Legislative means for eliminating illicit file-sharing (2009), available in Finnish (summary in English) at <http://www.minedu.fi/export/sites/default/OPM/Julkaisut/2009/liitteet/tr21.pdf?lang=fi>. Visited on 7.7.2014.
- Website of the Ministry of Education and Culture. http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeuden_kehittaminen/vireilla_tekijanoikeus/arkisto/luvaton_verkkojakelu/index.html. Visited on 8.7.2014.

¹⁵ The Copyright Commission’s report “Solutions to the challenges of the digital age”, published on 20.12.2011, states that current legal tools are not sufficient in preventing unauthorized file-sharing. According to the Commission, the problem is that the hosts of the illegal services are often anonymous or located in countries that do not have efficient legal means for intervention. The Commission proposed that “Section 56 g of the Copyright Act be amended to allow courts to rule that teleoperators (provider of internet connection) shall deny its clients access to a website whose purpose is to make available copyright protected content without the consent of the rightholder, unless it would be unreasonable taking into account the rights of the person making content available to the public, the intermediary and the author. Based on the judgment of the Commission such a regulation could work to decrease the negative effects of file sharing to the rightholders and the consumers and lead them to take advantage of legal services.” Source: Report of the Copyright Commission - Solutions to challenges of the digital age. Available in Finnish (summary in English) at http://www.minedu.fi/OPM/Julkaisut/2012/Tekijanoikeustoimikunnan_mietinto.html?lang=fi&extra_locale=fi. Visited on 8.7.2014.

¹⁶ In addition to the “Impact Assessment”-section of the study, the impacts are assessed separately in the unauthorized file-sharing – related bill draft too. The assessment is carried out according to the instructions of the Ministry of Justice and “Economic Impact”, “Impact on Public Administration” and “Social impact” are covered briefly under their own sub-headings.

¹⁷ The impacts of voluntary actions and dissemination of knowledge are assessed briefly in their own sections as well.

¹⁸ The ”Guidelines for Impact Assessment in Legislative Proposals” are available in English at http://oikeusministerio.fi/material/attachments/om/julkaisut/6FiopyBT5/nettiversio_60_s.pdf. Visited on 4.7.2014.

within the categories of economic impacts and social impacts which were not evaluated in the “*Impact assessment*” section of the background study. These include public finances in the area of economic impacts, as well as social affairs and health, regional development, equality, children and gender equality in the area of social impacts.

The following table and paragraphs present the impacts described in the background study’s “*Impact assessment*” section. All the impacts were not assessed in connection with all the four legislative options. The comprehensiveness of the assessment is not discussed.

Table 2. Impact assessment in the background study regarding the legislative proposal on prevention of unauthorized file-sharing	
<i>The following legal options were assessed: Notification procedure; Access blocking; Slowing down injunction; and Domain closure</i>	
Categories of impact	The impacts evaluated in the study
Economic impact	households: Impact to consumer markets of creative products
	businesses: Impacts on business freedom, impacts on right holders’ and telecom providers’ economy, different types and amounts of costs (e.g. labor and system costs) for telecom providers and right holders at the different stages (planning, enforcement, administration) of the process, impacts to businesses willing to invest in electronic commerce of copyrighted content.
	the economy: Impact on the economics of digital network content, electronic commerce and economic foundation of culture and communication, and through this impact on production, trade and employment rates
Impact on Public Administration	inter-authority relationships: Impact resulting from the need for judicial assistance from the domestic and foreign authorities (e.g. for public domain closure)
	the duties and procedures of the authorities : Impacts on the duties and procedures of the Finnish Communications Regulatory Authority or other authority established for the purposes of the proposals (e.g. collection, storage and release of information), impacts on responsible courts and procedures (trials, hearings, application issues)
	personnel and organization: Impact on the workload for the Finnish Communications and Regulatory authority or other authority established for the purposes of the proposals, workload for courts
	administrative procedures and costs: Costs of collection, storage and release of information, sharing of responsibilities for the costs between states, liability for legal costs, remuneration costs
Social impact	status of the citizens and the functioning of the democratic society: Impact on fundamental rights of citizens such as property protection, privacy protection, the confidentiality of communication, the freedom of speech, due process rights of citizens and alleged infringers; impact on values and attitudes towards copyright and piracy, impact on cultural interests
	employment and the working life: Impact on the economics of digital network content, electronic commerce, as well as the economic foundation of culture and communication and through this, impact on production, trade and employment rates
	crime prevention and security : impacts on the amount and acceptancy of unauthorized file-sharing
	Information society: (1) impact on businesses offering information society services: - Impacts on electronic commerce in general and on businesses of the content industry as a consequence (2) impact on individuals using information society services:

- Impacts on consumers' perceived fairness of copyright
- (3) impacts on ICT infrastructure:**
- Impacts on the telecommunications network as a whole and regionally; e.g. issues of integrity, security and internet neutrality
- Potential technical problems (misalignment of techniques, methods for bypassing the restrictions and collateral damage to third parties) and their solutions

▪ ECONOMIC IMPACTS

The guidelines of the Ministry of Justice (The Guidelines for Impact Assessment in Legislative Proposals, 2007) propose assessing the economic impacts in four areas: households, businesses, public finances and the economy in general. In the background study analyzed, direct impacts on households are not covered but indirect impacts on consumers are evaluated through the development of markets of creative products. The guidelines suggest using the viewpoint of a "typical target business" when analyzing impacts on businesses at the company level.¹⁹ Typical target businesses considered in the impact assessment of the background study are right holders and telecom operators. Impacts on right holders' and telecom providers' economy are evaluated in the context of decreasing unauthorized file-sharing and emerging legal markets as a consequence.

The impact assessment guidelines of the Ministry of Justice present two types of economic costs for businesses: (1) Costs of doing business including necessary investments in machinery, tools, production methods, buildings, information systems and personnel training, or recurring costs, such as labour, capital and financial costs. (2) Administrative costs including costs of notifications, licenses, reporting and registration. Both types of costs are evaluated in the background study from the perspectives of telecom operators and right holders and are expected to be incurred at the different stages (planning, enforcement, administration) of the process. According to the guidelines, the economic impacts should be assessed in monetary terms whenever possible²⁰. The costs per transaction are evaluated in connection with the notification procedure and access blocking in the "Impact assessment" section, as well as in other sections of the study report²¹. The guidelines also propose evaluating impacts on businesses' investments or investment opportunities²². The notification procedure is evaluated as advantageous to businesses willing to invest in electronic commerce of copyrighted content.

According to the Ministry of Justice's Guidelines for Impact Assessment in Legislative Proposals, once the economic impacts of proposed regulation on different target groups has been completed, it may be necessary to assess the impact of the proposal on the economy as a whole. The macroeconomic impacts may pertain to employment rates, investment, consumption, production, imports, exports and price levels.²³ The proposals' impacts for business freedom are assessed at the macroeconomic level. The study also evaluates the proposals' impact on the economic foundation of culture and communication and impacts on production, trade and employment rates as a consequence. The decreasing rate of unauthorized file-sharing is expected to have impacts on the conditions for investments in electronic commerce.

¹⁹ Source: Page 20 of the "Guidelines for Impact Assessment in Legislative Proposals".

²⁰ Source: Page 27 of the "Guidelines for Impact Assessment in Legislative Proposals".

²¹ For example, see page 80 of the report.

²² See the page 22 of the "Guidelines for Impact Assessment in Legislative Proposals".

²³ Source: Page 26 of the "Guidelines for Impact Assessment in Legislative Proposals".

▪ IMPACT ON PUBLIC ADMINISTRATION

The guidelines of the Ministry of Justice propose assessing the impact on public administration in four areas: inter-authority relationships, the duties and procedures of authorities, personnel and organisation, as well as administrative procedures and costs. Special emphasis in the background study's impact assessment is placed on the categories of "*duties and procedures*", "*personnel and organization*", as well as "*administrative procedures and costs*" concerning the Finnish Communications Regulatory Authority²⁴ and courts. The former's duties and procedures are related to issues such as collection, storage and release of information and the latter's to trials, hearings, and application issues. The inter-authority relationships are evaluated from the perspective of assistance between domestic and foreign authorities.

▪ SOCIAL IMPACTS

Social impacts are evaluated in the following areas proposed by the guidelines: "*status of the citizens and the functioning of the democratic society*", "*employment and the working life*", "*crime prevention and security*", and "*the information society*".

According to the guidelines, "*impact on the status of citizens in society and on the functioning of democratic society covers e.g. impact on values and attitudes, the realization of fundamental rights and due process, the co-operation and legal relationships among citizens, the status and behavior of population groups, and the functioning of democratic society.*"²⁵ In the background study this area is evaluated especially from the perspective of fundamental rights, such as property protection, privacy protection, the confidentiality of communication and the freedom of speech, as well from the perspective of due process rights of the citizens and alleged infringers. The impacts on citizens' attitudes and values towards copyright and piracy, as well as impacts to cultural interests are evaluated in the study as well. The area of employment and the working life is assessed mainly through indirect impacts to employment rate caused by the proposals' impact on the electronic commerce and economic foundation of culture and communication. The area of crime prevention and security is evaluated through changes in the amount and acceptance of unauthorized file-sharing.

According to the guidelines, direct or indirect information society impacts can be caused to businesses offering information society services, individuals using such services and the behavior of these individuals, as well as to the ICT infrastructure.²⁶ In the background study, the information society impacts are evaluated in these three categories: (1) The impacts on businesses offering information society services are evaluated through the impacts on electronic commerce and businesses of the content industry. (2) The impact on individuals using information society services are evaluated through consumers' perceived fairness of copyright. (3) The impacts on ICT infrastructure are evaluated in the context of the telecommunications network as a whole and regionally from the viewpoints of integrity, security and Internet neutrality. In addition, potential technical problems and solutions related to different legislative options, such as misalignment of the measures, means of bypassing the restrictions and collateral damage caused to third parties are evaluated in the impact assessment.

▪ CONSULTED PARTIES

The Guidelines state that "*hearings and comments by other ministries, authorities, experts and stakeholders should be utilised in the impact assessment*" (...) *The examination and evaluation of the*

²⁴ Or other authority established for the purposes of the proposals.

²⁵ Source: Page 35 of the "Guidelines for Impact Assessment in Legislative Proposals".

²⁶ Source: Page 43 of the "Guidelines for Impact Assessment in Legislative Proposals".

impact of the various options promote also the chances of target groups, stakeholders and others to participate in the regulatory process. Stakeholders and those affected by regulatory reforms are often in a position to offer relevant information about the impact of a proposed reform. Awareness of the reform project and its estimated impact will also aid target groups in preparing for the changes and thus make the implementation of the reform easier. Impact assessment and the open dissemination of its results will increase the transparency of regulatory drafting and decision-making and thereby also the credibility of the decision-makers. It is in any event necessary for the decision-maker to supply reasons for the choice of a given alternative or approach".²⁷

Several parties, such as ministries, authorities, experts and stakeholders were consulted when conducting the background study and assessing the impacts. The consulted parties are listed in the following table.

Table 3. Consulted parties in the background study made in connection with the legislative drafting regarding unauthorized file-sharing
Ministries
The Ministry of Employment and the Economy
The Ministry of Justice
The Ministry of Transport and Communications
Other public authorities
The Finnish Communications Regulatory Authority
The Office of the Data Protection Ombudsman
The Market Court
Experts
Experts in procedural law
Experts on fundamental rights
Stakeholder groups
Lyhty - a joint project of creative sector artists, employees, and entrepreneurs in Finland
Nets (Nordic provider of payment-, cards- and information solutions)
The Association of Finnish Advertisers

²⁷ Source: Pages 9-10 and 13 of the "Guidelines for Impact Assessment in Legislative Proposals"-document, available in English at http://oikeusministerio.fi/material/attachments/om/julkaisut/6FiopyBT5/nettiversio_60_s.pdf. Visited on 4.7.2014.

SECTION 2. THE USE OF RESEARCH IN COPYRIGHT POLICY DEVELOPMENT

Section 2 focuses on the use of research in copyright policy development by the Ministry of Education and Culture, and presents as an example the use of research in the background study concerning a specific legislative initiative on the prevention of unauthorized file-sharing.

A. COPYRIGHT-RELATED RESEARCH AT THE MINISTRY OF EDUCATION AND CULTURE

The Division for Copyright Policy and the Economy of Culture of the Ministry of Education and Culture commissions studies while planning future actions and whenever there is a need for information on the current state of affairs.²⁸ The studies commissioned by the division are usually conducted by a third party researcher. The ministry has an extensive contact network used to commission studies for different purposes. The nature of the subject affects the commission: the more sensitive issues require a researcher or investigator with a good understanding of societal phenomena. The neutrality of the researcher is considered especially important in sensitive cases²⁹. Studies with more technical aspects are often commissioned from university students. The researcher's compensation fee is considered case by case and the compensations vary between a few thousands to 15 000 euros depending on the complexity or comprehensiveness of the study. A typical extensive study costs approximately 12 000 euros. In the interviews the officials of the ministry stated that they have had so far enough resources to commission studies whenever considered necessary.³⁰

The information sources supporting the development of copyright policy and legislation include studies, reports and communications published by European Union bodies, international organizations, governments, public authorities, commercial and non-commercial organizations, as well as academic monographs, theses and articles produced in universities. The Copyright Information Center (established in 1987), hosted by the Finnish Copyright Society, maintains a comprehensive library of copyright-related literature available for this purpose. The library acquires the latest copyright-related publications and subscribes to approximately 100 copyright-related magazines or journals.³¹

The work at the Division for Copyright Policy and the Economy of Culture is supported by both domestic and foreign research, but the latter forms the majority. The European Commission's studies, impact assessments and communications are especially important information sources. The impact assessments and policy documents produced in other states, especially in the United Kingdom, have been useful information sources as well. The problem with foreign studies regarding to legislative issues is often that those have been written from the viewpoint of some other state's legislative system and therefore cannot be applied directly to the Finnish system.³²

²⁸ For example in connection with the implementation of the European Union directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, the Ministry of Education and Culture commissioned seven studies from a law firm and published them on their website. In August 2002, before the bill was passed on for parliamentary discussion, the ministry organized a discussion event where stakeholders and experts were able to give their statements based on the results of the studies. The information was provided by Jukka Liedes, Ministry of Education and Culture (Interviewed on 16.6.2014).

²⁹ For example, the Ministry of Education and Culture commissioned a study related to the revision of the copyright levy system from an investigator whose position was considered as neutral by the different stakeholder groups affected by the levy system. The same investigator later acted as a moderator in the branch talks related to the revision of the system.

³⁰ The information was provided by Viveca Still and Jukka Liedes, Ministry of Education and Culture (Interviewed on 16.6.2014).

³¹ See the website of the Copyright Information Center in Finnish at <http://www.copyrightsociety.fi/index.php?id=4>. Visited on 8.7.2014.

³² The information was provided by Anna Vuopala, Jukka Liedes and Viveca Still, Ministry of Education and Culture (Interviewed on 16.6.2014).

The interviewees feel that copyright-related research is widely available in Finland and is conducted in universities all over the country³³. The services of the IPR University Center are considered useful when searching for legislation-related information and the Foundation for Cultural Policy Research (Cupore) provides studies for the purpose of assessing the impacts and developing the copyright system.³⁴ However, there are often situations when the domestic research cannot provide enough information for law drafting or policy development purposes.³⁵ One of the interviewees commented that the National Research Institute of Legal Policy, which at the moment conducts research primarily for the Ministry of Justice, could extend its research focus to better serve the needs of other ministries too. Regarding universities, it was pointed out that copyright-related research in the discipline of law is usually dogmatic: it studies the content and application of current legislation and the results of those studies do not often provide “*de lege ferenda*” arguments on the substance of copyright law in the future. There is also a permanent need for comparative law studies, which are not conducted very often because they are particularly complex and time consuming. It was also mentioned that a research institution providing reliable copyright-related comparative law studies at the European level for a relatively cheap price would be useful in policy development. At a more general level, from the viewpoint of the development of the copyright system, the research conducted in the discipline of “*Law and Economics*” may provide useful results for law drafting purposes, but the research in the area is relatively new in Finland. Additional copyright-related research in the field of social sciences would be welcomed too.^{36 37}

According to the interviewees, there would be room for improvements in communication between the ministries and universities. Officials do not necessarily know what is published or upcoming in universities around Finland, because of fragmented information and limited access to research databases. Officials usually become aware of new publications by receiving this information from academics and people operating in the copyright field or when performing information retrieval in connection with the investigation of some specific issue. According to the officials interviewed, there would be a high demand for a service that would connect the ministries with the information on research conducted in the universities. The service could monitor and tag information about the published and upcoming research. According to one of the officials interviewed, the service would be beneficial for the universities as well - the societal effectiveness of academic research could rise considerably through this kind of solution.³⁸

³³ See the pilot reports “DS 15. Research on copyright-related research” and “MC 12. Copyright-related research and study programs in universities and research institutes” for more information on copyright-related research in Finland.

³⁴ The project “Assessing the operation of copyright and related rights systems” of which this study is part, has been going on at Cupore since 2009.

³⁵ The information was provided by Anna Vuopala and Viveca Still, Ministry of Education and Culture (Interviewed on 16.6.2014).

³⁶ The information was provided by Viveca Still, Ministry of Education and Culture (Interviewed on 16.6.2014).

³⁷ The interviewees mentioned questions for future research regarding the development of the copyright system such as

- Copyright issues in teaching and research;
- The concepts related to “communication to the public” and “made available to the public”, as well as to radio and television broadcasting which are about to be clarified in the near future;
- The digitization of materials and issues related to remote access to library resources;
- The revision of the copyright levy system;

and questions concerning the copyright system in broader context:

- The system’s efficient operation in the digital environment and issues related to media convergence; and
- Potential profound reform of the system.

³⁸ The information was provided by Anna Vuopala, Jukka Liedes and Viveca Still, Ministry of Education and Culture (Interviewed on 16.6.2014).

B. CASE EXAMPLE: THE USE OF RESEARCH IN THE BACKGROUND STUDY REGARDING THE LEGISLATIVE INITIATIVE ON PREVENTION OF UNAUTHORIZED FILE-SHARING

This chapter takes a look into information sources used in the background study “*Assessing means for diminishing unauthorized file-sharing*” (“Luvattoman verkkojakelun vähentämiskeinojen arviointia; Selvitykset lainvalmistelun tueksi”) published by the Ministry of Education and Culture in 2013 to support decision making in the legislative initiative regarding the prevention of unauthorized file-sharing. More information on this initiative can be found in the Section 1 of this study where the “*Impact assessment*” section of the same background study is analyzed.

The needs for research depend on the legislative and policy agenda and the topics of possible law proposals under preparation, which will require different levels and types of research-based justification. Therefore, the use of research should be evaluated in the context of the goals of the study or policy document

The amount or type of studies used as source material do not, by themselves, tell about the quality, comprehensiveness or reliability of the document analyzed. Firstly, the mere amount of research used does not necessarily tell about the comprehensiveness of the study: in some occasions, one publication may be more comprehensive than five other publications combined. Secondly, the lack of certain kinds of information sources does not necessarily tell about incomprehensiveness of the study: it can be caused by a lack of research in the field in general. Thirdly, copyright-related policy making is constantly dealing with conflicting interests: each stakeholder group would like to see the research results supporting their own political agenda emphasized in the policy documents. The groups that do not support the legislative proposal or policy are more likely to question the research results presented in the policy documents. Therefore, an evaluation of the reliability of the studies used is challenging and depends on the reader’s position. Because of these difficulties in evaluation, this chapter does not analyze quality, comprehensiveness or reliability of the information sources used in the background study – instead it provides an overview of different kind of information sources used in the Finnish copyright-related legislative drafting process. The results are summarized in the following table.

Table 4. Summary of the information sources used in the background study on the unauthorized file-sharing related copyright legislative initiative					
Survey study reports³⁹	Other study reports⁴⁰	Statistics	Academic articles and theses	Policy Documents	News articles/web-sites
11	3	1	4	11	10

The study uses a wide range of survey studies conducted in the recent years. These studies are primarily used to demonstrate and assess the extent of unauthorized file-sharing, its economic effects, the availability of legal online services, as well as consumers’ attitudes and values. The information concerning Finland is based primarily on the Copyright Barometer (2008-2013), conducted by the commercial research firm Taloustutkimus Oy and commissioned by Lyhty (a joint project of creative sector artists, employees, and entrepreneurs in Finland) and on a survey study conducted by the National Research Institute of Legal Policy. Results of several foreign survey studies are presented in the

³⁹ The individual issues of the annual studies were considered as separate studies. The Copyright Barometers conducted by the commercial research firm Taloustutkimus Oy and commissioned by Lyhty ry comprise 6 of the total 11 survey study reports.

⁴⁰ Made by other methods than surveys or studies reviewing research results in general.

study as well. Policy documents, such as communications, reports, green papers and public consultation documents are used to present the legislative drafting process and implemented policies in Finland and abroad, as well as to introduce the more general national and foreign discussion on unauthorized file-sharing related policies. Three academic articles as well as one thesis are used to present academic research in the area and several of those are used to introduce prospective positive effects or perspectives other than the direct economic losses related to unauthorized file-sharing. Other studies include research conducted with methods other than surveys or studies presenting research conducted in the field in general. News articles, statistics and websites are used for various purposes. Some of the news articles include studies made by journalists. The following table presents all the information sources used in the study⁴¹.

Table 5. Summary of the information sources used in the background study regarding the legislative initiative on the prevention of unauthorized file-sharing				
Section of the study	Research institution/ Researcher/ Commissioned by	Type of research institution/ Information source	Publication	Publication type
The background of the phenomenon	European Commission	Body of the European Union	Communication from the Commission On Content in the Digital Single Market (2012)	Policy document
			Communication on copyright in the Knowledge Economy (2009)	Policy Document
			Green paper on copyright in the Knowledge Economy (2008)	Policy Document
	Michael Geist/Law Professor at the University of Ottawa	Academic/Private Person	The Battle over C-11 Concludes: How Thousands of Canadians Changed The Copyright Debate (2012)	News Article
The extent of unauthorized file-sharing in Finland	Taloustutkimus Oy (commissioned by Lyhty, a joint project of creative sector artists, employees, and entrepreneurs in Finland)	Commercial research institution	Copyright Barometer 2008	Survey study report
			Copyright Barometer 2009	Survey study report
			Copyright Barometer 2010	Survey study report
			Copyright Barometer 2011	Survey study report
			Copyright Barometer 2012	Survey study report
			Copyright Barometer 2013	Survey study report
	The Finnish Ministry of Education and Culture	Government Department	Report of the Copyright Commission - Solutions to challenges of the digital age (2011)	Policy Document
The National Research Institute of Legal Policy	Public research institution	Youth Criminal Behavior and Victim Experiences (2012) ⁴²	Survey study report	
The extent of unauthorized file	Netnames	Commercial research/	Digital Piracy: Sizing the Piracy Universe (2013)	Study report

⁴¹ Only references to some specific publications (studies, policy documents, news articles, websites) for the purpose of presenting information on the subject matter were included. Other references, for examples to websites presenting some organizations or projects, were not listed. Information sources mentioned in the text without citing a specific publication were not included in the table. References to legislation, case law, agreements, recommendations, engagements, government proposals, parliamentary committee statements or reports were not included either. The relevant information sources are listed in the table only in the sections where they first appear.

⁴² Translation by the researcher, original title in Finnish: "Katsaus nuorten rikoskäyttäytymiseen ja uhririkokemukset 2012.

sharing abroad		Consultant		
	Hadopi	Public authority	Publication d'une 2e vague barométrique sur les usages (2013)	Survey study report
	Kantar Media (Commissioned by Ofcom)	Commercial research / Consultant (commissioned by public authority)	High Volume Infringers analysis report (2013)	Survey study report
The impacts of unauthorized file-sharing	Harvard University and NBER & University of Kansas/ Oberholzer-Gee, F. & Strumpf, G.	University	File Sharing and Copyright (2009)	Academic research article
	Helsingin sanomat	Commercial newspaper	Internet saves the recording superstar (2013) ⁴³	News article
	IFPI Finland	Industry Organization	Statistics of Yearly Sales of IFPI Finland Member Companies (2013)	Statistics
	Tera Consultants, commissioned by International Chamber of Commerce's BASCAP project	Commercial research/ Consultant (commissioned by international chamber of commerce)	Building a Digital Economy: the Importance of Saving Jobs in the EU's Creative Industries (2010)	Study report
	University of Mannheim/ Telecom ParisTech, Peitz, M & Waelbroeck	University	The Effect of Internet Piracy on Music Sales: Cross-Section Evidence (2004)	Academic research article
	University of Mannheim/ Telecom ParisTech, Peitz, M & Waelbroeck	University	Why the Music Industry May Gain From Free Downloading – The role of Sampling (2006)	Academic research article
	University of Tampere/Timo Kellomäki	University	The Welfare Effects of Piracy (2010) ⁴⁴	Academic thesis (master's level)
Legal online markets in Finland	Several Finnish Finnish creative sector and media companies and organizations	Co-operative project	Dwnld.fi: Information on legal online services	Website
	Helsingin Sanomat	Commercial Magazine	The incomes of the large corporations escape from the Finnish tax collector (2013) ⁴⁵	News article
	Helsingin Sanomat	Commercial Magazine	Spotify sped up the growth of the record markets ⁴⁶	News Article

⁴³ Translation by the researcher, original title in Finnish: "Netti pelastaa levytähden".

⁴⁴ Translation by the researcher, original title in Finnish: "Piratismiin hyvinvointivaikutukset".

⁴⁵ Translation by the researcher, original title in Finnish: "Suuryhtiöiden tulot karkaavat Suomen verottajalta".

⁴⁶ Translation by the researcher, original title in Finnish: "Spotify vauhditti Ruotsissa äänitemarkkinoiden kasvua".

	Kantar Media, commissioned by Ofcom	Commercial research/ Consultant (commissioned by public authority)	OCI Tracker Benchmark Study Q3 (2012)	Survey study report
	IFPI	Industry Organization	Promusic: Information on legal online services	Website
Legal Background	European Commission	The body of the European Union	Communication on a Single Market for Intellectual Property Rights - Boosting Creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe (2011)	Policy Document
Enforcement of copyright in Finland	Copyright information and anti-piracy centre	Industry organization	The Espoos's District Court imprisons the Elisa's pirates (2012) ⁴⁷	News article
Actions in preventing unauthorized file-sharing and developing legal services in Finland	Digitoday	Commercial online Magazine	France to Web Giants :Hide the pirate pages quickly (2013) ⁴⁸	News article
	European Commission	The body of the European Union	Public Consultation on the review of the EU copyright rules (2013)	Policy Document
	European Commission	The body of the European Union	"Licences for Europe"- project (2012->)	Website
	IFPI	Industry Organization	Digital Music Report (2012)	Study report
	The Finnish Ministry of Education and Culture	Government department	Legislative means for eliminating illicit file-sharing (2009)	Policy Document
Actions in preventing unauthorized file-sharing and developing legal services abroad	Ministry of Culture Denmark	Government department	Rapport fra udvalget om ophavsrettigheder på internettet 2011	Policy Document
	Musicweek.com	Commercial online magazine	Hadopi Fails to Stop Internet Piracy	News Article
	United States Copyright Office/Maria A. Pallante	Government body	The Next Great Copyright Act	Policy Document
	United States Department of Commerce	Government department	Copyright, policy, creativity, and innovation in the digital economy	Policy Document
Impact assessment	GFK (Commissioned by Federal Music Industry Association of Germany, the Society for Prosecution of Copyright Infringement and German Publishers & Booksellers Association)	Commercial research/Consultant (commissioned by professional organizations)	Survey on Digital Content Usage (2012)	Survey study report
	Intellectual Property Office of the United Kingdom/ Richard Hooper CBE and Dr Ros Lynch	Government body	Copyright works – Streamlining copyright licensing for the digital age(2012)	Policy document

⁴⁷ Translation by the researcher, original title in Finnish: "Elisan huippupiraateille vankeutta Espoon käräjäoikeudelta".

⁴⁸ Translation by the researcher, original title in Finnish: "Ranska nettijäteille: Piraattisivut piiloon ja sassiin".

Conclusions

A. ANALYSIS AND SUMMARY OF THE RESULTS

■ IMPACT ASSESSMENT ON COPYRIGHT LEGISLATIVE INITIATIVES

The “*Bill Drafting Instructions*” (2004) and supplementary “*Guidelines for Impact Assessment in Legislative Proposals*” (2007) provide guidelines for impact assessment in the Finnish legislative drafting process. The documents introduce the categories of economic impact, impact on public administration, environmental impact and social impact, as well as methods for analyzing the impacts. There has been a growing discussion about the importance of cultural impacts⁴⁹, which are covered in the guidelines of Ministry of Justice very briefly. These impacts are however important when considering the overall picture and could be considered when preparing guidelines for impact assessment in the future.

The Ministry of Education and Culture uses the guidelines of the Ministry of Justice as a framework when assessing the impacts of the copyright-related legislative initiatives. The extent and quality of impact assessment in the 2000s have varied depending on the available time and resources. Impact assessments have been conducted regarding the copyright-related initiatives, but it has not been systematic. The assessment is usually conducted by officials at the Ministry of Education and Culture; third party researchers are rarely commissioned for this purpose. However it is common that the Division for Copyright Policy and the Economy of Culture at the Ministry of Education and Culture commissions studies from third parties before the actual legislative drafting stage begins in order to clarify the state of affairs and to identify different legislative options in a specific area⁵⁰.

This pilot study included a case example concerning the impact assessment related to the ongoing unauthorized file-sharing related legislative initiative. The impact assessment concerning this initiative was particularly extensive and therefore it is not representative of the level of impact assessment generally conducted at the Ministry of Education and Culture.

⁴⁹ “Cultural Impact Assessment (CIA) is regarded as a forward-looking device that proactively assists decision-makers to mitigate or avoid negative effects, and enhance positive effects pertaining to: values and beliefs, ideas and ideologies, morals and manners, customs and traditions and other material and non-material environments, or a combination of these. At first glance, it is possible to view CIA as a subsection of social impact assessment. However, it is important to note that SIA is related to organizations and social behavior rather than the cultural ideas and ideologies (for example) that underpin them. That is why the added value of CIA, unlike SIA lies in its ability to situate itself within the cultural domain.” Source: Partal, Adriana (2013). “Impact Assessment: A tool to assist cultural sustainable development”. Page 6. Available in English at <http://global-cities.info/wp-content/uploads/2013/12/Impact-Assessment-A-Tool-to-Assist-Cultural-Sustainable-Development.pdf>. Visited on 25.9.2014. For more information on Cultural Impact Assessment, see the following articles:

- Glicken, J. (2002): Social, Cultural, Economic Impact Assessments: A literature review. Prepared for The Office of Emergency and Remedial Response US Environmental Protection Agency. Available in English at <http://www.epa.gov/superfund/policy/pdfs/SILitRevFinal.pdf>. Visited on 25.9.2014.
- Langen, F. and Garcia, B. (2009). Measuring the Impacts of Large Scale Cultural Events: A literature review. Impacts 08. Available in English at http://www.liv.ac.uk/impacts08/Papers/Impacts08-FLangen_and_BGarcia_May_2009_Events_Review.pdf. Visited on 25.9.2014.
- Kong, L. (2009). Making Sustainable Creative/Cultural Space in Shanghai and Singapore. *Geographical Review*, 99, 1–22.

⁵⁰ The question whether impact assessments should be commissioned from third party researchers is twofold. On the one hand, self-evaluation by law drafters may raise questions related to the reliability of the assessment. But on the other hand, there is usually a busy schedule in the law drafting process and therefore commissioning a comprehensive impact assessment study in the middle of the process may be tedious to organize. In addition, it can be argued that in several cases the officials of the ministries are the best experts of impacts, because they have efficient monitoring tools and are as law drafters in a position in which they are in contact with the parties directly or indirectly affected by the legislation. Therefore they gain information on all kinds of possible impacts on a wide spectrum.

The background study report “Assessing means for diminishing unauthorized file-sharing” (“Luvattoman verkkojaketun vähentämiskeinojen arvoitua; Selvitykset lainvalmistelun tueksi”), published by the Ministry of Education and Culture in 2013 to support decision making in the legislative drafting process. The report includes an independent section (35 pages) on impact assessment including in-depth evaluation of each of the four legislative options: notification procedure, access blocking, slowing down injunction and domain closure. The “*Impact assessment*” section was analyzed in this pilot study in the context of the guidelines of the Ministry of Justice presented above. The evaluation in the impact assessment section of the background study is consistent with the categories and sub-categories of economic impact, impact on public administration and social impacts defined in the guidelines of the Ministry of Justice. The economic impacts are evaluated in the background study especially from the perspectives of telecom operators and right holders. The impacts on public administration focus mainly on the duties and procedures, personnel and organization, the administrative procedures and costs of the Finnish Communications Regulatory Authority and courts. The social impacts are related to topics such as fundamental rights, due process rights, attitudes and values, and ICT-infrastructure. See the summary of the different impacts in Table 2.

▪ THE USE OF RESEARCH IN POLICY DEVELOPMENT

The Ministry of Education and Culture uses its extensive contact network including experts and researchers to commission studies for different purposes. The researcher’s compensation is considered case by case and it varies between a few thousands to 15 000 euros depending on the complexity of the issue and comprehensiveness of the study. In the interviews the officials of the ministry stated that they have had so far enough resources to commission studies whenever considered necessary.

The officials of the division use all kinds of studies as background information in developing the copyright policy and legislation. The information sources include studies, reports and communications published by European Union bodies, international organizations and governments, public authorities, commercial firms, as well as academic monographs, theses and articles produced in universities. According to the officials interviewed, copyright-related research is widely available in Finland and is conducted in universities all over the country. The services of the Copyright Information Center and the IPR University Center are useful when searching legislation-related information, and the Foundation for Cultural Policy Research (Cupore) provides studies for the purposes of impact assessment and developing the copyright system. However there are occasions when the domestic research cannot provide enough information or the information is not suitable for law drafting or policy development purposes. There would be an additional need for “*de lege ferenda*” analysis on the substance of copyright law in the future to support policy development.

According to the interviewees, there is demand for a service that would connect the ministries with information regarding research conducted at the universities. At the moment, officials do not necessarily know what is published or being studied in the universities around Finland because of fragmented information and limited access to research databases.

This pilot study included a case example of a research published in late 2013 to support the legislative work regarding the prevention of unauthorized file-sharing. The information sources used in the background study included 11 survey studies, 3 other studies, 4 academic articles or theses, 11 policy documents, 10 news articles/websites and one statistics report. These studies are primarily used to demonstrate and assess the extent and the impacts of unauthorized file-sharing, its economic effects, the availability of legal online services, consumers’ attitudes and values, as well as unauthorized file-sharing policies and legislation in Finland and abroad. This pilot study did not rigorously evaluate the comprehensiveness, quality or reliability of the study, but it can be concluded that various types of information sources are used in the study and academic sources are used also to present prospective

positive effects or perspectives other than the direct economic losses related to unauthorized file-sharing.⁵¹

When considering the results of this pilot study it can be concluded that in the case of Finland impacts have been routinely assessed in the 2000s but the comprehensiveness and quality of the assessment has varied between the initiatives. Both domestic and foreign studies have been used by officials to support policy development.

B. METHODOLOGICAL FINDINGS

▪ LIMITATIONS

The information presented in this report is based on the interviews of the officials at the Ministry of Education and Culture and a complementary case example regarding the legislative initiative on the prevention of unauthorized file-sharing. The impact assessment concerning this initiative was particularly extensive and therefore it is not representative of the level of impact assessment generally conducted at the Ministry of Education and Culture. This pilot study presents different impacts evaluated in the initiative but does not provide information on the comprehensiveness or methods of the impact assessment.

Methodology projects conducted by the World Intellectual Property Organization (WIPO)⁵² and Foundation for Cultural Policy Research (CUPORE)⁵³ provide guidelines and tools for assessing impacts in the field of copyright. The work ongoing in these organizations and projects was not analyzed in this pilot study.

The methodology card proposes to analyze references used in public copyright policy documents to study the use of research in policy development. In this study, the research used in the background study of the legislative initiative regarding the prevention of unauthorized file-sharing was analyzed. The information sources used in the study are context specific and therefore do not provide an indication on the overall use of research in policy development at the Division for Copyright Policy and the Economy of Culture. Extensive policy documents addressing copyright issues in several areas could be considered as an alternative when analyzing the use of research in policy development. Those documents can be prominent in defining guidelines for the entire national copyright policy and may therefore provide better indication on the use of research in policy development on a wide scale. This kind of extensive policy document was not found in Finland⁵⁴.

Another limitation is related to the method itself. The research results presented in policy documents as well as their amount are affected by the policy-making culture in the country. Government officials may

⁵¹ The research used in the initiative has been criticized by Electronic Frontier Finland, an organization promoting users' rights in the digital environment. According to the Electronic Frontier Finland, the Ministry of Education and Culture is relying too heavily on the materials produced by the organizations promoting the interests of content industries. According to the Electronic Frontier Finland, these organizations are not experts in assessing the impacts of the new technologies. See the Electronic Frontier Finland's statement concerning the unauthorized file-sharing related bill draft, available in Finnish at <https://www.effi.org/lausunnot/lausunto-tekijanoikeus-20140124>. Visited on 8.8.2014.

⁵² WIPO's project "Assessing the Economic, Social and Cultural Impact of Copyright on the Creative Economy (ESCIA)" in particular.

⁵³ This project of "Assessing the Operation of Copyright and Related Rights Systems".

⁵⁴ However, there is ongoing process of drafting an explicit copyright policy for Finland. For more information, see the pilot report based on the Description sheet 6 – Copyright policy.

be familiar with the existing research, but it might not be a common practice to list research results in policy documents in the country in question.

▪ **GUIDELINES FOR FUTURE RESEARCH**

The study of Impact assessment regarding copyright policy and copyright law can start by presenting domestic and foreign impact assessment instructions or guidelines. Individual copyright-related legislative initiatives or all initiatives in defined time-period can be analyzed within the context of these instructions.

The time needed for this pilot study will depend for each country on the availability of data. In the case of Finland, the workload for collecting data and drafting this report could be evaluated at 4 weeks of full-time work.

Appendices

A. METHODOLOGY CARD

Methodology card as presented in the Methodology Handbook, version 20.12.2013.

Elements: Policy, Law	Methodology card 6. Use of research and impact assessment in policy development	
Key question	How much do the policy development and legislative processes take into account impact assessment studies and research data?	
Type of data	<i>Objective data</i>	
Description	Existence of studies evaluating the impact of copyright policies and laws before and after their enforcement; and use of academic and other research in the development of copyright policy.	
Parameters to measure	<p>1. Impact assessment studies regarding copyright policy and copyright law</p> <p>a) Have impact assessment studies regarding copyright policy and copyright law been carried out (commissioned by the government)</p> <p>b) To what proportion of copyright legislative initiatives has impact assessment been made</p> <p>c) Description of different kinds of impacts that have been assessed (regarding each of the commissioned impact assessment studies and copyright legislative initiatives separately)</p> <p>2. The use of research in policy development: To what extent have academic or other studies been referred to in public copyright policy documents</p> <p>If possible, consider separately</p> <ul style="list-style-type: none"> - academic research (such as scientific articles, other academic papers, monographs, doctoral theses and licentiate theses), and - other studies (such as studies conducted in research institutions, by individual experts or researchers, and by private organizations) 	
Guidelines for data collection	The data should be collected over a period allowing meaningful analysis, for example: 5 or 10 years.	
Definitions	<i>Impact assessment</i>	<i>Assessment made by a third party evaluating the possible impacts of a specified, current or proposed action. Depending on the subject matter and the objectives of the assessment, the focus can be on different kinds of impacts such as social impact, cultural impact, economic impact, impacts for different stakeholders, technological impact, and environmental impact.</i>
	<i>Legislative initiative</i>	<i>Legal changes proposed by and to legislators</i>
Limitations of the indicator	<ul style="list-style-type: none"> - The quality and comprehensiveness of the studies is not taken into consideration. - The needs for research and impact assessment will depend on the legislative and policy agenda and the topics under discussion which can highly differ over time. - The indicator focuses on studies commissioned or used by the government and there might be relevant research commissioned by the industry or other groups as well. - The results of parameter 2 are likely to depend on the general availability of scientific and other relevant publications. 	

B. INFORMATION SOURCES

Finland:

▪ **Finnish Government:**

- Program of Prime Minister Jyrki Katainen's Government, text in English:
<http://valtioneuvosto.fi/tietoarkisto/aiemmat-hallitukset/katainen/hallitusohjelma/pdf/en.pdf>

▪ **Foundation for Cultural Policy Research (Cupore):**

- Assessing the Operation of Copyright and Related Rights System, methodology framework, text in English: <http://www.cupore.fi/copyright.php>

▪ **Ministry of Education and Culture:**

- "Assessing means for diminishing unauthorized file-sharing" (2013) ("Luvattoman verkkojakelun vähentämiskeinojen arviointia; Selvitykset lainvalmistelun tueksi"), text in Finnish:
http://www.minedu.fi/OPM/Julkaisut/2013/Luvaton_verkkojakelu.html
- Draft bill regarding illegal file-sharing, text in Finnish:
http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeuden_kehittaaminen/vireilla_tekijanoikeus/tekijanoikeuslain_muutokset/index.html?lang=fi
- Legislative means for eliminating illicit file-sharing (2009), text in Finnish (summary in English):
<http://www.minedu.fi/export/sites/default/OPM/Julkaisut/2009/liitteet/tr21.pdf?lang=fi>
- Solutions to challenges of the digital age. Report of the Copyright Commission (2012), text in Finnish (summary in English) at
http://www.minedu.fi/OPM/Julkaisut/2012/Tekijanoikeustoimikunnan_mietinto.html?lang=fi&extra_locale=fi.
- Website, text in English: <http://www.minedu.fi/OPM/?lang=en>

▪ **Ministry of Justice:**

- Bill Drafting Instructions, text in English:
<http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/20063billdraftinginstructions.html>
- "Guidelines for Impact Assessment in Legislative Proposals"-document, text in English:
http://oikeusministerio.fi/material/attachments/om/julkaisut/6FiopyBT5/nettiversio_60_s.pdf.

▪ **Other:**

- Electronic Frontier Finland - statement regarding to the bill draft on prevention of illicit file-sharing, text in Finnish: <https://www.ffi.org/lausunnot/lausunto-tekijanoikeus-20140124>
- Finnish Copyright Society, text in Finnish: <http://www.copyrightsociety.fi/index.php?id=4>

International:

▪ **European Commission**

- Impact Assessment Guidelines, text in English:
http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm
- Website, text in English: http://ec.europa.eu/smart-regulation/impact/index_en.htm

▪ **Other:**

- Partal, Adriana (2013). Impact Assessment: A tool to assist cultural sustainable development, text in English: <http://global-cities.info/wp-content/uploads/2013/12/Impact-Assessment-A-Tool-to-Assist-Cultural-Sustainable-Development.pdf>
- Glicken, Jessica (2002). Social, Cultural, Economic Impact Assessments: A literature review. Prepared for The Office of Emergency and Remedial Response US Environmental Protection Agency. Text in English: <http://www.epa.gov/superfund/policy/pdfs/SILitRevFinal.pdf>
- Kong, Lily (2009). Making sustainable Creative/Cultural Space in Shanghai and Singapore. *Geographical Review*, 99, 1–22
- Langen, F and Garcia, B (2009). Measuring the Impacts of Large Scale Cultural Events: A literature review. *Impacts 08*. in English: http://www.liv.ac.uk/impacts08/Papers/Impacts08-FLangen_and_BGarcia_May_2009
- European Union: Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society, text in English: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

C. CONSULTED PARTIES

- Anna Vuopala, Government Counsellor at the Ministry of Education and Culture. Interviewed on 16.6.2014.
- Jukka Liedes, Director at the Ministry of Education and Culture. Interviewed on 16.6.2014.
- Viveca Still, Copyright Counselor at the Ministry of Education and Culture. Interviewed on 16.6.2014.

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

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>