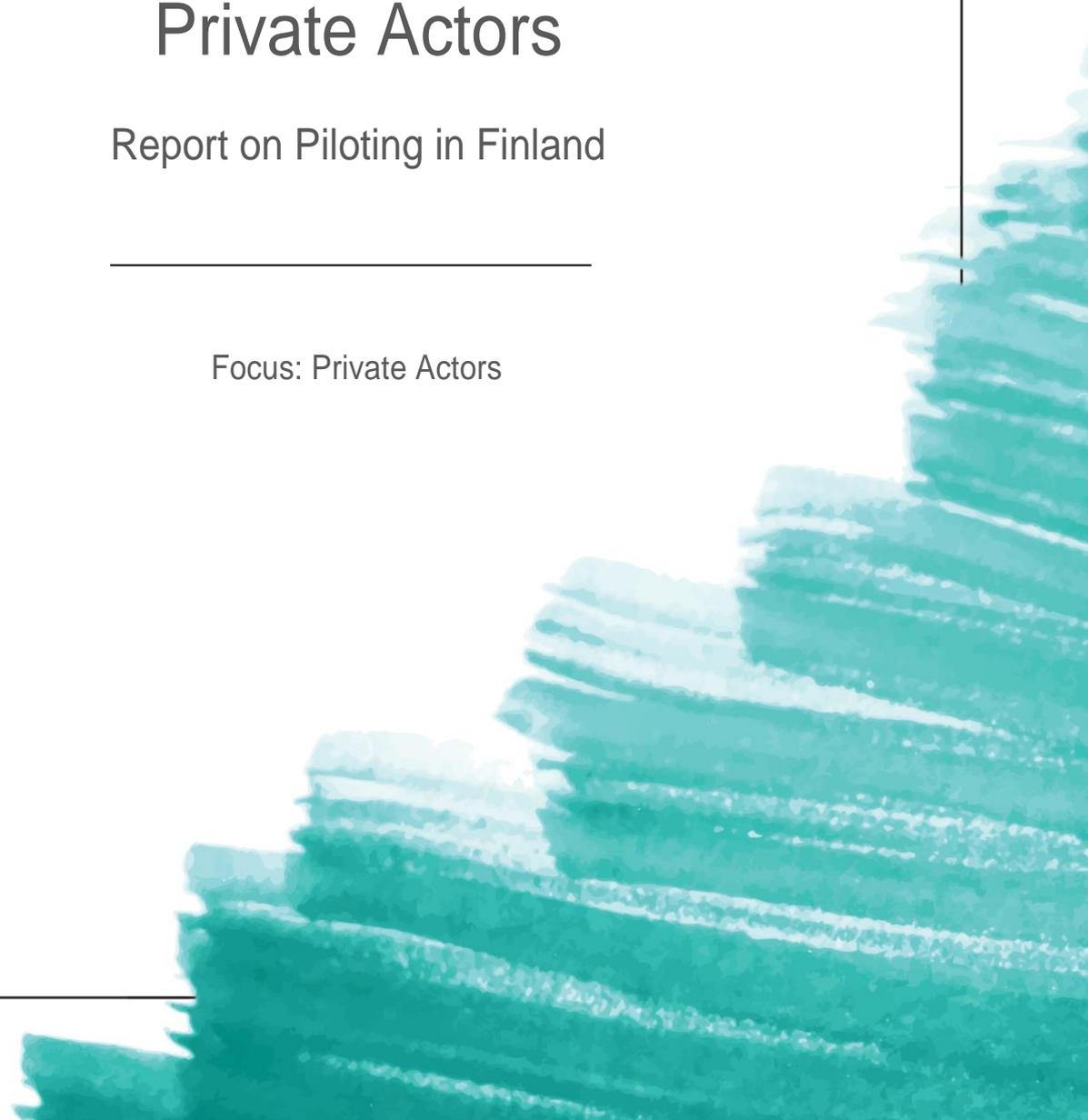


Assessing Copyright and Related Rights Systems

Enforcement by Public and Private Actors

Report on Piloting in Finland

Focus: Private Actors

A decorative graphic in the bottom right corner consisting of several overlapping, horizontal brushstrokes in various shades of teal and green, creating a textured, layered effect.



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Assessing Copyright and Related Rights Systems: Enforcement by Public and Private Actors – Focus: Private Actors. Report on Piloting in Finland.

This report is the result of the second pilot study implementing Description Sheet 8 – *Enforcement by Public and Private Actors*, 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 the core project team, Tiina Kautio and Nathalie Lefever between July and November 2015. It also used data from interviews performed in 2013 by Project Researcher Jukka Kortelainen in the course of an earlier pilot study conducted as part of the project. The results were first published in January 2016 on the website of Cupore.

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

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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 the eighth description sheet presented in the methodology handbook, titled “Enforcement by Public and Private Actors”, with a focus on the involvement of private actors in copyright enforcement. The goal of this report is to provide a description of the key private actors in the enforcement of copyright, as well as a description of and provisions on enforcement procedures.

In Finland, there are no public supervisory bodies (in the field of copyright) or any public anti-piracy bodies; supervision of the rights of copyright holders is performed by private parties. Since most copyright violations and offenses in Finland are so-called complainant offenses (offenses for which the prosecutor may not press charges against a suspect without the complainant’s claim for punishment), right holders need to supervise and control the use of protected subject matters themselves. As a result, right holders have formed a specific body for these purposes: the Copyright Information and Anti-Piracy Centre (CIAPC). This organization fights against piracy by supervising and controlling the use of protected subject matter on behalf of its members and by professionally preparing requests for police investigations. Moreover, thanks to its capacity to represent stakeholders in most copyright-related fields, it facilitates copyright enforcement in cases where several right holders are involved. Its activities also include education and information on copyright. CIAPC is a registered non-profit association without public role or mandate, despite the fact that part of its funding is provided by the Ministry of Culture and Education. Through its members which include all the most important organizations in all fields of copyright, the Copyright Information and Anti-Piracy Centre represents a large part of the Finnish right holders.

The Finnish Anti-Counterfeiting Group (FACG) is another Finnish organization active in copyright enforcement. Its purpose is to promote a better understanding of the importance of anti-counterfeiting work in Finland. As such, it conducts information activities for actors in the field, provides statements to different authorities in regards to counterfeit-related issues, and organizes international cooperation in the field.

Finnish anti-piracy organizations seek international cooperation in their activities. CIAPC follows the international development of judicial conditions and relevant legislation and participates in the anti-piracy programs of the International Federation of Phonographic Industry. Soon after its foundation, FACG joined the Global Anti-Counterfeiting Network which links a large number of national and regional anti-counterfeiting organizations with an objective to exchange and share information, to take part in joint activities and to co-operate in the resolution of specific IP problems and challenges in their respective national or regional areas.

In Finland, technological protection measures (technological tools with the purpose to prevent infringement of copyright, in particular unauthorized copying and exchange of copyrighted content in digital form) are legally protected through anti-circumvention laws in Chapter 5a of the Finnish Copyright Act.¹ This means that circumvention of an effective technological measure protecting a work is prohibited, but a person who has acquired the work lawfully is also entitled to use the work in accordance with the legal limitations laid down in the definition of exclusive rights. Technological protection measures cover a wide range of technological measures that differ according to the subject matter protected. At the time of research no public data was available on the topic.

As can be deduced from this report, Finland has a very elaborate system of copyright enforcement where public and private actors have their specific roles.

¹ This topic is addressed in the pilot report on Description sheet 5 – *Copyright law*, available at <http://www.cupore.fi/DS5.php>.

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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 8 of the methodology framework, titled "Enforcement by public and private actors", with a focus on private actors involved in the work against copyright infringement. The first pilot study based on this description sheet, focusing on public actors in copyright enforcement, was conducted in 2013².

This study was conducted by the core project group, Tiina Kautio and Nathalie Lefever between July and November 2015. It also used data from interviews conducted in 2013 by project researcher Jukka Kortelainen as part of an earlier pilot study in the project.³

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 second area, "Enforcement". It is a description sheet which presents the work of public authorities and private actors in copyright enforcement in order to support the analysis of the operation of the national copyright and related rights system.

As explained in the methodology handbook, enforcement is a key aspect to consider when measuring the efficiency of the copyright system as a whole; a well-organized enforcement system will enhance the efficiency of copyright law. With growing possibilities for easy exchange of copyrighted works through digital forms, the costs of enforcement have increased and the cases are increasingly difficult to prove⁴. In this context, evaluating the operation of official copyright enforcement procedures is a crucial step in finding solutions for possible updates of the copyright enforcement system.

² See the Cupore website at <http://www.cupore.fi/DS8.php>.

³ For more information, see the pilot report on Description sheet 13 – *Copyright-related information activities*, available at <http://www.cupore.fi/DS13.php>.

⁴ See Gowers Review of Intellectual Property conducted in the UK in 2005–2006: http://www.hm-treasury.gov.uk/gowers_review_index.htm.

The act of enforcement covers three steps that follow non-compliance to regulations: first, the search for infractions and information concerning them; second, the search for remedies through court or other methods of dispute resolution; and third, the carrying out of executive or judicial orders. Each step can involve both public authorities (police forces, custom officers, courts, etc.) and private parties (infringers and injured parties, private advisors or arbitrators). Each of these steps also includes costs for the actors involved: public authorities will have to support costs related to the search for infractions and setting up and maintaining law courts while private parties will incur costs when pursuing remedies.

This report concerns the role of private parties in preventing and detecting copyright infringements, including their involvement through organizations representing right holders. The work of public authorities (namely courts, prosecutors, customs, and the police) in copyright enforcement was the topic of a previous pilot study, conducted in 2013. Alongside public authorities fulfilling their functions characterized in law, private actors have a role in creating the conditions for efficient enforcement of copyright. For example, individual right holders might be able to organize themselves with the purpose of monitoring their rights, following the development of copyright law, acting for the prevention of copyright infringement, informing the public on copyright rules, etc.

Describing the work against copyright infringements by non-governmental organizations requires clarifying the existence, size (number of members, operative budgets, etc.), role and operation of such private organizations. The data also concerns the possible support from the government for the rights owners' anti-piracy and other organizations in their work against piracy, possible requirements for reporting from the organizations that receive financial support from government about the effects, outcomes and costs of their activities, anti-piracy measures and campaigns organized by the private sector.

Description sheet 8 also covers cooperation between authorities and anti-piracy bodies of different countries, which is important in preventing unauthorized production, dissemination and use of copyrighted works at an international level. Another important aspect of the work of private parties in the fight against piracy is the use of technological protection measures (technological tools with the purpose to prevent infringement of copyright, in particular unauthorized copying and exchange of copyrighted content in digital form). The description sheet recommends listing the main types of technological protection measures implemented by right holders in different industries and providing statistics on their use; since the data was not available in Finland, this study proposes methods for future research. The description and analysis of the recent trends in enforcement are also left as topics for further studies.

A 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 and international information sources. Therefore, the method chosen was desktop studies. The data was complemented through an email interview with Jaana Pihkala, Executive Director at the Copyright Information and Anti-piracy Centre in Finland and Chairman of the board at FACG.

Lists of information sources used for this report as well as a list of interviewees and commentators can be found in the Appendices.

SECTION 1. ANTI-PIRACY ORGANIZATIONS IN FINLAND

This section presents the most important non-governmental organizations whose main purpose is to work against copyright infringement in Finland: the Copyright Information and Anti-Piracy Centre and the Finnish Anti-Counterfeiting Group.

A. COPYRIGHT INFORMATION AND ANTI-PIRACY CENTRE IN FINLAND (CIAPC)

▪ **PRESENTATION**

The Finnish Copyright Information and Anti-piracy Centre (CIAPC)⁵ is a non-profit organization the mission of which is to monitor the interests of its member organizations⁶. According to CIAPC, the four main objectives of organization are “Centralized surveillance of both the physical market and the internet, supporting law enforcement and handling of actual infringement cases, education on copyright,⁷ and production and distribution of information on copyright.”⁸ The CIAPC represents actors across different cultural industries; according to its website⁹, “in a relatively small market like Finland, there is no need to have separate anti-piracy organizations for each industry. A joint anti-piracy association benefits all parties involved by reducing costs, coordinating more efficient anti-piracy strategies and giving authorities an effective point of contact.”

▪ **LEGAL FRAMEWORK**

CIAPC is a registered non-profit association. As such, it follows the dispositions of the Associations Act which regulates the operations of non-profit organizations; for example, it delineates the assembly of the board of directors, outlines the decision-making processes, as well as determines issues concerning membership and resignation.

All members of CIAPC are registered non-profit organizations that represent and monitor rights based on copyright legislation.

There is no specific mandate in national legislation concerning anti-piracy bodies in general or CIAPC in particular. CIAPC is a private organization with no public role.

▪ **FINANCING**

CIAPC’ regular activities are fully financed by its member associations. CIAPC’s 15 member associations cover a large amount of coyright holders through professional organizations and collective management organizations in various fields:

- The Finnish Film Distributors Association (www.filmikamari.fi)
- The Central Organization of Finnish Film Producers (www.filmikamari.fi)

⁵ In Finnish: Tekijänoikeuden tiedotus- ja valvontakeskus ry (TTVK)

⁶ Members of CIAPC are organizations and enterprises in core copyright industries. See list of organizations on the website of Finnish Information and Anti-piracy Centre, <http://antipiracy.fi/ttvk/jasenet/>. Visited on 16.8.2015

⁷ For more information on CIAPC’s education, see Pilot report of Description Sheet 15 – *Education*.

⁸ Source: Website of Finnish Information and Anti-piracy Centre, <http://antipiracy.fi/inenglish/>. Visited on 29.9.2015.

⁹ <http://antipiracy.fi/inenglish/>

- IFPI Finland (www.ifpi.fi)
- Teosto, the Finnish Composers' Copyright Society (www.teosto.fi)
- Gramex, the Copyright Society of Performing Artists and Producers of Phonograms (www.gramex.fi)
- The Finnish Musicians' Union (www.muusikkojenliitto.fi)
- Kopiosto (www.kopiosto.fi)
- Tuotos, the Collective society for audiovisual producers (www.tuotos.fi)
- SATU, the Association of Independent Producers in Finland (www.satu.fi)
- Elvis ry, the Guild of Light Music Composers and Authors in Finland (www.elvisry.fi)
- The Finnish Music Publishers Association (www.musiikkikustantajat.fi)
- Sanasto ry, the Copyright Society of Literary Copyright Holders (www.sanasto.fi)
- MTV Oy (www.mtv3.fi)
- YLE, the Finnish Broadcasting Company (www.yle.fi)
- Sanoma Entertainment Finland Oy (www.sanoma.fi)

Certain member organizations in music or audiovisual industries have financed CIAPC's operations through private copying levies.

CIAPC' education projects and awareness campaigns are financed through grants received from the Finnish Ministry of Education and Culture. In addition, 30 % of the costs are covered by CIAPC's operational budget. The use of these grants is always reported to the Ministry.

▪ ANTI-PIRACY ACTIVITIES

In Finland, most copyright-related criminal violations are so-called complainant offences¹⁰: offences for which the prosecutor may not press charges against a suspect without the complainant's claim for punishment.¹¹ In such cases, the prosecutor's right to press charges in a criminal case is limited. Right holders therefore need to supervise and control the use of protected subject matters themselves and it is of crucial importance that the requests for police investigations are professionally prepared and drafted. Furthermore, in many cases of infringement there are several right holders whose protected subject matter has been infringed. The concentration of the work against copyright infringement under one anti-piracy organization is therefore a practical necessity. As a result, right holders have organized themselves and formed the CIAPC for these purposes.

CIAPC has an important role in supporting law enforcement and handling of actual infringement cases on the markets of both digital and physical products. Due to the fact that all relevant organizations representing right holders in the field of music, literature and audiovisual industries are members of CIAPC, CIAPC is able to represent all the relevant right holders in most copyright infringement cases. Moreover, the police, prosecutors and the Finnish Customs can easily cooperate with CIAPC, which takes care of the clearance of infringed rights in a particular case. In addition, CIAPC offers its expertise to the authorities in identifying goods suspected of infringement¹².

Additionally, CIAPC follows the domestic and international development of judicial conditions and legislation, makes proposals and statements to the legislator and public authorities and keeps contact with the media in support of the fight against piracy.

¹⁰ In Finnish: asianomistajarikos. See Chapter 49, Section 6 of the Criminal Code, and Section 62 of the Copyright Act.

¹¹ See Section 3(1) of the Pre-trial Investigation Act. The copyright-related violations which are not complainant offences are a violation of Section 56e(2) (violation of a technological measure) or of section 51 or 52 of the Copyright Act (moral rights). This means that the prosecutor may press charges against a suspect without the initiative of a complainant. For more details, see the pilot report on Description sheet 9 – *Sanctions and remedies for copyright infringement*, available at <http://www.cupore.fi/DS9.php>.

¹² Source: CIAPC's website, <http://antipiracy.fi/inenglish/>. Visited on 18.9.2015.

In order to carry its anti-piracy activities, CIAPC collaborates with other Finnish organizations. Some awareness campaigns, such as the organization of exhibitions or media education projects, are carried out with relevant partners. CIAPC holds a seat at the Board of the Finnish Anti-Counterfeiting Group (FACG) and the two organizations collaborate in particular in cases concerning physical piracy. CIAPC participates annually in the arrangements of the World Anti-Counterfeiting Day organized by FACG. Like FACG, CIAPC has a cooperation agreement with the Finnish Customs (see below). CIAPC also collaborates, for example through educational activities, with the Finnish Customs, the Police and key prosecutors in the IPR field.

■ INFORMATION ACTIVITIES

One of CIAPC's missions is to inform and educate on copyright-related issues. For this purpose, CIAPC produces and distributes brochures and teaching material and organizes education, for example in schools. CIAPC also provides general copyright counselling online and by phone. Questions are asked daily and they usually concern particular uses of artworks¹³. CIAPC hosts three websites¹⁴ with detailed information on copyright and piracy, news and quizzed related to unauthorized use of copyrighted material, information on legal services, instructions for identifying pirate copies and providers of unauthorized services, as well as links to relevant copyright-related websites. CIAPC produces copyright-related guidebooks¹⁵, educational materials, brochures, comic strips, and postcards, which are disseminated to the public in different ways¹⁶. CIAPC takes part in various campaigns¹⁷ and events¹⁸ where they spread copyright-related information for the public in general. CIAPC has also launched a copyright section in an online quizz service¹⁹. In addition, CIAPC has educated students in elementary, secondary, upper secondary and vocational schools since 2008.

CIAPC has produced and sent copyright-related teaching material packages to all elementary and secondary schools in Finland. The package for elementary schools²⁰ contains a copyright-related poster, a picture book, a board game, an exercise book, a template for a self-made comic and instructions for teachers. Teaching material packages for secondary schools²¹ consist of comic magazines, presentation sheets, and instructions for teachers. Occasionally, CIAPC has also educated students in universities and

¹³ Source: CIAPC's Communication Officer Juha Rislakki, through an interview with researcher Jukka Kortelainen on 9.5.2013.

¹⁴ Antipiracy.fi, official website of CIAPC, <http://antipiracy.fi/inenglish/>; Tekijanoikeus.fi, website targeted to the public and focused on copyright-related issues in general, <http://www.tekijanoikeus.fi/>; and Piraattitehdas.fi, a website presenting teaching materials concerning the fight against piracy, <http://www.piraattitehdas.fi/index.php>. Visited on 2.12.2015.

¹⁵ The guidebooks contain information targeted to consumers, parents, officials, enterprises and teaching institutions.

¹⁶ Most of the materials are also available on CIAPC's websites.

¹⁷ An example of such campaigns is the Week of Media Skills (Mediataitoviikko in Finnish) where CIAPC has held lectures on copyright as part of media education. Website of the campaign: <http://www.mediataitokoulu.fi/mediataitoviikko/>. Visited on 17.9.2015.

¹⁸ For example, National Training Event for Educators (Educa) and Helsinki Music Fair.

¹⁹ Copyright section in the quizz service at <http://alypaa.com/pelit/tekijanoikeus>. Visited on 17.9.2015. Source: CIAPC's Communication Officer Juha Rislakki, interviewed by researcher Jukka Kortelainen on 9.5.2013. For more information on CIAPC's information activities, see the report on Description sheet 13 – *Copyright-related information activities* available at <http://www.cupore.fi/DS13.php>.

²⁰ The material package was sent in 2008 and it was targeted to fourth grade students (source: CIAPC's Communication Officer Juha Rislakki, during an interview with researcher Jukka Kortelainen which took place on 9.5.2013). The package has been produced in cooperation with Lyhty and the Finnish Ministry of Education and Culture. See the package on the website hosted by CIAPC at <http://www.tekijanoikeus.fi/aineistopaketti-alakoululaisille>. Visited on 9.5.2013.

²¹ "The Mystery of Pirate Factory" (Original title "Piraattitehtaan arvoitus") teaching material package was produced in 2006 and sent later to all secondary schools in Finland (source: CIAPC's Communication Officer Juha Rislakki, during an interview with researcher Jukka Kortelainen which took place on 9.5.2013). The "Adventure on the night train" (Original title "Seikkailu yöjunassa") teaching material package was sent to all secondary schools in 2011. CIAPC has produced teaching material packages in cooperation with Lyhty, the Finnish National Board of Education and the Finnish Ministry of Education and Culture. See the website for secondary school teaching materials, hosted by CIAPC, at <http://www.piraattitehdas.fi/index.php?mid=41>. Visited on 16.9.2015.

universities of applied sciences. During these visits, education has focused more on the legislative aspects of copyright.²²

▪ INTERNATIONAL COOPERATION

CIAPC follows the international development of judicial conditions and relevant legislation and participates in international cooperation against piracy. This cooperation takes the form of an exchange of information with other anti-piracy centres and the participation in seminars in the field. In the music and audiovisual sectors, umbrella organizations hold annual anti-piracy seminars which are attended by CIAPC representatives in order to meet international colleagues. The Nordic anti-piracy organizations also meet annually in order to promote collaboration on enforcement issues among the authorities in the Nordic countries.

CIAPC also participates in the anti-piracy programs of the International Federation of Phonographic Industry (IFPI)²³.

B. FINNISH ANTI-COUNTERFEITING GROUP (FACG)

▪ PRESENTATION

The Finnish Anti-Counterfeiting Group (FACG)²⁴ is a Finnish association campaigning against counterfeiting and piracy since 1998. Its members mainly consist of representatives of the Finnish industries as well as of Finnish attorneys specialized in intellectual property rights.

The most important aim of FACG is to promote a better understanding of the importance of anti-counterfeiting work in Finland and to work for an effective enforcement of the anti-counterfeiting laws. FACG informs its members and the public in general of the current trends in counterfeiting and the changing legislation in the field. FACG also aims to offer advice to the legislator and inform policy makers, judges and prosecutors in the field of IPR crime.

▪ LEGAL FRAMEWORK

The Finnish Anti-Counterfeiting Group is a non-profit organization, like the CIAPC. As such, it follows the dispositions of the Associations Act which regulate the operations of non-profit organizations; for example, it delineates the assembly of the board of directors, outlines the decision making processes and determines issues concerning membership and resignation.

Members of the association may be registered societies, foundations, and individuals who have shown support for the association's purposes.

There is no specific mandate in national legislation concerning anti-piracy bodies in general or FACG in particular. FACG is a private organization and has no public role.

▪ FINANCING

The Finnish Anti-Counterfeiting Group is a non-profit organization entirely financed by its members. Members of FACG include private individuals, foundations and societies that support the purposes of

²² Source: CIAPC's Communication Officer Juha Rislakki, during an interview which took place on 9.5.2013.

²³ Source: <http://antipiracy.fi/inenglish/>. Visited on 29.9.2015.

²⁴ In Finnish: Suomen Anti-piratismiyhdistys ry. Website: <http://www.facg.fi/>. Visited on 16.9.2015.

the association. It is possible to apply for membership through the FACG's website. At the end of 2014, FACG had 137 members, including 110 individuals and 27 organizations.

▪ **ANTI-PIRACY ACTIVITIES**

FACG's anti-counterfeiting activities are delineated in its official rules²⁵. The purposes of the association are preventing the production and the distribution of pirate copies, disseminating knowledge for the purposes of preventing unauthorized copying, and encouraging authorities and other parties to establish efficient measures towards unauthorized copying. For these purposes, FACG connects and organizes meetings with its members for the purposes of cooperation and exchange of information to combat unauthorized copying, and organizes courses, seminars, and other types of training for its members, authorities, organizations and other interested parties. It also establishes and maintains contacts with other Finnish, foreign and international organizations with similar purposes, and has also publishing activities. In addition, FACG provides statements to different authorities as regards to various intellectual property rights and counterfeit related issues.

In order to carry out its anti-piracy activities, FACG collaborates with other organizations. As described earlier, FACG collaborates on a regular basis with the CIAPC; in particular, CIAPC participates in the World Anti-Counterfeiting Day organized by FACG and, in recent years, has taken part in the organization of the exhibition organized at this occasion. Both FACG and CIAPC have a cooperation agreement with the Finnish Customs, and these three organizations have, among others, collaborated in the organization of campaigns to reduce counterfeiting and piracy targeting popular second-hand online market places²⁶. Together with CIAPC, FACG has collaborated through educational activities with the Finnish Customs, the Police and key prosecutors in the IPR field; CIAPC normally provides information on copyright issues, while FACG focuses on issues concerning the violation of industrial property, in particular trademarks.

▪ **INTERNATIONAL COOPERATION**

FACG joined the Global Anti-Counterfeiting Network (GACG)²⁷ on the year of its foundation. The GACG Network links a large number of national and regional anti-counterfeiting organizations with an objective to exchange and share information, to take part in joint activities and to cooperate in the resolution of specific IP problems and challenges in their respective national or regional areas.

SECTION 2. THE LEVEL OF USE OF TECHNOLOGICAL PROTECTION MEASURES

A. WHAT ARE TECHNOLOGICAL PROTECTION MEASURES?

Technological protection measures are technological tools with the purpose to prevent infringement of copyright, in particular unauthorized copying and exchange of copyrighted content in digital form. Technological protection measures vary according to the type of content to be protected and the support on which it is embodied. They include Digital Rights Management systems (DRMs), metadata and watermarks, encryption and activation systems, copy protection techniques, etc.

²⁵ Source (in Finnish only): <http://facg.fi/saannot/>. Visited on 29.9.2015.

²⁶ The campaigns targeted the websites huuto.net and tori.fi.

²⁷ The website of the Global Anti-Counterfeiting Network: <http://www.gacg.org/>. Visited on 6.11.2015.

Digital rights management (DRM) is a category of technologies that are used by hardware manufacturers, publishers, copyright holders, and individuals with the intent to control the use of digital content after sale in order to prevent piracy. With first-generation DRM software, the intent is to control copying while Second-generation DRM schemes seek to control viewing, copying, printing, and altering of works or devices.

Metadata and watermarks are techniques by which data useful for the purposes of copyright enforcement are created and attached or embedded in a digital file containing copyrighted content before its distribution. Such data include the copyright owner, distributor, distribution chain, or the identity of the purchaser. Metadata are attached to the copyrighted content, while watermarks are directly embedded within it.

Activation or encryption systems are often used in the distribution process of software and video games. They require users to obtain and introduce a key before use, therefore limiting the access to the software.

Although technological protection measures are never able to technically restrict all unauthorized sharing or copying, they can be very efficient in copyright management and are or have at some point been widespread in the distribution of all types of copyrighted digital products. They have however been criticized for causing problems for validly licensed users who encounter technical difficulties in enjoying the cultural products they purchased, as well as for rendering impossible some types of uses, such as copies made for private purposes, which are authorized as part of copyright exceptions and limitations.

B. SITUATION IN FINLAND

In Finland, technological protection measures are legally protected through anti-circumventing rules which were implemented in application of the European Information Society Directive²⁸. Anti-circumvention laws are designed to prohibit the circumvention of technological protection measures. Such rules are embodied in Chapter 5a of the Finnish Copyright Act.²⁹

Section 50a prohibits the circumvention of an effective technological measure protecting a work. The term *effective technological measure* is defined as a technology, a device or a component which is designed to prevent or restrict acts in respect of the work without the author's or other right holder's authorization and by means of which the protection objective is achieved. In the preparatory works, the protection objective is considered achieved when the circumvention cannot happen accidentally. However, this prohibition does not apply if the measure is circumvented in the course of research or education relating to cryptology. Circumvention is also allowed if done in order to be able to listen to or view a lawfully obtained work. These provisions do not apply to computer programs.

Section 50b incorporates a prohibition to produce and distribute devices for circumventing technological measures. According to section 50c, a person who has acquired the work lawfully is also entitled to use the work in accordance with the legal limitations laid down in the definition of exclusive rights. The author is obliged to offer these possibilities, if they are made impossible due to the technological measures in use. Section 50d concerns electronic rights management information (covering metadata). Paragraph 1 states that such information which identifies the work, the author or some other right holder or which provides information about the terms of governing the use of the work shall not be removed or altered.

²⁸ European Directive 2001/29/EC of the European Parliament and of the council of May 22, 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

²⁹ This topic is addressed in the pilot report on Description sheet 5 – *Copyright law*, available at <http://www.cupore.fi/DS5.php>.

Technological protection measures are therefore legally protected in Finland. However, at the time of research no public data was available on their level of use in different copyright-related industries.

C. SUGGESTIONS FOR QUESTIONS IN A SURVEY DIRECTED AT COPYRIGHT HOLDERS IN DIFFERENT INDUSTRIES

Technological protection measures are important tools of protection for copyrighted works in certain copyright-related fields, and assessing their prevalence is important in the description and analysis of a copyright system. These technological devices and their uses are likely to evolve rapidly. In order to get a comprehensive set of information on the issue of the involvement of private actors in copyright enforcement, the information collected here through desktop research could be complemented with survey data or interviews with representatives from different industries.

Proposals for questionnaires directed to authors and performers, and professional copyright users in different copyright-related industries are presented in Appendix D of this report. The questions could be used to address the issue of importance of technological protection measures with different industry representatives through surveys, focus groups or interviews.

The questionnaire covers the following issues:

- What are the main types of technological protection measures used in the field?
- What are the purposes of these tools?
- How commonly are the devices used by stakeholders in the field?
- Have unauthorized uses decreased thanks to the use of technological protection measures?

Conclusions

A. ANALYSIS AND SUMMARY OF THE RESULTS

▪ ANTI-PIRACY ORGANIZATIONS IN FINLAND

In Finland, there are no public supervisory bodies (in the field of copyright) or any public anti-piracy bodies. Supervision of the rights of copyright holders is performed by private organizations. Since most copyright violations in Finland are so-called complainant offences³⁰, right holders are obliged to supervise and control the use of protected subject matters themselves. As a result, right holders have organized themselves and formed a specific body for these purposes: the Copyright Information and Anti-Piracy Centre (CIAPC). This organization facilitates the fight against piracy by supervising and controlling the use of protected subject matter on behalf of its members, by professionally preparing requests for police investigations, and, thanks to its capacity to represent stakeholders in most copyright-related fields, by facilitating copyright enforcement in cases where several right holders are involved.

The CIAPC's activities also include education and information on copyright. It is a registered non-profit association without public role or mandate, despite the fact that part of its funding is provided by the Ministry of Culture and Education. Through its members which include the most relevant organizations in all fields of copyright, the Copyright Information and Anti-Piracy Centre represents a large part of right holders.

The Finnish Anti-Counterfeiting Group (FACG) is another Finnish association active in copyright enforcement. Its purpose is to promote a better understanding of the importance of anti-counterfeiting work in Finland. As such, it conducts information activities, provides statements to different authorities as regards to counterfeit-related issues, and takes part in international cooperation in the field.

▪ INTERNATIONAL COOPERATION IN THE WORK AGAINST PIRACY

As presented in the report on Description sheet 2 – *International and regional context*³¹, Finland has a history of international cooperation in the field of copyright. It has adhered to all the important international conventions in the field since 1928, has implemented the Directives of the European Union in the field of copyright harmonization and enforcement, has concluded bilateral agreements aiming at organizing international promotion and protection of investments, including investments in intellectual property rights, and is also party to a large number of free trade agreements concluded by the European Union which include sections aiming at ensuring adequate and effective protection of intellectual property rights between the contracting parties.

This study has also found that Finnish anti-piracy organizations seek to a certain extent international cooperation in their activities. CIAPC follows the international development of judicial conditions and relevant legislation and participates in the anti-piracy programs of the International Federation of Phonographic Industry (IFPI). As soon as it was founded, FACG joined the Global Anti-Counterfeiting Network (GACG) which links a large number of national and regional anti-counterfeiting organizations with an objective to exchange and share information, to take part in joint activities and to co-operate in the resolution of specific IP problems and challenges in their respective national or regional areas.

³⁰ The copyright-related violations which are not complainant offences are a violation of Section 56e(2) (violation of a technological measure) or of section 51 or 52 of the Copyright Act (moral rights). This means that the prosecutor may press charges against a suspect without the initiative of a complainant. For more details, see the pilot report on Description sheet 9 – *Sanctions and remedies for copyright infringement*, available at <http://www.cupore.fi/DS9.php>.

³¹ Available at http://www.cupore.fi/DS2_internationalandregionalcontext.php.

▪ TECHNOLOGICAL PROTECTION MEASURES

In Finland, technological protection measures are legally protected through anti-circumventing laws in Chapter 5a of the Finnish Copyright Act.³² This means that circumvention of an effective technological measure protecting a work is prohibited, but a person who has acquired the work lawfully is also entitled to use the work in accordance with the legal limitations laid down in the definition of exclusive rights. Technological protection measures cover a wide range of tools which differ according to the subject-matter protected. At the time of research no public data was available on their levels of use in different copyright-related industries.

▪ GENERAL CONCLUSIONS

As can be deduced from this report, Finland has a very elaborated system of copyright enforcement where public and private actors have their specific roles. At a private level, the fight against piracy is highly organized and centralized through the Copyright Information and Anti-Piracy Center (CIAPC) which represents stakeholders throughout all copyright industries with financial support from the government. CIAPC as well as the Finnish Anti-Counterfeiting Group (FACG) are also active in informing the public in general on copyright, in promoting the fight against piracy together with public authorities and in participating in international cooperation in the fight against piracy. Private actors are also able to protect their works through technological protection measures which themselves are legally protected from circumvention.

B. METHODOLOGICAL FINDINGS

▪ LIMITATIONS

At the time of research, no public data was available on the level of use of technological protection measures in Finland. Studying this topic would have required industry-specific information that can be acquired through a series of interviews, focus group studies or surveys only. Another topic that was left for future studies is the description and analysis of the recent trends in enforcement.

▪ GUIDELINES FOR FUTURE RESEARCH

Information can be collected as a combination of a desktop study (using available national and international information sources, statistics and industry data) and interviews, focus group studies or surveys.

The time necessary for this research will highly depend on the availability of the data and the potential interviewees. Taking into account only the actual time needed for research, interviews and drafting of the report, the work would take approximately four weeks of full-time work.

³² This topic is addressed in the pilot report on Description sheet 5 – *Copyright law*, available at <http://www.cupore.fi/DS5.php>.

Appendices

A. DESCRIPTION SHEET

Description sheet as presented in the methodology handbook, draft version 1.12.2015.

Description sheet 8. Enforcement by public and private actors

Description of the operation of the authorities in charge of copyright enforcement, as well as the (legal) provisions determining the enforcement by public authorities. Consider the following actors/institutions:

- Courts
 - Main principles of national court proceedings
 - Types of proceedings: Civil proceedings, criminal proceedings, special proceedings, out-of-court proceedings (briefly)³³
 - Composition of the court: Options available, qualification requirements for judges
 - Possible centralization of intellectual property matters in the specialized courts
 - Appealing a decision of the Court
- Prosecutors
 - Organization and general duties of the Prosecution Service
 - Prosecutor's jurisdiction
 - Prosecutor's role and duties during criminal proceedings: Prosecutor's role in the pre-trial investigation, penal order proceedings, consideration of charges and court proceedings, Prosecutor's right to bring charges
- Police
 - Pre-trial investigation and coercive measures (such as seizure and home search) available to the Police
 - Existence of a special unit in the police force for handling IP/copyright issues
- Customs
 - Tasks and organization
 - Measures under the national law
 - Measures under regional or international law
- Public supervisory or anti-piracy bodies
 - Tasks and organization
 - Coercive and searching methods available to these bodies

Information on the existence of non-governmental organizations working against copyright infringement (such as anti-piracy centers), including the following data:

- Name, description and activities of such organizations
- Possible role/mandate in national legislation for anti-piracy bodies (yes/no, description)
- Support from the government for rights owners' organizations in their work against piracy (amount and proportion in the organization's operational budget), as well as possible requirement for reporting from the subsidized organizations (yes/no)
- The amount of right holders represented by private anti-piracy bodies

Description of the international cooperation in the work against piracy (steps taken at an international level to lower the amount of unauthorized sharing and distribution of copyrighted works)³⁴:

- Amount of copyright enforcement cases requiring international cooperation between police or customs / year
- International cooperation of private copyright organizations and anti-piracy organizations in the enforcement of copyright (yes/no)
- Other cooperation with the authorities of other countries in the work against piracy (yes/no, between whom?)

³³ This last type of proceedings will be analyzed in details as part of Description sheet 10. Availability of alternative dispute resolution mechanisms.

³⁴ This international work can take place on the basis of bilateral agreements or multilateral treaties, whether they are specifically designed for copyright enforcement or are part of general judiciary cooperation.

Description of the recent trends in enforcement, including: <ul style="list-style-type: none"> - Level of use of technological protection measures (digital right management devices, holograms, etc.), including the list and description of technological protection measures used in each creative industry and statistics concerning the use of each types of technological protection measures - Information on how responsive and fast is the public enforcement action. 		
Definitions	<i>Civil case</i>	A case handled in a civil procedure, normally concerning a dispute between two or more private parties. Civil procedures are always initiated by the plaintiff with no involvement of public prosecutors.
	<i>Criminal case</i>	A case in which the defendant is accused of a breach of law by a prosecutor. The case may also involve victims seeking compensation.
	<i>Non-contentious civil case</i>	Non-contentious civil cases are instigated with an application in which the court is requested to confirm an action or record a matter in a public register. ³⁵
	<i>Special proceedings</i>	Proceedings such as certain summary proceedings (both civil and criminal) like the penal order procedure, and proceedings concerning the granting of precautionary measures.
	<i>Public supervisory anti-piracy bodies</i>	Publicly financed organizations specialized in copyright enforcement or the search for copyright infringement
	<i>Piracy</i>	Equivalent to “infringement of copyright”: unauthorized use of copyrighted works, both in their digital and physical form.
	<i>Technological protection measures</i>	Technological tools that effectively control the access and use of a copyrighted work, such as Digital Rights Management devices, anti-copying devices, etc.
Guidelines for data collection	The information for this indicator can be collected through desktop studies complemented with expert interviews with the actors/institutions listed above. This study would require a minimum of one month of work, depending on the schedules of the interviewees and providing that the researcher has a good basic understanding regarding copyright and procedural regulation.	
Limitations of the indicator	Certain types of information can be collected through expert interviews only. Specific sets of data concerning the level of use of technological protection measures and enforcement of copyright by public authorities might not be available.	

B. INFORMATION SOURCES

Legislation:

- Chapter 49, Section 6 of the Finnish Criminal Code
- European Directive 2001/29/EC of the European Parliament and of the council of May 22, 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.
- Section 3(1) of the Finnish Pre-trial Investigation Act
- Section 62 of the Finnish Copyright Act

This is in some cases connected to the data of Description sheet 1 – *International and regional context*. Both sets of data will indicate a general tendency for, or lack of, international cooperation. The amount of copyright enforcement cases can be compared to the number of requests for investigation and court cases required in the next indicator, in order to evaluate the importance of international cooperation at the scale of a country’s general copyright enforcement procedures.

³⁵ Source: Official Statistics of Finland (OSF): Decisions by district courts in civil cases [e-publication]. Helsinki: Statistics Finland [referred: 6.9.2013]. http://www.stat.fi/til/koikrs/index_en.html.

Websites:

- Copyright-related teaching material for secondary school (hosted by CIAPC): <http://www.piraattitehdas.fi/index.php?mid=41>
- Copyright-related section in the "älypää!" quizz service: <http://alypaa.com/pelit/tekijanoikeus>
- Finnish Anti-Counterfeiting Group (Suomen Anti-piratismiyhdistys ry): <http://www.facg.fi/>
- Finnish Information and Anti-piracy Centre (Tekijänoikeuden tiedotus- ja valvontakeskus ry): <http://antipiracy.fi/>
- Information on copyright (website hosted by CIAPC): <http://www.tekijanoikeus.fi/>
- Week of Media Skills (Mediataitoviikko): <http://www.mediataitokoulu.fi/mediataitoviikko/>

Other documents:

- Gowers Review of Intellectual Property conducted in the UK in 2005–2006: http://www.hm-treasury.gov.uk/gowers_review_index.htm.

C. CONSULTED AND INTERVIEWED PARTIES

- Kristiina Harenko, esittelijäneuvos at the Supreme Court (19.5.2013)
- Jaana Pihkala, Executive Director at the Copyright Information and Anti-piracy Centre in Finland and Chairman of the board at FACG (email on 26.10.2015)
- Juha Rislakki, Communication Officer at the Copyright Information and Anti-piracy Centre in Finland (interview with researcher Jukka Kortelainen on 9.5.2013)

D. QUESTIONNAIRE (PROPOSAL)

The following questionnaires are based on a set of exemplary questions for surveys, interviews and focus group studies specified in a separate toolkit of questionnaires.

QUESTIONNAIRE FOR AUTHORS AND PERFORMERS

BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

3. Please estimate the size of your yearly taxable gross income (individual artists and performers) OR, alternatively, the size of your yearly turnover (organizations)

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

THE USE OF TECHNOLOGICAL PROTECTION MEASURES

5. Do you currently use technological protection measures to control the access to, or the use of a copyrighted work? *Technological protection measures are tools that effectively control the access to and the use of copyrighted works, such as Digital Rights Management devices and anti-copying devices.*

- Yes
- No

6. What types of technological protection measures do you use?
.....

7. What are your purposes for using technological protection measures:
- preventing unauthorized copying
 - preventing unauthorized sharing of copyrighted works
 - preventing other types of unauthorized uses (please describe :)
 - monitoring the uses of the works (for example, for datamining purposes)
 - tracking unauthorized uses
 - informing users on copyright information
 - other (please describe :)

8. Have unauthorized uses decreased thanks to the use of technological protection measures? If necessary, please answer separately for each type of tools mentioned above.

.....

QUESTIONNAIRE FOR PROFESSIONAL COPYRIGHT USERS

BACKGROUND INFORMATION

1. If you represent an organization, what are your position and responsibilities in your organization?

.....

If you represent an organization: In the following questions, please answer on behalf of the organization you represent.

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

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

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

3. What types of copyright-based revenue (income or turnover) did you receive last year?"

- Royalties or other revenue from your own related rights (reproduction, broadcasting, communication to the public,...)
- Revenue from licensing your own related rights to third parties
- Revenue from copyrighted works produced using rights licensed from authors or performers
- Other, please describe

Instruction for the researcher: The categories here-up need to be adapted according to the industry in consideration. New lists can also be drafted in order to allow for more detailed answers.

4. Please estimate the size of your yearly turnover

- turnover group 1
- turnover group 2
- turnover group 3

Instruction for the researcher: This information enables distinguishing the actors of different sizes. The turnover groups need to be defined for each country separately. Alternatively, the information could be asked with an open question.

5. Please estimate the proportion of your yearly total turnover which is direct copyright revenue (the sources of direct copyright revenue are specified in question 3) %

THE USE OF TECHNOLOGICAL PROTECTION MEASURES

6. Do you currently use technological protection measures to control the access to, or the use of a copyrighted work? *Technological protection measures are tools that effectively control the access to and the use of copyrighted works, such as Digital Rights Management devices and anti-copying devices.*

- Yes
- No

What types of technological protection measures do you use?

.....

7. What are your purposes for using technological protection measures:

- preventing unauthorized copying
- preventing unauthorized sharing of copyrighted works
- preventing other types of unauthorized uses (please describe :)
- monitoring the uses of the works (for example, for datamining purposes)
- tracking unauthorized uses
- informing users on copyright information
- other (please describe :)

9. Have unauthorized uses decreased thanks to the use of technological protection measures? If necessary, please answer separately for each type of tools mentioned above.

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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>