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ESCIA PILOT STUDY

The Use of Copyrighted Material for the Purposes of Non-commercial Scientific Research

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The Use of Copyrighted Material for the Purposes of Non-commercial Scientific Research

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1 INTRODUCTION

1.1 ESCIA Methodology

The Economic, Social and Cultural Impact Assessment or ESCIA guidelines, developed by the World Intellectual Property Organization WIPO[1], comprise a methodology for a comprehensive assessment of the impacts produced by copyright on society. It follows the development of other tools by WIPO used to measure various copyright effects. Its purpose is to add to these tools by providing an instrument which enables governments and research institutions to look beyond the economic contribution of copyright and assess its impact in social, economic and cultural terms.

The ESCIA methodology has been developed in several rounds by a group of experts representing a multidisciplinary approach to the analysis of copyright, something that has been missing from the literature and practice so far. ESCIA has been developed with the view of providing solid and objective evidence to policy makers in the field of copyright.

1.2 The Pilot Project

Finland was the first country to test the application of the ESCIA methodology, following a proposal by the Secretariat of WIPO. The pilot project was conducted in 2014-2016 in cooperation between the Center for Cultural Policy Research Cupore and the Finnish Copyright Society. The topic of the pilot study was the impacts of different policy options concerning the use of copyrighted material for the purpose of non-commercial scientific research.

The core project team consisted of the following persons:

- Jukka Liedes, Chairman of the Finnish Copyright Society
- Tiina Kautio, Project Manager, Cupore
- Jukka Kortelainen, Project Researcher, Cupore
- Jari Muikku, Consultant, Digital Media Finland

An advisory group consisting of representatives of WIPO provided assistance on implementing the methodology. The advisory group delivered to the core project team a basic guide on implementing the ESCIA guidelines in order to conduct the pilot study. The advisory group and the core project team also held several video meetings throughout the process.

1 The document ”WIPO Draft Guidelines on Assessing the Economic, Social and Cultural Impact of Copyright on the Creative Economy” is available on the website of WIPO at http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/escia.pdf.

The project consisted of two phases. The first phase of the project was conducted between March 2014 and February 2015[2]. In this report we call this phase the pre-pilot project.

The second phase, which is the main subject of this report, took place between March 2015 and January 2016. The results of the second phase were discussed at a seminar, which was held on March 8, 2016 and was attended by members from both focus groups and representatives of WIPO and the Ministry of Education and Culture. These two phases together form and are called in this report the Pilot Project.

Both phases of the project were carried out by using the same kind of process. First the project team planned the project and discussed it with the representatives of WIPO. Two focus groups comprising experts on the subject matter were formed and invited to take part in the study. Thereafter preliminary surveys were prepared and sent to the members of the focus groups. The results of the preliminary surveys were analysed and used as the basis for planning the themes of the next step of the process, structured and moderated group discussions. Finally, all the materials were analysed and reported on by the core project team. The process is described in detail in the following chapters.

In 2017 the Finnish Copyright Society conducted, on the basis of a suggestion by WIPO, an additional step in the project. The purpose was to test the use of surveys for collecting more comprehensive data on the topic and to verify the results of the focus group discussions. The idea behind data triangulation (the use of multiple methods in the study) was to gain more insight into the topic of the study. The questionnaires were sent in April 2017 to 300 researchers or persons responsible for research activity in two universities (Helsinki and Oulu), as well as 300 rightholders, mainly from publishing and production companies.

It, however, turned out that the method of using survey questionnaires to verify the results of the focus group discussions was impracticable for the purposes of the study. The number of responses to both questionnaires remained low.

There are several possible reasons for the non-functioning of the additional surveys to validate the results. The connection and causality between the use of works for scientific purposes and its effects on the markets are often indistinct. It was not possible to establish proper, yet narrow, selections of respondents to the questionnaires. The target groups of the questionnaires were not sufficiently aware of the research issues nor did they have motivation to respond.

2 A report of the pre-pilot study to test the application of the WIPO Draft Guidelines on Assessing the Economic, Social and Cultural Impacts of Copyright on the Creative Economy (ESCIA) was submitted to the Finnish Ministry of Education and Culture and the WIPO on 2.2.2015.

It may also be that the reasons of the non-functioning of the additional surveys are in the case of scientific research already built in the choice of the theme to be tested: the effects that the use of works for research purposes has on the markets are uncertain and complex, and the questions concerning different kinds of impacts of alternative policy outcomes are here best resolved using other research methods.

As a consequence, this report covers only the results of the focus group discussions.

1.3 The Structure of the Report

The report is divided into three sections. The objectives, aims and methodology of the pilot project are described in chapter 2. The key findings of the study concerning the research topic are presented in chapter 3. The observations and comments concerning the ESCIA methodology are presented in chapter 4. Conclusions and recommendations are summed up in chapter 5. The relevant background materials of the study are presented in annexes.

2 BACKGROUND INFORMATION

2.1 The Objective of the Study

The objective of the pilot project was to test the framework of "WIPO Guidelines on assessing economic, social and cultural impact of copyright in the creative economy" in Finland. The study focused on the impacts of different policy options concerning the use of copyrighted material for the purposes of non-commercial scientific research.

The assessment was based on a set of alternative policy options or scenarios. The purpose of these alternative policy measures was to clarify the questions concerning the use of copyright-protected material for the purposes of non-commercial scientific research and the publication of research results, and preservation and verification of research results and research data, including copyrighted material of third parties.

The topic was chosen based on two main criteria. Firstly, the ESCIA methodology was tested for the first time in practice. Therefore a conscious decision was made to simulate the methodology by doing a limited-scale project in order to explore and learn it better, instead of launching directly a full-scale project.

Secondly, the subject had to be relevant for the current copyright discussion in Finland. The use of protected subject matter in the context of scientific research has been referred to in Finland as one of the possible areas of future review, and as an area of possible consideration of additional measures to facilitate scientific research. The theme is also closely associated with the EU-level debate on the openness of science. In addition to this, new methods enabled by the development of technology such as text and data mining (TDM) have brought along new kinds of issues and challenges for the copyright system.

2.2 Three Scenarios for Copyright Policy

The assessment was based on three alternative policy options or scenarios, which were discussed and defined in co-operation with representatives of the Ministry of Education and Culture:

1. Maintaining the current situation

Licensing on an individual or collective basis is required; extended collective licensing (ECL) under Section 14 of the Copyright Act is applicable to the use of any kinds of works for the purposes of scientific research.

When there is need to have recourse to ECL, the interlocutors are collective copyright management organizations Kopiosto, Gramex and Tuotos. As the project concerned professional scientific research in organized forms and not private study or research, Section 12 does not apply. Works of art may be reproduced in a scientific presentation (Section 25).

2. Introduction of a new limitation to copyright

A (general) limitation that allows:

- the use of copyright-protected material for the purposes of non-commercial scientific research and
- the publication of research results and preservation and verification of research data that includes copyrighted material of a third party.
- ECL under Section 14 of the Copyright Act would be applicable to the use of works for the purposes of commercial scientific research.

The provisions for the purposes of scientific research could be formulated *e.g.* as follows:

"*The reproduction of a work made public is allowed for the purposes of non-commercial scientific research. Thus reproduced work may be communicated to the public for the purposes of scientific research. The copy thus made may not be used for other purposes.*"

3. Additional policy option, which is applicable to both scenarios 1 and 2 but not as an independent solution: Introduction of a specific soft law instrument such as a consensus document

A national memorandum of understanding (MoU) on the use of copyrighted material for the purposes of scientific research would be established at the national level between all the organizations carrying on scientific research and organizations representing all relevant groups of right holders. The rightholders' organizations would declare that they endeavor to influence the right holders they represent to allow the use of protected subject matter for the purposes of scientific research according to agreed terms. Furthermore, the right holders' organizations are committed to work to preclude claims for the use governed by the MoU.

The research institutions would commit to comply with the conditions, and to oversee that they are observed in the research conducted under their auspices.

The MoU scenario would allow flexibility for the parties in designing the scope of the MoU, at the same time devising strict conditions for the allowed uses; e.g. the MoU could extend the allowed uses to scientific research conducted for commercial purposes.

Examples of strict agreed conditions:

- The research shall be organized in such a way that the use does not interfere with the market of the protected subject matter.
- The institutions shall provide that reproduction and communication for other purpose than for the very research is prohibited and prevented.

2.3 The Pre-pilot Study

The first phase of the project was conducted between March 2014 and February 2015. For the purposes of the pre-pilot study, the core project team established a focus group of leading experts on the chosen subject. The aim was to keep the size of the group limited, and to make sure that the most important stakeholders are represented in the group in a balanced way. The group consisted of ten members representing interests of researchers, research institutions and right holders[3].

The members of the focus group first replied to a questionnaire in which they were asked to answer a series of questions concerning the overall situation in Finland, and to analyse and evaluate different copyright policy options. After this, two group discussions were held. The main aim of the first group discussion was to assess the importance of different problems related to the subject for different stakeholders. The main aim of the second group discussion was to find the best solutions and copyright policy options to solve the problems brought up during the first session.

The following list presents the main findings of the first group discussion of the pre-pilot study. These findings provided a baseline for designing the questionnaires and group discussions for the second phase of the pilot project presented in this report.

Distribution and preservation of research results and materials:
The essence of problems identified is not related to carrying out research as such, but to distributing or retaining, and providing access to the research results and materials for verification. In the present situation obstacles to distribution and preservation may emerge when research sponsors and scientific publishers require research materials and results to be openly available.

3 The following experts participated in the group discussions held in November 2014: Mikael Laakso (Hanken School of Economics), Anna Kallio (The Finnish Association of Non-fiction Writers), Jukka-Pekka Timonen (Kopiosto Copyright Society), Maria Rehbinder (Aalto University), Marjut Salokannel (University of Helsinki), Pirjo Kontkanen (University of Helsinki), Pekka Heikkinen (National Library of Finland), Sakari Laiho (The Finnish Book Publishers Association), Satu Kangas (The Federation of the Finnish Media Industry), Krister Lindén (University of Helsinki). These experts were also invited to the focus groups established in the second phase of the project.

Internationalization of research work:
Scientific research work is often done in the form of international collaboration projects. In these kinds of cases different legislations of different countries create challenges. The degree of legal security in research work may impact the mutual competitive setting of EU countries.

Legal uncertainty:
Several respondents had experienced uncertainty about copyright issues during research work. The experiences of risks related to uncertainty are varied due to the heterogeneity of research materials, and the varying ways the research projects are carried out.

Particular areas of problems:
Currently, some of the biggest problems are related to the use of text and data mining (TDM). In addition, the use of audio-visual materials was said to cause difficult problems on a regular basis.
The amount of work related to clarifying the existence of copyrights and copyright holders has created obstacles, especially when older materials are needed for research. Furthermore, there are unclear areas in the rights and responsibilities of researchers and universities.

Knowledge of researchers:
The researchers were considered to have generally a low level of knowledge of copyright issues. One of the main reasons for the lack of understanding of copyright and contracts is that the matters are often rather complicated. Currently, there are not enough training or information services regarding copyright and research available for researchers.

In the questionnaire, practically all respondents expressed that soft law instrument is not a desirable way to solve the problems and challenges. However, during the group discussion it was considered by some respondents to be a good and practical tool to establish common guidelines even though it does not offer legal certainty and does not solve the problems at the international level.

Based on these findings, it was decided that the project would be continued during 2015 in order to elaborate on these findings and to assess the impacts of different policy scenarios more precisely.

2.4 Description of the Work Process

The second phase of the project was launched after finalising the pre-pilot study in February 2015. The pilot project was discussed with WIPO representatives in March 2015.

An extended project team was founded in order to get more wide-based expertise on statistical methods, impact assessment, and political processes into the project organization. The extended project team consisted of, in addition to the members of the core project team, the following persons:

- copyright experts from the Ministry of Education and Culture: Viveca Still and Anna Vuopala
- science policy experts from the Ministry of Education and Culture: Immo Aakkula and Sami Niinimäki
- statistical experts and experts in impact assessment methodology from Cupore: Pasi Saukkonen, Sari Karttunen, and Pauli Rautiainen

The extended project team had three meetings during June-December 2015.

As a first step, preliminary surveys were sent to a selected group of 17 experts on the subject in October 2015. In the preliminary surveys, the experts were asked to describe and evaluate the effects of the above-mentioned policy options from their points of view. The questionnaires were targeted to cover each essential stakeholder group.[4] After receiving 16 answers the core project team analysed the results.

The aim of the preliminary surveys was, in addition to collecting information, to help the experts to prepare for the group discussions that were the main step in the data collection process. The agenda and the themes of the discussions were planned according to the answers received. The two focus groups discussions were carried out on November 17 and 19, 2015 at the premises of the Ministry of Education and Culture in Helsinki. The language used in the sessions was Finnish. Jari Muikku acted as the chairman in both sessions, and the members of the core project team were present.

Unlike in the pre-pilot project, the discussion groups were formed so that the first group consisted only of the representatives of the interests of researchers and research organizations, and the second group of the representatives of the interests of various right holders. The main reason for this was to verify the results of the preliminary survey, to elaborate on the results of the survey, to find answers to open questions, to discover possible areas of misunderstandings or conflicts between the two interest groups, and to analyse selected themes in more depth. In addition, the groups evaluated selected impacts in the context of each scenario by using a risk and opportunity matrix.

After the core project team had analysed the data of the group discussions, the representatives of both groups were invited to a seminar to discuss the results of the second phase of the pilot

4 The questionnaires are presented in annexes.

study. In addition to representatives of the focus groups, the extended project team, representatives of the Finnish Ministry of Education and Culture as well as Mr. Dimiter Gantchev (WIPO) and Mr. Vanus James (University of Technology, Jamaica) were present at the seminar.

The focus groups consisted of the following persons, who were considered to be both the leading experts on the issue and representing the most important institutions regarding the use of copyrighted materials in scientific research:

Group 1: Representatives of the interests of researchers and research institutions[5]:

- Pekka Heikkinen (The National Library of Finland)
- Kristiina Hormia-Poutanen (Liber/The National Library of Finland)
- Krister Lindén (University of Helsinki/FIN-CLARIN)
- Mikael Laakso (Hanken School of Economics)
- Pirjo Kontkanen (University of Helsinki)
- Jukka Rantala (Nokia Technologies)
- Maria Rehbinder (Aalto University)
- Marjut Salokannel (University of Helsinki)
- Jarmo Saarti (The Finnish Research Library association (Chairman); University of Eastern Finland Library)

Group 2: Representatives of the interests of right holders

- Anna Kallio (The Finnish Association of Non-fiction Writers)
- Jukka-Pekka Timonen (Kopiosto, umbrella organisation for associations representing performing artists, authors and publishers)
- Sakari Laiho (Finnish Book Publishers Association)
- Satu Kangas (The Federation of the Finnish Media Industry)
- Kirsi Salo (Tuotos, collective society for audiovisual producers)
- Pekka Sipilä (Finnish Music Publishers Association)
- Lauri Kaira (Gramex, copyright society of performing artists and phonogram producers)
- Katri Soramäki (Grafia, Association of Visual Communication Designers)

After the focus group discussions the core project team discussed, analysed and reported the results[6].

The seminar of March 8, 2016 was held at the premises of the Ministry of Education and Culture in Helsinki. The language used was English. Jari Muikku acted as the chairman of the session.

5 The members of this group were meta level professionals, who are able to discuss the issues without limiting themselves to certain branches of science.

6 The results have been presented in chapters 3–5.

The following experts representing the interests of researchers and research institutions, and the interests of right holders, participated the seminar:

- Noora Arkia (The Finnish Association of Non-fiction Writers)
- Mikko Hoikka (The Federation of The Finnish Media Industry)
- Mikael Laakso (Hanken School of Economics)
- Krister Lindén (University of Helsinki; FIN-CLARIN)
- Jukka Rantala (Nokia Technologies)
- Maria Rehbinder (Aalto University)
- Kirsi Salmela (Kopiosto, umbrella organisation for associations representing performing artists, authors and publishers)
- Marjut Salokannel (University of Helsinki)

The programme of the seminar consisted of presentations made by Dimiter Gantchev (presentation of ESCIA), Vanus James (notes on methodology), Maria Rehbinder (notes on the baseline from the point of view of research institutions) and Kirsi Salmela (notes on the baseline from the point of view of right holders). After these presentations the results of the project were discussed based on four pre-selected themes[7], which were sent to the participants in advance.

2.5 Economic, Social, and Cultural Impacts

The three aforementioned scenarios were reviewed during the group discussions also by using economic, social, and cultural indicators of the ESCIA methodology[8]. As the scope of the study and the time available for the group work was limited, only a small selection of the indicators were used for assessment during the discussions.

The members of the focus groups discussed the impacts and the indicators as a brief final task of the sessions by using a matrix, which included the indicators selected by the core project team. The participants estimated the risks and opportunities of each indicator by using a scale from 1 (low risk or opportunity) to 5 (high risk or opportunity). Furthermore, they were given a longer list of indicators and they were asked to pick up the ones which they felt relevant and important in relation to the subject of the study. The evaluations were carried out by groups of two or three persons during the group discussion sessions, and the results were discussed with the whole focus groups.

7 The themes were access to research materials, preservation of the research materials for verification, publishing research results, and the economic, social and cultural impacts.

8 The ESCIA methodology characterizes nine main indicators which are each followed by a set of core and supporting indicators. The indicators are designed to capture both qualitative and quantitative information on economic, social and cultural impacts. For more information, see the document ”WIPO Draft Guidelines on Assessing the Economic, Social and Cultural Impact of Copyright on the Creative Economy”.

We do not present the exact numerical evaluations in this report but refer to the outcomes of the discussions in chapter 4. This is due to the limited time available for the impact evaluation phase. However, the results can be used as indications.

The following topics for impact assessment were mentioned either as a part of the assessment matrix or in the discussions:

Economic impacts

- Right holders' livelihood
- Researchers' livelihood
- Publishing business
- Finances of universities
- Market effects
- National economy
- Cost of licensing
- Copyright revenues
- Scope of licensing
- Funding for public and private research
- New business models, new income streams
- Market position
- Interference of data mining with other commercial entities
- Making available

Social impacts

- Scope of licensing
- Creation of new knowledge through data mining
- Access to knowledge
- Cross border collaboration
- Research bottlenecks due to copyright
- Conflict between right holders and users
- Impact on education
- Data preservation
- Protection of personal data

Cultural impacts

- Perception on access to culture
- Availability of content
- Diversity
- Attitudes to open access and storage
- Cross-border impacts
- Storage and preservation of research data

2.6 Definitions and Limitations

For the sake of clarity, some key concepts and terms were defined in the beginning of the pilot project as follows:

Research: Refers to an activity and not to an institution.

Scientific research: Research based on or characterized by the methods and principles of science[9]. For the purposes of the ESCIA pilot project the threshold for "scientific" was considered to be low. Restrictions concerning the different branches of science are not made. Also research which is taking place in the field of arts may be scientific.

Non-commercial purpose: The term was defined by the following characteristics:

- The non-commercial nature of the activity shall be determined by the activity as such; the organisational structure and the means of funding are not decisive factors
- Research is not conducted for commercial purposes when the research activity itself is not made for profit
- University spin-offs and commissioned research would fall out of the limitation
- Conducting research in co-operation with commercial partners does not disqualify the non-commercial research as such
- Publication on commercial terms of the research results does not disqualify the non-commercial research as such

University spin-off: A company founded on the findings of a member or by members of a research group at a university[10]

Commissioned research: Research work carried out on order; the commissioner or a third party wholly pays the costs of research activities. However, the distinction between commissioned and basic research work is not always clear and should be taken into consideration in discussing the commercial/non-commercial nature of research work.

Use: Reproduction and making available (for the research group/research community) of copyrighted material of a third party

Making available to the public: In the context of Finland, making available is used as an umbrella term for communication of the works, distribution of copies, public performance and public display

9 http://www.oxforddictionaries.com/definition/english/scientific.
10 http://en.wikipedia.org/wiki/Spin-off.

The project was scaled and carried out according to the resources available. This caused limitations both in the overall scale and the group discussions as explained previously. Furthermore, the pilot project concentrated on copyright issues. Other issues such as privacy protection in text and data mining research were not discussed in detail.

3 THE USE OF COPYRIGHT-PROTECTED MATERIAL FOR THE PURPOSES OF NON-COMMERCIAL SCIENTIFIC RESEARCH

In this chapter we present the results of the preliminary surveys, the group discussions, the impact evaluations, and the seminar discussions according to three policy options or scenarios as described in the previous chapter.

3.1 Scenario 1: Maintaining the Current Situation

3.1.1 The Results of the Preliminary Survey

In the preliminary survey **researchers and research institutions** emphasized the problems regarding legal uncertainty in distributing results and preserving research materials, and the amount of work needed for clearing the rights and finding the respective right holders.

In most answers it was considered that the present situation offers a weak basis for conducting scientific research and that the level of legal certainty is low.

Most experts considered that the effects of keeping the present situation are either neutral or negative in the following areas:

- Availability of research material and knowledge
- Amount and quality of research
- Agreeing upon the use of works
- Operation of commercial markets for works
- Administrational and transaction costs
- Research co-operation both in Finland and at the international level

Researchers and research institutions considered it unlikely that the use of copyright-protected materials in the present situation would cause harm to right holders.

Contrary to the researchers and research institutions, **right holders** stated in the survey that the present situation offers good legal certainty, and keeping the present situation would have a positive effect on agreeing upon the use of works, on the operation of commercial markets for works, and on administrational and transaction costs.

The majority of right holders also see the effect of using the works for research in the present situation neutral, and that harm caused to right holders is unlikely.

3.1.2 The Results of the Group Discussions

Researchers and research institutions emphasized in the group discussion that there is a basic tension between the research world and commercial markets for works in terms of ethos. In research there is a basic aspiration for openness, whereas various parties of the commercial markets have interests to control the use of the materials. However, it was recognized that the situation is complex as researchers are right holders as well, and there are substantial commercial interests connected to research and the scientific publication business.

The practical problems occur mainly in two situations. At the beginning of a research project the main problem is getting access to research materials. At the end of a research project the main problems concern the publication of the results, and the preservation of the research materials for verification.

According to the researchers and research institutions, most of the problems and challenges in the present situation occur in the field of text and data mining (TDM). Some of the main issues are arranging legal access to materials, the use of international materials, the new kind of approaches and methods used in TDM, and whose software, the material owner's or the researcher's, is allowed to be used in actual TDM work. In addition to this, it was mentioned that the problems of TDM are not limited to copyright issues but, for example, privacy issues are of paramount importance.

Researchers and research institutions emphasized that the openness of science is an important and current theme, which is both in the agenda of EU Commission and different ministries in Finland. According to them it is required that the principle of openness should be extended from basic research work to publications and reference use.

In the present situation the coverage and the scope of mandates of the current copyright organizations cause problems. For example, the materials produced by the individual users of various social media services cannot be licensed by the existing collective management organizations. Also the prices of the licenses were considered to be too high, and if a paying party wants to know exactly what the license covers and what not, and who will finally get the remunerations, the transaction costs will raise considerably.

Right holders considered that the present situation offers a lot of possibilities for users and that the problems mentioned by researchers and research institutions are, in many cases, caused by lack of information, knowledge, and dialogue between the parties. According to them, the current legal framework and collective agreements already offer solutions to most of the problems addressed by the researchers and research institutions. Furthermore, the extended collective

licensing system offers tools to search and identify individual right holders, which diminishes the transactions costs.

Right holders therefore suggested that it would be important to analyse the problems mentioned in the discussions in detail, and study at a practical level the actual cases where research work has failed due to copyright issues.

Right holders also pondered if the current price levels of licenses cause discomfort among researchers and research institutions. According to right holders the levels are quite low compared with other Nordic countries, and reasonable compared with other EU countries.

3.1.3 Impact Evaluation

Researchers and research institutions considered that the present situation causes big risks (level 4 or 5) in cases of the following indicators: finances of universities and research institutions, national economy, market effects, development of research infrastructure, availability and usability of research materials, technological innovations, development of research methods, research bottlenecks due to copyright, impact on education, and storage and preservation of data. The only big (level 4) opportunities mentioned were the income of publishers and other right holders, as they can keep on doing business with data.

The effects on other indicators were mainly considered to be neutral. The evaluation of innovation and TDM methods were told to be difficult, as they can also be developed "in a vacuum".

All in all, it was described that the established parties are used to the present situation.

The right holders' evaluation was more or less a mirror image of the researchers' and research institutions' evaluation. Right holders considered that the present situation offers big opportunities (level 4 and 5) regarding most indicators and did not recognize any major risks.

Some right holders emphasized that the present situation should not be considered to be a static situation but a scenario which offers various possibilities for development.

3.1.4 The Seminar of March 8, 2016

During the seminar it became evident that the current licenses cover neither all kinds of materials nor all types of uses. In addition to this, the geographical scope of licenses remains a problem as research work is done more and more on a global level, not only at the EU level. Furthermore,

it was pointed out that more attention should be paid to the facts, which issues and forms of research work are directly copyright-related and which are not, or do the current licenses cover areas which are not licensable in the first place. The debate can also easily miss the point as researchers address specific and technical problems whereas right holders speak in general terms.

3.2 Scenario 2: Introduction of a New Limitation to Copyright

3.2.1 The Results of the Preliminary Survey

Researchers and research institutions stated almost unanimously that a new limitation to copyright would make it possible to conduct scientific research in an efficient way and it would also guarantee legal certainty. Furthermore, they also said that a limitation would have a positive or neutral effect on the following areas:

- Availability of research material and knowledge
- Amount and quality of research
- Agreeing upon the use of works
- Operation of commercial markets for works
- Administrational and transaction costs
- Research co-operation both in Finland and at the international level

Researchers and research institutions considered it unlikely that the use of copyright-protected materials would cause any significant harm to right holders also in this scenario.

Among the focus group members there was a clear exception as a representative of a big technology company considered that a limitation would lead to less co-operation between commercial companies and research institutions. The main risk would be a leak of business secrets and that research institutions could use their programming codes and algorithms freely without limitations. This would lead to an increasing prevalence of prohibition clauses in contracts.

Right holders had an opposite view on many points presented by the other group. Right holders also emphasized the problems of the definition of non-commercial research. They stated that a limitation would guarantee legal certainty weakly or very weakly, and it would also weakly guarantee the right holders' possibility to license uses which are not covered by a limitation. The effects regarding the operation of commercial markets for works were considered to be negative as well.

Most right holders expected that a limitation would have a negative effect on sales of the works and that a limitation would cause most likely significant harm to right holders.

3.2.2 The Results of the Group Discussions

Researchers and research institutions considered that a limitation would be an efficient solution to most problems discussed in the study. The biggest challenge would concern the definition of non-commercial research. However, the definition[11] was found to be as comprehensive as it could be. The main risk would be so-called grey areas, which could easily lead to court cases, and would increase costs.

A representative of a big technology company stated that their position on a limitation depends on what the limitation would cover. If it covered data, it would be a positive thing for research. However, if it covered program codes, it would potentially have negative effects on commercial companies if the results would eventually be shared with competitors. It was mentioned that a limitation could be written so that computer programs would be treated separately.

Right holders considered that the definition of non-commercial research is complex and emphasized that if a new term is introduced into the legislation it will affect also the whole copyright system. The main risk mentioned concerns potential loopholes, which could lead to unfair competition situations. All in all, the definition should be analysed and discussed carefully.

Furthermore, right holders said that also other concepts and terms discussed in the study are vague by nature. For example, right holders pondered if master's theses and methods are included in the definition of research. On a more general level, there is no easy way to separate research from education taking place in research institutions. Right holders said that in the present situation there are already well functioning licensing systems which cover both areas, and therefore they did not see any reasons for change.

According to right holders, a limitation would have a significant negative financial effect on certain right holder groups as a limitation would erase a potential licensing area. Generally speaking, right holders were afraid that a limitation would potentially have a significant negative effect in the long run on the digital content market, where the income will more and more consist of several small income streams instead of single big sources.

Right holders also stated that a limitation would include a risk that researchers would not anymore inform them of the uses of works which are not covered by the limitation. They also identified a risk that right holders might use various means to limit the availability of materials as a result of a limitation.

11 As presented in chapter 2.6.

3.2.3 Impact Evaluation

Researchers and research institutions considered that a limitation would offer big opportunities (level 4 or 5), and erase the risks almost completely.

The only exceptions mentioned were the effects on the publishing business, the co-operation between research institutions and commercial companies, and the operation of commercial markets for works.

The right holders' evaluation was also in this case a mirror image of the researchers' and research institutions' evaluation. Right holders considered that a limitation would bring along far more risks than the present situation, and a limitation alone would not be a sufficient tool to solve the problems presented by the other group. However, the assessed levels of the risks varied more than in the case of researchers.

Right holders said that in case of a very strong limitation, it would possibly reduce the availability of research materials as right holders would like to keep them for themselves whenever possible. Therefore, paradoxically, extended collective licensing can make possible a wider use than can be obtained with a limitation. It was commented that in case of a limitation, research institutions would also lose some of their current own rights.

Furthermore, it was mentioned that research is such a small portion of the national economy that various scenarios do not affect it. Right holders also noted that assessing the impacts is very difficult without knowing the exact wording of a limitation.

3.2.4 The Seminar of March 8, 2016

At the seminar the worries regarding the loss of income sources expressed by the right holders were said to have more nuances, as small and big publishers may have various views on this. Representatives of researchers' interests pointed out that experiences from other countries such as the USA and the UK support the view that the loss on income is not a big issue but limitations have contributed positively to the national economy. Right holders said that licenses are flexible and they are better solutions for everybody than narrow limitations. Another point requiring clarification is the differences between the issues concerning research data (such as access to the material and preservation of the research material) and scientific publications (such as parallel publication of the results of the research work).

3.3 Scenario 3: Introduction of a Specific Soft Law Instrument

3.3.1 The Results of the Preliminary Survey

Researchers and research institutions had varied opinions on the effects of a specific soft law instrument such as a consensus document or a national memorandum of understanding (MoU), which would be an additional element either to the present situation or to a limitation. Some respondents considered that it would make the legal situation even more complex, whereas some considered that it would be useful if a limitation would be defined in a narrow way.

Right holders had also varied opinions both for and against this scenario. A soft law instrument could be a useful tool for communication but, on the other hand, it could disturb the current licensing system.

3.3.2 The Results of the Group Discussions

Researchers and research institutions did not consider a soft law instrument as an efficient solution as it would not, for example, increase legal certainty or cover use in international projects, and it would increase administrational and transaction costs. However, it could work as an additional element to a limitation in cases where a limitation can be overruled with separate contracts.

Right holders had varied opinions on a soft law instrument. Generally speaking it was considered better to combine it with the current conditions than to have a change of legislation, as it would be much easier and more flexible to modify an instrument according to the needs of the fast changing markets. Right holders did not see any purpose for a soft law instrument combined with a limitation, as there would not be any areas of agreement or licensing left to be covered.

However, it was said that a soft law instrument could be a useful tool for communication as it could express clearly the practical rules of uses, and it could be employed to define certain areas of use. It was also stated that the current Kopiosto licenses are “soft licenses” by nature as they include terms which are defined quite loosely and in a permissive way.

3.3.3 Impact Evaluation

Both groups said that it is difficult to evaluate the impacts of a soft law instrument without knowing, firstly, whether it would be added to the present situation or combined with a limitation, and, secondly, without knowing the exact wording of a limitation and a soft law instrument.

Researchers and research institutions considered that a soft law instrument is a "milder" version of a limitation. It would be better than the present situation but not as optimal as a limitation. It was considered that it does not bring along major risks either.

Right holders said that, at its best, a MoU could offer fruitful opportunities for the parties for a constructive dialogue, which might increase the level of opportunities.

3.3.4 The Seminar of March 8, 2016

At the seminar the additional policy option of introducing a specific soft law instrument was not discussed in detail.

3.4 Summary of the Results

It became evident that the two groups had opposite views on the scenarios. The group of researchers and research institutions believed that a limitation would be a "silver bullet" or a single solution, which could solve more or less all the current problems and open up a lot of new possibilities. The group of right holders did not agree but, instead, emphasized that developing the current systems and licenses, and increasing dialogue between various parties would lead to better, more efficient and risk-freer solutions than introducing a limitation.

The main contradiction behind this setting was clear. Right holders argued that the current systems either already solve or could solve the problems emphasized by the other group. From the core project team's point of view the only explanations to this situation are that, firstly, there is a lack of information on the actual content and scope of the existing licenses and contracts, and/or, secondly, there is a conscious tendency to interpret the facts according to the political aims of each stakeholder group.

In order to find answers to these questions, a third group discussion, where representatives of each stakeholder group would participate, could give further information.

On a more general level, the right holders' position reflected a fear of limiting exclusive rights in any way, and the researchers' and the research institutions' position reflected their wish to have free rights to use, publish and preserve any kind of copyright protected material.

The point both groups agreed upon was that the subject of the study is complex and each sub-theme includes specific issues such as the use of materials in TDM analysis, and the publication and preservation of materials and results in various ways. The positions also change depending on the commercial or non-commercial nature of research work and various ways of publishing the results.

It should also be mentioned that, compared with the results of the pre-pilot project, where a soft law instrument was considered to be a somewhat useful tool, it was now considered to have little or no value in solving the problems mentioned in the study.

4 ESCIA METHODOLOGY

4.1 Evaluation of the Methodology

During the group discussions and the impact assessment exercises the participants were also asked to comment the ESCIA methodology and the individual indicators selected by the core project team. The following list presents a summary of the comments:

Policy scenarios

- The short and long term impacts should be treated separately in the assessment.
- The time dimension of the present situation should be more about the near future in order to avoid analysing it as a static state of things.
- Assessing the impacts of a limitation, a soft law instrument or their combination is very difficult without knowing the exact wordings.
- The scenarios should be compared more in detail and considered within a wider context.

Economic indicators

- Economic indicators should be defined more accurately.
- The publishing business is also part of the category “right holders”, and researchers are also right owners.
- Right holders stated that the scenarios do not have a direct impact on individual researchers’ economic situation as the institutions pay for the licenses.
- Some considered that market effects and the national economy are, in relation to the subject of the study, more or less the same thing.

Social and cultural indicators

- The increase and decrease of the amount of research should both be analysed.
- The evaluation should take properly into consideration also the importance of the quality of research, not only its quantity.

Other general remarks

- The risk/opportunity matrix was criticized to be artificial and difficult to understand.
- It is difficult to assess certain individual impacts, as they are very dependent on many other factors and their simultaneous development.
- The indicators and risk/opportunity assessment together make it easy to manipulate answers so that it leads to politically desired end results.
- Some right holders commented that the economic impacts cover both right holders’ and researchers’ points of views but the social and cultural impacts concerned only

the interests of research, and therefore the elements of national culture and creative industries should also be included.

- The assessment could be carried out so that the respondents would get only very specific questions in order to avoid the interpretations of too abstract indicators. By doing this, a researcher who analyses the answers could put them later under the relevant categories of economic, social and cultural indicators.

4.2 Suggestions for Development

Based on the previous chapter, here are the suggestions of the core project team based on the key findings of the project:

- On a more general level, the ESCIA Guidelines should be more condensed and include more practical advice and tools for implementing the methodology.
- The creation of the base line can require a lot work and resources, which should be emphasized in the Guidelines. Furthermore, there should be more practical examples of how to compose the base line, as it can easily become a subject of another study itself.
- It should be possible to adjust the abstraction level of indicators according to the nature and scope of the subject of the study. In case of a study subject which is narrow or has limited economic importance, lighter and more practical approaches, tools, and guidelines should be developed.
- The time span dimensions (short vs. long term) should be implemented into the risk/opportunity matrix as they may vary, sometimes dramatically.
- The methods to handle the cross-dependencies of various indicators should be developed.
- It should be considered how to minimize possible manipulation of the results if respondents assess impacts in order to promote their political aims and not based on their actual knowledge.
- The descriptions of the tested policy scenarios have to be detailed enough in order to be able to assess them properly.

5 CONCLUSIONS

This report describes the practical phases of the ESCIA pilot project and the key findings concerning both the subject of the study and the ESCIA methodology. The key findings concerning the subject of the study have been presented in chapter 3.

The key issue for further development of the ESCIA methodology on a general level is to work on its scalability according to the nature of the subject of the study. There is a need to give more practical instructions on using the tools, and develop the use of the indicators.

Regarding the use of focus groups, the core project team would like to emphasise that a sufficient amount of information and communication is crucially important in order to make sure that all participants have understood the subject and the issues to be discussed in the same way. This helps to focus the surveys and the discussions.

ANNEXES

Annex A: Questionnaires

ESCIA PILOT STUDY
Copyright Issues Related to Scientific Research

Survey for participants in group discussions: Researchers and research institutes

This pilot study is related to the collaborative project of the Foundation for Cultural Policy Research (Cupore) and The Finnish Copyright Society, which studies copyright issues related to scientific research. Additional information on the project is provided on Cupore's website: http://www.cupore.fi/ajankohtaista16102014.php.

This survey deals with the themes to be discussed in the group discussions organised on ***November 17th at 9 a.m.*** *and functions as a preliminary survey for the group discussions. We kindly ask the participants to answer the questions and to* ***return the questionnaire by November 4th*** *by email to jukka.kortelainen@cupore.fi.*

Instructions for the respondent:
Please answer the questions as the representative of your organisation (the respondent must either name one organisation which they represent, or alternatively define their role). The responses are handled confidentially, and if a respondent does not wish their name or their organisation to be published in the research report, this can be arranged upon specific request. The study focuses on copyright issues related to scientific research (not teaching). In the survey, the word 'use' refers to situations that involve some kind of action relevant to copyright issues[1].

Completing the questionnaire will take around 45 minutes. Thank you for your time!

1 Examples of different relevant uses of works:
1. The work as a research object or as a part of research material.
2. The work as part of an information exchange between researchers (for example, use in a seminar, use in an online seminar, collaborative working prior to publication).
3. The work as part of research results (in a research publication or as part of research data).
4. Research data preserved to verify research.

BACKGROUND INFORMATION

1. Respondent's name (and organisation):

_____

Respondent's role and/or central tasks in the represented organisation
(or, alternatively, definition of the respondent's role):

_____

If relevant: Discipline(s) represented by the respondent:

- ☐ Natural sciences
- ☐ Biosciences and environmental sciences
- ☐ Technical science
- ☐ Medical and health sciences
- ☐ Agricultural and forest sciences
- ☐ Social sciences
- ☐ Humanities
- ☐ Other, please define: _____

We kindly ask you to respond from the perspective of the organisation you represent.

PROBLEMS/ISSUES RAISED DURING THE INITIAL PILOT STUDY

2. The following issues concerning the use of copyright-protected material for the purposes of scientific research were raised during the initial pilot study conducted in autumn 2014: Please choose three (3) the most essential issues from your viewpoint *(alternatively, other issues than those listed can be defined)*

- ☐ Research being not implemented because of legal uncertainty
- ☐ Legal uncertainty affecting the distribution of research results and materials
- ☐ Legal uncertainty affecting the retaining of research results and materials for verification
- ☐ The amount of work related to clarifying the existence of copyrights and copyright holders
- ☐ Unclear areas in the rights and responsibilities of researchers and universities
- ☐ The level of understanding of copyright and contractual issues among researchers and research institutes

- [ ] Lack of training or communication regarding copyright and research
- [ ] Lack of support from the research institute to reduce researchers´ uncertainty
- [ ] Lack of other professional support to reduce uncertainty
- [ ] Costs of licenses
- [ ] Lack of clarity of the uses allowed (limited information from the right holders on what is allowed from their viewpoint)
- [ ] Problems in international collaborative projects where material is shared between researchers or research groups operating in different countries (Differing legislations in different countries creating challenges for international collaboration projects)
- [ ] Other, please define: _____
- [ ] Other, please define: _____
- [ ] Other, please define: _____

3. Do you find it reasonable that the use of copyright-protected works for non-commercial scientific research is under the exclusive rights of right holders and requires licensing?

- [ ] Yes
- [ ] No

Optional description: _____

IMPACTS OF ALTERNATIVE POLICY SCENARIOS: PRESENT SITUATION

In the present situation, *licensing on an individual or collective basis is required; the ECL under Section 14 of the Copyright Act is applicable to the use of any kinds of works for the purposes of scientific research.*

- *When there is need to have recourse to ECL, the interlocutors are Kopiosto, Gramex and Tuotos.*
- *We are discussing professional scientific research in organized forms; not about private study of research, hence Section 12 does not apply.*
- *Works of art may be reproduced in a scientific presentation (Section 25).*

This section focuses on…

- *the economic, social and cultural impacts of keeping the current status,*
- *the risks and opportunities of keeping the current status, and*
- *issues affecting the operation of the copyright system in the present situation.*

4. Please estimate how efficiently the current status…

	low efficiency / not able 1	2	3	4	very efficiently 5
a) … is able to guarantee researchers the possibility to carry out scientific research (use, distribution, publishing and preservation of research material or research results)	☐	☐	☐	☐	☐
b) …is able to guarantee legal security *(clarity on what can be used; clarity on the terms of use)*	☐	☐	☐	☐	☐

Optional comments: _____

5. Please estimate the possible future impacts of keeping the current status on…

	negatively 1	2	3	4	positively 5	don't know
a) … the availability of the research material and research data:						
a1) The availability and/or usability of research material;	☐	☐	☐	☐	☐	☐
a2) The availability of research funding (the amounts of public and private research funding);	☐	☐	☐	☐	☐	☐
a3) The availability and/or usability of research data (societal impact);	☐	☐	☐	☐	☐	☐
a4) The possibilities to verify research evidence	☐	☐	☐	☐	☐	☐
b) …the amount and the quality of scientific research	☐	☐	☐	☐	☐	☐
c) …the operation of the markets for works and agreeing on the use of works	☐	☐	☐	☐	☐	☐
d) …administrative/transaction costs for the contracting parties: investment in time or money, or other effort made in order to agree on the terms of use of the works and to ensure that the rights are realized	☐	☐	☐	☐	☐	☐
e) … research cooperation:;						
e1) international research cooperation	☐	☐	☐	☐	☐	☐
e2) research cooperation in Finland	☐	☐	☐	☐	☐	☐

Please describe how maintaining the current status would affect the issues presented in parts a)–e) of the question (optional): _____

6. How do you reckon the harm for right holders from the unauthorized use of copyrighted material as part of scientific research in the present situation? *Choose one option from the following scale, in which 1 = very unlikely, 5 = very likely.*

1	2	3	4	5
☐	☐	☐	☐	☐

If you chose the option 3, 4, tai 5: How would you characterise the possible harm caused to copyright holders by the use of copyrighted material as part of scientific research?

IMPACTS OF ALTERNATIVE POLICY SCENARIOS: A PROVISION ON LIMITATION OF COPYRIGHT

Please think of a situation in which a (general) limitation to copyright is introduced to allow

- *the use of copyright-protected material for the purposes of non-commercial scientific research, and*
- *the publication of research results and preservation and verification of research data that includes copyrighted material of a third party*
- *ECL under Section 14 of the Copyright Act would be applicable to the use of works for the purposes of commercial scientific research.*

The provisions could read e.g. as follows:

"The reproduction of a work made public is allowed for the purposes of non-commercial scientific research. Thus reproduced work may be communicated to the public for the purposes of scientific research. The copy thus made may not be used for other purposes."

In the following, the adoption of a provision on limitation to copyright is analysed from the following perspectives…

- *the potential economic, social and cultural impacts,*
- *the risks and opportunities connected to the scenario, and*
- *the effects of the scenario on the operation of the copyright system.*

7. Please estimate how efficiently a provision on limitation of copyright…

	low efficiency / not able 1	2	3	4	very efficiently 5
a) … is able to guarantee researchers the possibility to carry out scientific research (use, distribution, publishing and preservation of research material or research results)	☐	☐	☐	☐	☐
b) …is able to guarantee legal security *(clarity on what can be used; clarity on the terms of use)*	☐	☐	☐	☐	☐

Optional comments: _____

8. Please estimate the possible future impacts of introducing a provision on limitation to copyright on…

	negatively 1	2	3	4	positively 5	don't know
a) …the availability of the research material and research data:						
a1) The availability and/or usability of research material;	☐	☐	☐	☐	☐	☐
a2) The availability of research funding (the amounts of public and private research funding);	☐	☐	☐	☐	☐	☐
a3) The availability and/or usability of research data (societal impact);	☐	☐	☐	☐	☐	☐
a4) The possibilities to verify research evidence	☐	☐	☐	☐	☐	☐
b) …the amount and the quality of scientific research	☐	☐	☐	☐	☐	☐
c) …the operation of the markets for works and agreeing on the use of works	☐	☐	☐	☐	☐	☐
d) …administrative/transaction costs for the contracting parties: investment in time or money, or other effort made in order to agree on the terms of use of the works and to ensure that the rights are realized	☐	☐	☐	☐	☐	☐
e) …research cooperation:						
e1) international research cooperation;	☐	☐	☐	☐	☐	☐
e2) research cooperation in Finland	☐	☐	☐	☐	☐	☐

Please describe how the introduction of a provision on limitation to copyright would affect the issues presented in parts a)–e) of the question (optional): _____

9. How do you reckon the harm for right holders from the use of copyrighted material as part of scientific research in this scenario (*limitation to copyright*)? *Choose one option from the following scale, in which 1 = very unlikely, 5 = very likely.*

1	2	3	4	5
☐	☐	☐	☐	☐

If you chose the option 3, 4, tai 5: How would you characterise the possible harm caused to copyright holders by the use of copyrighted material as part of scientific research?

IMPACTS OF ALTERNATIVE POLICY SCENARIOS: SOFT LAW INSTRUMENT

Please think of a situation in which a national memorandum of understanding (MoU) or a corresponding soft law instrument is introduced to clarify the use of copyrighted material for the purposes of scientific research. The contents of the memorandum of understanding are agreed by the parties of the agreement; it could comprise for example the following elements:

- *the MoU would be established on national level between all the organisations carrying on scientific research and organisations representing all relevant groups of right holders*
- *the right holders' organisations would declare that they endeavor to influence the right holders they represent to allow the use of protected subject matter for the purposes of scientific research according to agreed terms*
- *the right holders' organisations commit to work for precluding claims for the use governed by the MoU*
- *the research institutions would commit to comply with the conditions and to oversee that they are observed in the research conducted under their auspices*
- *the MoU scenario would allow flexibility for the parties in designing the scope of the MoU, at the same time devising strict conditions for the allowed uses; e.g. the MoU could extend the allowed uses to scientific research conducted for commercial purposes*
- *examples of strict agreed conditions: the research shall be organized in such a way that the use does not interfere with the market of the protected subject matter; the institutions shall provide that reproduction and communication for other purpose than for the very research is prohibited and prevented*

A national memorandum of understanding (MoU) or a corresponding soft law instrument would be a suitable additional element to both the present situation and the situation in which a (general) limitation to copyright is introduced. This pilot study covers only the alternative where a soft law instrument is introduced as an additional element to the present situation.

In the following, the adoption of a soft law instrument is analysed from the following perspectives…

- *the potential economic, social and cultural impacts,*
- *the risks and opportunities connected to the scenario, and*
- *the effects of the scenario on the operation of the copyright system.*

10. Please estimate how efficiently the consensus document (soft law instrument)…

	low efficiency / not able 1	2	3	4	very efficiently 5
a) … is able to guarantee researchers the possibility to carry out scientific research (use, distribution, publishing and preservation of research material or research results)	☐	☐	☐	☐	☐
b) ...is able to guarantee legal security *(clarity on what can be used; clarity on the terms of use)*	☐	☐	☐	☐	☐

Optional comments: _____

11. Please estimate the possible future impacts of introducing a consensus document (soft law instrument) on…

	negatively 1	2	3	4	positively 5	don't know
a) …the availability of the research material and research data:						
a1) The availability and/or usability of research material;	☐	☐	☐	☐	☐	☐
a2) The availability of research funding (the amounts of public and private research funding);	☐	☐	☐	☐	☐	☐
a3) The availability and/or usability of research data (societal impact);	☐	☐	☐	☐	☐	☐
a4) The possibilities to verify research evidence	☐	☐	☐	☐	☐	☐
b) …the amount and the quality of scientific research	☐	☐	☐	☐	☐	☐
c) …the operation of the markets for works and agreeing on the use of works	☐	☐	☐	☐	☐	☐
d) …administrative/transaction costs for the contracting parties: investment in time or money, or other effort made in order to agree on the terms of use of the works and to ensure that the rights are realized	☐	☐	☐	☐	☐	☐
e) …research cooperation:						
e1) international research cooperation	☐	☐	☐	☐	☐	☐
e2) research cooperation in Finland	☐	☐	☐	☐	☐	☐

Please describe how the introduction of a consensus document (soft law instrument) would affect the issues presented in parts a)–e) of the question (optional): _____

12. How do you reckon the harm for right holders from the use of copyrighted material as part of scientific research in this scenario (*soft law instrument*)? *Choose one option from the following scale, in which 1 = very unlikely, 5 = very likely.*

1	2	3	4	5
☐	☐	☐	☐	☐

If you chose the option 3, 4, tai 5: How would you characterise the possible harm caused to copyright holders by the use of copyrighted material as part of scientific research?

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13. *The previous questions concerned a situation in which a national memorandum of understanding (MoU) or a corresponding soft law instrument would be introduced as an additional element to the present situation. A soft law instrument could be introduced also in a situation where a (general) limitation to copyright has been introduced.*

Optional comments concerning the impacts of introducing a soft law instrument in a situation where a (general) limitation to copyright has been introduced:

Survey for participants in group discussions: Copyright holders

This pilot study is related to the collaborative project of the Foundation for Cultural Policy Research (Cupore) and The Finnish Copyright Society, which studies copyright issues related to scientific research. Additional information on the project is provided on Cupore's website: http://www.cupore.fi/ajankohtaista16102014.php.

This survey deals with the themes to be discussed in the group discussions organised on ***November 19th at 9 a.m.*** *and functions as a preliminary survey for the group discussions. We kindly ask the participants to answer the questions and to* ***return the questionnaire by November 4th*** *by email to jukka.kortelainen@cupore.fi.*

Instructions for the respondent:
Please answer the questions as the representative of your organisation (the respondent must either name one organisation which they represent, or alternatively define their role). The responses are handled confidentially, and if a respondent does not wish their name or their organisation to be published in the research report, this can be arranged upon specific request. The study focuses on copyright issues related to scientific research (not teaching). In the survey, the word 'use' refers to situations that involve some kind of action relevant to copyright issues[2].

Completing the questionnaire will take around 45 minutes. Thank you for your time!

2 Examples of different relevant uses of works:
1. The work as a research object or as a part of research material.
2. The work as part of an information exchange between researchers (for example, use in a seminar, use in an online seminar, collaborative working prior to publication).
3. The work as part of research results (in a research publication or as part of research data).
4. Research data preserved to verify research.

BACKGROUND INFORMATION

1. Respondent's name (and organisation):

Respondent's role and/or central tasks in the represented organisation (or, alternatively, definition of the respondent's role):

We kindly ask you to respond from the perspective of the organisation you represent.

2. Please describe how the use of copyright-protected works for the purposes of *non-commercial* scientific research affects the business opportunities in your field of business?

IMPACTS OF ALTERNATIVE POLICY SCENARIOS: PRESENT SITUATION

In the present situation, *licensing on an individual or collective basis is required; the ECL under Section 14 of the Copyright Act is applicable to the use of any kinds of works for the purposes of scientific research.*

- *When there is need to have recourse to ECL, the interlocutors are Kopiosto, Gramex and Tuotos.*
- *We are discussing professional scientific research in organized forms; not about private study of research, hence Section 12 does not apply.*
- *Works of art may be reproduced in a scientific presentation (Section 25).*

This section focuses on…

- *the economic, social and cultural impacts of keeping the current status,*
- *the risks and opportunities of keeping the current status, and*
- *issues affecting the operation of the copyright system in the present situation.*

3. Please estimate how efficiently the current status…

	low efficiency / not able 1	2	3	4	very efficiently 5
a) …is able to guarantee legal security, i.e. clarity on the terms of use *(clarity on the need to negotiate on the use)*	☐	☐	☐	☐	☐
b) …makes it possible for right holders to receive an appropriate remuneration for the use of their works	☐	☐	☐	☐	☐

Optional comments: _____

4. Please estimate the possible future impacts of keeping the current status on…

	negatively 1	2	3	4	positively 5	don´t know
a) …the operation of the markets for works and agreeing on the use of works	☐	☐	☐	☐	☐	☐
b) …administrative/transaction costs: investment in time or money, or other effort made in order to agree on the terms of use of the works and to ensure that the rights are realized	☐	☐	☐	☐	☐	☐

Please describe how maintaining the current status would affect the issues presented in parts a) and b) of the question (optional): _____

5. Based on your experience, evaluate how the use of works as part of scientific research affects the sales of works in Finland. Please *choose one option from the following scale, in which 1 = very negatively, 5 = very positively.*

1	2	3	4	5
☐	☐	☐	☐	☐

6. How do you reckon the harm for right holders from the unauthorized use of copyrighted material as part of scientific research in the present situation? *Choose one option from the following scale, in which 1 = very unlikely, 5 = very likely.*

1	2	3	4	5
☐	☐	☐	☐	☐

If you chose the option 3, 4, tai 5: How would you characterise the possible harm caused to copyright holders by the unauthorised use of copyrighted material as part of scientific research?

_____

IMPACTS OF ALTERNATIVE POLICY SCENARIOS: A PROVISION ON LIMITATION OF COPYRIGHT

Please think of a situation in which a (general) limitation to copyright is introduced to allow

- *the use of copyright-protected material for the purposes of non-commercial scientific research, and*
- *the publication of research results and preservation and verification of research data that includes copyrighted material of a third party*
- *ECL under Section 14 of the Copyright Act would be applicable to the use of works for the purposes of commercial scientific research.*

The provisions could read e.g. as follows:

"The reproduction of a work made public is allowed for the purposes of non-commercial scientific research. Thus reproduced work may be communicated to the public for the purposes of scientific research. The copy thus made may not be used for other purposes."

In the following, the adoption of a provision on limitation to copyright is analysed from the following perspectives ..

- *the potential economic, social and cultural impacts,*
- *the risks and opportunities connected to the scenario, and*
- *the effects of the scenario on the operation of the copyright system.*

7. Please estimate how efficiently a provision on limitation of copyright for the benefit of scientific research…

	low efficiency / not able 1	2	3	4	very efficiently 5
a) …is able to guarantee legal security, i.e. clarity on the terms of use *(clarity on the need to negotiate on the use)*	☐	☐	☐	☐	☐
b) …is able to ensure that right holders are able to negotiate a remuneration on the uses other than those covered by the limitation	☐	☐	☐	☐	☐

Optional comments: _____

8. Please estimate the possible future impacts of introducing a provision on limitation to copyright on…

	negatively 1	2	3	4	positively 5	don´t know
a) …the operation of the markets for works and agreeing on the use of works	☐	☐	☐	☐	☐	☐
b) …administrative/transaction costs: investment in time or money, or other effort made in order to agree on the terms of use of the works and to ensure that the rights are realized	☐	☐	☐	☐	☐	☐

Please describe how the introduction of a provision on limitation to copyright would affect the issues presented in parts a) and b) of the question (optional): _____

9. Please evaluate how the use of works as part of scientific research would affect the sales of works in Finland in this scenario. *Choose one option from the following scale, in which 1 = very negatively, 5 = very positively.*

1	2	3	4	5
☐	☐	☐	☐	☐

10. How do you reckon the harm for right holders from the use of copyrighted material as part of scientific research in this scenario (*limitation to copyright*)? *Choose one option from the following scale, in which 1 = very unlikely, 5 = very likely.*

1	2	3	4	5
☐	☐	☐	☐	☐

If you chose the option 3, 4, tai 5: How would you characterise the possible harm caused to copyright holders by the use of copyrighted material as part of scientific research?

_____

IMPACTS OF ALTERNATIVE POLICY SCENARIOS: SOFT LAW INSTRUMENT

Please think of a situation in which a national memorandum of understanding (MoU) or a corresponding soft law instrument is introduced to clarify the use of copyrighted material for the purposes of scientific research. The contents of the memorandum of understanding are agreed by the parties of the agreement; it could comprise for example the following elements:

- *the MoU would be established on national level between all the organisations carrying on scientific research and organisations representing all relevant groups of right holders*
- *the right holders' organisations would declare that they endeavor to influence the right holders they represent to allow the use of protected subject matter for the purposes of scientific research according to agreed terms*
- *the right holders' organisations commit to work for precluding claims for the use governed by the MoU*
- *the research institutions would commit to comply with the conditions and to oversee that they are observed in the research conducted under their auspices*
- *the MoU scenario would allow flexibility for the parties in designing the scope of the MoU, at the same time devising strict conditions for the allowed uses; e.g. the MoU could extend the allowed uses to scientific research conducted for commercial purposes*
- *examples of strict agreed conditions: the research shall be organized in such a way that the use does not interfere with the market of the protected subject matter; the institutions shall provide that reproduction and communication for other purpose than for the very research is prohibited and prevented.*

A national memorandum of understanding (MoU) or a corresponding soft law instrument would be a suitable additional element to both the present situation and the situation in which a (general) limitation to copyright is introduced. This pilot study covers only the alternative where a soft law instrument is introduced as an additional element to the present situation.

In the following, the adoption of a soft law instrument is analysed from the following perspectives…

- *the potential economic, social and cultural impacts,*
- *the risks and opportunities connected to the scenario, and*
- *the effects of the scenario on the operation of the copyright system.*

11. Please estimate how efficiently the consensus document (soft law instrument)…

	low efficiency / not able 1	2	3	4	very efficiently 5
a) …is able to guarantee legal security, i.e. clarity on the terms of use *(clarity on the need to negotiate on the use)*	☐	☐	☐	☐	☐
b) …is able to guarantee that the possibility of receiving a compensation from uses other than those agreed upon in the consensus document are not hindered	☐	☐	☐	☐	☐

Optional comments: _____

12. Please estimate the possible future impacts of introducing a consensus document (soft law instrument) on...

	negatively 1	2	3	4	positively 5	don't know
a) …the operation of the markets for works and agreeing on the use of works	☐	☐	☐	☐	☐	☐
b) …administrative/transaction costs: investment in time or money, or other effort made in order to agree on the terms of use of the works and to ensure that the rights are realized	☐	☐	☐	☐	☐	☐

Please describe how the introduction of a consensus document (soft law instrument) would affect the issues presented in parts a) and b) of the question (optional):_____

13. Please evaluate how the use of works as part of scientific research would affect the sales of works in Finland in this scenario. *Choose one option from the following scale, in which 1 = very negatively, 5 = very positively.*

1	2	3	4	5
☐	☐	☐	☐	☐

14. How do you reckon the harm for right holders from the use of copyrighted material as part of scientific research in this scenario (*soft law instrument*)? *Choose one option from the following scale, in which 1 = very unlikely, 5 = very likely.*

1	2	3	4	5
☐	☐	☐	☐	☐

If you chose the option 3, 4, tai 5: How would you characterise the possible harm caused to copyright holders by the use of copyrighted material as part of scientific research?

_____

15. *The previous questions concerned a situation in which a national memorandum of understanding (MoU) or a corresponding soft law instrument would be introduced as an additional element to the present situation. A soft law instrument could be introduced also in a situation where a (general) limitation to copyright has been introduced.*

Optional comments concerning the impacts of introducing a soft law instrument in a situation where a (general) limitation to copyright has been introduced:

Annex B: Slides Presented in the Focus Group Sessions

Group 1: Representatives of the interests of researchers and research institutions (17 November 2015)

ESCIA PILOT STUDY

IMPACT OF POSSIBLE MEASURES FOR THE BENEFIT OF SCIENTIFIC RESEARCH

ESCIA Group discussions
Researchers and research institutes
17 November 2015

WIPO ESCIA GUIDELINES: OBJECTIVES OF THE PILOT STUDY

The objective of the pilot study is to test the framework of "WIPO Guidelines on assessing economic, social and cultural impact of copyright in the creative economy" in Finland. The pilot study focuses on the impacts of different policy options concerning the use of copyrighted material for the purposes of scientific research in universities and research institutes.

Assessment is based on a set of alternative policy options. The purpose of these alternative policy measures would be to clarify the questions concerning

- the use of copyright-protected material for the purposes of non-commercial scientific research and the publication of research results, and preservation and verification of research results and research data (including copyrighted material of a third party).

Definitions:

- Use: reproduction and making available (for the research group/research community) of copyrighted material of a third party
- Making available (yleisön saataviin saattaminen): In the context of Finland, making available is used as an umbrella term for communication of the works, distribution of copies, public performance and public display.

2

KEY DEFINITIONS

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Scientific research: Research "based on or characterized by the methods and principles of science" (Source: http://www.oxforddictionaries.com/definition/english/scientific). For the purposes of the ESCIA Pilot Project the threshold of "scientific" is considered to be low. Also research in the field of arts may be scientific.

Non-commercial purpose:

- non-Commercial nature of the activity shall be determined by the activity as such; the organisational structure and the means of funding are not decisive factors
- research is non-commercial when its actual conducting is not commercial; this means that the research activity itself is not made for profit
- university spin-offs and commissioned research would fall out of the limitation
- conducting research in co-operation with commercial partners does not disqualify the non-commercial research as such
- publication on commercial terms of the research results does not disqualify the non-commercial research as such

University spin-off: "A company founded on the findings of a member or by members of a research group at a university" (Source: Wikipedia, http://en.wikipedia.org/wiki/Spin-off)

Commissioned research: Research work carried out on order; the costs of research activities are wholly paid by the commissioner or a third party

DEFINITIONS: DIFFERENT USE CASES

The use cases at different stages of research and events that are relevant from a copyright perspective:

1. A copy of a work as a research object or as a part of research material (background material)

→ Reproduction/making a copy; Data mining

2. A copy of a work as part of an information exchange between researchers (use in a seminar, use in an online seminar, collaborative working prior to publication)

→ Reproduction/making a copy; Making available to the public (allowing access)

3. A copy of a work as part of research results

→ Reproduction/making a copy; Making available to the public

4. Research data retained to verify research (limited vs. unlimited access to the material)

→ Reproduction/making a copy; Making available to the public (allowing access); Preservation and verification of research results and research data

4

INITIAL PILOT STUDY: AUTUMN 2014

- **Problems related to the use of copyrighted material for research purposes**
- **Knowledge of copyright issues amongst researchers**
- **Operation of the copyright system from the perspective of scientific research**
- **Other issues affecting the use of copyrighted material for research purposes (concerning e.g. licensing)**

5

PROJECT ORGANISATION

<u>Core project team:</u>

- **Jukka Liedes, Chairman of the Finnish Copyright Society**
- **Tiina Kautio, Project Manager, Cupore**
- **Jukka Kortelainen, Project Researcher, Cupore**
- **Jari Muikku, Consultant, Digital Media Finland**

<u>Extended project team:</u>

- **Copyright experts from the Ministry of Education and Culture (Viveca Still/Anna Vuopala)**
- **Science policy experts from the Ministry of Education and Culture (Immo Aakkula/Sami Niinimäki)**
- **Statistical experts/Experts in impact assessment methodology (Pasi Saukkonen/Sari Karttunen/Pauli Rautiainen, Cupore)**

6

TWO FOCUS GROUPS

Group 1) Those representing the interests of researchers and research organizations

- Pekka Heikkinen (The National Library of Finland)
- Kristiina Hormia-Poutanen (Liber)
- Krister Lindén (University of Helsinki)
- Juho Lindman / Mikael Laakso (Hanken School of Economics)
- Pirjo Kontkanen (University of Helsinki)
- Jukka Rantala (Nokia Technologies)
- Maria Rehbinder (Aalto University)
- Marjut Salokannel (University of Helsinki)
- Jarmo Saarti (The Finnish Research Library association; University of Eastern Finland Library)

Group 2) Those representing the interests of right holders

- Anna Kallio (The Finnish Association of Non-fiction Writers)
- Jukka-Pekka Timonen (Kopiosto)
- Sakari Laiho (Finnish Book Publishers Association)
- Satu Kangas (Finnish Book Publishers Association)
- Kirsi Salo (Tuotos)
- Pekka Sipilä (Finnish Music Publishers Association)
- Lauri Kaira (Gramex)
- Katri Soramäki (Grafia)

7

AGENDA

9:00 Project presentation

9:20 Current situation

10:00 Scenario 1 - Provision on limitation of copyright

Short break (5 mins)

10:55 Scenario 2 - Memorandum of Understanding

11:30 Lunch

12:00 General discussion
- Impacts of the different scenarios
- Further work

8

CURRENT SITUATION

- The pre-pilot carried out in the autumn of 2014 identified problems related to the use of copyrighted material in scientific research. The following topics were raised during the discussions
  - The use of text and data mining as an analytics tool (especially in the fields of humanities and social sciences)
  - Audio-visual works as a study subject
  - The heterogeneity of research materials and the legal uncertainty in various contexts of use
  - Confusion in the rights and responsibilities between researchers and universities
  - Insufficient knowledge of copyright matters among researchers
- In preliminary surveys carried out this autumn researchers and research organisations emphasised, in particular, the following problems
  - Legal uncertainty regarding the distribution of research results and materials (7 replies)
  - The amount of work required for determining rights and finding the right holders (5 replies)

9

CURRENT SITUATION

- The majority of the participants in the preliminary survey considered that the current situation guarantees slim possibilities for carrying out scientific research. In the current situation the legal certainty is also perceived as low.

  "Publication of the results is not as problematic as sharing and preserving materials and results for the purpose of dissemination."

  "Social scientists are studying e.g. the works of citizens created in the social media, but the current legislation prevents using these for the purpose of verifying the research results. Out-of-print works are another important data source for arts students. However, it is not allowed to copy them or use them for scientific purposes."
- Right holders who participated in the preliminary survey considered the current situation as one which is effective or very effective in guaranteeing legal certainty

  "Kopiosto has functional licensing solutions for research use. Also, there is a functional and cost-effective policy for the division of compensations."

What are the causes of the differing views of the groups?

10

MAINTAINING THE CURRENT SITUATION

- The majority of respondents considered that the effects of maintaining the current situation are neutral or negative in terms of the following aspects:

- availability of research materials and research data
- quantity and quality of studies
- agreements on the use of works and the functionality of the market of commercial works
- administrative costs or transaction costs
- research cooperation (international cooperation or cooperation between researchers in Finland)

"The collection and transmission of materials will move abroad, along with parts of the studies."

"In the current situation, copyrights related to materials are slowing down or even preventing activities, because the necessary licenses are not always available, or the right holders cannot be found."

- The majority of respondents considered that maintaining the current situation has a particularly negative effect on administrative costs. On the other hand, right holders considered that the effects were mainly positive.

Why are the administrative costs considered negative if the current situation prevails? What could cause the differing views between researchers and right holders?

11

MAINTAINING THE CURRENT SITUATION

- It was mainly considered unlikely in the current situation that research use would cause harm to right holders
- Among right holders, it was also considered mainly unlikely that research use would cause harm

"No harm will be done, if the use is agreed upon with Kopiosto."

12

AGENDA

9:00 Project presentation

9:20 Current situation

10:00 Scenario 1 - Provision on limitation of copyright

Short break (5 mins)

10:55 Scenario 2 - Memorandum of Understanding

11:30 Lunch

12:00 General discussion
- Impacts of the different scenarios
- Further work

13

PROVISION ON LIMITATION OF COPYRIGHT

- The majority of respondents considered that the provision on limitation of copyright would either effectively or very effectively guarantee researchers the possibility to carry out scientific research, as well as ensure legal certainty. A differing opinion was also found

  "It would lead to specific prohibitions in bilateral agreements.Companies would not be able to agree on the fact that research institutions would be entitled to use e.g. their software code for research without restrictions, and publish it. Companies would reduce the collaborative research with research institutions."
- Right holders perceived that a provision on limitation of copyright would guarantee the legal certainty poorly or very poorly

  "Non-commercial scientific research is a very ambiguous concept. If a derogation of this kind would be added to the law, there is a risk that any kind of research would be slipped in as "non-commercial scientific research" in order to avoid compensations. For example, the most commercial kind of data analytics would be performed disguised as academic studies."

Are these kinds of threats realistic? In what fields of science or business in particular?

14

PROVISION ON LIMITATION OF COPYRIGHT

- The majority of respondents considered that a provision on limitation of copyright would have a positive or neutral effect on the following aspects:
  - availability of research materials and research data
  - quantity and quality of scientific research
  - agreements on the use of works and the operation of commercial markets for works
  - administrative costs or transaction costs
  - research cooperation

  "The effect depends on the scope of the provision."

  "The availability of materials created by research would be better, and e.g. universities would not have to worry about agreements between researchers, which would reduce the amount of administrative work. Researchers would no longer be able to prevent using their materials by referring to copyrights in dispute situations or when the relations between researchers are infringed."
- Right holders considered that the provision on limitation of copyright would have negative effects on the operation of commercial markets for works and the administrative costs or transaction costs

  "A full exception to the copyright protection would reduce transaction costs, because agreements would not be needed. However, unclear provisions could result in large costs, because the legal position would be clarified by means of communication between parties and eventually by using the legal system."

PROVISION ON LIMITATION OF COPYRIGHT

- The majority of respondents considered that it is unlikely or very unlikely that harm will be caused to right holders. A differing opinion was also found

  "Trade secrets leak to competitors"
- Right holders generally considered that harm will be likely

  "Negotiations regarding permissible copying between Kopiosto and universities would be significantly impeded, compensations would be reduced and negotiations meddled by arguments regarding concepts."

  "As the amount of limitations of copyright increases, it is harder to benefit commercially from audio-visual works, because the number and rights of commercial parties participating in the funding/dissemination narrows."

AGENDA

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MEMORANDUM OF UNDERSTANDING

- Perceptions regarding the impact of a memorandum of understanding on the possibilities to carry out research and legal certainty varied

  "The result will depend on the final text and potential provisions. A license agreement may not provide the same general level of use rights than the common use license provided by the law. Compare with current extended collective licenses, for example."

  "In terms of the investments or risk management of universities, a soft law instrument is not enough, as it does not limit the prohibition rights or the right for compensation of the right holder."

  "The research is often international or, at the very least, it is carried out by comparing with results of other countries, so the research would still suffer from differing national solutions."
- The conceptions of right holders varied regarding potential impacts

  "Using a MoU would be the best option for all parties involved, if the ground rules and contents correspond to the exemplary MoU presented."

  "The licensing mechanism of Kopiosto largely works the same way already."

MEMORANDUM OF UNDERSTANDING

- The effect on the availability of research material and research data, the quantity and quality of the research, agreements regarding works, the operation of commercial markets for works, the administrative costs or transaction costs, as well as research cooperation:
  - Responses varied, and several respondents had no opinions. Respondents considered administrative costs to be affected negatively.

    "The soft law instrument does not work in international research collaborations at all, not even in domestic, in the case of research that uses non-domestic materials. The biggest copyright-related problem when using data and other materials is the legal uncertainty, which cannot be eliminated by soft law instruments.

    "A model agreement with specific general agreement practices could be used instead of a MoU. Why use a MoU, when an agreement can be prepared with the same effort?"
- Right holder respondents also brought up negative effects related to administrative costs

MEMORANDUM OF UNDERSTANDING

- It was mainly considered unlikely that the use of copyrighted materials would cause harm to right holders

  "*Preparing an agreement or MoU brings extra work.*"
- A memorandum of understanding as an additional element to the limitation of copyright

  "A soft law instrument would be a useful additional element."

  "If the provision on limitation of copyright turns out to be too narrow at EU or national level, e.g. the copyright is limited only to data extraction purposes, it may lead to the need for a soft law instrument in order to preserve and convey materials for other non-commercial research."

  "It would not add value. Instead, the legal situation would be even more complicated."

  "A soft law instrument is not suitable as an addition to the current situation or as a supplement to the provision on limitation of copyright. Professional high-level international research activities require clear legal regulation for ensuring legal certainty, and agreements between parties as required by law."

AGENDA

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- Impacts of the different scenarios
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IMPACTS OF THE DIFFERENT SCENARIOS

- The potential follow-on impacts of different scenarios
  - The economic impacts, for example on the following:
    - Income of right holders
    - Income of researchers
    - Publishing business
    - Economy of universities and research institutes
    - Market effects
    - National economy
  - The social and cultural impacts, for example on the following:
    - Increase/decrease in the number of published studies
    - Development of research infrastructures
    - Research data availability and usability
    - Diversity of research
    - Technological impacts: innovation, development of data mining methods

Group 2: Representatives of the interests of right holders (19 November 2015)

ESCIA PILOT STUDY

IMPACT OF POSSIBLE MEASURES FOR THE BENEFIT OF SCIENTIFIC RESEARCH

ESCIA Group discussions
Copyright holders
19 November 2015

AGENDA

ESCIA Pilot Study
Group discussion / Right holders
19 November at 9-13 (Meeting room Kultakabinetti, Ministry of Education and Culture)

9:00 Project presentation

9:20 Current situation

10:00 Scenario 1 - Provision on limitation of copyright

Short break (5 mins)

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The objective of the pilot study is to test the framework of "WIPO Guidelines on assessing economic, social and cultural impact of copyright in the creative economy" in Finland. The pilot study focuses on the impacts of different policy options concerning the use of copyrighted material for the purposes of scientific research in universities and research institutes.

Assessment is based on a set of alternative policy options. The purpose of these alternative policy measures would be to clarify the questions concerning

- the use of copyright-protected material for the purposes of non-commercial scientific research and the publication of research results, and preservation and verification of research results and research data (including copyrighted material of a third party).

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3

POLICY SCENARIOS

Present situation
- Licensing on an individual or collective basis is required; the ECL under Section 14 of the Copyright Act is applicable to the use of any kinds of works for the purposes of scientific research

Introduction of a new limitation to copyright
A (general) limitation that allows
- the use of copyright-protected material for the purposes of non-commercial scientific research and
- the publication of research results and preservation and verification of research data that includes copyrighted material of a third party
- ECL under Section 14 of the Copyright Act would be applicable to the use of works for the purposes of commercial scientific research

Additional policy option (applicable to both scenarios a) and b)): introduction of a specific soft law instrument (such as a consensus document)
- A national memorandum of understanding (MoU) on the use of copyrighted material for the purposes of scientific research

4

KEY DEFINITIONS

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4. Research data retained to verify research (limited vs. unlimited access to the material)

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6

INITIAL PILOT STUDY: AUTUMN 2014

- Problems related to the use of copyrighted material for research purposes
- Knowledge of copyright issues amongst researchers
- Operation of the copyright system from the perspective of scientific research
- Other issues affecting the use of copyrighted material for research purposes (concerning e.g. licensing)

7

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Short break (5 mins)

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11:30 Lunch

12:00 General discussion
- Impacts of the different scenarios
- Further work

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CURRENT SITUATION

- The pre-pilot carried out in the autumn of 2014 identified problems related to the use of copyrighted material in scientific research. The following topics were raised during the discussions
  - The use of text and data mining as an analytics tool (especially in the fields of humanities and social sciences)
  - Audio-visual works as a study subject
  - The heterogeneity of research materials and the legal uncertainty in various contexts of use
  - Confusion in the rights and responsibilities between researchers and universities
  - Insufficient knowledge of copyright matters among researchers
- In preliminary surveys carried out this autumn researchers and research organisations emphasised, in particular, the following problems
  - Legal uncertainty regarding the distribution of research results and materials (7 replies)
  - The amount of work required for determining rights and finding the right holders (5 replies)

11

CURRENT SITUATION

- On the basis of the preliminary surveys, right holders considered the legal certainty ensured by the current situation as good.
  "Kopiosto has functional licensing solutions for research use. Also, there is a functional and cost-effective policy for the division of compensations."
  "In the current situation it is clear that permission for research use is requested from production companies. It is also possible to achieve this licensing by using collective administration."
  - On the other hand, researchers found that the current situation generally provides a low level of legal certainty
    "No central administration and a lack of know-how."

What could cause the differing views between the right holders and researchers?

- The majority of respondents considered that the current situation allows for an appropriate compensation for the use of works to right holders
  "Right holder compensations are low in Finland compared to other Nordic countries, and moderate on a European level."
  "An appropriate compensation for authors for the use of their work depends mainly on post-use licensing."

12

MAINTAINING THE CURRENT SITUATION

- Maintaining the current situation was considered to have a positive effect on use agreements of works, and the operation of commercial markets for works
  "The licensing policy of Kopiosto works."
- The current situation was considered mainly to affect positively on administrative costs or transaction costs
  "Extended collective licensing arrangements can be used for reducing administrative and transaction costs. Collective arrangements are highly beneficial for users, because a there is no need for separate agreements for each use."
  "It is not easy to assess the effects the extended collective licensing system has on transaction costs. Direct agreements can be more cost effective in some cases, because it removes the middle man from the value chain. In other situations, extended collective licensing is a better alternative in terms of transaction costs, for example, when small works are licensed for a large user audience."
  - The representatives of researchers considered that maintaining the current situation mainly has negative effects on administrative costs.

13

MAINTAINING THE CURRENT SITUATION

- The effect of the use of works in scientific research on the sales of works and the possible harm to right holders
  - The majority of respondents consider that the effect on sales is neutral
  - It is mainly considered unlikely that the current situation would cause harm to right holders
    "No harm will be done if the use is agreed upon with Kopiosto."
    "I have no idea about how widely works are used for scientific research, how much of the use is licensed, and in what way and how often unauthorised or illegal use occurs. The effects should be assessed in terms of licensing income instead of sales revenue."
  - Representatives of researchers considered that it is unlikely that the current situation causes harm to right holders

14

AGENDA

9:00 Project presentation

9:20 Current situation

10:00 Scenario 1 – Provision on limitation of copyright

Short break (5 mins)

10:55 Scenario 2 - Memorandum of Understanding

11:30 Lunch

12:00 General discussion
- Impacts of the different scenarios
- Further work

15

PROVISION ON LIMITATION OF COPYRIGHT

- It was perceived that the guarantees of legal certainty provided by the provision on limitation of copyright would be poor or very poor
  "The problem lays in outlining the contents of the limitation. When is a license required?"
  "Non-commercial scientific research is a very ambiguous concept. If a derogation of this kind would be added to the law, there is a risk that any kind of research would be slipped in as "non-commercial scientific research" in order to avoid compensations."
- The provision on limitation of copyright was considered to provide a poor or very poor possibility for right holders to negotiate a compensation for use outside the limitation
  "Agreeing on copyrights becomes harder, and compensations decrease for non-fiction authors and researchers, as well as for scientific publishing."
- The majority of the representatives of researchers considered that the provision on limitation of copyright would allow an effective or very effective opportunity to perform scientific research, as well as ensure legal certainty

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PROVISION ON LIMITATION OF COPYRIGHT

- It considered to have a negative effect on use agreements of works and the functionality of the market of commercial works
  - *"The impact essentially depends on the definition of what commercial and non-commercial is. In the absence of a clear definition, there is a chance that it becomes even harder to tell what the exclusive rights of copyrights are."*
- Several respondents considered that the question of administrative costs is difficult
  - *"If the provision on limitation of copyright narrows down the extended collective license, it would lead to transaction and administrative costs in the beginning, owing to the need for rephrasing authorisations and permit terms."*
  - *"A full exception to the copyright protection would reduce transaction costs, because agreements would not be needed. However, unclear provisions could result in large costs, because the legal position would be clarified by means of communication between parties and eventually by using the legal system."*
- Representatives of researchers considered that the limiting provision has neutral or positive effects on agreements and the functionality and administrative costs (or transaction costs) of the market of commercial works

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PROVISION ON LIMITATION OF COPYRIGHT

- The majority of respondents of the preliminary survey considered that the provision on limitation of copyright would have a negative effect on the sales of works
- It was considered likely that harm would be caused to right holders
  - *"Negotiations regarding permissible copying between Kopiosto and universities would be significantly impeded, compensations would be reduced and negotiations meddled by arguments regarding concepts. Compensations to scientific publishers and nonfiction writers would be reduced. The terms for domestic scientific publishers are ailing already, and they would only get worse, also due to lower sales."*
  - *"As the amount of limitations of copyright increases, it is harder to benefit commercially from audio-visual works, because the number and rights of commercial parties participating in the funding/dissemination narrows."*
- Representatives of researchers considered that it is mainly unlikely that harm would be caused to right holders

How significant are the potential economic losses and how critical are they to different groups, such as authors and publishers?

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AGENDA

9:00 Project presentation

9:20 Current situation

10:00 Scenario 1 – Provision on limitation of copyright

Short break (5 mins)

10:55 Scenario 2 - Memorandum of Understanding

11:30 Lunch

12:00 General discussion
- Impacts of the different scenarios
- Further work

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MEMORANDUM OF UNDERSTANDING

- Perceptions regarding the effects of a memorandum of understanding on legal certainty varied
  - *"The possibility for a dialogue related to soft law instruments is better than a full limitation, which threatens several important and essential interests of right holders. Discussions between a soft license (the permission method used for research at present) and soft law is a form of dialogue."*
  - *"Using a MoU would be the best option for all parties involved, if the ground rules and contents correspond to the above list in English."*
  - *"The licensing mechanism of Kopiosto largely works the same way already."*
- The ability of the memorandum of understanding to guarantee that compensation can be received from other uses than research use agreed upon in the MoU
  - *"A soft law document cannot be used to ensure that compensations for uses other than free or agreed use are not hindered. In addition to potential sanctions, the soft law document should include other effective means for dealing with unauthorised use."*
  - *"Finnmedia cannot be a party in such MoU negotiations, because we do not direct or herd the business activities of our member companies in any way. Our members should be free to decide the terms of their business."*

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MEMORANDUM OF UNDERSTANDING

- Perceptions regarding the effects of a memorandum of understanding on use agreements of works and the functionality of the market of commercial works varied
  - *"A soft law instrument would be a considerably worse solution than the "soft license" used now, which relates to the expansion effect of the extended collective license."*
  - *"A soft law document could be used as a method of communication, which could help clarify the subject area, and increase the knowledge of the rights of the author and the copyright system."*
- Perceptions regarding the effects on administrative and transaction costs varied
  - *"It would probably not affect administrative and other costs, or it may even reduce them in some cases."*
  - *"Rights licensing would become unclear and more expensive."*
  - Representatives of researchers considered that a memorandum of understanding mainly has negative effects on administrative or transaction costs

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MEMORANDUM OF UNDERSTANDING

- Perceptions regarding whether harm is caused to right holders for the scientific use of works in the memorandum of understanding scenario varied:
  - *"The effects of a soft law document is hard to assess. Depending on how widely the document states which usage forms are not intervened, it could reduce the need for customers to use chargeable commercial services. The loss of paying customers would reduce the revenue of right holders."*
  - *"Downsides are legal uncertainty, costs related to resolving unclear issues and lost licensing income."*
- A memorandum of understanding as an additional element to the limitation of copyright
  - *"The MoU model only functions for complementing the present situation. If the copyright is previously limited in the area covered by the MoU, the MoU itself is meaningless and useless."*
  - *"It is difficult to exactly identify the purpose for which a separate limitation to copyright together with a Soft law document would be used. Instead of only a limitation provision, a more functional model could be to prepare the limitation provision very carefully and narrowly, which would be complemented by the Soft law document prepared by participants of the sector."*

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AGENDA

9:00 Project presentation

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- Impacts of the different scenarios
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IMPACTS OF THE DIFFERENT SCENARIOS

- The potential follow-on impacts of different scenarios
  - The economic impacts, for example on the following:
    - Income of right holders
    - Income of researchers
    - Publishing business
    - Economy of universities and research institutes
    - Market effects
    - National economy
  - The social and cultural impacts, for example on the following :
    - Increase/decrease in the number of published studies
    - Development of research infrastructures
    - Research data availability and usability
    - Diversity of research
    - Technological impacts, e.g. development of data mining methods

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Annex C: List of Background Materials for the Study

Part 1: Statistics and previous studies

Statistics Finland: Research and Development

- Research and development expenditures by sector and as % of GDP (Business enterprises, public sector, higher education sector)
- Total numbers of workers and working years in research and development by sector
- Sources of financing for research and development by sector

Summary of the statistics is available in English at
http://www.tilastokeskus.fi/til/tkke/2013/tkke_2013_2014-10-30_tie_001_en.html

Statistics Finland: Government R&D Funding in the State Budget

- Funding allocated in the state budget to research

Summary of the statistics is available in English at
http://tilastokeskus.fi/til/tkker/index_en.html

Ministry of Education and Culture

- Number of peer-reviewed scientific publications (domestic publications and international co-publications) by discipline (as reported by Finnish universities)

Source: The report "State of scientific research in Finland 2014" by Academy of Finland,
http://www.aka.fi/globalassets/kuvat/tieteen-tila/aka_tieteen_tila_yhteenveto_en_2014_web.pdf

Statistics of the Finnish National Board of Education, (Vipunen)

Universities

- The total number of researchers
- Domestic and foreign sources of financing by university and field of science
- Research expenditures
- Statistics on international mobility of researchers
- Number of publications by type, year, university and field of science

Universities of applied sciences

- The total number of researchers
- Sources of financing for research
- Research expenditures by university and field of science

Vipunen statistics are available in Finnish only at
https://vipunen.fi/fi-fi

Academy of Finland: The State of Scientific Research in Finland 2014

- Research effectiveness, Top 10 index: the amount of publications belonging to the top 10 % of the most referenced publications in the world by university and field of science
- Number of research infrastructures by field of science
- Number of recruited professors in universities and research institutes in the period 2010-2013

The report The State of Scientific Research in Finland 2014 by Academy of Finland is available at http://www.aka.fi/globalassets/kuvat/tieteen-tila/aka_tieteen_tila_yhteenveto_en_2014_web.pdf

OECD Science, Technology and Industry Scoreboard 2015

International comparison on several areas such as:

- Higher education expenditure on R&D
- Funding of R&D in higher education
- Graduates at doctoral level, by field of education
- Doctorate holders in the working age population
- Employment rate of doctorate holders and other tertiary graduates
- R&D personnel
- Researchers, by sector employment
- The quantity and quality of scientific production (number of documents and percentage among the world's 10 % most cited, 2003–2012

The OECD Science, Technology and Industry Scoreboard 2015 is available at https://www.oecd-ilibrary.org/science-and-technology/oecd-science-technology-and-industry-scoreboard-2015_sti_scoreboard-2015-en

European Commission: Innovation Union Scoreboard 2015

Comparison between the countries of the European Union on eight innovation dimensions:

- Human resources
- Open, excellent research systems
- Finance and support
- Firm investments
- Linkages & entrepreneurship
- Intellectual assets
- Innovators
- Economic effects

The Innovation Union Scoreboard is available at http://ec.europa.eu/growth/industry/innovation/facts-figures/scoreboards/

International comparisons on open data

Finland is part of the following international comparisons on open data:

- Global open data index, available at https://index.okfn.org/
- *The European Data Portal: Open Data in Europe, available at* https://www.europeandataportal.eu/en/dashboard#2017

Copyright and research – a study on the views of researchers (2013) by Aalto University, the University of Helsinki, the IPR University Center, University of Arts Helsinki and Kopiosto

- Survey study covering over 1200 researchers and research directors in different branches of all Finnish universities
- The study focused on the following themes:
  - The respondent's latest research or research project
  - The utilization of materials created by others in research work
  - The use of materials created by others
  - The distribution of materials created by others
  - Publishing research results
- Copyright-related problems were most reported by researchers in the fields of art and design, humanities and social sciences

Summary of the study and the survey questionnaire are available in English at http://www.kopiosto.fi/kopiosto/en_GB/

Part 2: Information on licensing arrangements, 2016

Legal basis

Section 13 of the Finnish Copyright Act provides a possibility of an Extended Collective License for any photocopying of protected works and other protected subject matter.

Section 14 of the Finnish Copyright Act provides the possibility for an Extended Collective License for the purposes of education and research. It covers both reproduction by any other means than photocopying and communication to the public (except transmitting on radio or television).

Examples of licensing arrangements

Kopiosto – The Finnish universities

- Representatives of the universities negotiate the copying license with Kopiosto.
- All Finnish universities currently have a copying license.
- The license covers the use of all kinds of literal and visual materials in research and education, except works
  - covered by other agreements or licenses
  - shared in communications between private persons in social media
  - exercise books, music and audiovisual works, software.
- The following acts are allowed:
  - photocopying publications
  - printing out copyrighted material
  - scanning publications
  - copying/downloading copyrighted text and images from open Internet sources – no limit for TDM-activities
  - publications may be digitally copied for the research group in the extent required by the purpose (even an entire work), when it is essential for furthering the research.
- Copies may be stored in a secure network for the research group, distributed via e-mail (even to members abroad) and kept available as long as the research takes place. Long-term preservation can be arranged by separate agreement with the institution (e.g. Kopiosto's agreement with FSD).

Kopiosto – The FIN-CLARIN consortium

- Fin-Clarin is a national language resources consortium.
- The participating organisations:
  - University of Helsinki
  - University of Tampere
  - University of Jyväskylä
  - University of Eastern Finland
  - University of Oulu
  - University of Turku
  - University of Vaasa
  - Aalto University
  - Institute for the Languages of Finland
  - CSC – IT Center for Science
- The participating organisations have mandated the University of Helsinki to coordinate the consortium.

- The resources are maintained by CSC (CSC – IT Center for Science Ltd is a non-profit, state-owned company administered by the Ministry of Education and Culture).
- The license agreement between Kopiosto and FIN-CLARIN allows:
  - to create a database consisting of
    - all publications digitized by the National Library (currently that's what they have digitized)
    - copyrighted works freely available in Internet
    - commercial e-publications behind a paywall to which the publisher has given a permission
  - to make the database available to the research community for text and data mining purposes
    - identified users can read and browse part of the works and make different searches from the database
    - authorized users can also read and browse entire works and make copies of the entire works for research purposes
    - full-text services via special permission

Kopiosto – Finnish Social Science Data Archive (FSD)

- The agreement between Kopiosto and FSD enables the preservation of copyrighted materials in the archive for further research and verification purposes.
- Researchers can download and store any set of research material (including collection of works) in the database.
- Available to other researchers through permission procedure

FinElib: Individual publishers – The National Library of Finland

- The National Library of Finland maintains FinElib, a consortium.
- Members of FinELib consortium: universities (15), vocational universities (26), public libraries, 18 provincial libraries, several research institutions, special libraries (37)
- The FinElib unit negotiates licenses for the participating libraries.
- The service covers an impressive amount of e-periodicals, e-books, reference e-books and databases.
- For each material conditions of use are agreed.
- The customary generic condition is that the use may not be for commercial purposes.
- The conditions often allow text and data mining and other copyright relevant uses.
- The license acquisition budget is about 22 million euros yearly.
- The part of the acquisition budget confined to copyright-relevant uses cannot be specified (an estimation: several million euros).

Open access publishing: Individual publishers – universities

- Open science initiatives have been implemented with precise demands for open access publishing.
  For example: Horizon 2020 requirements by EU Commission: H2020 Model Grant Agreement: Multi-beneficiary General MGA[1], 29.2 Open access to scientific publications:

  > *Each beneficiary must ensure open access (free of charge, online access for any user) to all peer-reviewed scientific publications relating to its results.*
  >
  > *In particular, it must:*
  > *(a) as soon as possible and at the latest on publication, deposit a machine-readable electronic copy of the published version or final peer-reviewed manuscript accepted for publication in a repository for scientific publications;*
  > *moreover, the beneficiary must aim to deposit at the same time the research data needed to validate the results presented in the deposited scientific publications.*
  > *(b) ensure open access to the deposited publication — via the repository — at the latest:*
  > *(i) on publication, if an electronic version is available for free via the publisher, or*
  > *(ii) within six months of publication (twelve months for publications in the social sciences and humanities) in any other case.*

- Most universities have open access publishing policies, requiring the university employees to publish their articles open access.
  - Parallel publishing (green open access) takes place by publishing articles usually after an embargo in university repository and other field specific repositories.
  - Gold open access provides immediate open access provided by publisher and often involving an article processing charge APC.

- Publishers are granting licenses that comply with Open Science demands, usually Creative Commons licenses.

1 The agreement is available at http://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi_en.pdf.

Center for Cultural Policy Research Cupore

Finnish Copyright Society