The third Amendment to German Copyright Law - Achievements & Failures

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Workshop

Copyright fit for the Internet Age:
National and International Strategies to support Education and Research

British Library, London, UK

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The Coalition for Action "Copyright for Education and Research"

- Founded in 2004
- Reaction to the disappointing results of German copyright reform (1. basket)
- launched the Göttingen Declaration on Copyright for Education and Research of 5 July 2004
- lobbies for a balanced copyright
- Demands free access to worldwide information at any time from anywhere for everybody active in public education and research

"Membership" = signatories of the Göttingen Declaration
- 370 learned societies, federations and institutions as well as more than 7,250 individuals were.
- Six members of the Alliance of German Research Organizations
  - Fraunhofer-Gesellschaft
  - Helmholtz-Gemeinschaft
  - Hochschulrektorenkonferenz
  - Max-Planck-Gesellschaft
  - Wissenschaftsrat
  - Leibniz Wissenschaftsgemeinschaft
Copyright reform chronology

- 2001 EU Copyright Directive 2001-0029

- Implementation in Germany

  2001-2003  1. basket

  2004-2007  2. basket

  2010-201?  3. basket
2003  Berlin Declaration initiated by Max Planck Society
2003  Charter for a common interpretation of the exception for education and research in the German copyright law (§52a UrhG)
2004  Götingen Declaration launched by the newly founded Coalition for Action "Copyright for Education & Research"
2008  Founding of the Priority Initiative "Digital Information" by the Alliance of German Research Organizations
2009  Electronic sign-on petition to the Bundestag demanding Open Access for publications stemming from publicly funded research
2010  Coalition for Action "Copyright for Education & Research" demands general exception for education and research
2010  ENCES is founded
2010  The Alliance of German Research Organizations and the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany coordinate and focus their lobbying on the demand for a right for secondary publication
An exception for education and research (§ 52a UrhG) is introduced into German copyright law.

It is a labyrinth. It is associated with an expiry date.
Exception for education and research (§ 52a UrhG)

- What works can be used?
  - individual articles in newspapers or journals
  - published small parts of a work
  - works of small length

- What can the works be used for?
  - for demonstration in education
  - personal research
  - this includes the right to make necessary copies of the work (§53)

- Education where?
  - schools
  - universities
  - not-for-profit entities of vocational training and continuing education

- Provided availability is
  - limited to a definitely defined group of students
  - limited to non-commercial use
  - necessary and adequate

- Exceptions
  - Textbooks can only be used with the consent of the rights holder.
  - Right holders consent is mandatory for the use of movies until two years after usual period of exploitation

- Do the right holders get compensated?
  - An adequate compensation is to be paid via a collecting society.

- Expiry date 31 December 2006
Making works publicly available

- A new "right to making works publicly available" (§19a UrhG) is introduced in order to facilitate Open Access.

- It is defined as a right to make a work publicly available wire-bound or wireless so that it can be accessed by members of the public from places and at times of their choice.
Prerogative for DRM

- Limitation of the exception for digital private copies (§ 53 UrhG)

- A newly introduced regulation rules out the circumvention of DRM provisions even they inhibit the usages which are permitted due to exceptions in the copyright act, e.g. private copy
Coalition for Action "Copyright for Education & Research"

- Disappointment with the results of the 1. basket
- Formation of the Coalition for Action "Copyright for Education & Research"
- Launch of the Göttingen Declaration on Copyright for Education and Research of 5 July 2004

Signatories
- 7,250 individuals
- 370 learned societies, federations and institutions
- 6 members of the Alliance of German Research Organizations

- Special representation of the Alliance members its board
- Close relation with the Alliance limits scope of positions which can advocated

Göttingen Declaration on Copyright for Education and Research

• "Education and research must be allowed unrestricted use of the new ways of disseminating and acquiring knowledge and information."

• The Coalition for Action "Copyright for Education & Research" is motivated by conviction that …

"The answer to the question 'How accessible are knowledge and information?' will determine the opportunities for education and development open to every citizen in the information society and the opportunities future generations will have to build on existing knowledge."
• Provisions taking in account the needs of open source and open access business models

• Exception for education and research (§ 52a UrhG)
  - removal of expiry date
  - extension of exception to cover uses in addition to classroom teaching, e.g. homework, private studies

• Provision allowing archival copies

• Right to secondary publication of journal articles
  - which were created as part of research or educational work funded publicly by more than half
  - Embargo period 6 months
  - secondary publication may not be for-profit
  - original formatting may not be used
  - This right cannot be transferred
Outcomes: overview

• Extension of Exception for education and research (§ 52a UrhG)
  - old expiry date 31. Dec. 2006
  - extended until date 31. Dec. 2008 by the 5th act to amend the copyright law (Nov. 2006)

• Use of works in electronic format (new § 52b UrhG)
  - only on campus
  - read-only

• Changes to exception for private copies (§ 53 UrhG)
  - ban of file sharing of protected works
  - abdication to enforce private copy exception against DRM
  - Collective compensation for private copy exception (§ 54a UrhG)
    • use of DRM leads to lowering of fees

• Document delivery by public libraries (new § 53a UrhG)
  - Aims protect market for electronic offerings of right holders
  - Regulation is so vague that libraries (Subito) opted for a contractual agreement with publishers
Making available electronic copies of works from print collection (52b UrhG)

• What
  - Published works which are part of the collection of publicly accessible libraries, museums, or archives which operate on a not-for-profit basis

• Where
  - on the premises of the above privileged entities only
  - at read-only terminals only

• Provided
  - no contractual agreements to the contrary are in place
  - only one electronic copy per owned "original" may be made available

• What for
  - Research and private study

• Compensation
  - Fair compensation via collecting society
3. basket (2010-?)

- Negotiations started in June 2010
- 3 hearings were staged in autumn 2010
- The promise that concerns of the research community would be dealt with was not met as of now.
- Extension of Exception for education and research (§ 52a UrhG)
  - The decision on yet another extension or the lifting of expiry date is not to be included in the 3. basket.
- The draft bill is expected before the summer break.
3. basket (2010-?)

- The Coalition for Action "Copyright for Education & Research" demands a
  - General exception for education and research and
  - Right to secondary publication

- Cooperation of The Alliance of German Research Organizations and the Standing Conference of the Ministers of Education and Cultural Affairs jointly demand a
  - Right to secondary publication

- The cooperation of the Alliance and the Conference of Ministers marginalized the Coalition for Action somewhat.
Exception for education & research (new 45b UhrG)

- The new exception is to replace regulations currently dispersed across §§ 52a, 52b, 53 and 53a UrhG
- The exception is in line with the requirements set by the EU copyright directive
- Features
  - Simplification of the overly complicated current regulations
  - No limitation to the premises of privileged entities, instead the exception refers to the privileged group of persons, e.g. researchers, students etc.
- The exception for education and research is to be supplemented by a right for secondary publication (§38 UrhG)
(1) The copying, publication, and making available of published works is permitted for personal research purposes and for educational purposes at schools, universities and not-for-profit establishments of advanced and vocational training. The making available according to § 19a UrhG is permitted only if limited to a definite group of persons. Sentence 1 also applies in cases of use for documentation, preservation and archiving in education and research, especially for the scholarly use and for educational purposes of intermediary institutions like public libraries, archives, documentation centers and museums.

(2) Authors are eligible for a fair compensation for usages permitted according to paragraph 1. This entitlement can only be discharged by a collecting society or another legitimated entity.

(3) Contractual agreements eliminating or limiting paragraph 1 are ineffective.
Demand for a right to secondary publication

- Jointly The Alliance of German Research Organizations and the Standing Conference of the Ministers of Education and Cultural Affairs jointly demand a right for secondary publication:
  
- **Who?**
  - Authors of scholarly works
  - based on educational or research work which was at least half publicly funded
  - published in collections (everything but monographs)

- **What?**
  - Retain a right to secondary publication on a not-for-profit platform
  - Publisher formatting (= publisher PDF) can be used

- **Provided**
  - Embargo period of 6 month

- **This right cannot be waived.**
Positions of political parties

• SPD (Social Democrats)
  - Draft bill concerning orphan and out-of-print works (Dec. 2010)
  - Draft bill for right to secondary publication (Mar. 2011)

• Die Linke (The Left)
  - Draft bill concerning orphan and out-of-print works (Feb. 2011)
  - Declaration demanding a right to secondary publication (April 2011)

• CDU/CSU (Christian Democrats)
  - Major internal differences

• Bündnis 90/Grüne (Greens)
  - Still undecided but aiming for a more balanced copyright
• **Who?**
  - Authors of scholarly works
  - based on educational or research work which was at least half publicly funded
  - published in journals or collected editions

• **What?**
  - Retain a right to secondary publication on a not-for-profit platform
  - Publisher formatting (= publisher PDF) can be used

• **Provided**
  - Embargo period of 6 month for journal articles and 12 months for works in collected editions
  - The source of the original publication has to specified.

• Otherwise the rights transfer is not altered.

• This right cannot be waived.
Die Linke: demand for a right to secondary publication (Apr. 2011)

• Who?
  - Authors of Scholarly works
  - based on educational or research work which was at more than half publicly funded
  - no limitation to works published in journals or collected editions

• What?
  - Retain a right to secondary publication also on a for-profit platform
  - Publisher formatting (= publisher PDF) can be used

• Provided
  - Embargo period of 6 month - no extended embargo period, e.g. for books
  - The source of the original publication has to specified.

• Otherwise the rights transfer is not altered.

• This right cannot be waived.
Achievements & failures

- The notion that the public has a right of access to scholarly publications stemming from publicly funded research has gained wide acceptance.
- Chances are the 3. basket will not include a right for secondary publication.
- However, the demand has moved from fringe to a center position.
- The demand for a general exception for education and research was discarded at the very beginning of the negotiations for the 3 basket.
- The Alliance and the Committee of Ministers jointly adapted to this leaving the Coalition for Action in the cold.
- If Open Access business models succeed (in the right way) many copyright related issues will be considered less urgent in the scholarly community.
- The paradigm shift the Coalition for Action is aiming for will most probably not be achieved via the German law-makers.
- Do we stand a better chance on the European level?
Thank you very much for your attention!
Links

• The Coalition for Action "Copyright for Education and Research"
  - Göttingen Declaration (July 2004)
    http://www.urheberrechtsbuendnis.de
  - Addition to Sign-on petition to the Bundestag demanding Open Access for publications stemming from publicly funded research (February 2010)
    http://www.urheberrechtsbuendnis.de/docs/Aktionsbuendnis-petition-open-access-ergz-zu-LarsFischer250110.pdf
  - Demand for a general exception for education and research (June 2010)
    http://www.urheberrechtsbuendnis.de/pressemitteilung0610.html

• Priority Initiative "Digital Information" by the Alliance of German Research Organizations (2008-2012)
  - http://www.allianzinitiative.de/en/start

• Sign-on petition to the Bundestag demanding Open Access for publications stemming from publicly funded research (October 2009)
  - https://epetitionen.bundestag.de/index.php?action=petition;sa=detai ls;petition=7922
Image sources

http://ariadne-akzeptiertesaltern.net/man-in-labyrinth-sw360.gif


http://static.gulli.com/media/archiv/buddy_drm_gabe.png

http://4.bp.blogspot.com/-N4NZLiQDe18/Taus368v2yI/AAAAAAAAABAM/mQ8logVEeUI/s1600/df-mgbw-baguette-basket_300.jpg

http://3.bp.blogspot.com/_tfGC7tOlrdk/R85UqyDjAhI/AAAAAAAACeU/Dn1-EkOeDNY/s400/3-rectangular-water-hyacinth-baskets-nested.png

http://www.mathe-wettbewerbe-nrw.de/grundschulwettbewerb/grundschaen/Grundschulbilder/sanduhr.gif