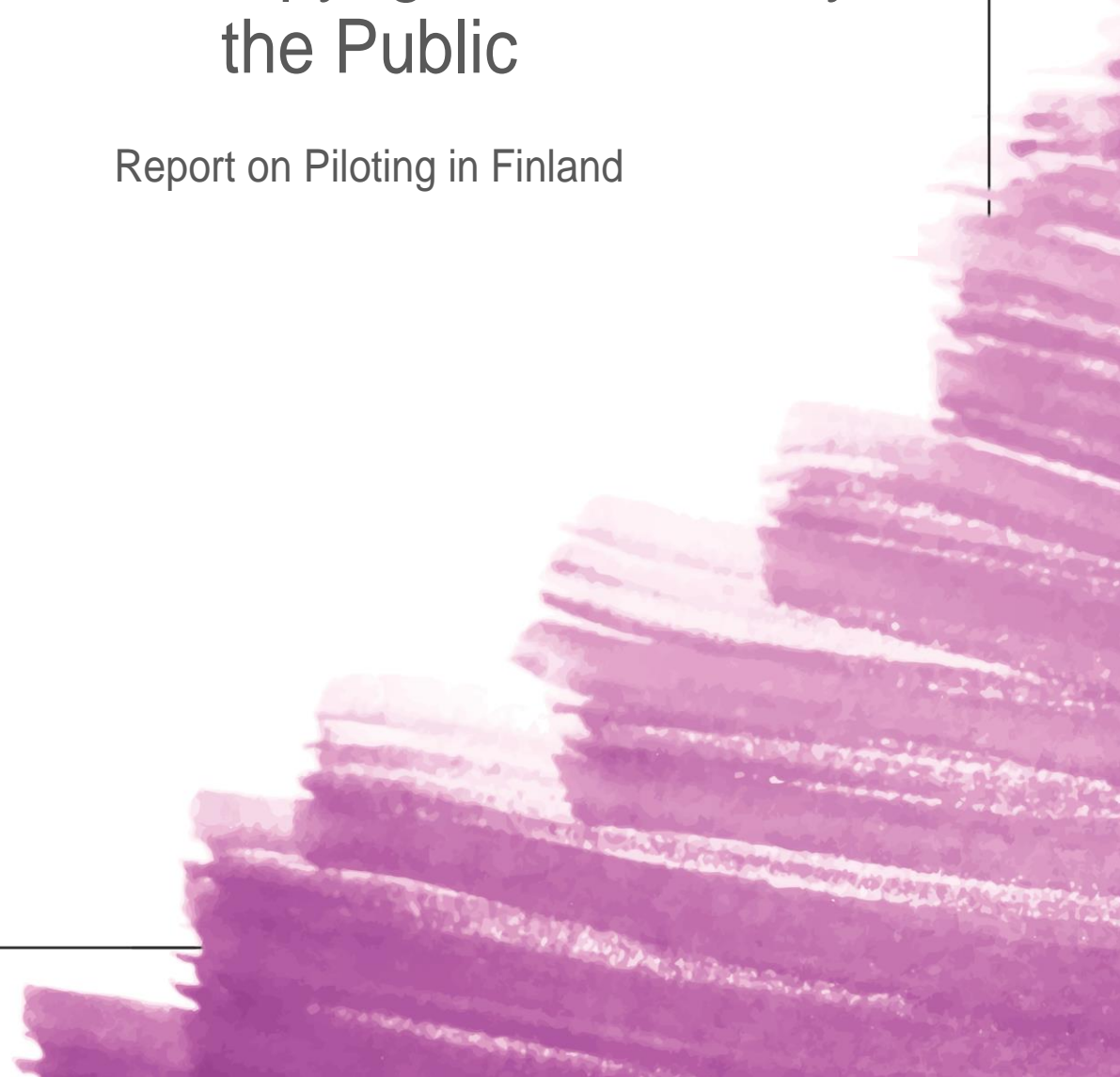


Assessing Copyright and Related Rights Systems

# Access to Copyrighted Works by the Public

Report on Piloting in Finland





cupore

**Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland.**

This report is the result of the first pilot study implementing Methodology Card 16 – *Access to Copyrighted Works by the Public*, one of the 37 indicators constituting a methodology framework for assessing the operation of national copyright and related rights systems. The methodology framework has been developed at the Foundation for cultural policy research (Cupore) in Finland as part of a project financed by the Finnish Ministry of Education and Culture. The pilot study was conducted by Project Researchers Jukka Kortelainen and Milla Määttä together with the core project team (Tiina Kautio and Nathalie Lefever) between June and December 2015. The results were first published in January 2016 on the website of Cupore.

*A handbook presenting the methodology framework is available on the website of Cupore at [www.cupore.fi](http://www.cupore.fi).*

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## Executive summary

This document presents data collected in application of a methodology framework to assess the operation of copyright and related rights systems. More precisely, the information and analysis below correspond to Methodology Card 16 presented in the methodology handbook, titled “Access to Copyrighted Works by the Public”. The goal of this report is to evaluate access from the perspectives of the public at large and special groups, as well as to present solutions on extended collective licensing and services used and provided by collective management organizations in identifying copyright owners.

There are high amounts of domestically produced as well as imported copyrighted newspapers and magazines, books, phonograms, films, games and software available on legal markets in Finland. Several industries are undergoing a transformation, which is reflected in the shift from the traditional publishing formats to the supply of works in new online platforms.

Access to copyrighted works in libraries, museums and archives was analyzed in this study through case examples of public libraries, the National Gallery of Finland and the Literary Archives of the Finnish Literature society. Results of the study show that these institutions are currently serving the general public without any insurmountable barriers. Access could be, however, facilitated in these institutions by developing copyright-related legislation or policies, especially in the area of online distribution.

There is legal uncertainty on the use of copyrighted works in teaching in elementary, secondary and upper secondary schools. The uncertainty is mainly related to the use of copyrighted materials in the online environment including questions such as the use of Internet videos in teaching, copying materials to virtual learning environments and long-term preservation of digital materials.

The Finnish Copyright Act includes several provisions for the benefit of different special groups. Section 17 allows certain institutions to make copies of published works for the use of people with visual impairments or other disabilities. Section 45 regarding the rights of performing artists includes a reference to performances of expressions of folklore. Section 53 of the Copyright Act provides the right for an authority, designated by a decree, to prohibit treatment of literary or artistic works in a manner which violates cultural interests. This protection for classic works or folklore exists notwithstanding of copyright.

The Finnish extended collective licensing system simplifies the rights clearance by facilitating the mass-use of works by professional copyright holders, intermediaries and organizational end-users and thereby indirectly affects the level of access to works by the public. The Finnish collective management organizations have domestic and/or international right holder databases at their disposal, the purpose of which is to facilitate the operation of the system. The databases maintained by the organizations are mainly used in-house only, but the contact details of right holders may be released by request for those seeking to negotiate licenses directly with the right holders.

All in all, results of the study indicate that the Finnish copyright system plays its part in providing sufficient access to the copyrighted works to the general public and special groups. The major access-related challenges are currently faced in teaching.

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## Introduction

### ***A. CONTEXT OF THE PILOT STUDY***

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A methodology framework for assessing the operation of national copyright and related rights systems has been developed at the Foundation for cultural policy research (Cupore) in Finland. It is a collection of tools for achieving a systematic assessment of the functioning, performance and balanced operation of national copyright and related rights systems.

In the methodology, the assessment is determined through a framework consisting of so-called description sheets and methodology cards. The description sheets constitute guidelines to produce a comprehensive presentation and description of a country's copyright and related rights system and its operating environment. The methodology cards propose the collection of specific sets of data, either quantitative, descriptive or qualitative, that will be used as indicators of the functioning, performance and balanced operation of the system. Description sheets and methodology cards are accompanied by detailed information on the data to be collected, as well as analysis guidelines that will help connect them to each other.

The methodology framework is meant to be continuously improved through application feedbacks. For more information, see the Cupore website, [www.cupore.fi/copyright.php](http://www.cupore.fi/copyright.php).

This report presents data collected in application of Methodology card 16 of the methodology framework, titled "Access to copyrighted works by the public". It is the result of the first pilot study applying this indicator in Finland.

The data for this study was collected by Project researcher Jukka Kortelainen (Sections 1 and 2) and Project researcher Milla Määttä (Section 3). The study was conducted together with the core project team (Tiina Kautio and Nathalie Lefever) between June and December 2015.

### ***B. PRESENTATION OF THE INDICATOR***

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The indicator implemented here is part of the third pillar of the methodology framework, "Operational balance of the copyright system", and its second area, "Access". It is a methodology card which defines methods for studying the operation of copyright system in facilitating access to culture, in order to support the analysis of the operation of the national copyright and related rights system.

As explained in the methodology handbook, maintaining a balance between the limited monopoly power granted to the authors and holders of rights to other protected subject matter on the one hand and the possibilities for all members of society to access cultural works on the other hand is an important goal of the copyright system. This balance is partly achieved through supporting the efficient operation of markets for copyrighted products and services as well as creative activities, and partly through exceptions and limitations to the limited monopoly granted by copyright. Such exceptions and limitations cover certain cases where a particular group of users is considered as having a specific interest in accessing copyrighted works. The access by certain actors, such as educators and researchers, and through certain organizations such as libraries, archives and museums is important from the focus of public interest. Taking into account the needs of persons with print or other disabilities by specific provisions or other arrangements is another way to ensure fair access to all members of society. Copyright exceptions and limitations provide for access to the public at large and to special interest groups, which is likely to benefit society in general.

Methodology card 16 aims at determining whether the copyright system creates sufficient conditions for a balance between the protection of copyrighted works and the access to these works by the public. For this purpose, legislative and other solutions are analyzed from the point of view of enabling access to copyrighted works to different audiences and to the public at large.

The first parameter aims at measuring the access to copyrighted works through legal markets. It requires the collection of information on the number of works (titles) legally distributed as physical products and in digital form in the country. All relevant formats and channels of distribution are to be considered. The indicators concerning the markets for copyrighted products and services will offer background information for interpreting these results. Description Sheet 4 provides information on the amount of end-use, the prices of cultural products and the most common business models used in the industries under consideration). Methodology Cards 2 – *Volume of Domestic Production of Copyrighted Products and Services*, and 3 – *Volume of Exported and Imported Copyrighted Products and Services* tell about the availability of domestic and imported products and services. Methodology Card 4 – *Development of Digital Business Models and Income Based on Digital Distribution* focuses on the digital sales. End-users' opinions on access are examined as part of Methodology Card 22 – *Analysis of Stakeholders' Opinions on the Copyright System*.

Archives, museums and libraries have large collections of culturally relevant material. These institutions preserve cultural heritage and promote the access to culture. In addition to a description of special provisions such as library privileges in the country's legislation<sup>1</sup>, the use of copyrighted works in libraries, archives and museums can be studied by surveys and expert interviews. Questions for archives, museums and libraries are included in a separate toolkit of questionnaires. The question of access to copyrighted material by the general public also includes the use of copyrighted material for educational purposes.

The second parameter of this indicator aims at providing information on the access to copyrighted works by special interest groups, including the persons with print or other disabilities. The existence of provisions facilitating access to copyrighted works by these groups tells whether this aspect is taken into account in the national copyright system.<sup>2</sup>

The third parameter of the indicator proposes a desktop study describing the solutions made at national level to the problems in identifying copyright holders. This parameter includes the level of development of the CMO's services concerning the identification of copyright holders and right holder databases. These tools complement the solutions implemented in the national legislation (see Description Sheet 5 – *Copyright Law*). By facilitating the mass-use of works, the solutions on collective licensing significantly reduce the burden of professional copyright users (e.g. broadcasting companies), intermediaries (e.g. libraries, archives and museums), and organizational end-users (e.g. restaurants and hotels) when seeking to identify individual copyright holders and therefore indirectly affects the access to works by the public. The CMOs' services that aim at facilitating the identification of copyright holders may also serve these groups, as well as follow-on creators seeking a permission to use works in ways not covered by the collective licensing system. Public regulations, policies and other measures to facilitate access to the protected works for follow-on creation are examined in more detail in Methodology Card 17 – *Access to Copyrighted Works for Follow-on Creation*.

In this study, the data collected through this indicator is read in connection to the description of legal exceptions and limitations to copyright presented in Description Sheet 5 – *Copyright Law*. The analysis also takes into account the public awareness of rights (Methodology Card 10) and the provisions on private use in national law (Description Sheet 5). Other legislations than the Copyright Act also have a

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

<sup>2</sup> Examples of such measures in different countries have been gathered by the WIPO: see WIPO Standing Committee on Copyright and Related Rights, Examples of Practices and Other Measures for the Benefit of Persons with Print Disabilities, SCCR/20/5, [http://www.wipo.int/meetings/fr/doc\\_details.jsp?doc\\_id=133681](http://www.wipo.int/meetings/fr/doc_details.jsp?doc_id=133681)

significant impact on the access to copyrighted works in Finland. These legislations include the Act on Legal Deposit and Preservation of Cultural Material (2007/1433)<sup>3</sup>, the Act on the Use of Orphan Works (2013/764)<sup>4</sup> and the Personal Data Act (1999/523)<sup>5</sup>.

A lack of access to copyrighted works could be explained by a malfunctioning market for copyrighted products and services. The information collected through the area “licensing markets” of Pillar III is useful to ascertain this causality. Moreover, this indicator might be connected to those assessing the level of unauthorized use, since a lack of legal access will encourage users to look for other sources of content (see Methodology Cards 20 and 21).

Facilitating access to creative works is one key role of the copyright system, together with the role of providing incentives for creation and investment. Therefore, a deeper understanding of the issues concerning access requires a comparative analysis with indicators concerning the incentive function of the copyright system (see Methodology Cards 13, 14 and 15). On the other hand, the success of open access licenses in solving access issues is measured through Methodology Card 4 – *Development of Digital Business Models and Income Based on Digital Distribution*.

A methodology card presenting the indicator can be found in Appendix A of this report.

### **C. METHODS**

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The data for Parameter 1, “Access to copyrighted works – Public interest focus”, was collected through desktop study and expert interviews. The data on libraries and schools was provided by copyright experts in the field and information regarding museums and archives by representatives of two specific institutions: the National Gallery of Finland and the Literary Archives of the Finnish Literature Society. The interviews conducted with representatives of libraries, archives and museums were based on the exemplary questions presented in a separate toolkit of questionnaires.

The data for Parameter 2, “Access to copyrighted works – Special interest groups focus”, was collected by the means of a desktop study.

The data for Parameter 3, “Access to copyrighted works – Identifying copyright owners”, was collected through interviews of representatives of collective management organizations.

A list of national and international information sources used for this report as well as a list of interviewees and commentators can be found in the appendices.

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<sup>3</sup> The Act on Collecting and Preserving Cultural Material is available at <http://www.finlex.fi/fi/laki/ajantasa/2007/20071433>. Visited on 1.12.2015.

<sup>4</sup> The Act on the Use of Orphan Works came into force on October 29th 2014. It implements Directive 2012/28/EU of the European Parliament and the Council. The Directive “sets out common rules on the digitisation and online display of so-called orphan works. Orphan works are works like books, newspaper and magazine articles and films that are still protected by copyright but whose authors or other rightholders are not known or cannot be located or contacted to obtain copyright permissions.” The Directive is available at [http://ec.europa.eu/internal\\_market/copyright/orphan\\_works/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm). The Act on the Use of Orphan Works is available at <http://www.finlex.fi/fi/laki/ajantasa/2013/20130764>. Visited on 1.12.2015.

<sup>5</sup> An unofficial translation of the Personal Data Act is available at <http://www.finlex.fi/en/laki/kaannokset/1999/19990523>. Visited on 1.12.2015.



## Results

This study focuses on the access to copyrighted works from the following three perspectives: public interest focus, special interest groups focus and the identification of copyright holders.

### SECTION 1. ACCESS TO COPYRIGHTED WORKS – PUBLIC INTEREST FOCUS

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This section examines the access to copyrighted works by the public. It starts with an overview on the works available on the legal markets. This is followed by an analysis of access to copyrighted works in libraries, museums, archives and schools in Finland. The information on libraries and schools was provided by copyright experts in the field, whereas data on museums and archives focuses on two specific institutions, the Finnish National Gallery and the Literary Archives of the Finnish Literature Society.

#### A. AVAILABILITY OF WORKS ON THE LEGAL MARKETS

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There is a wide variety of domestically produced and imported copyrighted works available on the Finnish markets. This is indicated in the figures presented in the pilot studies applying Methodology cards 2 and 3 concerning the volumes of domestically produced and imported newspapers and magazines, books, phonograms, films, games and software in Finland. The volumes of published domestic magazine and periodical titles, printed literature titles and phonogram sales have however decreased over time.<sup>6</sup>

The volumes of domestic and foreign works available in the markets vary between industries. For example, the figures of the film industry show that the foreign films constituted 82 percent of all new releases in 2013. In the music industry, about a third of phonograms sold in the domestic markets on the same year were of foreign origin. In the industries of book publishing, digital games and software, the levels of both imports and exports have been high.<sup>7</sup>

At present, several industries are undergoing a transformation, which is reflected in the shift from the traditional publishing formats to the supply of works on new online platforms. The results of the pilot study applying Methodology Card 4 – *Development of Digital Business Models and Income Based on Digital Distribution* show that digital sales have been increasing thoroughly in the cultural industries. The increase in the digital sales in the press industry, book publishing industry and music industry is indicated in the statistics, whereas information on the shares of digital sales in the audiovisual industry and game industry were not available at the time the study was conducted.<sup>8</sup> The volume of digital sales has presumably increased also in these industries as video on demand services and online gaming have become increasingly-popular.

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<sup>6</sup> See pilot studies applying Methodology Card 2 – *Volume of Domestic Production of Copyrighted Products and Services*, Methodology Card 3 – *Volume of Exported and Imported Copyrighted Products and Services* and Methodology Card 4 – *Development of Digital Business Models and Income Based on Online Distribution*. Available at <http://www.cupore.fi/Pilotreports.php>. Visited on 13.10.2015.

<sup>7</sup> Source: Methodology Card 3 – *Volume of Exported and Imported Copyrighted Products and Services*.

<sup>8</sup> Source: Pilot study applying Methodology Card 4 – *Development of Digital Business Models and Income Based on Digital Distribution*. Available at <http://www.cupore.fi/Pilotreports.php>. Visited on 13.10.2015.

## **B. ACCESS TO COPYRIGHTED WORKS THROUGH LIBRARIES**

Finland is internationally known for its public library network. In 2014, the public library network was comprised of 291 municipal public libraries, 465 branch libraries, 34 hospital libraries and 142 mobile libraries. In that year, public libraries accumulated a total of 50 million visits and about 91 million loans were made altogether, which means that each Finnish resident went to libraries on average 9 times that year and borrowed around 17 items each. The collections of public libraries have more than 37 million storage units of which about 86% are comprised of printed books and about 6% of audio recordings.<sup>9</sup>

There are also 43 research libraries maintaining 197 branches in institutions of higher education in Finland<sup>10</sup>. Over 14 million storage units of printed books and about 9 million e-books were available in these libraries in 2014<sup>11</sup>. In addition to the public and research libraries, there are hundreds of special libraries serving special interest groups such as the Celia Library for the visually impaired and with other print disabilities, the FAIDD (The Finnish Association on Intellectual and Developmental Disabilities) library, the Library and Information Service of the Finnish Association of the Deaf, the Sign Language Library, the Saami Library.<sup>12</sup>

The Act on Collecting and Preserving Cultural Material (2007/1433)<sup>13</sup> promotes the preservation of cultural material for future generations and for the use by researchers and other persons in need of the materials. The Act obliges publishers, distributors or importers to submit copies of all printed material to be distributed in Finland to certain libraries as follows<sup>14</sup>:

- Copies of printed matter other than newspapers, advertisements, brochures, price lists or corresponding materials are submitted to the National Library of Finland, University of Eastern Finland Library, Jyväskylä University Library, Oulu University Library, Turku University Library and Åbo Akademi University Library.
- Copies of advertisements, brochures/and price lists are submitted to the National Library of Finland and the Turku University Library.
- Copies of newspapers and recordings other than cinematographic works are submitted to the National Library of Finland
- The National Library of Finland is also responsible for retrieving and storing online materials.

The study of the access to copyrighted works in this report focused on the situation in public libraries. The text below focuses on awareness on copyright issues, the copyright-related administrative work, licensing of collections, digitization, problems in identifying copyright holders, library users' rights, library networks and copyright-related challenges in public libraries.<sup>15</sup>

### **■ AWARENESS ON COPYRIGHT ISSUES AND THE COPYRIGHT-RELATED ADMINISTRATIVE WORK IN PUBLIC LIBRARIES**

Public libraries do not have any special personnel responsible for copyright issues. The libraries' staff dealing with music, movies or online services are usually the ones to participate in copyright-related

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<sup>9</sup> Source: Finnish Public Library Statistics, available at <http://tilastot.kirjastot.fi/en-GB/>. Visited on 9.10.2015.

<sup>10</sup> The number includes the libraries of universities, universities of applied sciences and joint libraries. Source: Research Library Statistics Database, available at <https://yhteistilasto.lib.helsinki.fi/index.php?lang=fi>. Visited on 5.6.2015.

<sup>11</sup> Source: Research Library Statistics Database, available at <https://yhteistilasto.lib.helsinki.fi/index.php?lang=fi>. Visited on 5.6.2015.

<sup>12</sup> Source: Kirjastot.fi, available at <http://www.kirjastot.fi/fi/kirjastot/erikoiskirjastot#.VYgAcGCEffI>. Visited on 22.6.2015.

<sup>13</sup> The Act on Collecting and Preserving Cultural Material is available at <http://www.finlex.fi/fi/laki/ajantasa/2007/20071433>. Visited on 1.12.2015.

<sup>14</sup> See Section 21 of the Act on Collecting and Preserving Cultural Material (2007/1433).

<sup>15</sup> Information provided by Heikki Poroila, an expert of copyright issues in libraries. Poroila has been working in public libraries since 1979 and has retired recently. He has written copyright-related guidebooks and provided help for librarians on copyright issues in the online library network Kirjastot.fi. The interview took place on 7.7.2015.

education and seminars. Copyright-related issues in libraries can be divided broadly into two categories: (1) the issues related to collections and lending. These issues are usually dealt with managers and other administrative staff of the libraries. (2) The customers' questions on the permitted use of materials usually dealt with by the library's customer service.

All in all, the copyright-related administrative duties form only small minority of the daily work in public libraries. The employees' knowledge on copyright issues has improved in the past two decades and the librarians are usually able to provide library users with the necessary copyright-related information. There is however a great shortage of experts specialized in more complicated copyright questions in the public library field.

#### ▪ LICENSING OF COLLECTIONS

Section 19 of the Copyright Act provides a right to make purchased works available for loan. Therefore, in most cases, the libraries are able to acquire new materials for collections without contacting the copyright holders.

Cinematographic works and computer programs<sup>16</sup> are excluded from the lending right, which means that licenses have to be acquired for lending these types of material. There are not many computer programs in the collections of public libraries, but cinematographic works constitute about five percent of all collections. The majority of the films are licensed only for lending purposes, but some also for public performance in libraries. These licenses are usually acquired through intermediaries such as the BTJ Finland Oy<sup>17</sup>.

At the moment, public libraries do not acquire any rights through collective management organizations. The right to listen music in libraries is included in the collective license acquired by municipalities.

#### ▪ DIGITIZATION OF COLLECTIONS

Only a very small share of all public libraries' collections have been digitized so far. The digitization projects have been primarily targeted at materials which are not anymore protected by copyright<sup>18</sup>. Libraries may also conduct joint digitization projects together. For example, the Library of Porvoo is digitizing the old book collection of Porvoo Lyceum in cooperation with the National Library of Finland. The public libraries are also part of the National Digital Library project together with other memory institutions.

There exists lots of interesting collections that could be digitized in public libraries, but the labour intensiveness and lack of funding create restrictions for this process. Digitization of collections has not been given a high priority in several libraries either.

#### ▪ PROBLEMS IN IDENTIFYING COPYRIGHT HOLDERS

The public libraries do not primarily deal with copyright holders, but some intermediaries have faced difficulties in obtaining licenses for some movies. The copyright holders of small-budget films may be particularly difficult to identify in some cases.

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<sup>16</sup> There was uncertainty earlier about the status of the computer games, but according to the opinions issued by the Copyright Council, computer games can be loaned as well. See the opinions 2015:7 and 2015:8 at [http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston\\_lausunnot/2015.html?lang=fi](http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston_lausunnot/2015.html?lang=fi). Visited on 20.10.2015.

<sup>17</sup> See the website of the BTJ Finland Oy, available at <http://www.btj.fi/english/>. Visited on 30.9.2015.

<sup>18</sup> The digitized collections of public libraries are available online at <http://www.digi.kirjastot.fi>. Visited on 30.9.2015.

The Act on the Use of Orphan Works (2013/764)<sup>19</sup> provides libraries with a right to make copies of works whose copyright holders cannot be identified and communicate those to the public under certain circumstances<sup>20</sup>. This right can be exercised if a careful search for the identification of the right holders has been conducted.

#### ▪ LIBRARY USERS' RIGHTS IN PUBLIC LIBRARIES

Library users may use borrowed material under the conditions of the Copyright Act. Section 12 of the Copyright Act allows users to reproduce copies of works for private use under certain conditions. Distributing these copies requires permissions from original copyright holders.

#### ▪ LIBRARY NETWORKS

The public libraries often form cooperative groups together. For library users, this is reflected in joint library cards, shared databases and right to borrow from the collections of neighboring libraries.

Libraries.fi is an online network providing information for library professionals and library users<sup>21</sup>.

#### ▪ COPYRIGHT-RELATED CHALLENGES IN PUBLIC LIBRARIES

At current, copyright-related issues form no obstacles for serving the public in general. The exclusion of cinematographic works in Section 19 of the Copyright Act has however resulted in a significant reduction of choice for film enthusiasts.

Section 16 of the Copyright Act allows a certain group of libraries designated by a Government Decree<sup>22</sup> to make copies of works for the purposes of preserving material and safeguard its preservation, and technically restoring and repairing material. Section 16a provides this group an opportunity to make copies of works susceptible to damage by photocopying and make them available for lending. The following issues may restrict the access to materials by the public at large:

- (1) Only the libraries designated by the Government Decree can make copies under Section 16. At the moment, these libraries include the Central Library for Public Libraries and provincial libraries<sup>23</sup>.
- (2) The copyright-protected materials digitized under Section 16 cannot be made available outside the libraries' internal networks. Therefore, the materials cannot be shared with other public libraries mentioned in the Government Decree or made available online for the public.
- (3) Section 16a is limited to the method of photocopying. The libraries are not allowed, for example, to convert LP-records to CDs and make them available for lending.

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<sup>19</sup> The Act on the Use of Orphan Works came into force on 29 October 2014. It implements Directive 2012/28/EU of the European Parliament and the Council. The Directive "sets out common rules on the digitization and online display of so-called orphan works. Orphan works are works like books, newspaper and magazine articles and films that are still protected by copyright but whose authors or other rightholders are not known or cannot be located or contacted to obtain copyright permissions." The Directive is available at [http://ec.europa.eu/internal\\_market/copyright/orphan\\_works/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm). The Act on the Use of Orphan Works is available at <http://www.finlex.fi/fi/laki/ajantasa/2013/20130764>. Visited on 1.12.2015.

<sup>20</sup> For more information, see Section 7 of the Act on the Use of Orphan Works.

<sup>21</sup> See Libraries.fi at <http://www.libraries.fi/>. Visited on 12.10.2015.

<sup>22</sup> The Government Decree is available at <https://www.finlex.fi/fi/laki/ajantasa/1995/19950574>. Visited on 12.10.2015.

<sup>23</sup> The list of provincial libraries can be found at <http://www.kirjastot.fi/fi/kirjastoala/maakuntakirjastot#.VhuE5bnovIV>. Visited on 12.10.2015.

The main long-term challenge for libraries is related to the public libraries' lack of rights in the online environment. There are no copyright-related limitations or other special provision for libraries regarding online distribution of works. The libraries have to compete with commercial actors in negotiating online distribution rights in the future. Because of this, the public libraries are not necessarily able to provide users with new releases in digital form.

### **C. ACCESS TO COPYRIGHTED WORKS THROUGH MUSEUMS AND EXHIBITION ORGANIZERS**

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There are about 150 professionally run museums, which maintain over 300 regularly open museum sites and locations in Finland. These museums include cultural history museums, art museums, specialized museums, natural history museums and combination museums. In 2014, the collections of the professionally run museums included about 5.5 million cultural historical items, 390 000 artworks and 19 million natural objects or samples. There were about 5.5 million visitors and 1 146 new exhibitions in the professionally run museums in 2014. In addition to the professionally run museums, there are about 1000 local museum units and collections maintained by organizations, foundations, municipalities, companies and private persons.<sup>24</sup>

The text below focuses on the access to copyrighted works in museums through a case example of the art collections of the Finnish National Gallery<sup>25</sup>.

#### **▪ AWARENESS ON COPYRIGHT ISSUES AND THE COPYRIGHT-RELATED ADMINISTRATIVE WORK IN ART MUSEUMS**

The staff of the Finnish National Gallery have a very good knowledge on copyright issues. The issues may however be very complicated, especially in the online environment. Contemporary art forms are also more and more often colliding with copyright law or other legislations. The staff do not necessarily have expertise to solve the complicated issues by themselves, but they know when it is necessary to contact the in-house lawyer of the National Gallery. The staff also attends courses and seminars often organized together with other memory institutions.

#### **▪ LICENSING OF COLLECTIONS**

The art collections of the Finnish National Gallery include about 37 000 artworks<sup>26</sup>. An estimated 60 percent of the works are still protected by copyright, but the share varies in the museums of the National Gallery as follows:

- All art works in the collections of the Museum of Contemporary Art Kiasma are protected by copyright
- Copyright of all artworks of the Sinebrychoff Art Museum has expired.
- The collections of the Ateneum Art Museum are comprised of both protected and non-protected works. The Finnish art is comparatively young and therefore the share of artworks still protected by copyright is higher than in many other countries of the European Union. The share of copyright-protected works is likely to increase in the coming years as the Ateneum's acquisition focus on Modernism.

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<sup>24</sup> Source: report on the museum statistics produced by the National Board of Antiquities, available at: <https://www.museotilasto.fi/tiedostot/museovirasto/files/Museotilasto%202014.pdf>. Visited on 9.6.2015.

<sup>25</sup> Information in this section was provided by Tuula Hämäläinen, a lawyer responsible for copyright issues of collections and exhibitions at the Finnish National Gallery. The interview took place on 10.8.2015.

<sup>26</sup> In addition, the National Gallery maintains archive collections including documentation on art world, newspaper articles, photographs etc.

The ownership and the exhibition rights of the acquired artworks are transferred to the National Gallery. The terms of use regarding acquired audio-visual materials may vary according to the contract type. When organizing exhibitions, the National Gallery negotiates temporary exhibition rights with artists and remunerates them usually through Kuvasto.

A small amount of the works in the National Gallery's collections have been licensed with Creative Commons licenses, which allow certain kinds of uses of works in non-commercial or educational activities.

#### ▪ **DIGITIZATION OF COLLECTIONS**

There exists a photograph of 26 500 of the total 37 000 artworks of the National Gallery. All in all, about 44 000 images appear on the gallery's website. About 16 700 of the total 26 500 artworks in the online archive are subject to a national license organized by the Ministry of Education and Culture, Kuvasto, Kopiosto and The National Gallery. Rights to online distribution of images of foreign artworks are negotiated separately with foreign collective management organizations or with the artists themselves. The National Gallery has been generally satisfied with the national license and the resources available for providing images of artworks online. Before the national license, the gallery had to make some prioritization of the images provided in the online gallery. The National Gallery aims at bringing images of all artworks to the online archive.

#### ▪ **PROBLEMS IN IDENTIFYING COPYRIGHT HOLDERS**

The online distribution of the images of artworks is remunerated through Kuvasto which holds the main responsibility for identifying and remunerating the original copyright holders at the moment. There have been difficulties in identifying copyright holders at the Archive Collections of the National Gallery, but copyright issues related to these collections were not analyzed in this study.

The Act on the Use of Orphan Works (2013/764)<sup>27</sup> provides museums with a right to make copies of works whose copyright holders cannot be identified and communicate those to the public under certain circumstances<sup>28</sup>. This right can be exercised if a careful search for the identification of the right holders has been conducted.

#### ▪ **VISITORS' RIGHTS IN ART EXHIBITIONS**

Museum visitors are allowed to take pictures in the Museum of Contemporary Arts Kiasma and in the collections of the Ateneum and the Sinebrychoff Art Museum. The National Gallery's policies in this area are based on the principle of freedom of speech and expression. Taking pictures is however forbidden in all Ateneum's exhibitions, because it is common for artists to require this prohibition as a precondition for borrowing their artworks. Photographing some individual artworks in Kiasma may be prohibited as well.

#### ▪ **NETWORKS OF MEMORY INSTITUTIONS**

The juridical group KAM comprised of representatives of libraries, archives and museums has constituted an important discussion network on copyright-related issues. The group organizes annual seminars and keeps regular contact with the Ministry of Education and Culture. The National Gallery has been part of the National Digital Library project as well. The Open Access approach of the project has however imposed some challenges because the collections include rights of third parties.

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<sup>27</sup> The Act on the Use of Orphan Works is available at <http://www.finlex.fi/fi/laki/ajantasa/2013/20130764>. Visited on 1.12.2015.

<sup>28</sup> For more information, see Section 7 of the Act on the Use of Orphan Works.

## ▪ COPYRIGHT-RELATED CHALLENGES IN ART MUSEUMS

The National Gallery is able to provide sufficient access to the artworks in physical and digital forms and there are no specific groups that could not be served because of copyright-related issues. The problems of online access are primarily related to the archive collections of the National Gallery, which were not analyzed in this study.

The major copyright-related challenges are currently related to distribution and linking of images of artworks in the social media. Copyright rules in this area should be further clarified.

### ***D. ACCESS TO COPYRIGHTED WORKS THROUGH ARCHIVES***

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In Finland, there are several types of archives responsible for storing and preserving different kinds of materials<sup>29</sup>:

- The National Archive Service is comprised of the Provincial Archives and the National Archives, which directs them. The Finnish National Archive Service is a government body of the Ministry of Education and Culture. The Sami archives are also part of the Finnish National Archive Service<sup>30</sup>
- Other governmental central and special archives include the Archives of the Parliament of Finland, the Archives of the Finnish Government, the War Archives, the Archives of the Ministry for Foreign Affairs, the Archives of National Land Survey of Finland, the Archives of the Statistics Finland, the Finnish Social Science Data Service, the Archives of the National Audiovisual Institute and The Finnish National Sound Archive.
- The archives maintained by municipalities of Finland
- The private central archives funded by state aid. These include The People's Archives, the Archives of the Centre Party, the Archives of the Organizations of the National Coalition Party, the Central Archives for Finnish Business Records, the Sport Archives of Finland, the Archives of the Finnish Literature Society SKS, the Archives of Society of Swedish Literature in Finland SLS, the Archives of Salaried Employees, Labour Archives, and the Archives of the President Urho Kekkonen.
- The Archives of universities and museums

According to the Act on Collecting and Preserving Cultural Material (2007/1433)<sup>31</sup>, television and radio programs, as well as cinematographic works produced by domestic producers must be stored in the National Audiovisual Institute within different time limits. The institute may also contract with foreign producers concerning the storage of foreign television and radio programs and cinematographic works to the archives.

In this study, access to copyrighted works in archives was analyzed through a case example of the Literary Archives of the Finnish Literature Society<sup>32</sup>. The text below focuses on awareness on copyright

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<sup>29</sup> The information was found on the website of the Finnish National Archive Service, available at <http://www.arkisto.fi/fi/palvelut/julkaisuluettelo/d-verkko-opaat/arkistot-yhteiskunnan-toimiva-muisti/arkistolaitos-2>. Visited on 17.9.2015.

<sup>30</sup> Source: the website of the Finnish National Archive Service, available at <http://www.arkisto.fi/en/the-national-archives-service>. Visited on 17.9.2015.

<sup>31</sup> The Act on Collecting and Preserving Cultural Material is available at <http://www.finlex.fi/fi/laki/ajantasa/2007/20071433>. Visited on 1.12.2015.

<sup>32</sup> Information in this chapter was provided by Ulla-Maija Peltonen, the manager of the Literary Archives. She is responsible for signing donation contracts and compliance of copyright in the archives. The interview took place on 25.8.2015.

issues, the copyright-related administrative work in archives, licensing of collections, digitization of materials, problems in identifying copyright holders, visitors' rights in the archives, networks of memory institutions and copyright-related challenges concerning the access to copyrighted works in the archive.

- **AWARENESS ON COPYRIGHT ISSUES AND THE COPYRIGHT-RELATED ADMINISTRATIVE WORK IN ARCHIVES**

The staff of the archives uses various available information sources on copyright issues and attend to copyright-related seminars organized by memory institutions. When complicated questions arise, the archives consult with lawyers. The juridical group KAM has been an important information source for the archives as well. The staff of the Literary Archives has instructions on relevant legislations, decrees and research ethics, but there would be a need for additional information regarding the legal terms and conditions of the materials handed to the archives.

- **LICENSING OF COLLECTIONS**

The archives of the Finnish Literature Society, comprised of the Folklore Archives and Literary Archives, include all together 2643 shelf meters of text materials, 334 000 images and 35 200 hours of audio recordings. The materials have been deposited in the archives by private persons and associations.

Copyrights of the deposited materials are retained with original copyright holders. The conditions and terms regarding the use of materials in the archive are determined in the contract signed with each donator separately.

Approximately 30 percent of the Literary Archives' collections are comprised of non-protected materials, whereas the remaining 70 percent are still under protection. The estimation is made difficult by the fact that the archives do not necessarily know when the authors of the works have passed away.

The archive has not made any collective agreements with collective management organizations so far.

- **DIGITIZATION OF COLLECTIONS**

The SKS Archives digitizes materials for two purposes: (1) Production of long-term copies of the works and (2) for the use of researchers by online request. About 2-3 percent of the collections have been digitized altogether. These include old diaries and corresponding materials. The archives of Aleksis Kivi, as an example, are available on the website of the Finnish Literature Society. The archives are legally permitted to digitize old copyright free materials, but some donators have also given a permission to digitize materials still protected by copyright. Restrictions for digitization have been mainly caused by high labor costs and the lack of necessary equipment.

- **THE PROBLEMS IN IDENTIFYING COPYRIGHT HOLDERS**

The SKS Archives have a huge amount of orphan works. The archives have received lots of materials from third parties and the copyright holders needs to be identified if the materials are to be published. The photographer is unknown in about 60 percent of all photographs. There is a significant amount of orphan text materials in the archives as well. The speakers in the audio recordings are most often known.

If the copyrighted works of the archives are to be published, permissions from the original copyright holders are needed. In these cases, the researchers or other parties willing to publish materials tries to identify the copyright holders. The staff of the SKS Archives may provide assistance in this process. Identifying copyright holders, especially after the death of the authors, can be very difficult and labor intensive.



The Act on the Use of Orphan Works (2013/764)<sup>33</sup> provides archives with a right to make copies of works whose copyright holders cannot be identified and communicate those to the public under certain circumstances<sup>34</sup>. This right can be exercised if a careful search for the identification of the right holders has been conducted.

#### ▪ VISITORS' RIGHTS IN ARCHIVES

The archives are open for anyone and the materials can be used in accordance with the terms agreed upon in the donation contract. The conditions of use may be set in three ways: (1) The materials are open for use in accordance with the common practices of the archives, 2) The use of materials requires permission from the manager of the archives, original copyright holders or another dedicated person, 3) The materials become available after a set period of time. The SKS Archive's standard period is maximum 25 years after the work is donated to the archive, but some copyrighted materials become available immediately after the death of the author. The archives may also take into consideration the purpose of the use and access has been denied in some cases.

The users of the archives are able to use materials according to the rules of the Copyright Act. The use of digital cameras in making notes has become regular practice among researchers. The researchers must ensure that the images are used only privately and destroyed immediately when not needed anymore.

#### ▪ NETWORKS OF MEMORY INSTITUTIONS

The KAM juridical group has provided important support concerning difficult copyright questions faced by the Literary Archives. The Finnish Literature Society keeps regular contact with the Society of Swedish Literature in Finland, as well as with other private archives. The Finnish Literature Society has been part of the National Digital Library project.

#### ▪ COPYRIGHT-RELATED CHALLENGES IN ARCHIVES

One of the biggest challenges of the copyright system is to ensure equal access to copyrighted works between researchers all over Finland (or in the world). Because there are lots of archives concentrated in the capital area, it is important for archives to be able to provide materials for researchers over the Internet.

Another challenge is related to the huge amount of orphan works in the archives. Identifying copyright holders, especially after the death of the authors can be very difficult and labor intensive.

### ***E. ACCESS TO COPYRIGHTED WORKS FOR EDUCATIONAL PURPOSES***

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In 2014, there were about 2 597 comprehensive schools<sup>35</sup> and 366 upper secondary schools in Finland. In addition, there were 42 comprehensive and upper secondary general schools. The text below focuses on the access to copyrighted works in elementary, secondary and upper secondary schools<sup>36,37</sup>

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<sup>33</sup> The Act on the Use of Orphan Works is available at <http://www.finlex.fi/fi/laki/ajantasa/2013/20130764>. Visited on 1.12.2015.

<sup>34</sup> For more information, see Section 7 of the Act on the Use of Orphan Works.

<sup>35</sup> Including comprehensive school level special education schools.

<sup>36</sup> The information was provided by Tarmo Toikkanen, expert of copyright in education. Toikkanen is a researcher of learning and technology at Aalto University. He has provided training for teachers in KOTEK ("Koulujen tekijänoikeudet kuntoon") projects. Toikkanen has also published a book concerning the copyright issues in teaching together with Ville Oksanen. For more information on the book and copyright issues in teaching, see the website [www.opettajantekijanoikeus.fi](http://www.opettajantekijanoikeus.fi), maintained by Toikkanen. The interview took place on 7.7.2015.

<sup>37</sup> Source: Statistics Finland, Providers of Education and Educational Institutions, available at [http://www.stat.fi/til/kjarj/index\\_en.html](http://www.stat.fi/til/kjarj/index_en.html). Visited on 2.11.2015.

## ▪ **AWARENESS ON COPYRIGHT ISSUES AND THE COPYRIGHT-RELATED ADMINISTRATIVE WORK IN SCHOOLS**

Teachers in elementary, secondary and upper secondary schools are not generally well aware of copyright issues. Some teachers are using all kinds of materials found on the Internet, while others avoid using anything because of the legal uncertainty. Teachers between these two positions use materials cautiously. Teachers are often aware of their lack of knowledge, but are not keen to spend their time on complicated copyright issues. There are some incorrect views of the copyright law among teachers too. For example, teachers may think that copying individual exercises or illustrative images from exam books is prohibited in any case because of the restrictions of the well-known photocopying license.

Kopiosto, together with the Ministry of Education and Culture, holds the main responsibility for informing schools on copyright issues. The Kopiosto's Kopiraitti, The IPR University Center's Operight and opettajantekijanoikeus.fi maintained by the interviewee are online information sources for teachers on copyright issues.

The administration of copyright issues takes place at the level of municipalities or joint authorities for education. The Ministry of Education and Culture has acquired collective licenses for photocopying and digital copying for all schools through Kopiosto and therefore the schools do not have much of copyright-related administrative duties to take care of. Sometimes teachers may have to secure performing rights for movies, which are usually easily acquired. Schools' procurement practices may however require a substantial amount of teachers' working time.

## ▪ **LICENSING OF TEACHING MATERIALS**

According to the estimation of the interviewee, 89 % of all materials used in teaching do not require any licensing. These materials are comprised of:

- The teaching materials purchased by schools, for example text books and digital materials acquired from the publishers (67 %)
- The materials used under Section 21 of the Copyright Act allowing the free performance of works in education (10 %). This includes the performance of music in classes for example
- The materials whose term of protection has ended (2 %). These may cover the use of old images in history teaching for example.
- Creative Commons-licensed materials (10 %)

About 10% of all materials are licensed through the collective management organizations. These licenses allow:

- Photocopying and printing from the Internet
- Scanning printed publications or copying text and images from the Internet (digital license)
- Viewing, listening and recording television and radio programs, plus the online services of the Finnish Broadcasting Company (Yle Areena and Elävä Arkisto).

About 1% of all materials are negotiated individually with each copyright holder. The most common example is a teacher using the materials prepared by other teachers

## ▪ **COPYRIGHT-RELATED CHALLENGES CONCERNING ACCESS TO COPYRIGHTED WORKS IN SCHOOLS**

The use of physical copies in teaching does not cause any severe problems in schools at the moment. 3D-printing may impose some challenges in the future. The major challenges are related to the use of copyrighted materials in the online environment. The challenges are related to questions such as

- Use of Internet videos in teaching. Are all videos considered "cinematographic works" (which aren't included in the school performance limitation, Section 21) regardless of their length?

- Under what conditions are teachers allowed to copy materials from the Internet to virtual learning platforms? If virtual learning platforms are not used, how are teachers allowed to communicate materials to students online?
- Copyright issues concerning remote learning, how can the lectures and learning materials be delivered to students?
- What is the extent of the teacher's responsibility if the pupil's practical work infringes copyrights of third parties?

Some challenges are also related to the copyright law or the copyright system in general:

- The definition of "cinematographic work" .
- The long-term preservation of materials. At the moment, Kopiosto's digital license allows teachers to record video lectures, but those must be destroyed after the courses. Therefore, the digital license does not provide an opportunity to build digital lecture collections. The same problem applies to students' learning portfolios, which could be built already in elementary and secondary schools. Creative Commons licenses may however provide alternative solutions in this area.
- The interpretation of the public/private dichotomy is problematic at the moment. Teaching is considered public and schools acquire licenses for showing television programs in classes. On the other hand, the students are allowed to make derivative works, for example in music, foreign language and mother tongue classes, which is allowed only by the limitation regarding reproduction for private use.
- More information should be provided on Creative Commons licenses. The licenses are already widely used worldwide and should be part of teachers' and students' general knowledge.

## **SECTION 2. ACCESS TO COPYRIGHTED WORKS – SPECIAL INTEREST GROUPS FOCUS**

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This section focuses on the access to copyrighted works from the perspective of special interest groups. It includes a presentation of regulations and provisions concerning the access to copyrighted works for persons with visual impairments or other disabilities. This is followed by a presentation of regulations and provisions related to Traditional Cultural Expressions (TCEs).

### ***A. REGULATIONS OR PROVISIONS CONCERNING THE ACCESS TO COPYRIGHTED WORKS FOR PERSONS WITH VISUAL IMPAIRMENTS OR OTHER DISABILITIES***

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#### **▪ THE RIGHT OF CERTAIN INSTITUTIONS TO REPRODUCE COPIES OF WORKS**

According to Section 17 of the Copyright Act, copies of published literary works, musical works or works of fine art may be made by means other than recording sound or moving images for the use of people with visual impairments or other disabilities. Institutions entitled to making these copies are designated by a Government Decree. Moreover, according to Section 17, the author has a right to remuneration in cases in which a disabled or other person will permanently have a copy of the work.

Section 7 (1) of the Copyright Decree (574/1995)<sup>38</sup> provides the following institutions with the right defined in Section 17 (2) of the Copyright Act to produce talking books:

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<sup>38</sup> Unofficial translation of the Decree can be found at <http://www.finlex.fi/fi/laki/kaannokset/1995/en19950574.pdf>. Visited on 6.5.2015.

- The Library for the Visually Impaired as defined in the Act on the Library for the Visually Impaired (638/1996).<sup>39</sup>
- The Finnish Federation of the Visually Impaired (Näkövammaisten Keskusliitto ry)<sup>40</sup>
- The Finnish Deafblind Association (Suomen Kuurosokeat ry)

Section 7 (2) of the Copyright Decree (574/1995) provides the following institutions with the right to produce teaching materials in the form of talking books:

- The Cultural Service for the Visually Impaired (Näkövammaisten Kulttuuripalvelu ry)
- The Jyväskylä School for the Visually Impaired (Jyväskylän näkövammaisten koulu)
- The Swedish School for the Visually Impaired (Svenska skolan för synskadade)
- The Invalid Foundation (Invalidisäätiö)

Section 7a of the Copyright Decree (574/1995) provides the Finnish Association of the Deaf with the right to produce copies of works for the deaf and hearing impaired.

▪ **WIPO MARRAKESH TREATY TO FACILITATE ACCESS TO PUBLISHED WORKS FOR PERSONS WHO ARE BLIND, VISUALLY IMPAIRED OR OTHERWISE PRINT DISABLED (MARRAKESH VIP TREATY)**

Finland has signed the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh VIP Treaty) adopted on June 27, 2013. *“It requires Contracting Parties to introduce a standard set of limitations and exceptions to copyright rules in order to permit reproduction, distribution and making available of published works in formats designed to be accessible to VIPs, and to permit exchange of these works across borders by organizations that serve those beneficiaries.”* The treaty applies to persons who are blind, visually impaired, or reading disabled or persons with a physical disability that prevents them from holding and manipulating a book. The treaty will not enter into force until at least 20 eligible parties have deposited their instruments of ratification or accession.<sup>41</sup>

The European Union is an eligible party to the Treaty. The content of the treaty covers mostly areas that are harmonised within the EU (the Information Society Directive 2001/29/EC) but as regards the cross-border applicability of the measures it still belongs to the shared competence of the EU and its Member States. This has delayed the process of ratification. Finland considers that it is important to ratify and implement the instrument as quickly as possible. At the moment the European Commission has asked for an opinion of the European Court about who has the competence to ratify the Marrakesh VIP Treaty. A decision is expected in 2016. Meanwhile the Commission is preparing for the appropriate measures to implement the provisions of the Treaty into EU law.<sup>42</sup>

<sup>39</sup> Based on Act on the Library for the Visually Impaired (638/1996) and Decree on the Library for the Visually Impaired (639/1996), the Celia Library serves “people who are unable to read standard printed books, due to illness or disability - including visually impaired persons, persons suffering from dyslexia and learning disabilities, developmental disabilities and muscular diseases, etc.” Celia’s book collection includes more than 40 000 talking books, which can be downloaded and listened over Internet.<sup>39</sup> In 2014, over a million loans were made from the Celia library. Source: Page 8 of the Annual report of Celia, available at <http://www.celia.fi/eng/book-collection/>. Visited on 8.6.2015.

<sup>40</sup> The Finnish Federation of the Visually Impaired maintains a Visual Impairment Museum, which includes items, photographs, documents, audio and voice recordings, magazines and books. The museum provides information on history of organizational activities, teaching of visually impaired, traditional professions, and means of access to information from the middle of the 19th century. Source: Website of the Finnish Federation of the Visually Impaired, available at <http://www.nkl.fi/fi/etusivu/toiminta/museo>. Visited on 8.6.2015.

<sup>41</sup> Source: summary of the treaty, available at <http://www.wipo.int/treaties/en/ip/marrakesh/>. Visited on 8.6.2015.

<sup>42</sup> Information was provided by Anna Vuopala, Counsellor of Government at the Ministry of Education and Culture. Consulted by e-mail on 24.11.2015.

## **B. REGULATIONS OR PROVISIONS RELATED TO TRADITIONAL CULTURAL EXPRESSIONS (TCEs)**

Traditional Cultural Expressions (TCEs) are forms which constitute an important part of the identity of a traditional or indigenous community and are passed down from generation to generation. *“Traditional cultural expressions (TCEs), also called “expressions of folklore”, may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions.”*<sup>43</sup>

The following paragraphs provide an overview on domestic and international regulations and measures for the protection of TCEs.

### **▪ THE FINNISH COPYRIGHT ACT**

Section 45 of the Copyright Act regarding the rights of performing artists includes a reference to performances of expressions of folklore.

Section 53 of the Copyright Act<sup>44</sup> provides the right for an authority, designated by a Decree, to prohibit treatment of literary or artistic works in a manner which violates cultural interests. This protection for classic works or folklore exists notwithstanding that the copyright is no longer in force, or never existed. According to Copyright Decree (1995/574) the prohibition right is exercised by the Ministry of Education. This right was once used in 1962, when the Ministry of Education prohibited importing and making available to the public inexpertly made translations and adaptations of famous books.<sup>45</sup>

### **▪ THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

The United Nations Declaration on the Rights of Indigenous Peoples<sup>46</sup> was adopted on 13.9.2007 by a majority of 144 states in favour.<sup>47</sup> *“The Declaration recognizes the equal human rights of indigenous peoples to all other peoples against any forms of discrimination and seeks to promote mutual respect and harmonious relations between the indigenous peoples and States.”*<sup>48</sup> The following article of the declaration deals with intellectual property rights of traditional cultural expressions.

*Article 31: Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*

The Declaration concerns the special interests of indigenous people and has a strong political importance even though it is not legally binding. Specific intellectual property protection cannot be claimed on the basis of the declaration as the mandate to deal with the issues related to the protection

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<sup>43</sup> Source: the website of the World Intellectual Property Organization, available at <http://www.wipo.int/tk/en/folklore/>. Visited on 1.10.2015.

<sup>44</sup> An unofficial translation of the Copyright Act is available at <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>. Visited on 15.6.2015.

<sup>45</sup> Source: Pirkka-Liisa Haarmann, *Tekijänoikeus ja lähiöikeudet*, Talentum (2005), pages 151-152.

<sup>46</sup> The declaration is available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf). Visited on 15.6.2015.

<sup>47</sup> Source: website of the United Nations, available at <http://undesadspd.org/IndigenousPeoples/DeclarationontheRightsofIndigenousPeoples.aspx>. Visited on 15.6.2015.

<sup>48</sup> Source: website of the WIPO, available at <http://www.wipo.int/tk/en/resources/faqs.html>. Visited on 15.6.2015.

of traditional cultural expressions on the international level is with the World Intellectual Property Organisation (WIPO).

▪ **WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (GRTKF-IGC)**

Internationally, the work on the protection of folklore started in 1960. According to a background brief from WIPO *“the impetus came from a growing sense in developing countries that folklore embodied creativity and was part of the cultural identity of indigenous and local communities; it was therefore seen as worthy of IP protection, especially since new technologies were making folklore increasingly vulnerable to exploitation and misuse.”*<sup>49</sup> Achievements in this area have been limited and there have been major difficulties in defining the protectable subject matter, beneficiaries and scope of protection.<sup>50</sup> The WIPO Performances and Phonograms Treaty, adopted in 1996, however succeeded at providing protection for performers of expressions of folklore<sup>51</sup>.

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (also known as IGC) was established in 2000. The notion of protecting expressions of folklore was changed to the mutually exchangeable term “traditional cultural expressions” (TCEs). In addition to TCEs, the IGC addresses issues related genetic resources (GR) and traditional knowledge (TK). The IGC has been working on establishing international legal instrument or instruments for ensuring the effective protection of GRs, TK and TCEs.<sup>52</sup> In 2015, the IGC did not have any meetings and the general assembly of the World Intellectual Property Organization, held in October 2015, gave the IGC a mandate for the years 2016-2017 to “continue to expedite its work, including text-based negotiations, with the objective of reaching agreement on an international legal instrument(s), without prejudging the nature of the outcome(s), relating to intellectual property which will ensure the balanced and effective protection of GRs, TK and TCEs”<sup>53</sup>

The European Union has not generally been in favor of providing protection for something that has become part of the public domain (if it was ever protected by an intellectual property right). The EU has also considered that the subject matter is very difficult to define with legal certainty. Also, the EU has not considered possible that the beneficiary of protection could in any circumstances be the state. However, during recent years the WIPO Member states have found a way to tackle the issue of public domain through a tiered or granular approach where the protection would be provided based on how widely the TCE is distributed and used outside the indigenous community.<sup>54</sup>

The Government Program implemented by Prime Minister Katainen’s Cabinet and Prime Minister Stubb’s Cabinet<sup>55</sup> included remarks on working positively in the context of indigenous peoples rights.

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<sup>49</sup> Source: background brief on the WIPO intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore, available at [http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk\\_brief2.pdf](http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief2.pdf). Visited on 15.6.2015.

<sup>50</sup> Source: “Safeguarding of Traditional Cultural Expressions”, presentation by Anna Vuopala (Ministry of Education and Culture). Anna Vuopala was consulted by e-mail on 21.10.2015.

<sup>51</sup> Source: Background brief on the WIPO intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore, available at [http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk\\_brief2.pdf](http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief2.pdf). Visited on 15.6.2015.

<sup>52</sup> Source: Background brief on the WIPO intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore, available at [http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk\\_brief2.pdf](http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief2.pdf). Visited on 15.6.2015.

<sup>53</sup> Source: “Safeguarding of Traditional Cultural Expressions”, presentation by Anna Vuopala (Ministry of Education and Culture).

<sup>54</sup> Source: Anna Vuopala, Counsellor of Government at the Ministry of Education and Culture. Consulted by e-mail on 24.11.2015.

<sup>55</sup> The program is available at <http://valtioneuvosto.fi/documents/10184/367809/Programme+of+Prime+Minister+Katainen%E2%80%99s+Government/64238eca-58cd-43bb-81dc-963a364a22e>. Visited on 22.10.2015.

Finland has acted in a proactive manner in the negotiations among the EU Member States as Finland has a particular interest in these questions since the Saami people in the North of Finland (and in Sweden and Norway) is the only indigenous people in the European Union.<sup>56</sup>

Finland has not however yet started any national legislative or policy processes regarding traditional cultural expressions as Finland would like to rely on international guidelines to be adopted in the area. Finland will however be among the first to ratify and implement the Nagoya Protocol on Access and Benefit-Sharing of Genetic Resources and Associated Traditional Knowledge (TK) to the Convention of Biological Diversity from 1998.<sup>57</sup>

#### ▪ PREPARATION OF THE NORDIC SAAMI CONVENTION

In 2002, a Finnish-Swedish-Norwegian-Saami working group was established to prepare a Nordic Saami Convention whose object was to “confirm and strengthen such rights for the Saami people as to allow the Saami people to safeguard and develop their language, culture, livelihoods and way of life with the least possible interference by national borders”<sup>58</sup>. In October 2005, the working group submitted a draft version<sup>59</sup> of the convention to the Finnish, Swedish and Norwegian ministers responsible for Saami issues and chairs of the Saami parliaments. The draft convention includes 51 articles divided into seven chapters on various topics. The article 31 of the convention is titled “Traditional knowledge and cultural expressions”:

*The states shall respect the right of the Saami people to manage its traditional knowledge and its traditional cultural expressions while striving to ensure that the Saami are able to preserve, develop and pass these on to future generations. When Saami culture is applied commercially by persons other than Saami persons, the states shall make efforts to ensure that the Saami people gains influence over such activities and a reasonable share of the financial revenues. The Saami culture shall be protected against the use of cultural expressions that in a misleading manner give the impression of having a Saami origin. The states shall make efforts to ensure that regard is paid to Saami traditional knowledge in decisions concerning Saami matters.<sup>60</sup>*

In 2011, each of the three states established their own delegations of negotiators composed of representatives of the governments and Saami parliaments. The negotiations have been proceeding very slowly, but the parties are striving to reach an agreement with new simplified formulations within the 5 years deadline.<sup>61</sup>

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<sup>56</sup> Source: Safeguarding of Traditional Cultural Expressions, presentation by Anna Vuopala (Ministry of Education and Culture). Anna Vuopala was consulted by e-mail on 21.10.2015.

<sup>57</sup> This information was provided by Anna Vuopala, Counsellor of Government at the Ministry of Education and Culture. Consulted by e-mail on 24.11.2015.

<sup>58</sup> Article 1 of the draft convention, available at [https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami\\_samekonv\\_engelsk.pdf](https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf). Visited on 3.11.2015.

<sup>59</sup> The draft convention is available at [https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami\\_samskonvensjonen\\_finsk\\_h-2183-f.pdf](https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samskonvensjonen_finsk_h-2183-f.pdf). Visited on 15.6.2015. The unofficial translation of the convention is available in at [https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami\\_samekonv\\_engelsk.pdf](https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf). Visited on 3.11.2015.

<sup>60</sup> Source: Unofficial translation of the convention, available at [http://www.galdu.org/govat/doc/samekoneng\\_net.pdf](http://www.galdu.org/govat/doc/samekoneng_net.pdf). Visited on 16.6.2015.

<sup>61</sup> Source: Anna Vuopala, Counsellor of Government at the Ministry of Education and Culture. Consulted by e-mail on 24.11.2015.

### SECTION 3. ACCESS TO COPYRIGHTED WORKS – IDENTIFYING COPYRIGHT OWNERS

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This section presents the Finnish extended collective licensing system and the services used and provided by collective management organizations that help identifying copyright holders. By facilitating the mass-use of works, the extended collective licensing system significantly reduces the burden of professional copyright users (e.g. broadcasting companies), intermediaries (e.g. libraries, archives and museums), and organizational end-users (e.g. restaurants and hotels) when seeking to identify individual copyright holders and therefore indirectly affects the access to works by the public. The CMOs' services that aim at facilitating the identification of copyright holders may also serve these groups, as well as follow-on creators<sup>62</sup> seeking a permission to use works in ways not covered by the extended collective licensing system.

#### A. EXTENDED COLLECTIVE LICENSING

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Extended collective licensing is a system by which “an approved organization is deemed to represent authors of other works in the same field under the license. A licensee authorized by virtue of extended collective license may, under terms determined in the license, use all works by authors in the same field.”<sup>63</sup> In other words, “the ECL systems rely on specific provisions in the law, which extend the effect of the agreements concluded between specified parties in a way that allows the user to use, on conditions laid down in the agreement, also works by authors whom the organization does not represent. Through this arrangement the right holders are able to negotiate about the use foreseen and receive remuneration while the users' interests are taken care of by guaranteeing blanket agreements, without the risk of claims from non-represented right holders, and criminal sanctions.”<sup>64</sup> In most cases the authors retain the right to prohibit the reproduction or communication to the public of their works. Extended collective licensing has been introduced in Finland in the 1960s and last modified on June 1, 2015<sup>65</sup>. The Ministry of Education and Culture approves CMOs for this purpose according to the terms laid out in the Copyright Act.<sup>66</sup>

The extended collective licensing system's purpose is to simplify rights clearance. It is best suited for situations where there is a large amount of works to be used (mass use) and where it would be impossible or very impractical to licence every work individually. The ECL covers also situations where the copyright holders are difficult to identify. Through this arrangement, users willing to use works in a more streamlined way can negotiate about the use with the collective management organization approved for extended collective licensing for this type of works<sup>67</sup>. Extended collective licenses are

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<sup>62</sup> Access to copyrighted works for follow-on creation is examined in the pilot study applying Methodology card 17 – *Access to copyrighted works for follow-on creation*.

<sup>63</sup> Finnish Copyright Act, section 26, as modified according to Act 607/2015.

<sup>64</sup> Anna Vuopala, *Extended Collective Licensing – A solution for facilitating licensing of works through Europeana, including orphans?* (2013). Available at: [http://www.copyrightsociety.fi/ci/Extended\\_Collective\\_Licensing.pdf](http://www.copyrightsociety.fi/ci/Extended_Collective_Licensing.pdf). Visited on 11.6.2015.

<sup>65</sup> According to Act 607/2015, since June 1, 2015 an approved organisation is deemed to represent authors of other works in the same field under the licence. For a short history of extended collective licensing in Finland, see Olli Vilanka, *Rough Justice or Zero Tolerance? - Reassessing the Nature of Copyright in Light of Collective Licensing (Part I)*, article published on HELDA (the Digital Repository of the University of Helsinki), 2010, available at <https://helda.helsinki.fi/handle/10227/661>. Visited on 2.11.2015.

<sup>66</sup> Finnish Copyright Act, section 26. The Finnish Copyright Act provides that the Ministry of Education appoints CMOs to manage extended collective licenses. The CMOs selected on application are approved for a fixed period of maximum 5 years and “must have the financial and operational prerequisites and capacity to manage the affairs in accordance with the approval decision”. They must also represent a substantial proportion of the authors of works in the field concerned. Several organizations may be approved to grant licenses for a given use of works (in which case the terms of the approval decisions shall ensure, where needed, that the licenses are granted simultaneously and on compatible terms), but this has not been the case so far. The Act also provides that “the approval decision may also lay down terms guiding practical licensing in general for the organization”

<sup>67</sup> For more information on this topic, see Anna Vuopala, *Extended Collective Licensing – A solution for facilitating licensing of works through Europeana, including orphans?* (2013). Available at: [http://www.copyrightsociety.fi/ci/Extended\\_Collective\\_Licensing.pdf](http://www.copyrightsociety.fi/ci/Extended_Collective_Licensing.pdf). Visited on 2.11.2015.



therefore particularly useful in situations of mass use such as photocopying or use of works for educational activities: users do not need to contact each copyright holder separately but will profit from a “blanket agreement” arranged with the CMO. Extended collective licenses also protect users from the risk of claims from non-represented right holders and criminal sanctions. By greatly simplifying the market for rights, extended collective licensing improves the access to copyrighted works in general.

It is important to note however that extended collective licensing is also designed to protect the interests of copyright holders. Not only do authors that are not clients or members of the CMO retain the right to prohibit the reproduction or communication of their works, the Copyright Act also ensures that an author not represented by the organization but whose work has been licensed through extended collective licensing shall be treated equally and have the right to claim an individual remuneration even in cases where the agreement does not provide for individual remuneration. The claim must be placed within three years from the end of the calendar year during which the reproduction, communication or transmission of the work took place, and will be valid even if the CMO’s own stipulation does not provide for individual remuneration.

Extended collective licensing, as well as the area covered by this system in Finland, are presented in more detail in the pilot studies applying Description sheet 12 – *Collective management of rights* and Description sheet 5 – *Copyright law*.<sup>68</sup>

## **B. LEVEL OF DEVELOPMENT OF THE CMO’S SERVICES CONCERNING THE IDENTIFICATION OF COPYRIGHT OWNERS**

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The following paragraphs provide an overview of the right holder databases used by the Finnish collective management organizations and the services that these organizations provide for their customers in order to identify copyright owners<sup>69</sup>.

### ▪ **FILMEX**

Filmex is a recently established collective management organization representing actors performing in audiovisual productions<sup>70</sup>.

Filmex does not yet have any electronic right holder database, but information on all new clients has already been collected. It is also currently identifying deceased right holders and their heirs. Information is also available in the archives of the Finnish Actors’ Union.

The databases of Kopiosto and the Finnish Broadcasting Company YLE also include information on right holders in the audiovisual industry and therefore cooperation may be conducted with these organizations in the future.

There are currently no international organizations maintaining all-encompassing databases including information on actors in the audiovisual industry. The Internet Movie Database (IMDB) could be potentially used in the future<sup>71</sup>. Because the actors in the domestic audiovisual productions are usually Finnish, there is no great need for international right holder databases at the moment.

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<sup>68</sup> Both are available at <http://www.cupore.fi/Pilotreports.php>

<sup>69</sup> The Finnish collective management organizations, their roles and functioning are described in details in the pilot report on Description Sheet 12 - *Collective Management of Rights*, available online at <http://www.cupore.fi/Pilotreports.php>.

<sup>70</sup> Information was provided by Elina Kuusikko, Executive director at the Finnish Actors’ Union. Interview on 1.10.2015.

<sup>71</sup> See the website of the Internet Movie Database (IMDB) at <http://www.imdb.com/>. Visited on 19.10.2015.

## ▪ GRAMEX

Gramex is a collective management organization representing performing artists and producers of phonograms<sup>72</sup>.

Gramex has an exceptionally extensive right holder database including information on performing artists and producers of domestic phonograms. These track-by-track details are received from phonogram producers and stored in the database practically every time new records are published in Finland. At the moment, the database is for in-house use only.

There are no comprehensive international databases comprising information on copyright holders of phonograms. Collective management organizations in different countries have their own databases and information is shared between organizations. There are however some ongoing international projects regarding the identification of the right holders of phonograms.

## ▪ KOPIOSTO

Kopiosto is a collective management organization representing authors and performers in all fields of creative work.<sup>73</sup>

Kopiosto does not have any right holder databases of its own but uses the following third-party databases:

- IPI database (Interested party information) maintained by the Swiss collective management organization Suisa
- IDA (International Documentation on Audiovisual works) maintained by the International Confederation of Authors and Composers (CISAC)
- ISNI Name Identifier (public database)
- ISBN publication database (public database)

## ▪ KUVASTO

Kuvasto is a collective management organization representing artists in the field of visual arts<sup>74</sup>.

Kuvasto uses a contact management system provided by the third party service Gruppo<sup>75</sup>. The system includes a database including information on the artist clients and heirs represented by Kuvasto, as well as on other copyright owners receiving resale remunerations. The database is continuously expanding as new copyright holders are identified and new works are registered to the service. Kuvasto also receives information on the auctioned works from the large auction companies.

Kuvasto provides a public catalogue of its domestic artist clients<sup>76</sup>. Artists' contact details have been regularly requested from Kuvasto by organizations seeking a permission to use artworks in their

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<sup>72</sup> The information was provided by Lauri Kaira (Director) and Juhani Ala-Hannula (Legal Adviser) at Gramex. Interview on 29.9.2015.

<sup>73</sup> Information in this chapter was provided by Jukka-Pekka Timonen, Manager of Legal Affairs and Stakeholder Relations. Interview on 13.10.2015.

<sup>74</sup> Information in this chapter was provided by Tommi Nilsson (Executive Director) and Kati Pelkonen (Customer Service and Communications Manager) at Kuvasto. Interview on 30.9.2015.

<sup>75</sup> Gruppo service is used by several other cultural organizations as well. In addition to the contact management system, Gruppo provides Kuvasto with an e-services platform, which can be used for example to send newsletters and messages.

<sup>76</sup> The catalogue is available at <http://kuvasto.fi/taiteilijaluettelo/>. Visited on 8.10.2015.

activities. The Register of Artists maintained by the Artists' Association of Finland<sup>77</sup> is another database including information on professional visual artists either born or living in Finland.

As a first step in the identification of foreign copyright holders, Kuvasto usually uses the information retrieval service of the German visual artists' collective management organization Bild-Kunst<sup>78</sup>. The service provides comprehensive information on the copyright owners of artworks and collective management organizations administering their rights. Kuvasto is also currently examining options for using the Interested Party Information System (IPI)<sup>79</sup> of International Confederation of Societies of Authors and Composers (CISAC) in identification of foreign copyright owners.

#### ▪ SANASTO

Sanasto is a collective management organization representing literary copyright holders<sup>80</sup>.

Sanasto has a comprehensive database including information on the authors and copyright holders of literary works. Information on new publications is entered into the system by copyright holders themselves. At the moment, the database is for in-house use only, but contact details of authors may also be provided to parties seeking a permission to use their works. Sanasto also uses online search engines and the services of the Population Register Centre in identifying copyright holders, before contacting them directly to collect more contact details.

There are no international all-encompassing literary databases available at the moment. Collective management organizations maintain their domestic databases and information is shared across borders between CMOs. For example, when some members wish to dramatize foreign works, Sanasto contacts the foreign collective management organization responsible for administering the rights or releases the contact information of the organization and lets the client contact it directly.

#### ▪ TEOSTO

Teosto is a collective management organization representing composers and music publishers<sup>81</sup>.

There exists an international network of databases (CIS-NET)<sup>82</sup> maintained by the International Confederation of Societies of Authors and Composers (CISAC). Teosto has participated in the development of this network and standardization of the shared databases. The network is comprised of "nodes" of local and regional databases. Teosto has just joined the node maintained by the International Copyright Enterprise (ICE)<sup>83</sup> including other Nordic collective management organizations as well. Teosto is currently examining possibilities of providing its own paid services related to the information retrieval from the databases.

The right holder databases of the industry are very comprehensive and usually the identification of right holders takes time only when the works are just released or not already used in Finland. The International Standard Musical Work Code (ISWC) and Interested Parties Information (IPI) systems are

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<sup>77</sup> The register is available at <http://www.kuvataiteilijamatrikkeli.fi/en/home.html>. Visited on 8.10.2015.

<sup>78</sup> The service is available at <http://www.bildkunst.de/en/service-for-users/artist-search.html>. Visited on 8.10.2015.

<sup>79</sup> The system is available at <http://www.cisac.org/What-We-Do/Information-Services/IPI>. Visited on 8.10.2015.

<sup>80</sup> The information presented in this chapter was provided by Anne Salomaa, Executive Director at Sanasto. Interview on 30.9.2015.

<sup>81</sup> The information in this chapter was provided by Martti Kivistö, Director, Regulatory and Policy Affairs, Teosto. The interview took place on 15.10.2015.

<sup>82</sup> For more information on the database, see the CISAC's website at <http://www.cisac.org/What-We-Do/Information-Services/CIS-Net>. Visited on 23.10.2015.

<sup>83</sup> See the website of ICE at <http://www.iceservices.com/about-ice/>. Visited on 23.10.2015.

used for identifying copyright holders. Teosto rarely receives inquiries regarding the identification of copyright holders. If Teosto is not authorized to license the use in question, the inquiries will be directed to right holders directly.

- **TUOTOS**

Tuotos is a collective management organization representing independent film and audiovisual producers<sup>84</sup>.

Tuotos has a database including comprehensive information on audiovisual works of its clients. The database is currently for in-house use only. Tuotos also uses regularly other databases in the audiovisual industry. These databases are mentioned in the Decree on the Use of Orphan Works (846/2014)<sup>85</sup> and include the databases of the National Audiovisual Institute, the databases of the collective management organizations Kopiosto and Teosto, and the Trade Register<sup>86</sup>. Tuotos also uses the international IRRIS-database maintained by AGICOA, a partnership enabling efficient international collection and distribution of royalties for the retransmission of audiovisual works<sup>87</sup>.

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<sup>84</sup> This information was provided by Kirsi Salo, Lawyer at Tuotos. Interview on 5.10.2015.

<sup>85</sup> The Decree is available at <https://www.finlex.fi/fi/laki/alkup/2014/20140846>. Visited on 23.10.2015.

<sup>86</sup> Available online at <https://www.prh.fi/en/kaupparekisteri.html>. Visited on 3.11.15.

<sup>87</sup> See the website of the AGICOA at <http://www.agicoa.org/index.html>. Visited on 23.10.2015.

## Conclusions

### **A. ANALYSIS AND SUMMARY OF THE RESULTS**

#### **▪ ACCESS TO COPYRIGHTED WORKS – PUBLIC INTEREST FOCUS**

There are high amounts of domestically produced and imported copyrighted newspapers and magazines, books, phonograms, films, games and software available in Finland. The volumes of domestic and foreign works available in the markets vary between the industries. Several cultural industries are undergoing a transformation, which is reflected in the decreased number of published physical works and increased supply of content on online platforms.

Public libraries are able to provide the public with a wide selection of copyrighted works all over Finland. Lending rights for movies are negotiated with each copyright holder separately, which has however resulted in a significant reduction of choice for film enthusiasts. Only a very small share of public libraries' collections have been digitized so far and the process is slowed down by the lack of funding, labour intensiveness, low priority given to the digitization and restrictions of the Copyright Act. In a long-term perspective, the major copyright-related challenges in public libraries are related to online distribution.

The Finnish National Gallery is currently able to provide sufficient access to the art collections in physical and digital forms and there are no specific groups that could not be served because of copyright-related issues. The national license organized by the Ministry of Education and Culture, Kuvasto, Kopiosto and the National Gallery has facilitated the process of bringing images of artworks online. There exists an image of about 70 percent of all artworks at the website of the National Gallery. The major copyright-related challenges in art museums are currently related to distribution and linking of images of artworks in the social media. Copyright rules in this area should be further clarified.

The Literary Archives of the Finnish Literature Society are able to provide sufficient access to the copyrighted works to the public. Only a very small share, about 2-3 percent, of the archives has been digitized so far. Restrictions for digitization have been mainly caused by high labor costs and the lack of necessary equipment. One of the biggest copyright-related challenges in archives is related to ensuring equal access to copyrighted works between researchers all over Finland (or in the world). Because there are lots of archives concentrated in the Finland's capital area, it is important for archives to be able to provide researchers with materials over the Internet. Another challenge is related to the huge amount of orphan works in the archives.

There are problems in access to copyrighted works for the purpose of teaching in elementary, secondary and upper secondary schools. The major copyright-related challenges are related to the use of copyrighted materials in the online environment including questions such as the use of Internet videos in teaching, copying materials to virtual learning platforms and long-term preservation of digital materials. The interpretation of the public/private dichotomy in copyright law is also problematic at the moment.

#### **▪ ACCESS TO COPYRIGHTED WORKS – SPECIAL INTEREST GROUPS FOCUS**

Section 17 of the Copyright Act allows certain institutions to make copies of published literary works, musical works or works of fine art by means other than recording sound or moving images for the use by people with visual impairments or other disabilities. These institutions include the Library for the Visually Impaired, the Finnish Federation of the Visually Impaired, the Finnish Deafblind Association, the Cultural Service for the Visually Impaired, the Jyväskylä School for the Visually Impaired, the Swedish School for the Visually Impaired and the Invalid Foundation.

Finland has signed the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled (MVT) adopted on June 27, 2013. *“It requires Contracting Parties to introduce a standard set of limitations and exceptions to copyright rules in order to permit reproduction, distribution and making available of published works in formats designed to be accessible to VIPs, and to permit exchange of these works across borders by organizations that serve those beneficiaries.”*

In regards to traditional cultural expressions (TCEs), Section 45 of the Copyright Act regarding the rights of performing artists includes a reference to performances of expressions of folklore. Section 53 of the Copyright Act provides the right for an authority, designated by a Decree, to prohibit treatment of literary or artistic works in a manner that violates cultural interests. This protection for classic works or folklore exists notwithstanding that the copyright is no longer in force, or never existed.

At the international level, the work within the intellectual property community on the protection of traditional cultural expressions (TCEs) started in 1960. Achievements in this area have been limited, but the WIPO Performances and Phonograms Treaty (1996) succeeded at providing protection for performers of expressions of folklore. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was established in 2000. The IGC has been working on establishing international legal instrument or instruments for ensuring the effective protection of GRs, TK and TCEs.

The Finnish-Swedish-Norwegian-Saami working group was established to prepare a Nordic Saami Convention in 2002. The draft version of the convention, published in 2005, includes a section stating that *“states shall respect the right of the Saami people to manage its traditional knowledge and its traditional cultural expressions while striving to ensure that the Saami are able to preserve, develop and pass these on to future generations.”*

#### ▪ IDENTIFYING COPYRIGHT OWNERS

The Finnish extended collective licensing system simplifies the rights clearance by facilitating the mass-use of works by professional copyright holders, intermediaries and organizational end-users and thereby indirectly affects the level of access to works by the public. The Finnish collective management organizations have domestic and/or international right holder databases at their disposal, the purpose of which is to facilitate the operation of the system. The databases maintained by the organizations are mainly used in-house only, but the contact details of right holders may be released by request for those seeking to negotiate licenses directly with the right holders.

#### ▪ GENERAL ANALYSIS

Access to copyrighted works is influenced by several acts in the Finnish legislation, which are in some parts the result of the implementation of European directives. The results of this study indicate that the Finnish copyright system plays its part in providing sufficient access to the general public and different special groups.

Copyrighted works are legally available on the markets and memory institutions examined in this study are serving the public without any insurmountable barriers. Access could be, however, facilitated in these institutions by developing copyright-related legislation or policies, especially in the area of online distribution.

It seems that the biggest problems concerning access at the moment are faced in elementary, secondary and upper secondary schools. The problems are related especially to the use of copyrighted materials in the online environment.

The Finnish Copyright Act provides special provisions for facilitating the access to copyrighted works by people with visual impairments or other disabilities. In regards to Traditional Cultural Expressions (TCEs), Finland has been working actively within the EU in order to achieve international guidelines in the area in the near future.

There is a long tradition of collective management of rights in Finland, which is reflected in the extensive use of domestic and international right holder databases by CMOs in the administration of rights. Services provided for the identification of right holders from the CMOs' own databases are still quite limited.

## ***B. METHODOLOGICAL FINDINGS***

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### **▪ LIMITATIONS**

The methodology card suggests at collecting data concerning the number of works legally available in the markets. The availability of works in markets was presented in this study in a general level and the industry specific figures were further presented. Copyright-related issues in memory institutions were analyzed through case examples focusing on public libraries, the National Gallery of Finland and the Literary Archives of the Finnish Literature Society. In order to fully evaluate the access to copyrighted works in memory institutions, other kinds of libraries, museums and archives should be analyzed as well.

The right holder databases and services used and provided by collective management organizations were briefly presented in Section 3. The section does not include evaluation on the level of the development of these databases and services.

### **▪ GUIDELINES FOR FUTURE RESEARCH**

The study can begin with collecting relevant statistics and other already available information on the availability of copyrighted products and services through markets, on the access to copyrighted works through libraries, museums and archives, as well as on the use of copyrighted works for educational purposes. Managers or lawyers of the institutions, as well as copyright experts of these fields in general can be interviewed to collect information on the access to copyrighted works in these institutions.

The availability of copyrighted works in legal markets could be studied by selecting a group of cultural products such as TV programs, books, video games and music and by looking whether those can be legally accessed in Finland and with what kind of delay. The use of geo-blocking practices to restrict access to content on the Internet could also be analyzed to detect possible regional unbalances.

In the future, the results of this indicator could be complemented with data on the opinions of end-users which is a topic of Methodology card 22 – *Analysis of stakeholders' opinions on the copyright system*. A deeper analysis of consumer access gives an insight into the tensions between the exclusive rights of the creator, freedom of speech and the right to access culture.

In the case of Finland, the workload for collecting data and drafting this report could be evaluated at 10 weeks of full-time work.

## Appendices

### A. METHODOLOGY CARD

Methodology card as presented in the Methodology Handbook, draft version 1.12.2015.

Aspect: Access	Methodology card 16. Access to copyrighted works by the public
Key questions	Is the access to copyrighted works by the public as well as different audiences assured? Do the markets function from the consumers' point of view? Are there difficulties in identifying the copyright owners when seeking permission to use copyrighted works? What kind of problems are there regarding access?
Type of data	<i>objective data, subjective data</i>
Description	Assessment of the influence of the copyright system on the access to culture through an analysis of: <ul style="list-style-type: none"> <li>- Access to material in analogue and digital form by the public in general</li> <li>- Access to material governed by licensing or granted through exceptions and/or limitations</li> <li>- Access to material included in the collections or outside the collections of libraries, archives and museums</li> </ul>
Parameters to measure	<ol style="list-style-type: none"> <li><b>1. Access to copyrighted works — Public interest focus:</b> <ol style="list-style-type: none"> <li>a) Availability of works on legal markets (to be distinguished by subject matter, and if applicable, by format and/or channel of distribution):               <ul style="list-style-type: none"> <li>- Estimation of the number of published works (titles) available in physical form in the country</li> <li>- Estimation of the number of published works (titles) available in digital form through legal services</li> </ul> </li> <li>b) Access to copyrighted works through libraries:               <ul style="list-style-type: none"> <li>- Public libraries and</li> <li>- Scientific and special libraries</li> </ul> </li> <li>c) Access to copyrighted works through museums and exhibition organizers</li> <li>d) Access to copyrighted works through archives</li> <li>e) Reproduction, distribution, communication to the public, and public performance of copyrighted works for educational purposes</li> </ol> </li> <li><b>2. Access to copyrighted works — Special interest groups focus</b> (Some of the information can be collected as part of Description sheet 5 in Pillar II):           <ol style="list-style-type: none"> <li>a) Existence of regulations or provisions on the access to copyrighted works for persons with visual impairments or with other print disabilities</li> <li>b) Existence of regulations or provisions on the access to copyrighted works for persons with other disabilities</li> <li>c) Existence of regulations or provisions on the access to copyrighted works for other special interest groups</li> </ol> </li> <li><b>3. Access to copyrighted works — Identifying copyright owners:</b>           Description of the solutions made in the country to the problems in identifying the copyright owners, consider for example:           <ul style="list-style-type: none"> <li>- Legislative solutions, e.g. extended collective licensing, legislation on orphan works, etc.</li> <li>- Level of development of right holder databases</li> <li>- Level of development of the CMO's services concerning the identification of copyright owners</li> </ul> <u>Additional information:</u>            Difficulties in identifying the copyright owners when seeking permission to use         </li> </ol>



	copyrighted works among libraries, archives, museums, schools, research organizations or other user organizations (Survey, interview or focus group study on the experiences of users)	
Guidelines for data collection	<p>The data for parameter 1 and the additional information can be collected through desktop studies or interviews focusing on the stakeholder groups in question. The information for parameter 2 can be found in legislative texts. The data for parameter 3 can be collected from national data sources as a desktop study as well as through expert interviews. The study can be made for different categories of subject matter separately (see for instance the WIPO list of copyright-based industries in Appendix 3). <b>Exemplary questionnaires for interviews are presented in a separate toolkit.</b></p>	
Definitions	<i>Visual impairment or other print disability</i>	<p>According to the WIPO Marrakesh Treaty<sup>88</sup>, a person who is visually impaired or otherwise print disabled is a person who: (...) (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or 3. is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.</p>
Limitations of the indicator	It is not always possible to clearly evaluate the causality between the operation of the copyright system and access, i.e. to identify the problems connected to copyright and the problems connected to pricing or other business solutions.	

## B. INFORMATION SOURCES

### International:

#### ■ Legislation

- Directive 2012/28/EU of the European Parliament and the Council, available at [http://ec.europa.eu/internal\\_market/copyright/orphan\\_works/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm)
- Draft convention of Nordic Saami Convention, available at [https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami\\_samskonvensjonen\\_finsk\\_h-2183-f.pdf](https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samskonvensjonen_finsk_h-2183-f.pdf)
- Draft convention of Nordic Saami Convention, unofficial translation available at [http://www.galdu.org/govat/doc/samekoneng\\_net.pdf](http://www.galdu.org/govat/doc/samekoneng_net.pdf)
- United Nations Declaration on the Rights of Indigenous Peoples, available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled (MVT), available at <http://www.wipo.int/treaties/en/ip/marrakesh/>

#### ■ Literature

- Sivan L., Smith M. D. & and Telang R., *Do Search Engines Influence Media Piracy? Evidence from a Randomized Field Study (2014)*, available at <http://ssrn.com/abstract=2495591>

<sup>88</sup> WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013), full text available at [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=245323](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=245323). Visited on 19.2.2015.

- WIPO Standing Committee on Copyright and Related Rights, *Examples of Practices and Other Measures for the Benefit of Persons with Print Disabilities*, SCCR/20/5, available at [http://www.wipo.int/meetings/fr/doc\\_details.jsp?doc\\_id=133681](http://www.wipo.int/meetings/fr/doc_details.jsp?doc_id=133681)
- **Websites**
  - AGICOA: <http://www.agicoa.org/index.html>
  - International Copyright Enterprise (ICE): <http://www.iceservices.com/about-ice/>
  - Internet Movie Database (IMDB): <http://www.imdb.com/>
  - World Intellectual Property Organization: <http://www.wipo.int>
- **Other materials**
  - Bild-Kunst, information retrieval system: <http://www.bildkunst.de/en/service-for-users/artist-search.html>
  - International Confederation of Societies of Authors and Composers (CISAC), Interested Party Information System (IPI): <http://www.cisac.org/What-We-Do/Information-Services/IPI>

## Finland:

- **Legislation**
  - Act on Collecting and Preserving Cultural Material, available at <http://www.finlex.fi/fi/laki/ajantasa/2007/20071433>
  - Act on the Use of Orphan Works, available at <http://www.finlex.fi/fi/laki/ajantasa/2013/20130764>
  - Government Decree 1995/574: <https://www.finlex.fi/fi/laki/ajantasa/1995/19950574>
  - Personal Data Act, unofficial translation available at <http://www.finlex.fi/en/laki/kaannokset/1999/19990523>
- **Literature:**
  - *Government Program of Prime Minister Jyrki Katainen's Cabinet*, available at <http://valtioneuvosto.fi/documents/10184/367809/Programme+of+Prime+Minister+Katainen%E2%80%99s+Government/64238eca-58cd-43bb-81dc-963a364a422e>
  - Haarmann P.-L., *Tekijänoikeus ja lähioikeudet*, Talentum (2005).
  - Hietanen H., Huttunen A. & Kokkinen H., *Criminal Friends of Entertainment: Analysing Results from Recent Peer-to-Peer Surveys*, 5:1 SCRIPTed 31 (2008), available at <http://www.law.ed.ac.uk/ahrc/script-ed/vol5-1/hietanen.asp>
  - National Board of Antiquities, *Finnish museum statistics*, available (in Finnish) at <https://www.museotilasto.fi/tiedostot/museovirasto/files/Museotilasto%202014.pdf>
  - Vilanka O., *Rough Justice or Zero Tolerance? - Reassessing the Nature of Copyright in Light of Collective Licensing (Part I)*, HELDA (2010), available at <https://helda.helsinki.fi/handle/10227/661>
  - Vuopala A., *Extended Collective Licensing – A solution for facilitating licensing of works through Europeana, including orphans?* (2013), available at [http://www.copyrightsociety.fi/ci/Extended\\_Collective\\_Licensing.pdf](http://www.copyrightsociety.fi/ci/Extended_Collective_Licensing.pdf)
- **Websites:**
  - BTJ Finland Oy: <http://www.btj.fi/english/>
  - Celia Library: <http://www.celia.fi/eng/book-collection/>
  - Digi.kirjastot.fi: <http://www.digi.kirjastot.fi>
  - Finnish Federation of the Visually Impaired: <http://www.nkl.fi/fi/etusivu/toiminta/museo>
  - Finnish National Archive Service: <http://www.arkisto.fi/en/the-national-archives-service>
  - Finnish Public Library Statistics: <http://tilastot.kirjastot.fi/en-GB/>

- Kirjastot.fi: <http://www.kirjastot.fi>
  - Kopiraitti: <http://www.kopiraitti.fi/>
  - Ministry of Education and Culture: <http://www.minedu.fi>
  - Ministry of Justice: <http://oikeusministerio.fi>
  - Operight: <http://www.operight.fi/>
  - Opettajan tekijänoikeus: [www.opettajantekijanoikeus.fi](http://www.opettajantekijanoikeus.fi)
- **Other materials:**
- Artists' Association of Finland, Register of Artists, available at <http://www.kuvataiteilijamatrikkeli.fi/en/home.html>
  - Copyright Council's opinions, available at [http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston\\_lausunnot/2015.html?lang=fi](http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/tekijaenoikeusneuvoston_lausunnot/2015.html?lang=fi)
  - Kuvasto, Catalogue of domestic visual artists, available at <http://kuvasto.fi/taiteilijaluettelo/>
  - Research Library Statistics Database: <https://yhteistilasto.lib.helsinki.fi/index.php?lang=fi>
  - Statistics Finland, Providers of Education and Educational Institutions: [http://www.stat.fi/til/kjarj/index\\_en.html](http://www.stat.fi/til/kjarj/index_en.html).

### **C. CONSULTED PARTIES**

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#### **Interviews:**

- Anne Salomaa, Executive director, Sanasto, 30.9.2015
- Elina Kuusikko. Executive director, Finnish Actors' Union, 1.10.2015
- Heikki Poroila, Expert of copyright issues in libraries, 7.7.2015
- Juhani Ala-Hannula, Legal Adviser, Gramex, 29.9.2015
- Jukka-Pekka Timonen, Manager of Legal Affairs and Stakeholder Relations, 13.10.2015
- Kati Pelkonen, Customer Service and Communications Manager, Kuvasto, 30.9.2015
- Kirsi Salo, Lawyer, Tuotos, 5.10.2015
- Lauri Kaira, Director (information), Gramex, 29.9.2015
- Martti Kivistö, Director, Regulatory and Policy Affairs, Teosto, 15.10.2015
- Tarmo Toikkanen, Expert of copyright issues in Education, 7.8.2015
- Tommi Nilsson, Executive director, Kuvasto, 30.9.2015
- Tuula Hämäläinen, Lawyer, Finnish National Gallery, 10.8.2015
- Ulla-Maija Peltonen, Manager, Literary Archives of the Finnish Literature Society, 25.8.2015

#### **Emails:**

- Anna Vuopala, Counsellor of Government, Ministry of Education and Culture, 21.10.2015 and 24.11.2015.

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

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