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Assessing Copyright and Related Rights Systems

Use of Alternative Resolution Mechanisms for Solving Copyright Disputes

Report on Piloting in Finland

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Assessing Copyright and Related Rights Systems: Use of Alternative Resolution Mechanisms for Solving Copyright Disputes. Report on Piloting in Finland.

This report is the result of the first pilot study implementing Methodology Card 8 – *Use of Alternative Resolution Mechanisms for Solving Copyright Disputes*, one of the 37 indicators constituting a methodology framework for assessing the operation of national copyright and related rights systems. The methodology framework has been developed at the Foundation for cultural policy research (Cupore) in Finland as part of a project financed by the Finnish Ministry of Education and Culture. The pilot study was conducted by the core project team, Nathalie Lefever and Tiina Kautio, between June and November 2014 and its results were first published in December 2014 on the website of Cupore.

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

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Executive summary

This document presents data collected in application of a methodology framework to assess the operation of copyright and related rights systems. More precisely, the information and analysis below correspond to Methodology Card 8 presented in the methodology handbook, titled "Use of Alternative Resolution Mechanisms for Solving Copyright Disputes". The purpose of this pilot study is to discuss the extent to which copyright disputes are resolved through alternative dispute resolution methods, understood as the different mechanisms that could result in a copyright dispute being solved out of court. However, the methods presented in this report are very different in nature, are not directly comparable, and should be deemed as complementary.

Arbitration is the most popular alternative dispute resolution method for commercial disputes. Users usually consider the process to be cheaper and faster than litigation, and that it allows parties to choose arbitrators with particular expertise. However, the high cost for this type of procedure makes it unsuitable for disputes with limited monetary claims. Moreover, copyright disputes might not require as much technical expertise as demanded by other types of intellectual property rights. This might explain why a very small number of copyright disputes is submitted to arbitration (only 3 % of disputes submitted to the Arbitration Institute of Finland in 2013 had a subject matter related to IPR and license agreements, which include copyright matters).

Mediation and conciliation are also available in Finland as alternative dispute resolution mechanisms. No statistics concerning private mediation are available, but the Finnish National Institute for Health and Welfare keeps statistics concerning public mediation cases. In 2013, only 3.6 % of public mediation cases (413 cases out of 11 586 cases referred to mediation in total) concerned civil matters. These figures indicate that civil matters form only a very small part of all mediated cases, and therefore the part of copyright litigation (which most often takes place in front of civil courts) would be negligible. However, according to mediation providers, mediation would be suitable for copyright-related disputes where responsibilities are relatively clear, with limited economic importance and whose resolution would most likely be affected by interaction between parties. One reason for the low level of use of mediation in copyright cases might be the lack of information on this procedure.

Finally, another type of mechanism widely used in cases of copyright disputes in Finland is the opinions by the Copyright Council. Although they are not binding and do not follow regular litigation procedures, they carry sufficient authoritative force to influence the interpretation of copyright law. The procedure in front of the Copyright Council is free of charge, informal and does not require the support of a legal counsel, making it particularly suitable for disputes involving limited monetary claims. On average, the Council gives approximately twenty opinions a year (more than the number of cases solved through arbitration, mediation and conciliation together), and the procedure takes 2-12 months.

Altogether, it seems that despite their lack of binding power, the opinions of the Copyright Council have a function of resolving disputes that are particularly important for individuals and SMEs with limited financial resources. In many cases, an opinion by the Council is likely to be the only possible legal recourse due to the high costs of litigation. The importance of the Copyright Council in solving copyright disputes is highlighted by the fact that, although it is difficult to evaluate the exact number of cases concerning copyright disputes that have been settled in front of the courts, it seems to remain lower than the number of opinions rendered by the Copyright Council. Commercial copyright disputes involving larger monetary claims might sometimes be solved through arbitration. Litigation concerning copyright offenses could also be solved through penal conciliation, but the limited amount of copyright-related crimes brought to courts in Finland limits the number of such cases.

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Introduction

A. CONTEXT OF THE PILOT STUDY

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

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

The methodology framework is envisaged to be continuously improved through application feedbacks. For more information, see the Cupore website, www.cupore.fi/copyright.php.

This report presents data collected in application of Methodology card 8 of the framework, titled "Use of resolution mechanisms for solving copyright disputes". It is the result of the first pilot study applying this indicator in Finland.

This study was conducted by the core project team, Nathalie Lefever and Tiina Kautio, between June and November 2014.

B. PRESENTATION OF THE INDICATOR

The indicator implemented here is part of the second pillar of the methodology called "Functioning and Performance of the Elements of the Copyright System", and its second area, "Enforcement". It is a methodology card which presents the use of dispute resolution mechanisms in a country in order to support the analysis of the operation of the national copyright and related rights system.

As explained in the methodology handbook, in some legal systems copyright disputes can be settled privately with infringers. This aspect is covered in Description sheet 10 and Methodology card 8 of the framework, implemented here.

The goal of this indicator is to assess whether the dispute resolution mechanisms available are actually used, and to what extent. By collecting numerical data on the number of copyright disputes that are resolved out of court and comparing it to the figures of court cases (see Methodology card 7), it is possible to indicate whether copyright litigation in a particular legal system is resolved rather in or out of court. This is an important element in the description of a copyright enforcement system.

The interpretation of this indicator will depend on the general legal enforcement policy of a country. A low level of out-of-court dispute resolution might be a sign that right holders feel satisfied with the court system for the defense of their rights, but it might also indicate that they are not sufficiently informed of alternative dispute resolution mechanisms. This indicator was therefore compared first to the information gathered in the report on *Application of sanctions and remedies for copyright*

infringement (Methodology card 7), in order to assess what percentage of litigations are settled in court and out-of-court. Moreover, the analysis of the value of monetary claims and the average length and cost of the procedure might help identifying the reasons of a limited use of these dispute resolution mechanisms, possibly too costly for lower value cases.

For a deeper analysis of the findings presented below, it should be taken into account that figures concerning the use of dispute resolution mechanisms as well as sanctions and remedies can be influenced by the level of stakeholders´ awareness on their rights, or indicate a lack of trust in both in-court and out-of-court dispute resolution mechanisms. In order to evaluate this factor, the findings of this report were interpreted in the light of those of the report on *Copyright-related education as a part of the education of professionals for creative industries* (Methodology card 11).

Methodology card 8 includes the following parameters:

- Settlements with the help of a third party: Number of cases / year
- Arbitration: Number of cases / year
- Additional information:
  - average length and cost of the procedure
  - average value of the monetary claims, proportion of small claims in all claims made through dispute resolution mechanisms

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

C. METHODS

The information can be collected as a desktop study through available national and international information sources. It can be complemented by expert interviews.

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

Results

INTRODUCTION: FINNISH ADR MECHANISMS FOR SOLVING COPYRIGHT DISPUTES AND DATA FOR INTERPRETATION

As seen in the pilot report concerning Description sheet 10 – *Availability of dispute resolution mechanisms*, alternative dispute resolution mechanisms available in Finland and suitable for copyright disputes include:

1. Arbitration (*välimiesmenettely*)
2. Mediation and conciliation (*sovittelumenettely*), either through private mediation services, court mediation in civil matters or criminal conciliation
3. Opinions of the Copyright Council (*Tekijänoikeusneuvosto*).

These alternative dispute resolution mechanisms and their functioning in Finland are described in details in the report concerning Description sheet 10.

In order to evaluate the importance of alternative dispute resolution mechanisms in solving copyright disputes, it is necessary to provide a few data on court litigation for comparison. Such data was collected as part of the methodology project and presented in the pilot report concerning *Methodology card 7 – Application of sanctions and remedies for copyright infringement*.[1]

Collected data shows that the level of civil litigation concerning copyright matters in Finland is rather small: in 2012, 101 civil cases concerning the application of The Copyright Act were concluded at the District Court level, but a large part of them are likely to be non-contentious civil cases concerning the disclosure of contact information. The actual number of litigation concerning copyright matters is therefore likely to be much smaller. Between 2008 and 2011, from one to eight civil cases concerning the application of the Copyright Act (and those are very likely to be actual copyright disputes) were concluded in the upper instances, and leave of appeal seems to be granted on average in half of the cases. It can therefore be concluded that civil cases concerning copyright disputes do not exceed a maximum of 20 cases per year. [2]

Between 2008 and 2012, the average duration of process in all civil disputes in the District Court was approximately 2.4 months and it is impossible to distinguish statistics on the length of procedure for copyright disputes[3]. However, in the upper instances, the average duration of process in cases concerning the application of the Copyright Act is very long compared to many other civil cases which concern a different subject matter (especially in the Court of Appeal where the duration increased from 8.9 months in 2008 to 21.2 months in 2011)[4].

Another set of information related to the level of copyright litigation in Finland is the awareness of copyright holders on their rights that might influence their capacity to pursue these rights in or out of

[1] Available online at http://www.cupore.fi/documents/140114Publication_PilotreportMC7_Applicationofsanctionsandremediesforcopyrightinfringement.pdf. Visited on 23.6.2014.

[2] Copyright-related litigation can also be presented in front of penal courts when they involve a breach of penal law. Copyright offence (Chapter 49, Section 1 of the Criminal Code) and copyright violation (Section 56 a of the Copyright Act) are clearly the most common types of copyright-related crimes in Finland. Copyright violation are significantly more used overall, but the number of convictions varied between 6 and 13 per year between 2007 and 2011. The number of criminal proceedings is therefore very low in comparison to all crimes, and copyright disputes are most often handled as civil cases.

[3] As of September 2013 the handling of intellectual property matters is centralized to the Market Court in Finland.

[4] See Pilot report on MC7 – *Application of Sanctions and Remedies for Copyright Infringement*, p. 8.

court. The copyright education of professionals for the creative industries is the subject of Methodology card 11 and the research concerning Finland[5] indicated that copyright-related issues are strongly integrated into national vocational qualification requirements and University degrees related to arts, culture and media. Moreover, educational activities on copyright issues are organized for professionals in copyright-related industries. The small level of court litigation on copyright disputes in Finland therefore does not seem to be the result of a lack of awareness of the rights.

SECTION 1. ARBITRATION

Arbitration is an ADR method where the disputing parties involved present their disagreement to one or a panel of private, independent and qualified third party arbitrators. The arbitrator(s) determine the outcome of the case through a decision called an "award". The main centre for domestic or international arbitration in Finland is the Arbitration Institute of the Finland Chamber of Commerce (*Keskuskauppakamarin välimieslautakunta*)[6].

A. DURATION AND COSTS

In 2013, the median duration of regular arbitration procedures was 9 months[7]. Moreover, the rules in force as of 1 June 2013 provide that the award shall be given within nine months from the time at which the tribunal received the case file from the Institute[8].

In cases of expedited arbitration, the arbitral award is to be rendered within three months of the date the case file is transferred to the arbitral tribunal.

The costs of the arbitration include

- the fees of the arbitral tribunal[9];
- the travel and other expenses incurred by the arbitrators;
- the Administrative Fee and expenses of the Institute[10]; and
- the legal and other costs incurred by the parties in relation to the arbitration, if such costs have been claimed and to the extent that the arbitral tribunal considers that the amount of such costs is reasonable.

Filing fees must be paid upon filing a request for arbitration or or any counterclaim or set-off claim. They vary between 2500 euros and 8000 euros, depending on the type of arbitration and the amount of the

[5] The report applying Methodology card 11 in Finland is available here: http://www.cupore.fi/documents/191213Publication_PilotreportMC11_Copyright-relatededucationasapartoftheeducationofprofessio.pdf. Visited on 15.8.2014.

[6] For more information see the website of the Finnish Arbitration Institute: http://arbitration.fi/

[7] Source: The Arbitration Institute of Finland, http://arbitration.fi/en/statistics/ Visited on 18.6.2014.

[8] Art. 42 of the 2013 Arbitration Rules of the Finland Chamber of Commerce, available here: http://arbitration.fi/en/rules/ Visited on 18.6.2014.

[9] The Arbitration Institute of Finland offers a table of recommended fees for arbitrators, available here: http://arbitration.fi/en/files/Table-of-Recommended-Fees4.pdf Visited on 18.6.2014.

[10] The Arbitration Institute of Finland has a calculator to help evaluate the administrative fees and arbitrator's fees according to the type of arbitration, amounts of the claims and the number of arbitrators: http://arbitration.fi/en/costs-of-arbitration/calculator-2/ Visited on 18.6.2014.

claims. Unless otherwise agreed by the parties, the costs of arbitration shall in principle be borne by the unsuccessful party.[11]

No data is available on average costs of procedure. The Arbitration Institute of Finland provides an online calculator to evaluate administrative fees and arbitrators' fees[12]. For instance, a claim of 10 000 euros subject to expedited arbitration with one arbitrator will cost 2 500 euros of administrative fees and between 2 500 euros and 8000 euros of arbitrator's fee. The same amount of claim under the normal arbitration procedure will cost 3 000 euros of administrative fees and between 3 000 and 9 000 euros of arbitrator's fee. A much larger claim of 100 000 euros under the normal procedure will cost 3 900 euros of administrative costs and between 4 000 and 11 250 euros of arbitrator's fees. This of course does not include fees for legal counseling, and in some cases (10% of all cases in 2013), three arbitrators will be necessary. It seems obvious however that arbitration is only financially suitable for cases involving larger monetary claims.

B. LEVEL OF USE

According to the Roschiers Disputes Index 2012, mediation is the preferred method of alternative dispute resolution among the largest Swedish and Finnish companies.[13] The research found that companies who preferred arbitration considered that this process cost less and is faster than litigation, and that it allows parties to choose decision-makers with particular expertise.

The Finnish Arbitration Institute, the main forum for commercial arbitration in Finland, handled a total of 80 requests for arbitration in 2013. Among them, 77 % were cases under arbitration rules, while 10% were cases under the rules for expedited arbitration. However, only 3 % of disputes that year had a subject matter related to IPR and license agreements[14]. No specific statistics concerning copyright disputes were available, but their amount is likely to be very small or equal to zero. However, according to the Finnish Arbitration Institute[15], arbitration is sometimes used in cases of disputes on the amount of copyright remuneration due to collective management organizations. to deal with issues related to copyright remunerations and other cases covered in section 54 of the Finnish Copyright Act[16]; those however are typically handled through the ad-hoc arbitration procedure which is not managed by the Arbitration Institute and therefore is not included in the Institute's statistics.

According to the Finnish Arbitration Institute[17], one of the reasons why copyright disputes are rarely solved through arbitration might be that arbitration is often perceived as a means of solving disputes between companies, not disputes between, for example, an author and a buyer of copyrights. It is also possible that the arbitration procedure is perceived as too costly, even though the process tends to be cheaper than resorting to courts and results in a judgement which is final.

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[11] Source: Arbitration Institute, Finland: http://arbitration.fi/. Visited on 19.6.2014.

[12] Available at http://arbitration.fi/en/costs-of-arbitration/calculator-2/. Visited on 20.6.2014.

[13] Claes Lundblad, Petri Taivalkoski, Gisela Knuts and Henrik Fieber, "Roschier Disputes Index 2012 – Facts and trends in international dispute resolution, a nordic perspective", available at http://www.roschier.com/sites/default/files/Roschier%20Disputes%20Index_0.pdf. Visited on 19.6.2014.

[14] Source: Arbitration Institute of Finland's statistics, available at http://arbitration.fi/en/statistics/. Visited on 19.6.2014.

[15] Source: Anne Horttanainen, acting Secretary-General at the Arbitration Institute (vt. Pääsihteeri Keskuskauppakamarin välimieslautakunta), interviewed by email in September 2014

[16] Tekijänoikeuslaki [Copyright Act], Act No. 404/1961, § 54 (Fin.), available at http://www.finlex.fi/fi/laki/kaannokset/1961/en19610404.pdf. Visited on 21.8.2014.

[17] Source: Anne Horttanainen, acting Secretary-General at the Arbitration Institute (vt. Pääsihteeri Keskuskauppakamarin välimieslautakunta), interviewed by email in September 2014

SECTION 2. MEDIATION AND CONCILIATION

Mediation is an ADR method where a neutral and impartial third party, the mediator, facilitates dialogue in a structured process to help parties reach a conclusive and mutually satisfactory agreement. The mediator acts as a neutral third party and facilitates rather than directs the process by assisting the parties in identifying and articulating their own interests, priorities, needs and wishes to each other. Conciliation is another ADR process that involves building a positive relationship between the parties of disputes. It is similary to mediation but used in a wider range of disputes, including disputes resulting from a criminal behavior[18]. Settlements can be, under certain conditions, confirmed by Courts and lead to binding court orders.[19]

There are several types of mediation and conciliation methods available in Finland. The Finnish Bar Association provides private mediation services. Alternatively, if the parties wish, they may utilize publicly provided court mediation in some cases of civil disputes or criminal offences. Furthermore, a judge dealing with any civil and commercial matter has a duty to determine whether there are possibilities for settlement.[20]

A. DURATION AND COSTS

With private mediation services, the mediator and the parties should seek in cooperation to advance an efficient and prompt settlement of the dispute. Unless otherwise agreed, the parties will cover their own costs of the mediation procedure and the fees and expenses of the mediator will be divided in half between the parties.[21]

Court mediation (or court conciliation) in criminal cases is a public service for which no fee is charged.

Court mediation in civil cases involves lower costs than a trial for the parties concerned. A fee is charged for judicial mediation, as for all other matters handled by a court. If the case requires specific knowledge in some area, the mediator may, with the agreement of the parties, engage an assistant whose fee is paid by the parties. Each party pays only his or her own costs and is not obliged to pay the costs of the opponent. If the parties so wish, they may engage a legal adviser. It is also possible for a party to apply for legal aid at a legal aid office.

No information on the duration of mediation or conciliation procedures was found at the time of drafting this report.

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[18] In Finnish, the terms "mediation" and "conciliation" have only one common translation: "sovittelu". This results in both procedures being often treated as variations of the same alternative dispute resolution method. In English translations of legal documents, the terms "mediation" and "conciliations" are not always clearly distinguised. This is the reason why this report covers both procedures in the same section. For more information, see for instance Liisa Sippel, "Comparative Aspects Between the Nordic Countries and Austria: Court Mediation In or Out?" in "The Future of Civil Litigation: Access to Courts and Court-annexed Mediation in the Nordic Countries", Springer, 2014, page 207.

[19] Act on mediation in civil matters and confirmation of settlements in general courts (394/2011), translation in English available at http://www.finlex.fi/en/laki/kaannokset/2011/en20110394.pdf. Visited on 20.6.2014.

[20] Oikeudenkäymiskaari [Code of Judicial Procedure], Act No. 4/1734, ch. 5, § 19, amended by Act No. 1052/1991 (Fin.), available at http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf. Sections 19 and 22. Visited on 19.6.2014. See also Laki rikosasioiden ja eräiden riita-asioiden sovittelusta (sometimes called "The Mediation act"), Act No. 1015/2005. Translation in English available at http://www.finlex.fi/en/laki/kaannokset/2005/en20051015.pdf. Visited on 19.6.2014.

[21] Source: Suomen Asianajajaliiton Sovintomenettely-esite, http://www.asianajajaliitto.fi/asianajopalvelut/tarvitsetko_asianajajan/riitojen_sovittelu. Visited on 23.6.2014.

B. LEVEL OF USE

No statistics concerning private mediation is available, but the Finnish National Institute for Health and Welfare keeps statistics concerning public mediation cases (court mediation and conciliation)[22].

In 2013, only 3.6% of public mediation cases (413 cases out of 11 586 cases referred to mediation in total) concerned civil matters. Although no figure is available to distinguish specifically cases related to IPR or copyright, these cases are most often civil matters and court mediation in Finland is mainly used in criminal matters such as violence, theft, threat, breach of peace or defamation. The proportion of copyright-related cases dealt with through public mediation therefore seems negligible.

Another set of data shedding light on the use of mediation and conciliation in Finland was collected as part of the pilot report concerning Methodology card 7 – *Application of sanctions and remedies for copyright infringement*.[23] It provides statistics about the number of cases concerning the application of the Copyright Act in the District Court by the type of conclusion. According to these figures, the court has confirmed a settlement in six cases in a total of 334 during the period between 2008 and 2012. These figures are not limited to copyright disputes as they also include non-contentious civil cases concerning the disclosure of contact information, but they provide another indication that settlements in copyright disputes are very limited in numbers.

In order to get information on the use of mediation in cases related to copyright, the National Institute for Health and Welfare was consulted. With the help of Aune Flinck, Development Manager, information was collected from 13 public mediation service providers across the country[24]. Five of them answered that they had provided between 1 and 5 mediation services concerning cases related to copyright since 1.6.2006 (when the Mediation Act 9.12.2005/1015 came into force). Most of these cases concerned dissemination of copyright-protected digital content or violation of trade secrets, while the rest were classified as fraud (*petos*), minor fraud (*lievä petos*), counterfeit (*väärennös*) or civil disputes (*riita-asia*).

According to the respondents, mediation is suitable for disputes where responsibilities are relatively clear, for cases with limited economic importance and for cases whose resolution would most likely be affected by interaction between parties. Copyright-related cases could fit these criteria and mediation could be used more often for these types of disputes. The respondents mentioned the following reasons for the low level of use of mediation in copyright-related cases:

- in minor cases the parties are often able to resolve the disputes themselves, without the support of a mediator;
- the police or the prosecutors do not usually propose mediation to parties involved in penal disputes;
- the parties often want a judical decision to solve their case and are not usually inclined to using mediation.

The mediation service providers consulted therefore consider that parties to copyright disputes could be better informed about the possibility of mediation.

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[22] Rikos- ja riita-asioiden sovittelu 2013 (Mediation in criminal and civil cases 2013), a publication by THL, the National Institute for Health and Welfare, available (in Finnish) at http://www.julkari.fi/handle/10024/116237. Visited on 23.6.2014.

[23] Available online at http://www.cupore.fi/documents/140114Publication_PilotreportMC7_Applicationofsanctionsandremediesforcopyrightinfringement.pdf. Visited on 23.6.2014.

[24] The questions were forwarded by Aune Flinck in August and September 2014. The list of responding mediation service providers can be found in the appendices in the section "consulted parties".

SECTION 3. OPINIONS OF THE COPYRIGHT COUNCIL

The Copyright Council is an institution financed by the Finnish Ministry of Education and Culture which provides non-binding opinions concerning the interpretation of copyright law. Parties involved in a copyright dispute can refer to the Council for an opinion on the legal issues at hand. Although the Copyright Council does not solve disputes concerning individual contracts, it plays a role in dispute resolution by anticipating the legal grounds on which jurisdictions would base their decision and has a widely recognized authoritative power.

A. DURATION AND COSTS

The total time from filing an application to obtaining the Council's decision is 2 - 12 months. The variation depends on the amount of requests being submitted to the Council at each point of time as well as on the scope of the case in question. As for requests made by officials, there´s a possibility for expedited procedure.[25]

Applicants receive Council opinions free of charge; the Council is financed by the Finnish government which bears the costs of running the Council's activities (e.g., the salary of the secretary, remuneration to the chairman, vice-chairman and members, etc.). Each party to a dispute carries his or her own costs incurred during the proceedings but most cases do not involve legal counsel.

B. LEVEL OF USE

On average, the Council gives approximately twenty opinions a year, which has amounted to 440 opinions during its first twenty-five years of operation (1986-2011).[26] Compared to the number of judgments issued by general courts (including district courts, appeals courts, and the Supreme Court), the Council is the most abundant source of copyright decisions in Finland.[27] The case law of the Council covers a very broad range of fundamental copyright issues, including questions of originality, infringement, right to quote, or use of the work for transformative purposes. It should be taken into account that the Copyright Council does not solve disputes on the interpretation of contracts, and major part of civil cases is therefore left outside its effect.

According to Bruun and Mansala[28], copyright holders make up the largest group of petitioners (48 %) to the Council. The remaining fifty-two percent of applicants consists of users of copyright (26 %), public prosecutors (9 %), courts (4 %), copyright organizations (4 %), other lobbyists (5 %), government ministries (2 %) and others (2 %). Over half (55%) of all applications are filed after a dispute has already

[25] Source: Marco Grönroos, Ministry of Education and Culture, Consulted on 11.9.2014.

[26] Source: Niklas Bruun & Marja-Leena Mansala, Tekijänoikeusneuvosto--kenen palveluksessa?, in Tekijänoikeusneuvosto 25 vuotta 69, 74 (Katariina Sorvari ed., 2011) (in Finnish), cited by Nari Lee and Marcus Norrgård, 'Alternative to Litigation in IP Disputes in Asia and in Finland' (2012) 43 Cal. W. Int'l L.J. 109

[27] Source: Nari Lee and Marcus Norrgård, 'Alternative to Litigation in IP Disputes in Asia and in Finland' (2012) 43 Cal. W. Int'l L.J. 109. As presented in the section "Introduction: Data for comparison", between 2008 and 2011, from one to eight civil cases concerning the application of the Copyright Act (and those are very likely to be actual copyright disputes) were concluded in the upper instances, and leave of appeal seems to be granted on average in half of the cases. It can therefore be concluded that civil cases concerning copyright disputes do not exceed a maximum of 20 cases per year, most likely less.

[28] Niklas Bruun & Marja-Leena Mansala, Tekijänoikeusneuvosto-kenen palveluksessa?, in Tekijänoikeusneuvosto 25 vuotta 69, 74 (Katariina Sorvari ed., 2011) (in Finnish), cited by Nari Lee and Marcus Norrgård, 'Alternative to Litigation in IP Disputes in Asia and in Finland' (2012) 43 Cal. W. Int'l L.J. 109

arisen between the copyright holder and a third party, whether or not the dispute has already been taken to a court of law. As presented in the pilot report on Description sheet 10 – *Availability of alternative dispute resolution mechanisms*, Copyright Council opinions are likely to influence subsequent court rulings and therefore they can discourage parties from going to court. In fact, 64 % of the cases involving an actual dispute had not yet been taken to court, to the police, or to the public prosecutor at the time of filing the case with the Council. This clearly shows that the Council serves a role as a pure alternative dispute resolution body by proposing legal answers to dispute before they are brought to the authorities for litigation.

Conclusions

A. ANALYSIS AND SUMMARY OF THE RESULTS

The findings of this report highlighted the fact that the different ADR methods available in Finland are very different in nature. They do not target the same kinds of parties (companies or private individuals) or the same kinds of disputes (private disputes or disputes resulting from criminal behaviors; disputes involving smaller or larger moneraty claims), are organized by different actors (public or private) and were designed for different purposes. These instruments are therefore not directly comparable. The objective of this pilot study was nevertheless to evaluate the level of use of the different mechanisms that could result in a copyright dispute being solved out of court.

Arbitration is the most popular alternative dispute resolution method for commercial disputes. Its advantages are a usually cheaper and faster process than litigation (9 months or 8 months depending on the procedure), and that it allows parties to choose arbitrators with particular expertise. However, the high cost for this type of procedure makes it unsuitable for disputes with limited monetary claims. Moreover, copyright disputes might not require as much technical expertise as demanded by other types of intellectual property rights. This might explain why a very small number of copyright disputes are submitted to arbitration (only 3% of disputes submitted to the Arbitration Institute of Finland in 2013 had a subject matter related to IPR and license agreements, which include copyright matters).

Mediation and conciliation are also available in Finland as alternative dispute resolution mechanisms. No statistics concerning private mediation is available, but the Finnish National Institute for Health and Welfare keeps statistics concerning public mediation cases. These seem to indicate that civil matters form only a very small part of mediated cases, and therefore the part of copyright litigation (which most often takes place in front of civil courts) would be negligible. However, according to mediation providers, mediation would be suitable for copyright-related disputes where responsibilities are relatively clear, with limited economic importance and whose resolution would most likely be affected by interaction between parties. The low level of use of mediation in copyright cases might be in part the result of a lack of information on this procedure.

Finally, another type of mechanism widely used in cases of copyright disputes in Finland is the opinions of the Copyright Council. Although they are not binding and do not follow regular litigation procedures, they carry sufficient authoritative force to influence the interpretation of copyright law. The procedure in front of the Copyright Council is free of charge, informal and does not require the support of a legal counsel, making it particularly suitable for disputes involving limited monetary claims. On average, the Council gives approximately twenty opinions a year (more than the number of cases solved through arbitration, mediation and conciliation together) and the procedure takes 2-12 months.

Altogether, it seems that despite their lack of binding power, the opinions of the Copyright Council have a function of resolving disputes, a function that is particularly important for individuals and SMEs with limited financial resources. In many cases, an opinion by the Council is likely to be the only possible legal recourse due to the high costs of litigation. The importance of the Copyright Council in solving copyright disputes is highlighted by the fact that, although it is difficult to evaluate the exact number of cases concerning copyright disputes that have been settled in front of the courts, it seems to remain lower than the number of opinions rendered by the Copyright Council. Commercial copyright disputes involving larger monetary claims might sometimes be solved through arbitration. Litigation concerning copyright offences could also be solved through penal conciliation, but the limited amount of copyright-related crimes brought to courts in Finland limits the number of such cases.

The following table summarizes the results of the study.

Table 1. Use of dispute resolution mechanisms available in Finland for solving copyright disputes			
Mechanism	**Duration**	**Costs**	**Level of use**
Arbitration	- For regular arbitration: 9 months - For expedited arbitration: 3 months	No data is available on average costs of procedure. Our simulations on administrative and arbitrators' fees (not including travel and expenses of arbitrators and other legal costs) vary from 5 000 to 15 150 euros for one arbitrator.	Mediation is the preferred method of alternative dispute resolution among the largest companies. No specific statistics concerning copyright disputes were available, but their amount is likely to be very small. Arbitration is sometimes used by collective management societies to deal with issues related to copyright remunerations and other cases covered in section 54 of the Finnish Copyright Act.
Mediation, including			
- private mediation	No information	Private mediation services' costs are not public.	No statistics are available.
- court mediation	No information	A fee is charged for judicial mediation, but it is lower than the costs of a trial. It is possible to apply for legal aid.	No precise data on the amount of copyright disputes solved through mediation is available, but they have been very rare.
- criminal conciliation	No information	Criminal conciliation is a non-chargeable service.	
Opinions of the Copyright Council	The total time from filing an application to obtaining the Council's decision is 2 - 12 months.	Applicants receive Council opinions free of charge. Each party to a dispute carries his or her own costs incurred during the proceedings but most cases do not involve legal counsel.	On average, the Council gives approximately twenty opinions a year.

B. METHODOLOGICAL FINDINGS

- **LIMITATIONS**

Precise statistical data is not always available. Data on private mediation is not kept by public agencies, since the mediation is by definition taking place in private. In many other cases, it is not possible to distinguish data concerning copyright disputes from other types of disputes submitted to alternative dispute resolution methods. As a result, this report could only provide general tendencies concerning the use of dispute resolution mechanisms in copyright disputes.

- **GUIDELINES FOR FUTURE RESEARCH**

The research necessary for this report was conducted together with the research concerning Description sheet 10 – *Availability of dispute resolution mechanisms* as the information sources were often complementary.

The time needed for this pilot study will depend on the availability of statistical data and information. In the case of Finland, the workload for collecting data and drafting this report could be evaluated at three weeks of full-time work. With the help of an already-made list of useful references, this time could be reduced.

Appendices

A. METHODOLOGY CARD

Methodology card as presented in the Methodology Handbook, version 19.12.2014.

Element: Dispute resolution	**Methodology card 8. Use of alternative resolution mechanisms for solving copyright disputes**	
Key question	How often are copyright disputes or litigations resolved through alternative dispute resolution mechanisms?	
Type of data	*objective data*	
Description	The information tells about the level of use of alternative dispute resolution mechanisms in copyright disputes, as opposed to the use of copyright enforcement.	
Parameters to measure	**1. Number of copyright-related cases solved through each type of alternative dispute resolution mechanisms available** If possible, compare to the number of cases solved through litigation **2. The length and cost of the alternative dispute resolution procedures** - Length and cost of the procedure for each type of alternative dispute resolution mechanisms[29] (if relevant, applicable rules concerning length and cost of procedure) - Value of monetary claims: typical value range of claims made through each ADR mechanism **3. Additional information: Case study on the types of clauses promoting alternative dispute resolution methods in copyright-related contracts and alternative dispute resolution methods most often used**	
Definitions	*Alternative dispute resolution mechanisms* (also known as *External dispute resolution* in some countries)	Processes and techniques that act as a means for disagreeing parties to settle disputes without resorting to litigation in traditional courts. These mechanisms include negotiation, mediation, conciliation, arbitration and recommendation.
	Arbitration	Alternative dispute resolution method where the disputing parties involved present their disagreement to one or a panel of private, independent and qualified third party arbitrators. The arbitrator(s) determine the outcome of the case through a decision called an "award.
	Mediation	Alternative dispute resolution method where a neutral and impartial third party, the mediator, facilitates dialogue in a structured process to help parties reach a conclusive and mutually satisfactory agreement. Contrary to informal negotiation, mediation has a structure and timetable and the process is private and confidential. A successful mediation process ends with a written agreement that binds the parties contractually.

[29] In addition to legal fees, the costs of litigation include the costs of time spent and attention given. These costs might in particular affect the decisions of SMEs as compared to large companies that have better financial means to meet litigation costs.

	Conciliation	Alternative dispute resolution process similar to mediation where a (sometimes court-appointed) conciliator seeks to identify a right that has been violated and searches in collaboration with the parties to find the optimal solution. Contrary to mediation, it is the conciliator, not the parties, who often develops and proposes the terms of settlement.
	Recommendation	Alternative dispute resolution process where the parties bring their dispute in front of a (group of) specialized expert(s) that will provide them with an opinion on their case. Recommendations are not binding but may be very useful in offering authoritative answers concerning specific disputed questions.
	Copyright disputes	Disputes where the main issue or one of the basic issues is based on copyright legislation
Guidelines for data collection	The information can be collected as a desktop study through available national and international information sources. It can be complemented by expert interviews. The data should be collected over a period allowing meaningful analysis, for example: 5 years. The use of appropriate measures of central tendency (mean, median and/or mode) and measures of dispersion (such as minimum and maximum values) can be meaningful; see instructions in the subchapter "Analysis of data".	
Limitations of the indicator	The indicator does not take into account the cases where parties reached a settlement without the help of a third party (through negotiation), considering that those cases are not publicly documented.	

B. INFORMATION SOURCES

International:

- 'IPR Helpdeks Fact Sheet: Efficient resolution of disputes in R&D collaborations, licensing and other technology transfer', WIPO ADR Arbitration and Mediation Centre, November 2012, available at http://www.iprhelpdesk.eu/sites/default/files/newsdocuments/Alternative_Dispute_Resolution_Mechanisms.pdf (Visited on 2.8.2014)
- 'The Role of Private International Law and Alternative Dispute Resolution', WIPO's IP Survey concerning e-commerce and copyright, available at http://www.wipo.int/copyright/en/ecommerce/ip_survey/chap4.html (visited on 2.8.2014)
- Claes Lundblad, Petri Taivalkoski, Gisela Knuts and Henrik Fieber, "Roschier Disputes Index 2012 – Facts and trends in international dispute resolution, a nordic perspective", available at http://www.roschier.com/sites/default/files/Roschier%20Disputes%20Index_0.pdf.
- Mitchell Smith, 'Mediation as an Alternative to Litigation in Patent Infringement Disputes', ADR Bull., Nov. 2009, at 1, 3-4, available at http://epublications.bond.edu.au/adr/vol11/iss6/1 (visited on 2.8.2014)

  - ***Some dispute resolution centres:***

- International Dispute Resolution Centre (UK): http://www.idrc.co.uk
- International Institute for Conflicts Prevention and Resolution: http://www.cpradr.org
- WIPO Arbitration and Mediation Center, http://www.wipo.int/amc/en/domains/decisionsx/index.html

Finland:

- ***Legislation and jurisprudence:***

- Copyright Act (Tekijänoikeuslaki), Act No. 404/1961, § 54 (Fin.), available at http:// www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf
- Copyright Decree (574/1995, amendments up to 1004/2008 included), sections 18 and following, available at http://www.finlex.fi/fi/laki/kaannokset/1995/en19950574.pdf
- Arbitration Act (Laki välimiesmenettelystä)
- Act on mediation in civil matters and confirmation of settlements in general courts (394/2011), translation in English available at http://www.finlex.fi/en/laki/kaannokset/2011/en20110394.pdf
- Act 1015/2005, Laki rikosasioiden ja eräiden riita-asioiden sovittelusta (sometimes called "The Mediation act"), translation in English available at http://www.finlex.fi/en/laki/kaannokset/2005/en20051015.pdf
- Korkein oikeus [Decision by the Supreme Court of Finland], No. 2003:45, May 14, 2003 (Fin.), available at http:// www.finlex.fi/fi/oikeus/kko/kko/2003/20030045
- Oikeudenkäymiskaari [Code of Judicial Procedure], Act No. 4/1734, ch. 5, § 19, amended by Act No. 1052/1991 (Fin.), available at http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf. Sections 19 and 22
- Government Bill 32/1984, art 7 (in Finnish).

- ***Information sources:***

- Copyright Council's presentation on the Finnish Ministry of Education and Culture's website (in Finnish): http://www.minedu.fi/OPM/Tekijaenoikeus/tekijaenoikeusneuvosto/?lang=fi
- European E-Justice Portal, Mediation in EU members states – Finland; available at https://e-justice.europa.eu/content_mediation_in_member_states-64-FI-en.do?clang=en
- Finnish Arbitration Institute: http://arbitration.fi/
- ICLG – International Comparative Legal Guides, Finland Chapter - Litigation & Dispute Resolution 2014, Kristiina Liljedahl / Borenius Attorneys at law; Niki Welling / Borenius Attorneys at law, available at http://www.iclg.co.uk/practice-areas/litigation-and-dispute-resolution/litigation-and-dispute-resolution-2014/finland
- Kaijus Ervasti, Tuomioistuinsovittelu Suomessa (Court Mediation in Finland), Oikeuspoliittisen tutkimuslaitoksen tutkimuksia, 256 (2011), available at http://www.optula.om.fi/material/attachments/optula/julkaisut/tutkimuksia-sarja/FdRuwETWJ/tuomioistuinsovittelu.pdf (English summary on p. 97).
- Nari Lee and Marcus Norrgård, 'Alternative to Litigation in IP Disputes in Asia and in Finland' (2012) 43 Cal. W. Int'l L.J. 109
- Patrik Lindfors, Arbitration in Finland - Characteristic Features Currently Under Discussion, 1 Nordic J. Com. L., no. 1, 2003, at 4 (Fin.), available at http://www.njcl.fi/1_ 2003/note3.pdf
- Pilot reports implementing the methodology for assessing the operation of copyright and related rights systems, available on the webpage the Foundation for Cultural Policy Research: http://www.cupore.fi/Pilotreports.php
- Rikos- ja riita-asioiden sovittelu 2013 (Mediation in criminal and civil cases 2013), a publication by THL, the National Institute for Health and Welfare, available (in Finnish) at http://www.julkari.fi/handle/10024/116237
- Liisa Sippel, "Comparative Aspects Between the Nordic Countries and Austria: Court Mediation In or Out?" in "The Future of Civil Litigation: Access to Courts and Court-annexed Mediation in the Nordic Countries", Springer, 2014, page 207

- Suomen Asianajajaliiton Sovintomenettely-esite, http://www.asianajajaliitto.fi/asianajopalvelut/tarvitsetko_asianajajan/riitojen_sovittelu
- The Finnish Bar Association website (in Finnish): http://www.asianajajaliitto.fi/asianajopalvelut/tarvitsetko_asianajajan/riitojen_sovittelu
- The Finnish Institute for Health and Welfare's information package at http://www.thl.fi/en/web/thlfi-en/topics/information-packages/mediation-in-criminal-and-civil-cases

C. CONSULTED PARTIES

- Aune Flinck, Development Manager (kehittämispäällikkö) at THL – Terveyden ja Hyvinvoinnin Laitos (National Institute for Health and Welfare), interviewed by email in September 2014
- Marco Grönroos, Senior Legal Adviser (hallitussihteeri), Secretary of the Copyright Council at the Ministry of Education and Culture, consulted on 11.9.2014.
- Anne Horttanainen, acting Secretary-General at the Arbitration Institute (vt. Pääsihteeri Keskuskauppakamarin välimieslautakunta), interviewed by email in September 2014
- Viveca Still, Copyright Counsellor at the Ministry of Education and Culture, consulted on 3.9.2014
- The following mediation offices responded to questions forwarded by Aune Flinck (August-September 2014):
  1. Central Finland Mediation Office (Keski-Suomen sovittelutoimisto)
  2. Mediation office of Kanta-Häme (Kanta-Hämeen sovittelutoimisto)
  3. Mediation Office of Rovaniemi, Ranua and Posio (Rovaniemen, Ranuan ja Posion sovittelutoimisto)
  4. Northern Finland Mediation Office (Pohjois-Suomen sovittelutoimisto)
  5. Mediation office in Western Uusimaa (Länsi-Uudenmaan Sovittelutoimisto/ Västra Nylands medlingsbyrå)
  6. Helsinki Mediation Office (Helsingin sovittelutoimisto)
  7. Päijät-Häme Mediation Office (Päijät-Hämeen sovittelutoimisto)
  8. Pirkanmaa mediation office (Pirkanmaan sovittelutoimisto (two replies))
  9. Mediation office in South-East Finland (Kaakkois-Suomen sovittelutoimisto)
  10. Ostrobothnia Mediation office (Pohjanmaan sovittelutoimisto - Österbottens medlingsbyrå)
  11. South Ostrobothnia Mediation Office (Etelä-Pohjanmaan sovittelutoimisto)
  12. Satakunta Mediation Office (Satakunnan sovittelutoimisto)
  13. Varsinais-Suomi Mediation Office (Varsinais-Suomen sovittelutoimisto)

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

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