

Assessing Copyright and Related Rights Systems

# Individual Exercise of Rights

Report on Piloting in Finland

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Focus: Literature (Book Publishing Industry)





cupore

**Assessing Copyright and Related Rights Systems: Individual Exercise of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland.**

This report is the result of the first pilot study implementing Description Sheet 11 – *Individual Exercise of Rights*, 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 Researcher Milla Määttä together with the core project team (Tiina Kautio and Nathalie Lefever), between April and December 2014. The 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](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 Description Sheet 11 presented in the methodology handbook, titled “Individual Exercise of Rights”. The focus is on the Finnish literature/book publishing industry.

The exercise of rights by stakeholders in the field of book publishing in Finland is complemented by the system of extended collective licenses and compulsory licenses, as well as some of the limitations to copyright relevant in the field of literature. The system of extended collective licensing is based on provisions in the Finnish Copyright Act which extend the reach of a collective agreement on the use of works to cover also unrepresented right holders. Unrepresented right holders are entitled to individual remuneration for the agreements concluded between CMOs and users of copyrighted works. Under a statutory license, copyrighted works can be used for certain purposes without the right holder's permission; however, the right holder is entitled to remuneration. Conversely, limitations of rights listed in the Copyright Act concern situations where the use of a work requires neither the right holder's permission nor compensation for using the work. An exhaustive list of limitations to the exclusive rights conferred to authors can be found from Chapter 2 of the Copyright Act.

The Finnish Copyright Act also includes general provisions governing transfer of rights to facilitate balanced contract-making. Furthermore, there are also more specific provisions concerning publishing contracts, some of which aim at protecting the author in cases where the publisher makes no effort in making the work available to the public.

However, there are no collectively negotiated model contracts or framework agreements in the industry, as these could be against competition law. Instead, there are examples of balanced publishing contracts available. Furthermore, organizations representing the Finnish authors and translators of literature as well as Finnish publishers provide support and advisory services for their members. Nonetheless, although the organizations actively discuss the governing practices and monitor transfer of rights, a great number of publishing contracts are being made with no assistance of third parties.

The most commonly used licensing contracts in the industry are publishing and translation contracts, as well as contracts concerning adaptations of a work. In Finland, adaptation rights of a book are generally not transferred in publishing contracts.

In cases of direct sales of electronic books, end-users are typically required to accept specified terms of an End-User License Agreement (EULA) before downloading or streaming a book. EULAs are non-exclusive licensing contracts establishing the purchaser the right to use the electronic book. The sales of electronic books have been protected by DRM technologies in the past, but currently digital watermarks are being favored by the industry.

The Finnish Literature Exchange is the main organization facilitating the distribution of creative works internationally.

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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 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](http://www.cupore.fi/copyright.php).

This report presents data collected in application of the Description Sheet 11 presented in the methodology handbook, titled "Individual Exercise of Rights". It is the result of the first pilot study applying this indicator in Finland.

This study was conducted by Project Researcher Milla Määttä together with the core project team (Tiina Kautio and Nathalie Lefever), between April and December 2014.

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

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The indicator implemented here is intended to present one of the copyright system's elements. It is part of the second pillar of the methodology framework, "Functioning and performance of the elements of the copyright system", and its third area, "Management of Rights". It is a description sheet which presents the operation of the copyright system from the perspectives of individual licensing and contract-making in order to support the analysis of the operation of the national copyright and related rights system.

As explained in the methodology handbook, both legal and other arrangements will have an effect on the exercise of rights by individual right holders.

This description sheet suggests to gather information on individual contract making and licensing as well as on legal and other arrangements to facilitate the functioning of the markets for rights. The purpose is to map the practices and tools for the individual exercise of rights in order to get a general understanding of this particular aspect of the copyright system's operation. Focus will be on the arrangements made in the country to facilitate individual licensing. This description will also constitute a basis for understanding the operation of licensing markets and the markets for copyrighted products and services.

The structure of the markets as well as the architecture of value creation differ between industries. For this reason, the different types of creative activities and creative industries should be analyzed separately. Moreover, the methodology implemented in this study has been designed to be modular: it

is possible to apply it to a national copyright system as a whole, or to specific sections of it. This study illustrates the use of the methodology when applied to one area of the copyright system: literature and the book publishing industry in Finland.

The area covered concerns both a specific subject matter and a particular industry. The subject matter selected, "literature", includes both fiction and non-fiction books published in Finland<sup>1</sup>. It does not include news publications, journals and periodicals. When analyzing the market for literature from the economic point of view, the focus is on the book publishing industry, including all actors involved into the creation and publication of a book on the Finnish market: typically writers, illustrators, translators and publishers.

The first area of the description sheet discusses individual contract-making and licensing by mapping the most commonly used licensing models in different industries. The analysis can cover different situations where direct licensing has been applied (license contracts negotiated and signed between copyright owner and user without the intermediary of collective management organizations). When meaningful, the description can also include information on the use of DRM technologies for managing the rights in particular industries.<sup>2</sup> Although the research and development as well as the commercial supply of DRM technologies is global, there might be preferences at national level for some types of DRM technologies or infrastructures, barriers for the use of DRM due to commercial policy or other factors, as well as institutional or legal incentives for their use (such as anti-circumvention measures). The descriptive information collected here can provide an understanding of these issues.

The next topic of the description sheet concerns the public measures to facilitate the functioning of the markets for rights. These can include both legal and other arrangements, such as compulsory, statutory and extended collective licenses, limitations of rights, and provisions or stipulations on contractual arrangements (contractual clauses concerning dispute settlement mechanisms are examined in Description Sheet 10). The description should also take into account solutions provided by other legal regimes, such as competition law and consumer protection.

The description sheet also covers the active steps taken by right holders' and users' organizations to facilitate the functioning of the markets. This description can include model contracts, framework agreements and other measures taken by these organizations for the purposes of increasing effective use of copyrights.

Finally, the description will cover the use of national or international standards for identification of rights, the existence of organizations and other arrangements facilitating distribution of creative works internationally and the availability of other arrangements or services facilitating the individual exercise of rights. These specific arrangements could be connected to particular licensing models such as pooling (copyright owners pooling their rights in order to gain a stronger position on the market when contracting licenses), brokering (use of licenses brokers' services by copyright owners) or open licensing (the right holder decides to use his/her rights by allowing others to use works freely, with certain reservations cited in the license). For instance, the Creative Commons web-based licensing service represents an example of an arrangement facilitating individual licensing with open licensing<sup>3</sup>.

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<sup>1</sup> When relevant, a distinction has been made between digital and physical material.

<sup>2</sup> Digital rights management (DRM) technologies are technical tools can be used in content recognition, expressing the terms and conditions for use, monitoring the use and preventing unauthorized use.

DRM systems can include one or more technological protection measures (TPMs), rights management information (RMI) or end user licensing agreements (EULAs). Law might include provisions related to TPMs and RMI. The WIPO Internet Treaties require to prohibit circumventing of TPMs and tampering with, removing or altering RMI.

<sup>3</sup> Creative Commons Inc.<sup>TM</sup> facilitates arrangements for individual licensing of work under Creative Commons -license (CC) through their web-based licensing service. However, web-based services do not offer any legal advice for authors licensing their work. Creative Commons web-based licensing services are adopted in different languages, but to varying degree. The English version of the web-service has the most content at the moment.

Information on the provisions in national legislation that are likely to help individual authors and performers in obtaining balanced and equitable contractual conditions is collected using Description Sheet 5 – *Copyright Law*, and implementing Description Sheet 4 – *Markets for Copyrighted Products and Services* will provide complementary information on right holders’ and users’ organizations in each industry. The results of Description Sheet 11 are particularly useful in the interpretation of the results collected through Methodology Card 19 in Pillar III concerning terms of licensing contracts.

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

### **C. METHODS**

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This pilot study is part of a package of six pilot studies applying the methodology for assessing the copyright and related rights system with a focus on literature (the book publishing industry). This package includes pilot studies made in application of the following indicators:

- *Description Sheet 4. Markets for copyrighted products and services*
- *Description Sheet 11. Individual Exercise of Rights*
- *Methodology Card 15. Efficiency of Copyright as an Incentive to Create and Invest in Creative Works*
- *Methodology Card 18. Transaction Costs in Transfer and Licensing of Rights*
- *Methodology Card 19. Terms for Transfer and Licensing of Rights*
- *Methodology Card 22. Analysis of Stakeholders’ Opinions.*

These studies provide relevant background and complementary information that were used when conducting this study and analyzing its results.

The information collected for this indicator can be found through available national information sources. A list of the information sources used in the course of this research can be found in Appendix B of this report. The method chosen was therefore desktop studies. This data was complemented with expert interviews. The list of consulted parties can be found in Appendix C.

## Results

### SECTION 1. DESCRIPTION OF INDIVIDUAL CONTRACT-MAKING AND LICENSING

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The purpose of this description sheet in its first part is to discuss individual contract-making and licensing by providing an overview of the most commonly used licensing models in the book publishing industry in Finland. The description in this section covers different situations where licensing contracts are negotiated and concluded between copyright owner and licensee without the intermediary of collective management organizations. This section also provides information on the use of DRM technologies for managing the rights in the field of literature and book publishing.

#### ***A. THE MOST COMMONLY USED LICENSING MODELS IN THE BOOK INDUSTRY***

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##### **▪ PUBLISHING CONTRACTS**

Publishing contracts between authors and publishers make the dissemination of creative works possible. Through a publishing contract, an author typically grants a publisher the exclusive right to reproduce and to publish a literary work as a printed, recorded or digital book.

In practice, the author transfers these rights in exchange for remuneration. Typically the remuneration for transferring the rights is either a percentage of the profits from the book's eventual sales (royalty) or a flat fee for the book. Usually the author is paid an advance against all future royalties. A typical level for royalties in Finland is between 21 and 26 per cent of the profits from book sales.<sup>4</sup>

After the publishing right to a work has been transferred, the publisher bears the financial risk connected to publishing the work. The author provides the publisher with a manuscript which is then edited by the publishing editor assigned by the publisher in cooperation with the author. In practice, the publisher transforms the original manuscript into a final product which can be laid down to the end-user market. Generally, the contract grants the publisher also the rights to decide on the outlook, the name and the pricing of a book. In exchange, the publisher has the obligations to publish the work and to market it.<sup>5</sup>

##### **▪ TRANSLATION RIGHTS**

Translation of a literary work, such as a book, a poem or a comic strip, is an adaptation of the original work. According to section 2(1) of the Finnish Copyright Act (404/1961), translating a work that falls under copyright protection requires the permission of the copyright owner.

Translation rights for a work are usually sold or licensed either by the author, the publisher on the basis of the publishing contract, or by a literary agent on the basis of an agency agreement<sup>6</sup>. Licensing of translation rights for books is typically administered by publishers' foreign rights departments or

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<sup>4</sup> The Union of Finnish Writers. Kustannussopimus: <http://www.kirjailijaliitto.fi/kirjailijan-tyo/kustannussopimus/>. Visited on 28.3.2014.

<sup>5</sup> If the author is required to pay for the printing costs or to buy a share of an edition, the contract is not in reality a publishing contract but rather an agreement on printing a work. The Union of Finnish Writers. Kustannussopimus: <http://www.kirjailijaliitto.fi/kirjailijan-tyo/kustannussopimus/>. Visited on 28.3.2014.

<sup>6</sup> An agency agreement is a contract between the author and an agent where the author appoints the agent to represent him and to negotiate the transfer and licensing of the rights to the author's works in exchange for a commission. An author may have a number of agents who are appointed to transfer or license only certain rights (e.g. translation rights) on behalf of the author.



representatives. Literary agencies that focus on selling translation rights can represent both publishers and authors.<sup>7</sup>

When a publishing contract is concluded, the author has to decide if he or she is willing to transfer the right to license or sell the translation rights to the publisher of the original work. There is always the option to agree that both the author and the publisher have the right to sell or license translation rights for a work. If the publisher has obtained the right to sell the translation rights to a third party, the author should be entitled to get a proportion of the returns of the transaction.<sup>8</sup>

Translation rights are sold typically by publishers at international book fairs. The transfer of translation rights from copyright owners to licensees requires first finding suitable foreign publishers, and since translations of Finnish literature are rather rare, Finnish publishers are often in a better position to find a foreign publisher for the work than the original author.<sup>9</sup>

#### ▪ **ADAPTATION RIGHTS, MUSIC PUBLISHING CONTRACTS AND WRITINGS IN NEWSPAPERS AND MAGAZINES**

An important source of income for an individual author may be a license for the adaptation rights of a book. In Finland, rights to license adaptation rights of a book are generally not transferred in publishing contracts, and thus adaptations in most cases require the permission of the original author. However, according to industry representatives, clauses concerning also the transfer of adaptation rights have started to become more common in publishing contracts of some publishing houses.<sup>10</sup>

Typical examples of adaptations made on the basis of literary works are dramatizations and movie projects based on a book. Authors and publishers may also grant licenses for using a literary work as a part of a musical work. A typical example is the combination of a poem with a musical composition; in these cases a music publishing contract is signed.

Furthermore, it is common that especially well-known authors make agreements with publishers of newspaper and periodicals on writing short stories, columns and other types of texts for papers and magazines. In these cases the transfer of rights is governed by the terms and conditions of a freelance contract.

#### ▪ **E-BOOK LICENSES**

The Finnish e-book market has only recently started to emerge.<sup>11</sup> When electronic books are sold directly to the end-user, downloading or streaming a book typically requires the consumer to accept specified terms of an End-User License Agreement (EULA). EULAs are non-exclusive licensing contracts between the licensor (the publisher) and purchaser, and they establish the purchaser the right to use the electronic book. EULAs cover only a set of uses that are allowed under the license: for example, the

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<sup>7</sup> FILI. FILI's guide to new translators: <http://www.finlit.fi/fili/en/translators/filis-guide-for-new-translators/>. Visited on 20.7.2014.

<sup>8</sup> The Finnish Association of Non-fiction Writers. Edunvalvonta. Käännösoikeudet: <http://www.suomentietokirjailijat.fi/edunvalvonta/kustannussopimus/kustannussopimusmalli/kaannosoikeudet/>. Visited on 20.7.2014.

<sup>9</sup> The Finnish Association of Non-fiction Writers. Edunvalvonta. Käännösoikeudet: <http://www.suomentietokirjailijat.fi/edunvalvonta/kustannussopimus/kustannussopimusmalli/kaannosoikeudet/>. Visited on 20.7.2014.

<sup>10</sup> Group interview of representatives of authors' societies, 6.6.2014, see Appendix C.

<sup>11</sup> The situation is similar also in Sweden. Instead, in Norway ebook sales have gained market share thanks to one central platform of distribution, Bokskya. The service is provided by the industry information service Bokbasen co-owned by major publishers, distributors and booksellers in Norway; Rüdiger Wischenbart: IPA Global Publishing Statistics. Available at: [http://www.internationalpublishers.org/images/stories/MembersOnly/STATS/2012/IPA\\_Global\\_Publishing\\_Statistics\\_2.pdf](http://www.internationalpublishers.org/images/stories/MembersOnly/STATS/2012/IPA_Global_Publishing_Statistics_2.pdf). Visited on 16.12.2014.

term of the license may be limited or the e-book can be used only for personal, non-commercial purposes. The licenses are often supported by digital rights management techniques.

When an e-book is licensed for public lending, each library buys a license from the publisher for a limited time period to provide access to the book by third parties. The e-book can also be bought by the library, but in these cases the library may have to pay some sort of annual maintenance fee to the publisher for providing the server space for the e-book. The end-user either streams the content by using Internet connection or downloads a DRM-protected copy of the book, which can be read with no Internet connection. These practices apply also to other types of organizations providing e-books to a limited group of users.<sup>12</sup>

There are a number of different pricing models for e-book licenses granted for organizations, for example:

- Standard price, regardless of the size of the organization
- Price according to the size of the organization's user base (typical for scientific e-publications)
- Price according to the nature of the organization (typical for scientific e-publications)
- Price according to number of users with the possibility to access the book at the same time
- Price according to use, e.g. number of downloads
- Combinations of different pricing models.

## ***B. THE EXTENT OF THE USE OF DRM TECHNOLOGIES FOR MANAGING THE RIGHTS***

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PDF and ePub have been the most common formats of publishing in the slowly emerging Finnish e-book market. According to the Finnish Book Publishers Association, both strong and weak Adobe DRM technologies have been used as a protection measure for licensed e-books. An Adobe DRM protected e-book can only be accessed with hardware which has been authorized with the same Adobe ID that was used when the license was first acquired.<sup>13</sup>

However, the industry has come to the conclusion that Adobe DRM is not a satisfactory solution and it does not meet the needs of Finnish consumers. At the moment, both the Finnish Book Publishers Association and the Union of Finnish Writers have recommended that no DRM technologies would be used in order to enhance the user experience as well as to promote the development of a well-functioning legal market for e-books in Finland.<sup>14</sup>

Instead, the industry has been encouraged to use digital watermarks as the main rights management technique for e-book licensing. A watermarked e-book contains information on the transaction, such as where, when and by whom the licensed book has been bought originally. The use of the book has not been restricted with any DRM technique, which means that the user has the possibility to make private copies of the file and access it by using any hardware which supports the file format. Copying and printing the text is also possible. However, these actions can still be forbidden in the terms of use of the end-user agreement.<sup>15</sup>

Some of the largest publishing houses in Finland, Otava, Like Kustannus, Tammi and WSOY, have already announced that they are no longer using DRM protection measures and that they have started to sell

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<sup>12</sup> Antikainen, Hannele (2011), Sähkökirjojen kirjastolisenssiselvitys. Next Media – a Tivit Programme, VTT. Available at: [http://virtual.vtt.fi/virtual/nextmedia/Deliverables-2011/D\\_1\\_1\\_1\\_3\\_Part1\\_sahkokirjojen\\_kirjastolisenssiselvitys\\_v\\_1\\_1\\_01.pdf](http://virtual.vtt.fi/virtual/nextmedia/Deliverables-2011/D_1_1_1_3_Part1_sahkokirjojen_kirjastolisenssiselvitys_v_1_1_01.pdf). Visited on 7.9.2014.

<sup>13</sup> Sähkökirja.fi. Sähkökirjan julkaisumuodot: [http://sahkokirja.fi/?page\\_id=46](http://sahkokirja.fi/?page_id=46). Visited on 7.9.2014.

<sup>14</sup> Group interview of representatives of authors' societies, 6.6.2014, see Appendix C.

<sup>15</sup> Sähkökirja.fi. Sähkökirjan julkaisumuodot: [http://sahkokirja.fi/?page\\_id=46](http://sahkokirja.fi/?page_id=46). Visited on 7.9.2014.

watermarked e-book licenses.<sup>16</sup> The biggest Finnish retailers of e-books have also stated that they will be selling both DRM-protected and watermarked books.<sup>17</sup>

Access to electronic content licensed to organizations such as universities, polytechnics, research institutes and larger corporations, is often protected with a password. It is also possible to arrange for an organization license that is connected to certain IP-addresses. Public lending of e-books may also be managed with pin codes, and this way the public can access the contents from their own computers.<sup>18</sup>

## SECTION 2. PUBLIC MEASURES TO FACILITATE THE FUNCTIONING OF THE MARKETS FOR RIGHTS

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The purpose of this section is to give an overview of the public measures to facilitate the functioning of the markets for rights concerning literary works. These measures include legal arrangements, such as statutory and extended collective licenses, limitations of rights and provisions on contractual arrangements.

### A. EXTENDED COLLECTIVE LICENSING<sup>19</sup>

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Individual exercise of rights in the field of copyright and related rights has proved to be impractical especially in situations where users need rapid access to a large number of works and reproduction is massive. In Finland, collective management organizations acting on behalf of the owners of copyrights and related rights play an important role in administering and supervising the rights of individual right holders. In practice, these associations have been empowered by the right holders to authorize the use of protected materials and to collect and distribute remunerations for the use of their works based on a power of attorney or some other arrangement.

However, as a premise, the collective management organizations do not have the power to grant licenses for use of works of right holders who are not represented by the organization. A legal technique used in Finland to support collective management and to facilitate the functioning of the markets for rights is the system of *extended collective licensing*. The system is based on provisions in the Finnish Copyright Act which extend the reach of a collective agreement on the use of works to cover also unrepresented right holders. These non-represented right holders are entitled to individual remuneration for the agreements concluded between CMOs and users of copyrighted works.

According to Section 26 of the Copyright Act, the provisions regarding extended collective licenses apply when the use of a work has been agreed upon between the user and an organization approved by the Finnish Ministry of Education. The Ministry approves the organizations to issue extended collective licenses and to collect reimbursements for the reproduction, communication or transmission of works of

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<sup>16</sup> Otava: Otavalla käytössä sähkökirjojen vesileimaus, 23.10.2013: <http://www.otava.fi/medialle/uutiset/2013/otavalla-kaytossa-sahkokirjojen-vesileimaus/>; Tammi: Sähkökirjat hyllyyn helpommin - Tammi ja WSOY suojaavat sähkökirjansa jatkossa vesileiman ja sosiaalisen suojan yhdistelmällä, 14.10.2013: <http://www.tammi.fi/web/kyselylinkkeja/uutiset/-/news/16460481/>; WSOY: Sähkökirjat hyllyyn helpommin - Tammi ja WSOY suojaavat sähkökirjansa jatkossa vesileiman ja sosiaalisen suojan yhdistelmällä, 14.10.2013: <http://www.wsoy.fi/ajankohtaista/-/news/16460498>. All visited on 7.9.2014.

<sup>17</sup> Suuri Suomalainen Kirjakerho: <http://www.sskk.fi/apuajaoheita/sahkokirja>. Visited on 12.12.2014.

<sup>18</sup> Antikainen, Hannele (2011), Sähkökirjojen kirjastolisenssiselvitys. Next Media – a Tivit Programme, VTT. Available at: [http://virtual.vtt.fi/virtual/nextmedia/Deliverables-2011/D\\_1\\_1\\_1\\_3\\_Part1\\_sahkokirjojen\\_kirjastolisenssiselvitys\\_v\\_1\\_01.pdf](http://virtual.vtt.fi/virtual/nextmedia/Deliverables-2011/D_1_1_1_3_Part1_sahkokirjojen_kirjastolisenssiselvitys_v_1_01.pdf). Visited on 7.9.2014.

<sup>19</sup> The Finnish extended collective license is discussed in more detail in the Pilot report on Description sheet 5: *Copyright law*. See also article "Extended Collective Licensing – A solution for facilitating licensing of works through Europeana, including orphans? by Anna Vuopala (2013). Available at: [http://www.copyrightsociety.fi/ci/Extended\\_Collective\\_Licensing.pdf](http://www.copyrightsociety.fi/ci/Extended_Collective_Licensing.pdf). Visited on 20.7.2014.

certain categories for a fixed period, with a maximum of five years. The organizations must represent a substantial number of rights holders in a given field and have the financial and operational prerequisites and capacity to manage the affairs in accordance with the approval decision. The approval decisions concerning the organizations with the power to issue extended collective licenses can be found on the webpage of the Ministry of Education and Culture.<sup>20</sup>

Possible stipulations by the organizations concerning the distribution of remunerations for the use of works among their members or the use of the remunerations for the authors' common purposes also apply to non-represented right holders. Even though the rules of the organization do not provide a right to individual remuneration for the represented authors, a non-represented right holder shall have the right to claim an individual remuneration paid by the CMO.<sup>21</sup>

Extended collective licensing is used only in cases where special grounds for it exist. In practice, this means cases where the amount of works used and single acts of use is high (mass use), or where only a small portion of works from an extensive repertoire is incidentally used. The Finnish Copyright Act provides for extended collective licensing in the following cases:

- Photocopying (section 13)
- Use for internal communication (section 13 a)
- Use of works for educational activities and scientific research (section 14)
- Use of works in archives, libraries and museums (sections 16 d and 16 e)
- Use of works of art in catalogues (section 25 a)
- Use in original radio and television transmissions (section 25 f)
- A new transmission of a television programme stored in archives (section 25 g)
- Retransmission of a radio or television transmission (section 25 h).

## **B. STATUTORY LICENSES**

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Under a statutory license, a work can be used for certain purposes without the right holder's permission. The right holder has nonetheless a right to compensation. The Finnish Copyright Act includes three different types of statutory licenses:

- Availability of works to persons with disabilities (Section 17 of the Copyright Act)
- Literary or artistic works of compilation used in education (Section 18 of the Copyright Act)
- Distribution of copies of a work: Public lending (Section 19 (4) of the Copyright Act).

## **C. LIMITATIONS OF RIGHTS**

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Another category of public measures to facilitate the functioning of the markets for rights is constituted by the limitations to copyright protection listed in the Copyright Act. Limitations of copyright cover those cases where the use of a work requires neither the right holder's permission nor compensation for using the work.<sup>22</sup> A copy of a work made by virtue of these limitations on copyright may be, for the purposes determined in those provisions, respectively, distributed to the public and used in public

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<sup>20</sup> The Ministry of Education and Culture. Tekijänoikeus. Oikeuksien hallinnointi ja hankinta. Sopimuslisenssi: [http://www.minedu.fi/OPM/Tekijaenoikeus/oikeuksien\\_hallinnointi\\_ja\\_hankinta/sopimuslisenssi/?lang=fi](http://www.minedu.fi/OPM/Tekijaenoikeus/oikeuksien_hallinnointi_ja_hankinta/sopimuslisenssi/?lang=fi). Visited on 20.7.2014.

<sup>21</sup> A claim concerning the remuneration has to be verifiably presented within three years from the end of the calendar year during which the reproduction, communication or transmission of the work takes place.

<sup>22</sup> The use of exceptions and limitations is governed by a three-step test presented in the Infosoc Directive 2001/29/EC<sup>22</sup>, which states in Article 5, paragraph 5 that: *“The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holder.”*

performance (Section 11(3)). However, the author's name and the source must be indicated to the extent and in the manner required by proper usage, and the work may not be altered without the author's consent more than necessitated by the permitted use.

The complete list of limitations to the exclusive rights conferred to authors can be found from Chapter 2 of the Copyright Act. This means that no common law type of 'fair use' doctrine is applied. Limitations of copyright relevant in the field of literature cover:

- Exhaustion of right of distribution (Sections 19 and 20)
- Reproduction for private use (Section 12)
- Quotation right (Section 22)
- Parody (not mentioned in the Finnish Copyright Act; see Supreme Court case SC: 1971-II-44)
- Reproduction of works of art in pictorial form in connection with a text in a critical or scientific presentation (Section 25(1))
- Use of copyrighted works in libraries, archives and museums (Section 16 and 16 a – 16 d)
- Use of orphan works (Section 19, and the Act on the Use of Orphan Works (763/2013))
- Temporary reproduction (Section 11a)
- Use of copyrighted works for educational activities and scientific research, and other similar limitations (Sections 14(3), 21 and 14(1)).

Descriptions of the statutory licenses and limitations of rights included in the Finnish Copyright Act can be found from Pilot report on Description sheet 5: *Copyright law*.<sup>23</sup>

#### **D. PROVISIONS ON CONTRACTUAL ARRANGEMENT IN LEGISLATION**

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The Finnish Copyright Act includes general provisions governing transfer of rights. In addition to this, there are provisions on publishing contracts which are relevant in the field of literature.

Specific legal provisions concerning rights to works created within an employment relationship could also be examined in this section. However, in Finland, there are no provisions concerning rights to literary works created during the course of employment.

##### **▪ GENERAL PROVISIONS GOVERNING TRANSFER OF COPYRIGHT**

According to Section 27 of the Copyright Act, copyright may be transferred entirely or partially. This transferability concerns mainly the economic rights of the author; Section 3 states that the moral rights of the author may be waived by the author with binding effect only in regard of a use limited in character and extent.

Unless otherwise agreed, the person to whom the copyright is transferred has no right to alter the work or transfer the copyright to third parties. Copyright may however be transferred in conjunction with a business or a part thereof, and in these cases the transferor shall remain liable for the fulfillment of the agreement (Section 28).

According to Section 29 of the Copyright Act, the adjustment of an unreasonable condition in an agreement concerning the transfer of copyright shall be governed by the provisions of the Contracts Act (228/1929). According to Section 36 of the Contracts Act, if a contract term is unfair or its application would lead to an unfair result, the term may be adjusted or set aside. When determining the fairness of a term, at least the entire contents of the contract and the positions of the parties as well as the circumstances prevailing at and after the conclusion of the contracts shall be taken into consideration.

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<sup>23</sup> Furthermore, a full list of limitations on copyright and provisions concerning extended collective license in Copyright Act can be found in Appendix B of the Pilot report on Description sheet 5: *Copyright law*.

## ▪ PROVISIONS CONCERNING PUBLISHING CONTRACTS

According to section 31 of the Copyright Act, by a publishing contract the author transfers to the publisher:

- 1) the right to reproduce a literary or artistic work by printing or a similar process; and
- 2) the right to publish it.

There are no legal requirements for the form of the contract: it may be written or oral, or a combination of both.<sup>24</sup> The original manuscript or other copy that is to be reproduced remains the property of the author.

According to Section 32, unless otherwise agreed, the edition of a literary work may not exceed 2000 copies. However, it is common that publishing agreements include a provision under which the publisher has the right to decide on the size of the edition.<sup>25</sup>

According to Section 33, the publisher is obliged to publish the work within a *reasonable* time, take care of its distribution *in the usual manner*, and follow up the publishing to *the extent determined by marketing conditions and other circumstances*. If the publisher does not fulfill these obligations, the author may rescind the contract and keep the remuneration received. Some of the expressions in this section are rather loose, but the provision has been passed in order to protect the author in cases where the publisher puts no effort on making the work available to the public. The same reasoning applies to section 34, which defines certain time limits for the publication of the work: if a work has not been published *within two years* from the date on which the author submitted a complete manuscript or other copy for reproduction, the author may rescind the contract and keep the remuneration received.<sup>26</sup>

The author should also be able to verify how many copies of the published work the publisher obtains. Hence, according to Section 35, the publisher shall provide the author with a certification from the printer, or whoever else reproduces the work, concerning the number of copies produced. If the parties have agreed on remuneration based on sales in the publishing contract, the publisher shall render account to the author within nine months from the end of the year concerning the sales or rentals during the year and the number of copies in stock at the end of the year. In addition to this, the author has the right to obtain information, at his own request, about the number of copies in stock at the end of a year even after the end of the accounting term.

A provision concerning especially non-fiction works is Section 26 of the Copyright Act under which the author shall be given an opportunity to make alterations in the work if the production of a new edition is commenced later than one year after the publication of the previous edition. Alterations are permitted only if they can be made without causing unreasonable cost and without changing the character of the work.

Finally, according to Section 37 of the Copyright Act, the author may not publish the work again in the form and manner determined in the contract, until the edition or editions which the publisher has the right to publish have been sold out. A literary work may nevertheless be incorporated by the author in an edition of his collected or selected works after 15 years from the year during which the publishing of the work commenced. However, in practice the exclusive right of the publisher to publish the work is not limited to first edition, but instead, the author usually transfers the right to reproduce and to publish a literary work until it becomes a part of the public domain.<sup>27</sup>

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<sup>24</sup> Harenko – Niiranen – Tarkela 2006, p. 314.

<sup>25</sup> *Idem*, p. 317.

<sup>26</sup> *Idem*, pp. 318–323.

<sup>27</sup> *Idem*, pp. 330–332.

It is common, however, that situations governed by the provisions are covered in the terms and conditions of publishing contracts, and therefore the provisions are rarely applied.

### ***E. INFLUENCE FROM THE COMPETITION LAW REGIME***

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The European and Finnish competition law regime influences the individual exercise of rights of stakeholders in the field of book publishing by protecting individual parties from model contracts imposed by contracting parties with a stronger negotiation position. In practice, every publishing contract is negotiated individually between the parties. Compulsory model contracts and framework agreements (see below) prepared by professional organizations are likely to be considered as illegal cartel-like behavior and therefore are not utilized by the industry.

### **SECTION 3. MEASURES TAKEN BY THE RIGHT HOLDERS' AND USERS' ORGANIZATIONS TO FACILITATE THE FUNCTIONING OF THE MARKETS FOR RIGHTS**

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This section includes a description of the different measures taken by the right holders' and users' organizations in Finland to facilitate the functioning of the markets for rights in the field of literature. In general, these measures may include for example:

- Model contracts
- Framework agreements
- Other types of professional assistance for authors and performers in licensing and contract-making.

#### **▪ THE USE OF MODEL CONTRACTS IN THE INDUSTRY**

Different kinds of industry organizations may offer models of ready-made contracts that can be used by private parties as examples when transferring rights. The representatives of different stakeholders in the field of literature (authors' organizations and publishers) were interviewed during the piloting and asked whether or not model contracts are utilized currently in the markets for rights in Finland<sup>28</sup>.

According to industry representatives, there used to be model contracts that were negotiated between the publishers' organizations and the authors' organizations to form a basis for individual publishing contracts. Currently no collectively negotiated model contracts are being used; rather there are examples of balanced publishing contracts available. The Finnish authors' organizations and the Book Publishers Association have also drafted a list of good practices and essential conditions<sup>29</sup> for publishing agreements in order to enhance the mutual interaction and balance between individual authors and publishers.

According to authors' organizations, the reason for not having any generally binding models for publishing contracts is that publishers are not willing to use them anymore. Some publishers have also rules of forbidding the authors from showing their publishing agreements to third parties. However,

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<sup>28</sup> The list of the consulted parties can be found from Appendix C of this report.

<sup>29</sup> "Suomen Kirjailijaliitto ja Suomen Kustannusyhdystys ovat laatineet yhdessä hyvät käytännöt ja muistilistan, joiden tarkoituksena on edistää sujuvaa kanssakäymistä ja reilua peliä kirjailijan ja kustantajan kustannussopimusuhteissa." See: <http://www.kustantajat.fi/attachements/2013-06-17T13-51-1515.pdf>

"Suomen tiedekustantajien liitto on laatinut jäsentensä käyttöön erityisesti tieteellisen julkaisutoimintaan soveltuvan yleisen sopimusmallin ja kustannussopimukset sekä artikkelille ja monografiatekstejä varten. Sopimusmallit ovat vapaasti muidenkin tiedekustantajien saatavana liiton kotisivuilta." See: <http://www.tiedekustantajat.fi/>

according to the Finnish Book Publishers Association, the reasons for not having any binding model contracts provided by the publishers' associations lay in the European competition law regime<sup>30</sup>.

However, even though no binding standards for publishing contracts exists at the moment, it is still common that the basic conditions included in model contracts negotiated collectively previously can still be found in publishing contracts.

#### ▪ THE USE OF FRAMEWORK AGREEMENTS

Framework agreements are agreements with concerning parties (government, right holders' or users' organizations) which set out terms and conditions under which specific actions (in the markets for rights) take place throughout the term of the agreement.

The Finnish book publishing industry and Finnish authors have not negotiated any framework agreements due to competition law issues. Previously, the Union of Finnish Writers had framework agreements between two larger Finnish publishing houses, WSOY and Otava, but these contracts are no longer effective. However, the Union of Finnish Writers has discussed the terms and conditions of publishing contracts generally with individual publishers.

#### ▪ DIFFERENT TYPES OF PROFESSIONAL ASSISTANCE FOR AUTHORS AND PERFORMERS IN LICENSING AND CONTRACT-MAKING

One of the core activities for all organizations representing the creators of Finnish literature is providing support and advisory services for their members. The associations offer writers and translators detailed advice and assistance in matters concerning for example publishing contracts and copyright issues. The associations do not litigate, but for example the Union of Finnish Writers has a lawyer who goes through publishing contracts of their members for free.<sup>31</sup>

Similarly to authors' organizations, the Finnish Book Publishers Association provides assistance to its members in matters concerning acquisition of rights and other contractual issues.<sup>32</sup>

However, the interviewees wanted to emphasize that although the organizations actively discuss the governing practices and monitor transfer of rights, a great number of publishing contracts are being made with no assistance from third parties.

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<sup>30</sup> The same applies to contracts made between publishers and users of the works: "Suomen Kustannusyhdistys ei voi EU:n kilpailulainsäädännön takia laatia kustannussopimusmallia, joka helpottaisi yhtenäisten käytäntöjen synnyttämistä sähkökirjojen lisensiointiin yleisille kirjastoille. Sen sijaan kustantajien asiakkaina yleiset kirjastot voivat esittää, millaisia kustannussopimusten lausekkeita sähkökirjojen lisensiointi edellyttää", see: Antikainen, Hannele (2011), Sähkökirjojen kirjastolisenssiselvitys. Next Media – a Tivit Programme, VTT. Available at: [http://virtual.vtt.fi/virtual/nextmedia/Deliverables-2011/D\\_1\\_1\\_1\\_3\\_Part1\\_sahkokirjojen\\_kirjastolisenssiselvitys\\_v\\_1\\_01.pdf](http://virtual.vtt.fi/virtual/nextmedia/Deliverables-2011/D_1_1_1_3_Part1_sahkokirjojen_kirjastolisenssiselvitys_v_1_01.pdf). Visited on 7.9.2014.

<sup>31</sup> The Union of Finnish Writers: <http://www.kirjailijaliitto.fi/in-english/>; Society of Swedish Authors in Finland (FSF): <http://www.forfattarna.fi/start/>; The Finnish Association of Non-fiction Writers: <http://www.suomentietokirjailijat.fi/en/>; The Finnish Playwrights and Screenwriters Guild: <http://www.sunklo.fi/index.php?lng=en>; The Finnish Comics Professionals: <http://www.sarjakuvantekijat.fi/en/>; The Finnish Association of Translators and Interpreters: <http://www.skdl.fi/in-english/>; The Association of Finnish Illustrators Kuvittajat: <http://kuvittajat.fi/?lang=en>; Grafia - Association of Visual Communication Designers in Finland: <http://www.grafia.fi/in-english/about-grafia/>. All visited on 31.7.2014.

<sup>32</sup> The Finnish Book Publishers Association: <http://www.kustantajat.fi/>.



#### **SECTION 4. USE OF STANDARDS OR SYMBOLS FOR THE IDENTIFICATION OF RIGHTS**

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Copyright is not subject to any formality, and this is why no standards or symbols for the identification of rights are required in Finland in order for copyright protection to apply. Hence, industry specific standards or symbols in the field of literature have not been examined in this study.

#### **SECTION 5. ORGANIZATIONS THAT FACILITATE DISTRIBUTION OF CREATIVE WORKS INTERNATIONALLY**

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FILI – Finnish Literature Exchange<sup>33</sup> is the main organization in Finland that facilitates distribution of creative works internationally. It is an expert and export organization dedicated to supporting the translation, printing and publication of Finnish literature and promoting the awareness of Finnish literature abroad. The core activities of FILI include awarding grants for promotional activities and the translation and printing of literature, participating in various literary events and international book fairs and acting as a connecting link for publishers in Finland and other countries. In addition to participating in various international projects, the association organizes seminars and other events for translators and international publishers and editors. The association administers a list of translators who work with the languages of Finland and offers useful information for translators just starting their career. FILI also produces materials about contemporary literature from Finland primarily for publishing professionals and maintains a translation database.

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<sup>33</sup> FILI – Finnish Literature Exchange: <http://www.finlit.fi/fili/en/>

## Conclusions

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

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#### **▪ THE MOST COMMONLY USED LICENSING MODELS IN THE BOOK INDUSTRY**

The description of the most commonly used licensing models in the Finnish book industry covered different kinds of licensing contracts negotiated and concluded between copyright owners and users without the intermediary of collective management organizations.

A publishing contract takes place when an author grants a publisher the exclusive right to reproduce and to publish a literary work as a printed version, a recorded book or a digital book in exchange for an appropriate compensation. Typically, the author provides the publisher a manuscript which is then edited and transformed into a final product.

Translations of a work protected by copyright require the permission of the copyright owner. Translation rights for a work are often sold or licensed at international book fairs either by the publisher on the basis of the publishing contract or by a literary agent on the basis of an agency agreement.

In some cases, licenses for other kinds of adaptations of a book, such as dramatizations and movie projects, can be an important additional source of income for individual authors. Licenses for using a literary work as a part of a musical work are also granted in music publishing contracts. In Finland, rights to license adaptation rights of a book are generally not transferred in publishing contracts.

Furthermore, the transfer of rights may be governed by the terms and conditions of a freelance contract, for instance when the author writes texts for newspapers and magazines.

In cases of direct sales of electronic books, end-users are typically required to accept specified terms of an End-User License Agreement (EULA) before downloading or streaming a book. EULAs are non-exclusive licensing contracts establishing the purchaser the right to use the electronic book. EULAs define a limited set of uses that are allowed under the license and are often supported by digital rights management techniques. E-books are licensed also for public lending, and a number of different pricing models for e-book licenses granted for organizations exist. Usually, end-users either stream the content or download a DRM-protected copy of the book.

According to the Finnish Book Publishers Association, both strong and weak DRM technologies have been used as a protection measure for licensed e-books. However, currently the industry organizations have recommended that no DRM technologies would be used in order to enhance the user experience as well as to promote the development of a well-functioning legal market for e-books in Finland. Instead, the industry has been encouraged to use digital watermarks as the main rights management technique for e-book licensing. Furthermore, the access to electronic content licensed to organizations is often protected with a password or a pin code, or is limited to certain IP addresses.

## ▪ PUBLIC MEASURES TO FACILITATE THE FUNCTIONING OF THE MARKETS FOR RIGHTS

The description of the public measures to facilitate the functioning of the markets for rights concerning literary works included information concerning extended collective licenses, statutory licenses and limitations of rights as well as provisions on contractual arrangements.

The system of extended collective licensing is based on provisions in the Finnish Copyright Act which extend the reach of a collective agreement on the use of works to cover also unrepresented right holders. Unrepresented right holders are entitled to individual remuneration for the agreements concluded between CMOs and users of copyrighted works. Extended collective licensing is used only in cases where the amount of works used or single acts of use is high, or where only a small portion of works from an extensive repertoire is incidentally used.

Under a statutory license, copyrighted works can be used for certain purposes without the right holder's permission; however, the right holder is entitled to compensation. The Finnish Copyright Act includes three different types of statutory licenses:

- Availability of works to persons with disabilities
- Literary or artistic works of compilation used in education
- Distribution of copies of a work: Public lending.

Conversely, limitations of rights listed in the Copyright Act concern situations where the use of a work requires neither the right holder's permission nor compensation for using the work. An exhaustive list of limitations to the exclusive rights conferred to authors can be found from Chapter 2 of the Copyright Act.

The Finnish Copyright Act includes also general provisions governing transfer of rights. For instance, according to the Copyright Act, copyright may be transferred entirely or partially, and unless otherwise agreed, the person to whom the copyright is transferred has no right to alter to the work or transfer the copyright to third parties.

Furthermore, there are also more specific provisions concerning publishing contracts, some of which aim at protecting the author in cases where the publisher puts no effort on making the work available to the public. For instance, unless otherwise agreed, the publisher is obliged to publish the work within a reasonable period of time, take care of its distribution in the usual manner, and follow up the publishing to the extent determined by marketing conditions and other circumstances. It is common, however, that situations governed by the provisions are covered in the terms and conditions of publishing contracts, and therefore the provisions are rarely applied.

The adjustment of an unreasonable condition in an agreement concerning the transfer of copyright is governed by the provisions of the Contracts Act, according to which a contract term may be adjusted or set aside, if it is unfair or its application would lead to an unfair result. When determining the fairness of a term, at least the entire contents of the contract and the positions of the parties as well as the circumstances prevailing at and after the conclusion of the contracts shall be taken into consideration.

In conclusion, it seems that in Finland, there are a number of provisions intended to support the functioning of the markets for rights. Nonetheless, since some of the provisions governing the transfer of rights may be overridden by contract, the parties have also developed practices of their own, and hence some of the provisions are rarely applied.

#### ▪ **MEASURES TAKEN BY THE RIGHT HOLDERS' AND USERS' ORGANIZATIONS TO FACILITATE THE FUNCTIONING OF THE MARKETS FOR RIGHTS**

Information concerning different kinds of measures taken by right holders' and users' organizations to facilitate the functioning of the markets for rights in the field of literature was gathered by interviewing the representatives of Finnish creators and publishers.

According to industry representatives, there are no collectively negotiated compulsory model contracts or framework agreements being used at the moment. Instead, there are examples of balanced publishing contracts available. The Finnish authors' organizations and the Book Publishers Association have also drafted a list of good practices and essential conditions for publishing agreements in order to enhance the mutual interaction and balance between individual authors and publishers.

Furthermore, organizations representing the Finnish authors and translators of literature as well as Finnish publishers provide support and advisory services for their members. Legal advice and assistance is offered in matters concerning for example publishing contracts and copyright issues. However, these the organizations do not offer court assistance.

It seems that the Finnish right holders' and users' organizations in the field of literature have taken concrete measures in order to enhance the functioning of markets for rights. Nonetheless, although the organizations actively discuss the governing practices and monitor transfer of rights, a great number of publishing contracts are being made with no assistance of third parties.

#### ▪ **ORGANIZATIONS THAT FACILITATE DISTRIBUTION OF CREATIVE WORKS INTERNATIONALLY**

FILI – Finnish Literature Exchange is an expert and export organization dedicated to supporting the translation, printing and publication of Finnish literature and promoting the awareness of Finnish literature abroad. For example, the association awards grants, participates in various events and international book fairs and acts as a connecting link for publishers in Finland and other countries. The association also administers a list of translators who work with the languages of Finland and maintains a translation database.

#### ▪ **INDIVIDUAL EXERCISE OF RIGHTS – GENERAL REMARKS**

The report has shown that there are a number of elements in the Finnish copyright system which have been designed to enhance individual exercise of rights. The exercise of their rights by stakeholders in the field of book publishing in Finland globally is facilitated by the system of extended collective licenses and statutory licenses, as well as some of the limitations to copyright relevant in the field of literature. The Finnish Copyright Act also includes general provisions governing the transfer of rights that facilitates balanced contract-making. There are no collectively negotiated model contracts or framework agreements in the industry, as these could be against competition law.

The report also reviewed the most commonly used licensing contracts in the industry – publishing and translation contracts, as well as, in some cases, contracts concerning the adaptation of a work. In addition to traditional publishing activities, digital distribution of literature is emerging, and the book industry has tried to adapt their operations and ways of managing rights to changes in consumer demand. The Finnish book industry has also shown positive development in international trade, which indicates that the operations of the Finnish Literature Exchange have had a positive effect on the international distribution of Finnish literature.

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

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### **▪ LIMITATIONS**

Information was sufficiently available in order to present a broad overview of individual exercise of rights in the Finnish book publishing industry. More detailed data might, however, be difficult to obtain. In addition, information might not be as easily available in other industries.

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

The data should offer a thorough but focused picture of the industry in question. In the case of Finland, data on book publishing industry was relatively easily available. This might, however, not be the case with other industries.

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

## Appendices

### A. DESCRIPTION SHEET

Description sheet as presented in the Methodology Handbook, version 20.12.2013.

Description sheet 11. Individual exercise of rights		
<p>Description of individual contract-making and licensing:</p> <ul style="list-style-type: none"> <li>- The most commonly used licensing models in different industries</li> <li>- The extent of using DRM technologies for managing the rights</li> </ul> <p>Description of the public measures to facilitate the functioning of the markets for rights; Consider for example:</p> <ul style="list-style-type: none"> <li>- Compulsory, statutory and extended collective licenses</li> <li>- Limitations of rights</li> <li>- Provisions on contractual arrangement in legislation; consider for example the specific legal provisions concerning rights to works created within an employment relationship and corrective measures and remedy mechanisms in favor of weaker parties</li> <li>- Solutions provided by the competition law regime</li> <li>- Solutions provided by the consumer protection regime</li> </ul> <p>Description of the measures taken by the right holders' and users' organizations (including trade-unions, professional associations or guilds) to facilitate the functioning of the markets for rights; Consider for example:</p> <ul style="list-style-type: none"> <li>- Model contracts</li> <li>- Framework agreements</li> <li>- Other types of professional assistance for authors and performers in licensing and contract-making</li> </ul> <p>Description of the use of standards or symbols for identification of rights.</p> <p>Description of the organizations and other arrangements that facilitate distribution of creative works internationally.</p> <p>Description of the availability of other arrangements and services facilitating licensing based on other models than collective management (for instance pooling, brokering and open licensing)</p>		
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. Parts of the data can focus on different industries or categories of subject matter.	
Definitions	<i>Statutory (or compulsory) license</i>	<i>Rule which, under certain conditions, compels a copyright holder to grant a license (but allows him or her to negotiate the fee)</i>
	<i>Model contracts</i>	<i>Models of ready-made contracts that can be used by private parties as examples</i>
	<i>Framework agreements</i>	<i>Agreements with concerning parties (government, right holders' or users' organizations), which set out terms and conditions under which specific actions (in the markets for rights) concur throughout the term of the agreement.</i>
	<i>Pooling</i>	<i>Voluntary collaborative licensing model using aggregated resources or property and subjecting them as a common pool for the purposes of management of rights.</i>
	<i>Brokering</i>	<i>The use of intermediary functions or agents helping to reach an agreement</i>
	<i>Open license</i>	<i>License that with few or no restrictions grants permission to access to content (any kind of artistic and literary works) and provides the</i>

		<i>possibility to modify and redistribute it as long as attribution is given to the authors.</i>
Limitations of the indicator	The results will not tell about the efficiency of the measures taken.	

## ***B. INFORMATION SOURCES***

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### **International:**

- Rüdiger Wischenbart: IPA Global Publishing Statistics. Available at: [http://www.internationalpublishers.org/images/stories/MembersOnly/STATS/2012/IPA\\_Global\\_Publishing\\_Statistics\\_2.pdf](http://www.internationalpublishers.org/images/stories/MembersOnly/STATS/2012/IPA_Global_Publishing_Statistics_2.pdf)

### **Finland:**

- Anna Vuopala, 2013: Extended Collective Licensing – A solution for facilitating licensing of works through Europeana, including orphans? Available at: [http://www.copyrightsociety.fi/ci/Extended\\_Collective\\_Licensing.pdf](http://www.copyrightsociety.fi/ci/Extended_Collective_Licensing.pdf).
- FILI – Finnish Literature Exchange: <http://www.finlit.fi/fili/en/>
  - o FILI’s guide to new translators: <http://www.finlit.fi/fili/en/translators/filis-guide-for-new-translators/>
- Grafia - Association of Visual Communication Designers in Finland: <http://www.grafia.fi/in-english/about-grafia/>
- Hannele Antikainen, 2011: Sähkökirjojen kirjastolisenssiselvitys. Next Media – a Tivit Programme, VTT. Available at: [http://virtual.vtt.fi/virtual/nextmedia/Deliverables-2011/D\\_1\\_1\\_1\\_3\\_Part1\\_sahkokirjojen\\_kirjastolisenssiselvitys\\_v\\_1\\_01.pdf](http://virtual.vtt.fi/virtual/nextmedia/Deliverables-2011/D_1_1_1_3_Part1_sahkokirjojen_kirjastolisenssiselvitys_v_1_01.pdf).
- Kristiina Harenko, Valteri Niiranen and Pekka Tarkela, 2006: Tekijänoikeus. Kommentaari ja käsikirja. WSOY pro Helsinki 2006.
- Otava: Otavalla käytössä sähkökirjojen vesileimaus, 23.10.2013: <http://www.otava.fi/medialle/uutiset/2013/otavalla-kaytossa-sahkokirjojen-vesileimaus/>
- Society of Swedish Authors in Finland (FSF): <http://www.forfattarna.fi/start/>
- Suuri Suomalainen Kirjakerho: <http://www.sskk.fi/apuajaohjeita/sahkokirja>
- Sähkökirja.fi, Sähkökirjan julkaisumuodot: [http://sahkokirja.fi/?page\\_id=46](http://sahkokirja.fi/?page_id=46)
- Tammi: Sähkökirjat hyllyyn helpommin - Tammi ja WSOY suojaavat sähkökirjansa jatkossa vesileiman ja sosiaalisen suojan yhdistelmällä, 14.10.2013: <http://www.tammi.fi/web/kyselylinkkeja/uutiset/-/news/16460481/>
- The Association of Finnish Illustrators Kuvittajat: <http://kuvittajat.fi/?lang=en>
- The Finnish Association of Non-fiction Writers: <http://www.suomentietokirjailijat.fi/en/>
  - o Edunvalvonta, Käännösoikeudet: <http://www.suomentietokirjailijat.fi/edunvalvonta/kustannussopimus/kustannussopimusmalli/kaannosoikeudet/>
- The Finnish Association of Translators and Interpreters: <http://www.sktl.fi/in-english/>
- The Finnish Comics Professionals: <http://www.sarjakuvantekijat.fi/en/>
- The Finnish Playwrights and Screenwriters Guild: <http://www.sunklo.fi/index.php?lng=en>
- The Ministry of Education and Culture, Tekijänoikeus, Oikeuksien hallinnointi ja hankinta, Sopimuslisenssi: [http://www.minedu.fi/OPM/Tekijaenoikeus/oikeuksien\\_hallinnointi\\_ja\\_hankinta/sopimuslisenssit/?lang=fi](http://www.minedu.fi/OPM/Tekijaenoikeus/oikeuksien_hallinnointi_ja_hankinta/sopimuslisenssit/?lang=fi)

- The Union of Finnish Writers: <http://www.kirjailijaliitto.fi/in-english/>
  - o Kustannussopimus: <http://www.kirjailijaliitto.fi/kirjailijan-tyo/kustannussopimus/>
- The Finnish Book Publishers Association: <http://www.kustantajat.fi/>
- WSOY: Sähkökirjat hyllyyn helpommin - Tammi ja WSOY suojaavat sähkökirjansa jatkossa vesileiman ja sosiaalisen suojan yhdistelmällä, 14.10.2013: <http://www.wsoy.fi/ajankohtaista/-/news/16460498>

### **C. CONSULTED PARTIES**

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- Sakari Laiho, Director, The Finnish Book Publishers Association (Interviewed on 08.04.2014)
- Suvi Oinonen, Executive director and Tuula-Liina Varis, Chairman, The Union of Finnish Writers (Interviewed on 09.04.2014)

*Model contracts were discussed during a focus group with authors' organizations which was organized on 06.06.2014 as a part of the piloting of Methodology card 15 (on the efficiency of copyright as an incentive to create and invest in creative works), 18 (on the transaction costs in transfer and licensing of rights), 19 (on the terms for transfer and licensing of rights and 22 (on the analysis of stakeholders' opinions). The pilot reports on these studies include description of the way this focus group was organized. The focus group included the following interviewees:*

Karola Baran, Executive director, The Finnish Association of Translators and Interpreters  
 Merete Jensen, Executive director, Finlands Svenska författareförening  
 Sonia Meltti, In-house counsel, The Union of Finnish Writers  
 Suvi Oinonen, Executive director, The Union of Finnish Writers  
 Jukka-Pekka Pietiäinen, Executive director, The Finnish Association of Non-Fiction Writers  
 Kalervo Pulkkinen, Secretary, The Finnish Comics Professionals.





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

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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>