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# Evidence for the Future

A REVIEW OF  
THE FINNISH COPYRIGHT SYSTEM

Jukka Kortelainen

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**Cupore webpublications 48**

Kulttuuripolitiikan tutkimuskeskus Cupore

Center for Cultural Policy Research Cupore

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# Foreword

Since the beginning of the twenty-first century copyright and its operating environment have become increasingly complex. Simultaneously, copyright has turned into a burning issue in politics and among the public at large. The great economic significance of the copyright system is now broadly recognized. Copyright constitutes the foundation on which creative work and its economy are built.

The idea for drafting an explicit Finnish copyright policy crystallized during the years 2000–2005 when the Finnish Copyright Act was being amended. As a first step, the memorandum “Guidelines for Copyright” was published in the spring of 2007. The Government’s “Resolution for a Strategy Concerning Intellectual Property Rights” (also called “IPR Strategy of Finland”), adopted in 2009, presented a set of recommended measures concerning intellectual property rights, including copyright, further strengthening the strategic approach to intellectual property rights.

Each amendment of the Copyright Act results from policy decisions. In Finland, improving copyright legislation has been a continuous process. Reviewing the legislation has become necessary as a result of multiple factors, such as technological developments and the activities of the European Union. The processes for developing copyright legislation have evolved from traditional committee work towards a more broad-based dialogue in the preparatory phase.

At the request of the Finnish Ministry of Education and Culture, a methodology framework for assessing the operation of copyright systems has been developed at the Centre for Cultural Policy Research (Cupore). The first implementation of the methodology resulted in the present Review of the Finnish Copyright System, which can be used as a baseline in relation to which the further development of the system can be observed. The intention is to consistently monitor the Finnish copyright system in the future.

The second part of the review examines the governance of the copyright system, for example its efficiency and transparency. At the end of the review, the Finnish copyright system is assessed from the viewpoint of compliance with the principles of good governance.

Overall, the assessment of the operation of the Finnish copyright system aims at producing information and estimates on the basis of which the copyright system can be further improved and developed to better take into account multiple forms of social development.

Jorma Waldén

Director

Finnish Ministry of Education and Culture

# Executive summary

The copyright system is a complex balance of sometimes opposed, sometimes converging interests, including many actors, policies, processes and rules; its success in achieving its goals will depend on its capacity to respond to various challenges and adapt to the evolution of cultural and societal processes. In order to meet these challenges, a methodology framework for a systematic assessment of national copyright and related rights systems was published in 2016. This document assembles and analyzes the results of the pilot studies conducted in 2013–2015 to implement the methodology in Finland, with the purpose of offering a general review of the Finnish copyright system's operation and performance. Additionally, the same information is used to assess the governance of the Finnish copyright system by public authorities and to verify whether their organizational structure and actions comply with generally accepted principles of good governance.

The review starts with a section concerning the copyright environment, which briefly presents the society in which the Finnish copyright system is anchored, as well as the most important aspects of Finnish copyright industries and the Finnish markets for copyrighted products and services. The Finnish society has a high level of development of ICT, and culture is supported by public funding of more than 400 million euros per year. Core copyright industries constituted 4.14% of the Finnish GDP and 4.15% of total employment in 2015. Recent years have seen an increase in production in the industries of software, digital games and movies, and the whole sector is marked by a current shift from traditional publishing formats to digital distribution.

The second section of the review of the system's operation describes the constituting elements of the Finnish copyright system and assesses their functioning and performance. It first presents copyright-related laws, policies and strategies, the public bodies in charge of copyright policy and administration, as well as the evolution of Finnish copyright policy in the 2000s. Finnish copyright legislation has been highly influenced by international treaties and the directives of the European Union. Finnish copyright policy, primarily governed by the Ministry of Education and Culture, has been guided by the governments' key projects, strategies and programs in the 2000s along two points of view: the vision of Finland as an information society, and the vision of creative industries as a significant source of economic value creation through intellectual property rights. The assessment also considers whether the processes of formulating copyright legislation involve and welcome the input of stakeholders; comments from stakeholder groups and experts are invited at both the legislative drafting and the parliamentary phase. Moreover, impact assessment studies are generally but not systematically performed.



Regarding the management of rights, the review describes the functioning of collective management in Finland and assesses the organizational aspects and efficiency of collective management organizations. Collective management of rights in Finland is organized for the purpose of simplifying the licensing of rights and includes extended collective licenses and special remuneration and compensation schemes; in this system, collective management organizations hold a prominent role and seem to be managed with reasonable financial efficiency.

Concerning copyright enforcement, the public actors as well as non-governmental organizations involved in the protection of the rights are presented, the civil and criminal enforcement of copyright as well as alternative dispute resolution mechanisms are analyzed, and the efficiency of enforcement of copyright in general is examined. Overall, the recourses available in Finland in case of copyright infringement are numerous, generally affordable and accessible, and there does not seem to be significant obstacles to the use of sanctions and remedies in cases of copyright infringement.

Finally, concerning the dissemination of knowledge on the copyright system, this review indicates that the amount of copyright-related information available to the public is comprehensive. Professionals in creative industries are provided with copyright education as part of their vocational studies and through advisory services. Research on copyright-related issues is currently conducted extensively.

The third section of the review of the copyright system's operation focuses on the operational balance of the Finnish copyright system and aims to assess whether the system is fit for its purpose. First, the section discusses the capacity of the copyright system to encourage creation. Copyright can be deemed as an important source of revenue in the Finnish creative industries. However, the significance of economic incentives created by copyright should be studied further.

Next, the capacity of the system to ensure access to copyrighted works by all members of society and for the purpose of follow-on creation is studied by outlining the different public measures facilitating the access to copyrighted works, the regulatory frameworks, and the functioning of licensing in key areas. The Finnish copyright system includes a wide spectrum of provisions and arrangements that aim at promoting access to copyrighted works by the public and special interest groups. However, access to copyrighted works through libraries, archives and museums, as well as in education or for follow-on creation each face challenges, in particular concerning new practices made possible by the development of digital technology and the online environment. In these areas the scope and rules of copyright protection should be clarified and licensing agreements should be updated.

The review also observes that, in the last decade, copyright infringement in physical form has been very limited, while copyright infringement in digital form has been generally widespread but decreasing. The legal markets are sufficiently developed to compete with unauthorized use, and enforcement activities by right holders have

increased. The principle of copyright and its rules do not seem to be generally challenged, although more research is needed to better understand the opinions of citizens concerning copyright rules and copyright infringement.

Finally, a separate analysis focuses on the book publishing industry; it discusses the market and its actors, the significance of copyright to right holders, the exercise of rights and the licensing markets, and right holders' opinions on the copyright system. Even though the scale of publishing activities in Finland is relatively small, sales of Finnish books in foreign markets have increased significantly during the last years, and the Finnish book publishing industry is strongly organized. Right holders in the field consider the economic incentive provided by copyright important, deem current copyright policies coherent with the values and principles in the society, and estimate that the copyright system is working properly even though the operation of the markets could be improved.

The review of the system's operation concludes with a summary of the findings in the form of a compact diagnostic of the Finnish copyright system. Altogether, the review indicates that the Finnish copyright system is functioning adequately at the moment, even though some areas need adjustments and improvements. Based on the data, a set of fact-based and practical recommendations for improving the operation of the system is proposed.

Part II of this document discusses whether public actors in the field of copyright are organized and fulfill their duties in accordance with the good governance principles of transparency, participation, accountability, coherence and consistency, responsiveness, effectiveness and efficiency, equity and inclusiveness, and separation of powers. There is not at this stage sufficient information to make a thorough and complete assessment, but the review finds that the Finnish copyright system is rather transparent; information on copyright rules and the system is available, and laws and policies are prepared in a transparent manner. The system allows for participation of stakeholders in its development, depending partly on the stakeholders' capacity to organize into interests groups. It is responsive in the sense that public authorities regularly assess the need for changes to the copyright system, but whether administrative proceedings concerning copyright are conducted without unreasonable delay still needs to be assessed. It can be considered as inclusive since it contributes to the possibilities of all members of society to acquire a knowledge of copyright sufficient to participate in the system.

# Introduction

A national copyright system is a complex balance of sometimes opposed, sometimes converging interests, including many actors, policies, processes and rules; Figure 1 illustrates the landscape of copyright, including some of the most important actors, areas, and aspects of society that affect or are affected by the copyright system. The success of a national copyright system in achieving its goals will depend on its capacity to respond to various challenges and adapt to the evolution of cultural and societal processes. In order to meet these challenges, the development of the copyright system needs a solid and reliable information base that is collected in an objective manner and on a regular basis.

For this purpose, a methodology framework for a systematic assessment of national copyright and related rights systems was commissioned by the Finnish Ministry of Education and Culture and created at the Centre for Cultural Policy Research (Cupore) between 2009 and 2016.<sup>1 a</sup> The methodology framework is composed of a set of guidelines for the assessment of the operation of national copyright systems in order to support the development of copyright and related rights policies and strategies. The assessment is determined through 37 indicators, including 15 description sheets and 22 methodology cards, divided under three pillars. 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. This work has been done to initiate international processes aiming at the development of national copyright systems.

The methodology framework was tested in Finland during a pilot phase carried out in 2013–2015. This resulted in the publication of 37 reports,<sup>2</sup> which put into practice the indicators specified in the methodology framework. The framework also resulted in a publication that explores different ways of assessing governance in national copyright and related rights systems.<sup>b</sup>

The purpose of this document is to assemble and analyze the results of the earlier pilot studies implementing the methodology framework for assessing the operation of copyright and related rights systems. The goal is to offer a general review of the Finnish copyright system's operation, performance and governance, present it in a compact form, and conclude with a list of recommendations for improvements. As an

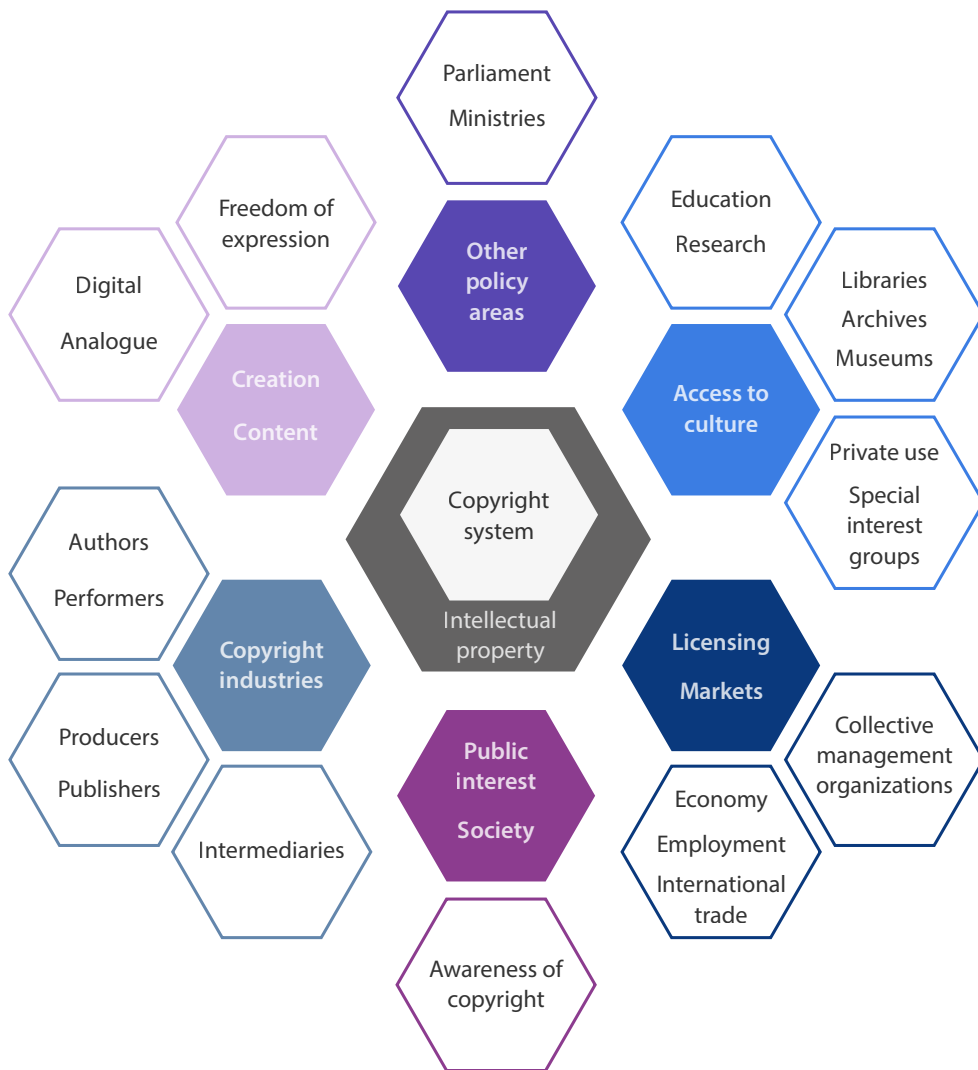
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<sup>a</sup> In this document, clarifications are presented in footnotes indicated by letters, while sources are listed in endnotes introduced by numerals.

<sup>b</sup> Tiina Kautio & Nathalie Lefever 2017. *Assessing Governance in the Context of Copyright Systems – Second Edition*. Cupore web-publications 45. Available at <https://www.cupore.fi/en/publications/cupore-s-publications/assessing-governance-in-the-context-of-copyright-systems>.

independent research organization operating at arm’s length from the Finnish Ministry of Education and Culture, Cupore is capable of analyzing the system’s performance in an impartial manner.

The document is divided into two parts. Part I compiles the information collected in the pilot reports and assembles them into a global and coherent analysis of the Finnish copyright system. Part II uses the same information to assess the governance of the Finnish copyright system. The analysis is designed to offer a diagnostic of the Finnish copyright system that will shed light on this complex set of inter-connected elements and actors, evaluate its internal balance, and provide a factual basis to inform future public policies in the field. It also tells what information is available at the moment and what is not.



**Figure 1.** Components of the landscape of copyright.

# PART I

## OPERATION OF THE COPYRIGHT SYSTEM

The purpose of this part of the document is to compile the information collected during the pilot phase of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, update it whenever possible, and analyze it as a whole in order to offer a structured description and assessment of the Finnish copyright system.

This part is divided into three sections corresponding to the three pillars of the methodology framework:

- Section 1, Copyright environment, briefly presents the context in which the Finnish copyright system operates and the markets for copyrighted products and services.
- Section 2, Functioning and performance of the copyright system, presents the functioning of different elements of the system.

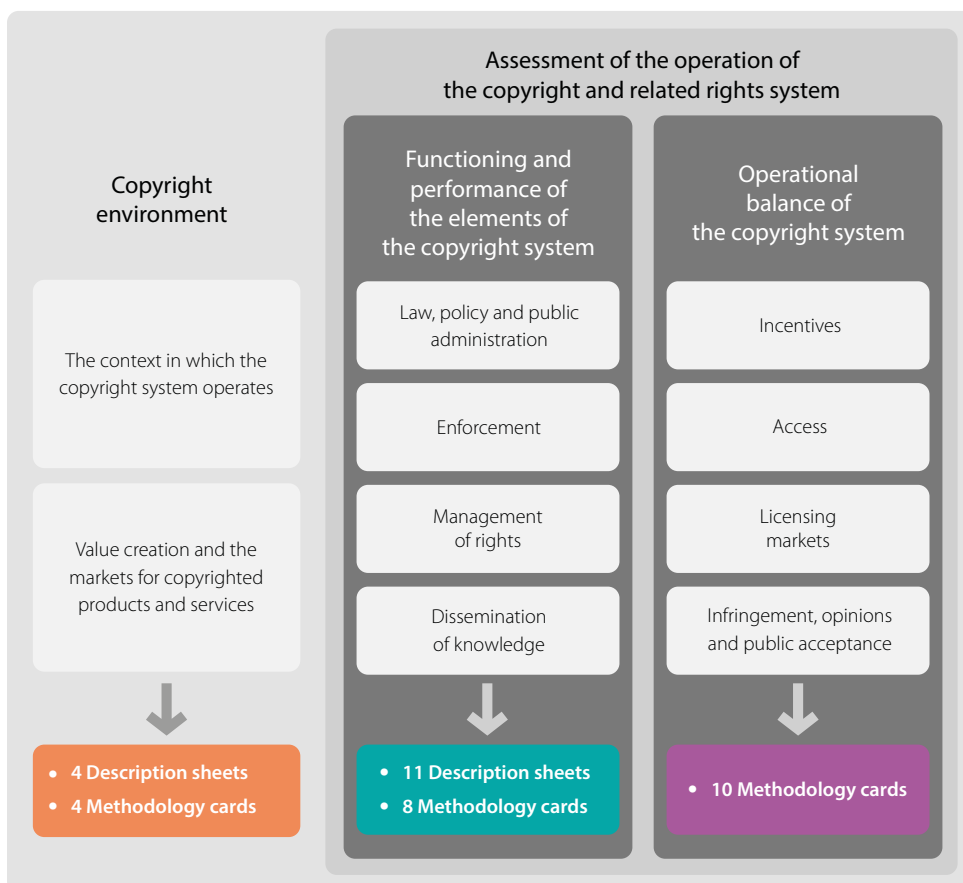


Figure 2. The different parts of the methodology framework.

- Section 3, Operational balance of the copyright system, assesses the functioning of the Finnish copyright system as a whole and its capacity in delivering expected.

A conclusion proposes a general diagnostic of the system and suggestions for its improvement based on the findings of the analysis.

## Section 1.

# Copyright Environment

An analysis of the operation of the copyright system cannot be made without fully understanding its particularities and the forces that are driving its evolution. This section briefly describes the Finnish copyright system's environment, including its national and international contexts as well as the characteristics of the markets for copyrighted goods and services.

### 1. The context in which the copyright system operates<sup>3</sup>

Finland, with a population of 5.5 million people,<sup>4</sup> is a classical parliamentary democracy with a multiparty political system. The Parliament enacts Finnish law, while general policy is decided by the Government, which is also responsible for administrative matters.<sup>5</sup>

Finland can be considered as a balanced and relatively small market economy. In 2016, the gross domestic product of Finland at market prices was 39,236 euros per capita,<sup>6</sup> which places Finland at the 16th position in a ranking of countries according to their estimated GDP per capita by the OECD.<sup>7</sup> The country is part of the European Union's open market and uses the euro, but remains relatively isolated geographically, which influences its international exchanges. Culture in Finland is supported by public funding for a total of more than 400 million euros per year.<sup>8</sup>

The country has three national languages: around 88% of inhabitants in Finland speak Finnish as their native language, 5.3% Swedish, and 0.04% Sámi.<sup>9</sup> All the inhabitants of Finland have the right to free basic education, and the educational system covers all levels from pre-primary education to university degrees. As a result, the population of Finland is generally well educated. The country consistently scores high in human and social welfare indicators.<sup>10</sup>

Finland has been ranked high in international comparisons concerning the level of development of information and communication technologies. The majority of Finnish households have at least one TV set (96% in 2017),<sup>11</sup> the vast majority of the population listens to the radio weekly (93% in 2017),<sup>12</sup> most households have access

to the internet (92% in 2016),<sup>13</sup> and the internet is used daily in almost all Finnish businesses. There exists a comprehensive network of public or private companies and associations and other organizations that aim at supporting the development of digital business models in Finland.<sup>14</sup>

## 2. Value creation and markets for copyrighted products and services<sup>15</sup>

In 2015, copyright-based industries<sup>a</sup> constituted 5.38% of the Finnish GDP with a total amount of 11.27 billion euros.<sup>b</sup> <sup>16</sup> The economic contribution of core copyright industries<sup>c</sup> has experienced a moderate growth between the years 2000–2015, increasing from 3.28% to 4.14% of the Finnish GDP. In 2015, the major part of the economic contribution was constituted by the industries of software and databases (68%), press and literature (17%), and advertising (6%).<sup>d</sup> <sup>17</sup> The share of core copyright industries of the total employed Finnish workforce was 4.15% in 2015 and had remained relatively stable since 2003. As regards the core copyright industries' contribution to foreign trade, the value of both exports and imports has increased over the time period of 2003–2015. The trade balance of core copyright industries has been in surplus since 2008, mostly due to computer services. The capital value of the Finnish copyright assets<sup>e</sup> was estimated to amount to 16.4 billion euros<sup>18</sup> in 2008.<sup>19</sup>

The figures concerning domestic production and import of newspapers and magazines, books, phonograms, films, broadcasts, games and software in Finland show that there is a wide offering of copyrighted works available on the Finnish markets. The distribution between domestically produced and imported titles available in the markets varies greatly between the industries. Also, several industries are undergoing a transformation, which is reflected in the shift from traditional publishing formats to the supply of works on new online platforms. Sales based on digital distribution have been increasing rapidly in the creative industries.<sup>20</sup>

When looking at the domestic production of copyrighted works in the time period of 2006–2015, the most positive development concerns the industries of software

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<sup>a</sup> Copyright-based industries are industries in which copyright plays a significant role. They can be divided into four groups: the core copyright industries, the interdependent copyright industries, the partial copyright industries and the non-dedicated support industries. Source: Grönlund, M., Ranti, T. Pönni, V., Sinervo, P. (2017).

<sup>b</sup> The contribution of copyright to national economy can also be evaluated through examining the cultural industries: in 2015, the contribution of cultural industries was estimated at 2.9% of the Finnish GDP. Source: Statistics Finland, available in English at [http://www.stat.fi/til/klts/2014/klts\\_2014\\_2016-10-21\\_tie\\_001\\_en.html](http://www.stat.fi/til/klts/2014/klts_2014_2016-10-21_tie_001_en.html).

<sup>c</sup> "The core copyright industries are industries which are wholly engaged in the creation, production and manufacture, performance, broadcasting, communication and exhibition, dissemination and sale of works and other protected subject matter. The core copyright industries as a category could not exist, or would be significantly different, without copyright in works or other subject matter. These industries include, for example, press and literature, motion pictures, recorded music, music publishing, radio and television broadcasting, and software." Source: Grönlund, M., Ranti, T. Pönni, V., Sinervo, P. (2017).

<sup>d</sup> The figures are rounded to the nearest percent.

<sup>e</sup> The study covered eight core copyright industries defined by WIPO. The figures were based on data from 2008. The calculation was based on three variables: the earnings to be discounted, the discount rate, and the time span. The copyright revenue streams of the copyright industries were used to determine the levels of earnings. The data on copyright revenue streams were based on data collected in studies concerning direct copyright revenue streams in creative industries in Finland, see Koskinen-Olsson (2010), Koskinen-Olsson & Muikku (2014).

and digital games.<sup>21</sup> The movie industry has also shown some positive development, which is reflected in the figures concerning domestic feature films produced in Finland.<sup>22</sup> Domestic production of nationwide public service radio and television broadcasts has remained stable over the period, while the amount of private nationwide TV and radio channels available has increased.<sup>23</sup> In the music industry, phonogram sales have decreased and streaming and subscription services are thriving.<sup>24</sup> The domestic production of newspapers, magazines and books has declined, but sales based on digital distribution have been increasing in the field of press and literature.<sup>25 26</sup>

The figures show that imports and exports of books, digital games and software were high during the time period of 2006–2013. In the film industry, imports have been much higher than exports, which is explained by the small level of production and potential markets for movies in Finnish. The imports and exports of newspapers and periodicals have decreased significantly in the time period of 2006–2015.<sup>27</sup> The share of the value of foreign phonogram sales in the domestic markets in 2016 was 42%,<sup>a</sup> and the value of Finnish music sales abroad have been increasing since 2007.<sup>28 29</sup>

## IN SHORT

- The Finnish copyright system is anchored in a society characterized by
  - a parliamentary democracy with a multiparty system
  - a balanced and relatively small market economy
  - three national languages (Finnish 88%, Swedish 5.3% and Sámi 0.04%)
  - a generally well educated population
  - a high level of development of information and communication technologies
  - more than 400 million euros per year of public funding supporting culture.
- Core copyright industries
  - constituted 4.14% of the Finnish GDP in 2015 (8.67 billion euros) with the industries of software and databases (68%), press and literature (17%) and advertising (6%) representing the major part of the total
  - employed 4.15% of the entire labor force in 2015
  - present a trade balance in surplus since 2008
  - can be estimated to have covered copyright assets amounting to a capital value of 16.4 billion euros in 2008.
- The Finnish markets for copyrighted products and services present
  - a wide offering on the Finnish markets
  - an increase in production in the industries of software, digital games and movies (in 2006–2015)
  - a current shift from traditional publishing formats to digital distribution.

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<sup>a</sup> Source: Statistics Finland, Cultural Statistics, available at [http://pxhopea2.stat.fi/sahkoiset\\_julkaisut/kulttuuritilasto/html/suom0004.htm](http://pxhopea2.stat.fi/sahkoiset_julkaisut/kulttuuritilasto/html/suom0004.htm).



## Section 2.

# Functioning and performance of the elements of the copyright system

In order to understand the operation of the copyright system and to diagnose possible needs for improvement, it is necessary to describe its individual constituting elements and assess their functioning and performance separately. The copyright system's core elements presented here are grouped under four areas: law, policy and public administration; management of rights; enforcement; and dissemination of knowledge.

### 1. Law, policy and public administration

Copyright-related laws, policies and strategies constitute one of the elements on which copyright systems are founded, and their operation should be continuously monitored in order to develop them and keep them up to date with the changes in the national and international environments. A well-organized public administration of copyright is essential to the efficiency of laws and policies. This area describes and assesses the operation of Finnish copyright legislation, policy and administration.

#### 1.1. Copyright law<sup>30</sup>

The Finnish copyright legislation comprises the Copyright Act (404/1961) and related sections in the Criminal Code, which are based on the Constitution of Finland (731/1999).

Finnish copyright legislation is highly influenced by copyright-related international treaties and the directives of the European Union. Finland has adhered to the Berne Convention and its revisions and amendments, the Universal Copyright Convention, the Rome Convention, the WIPO Copyright Treaty, The WIPO Performances and Phonograms Treaty, and the WTO/TRIPS Agreement. Finland has also signed the final acts of the Beijing Treaty on Audiovisual Performance and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or otherwise Otherwise Print Disabled. The ratification of the Beijing Treaty has not been a priority of the EU in recent years, but Finnish legislation is in line with the treaty.

The European Union has produced several copyright-related directives in order to harmonize the legislation of member countries. As a result, the Finnish copyright legislation is very consistent with other European copyright legislations. As a member of the European Union, Finland is also a party to several free trade agreements concluded by the EU. These agreements include sections related to ensuring adequate and effective protection of intellectual property. Finland has also negotiated bilateral agreements that aim at reciprocal promotion of investments. In these agreements, intellectual property rights are considered as investments.

The Finnish Copyright Act (404/1961) has been prepared in co-operation with other Nordic Countries (Sweden, Norway, Denmark and Iceland), which explains the similarity of the legislations. The Finnish Copyright Act is interpreted mainly by the Finnish Supreme Court, but the opinions of the Copyright Council have also had influence on the case law (for more information on the Council, see Part I, Section 2, Chapter 3.1.1). The judgments of the Court of Justice of the European Union are binding on the interpretation of Finnish copyright law.

The Finnish Copyright Act grants copyright to a person who has created a work. Protection starts from the creation of the work and continues 70 years after the death of the author. In order to qualify as a protected work, the requirement of originality must be met. Copyright protects only the form of expression, not ideas, information or methods of operation. The Finnish Copyright Act provides the author with economic and moral rights. Economic rights consist in the right of making copies and the right of making available to the public. Moral rights are comprised of the right of paternity and the right of respect. The right of paternity provides that the author should be identified in a manner required by proper usage, and the right of respect states that others do not have permission to modify the work in a manner that violates its literary and artistic value or is prejudicial to the author's reputation.

The Copyright Act contains limitations and other arrangements aimed at promoting access to copyrighted works by the public. The first type of limitation allows for the use of a work without permission or compensation; the limitations include exhaustion of the right of distribution,<sup>a</sup> reproduction for private use, quotation, current topics and events in newspapers and periodicals, reproduction of works of art in pictorial form in connection with a text in a critical or scientific presentation and the use of copyright works in libraries, archives and museums, use of orphan works,<sup>b</sup> radio and television transmissions, temporary reproduction, use of computer programs and databases, use of copyrighted works for educational activities, scientific research and other similar limitations and reproduction in certain institutions. Another type of limitation is the mechanism of statutory licenses, which allows the use of works without permission but requires paying compensation to the right holders.<sup>c</sup> Finally, the system of extended collective licensing (ECL) allows collective management organizations to license the use of works of authors that are not represented by the organizations.<sup>d</sup>

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<sup>a</sup> The limitation provides that a copy of a work can be further distributed when it has been sold or permanently transferred with the consent of the author.

<sup>b</sup> The limitation is based on the Act on the Use of Orphan Works (763/2013). It provides that in certain circumstances, public libraries, museums, educational organizations, archives and public service television and radio companies are permitted to use works whose copyright holders cannot be identified.

<sup>c</sup> See the list of statutory licenses in Part I, Section 2, Chapter 2.1.

<sup>d</sup> See the list of extended collective licenses in Part I, Section 2, Chapter 2.1.

In addition to copyright protection, the Copyright Act provides other rights related to copyright (so-called neighboring rights). These include protection for audio and video recordings, photographs, performances, as well as databases and catalogues. The originality requirement does not apply to the subject matters protected by neighboring rights, but they have their own specific criteria for protection.

The Copyright Act includes provisions concerning the protection of technological measures and electronic rights management information. These provisions include a prohibition to circumvent a technological measure or remove or alter electronic rights management information contained in a copy of a work.

## **1.2. Copyright policy and administration**

In Finland, several public bodies are responsible for the administration of copyright and for the drafting of copyright policies that will determine the direction of copyright administration in the longer term.

### **1.2.1. Public bodies<sup>31</sup>**

The Parliament, comprised of 200 members, is the supreme decision-making authority in Finland. The work at the Parliament is organized in 15 special committees and the Grand Committee, which deals primarily with EU affairs. Copyright-related issues are usually dealt with in the Education and Culture Committee, but several other committees have also participated in the preparation of or commented on the legislative proposals. The Parliament supervises the Government and the operations of its authorities.

There are currently 12 ministries in Finland, which are responsible for drafting legislation within their field of competence. The Ministry of Education and Culture is responsible for preparing copyright-related legislative initiatives and ensuring the balanced operation of the system. The Ministry is also responsible for approving collective management organizations to operate as extended collective licensing organizations. It also participates in the development of European Union legislation, negotiations on international copyright treaties and other projects in the remit of the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), UNESCO, and the Council of Europe.

Copyright-related work takes place at the Division for Copyright Policy and Audio-visual Culture at the Department of Art and Cultural Policy. The preliminary preparation and legislative drafting at the Division is usually conducted in ad hoc working groups. The Advisory Board on Copyright Issues, comprised of 40 members, operates as an expert body supporting the work at the Ministry. The Advisory Board is comprised of representatives of ministries, experts and different stakeholder groups. The Ministry of Education and Culture has regular interactions especially with the Ministry of Justice, the Ministry of Transport and Communications, and the Ministry of Economic affairs and Employment regarding copyright issues.

The Copyright Council, established in 1986, is a body assisting the Ministry of Education and Culture in issues related to copyright. The main task of the Copyright Council is to give opinions on the application of copyright law. The Copyright Council is not a court of law, and its opinions are not legally binding, but they are considered authoritative in the interpretation of copyright law. The Council is appointed for a period of three years and is comprised of representatives of different stakeholder groups, as well as a chairman, a vice-chairman and at least one other member outside of these groups.

The regional level does not have a prominent role in the administration of copyright, but the Regional State Administrative Agencies (Aluehallintovirastot, AVI) are responsible for monitoring payments related to the resale of artistic works.<sup>a</sup> A regional government reform will take place in Finland in the coming years, which might have some effect on the government of copyright issues at the regional level.<sup>b</sup>

### **1.2.2. Copyright policy in the 2000s<sup>32</sup>**

National copyright policy is embodied in the actions of the Government and in particular those of the Ministry of Education and Culture, which prepares copyright legislation and policy. Long-term copyright policy is influenced by the priorities of the different governments and the ministers responsible for copyright issues, as well by the practical work conducted at the Ministry. Therefore, a comprehensive view of Finnish copyright policy would require an analysis of the concrete actions undertaken by different governments. Information on the general trends of copyright policy can however be acquired by analyzing the aims of the different governments stated in the policy documents. In Finland, government programs have been important in defining the general guidelines for the policies of different governments and therefore provide useful information sources for examining how copyright issues have been covered as part of broader national policy in the 2000s.

Generally, Finnish copyright policy in recent decades has been largely influenced by the flourishing of new technologies and the development of the internet, especially since the middle of the 1990s. These developments have dramatically changed copyright's operating environment and markets: citizens produce and come in contact with copyrighted content in their daily communication, copyright's relevancy in areas outside the traditional cultural sector has increased significantly and the markets are increasingly international. This has naturally increased the significance of copyright outside the traditional cultural policy.

In the Finnish government programs of the 2000s, copyright issues can be identified as part of two overlapping general visions: the vision of Finland as an in-

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<sup>a</sup> For this purpose, they can be requested to conduct audits by Kuvasto, the collective management organization representing visual artists.

<sup>b</sup> For more information, see <http://alueuudistus.fi/en/general-information-reform>.

formation society and the vision of creative industries as a significant source of economic value creation (through intellectual property rights). Both these visions were manifested at the beginning of the century in the establishment of the “Content Finland 2000–2004” project<sup>a</sup>, which aimed at developing the Finnish content and cultural industries into an internationally competitive branch alongside with the telecommunications industry. Copyright issues in the digital environment were among the project’s key priorities. Both visions remained strong when the Information Society Policy Program (2003–2007)<sup>b</sup> and the National Knowledge Society Strategy (2006)<sup>c</sup> were adopted. The strategy set a goal that in 2015 Finland would have a strong copyright industry as well as a comprehensive offer of commercial digital content.

A certain kind of turning point towards an emphasis on the second vision can be identified at the end of the first decade of the 2000s.<sup>d</sup> This was reflected in the formulation of the IPR strategy (2009)<sup>e</sup> as part of the Government’s innovation policy and growing discussion (in the related policy documents) about creative economy and intellectual property rights as tools for intangible value creation. This trend continued with the adoption of the Policy Program on Intangible Value Creation (2014)<sup>f</sup>, which comprised an updated IPR strategy, key policy measures promoting business and entrepreneurship in the creative industries, and an updated national design program. The approach of seeing copyright as a tool for intangible value creation as part of innovation policy is also present in the current government program stating that: *“Expertise is not being converted into innovations, innovations are not commercialized. We are losing our expertise-based competitive edge.”*<sup>g</sup> Based on this observation, the Minis-

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<sup>a</sup> See the Government Program of Prime Minister Lipponen’s Second Cabinet (1999–2003), available in Finnish at [http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat?p\\_p\\_id=56\\_INSTANCE\\_SSKDNE5ODInk&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_count=1&\\_56\\_INSTANCE\\_SSKDNE5ODInk\\_languageId=en\\_US](http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat?p_p_id=56_INSTANCE_SSKDNE5ODInk&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1&_56_INSTANCE_SSKDNE5ODInk_languageId=en_US) and the final report of the working group on cultural industries, suggesting the establishment of the project, available in Finnish at [http://luovasuomi.fi/www.minedu.fi/export/sites/default/OPM/Julkaisut/1999/liitteet/kulttuuriteollom1\\_995720.pdf?lang=fi](http://luovasuomi.fi/www.minedu.fi/export/sites/default/OPM/Julkaisut/1999/liitteet/kulttuuriteollom1_995720.pdf?lang=fi)

<sup>b</sup> See the Government Program of Prime Minister Jäätteenmäki’s Cabinet and Prime Minister Vanhanen’s First Cabinet, available in English at [http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat?p\\_p\\_id=56\\_INSTANCE\\_SSKDNE5ODInk&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_count=1&\\_56\\_INSTANCE\\_SSKDNE5ODInk\\_languageId=en\\_US](http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat?p_p_id=56_INSTANCE_SSKDNE5ODInk&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1&_56_INSTANCE_SSKDNE5ODInk_languageId=en_US) and the final report on the implementation of the Information Society Program, available in Finnish at <http://vnk.fi/julkaisu?pubid=9001>.

<sup>c</sup> See the National Knowledge Society Strategy for the years 2007–2015, available in English at <http://www.unksoc.org/index.php/case-studies/finland-knowledge-society-strategy-2007-2015/>

<sup>d</sup> See the Government Program of Prime Minister Vanhanen’s Second Cabinet and Prime Minister Kiviniemi’s Cabinet (2007–2010), available in English at [http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat?p\\_p\\_id=56\\_INSTANCE\\_SSKDNE5ODInk&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_count=1&\\_56\\_INSTANCE\\_SSKDNE5ODInk\\_languageId=en\\_US](http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat?p_p_id=56_INSTANCE_SSKDNE5ODInk&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1&_56_INSTANCE_SSKDNE5ODInk_languageId=en_US).

<sup>e</sup> In English: The Government’s Resolution for a strategy concerning intellectual property rights (26 March 2009), in Finnish: Valtioneuvoston periaatepäätös kansallisesta aineettomien oikeuksien strategiasta 26.3.2009.

<sup>f</sup> The program is available in Finnish at [https://ek.fi/wp-content/uploads/Paatos\\_aineettoman\\_arvonluonnin\\_kehittamisojelmasta2014-1.pdf](https://ek.fi/wp-content/uploads/Paatos_aineettoman_arvonluonnin_kehittamisojelmasta2014-1.pdf), see also the government programs of Prime Minister Katainen’s and Prime Minister Stubb’s Cabinets (2011–2014), available in English at [http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat?p\\_p\\_id=56\\_INSTANCE\\_SSKDNE5ODInk&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_count=1&\\_56\\_INSTANCE\\_SSKDNE5ODInk\\_languageId=en\\_US](http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat?p_p_id=56_INSTANCE_SSKDNE5ODInk&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1&_56_INSTANCE_SSKDNE5ODInk_languageId=en_US).

<sup>g</sup> See the Government Program of Prime Minister Sipilä’s Cabinet in English at <http://valtioneuvosto.fi/en/sipila/government-programme>.



COPYRIGHT AS PART OF AN OPERATIONAL FRAMEWORK IN THE INFORMATION SOCIETY

COPYRIGHT AS AN INSTRUMENT FOR CREATING ECONOMIC VALUE FROM INTELLECTUAL ASSETS

Figure 3. Copyright as part of the Finnish governments' key policies in the 2000s.

try of Education and Culture, the Ministry of Economic Affairs and Employment, and the Ministry of Social Affairs and Welfare established a working group on recognizing the creative sectors as a driver of Finnish economy and employment, which published a report “*Promoting the creative economy and intangible value creation as spearheading growth sector*” (2017)<sup>a</sup>. The report of the working group includes proposals for promoting the economy and employment, including, among others, copyright-related measures.

Copyright issues have been part of the successive governments’ key projects within the two visions described above, but have also been taken into account when drafting cultural, communication and competition policy documents. Finland is also involved in international work concerning the intellectual property rights of indigenous peoples, as a community and as individuals of such communities, in order to promote the rights of the Sámi people living in the north of the country.<sup>b</sup>

In addition, a comprehensive copyright policy has been developed at the Ministry of Education and Culture. The idea of drafting an explicit copyright policy document for Finland was born at the beginning of the 2000s, and the project was launched with the document “*Guidelines for Copyright Policy and Development of the System*” (2007),<sup>c</sup> followed by the “*Copyright Policy*” memorandum in 2012<sup>d</sup>. The goal is to prepare a document taking into account the discussions in the copyright field.<sup>e</sup>

Finally, it should be acknowledged that this study only tracks the general trends of copyright policy. It doesn’t take into consideration the preconceptions underlying political choices, and doesn’t comprehensively analyze the implementation of strategies. However, despite the limitations in the research, it can be concluded that copyright has been seen by the Government primarily (1) as a part of the operational framework in the information society and (2) as an instrument in creating economic value from intellectual assets. On the other hand, copyright has also remained an important part of the traditional cultural policy documents.

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<sup>a</sup> The report is available in Finnish at <http://julkaisut.valtioneuvosto.fi/handle/10024/79725>.

<sup>b</sup> The work on establishing international legal instrument or instruments for ensuring the effective protection of genetic resources (GR), traditional knowledge (TK) and traditional cultural expressions (TCEs) has been ongoing in the WIPO Intergovernmental Committee on Intellectual Property and Genetic resources, Traditional Knowledge and Folklore since 2000. For more information, see pilot report *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland*, Cupore webpublications 39:30, pages 22–23.

<sup>c</sup> Translation by the researcher, original title in Finnish: “*Tekijänoikeuden suuntaviivoja – keskustelumuistio politiikan muodostamisesta ja järjestelmän kehittämisestä.*” The report is available in Finnish at <https://julkaisut.valtioneuvosto.fi/handle/10024/79729>.

<sup>d</sup> Translation by the researcher, the original title in Finnish: “*Tekijänoikeuspolitiikka 2012.*” The report is available in Finnish at <https://julkaisut.valtioneuvosto.fi/handle/10024/75358>.

<sup>e</sup> For more information, see pilot report *Assessing Copyright and Related Rights Systems: Copyright Policy. Report on Piloting in Finland*, Cupore webpublications 39:10.

### **1.3. The process of formulating copyright legislation and involvement of stakeholders<sup>33</sup>**

The same policy actions have different impacts on different groups, and they can bring benefits to one group at the expense of other stakeholders with different interests. Therefore, it is important that different interest groups are heard and offered an opportunity to comment on the future developments of the copyright system. Public debate on copyright policy and law has a potential to increase the balance, acceptance and efficiency of copyright. Impact assessment studies, on the other hand, are important tools in studying the potential effects of legislative proposals on different stakeholder groups and the public in general.

Legislative initiatives can be put forward by the Government, by members of Parliament and by groups of citizens. Legislative initiatives by the Government go first through the stages of preliminary preparation and regulatory drafting. The Ministry of Education and Culture organizes hearings at these stages regarding copyright-related legislative initiatives, as well as the European Union's and WIPO's policy initiatives. These hearings consist in dozens of small discussions in the preliminary phase with everyone interested, as well as more extensive consultations, first in the preliminary stage and secondly after the regulatory drafting stage, when the bill draft already exists.

The way consultations are held depends on the stage of proposals. At the preliminary stage, the Ministry may organize hearings and seminars without requesting written statements, or vice versa. More elaborated proposals, such as draft bills, are sent for written statements, and hearings and/or seminars are organized before the deadline of issuing the statements. Through such procedures, different interest groups have an opportunity to prepare their statements after receiving additional information on the initiatives and the positions of other groups. The formulation of copyright policies and strategies may also include consultations of stakeholders, either through written statements or hearings and discussions.

Besides informing the public at large of each consultation for example through their website, the Ministry of Education and Culture maintains a consultation list of actors interested in copyright issues. The list is open to all interested parties and is composed of approximately 170 stakeholders. Most of the copyright-related legislative proposals are sent to all actors in the list, plus some others whenever necessary. Regarding some specific issues, however, requests for statements and invitations to discussion events are sent to a selection of 30 to 50 actors only.

The Ministry of Education and Culture uses the guidelines prepared by the Ministry of Justice when assessing the impacts of copyright-related legislative initiatives. The guidelines suggest that impacts of legislative initiatives should be analyzed within four categories: economic impacts, impacts on public administration,



environmental impacts, and social impacts. Cultural impacts are not presented as an independent category, but have been increasingly taken into account in impact assessment studies worldwide in the recent decades.<sup>a</sup> The comprehensiveness and quality of the impact assessments conducted at the Ministry of Education and Culture in the 2000s have varied between the initiatives depending on the available time and resources. Impact assessments have been conducted regarding copyright-related initiatives, but the evaluation has not been systematic. The assessment is usually conducted by officials at the Ministry of Education and Culture; third party researchers are rarely commissioned for this purpose. However, it is common for the Ministry of Education and Culture to commission studies from third parties before the actual legislative drafting stage in order to clarify the state of affairs and to identify different legislative options in a specific area. At this stage, officials also get familiar with existing research concerning the legislative initiative, but they might not be fully aware of research conducted in universities and research institutes, or it might be limited in some areas (such as comparative law studies). In 2015, the Finnish government established the independent Council of Regulatory Impact Analysis. The mission of the Council is to issue statements on government proposals and, in particular, on their regulatory impact assessments, in order to improve the quality of bill drafting. All legislative initiatives are sent to the Council for possible evaluation.

During the piloting of the methodology for assessing copyright and related rights systems, the four consultation rounds organized in connection with an initiative related to illicit file-sharing were analyzed to determine the distribution of statements provided by different groups in the different stages of consultation. The results showed that authors and performers and professional copyright users provided about half, experts about a quarter, and intermediaries, end-users and other groups the rest of the submitted statements. The share of statements by end-users (6% to 10% of all statements) was particularly low.

The impact assessment regarding the initiative was consistent with the guidelines of the Ministry of Justice. Economic impacts were analyzed especially from the perspectives of telecom operators and right holders. The assessed impacts on public administration were related to the responsibilities of the Finnish Communications Regulatory Authority and the courts. The social impacts were related to topics such as

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<sup>a</sup> Different kinds of impacts are interconnected and therefore not clearly separable from each other. However, cultural impacts could be defined as “the consequences to human populations of any public or private policies and actions that significantly change their norms, values, beliefs, practices, institutions as well as the way they live, work, socialize and organize themselves as part of their cultural life.” Source: Burama, K. Sagnia (2004). *Framework for cultural impact assessment project*. Dakar: International Network for Cultural Diversity (INCD). Available at [http://www.dmeforpeace.org/sites/default/files/FRAMEWORK%20FOR%20CULTURAL%20IMPACT%20ASSESSMENT%20\(INCD\)\\_2004.pdf](http://www.dmeforpeace.org/sites/default/files/FRAMEWORK%20FOR%20CULTURAL%20IMPACT%20ASSESSMENT%20(INCD)_2004.pdf).

For more information on the methods and practices of cultural impact assessment, see Adriana Partal & Kim Dunphy (2016) *Cultural impact assessment: a systematic literature review of current methods and practice around the world*, *Impact Assessment and Project Appraisal*, 34:1, 1–13. Available at <https://doi.org/10.1080/14615517.2015.1077600>.

fundamental rights, due process, attitudes and values, and ICT infrastructure. Both domestic and foreign research was used in the background study.<sup>a</sup>

After the preliminary preparation and legislative drafting stages, copyright-related initiatives are reviewed by the Parliament. An analysis of all legislative proposals on copyright-related issues in parliamentary committees in the time frame of 2002–2013 shows that experts like public authorities, universities and research institutes offered a significantly larger share of oral statements than the representatives of stakeholders, while there were no substantial differences in the amount of written statements provided by these groups. Among the stakeholder groups, authors, performers and professional copyright users provided most of the oral or written statements to committees. During the time frame analyzed, intermediaries provided statements regularly, but in a smaller quantity. End-users' statements constituted a clear minority of all statements provided to the committees.

All in all, the results indicate that different stakeholder groups and experts are heard at different stages of drafting copyright-related legislative initiatives. The share of statements provided by groups representing end-users is, however, remarkably low throughout the legislative process. This can result from the fact that end-users are not widely organized in the Finnish society.<sup>b</sup> It can also be partially caused by the organizations being relatively young and unknown.

The results also indicate that the distribution of statements depends on the stage of the initiative. The early stages of the legislative drafting process (preliminary and regulatory drafting) focus on hearing different stakeholder groups, while the parliamentary phase focuses more on hearing experts such as public authorities and academics. This is understandable when considering the legislative process as a whole: In the early phases, it is important to know the positions of different stakeholder groups regarding the planned action. In the parliamentary phase, on the other hand, the initiatives are more elaborated and the information on technical details of the implementation (provided by experts) becomes more central in the process.

Finally, it must be noted that the results did not provide any information on the actual influence of the consultations or hearings on the legislative initiatives or copyright policy in general. Therefore, in order to make more elaborated conclusions, the results should be analyzed together with the data on actual legislative amendments and policies implemented in the 2000s.

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<sup>a</sup> The initiative was the object of a particularly extensive impact assessment, and therefore it could not be considered as representative of impact assessments generally conducted at the Ministry of Education and Culture. However, it provided an example of applying the guidelines of the Ministry of Justice in practice.

<sup>b</sup> Nor are they a stakeholder group in the traditional sense.

## IN SHORT

- Finnish copyright legislation
  - grants economic and moral rights to a person who has created a work
  - contains limitations and other arrangements (such as extended collective licensing) to promote access to copyrighted works by the public
  - also grants so-called neighboring rights with different criteria for protection
  - is highly influenced by copyright-related international treaties and by directives of the European Union, and very consistent with other European legislations.
- Finnish copyright policy
  - is primarily the responsibility of the Ministry of Education and Culture, with the support of other ministries and specialized bodies and agencies
  - has been determined in the successive governments' key projects in the 2000s along two points of view: the vision of Finland as an information society and the vision of creative industries as a significant source of economic value creation through intellectual property rights.
- When drafting Finnish copyright policy and legislation, the interests of different stakeholders are taken into account by
  - conducting impact assessment studies concerning legislative initiatives, but so far they have not been systematically comprehensive on this point
  - hearing and inviting comments from stakeholder groups and experts at different stages of the law drafting process, but end-users are less often involved than other categories.

## 2. Management of rights

In many cases, individual negotiation on the licensing of rights is not feasible. Collective management of rights provides the users of works with quick access to a wide spectrum of works while simultaneously guaranteeing that copyright holders are remunerated for their use. Therefore, the efficient collective management of rights is essential for the functioning of the copyright system.

### 2.1. Collective management of rights in Finland<sup>34</sup>

The Finnish Copyright Act provides an author with the right to control the copyrighted work by making copies thereof and making it available to the public. According to section 27 of the Copyright Act, this right can be transferred as a whole or partially.

The individual exercise of rights has proven to be infeasible in certain cases, especially when there is a need for quick access to large amounts of copyrighted works. To decrease time and costs needed for individual negotiations, right holders can mandate collective management organizations to license the use of their works, as well as to monitor and collect remunerations on the use. In addition to voluntary collective

management of rights, the State has aimed at promoting the operation of licensing markets and guaranteeing access to certain special groups by arrangements based on the Copyright Act. These arrangements can be further divided into extended collective licensing schemes and special remuneration schemes.

Extended collective licensing is an arrangement based on the Copyright Act to simplify the operation of licensing markets. It provides that collective management organizations represent all authors in their respective fields, which enables users to gain instant access to a wide spectrum of content without the risk of infringement claims by non-represented right holders or criminal sanctions. However, authors not represented by the collective management organizations also retain their right to claim remuneration on the use or prohibit it.

Extended collective licenses are applied in the following areas: photocopying (section 13 of the Finnish Copyright Act), use for internal communication (section 13a), use of works for educational activities and scientific research (section 14), use of works in archives, libraries and museums (sections 16d and 16e), use of works of art in catalogues and in information (section 25a), use in original radio and television transmissions (section 25f), ephemeral recording for radio and television transmissions (section 25f), reuse of a television program, newspaper or a magazine stored in an archive (section 25g), retransmission of a radio or television transmission (section 25h), online recording service of television programs (section 25l).

Special remuneration and compensation schemes are organized in the form of statutory or compulsory licenses. This means that right holders have the right to receive compensation or remuneration for the use of their works, but they do not have an opportunity to prohibit the use. These schemes include availability of works to persons with disabilities, literary or artistic works of compilation used in education, public lending, fair compensation for private copying, remuneration for acts of resale of works of fine art, remuneration for the use of sound recordings, and remuneration for the transmission of programs based on the must carry obligation to transmit programs.

## **2.2. The organizational aspects of collective management organizations in Finland<sup>35</sup>**

As Finnish collective management organizations (CMOs) are registered associations, the Association Act regulates their operation. The Association Act includes provisions in areas such as membership, formal practices, meetings and decision-making. Finnish CMOs are also de facto monopolies within their field of operation despite their status as non-profit organizations. Therefore, section 7 of the Competition Act concerning the abuse of a dominant position is applicable to Finnish CMOs. The Finnish Competition and Consumer Authority is responsible for supervising CMOs in this respect.

The Act on Collective Management of Copyright (1494/2016) was adopted in Finland on the basis of Directive 2014/26/EU on collective management of copyright

and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. The Act entered into force in Finland on 1 January 2017. The Act includes provisions concerning the relationship between right holders and CMOs, the rights and decision-making power of the members and right holders, management of remunerations, the relationship of CMOs and users of copyrighted content, as well as the obligations related to transparency and exchange of information.<sup>36</sup>

### **2.3. Efficiency of collective management organizations<sup>37</sup>**

Collective management of rights is based on the idea of economies of scale. It decreases the price of individual negotiations as well as transaction costs related to seeking and identifying right holders. Because of that, collectively managed licensing markets should operate more efficiently than those based on individual negotiations. The monopoly power of CMOs as well as other factors may, however, hinder this positive impact. Therefore, the efficient operation of CMOs can be seen as an essential part of a well-functioning copyright system.

There are currently seven collective management organizations in Finland: Filmex (actors in audiovisual productions), Gramex (performers and producers of phonograms), Kopiosto (managing certain rights of authors, photographers, performing artists and publishers in all fields of creative work), Kuvasto (visual artists), Sanasto (literary copyright holders), Teosto (music composers, lyricists, arrangers and publishers) and Tuotos (film and audiovisual producers).

The CMOs in Finland vary greatly in size, age, as well as rights administered and other activities. For example, Teosto, established in 1928, administered more than 65 million euros in 2014, while the youngest organization Filmex, established in 2013, was still launching its operations in that year<sup>a</sup>. As the type and size of operations affect the cost structure of the CMOs,<sup>b</sup> the analysis of their financial information alone does not provide tools for comparing the efficiency of individual CMOs. However, an examination of the amounts of copyright revenue collected and distributed by CMOs as well as their administration costs and other uses of funds provides an overall indication of the efficiency of collective management in Finland.

The amounts of remunerations administered and distributed have increased over time in all the analyzed CMOs. Especially younger organizations have increased the amount of remunerations administered. When comparing distributed remunerations with administered remunerations, there are differences between the CMOs. In most cases, the younger CMOs have increased the proportional share of distributed remunerations over time, while the more traditional ones have kept them relatively steady.

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<sup>a</sup> For the same reason, Filmex was not part of the analysis concerning the efficiency of collective management organizations.

<sup>b</sup> As well as other costs such as promotional activities.

Administration costs are connected to the types and volumes of licenses granted, the accuracy of the data on which the distribution of remunerations is based, as well as CMOs' need to devote resources to promotional activities such as lobbying. The administration costs of the CMOs have remained steady over time, most of them corresponding to less than 20% of all remunerations and compensations administered.

It is common for CMOs to devote part of their funds to different cultural purposes. These funds are often comprised of undistributed remunerations as well as profits from investments of the CMOs. These are usually distributed through promotional funds and foundations established to promote activities within the industry concerned. Generally speaking, these funds have constituted only a minor part of the total funds administered by Finnish CMOs, but yet have reached millions of euros annually for the biggest CMOs.

It was estimated that direct copyright revenues in 2012 were altogether approximately 2,931 million euros. During the same year, almost 115 million euros were administered by the Finnish collective management organizations. Therefore, the amount of collectively managed funds still constituted only minor part of all copyright revenues.

All in all, Finnish CMOs tend to distribute most of the administered funds to the right holders, which indicates efficient operation. Finnish CMOs also hold a prominent role in promoting culture by investing in their respective fields.

## IN SHORT

- Collective management of rights in Finland
  - is organized for the purpose of simplifying the licensing markets by avoiding the costs of individual negotiations and facilitating a quick access to large numbers of copyrighted works
  - consists in right holders mandating collective management organizations to monitor and collect remunerations on the use of their works
  - is promoted by the use of extended collective licenses, according to which collective management organizations are allowed to represent all authors in their respective field, unless authors opt out
  - also includes special remuneration and compensation schemes, according to which right holders receive compensation or remunerations for the use of their works but cannot prohibit it.
- Finnish collective management organizations
  - currently include Filmex, Gramex, Kopiosto, Kuvasto, Sanasto, Teosto and Tuotos
  - vary greatly in size, age, amounts of remunerations administered and activities
  - tend to distribute most of the administered funds to right holders, indicating reasonable financial efficiency
  - hold a prominent role in promoting culture by investing in their respective fields.

### **3. Enforcement**

Efficient enforcement of copyright is an essential aspect of the operation of the copyright system; if copyright rules are not properly enforced, the copyright system will not be able to support creation by allowing creators to enjoy the revenues from their works. Copyright enforcement at the national level involves public authorities in charge of detecting, preventing and imposing sanctions for copyright infringement, courts and other actors solving copyright disputes, as well as non-governmental organizations combating piracy.

At the international level, Finland has a history of international cooperation in the field of copyright enforcement through its adherence to all the important international conventions in the field since 1928, as well as through trade agreements (see Part 1, Section 2, Chapter 1 “Law, Policy and Public Administration”).

#### **3.1. Actors**

The public authorities involved in copyright enforcement are the courts, the prosecutors, the police, the Customs and the Copyright Council. Some non-governmental organizations are also involved in the supervision of rights as anti-piracy organizations.

##### **3.1.1. Public authorities<sup>38</sup>**

In Finland, civil and criminal proceedings concerning copyright and related rights are handled by different courts. Criminal cases are handled by the general courts of justice. These include the district courts as courts of first instance, courts of appeal as appellate courts, and the Supreme Court as the highest appellate court. Appealing a decision in the Supreme Court requires a leave to appeal. Since 1 September 2013, civil cases relating to intellectual property matters, including copyright matters, have been handled in first instance by a special court, the Market Court. The objectives of the reform were to reduce the current dispersion of handling of intellectual property matters and to guarantee the expertise of the court in intellectual property matters. A decision of the Market Court in intellectual property disputes and non-contentious matters is appealed directly in the Supreme Court.<sup>a</sup>

In criminal procedure, pre-trial investigations related to copyright enforcement are presumably in most cases initiated by a request of a complainant. They are carried out by the police in cooperation with a prosecutor, who can stop the investigation or demand more investigations to be conducted. During pre-trial investigations the police may also execute coercive measures (seizure and home search). It seems that, especially in cases relating to illicit file-sharing, criminal proceedings are a preferred form of enforcement because of the effectiveness of the coercive measures.

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<sup>a</sup> A leave to appeal is still required. The exclusion of the Court of Appeal was justified by the purpose of shortening the total duration of the process and reducing party expenses.

At the end of the pre-trial investigation, the prosecutor is responsible for the consideration of charges and is in charge of prosecuting a criminal case in public courts. In copyright-related crimes, imposing fines via penal order proceedings is a commonly used summary type of procedure, which belongs to the responsibility of the prosecutor.

The Customs also plays an important role in enforcing intellectual property rights, including copyright. The Customs has the competence to retain goods under the national law.<sup>a</sup> In certain situations, European law also allows a right-holder to apply for action by the customs authorities in cases where goods suspected of infringing intellectual property are found.<sup>b</sup> However, according to interviews with customs officials, there have been very few applications concerning copyrighted works. Furthermore, the scope of the regulation is limited in that it does not apply to private importation. For these reasons, potential infringements of copyright that come to the knowledge of the Customs are usually handled solely in a procedure under the national law.

The Copyright Council, which is a body appointed by the Ministry of Education and Culture, plays a significant role in copyright enforcement. The mechanism provided is rather unique to Finland. An opinion of the Council on the application of the Copyright Act can be requested by anyone – private persons, business enterprises, organizations, the police, authorities, and courts of law, whether or not they have personal interests at stake. The opinions of the Council are not legally binding. The procedure gives a possibility for ‘pre-checking’ the possible outcome of a dispute before going to the court. Even though the opinions are non-binding and unenforceable, they have a notable influence on the interpretation of Finnish copyright law. The opinions are also very often referred to in court cases by the applicant party and by the courts.

### **3.1.2. Non-governmental organizations<sup>39</sup>**

In Finland, there are no public supervisory bodies (in the field of copyright) or any public anti-piracy bodies. Supervision of the rights of copyright holders is performed by non-governmental organizations. Since most copyright violations in Finland are so-called complainant offences,<sup>c</sup> right holders are obliged to supervise and control the use of protected subject matters themselves.

As a result, right holders have organized themselves and formed a specific body for these purposes: the Copyright Information and Anti-Piracy Centre (CIAPC). This organization facilitates the fight against piracy by supervising and controlling the use of protected subject matter on behalf of its members, by professionally preparing requests

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<sup>a</sup> This competence is based on section 32 of the Customs Act, and is often referred to as ‘administrative retention’ (hallinnollinen haltuunotto). According to the section, the Customs may ‘retain goods exported from or imported to the country, if there is reasonable cause for this in order to prevent or investigate an offence’. The granting of seizure (takavarikko) is decided afterwards in another process.

<sup>b</sup> Council Regulation (EC) No 1383/2003.

<sup>c</sup> This means that the prosecutor may not press charges against a suspect without the initiative of a complainant. The copyright-related violations that are not complainant offences are the violations referred to in section 56e(2) (violation of a technological measure) and in sections 51 and 52 (moral rights) of the Copyright Act.



for police investigation, and, as a result of its capacity to represent stakeholders in most copyright-related fields, by facilitating copyright enforcement in cases where several right holders are involved. The CIAPC's activities also include education and information on copyright. It is a registered non-profit association without a public role or mandate, despite the fact that part of its funding is provided by the Ministry of Education and Culture. Through its members, which include the most relevant organizations in all fields of copyright, the Copyright Information and Anti-Piracy Centre represents a large part of right holders. At the international level, the CIAPC follows the international development of judicial conditions and relevant legislation and participates in the anti-piracy programs of the International Federation of Phonographic Industry (IFPI).

The Finnish Anti-Counterfeiting Group (FACG) is another Finnish association active in the field of copyright enforcement. Its purpose is to promote a better understanding of the importance of anti-counterfeiting work in Finland. As such, it conducts information activities, provides statements to different authorities on counterfeit-related issues, and takes part in international cooperation in the field. At the international level, FACG is part of the Global Anti-Counterfeiting Network (GACG), which links a large number of national and regional anti-counterfeiting organizations with an objective to exchange and share information, take part in joint activities, and co-operate in the resolution of specific IP problems and challenges in their respective national or regional areas.

## **3.2. Sanctions and remedies for copyright infringement<sup>40</sup>**

### **3.2.1. Civil enforcement**

Liability and compensation for damage caused by copyright infringement are regulated under section 57 of the Copyright Act:

- Section 57(1) of the Act provides for reasonable compensation<sup>a</sup> for unauthorized use.
- Section 57(2) concerns damages<sup>b</sup> for any other loss, including mental suffering and other detriment.
- Section 57(3) includes a provision on damages caused by a punishable act.

These provisions leave a lot of room for interpretation and practice varies a lot.

In civil cases concerning copyright, the court has the power to

- confiscate material which may constitute evidence in the trial. The requirements for such an order are defined under the Protection of Evidence in Industrial Property and Copyright Related Civil Cases Act. The provision is quite rarely applied by the courts, but it has been used successfully in a few software-related cases.

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<sup>a</sup> In Finnish: *hyvitys*.

<sup>b</sup> In Finnish: *korvaus*.

- declare illegal copies of a work and devices used in committing an unlawful act to be destroyed under section 58 of the Copyright Act. The purpose of the destruction<sup>a</sup> is to prevent future infringements by the same person. In cases concerning copyright, forfeiture has concerned, *inter alia*, unauthorized software on a hard drive of a computer, videocassettes, rings, pendants as well as bracelets and their molds.
- issue a ‘general precautionary measure’<sup>b</sup>, a temporary legal protection in application of Chapter 7, section 3 of the Code of Judicial Procedure. The provision is rarely applied in copyright matters, but there have been at least a few of such cases.
- order an internet service provider to disclose the contact information of a subscriber whose connection is used for making copyrighted material available to the public without the consent of the author (section 60a of the Copyright Act). This provision is applied increasingly often.
- order an intermediary to discontinue the making of allegedly copyright-infringing material available to the public (section 60c of the Copyright Act). In a few recent high-profile cases, an ISP has been ordered to block access to the peer-to-peer file sharing website The Pirate Bay. None of the cases have ended up in the Supreme Court.

In addition, sections 20–25 of the Act on Provision of Information Society Services lay down a procedure in which an internet service provider may be demanded to block access to copyright infringing material. Such a procedure is globally referred to as the ‘notice and take-down’ procedure. The remedy is available to authors and related rights owners as well as their representatives.

In 2012, there were 101 concluded civil cases concerning the application of the Copyright Act in the district courts. A significant majority of the cases related to the application of section 60a of the Copyright Act (disclosure of contact information). The number of such cases has increased rapidly during the last few years but in general, the number of civil cases concerning copyright and related rights is very small, especially when compared to the number of all civil cases (422,727 in 2012<sup>41</sup>).

### 3.2.2. Criminal enforcement

Copyright-related crimes in Finland consist of

- the copyright offence under Chapter 49, section 1 of the Criminal Code, which sanctions willful violations of copyright with the motive of profiting from the illegal action. Copyright offences also cover willful violations of copyright for

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<sup>a</sup> In Finnish: hävittämisauraamus.

<sup>b</sup> In Finnish: yleinen turvaamistoimi.

import and infringement done via a computer network or system (in this last case no profit motive is required).

- the circumvention of technical protection under Chapter 49, sections 3 and 4 of the Criminal Code, which sanction the circumvention of copyright-protected technology.
- the copyright violation under section 56a of the Copyright Act, which sanctions willful violations of copyright, without profit as a motive for the illegal act.
- other crimes under sections 56b to 56f of the Copyright Act: breach of confidentiality, illegal distribution of a device for removing a technological measure protecting a computer program, breach of the obligation to provide information, violation of a technological measure (through gross negligence), and violation of electronic rights management information.

The maximum penalty for a copyright offence is two years in prison, the maximum penalty for the other copyright-related crimes under the Criminal Code is one year in prison, and the maximum penalty for all the other crimes is 1 to 120 day-fines. Other available penalties include e.g. community service, which may be imposed as a substitute for imprisonment under certain conditions. Other criminal sanctions consist of e.g. forfeiture under Chapter 10 of the Criminal Code.

Copyright offence and copyright violation are clearly the most common types of copyright-related crimes in Finland. In fact, the other crimes are virtually non-existent in the statistics. Out of these two, copyright violation is significantly more used overall. The number of criminal proceedings is low in comparison to all crimes. Most copyright-related crimes are punished with a fine, and most commonly a fine has been imposed as a sanction for copyright violation. Imprisonment has been sentenced only a few times during 2007–2011, always in a suspended form and always as a penalty for a copyright offence.

### **3.3. Alternative dispute resolution mechanisms<sup>42</sup>**

Arbitration is a classic type of alternative dispute resolution mechanism that is usually used in cases of commercial disputes.<sup>a</sup> Finnish copyright law explicitly provides for arbitration in certain types of copyright disputes, but these disputes are not very common. The advantages of arbitration are a process that is usually cheaper and faster than litigation (9 months or 8 months depending on the procedure), and a process that allows parties to choose arbitrators with particular expertise. However, the cost for this type of procedure remains relatively high, which makes it unsuitable for disputes with limited monetary claims, and only a very small number of copyright disputes are submitted to arbitration.<sup>b</sup>

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<sup>a</sup> The main center for domestic or international arbitration is the Arbitration Institute of the Finland Chamber of Commerce.

<sup>b</sup> 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 procedures whereby a mediator assists those involved in a dispute to reach an agreement, which is later sanctioned by courts. It is available in Finland on a voluntary basis in civil and some criminal cases. Statistics 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, even though, according to mediation providers, mediation would be suitable for copyright-related disputes with limited economic importance and where responsibilities are relatively clear and the resolution would most likely be accelerated by interaction between parties.

Finally, the Finnish Copyright Council, appointed by the Government and comprised of representatives of the most relevant right holders, offers opinions on copyright matters. The Copyright Council cannot be considered as a dispute resolution mechanism per se, as it does not solve individual disputes and its procedure is not adversarial. The Council only provides general answers to questions concerning the interpretation of copyright law. However, despite their lack of binding power, the opinions of the Copyright Council are used as guidance by courts and fulfill an important role in copyright litigation. The procedure in front of the Copyright Council is free of charge, informal, and does not require the support of a legal counsel. It is particularly suitable for disputes involving limited monetary claims, since an opinion by the Council predicts the likely outcome of a court case without incurring the high costs of litigation. On average, the Council gives approximately twenty opinions a year (more than the number of copyright-related cases solved through arbitration, mediation and conciliation together) and the procedure takes 2–12 months.

### **3.4. Efficiency of enforcement**

Finland has a very elaborate system of copyright enforcement where public and non-governmental actors have their specific roles. The Customs, the police, and private parties all participate in the prevention and exposure of copyright infringement. At a private level, the fight against piracy is highly organized and centralized through the Copyright Information and Anti-Piracy Center (CIAPC), which represents stakeholders throughout all copyright industries and is financially supported by the government. CIAPC as well as the Finnish Anti-Counterfeiting Group (FACG) are also active in informing the public in general on copyright, in promoting the fight against piracy together with public authorities and in participating in international cooperation to the same end. Private actors are also able to protect their works through technological protection measures, which are themselves legally protected from circumvention (see Part I, Section 2, Chapter 1.1 on copyright law).

The available statistics do not show any significant signs that would indicate that sanctions in cases of copyright infringement are insufficient or insufficiently applied. Criminal enforcement of copyright is subject to criticism in legal literature because of

the wide and vaguely defined scope of copyright violation, which contravenes the principle that all criminal provisions should be clearly defined. Criminal sanctions are only regularly applied for two types of crimes related to copyright (copyright offence and copyright violation), and the number of criminal proceedings is low in comparison to all crimes, but there is no indication of lack of enforcement. The number of confiscations by Customs on the basis of potential copyright infringement is also low (around 800 articles per year between 2009 and 2011), especially when compared to the number of imported copyrighted goods, and the number of copyright violations exposed by the Customs has decreased significantly between 2008 and 2012. However, this is only likely to reflect the fact that physical piracy is very rare in Finland, and not due to inefficient enforcement.

Concerning the resolution of copyright disputes, civil enforcement includes a large number of provisions for remedies and compensations, but the number of copyright disputes resolved by the courts remains rather low compared to other types of disputes. Copyright disputes consist mainly in requests to disclose the contact information of a subscriber whose connection is used for making copyrighted material illegally available to the public, a provision that is used increasingly often. Copyright disputes can also be resolved through alternative dispute resolution mechanisms; a small number of them are brought in front of arbitrators, and mediation and conciliation could also be suitable for copyright disputes. The opinions of the Copyright Council are a very popular means to solve copyright disputes because of their accessibility and despite their lack of binding power. It seems that the number of opinions rendered by the Copyright Council might even exceed the number of copyright infringement cases brought in front of the courts. The Copyright Council therefore offers a very important public service, which makes some kind of copyright dispute resolution available even for claimants with limited financial resources.

According to section 60a of the Copyright Act, an author or his representative is entitled, by the order of the Market Court, to obtain contact information from the telecommunications service provider of a tele-subscriber who, without authorization, makes copyright-protected material available to the public. The wording of this provision from 2005 has in practice meant that relatively little evidence has been enough to convince the Market Court. This provision has been increasingly used in recent years by right holders who have sent letters to citizens allegedly sharing protected works online without authorization, to propose financial settlements. In 2016, right holders obtained approximately 100,000 IP addresses through the Market Court. In the absence of more detailed data, the estimated number of letters sent by right holders was a few tens of thousands. These letters have been the subject of much discussion in the society. Among the problems related to this procedure are cases where a year or more has elapsed between the alleged infringement and a contact by letter from the author's representative. In 2017, the Ministry of Education and Culture appointed

a working group with authorities, copyright holders, organizations sending letters, as well as representatives of citizens and consumers, to discuss how to safeguard the rights of copyright holders as well as those of alleged infringers. Another goal is to determine new best practices for the field.<sup>a</sup>

Overall, it seems that no significant obstacles prevent the use of sanctions and remedies: the criminal measures are relatively affordable to use; the number of investigations cleared by the police is somewhat in correlation with the number of crimes discovered; charges are being pressed somewhat in correlation with the number of police-cleared cases submitted to the prosecutor; and the number of penalties imposed is comparable to the number of cases submitted to the prosecutor, indicating that the enforcement process generally reaches its conclusion. Concerning civil enforcement and the resolution of copyright disputes, the large number of remedies accessible through civil courts is complemented by the possibility to request an opinion of the Copyright Council, which provides access to some kind of recourse to justice even to claimants with limited financial means.

## IN SHORT

- The actors in the field of copyright enforcement are
  - the public authorities: the courts, the prosecutors, the police, the Customs and the Copyright Council
  - the non-governmental organizations: the Copyright Information and Anti-Piracy Centre (CIAPC) and the Finnish Anti-Counterfeiting Group (FACG).
- Victims of copyright infringement can pursue enforcement through
  - the civil courts, which can order reasonable compensation or damages as well as other remedies but are not often used (a majority of cases are requests for disclosure of contact information of presumed infringers)
  - the criminal courts, which can order a maximum penalty of 2 years in prison (very rarely used and always in suspended form), fines (most common) and other types of penalties
  - alternative dispute resolution mechanisms, including arbitration, mediation and conciliation, rarely used in copyright matters
  - requesting a free and non-binding opinion of the Copyright Council on the interpretation of copyright law in a specific case (these opinions are very popular as they often predict the outcome of a possible court ruling).
- Overall, the recourses available in Finland in cases of copyright infringement are numerous, generally affordable and accessible, and there does not seem to be significant obstacles to prevent access to sanctions and remedies.

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<sup>a</sup> The report of the working group can be found at <http://minedu.fi/julkaisu?pubid=URN:ISBN:978-952-263-543-3>. The memorandums and other documents of the working group can be found at <http://minedu.fi/hanke?tunnus=OKM044:00/2017>.

## 4. Dissemination of knowledge

It is essential that the main functions of the copyright system and the rules regarding the use of works are understood by the public at large. Information can be disseminated through education and different kinds of information activities. Research on copyright issues is essential for understanding different aspects of the system as well as to develop its operation.

### 4.1. Information targeted at the public at large<sup>43</sup>

Copyright issues are strongly integrated in the current national core curriculum for basic education in Finland<sup>a</sup>. Although the previous national core curriculum included a possibility to include copyright issues in the education as a part of cross-curricular themes, they were not explicitly mentioned in the contents of teaching (with an exception of citation and referencing skills in the teaching of mother tongue and literature). In the current national core curriculum, they are mentioned under the general theme of information and communication technology (from the third grade), as goals in teaching of domestic languages and literature (from the third grade) and in the teaching of music (from the seventh grade). The analysis shows that there has been a significant increase in the involvement of copyright issues in the curriculum of basic education. In upper secondary schools, copyright issues were already mentioned in the previous national core curriculum, approved in 2003. In the current curriculum, approved in 2015,<sup>b</sup> copyright issues are included in the cross-curricular theme “*Multiliteracy Skills and Media*”, in the teaching of domestic languages, and as a part of the “National law” course.

Teaching of copyright-related issues in schools is supported by school visits, organized since 2008, by the Copyright Information and Anti-piracy Centre (CIAPC). The visits have included general information on copyright issues presented by a lecturer of the CIAPC and a representative from creative industries. School visits are organized approximately in 40 schools annually, reaching 5,000–6,000 pupils per year<sup>44</sup>.

An essential precondition for implementing the goals set by the Finnish National Agency for Education is that teachers themselves are familiar with copyright issues. They have to be aware of teaching-related copyright issues to pursue their profession, but they should also have knowledge of the copyright system in general. Copyright-related education in teacher training was not analyzed in the pilot studies implementing the methodology for assessing copyright and related rights systems, but the studies provided some indication that the general

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<sup>a</sup> Adopted in schools in autumn of 2016 at latest. The current national core curriculum for basic education is available in Finnish at [http://www.oph.fi/download/163777\\_perusopetuksen\\_opetussuunnitelman\\_perusteet\\_2014.pdf](http://www.oph.fi/download/163777_perusopetuksen_opetussuunnitelman_perusteet_2014.pdf).

<sup>b</sup> The current national core curriculum for upper secondary schools is available in Finnish at [http://www.oph.fi/download/172124\\_lukion\\_opetussuunnitelman\\_perusteet\\_2015.pdf](http://www.oph.fi/download/172124_lukion_opetussuunnitelman_perusteet_2015.pdf).

knowledge of teachers on copyright issues has been generally low. However, regular education for teachers was identified, offered by third parties such as the IPR university Center (Operight project) and the Association of Finnish eLearning Centre (KOTEK project).

Speaking of public awareness campaigns, the combined celebration of the World Intellectual Property Day (WIPO) and the World Book and Copyright Day (UNESCO), organized since 2008, has been the most comprehensive copyright-related annual campaign organized in Finland. The “Copyright Day” has included seminars, advertising campaigns as well as cinema tours for students. Other annual campaigns and projects have included for example the “World anti-piracy day” by the Finnish Anti-Counterfeiting Group and the “Liito” project launched in 2010. The results show that individual anti-piracy campaigns have also been organized regularly in Finland. Campaigns promoting the rights of users have included for example the “*Exploitation or Fair?*” campaign by the Electronic Frontier Finland against the extension of the private copying levy in 2011, as well as the “*Internet’s black day*” campaign organized by a group of Finnish websites in 2013.

Regarding other sources of information, the Copyright Information and Anti-piracy Centre provides advisory services on general copyright issues. The Ministry of Education and Culture as well as the collective management organizations provide general information on copyright issues on their websites. Other information sources include Lyhty (a joint project of creative sector artists, employees, and entrepreneurs in Finland), which also commissions the annual Copyright Barometer, as well as Electronic Frontier Finland, which provides copyright-related information from the user perspective.

There is a comprehensive amount of general copyright-related information available to the public, and it is provided from several sources. So the remaining question is whether copyright-related information has reached the public. The analyzed annual Copyright Barometer and the Youth Barometer surveys in 2009–2015 show that the general public in Finland is relatively well aware of the concepts of copyright and the rules related to the use of the works. However, the results showed that the public might have incorrect views on rules regarding the use in certain circumstances. In addition, awareness of the copyright system was low in some areas. For example, the CMOs and their activities were not very well known.

Finally, it is important to acknowledge that the provider of the information matters. The information providers eventually decide what information is covered and how the different aspects of the system are emphasized. Because Finland has several long-standing organizations representing right holder groups carrying strong informative power, it should be ensured that organizations that approach copyright issues from non-traditional standpoints (such as open licensing) also have possibilities to organize projects and disseminate knowledge with the support of the state. When



looking at the grants devoted to copyright-related education and information activities by the Ministry of Education and Culture, it seems that the activities of these kinds of organizations have also been funded in Finland.<sup>45</sup>

## **4.2. Information targeted at professionals working in creative industries<sup>46</sup>**

It is essential for the operation of the system that professionals in the creative industries understand how the copyright system works, know how to use their rights, and know how to respect the rights of others. In the earlier pilot study implementing the methodology for assessing copyright and related rights systems,<sup>a</sup> copyright-related education in creative industries was examined by analyzing curricula in vocational schools and interviewing managers and teachers in higher education institutions. In addition, the information activities of organizations in the creative industries were examined by analyzing their websites.

Copyright issues are strongly integrated into national qualification requirements in vocational education in the cultural field. Compliance with copyright law and contracts are emphasized as an integral part of professional skills. The three analyzed programs in cultural production and one program in library services in universities of applied sciences included 1–2 courses focusing on copyright as well as copyright-related education integrated into other teachings. Copyright-related education in universities was analyzed through six programs. Copyright-related education was organized in the programs in different ways. Some of the programs provided courses focusing on copyright, while others provided information as a part of other courses, or an opportunity to participate in copyright-related education provided by other departments.

There are many information and advisory services available for professionals in the creative industries. The organizations provide advisory services by phone and email, information on industry-specific practices, model contracts, and links to websites including copyright-related information. Projects undertaken in the cultural field<sup>b</sup> have offered substantial additional information resources and education for professionals.<sup>47</sup>

To conclude, the curricula of vocational schools and higher education institutions in the cultural field, as well as the availability of information and advisory services seem to indicate that copyright-related instruction is strongly included in the education of professionals in the Finnish creative industries. Whether this education translates into practical knowledge by authors and performers on copyright questions related to their creative activity is a different issue that was not assessed.

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<sup>a</sup> See the pilot report implementing Methodology Card 11 – *Assessing Copyright and Related Rights Systems: Copyright-related Education as part of the Education of Professionals for Creative Industries. Report on Piloting in Finland.* Cupore webpublications 39:26.

<sup>b</sup> For more information on ART360, TEKIJÄ, DIMEKE, KULTAHANKE and TAIVEX projects, see the pilot report implementing Description Sheet 13 – *Assessing Copyright and Related Rights Systems: Copyright-related Information Activities. Report on Piloting in Finland.* Cupore webpublications 39:23.

### 4.3. Copyright-related research<sup>48</sup>

Copyright-related research plays an essential role in creating conditions for understanding the copyright system and in developing its operation. The amount of copyright-related research also provides an indication of general awareness of copyright issues. In addition, the existence of research helps to identify the interests and needs of different interest groups, as well as supports the impact assessment of legislative and policy actions. The existence of research is an important prerequisite for evidence-based policy-making.

The increasing significance of copyright at the end of the 1990s led to the observation that there is a need for additional research in the field of intellectual property rights. In 2000, the Research Council for Culture and Society of the Finnish Academy established a working group to examine the state of intellectual property related research in Finland. The report of the working group presented intellectual property related research in Finland and identified shortages in several areas.<sup>a</sup>

During the time period of 2000–2013 the amount and the extent of intellectual property research expanded significantly in Finland. The multidisciplinary nature of copyright-related research is reflected in the results; copyright-related research projects and groups were identified in several disciplines such as law, economics, information technology, social sciences, and humanities in universities around Finland. Research on intellectual property issues is also organized through networks of relevant organizations, which is reflected for example in the establishment of the IPR University Center in 2000.<sup>b</sup>

The increase in copyright-related research in the 2000s is reflected in the numbers of separately funded copyright-related projects, master's degree programs and theses published in universities. In 2000, the Academy of Finland did not identify any separately funded ongoing copyright-related projects in Finland. In 2013, seven ongoing projects were identified, of which four included the estimated amount of more than 60% copyright issues. The funding of these four projects alone amounted to over 3 million euros. While the Academy of Finland identified three copyright-related doctoral dissertations published during the time interval of 1950–1999, the pilot study identified 30 doctoral dissertations and 19 licentiate's theses published during the time period of 2000–2013.

In 2000, there was increasing demand for intellectual property related education and professorships in universities. In 2013, while conducting the pilot study, copyright-related programs were identified in two faculties of law and one school of business: University of Helsinki's Faculty of Law (2 programs), University of Turku's Fac-

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<sup>a</sup> The report can be found in Finnish at <http://www.aka.fi/globalassets/awanhat/documents/tiedostot/julkaisut/immateriaalioikeudentutkimus-pdf.pdf>.

<sup>b</sup> The IPR University Center is maintained by the University of Helsinki, the University of Turku, Aalto University, the Hanken School of Economics, the University of Lapland and the University of Eastern Finland.

ulty of Law, and Hanken School of Economics. In addition, copyright-related courses were offered at the other faculties of law.

Outside of universities, the Center of Cultural Policy Research (Cupore) and the Copyright Institute of the Finnish Copyright Society have proved to be important actors in the field. Since 2009, Cupore has conducted extensive methodological work to assess the copyright system's operation and the quality of copyright governance. The Copyright Institute of the Finnish Copyright Society has published copyright-related studies and reports regularly since 1991.

The number of publications, the level of financing and the permanent structures in the field indicate that copyright research is currently conducted extensively in Finland. The contents of the research were not analyzed and therefore no conclusion on the quality of research or potential areas of shortages can be made. However, the results showed that from the perspective of developing the copyright system, there could be an additional need for, for example, comparative law studies, which are often work-intensive. Additional research in the fields of law and economics as well as in social sciences was also considered useful for the development of the system.<sup>49</sup>

## IN SHORT

- There is a comprehensive amount of general copyright-related information available to the public, and it is provided by several sources and through several means:
  - the integration of copyright issues in the current national core curriculum for basic education
  - public awareness campaigns and projects
  - advisory services on general copyright issues and online copyright information pages of the Ministry of Education and Culture, collective management organizations and associations of stakeholders.
- Information on copyright is provided to professionals working in creative industries through
  - the integration of copyright issues into national qualification requirements in vocational education, as well as into courses in universities
  - information and advisory services with information on industry-specific practices, model contracts and websites.
- The amount and the extent of intellectual property research in Finland has expanded significantly since 2000, and the number of publications, the level of financing, and the permanent structures in the field indicate that copyright research is currently conducted extensively in Finland.

## Section 3.

# Operational Balance of the Copyright System

This section presents the results of the indicators measuring the operational balance of the copyright system. While the information presented in Section 2 described and measured the functioning and performance of the different elements of the copyright system, this section focuses on providing answers to the question “Is the copyright system fit for its purpose?” and from this standpoint helps identify areas for improvement.

### 1. Incentives

The purpose of copyright is to encourage creativity and secure returns for investments made for the production of creative works. The goal is achieved by granting authors the ability to control and be remunerated for the use of their works. By securing returns from the market, copyright also creates an incentive for investing in creative works. In addition to economic rewards, copyright provides moral rights, including the right of attribution and the right of respect, which, by recognizing the significance of authorship, create intrinsic motives for authors and performers to engage in creative activities.<sup>50</sup> The capability of the copyright system to provide incentives to creation is an important factor in its functioning.

#### 1.1. Indicators for assessing the capacity of the copyright system to encourage creation

The methodology framework proposes several ways of studying how the copyright system provides incentives to creation. The examination of the amount of direct copyright revenue streams for different stakeholders (presented in the following chapters) is one way of measuring the efficiency of the copyright system to provide incentives to creation. The methodology framework also recommends to calculate the amount of investment in copyrighted products and services and to compare it with the level of revenues, in order to obtain a ratio that will allow an evaluation of the profitability of investing in different copyright industries. These calculations have been made in other countries, but unfortunately could not be made in Finland because of a lack of suitably precise financial data.

Other methods to assess the incentive function of the copyright system include studying the significance of copyright remunerations in the total incomes of authors and performers, and collecting stakeholders’ opinions on the matter, including their point of view on the efficiency of economic incentives and the significance of moral rights. These types of studies can be made separately for each industry, as the incen-

tives might vary. The significance of copyright revenues and moral rights in the book publishing industry is discussed in Part I, Section 3, Chapter 4.2 below, but could also be studied in other industries in the future.

## 1.2. Direct copyright revenue streams for different stakeholders<sup>a</sup>

The total amount of direct copyright revenues in Finland in 2012 was estimated at 2,931.2 million euros. The following table presents the estimated amounts of direct copyright revenues in creative industries in Finland in 2008 and 2012, in M€.

Industry	2008	2012
Press and literature	116.0	148.9
Music, theatrical productions and opera	89.9	94.2
Motion picture and video	114.7	138.6
Radio and television	224.4	273.8
Photography	61.5	65.2
Software and databases	1,170.0	1,830.0
Computer games	194.4	347.0
Visual and graphic arts	6.5	7.3
Advertising	45.0	26.2
<b>Total</b>	<b>2,022.4</b>	<b>2,931.2</b>

**Table 1.** Direct copyright revenues in Finland in 2008 and 2012, broken down by industry.

The table shows that all industries, except the advertising industry<sup>b</sup>, have experienced an increase in the amount of direct copyright incomes from 2008 to 2012.<sup>c</sup> The industries of software and databases, as well as computer games, constituted the majority of all revenues in the creative industries and were also the two industries with most significant growth in direct copyright revenue during the examined time period. Table 2 presents the copyright revenues (in M€) divided by steps in the value creation process in 2012.

As the table indicates, the majority of the copyright revenues in 2012 resulted from the production stage. However, when excluding the software and databases industry from the calculation, it can be noticed that copyright revenues are also generated at other stages of the value creation process, including creation, exhibition, distribution and digital delivery. The share of revenues created at these different stages depends largely on the characteristics of the industry in question. To conclude, the results of the two studies on the topic indicate that the amount of direct copyright revenue streams in Finland has been significant and increasing rapidly, but the evaluation model provided only tentative data for examining the amount of copyright revenues at different stages

<sup>a</sup> This chapter is based on the following studies made on the amounts of direct copyright revenue streams in Finland:

- Koskinen-Olsson, Tarja & Muikku, Jari. *Direct Copyright Revenue Streams in Creative Industries in Finland. An evaluation.* The Finnish Copyright Institute of the Finnish Copyright Society. Publications No 31 (2014).
- Koskinen-Olsson, Tarja. *Direct Copyright Revenue Streams in Creative Industries in Finland. Evaluation Model.* Publications No 30 (2010).

<sup>b</sup> The decrease of revenues in the advertising industry was partially explained by changes in the evaluation criteria.

<sup>c</sup> The two studies on direct copyright revenue streams were conducted in 2010 and 2014. More recent figures are not available.

Industry	Creation	Production	Exhibition	Distribution	Digital Delivery	CMOs	Total M€	Total %
Press and literature	87.5				42.8	18.6	148.9	5.1
Music, theatrical productions and opera	10.1	4.9		1.0	5.7	72.5	94.2	3.2
Motion picture and video	2.0		75.0	52.4		9.2	138.6	4.7
Radio and television	20.2		251.3	2.3		– *	273.8	9.3
Photography	41.2			24.0		– **	65.2	2.2
Software and databases		1,830.0					1,830.0	62.5
Computer games		250.0		97.0			347.0	11.8
Visual and graphic arts	6.2			0.1		1.0	7.3	0.3
Advertising		26.2						0.9
<b>Total M€</b>	<b>167.2</b>	<b>2,111.1</b>	<b>326.3</b>	<b>176.8</b>	<b>48.5</b>	<b>101.3</b>	<b>2,931.2</b>	
<b>Total %</b>	<b>5.7</b>	<b>72.0</b>	<b>11.1</b>	<b>6.0</b>	<b>1.7</b>	<b>3.5</b>	<b>100</b>	

\* Included in music and motion picture \*\* Included in press and literature

**Table 2.** Copyright revenues at different steps of the value creation process in 2012, broken down by industry.

of the process. More detailed information would be necessary to evaluate the significance of copyright revenues for individual authors and performers or businesses.

### IN SHORT

- The goal of copyright is to encourage creativity by granting authors the ability to be rewarded for the use of their works and securing returns from the market for those investing in creative industries.
- The significance of economic incentives created by copyright can be studied by examining the amounts of direct copyright revenues generated in creative industries. In Finland, copyright-related revenues are generated at different stages of the value creation process, including creation, production, exhibition, distribution and digital delivery.
- Further information on the efficiency of the copyright system to provide incentives to create and invest could be collected by
  - studying the significance of copyright remunerations in the total incomes of authors and performers
  - studying the profitability of investing in different copyright industries
  - collecting the opinions of stakeholders on the matter.

## 2. Access

Copyright grants a limited monopoly to right holders to control the use of works of creation, but it is also essential for all members of society to have access to cultural works. The protection of copyright should also allow follow-on creation<sup>a</sup>.

<sup>a</sup> The term “follow-on creation” refers to the use of existing works to support the creation of new works.

## **2.1. Access to works by the public<sup>51</sup>**

A balance between the exclusive right provided by copyright and access to works by the public can be achieved partly through limitations granted to particular groups of users considered as having a specific interest in accessing copyrighted works, as well as facilitating the efficient operation of markets for copyrighted products and services with different kinds of licensing arrangements.

When a copy of a work is acquired by an individual, there are certain basic functions that are allowed by the limitations of the Finnish Copyright Act. Sections 19 and 20 provide that the copy can be further distributed when it has been sold or permanently transferred with the consent of the author. Section 12 allows making a few copies of copyrighted works for private use, for which authors receive a compensation through the state budget. Sections 22 and 25 allow quotations in different forms. Moreover, works in the public domain can be freely copied and distributed without copyright restrictions. The public domain includes works whose copyright term has ended and public documents (e.g. laws, regulations, treaties, decisions of authorities), which are not protected in the first place (section 9 of the Finnish Copyright Act).

Concerning public institutions, the limitation under section 15 of the Copyright Act provides that copies of works can be made for temporary use by audio and video recording in hospitals, senior citizens' homes, prisons and other similar institutions. Extended collective licensing organized under section 13 of the Copyright Act facilitates the acquisition of rights for photocopying in education, state administration, municipalities, churches and regional communities, as well as companies and associations. Moreover, extended collective licensing under section 13a facilitates the use of writings published in newspapers or periodicals in internal communication by authorities, business enterprises and organizations. In addition, there are licensing arrangements facilitating the use of copyrighted works in libraries, archives, museums and in education. These arrangements are presented in more detail in Part I, Section 3, Chapters 2.1.1 and 2.1.2.

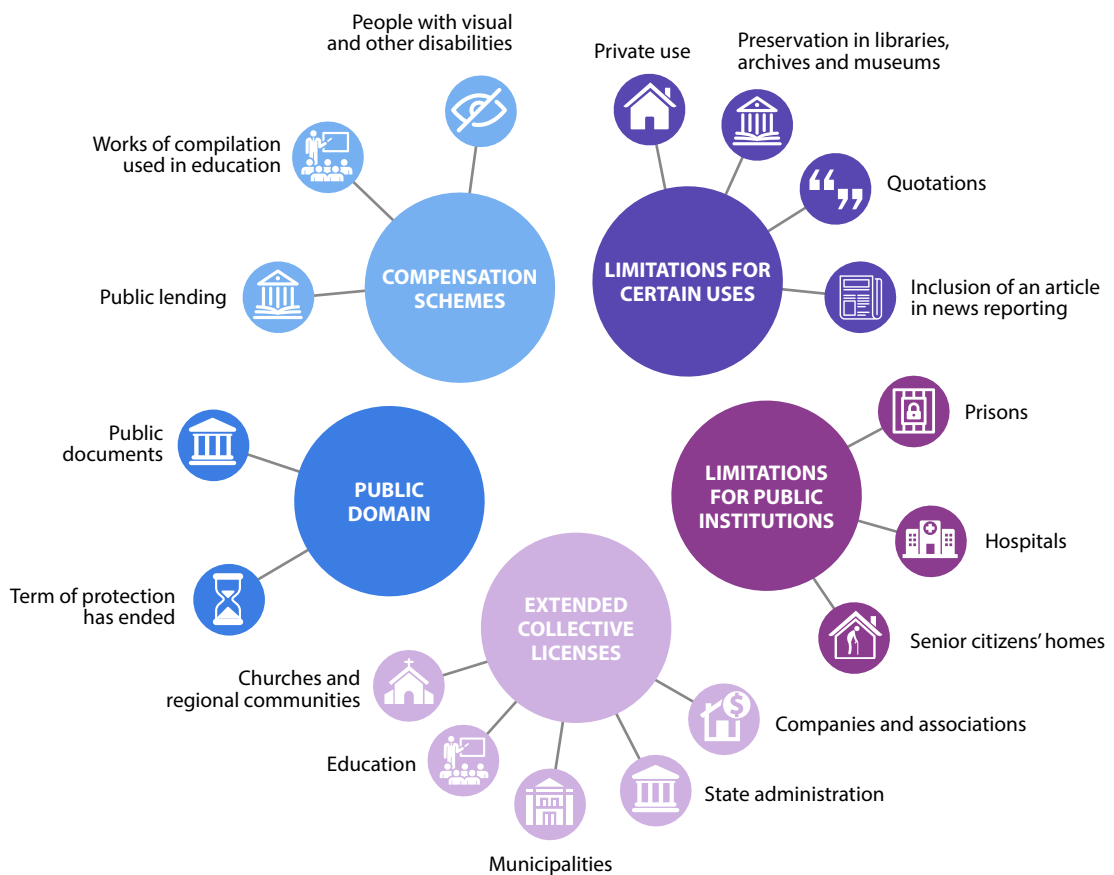
Finland has taken several measures to promote the rights of special interest groups. People with visual impairment or other disabilities that do not permit them to use works in the ordinary manner benefit from limitations to copyright that allow adapted copies to be made under certain conditions (section 17 of the Finnish Copyright Act). This includes for example copies of literary works in sound recordings or in sign language, which can only be made by specific institutions and for which the authors will be remunerated if the copy is sold or otherwise permanently transferred.<sup>52</sup>

The Copyright Act provides limitations and extended collective licenses aiming at facilitating the operation of licensing markets and thereby influencing indirectly the access of the public. For news reporting, the Copyright Act provides limitations allowing the inclusion of articles on current religious, political and economic topics from

other newspapers or periodicals (section 23) and the inclusion of a work in pictorial form in a newspaper or periodical when reporting on current events (section 25). In addition, the Copyright Act provides extended collective licenses enabling the use of works in radio and television transmissions (section 25f), the use of works of art in catalogues (section 25a), the reuse of a television program, newspaper or magazine stored in an archive (section 25g), and storing television programs by online recording services (section 25l). The Finnish collective management organizations also exercise voluntary collective licensing to allow the use of works of authors represented by the organizations in other circumstances.

Another solution for facilitating access are Creative Commons licenses, which are special arrangements allowing right holders to determine specific conditions for the use of their works.<sup>a</sup> These licenses are increasingly used in Finland to share content.

Finally, there are important legal provisions and licensing arrangements directly targeting libraries, museums and archives, as well as the use of copyrighted works in education. These provisions are covered as part of the following chapters that focus in more detail on copyright issues in these institutions.



**Figure 4.** Overview of public measures facilitating the access to copyrighted works.

<sup>a</sup> For example, the Creative Commons ShareAlike license allows others to copy, distribute, display, perform, and modify the work as long as the modified work is distributed on the same terms, and the NonCommercial license provides that the work can be used for any non-commercial purposes. For more information on Creative Commons licenses, see [www.creativecommons.org](http://www.creativecommons.org).



### 2.1.1. Access to works through libraries, archives and museums

There are many different kinds of libraries, museums and archives in Finland.<sup>a</sup>

The next chapters provide information on copyright-related issues in Finnish libraries, archives and museums by focusing on public libraries, the art collections of the Finnish National Gallery, and the Literary Archives of the Finnish Literature Society.

#### 2.1.1.1. Regulatory framework

The legislation of the European Union and copyright treaties impose some preconditions on the regulation of the access to copyrighted works by the public through libraries, archives and museums. Moreover, some specific provisions in the Finnish Copyright Act and related legislation have a significant influence on the access to copyrighted material through these institutions.

The Act on Collecting and Preserving Cultural Material (1433/2007) promotes the preservation of cultural material for future generations and for the use of researchers and other persons in need of the materials. The Act obliges publishers, distributors, producers or importers to submit copies of copyrighted works to be stored in some specific libraries and archives. Printed material is submitted to the National Library and university libraries<sup>b</sup>, depending on the type of material, and cinematographic works are stored by the National Audiovisual Institute.<sup>53</sup> This legislation will be updated beginning in 2018.

The Act on the Use of Orphan Works (764/2013) provides that libraries, archives and museums (as well as public broadcasting companies and educational organizations) can make copies of works whose copyright holders cannot be identified, and communicate those to the public under certain circumstances. This right can be exercised after a careful search for the identification of the right holders has been conducted.<sup>54</sup>

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<sup>a</sup> In 2016, Finland had a public library network comprising 284 main libraries, 436 branch libraries, 24 hospital libraries and 137 mobile libraries. In the same year, there were 45 research libraries (administrative units) maintaining 163 branches mainly in the institutions of higher education. In addition, there were hundreds of special libraries serving special interest groups.

In 2016, Finland had 154 professionally run museums, which maintained 326 museum sites and locations. These included cultural history museums, art museums, specialized museums, natural history museums and combination museums. In addition, there were about 1,000 local museum units and collections maintained by organizations, foundations, municipalities, companies and private persons.

Finland also has many types of publicly funded archives responsible for storing and preserving different kinds of materials: the National Archives of Finland responsible for ensuring that documents belonging to the national cultural heritage are preserved, and for promoting their use for research; other governmental central and special archives; the archives maintained by municipalities of Finland; the private central archives funded by state aid; and the archives of universities and museums.

Sources:

- Finnish Public Library Statistics, available at <http://tilastot.kirjastot.fi/>.
- Research Library Statistics Database, available at: <https://yhteisilasto.lib.helsinki.fi/index.php?lang=en>.
- Kirjastot.fi, available at [https://www.kirjastot.fi/kirjastot/erikoiskirjastot?language\\_content\\_entity=fi](https://www.kirjastot.fi/kirjastot/erikoiskirjastot?language_content_entity=fi).
- The National Board of Antiquities: *Finnish Museums 2016*, available at [https://www.museoilasto.fi/tiedostot/museovirasto/files/Tilastokortti\\_1\\_2016.pdf](https://www.museoilasto.fi/tiedostot/museovirasto/files/Tilastokortti_1_2016.pdf) and report on museum statistics 2014, available at [https://www.museoilasto.fi/tiedostot/museovirasto/files/Museoilasto2014\\_versio07102015\(1\).pdf](https://www.museoilasto.fi/tiedostot/museovirasto/files/Museoilasto2014_versio07102015(1).pdf).
- The website of the National Archives of Finland, <https://www.arkisto.fi/en/the-national-archives>.

<sup>b</sup> University of Eastern Finland Library, Jyväskylä University Library, Oulu University Library, Turku University Library and Åbo Akademi University Library.

Section 19 of the Copyright Act provides the right to make purchased works available for loan. Cinematographic works and computer programs are excluded from this lending right.

Section 16 and the following sections 16a–16c provide that certain libraries, archives and museums designated by a government decree can make copies of the works in their collections for the purposes of preserving, safeguarding, technically restoring and repairing or for the purpose of administering and organizing collections. Section 16a also allows the libraries and archives designated by the decree to photocopy and make available for lending works that are not commercially available.

Sections 16d and 16e provide for extended collective licensing for the use of copyrighted works in libraries, archives and museums for purposes other than those covered by sections 16a–16c. Section 16d covers the making of a copy of a work in the collections of the institution as well as communicating such a work to the public. The provision does not apply to a work whose author has prohibited the reproduction or communication of the work. It currently enables the online distribution of images of works of Finnish artists in the collections of the Finnish National Gallery and it enables the online distribution of images of works of Finnish artists worldwide.<sup>55</sup>

#### **2.1.1.2. Licensing of collections<sup>a</sup>**

By virtue of the lending right provided by section 19 of the Copyright Act, public libraries and university libraries in Finland can make the majority of their collections available for lending without contacting copyright holders. The author has a right to remuneration from public lending. Cinematographic works (about 5% of the collections)<sup>b</sup>, which are excluded from the provision, are usually licensed through intermediaries such as BTJ Finland Oy. Libraries have not faced problems in identifying copyright holders because identification is performed mainly by intermediaries. These intermediaries have had some difficulties in obtaining licenses for some movies. Especially copyright holders of small-budget films may be hard to trace.

When the Finnish National Gallery acquires art works, the ownership and the exhibition rights are transferred to the Gallery. When organizing exhibitions, the National Gallery negotiates temporary exhibition rights with artists and remunerates them usually through Kuvasto. Problems related to identifying copyright holders have not arisen concerning the art collections of the National Gallery, because remunerations related to the online distribution of art works are at the moment administered by the collective management organization Kuvasto. There have however been difficulties in the archive collections of the National Gallery, which were not a subject of the pilot study.

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<sup>a</sup> The copyright issues listed in the following paragraphs have been highlighted through a study focusing on public libraries, the art collections of the Finnish National Gallery and the Literary Archives of the Finnish Literature Society.

<sup>b</sup> Libraries do not have many computer programs in their collections.

Copyrights in the materials deposited in the Literary Archives remain with the original copyright holders, and the conditions and terms regarding the use of materials are determined in the contract signed with each donator. The materials in the Literary Archives can be used in accordance with the terms agreed upon in the donation contract. The donation contracts may set that (1) the materials are open for the use in accordance with the common practices of the archive, (2) the permission for the use of materials is needed from the manager of the archives or the original copyright holders or another dedicated person, or (3) the materials become available after a set period. In the Literary Archives of the Finnish Literature Society there have been some problems with high numbers of orphan works<sup>a</sup>, whose copyright holders should be identified if the materials are to be published. The photographer is unknown in about 60% of all photographs, and there is a large amount of orphan text materials as well.

### **2.1.1.3. Copyright-related challenges in libraries, archives and museums**

Generally, there are no insurmountable copyright-related barriers preventing libraries, archives and museums from providing access to the public. The staff of the institutions are provided with copyright-related knowledge, and they have been given important support on copyright issues by the juridical group KAM and in seminars organized by the institutions. However, a need for experts specialized in more complicated copyright questions in the public library field was reported. Also, there could be more information regarding the legal terms and conditions related to the materials handed to the archives.

As regards the copyright-related challenges faced by public libraries, the restrictions imposed by section 16 of the Copyright Act were mentioned: the possibility to make copies under section 16 is provided only to certain libraries, the copyright materials digitized under this section cannot be made available outside the libraries' internal networks; and section 16a is limited to the method of photocopying, which, for example, prevents libraries from converting LP records to CDs and making them available for lending. In the long term, the main challenge is the public libraries' lack of rights in the online environment. There are no copyright-related limitations or other special provisions for libraries regarding online distribution of works, which means that the libraries have to compete with commercial actors in negotiating online distribution rights in the future. Because of this, public libraries are not necessarily able to provide users with new releases in digital form.

In the archives, one of the biggest challenges of the copyright system is to ensure equal access to copyrighted works for researchers all over Finland (or in the world). Because there are many archives concentrated in the capital area, it is important for

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<sup>a</sup> Orphan works are works protected by copyright whose authors or right holders cannot be identified or contacted to obtain permissions for the use of works.

archives to be able to provide materials for researchers over the internet. Another challenge is related to the huge number of orphan works in the archives. Identifying copyright holders, especially after the death of the authors, can be very difficult and labor intensive. As regards the art collections of the National Gallery, there are no specific groups that can not be served because of copyright-related issues.<sup>a</sup> However, there would be a need to clarify copyright rules regarding distribution and linking of images of artworks in the social media.

## **2.1.2. Access to works in education**

### **2.1.2.1. Regulatory framework**

The Finnish Copyright Act includes limitations targeted especially for the purposes of education. Section 21 allows the public performance of a published work in educational activities (and in religious services). Section 14(2) of the Copyright Act permits recording a work performed by a teacher or a student on audio or video for temporary use for educational purposes. Section 14(3) provides that parts of literary works, or whole works when they are not extensive, can be used as part of the matriculation examination or other corresponding test.

Extended collective licensing organized under section 13 of the Copyright Act facilitates the acquisition of rights for photocopying in education. Section 14(1) provides the possibility of using extended collective licensing for the purposes of education and scientific research. Currently extended collective licenses are applied in the areas of digital uses, recording of and using works included in television and radio programs, as well as the use of phonograms in education.

The statutory license provided by section 18 allows the use of parts of literary or artistic works (even entire works if they are not extensive) in compilations made for the purpose of education. The use is not remunerated through collective management organizations but the remunerations are paid to right holders directly.

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

### **2.1.2.2. Licensing of teaching materials**

A large majority (estimated at 89%) of the materials used in teaching do not require any licensing. These include teaching materials purchased by schools, the materials used under section 21, the materials whose term of protection has ended and material under Creative Commons licenses. An estimated 10% of the materials is licensed

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<sup>a</sup> However, it was reported that the archive collections of the National Gallery have had some problems related to online access, which were not analyzed in this study.

through collective management organizations. These licenses allow photocopying, digital uses from the internet, and viewing, listening and recording television and radio programs, plus the online services of the Finnish Broadcasting Company (Yle Areena and Elävä Arkisto). Only a very small percentage (an estimated 1%) of all materials is negotiated individually with each copyright holder. The most common example is a teacher using materials prepared by other teachers.

### **2.1.2.3. Copyright-related challenges concerning access to works in schools**

Generally, copyright-related administrative duties in elementary, secondary and upper secondary schools are quite minor as the task is mostly managed by municipalities or joint authorities for education. Collective licenses for photocopying and digital copying are also negotiated and acquired by the Finnish National Agency for Education. However, the knowledge of teachers of copyright issues was reported to be generally low, which may result in incorrect views on the copyright rules among teachers. The lack of knowledge is not necessarily due to lack of education and information as copyright education is provided through several sources. On the contrary, teachers may often be aware of their lack of knowledge, but are not keen to spend their limited time on complicated copyright issues.

The use of physical copies in education is not currently causing any severe problems in schools. The challenges are related to the use of copyrighted materials in the online environment. The following issues were reported:

- The use of internet videos in teaching. Are all videos considered “cinematographic works” (which aren’t included in the school performance limitation, section 21) regardless of their length?<sup>a</sup>
- Under what conditions are teachers allowed to copy materials from the internet to virtual learning platforms? If virtual platforms are not used, how are teachers allowed to communicate materials to students online?
- Copyright issues concerning remote learning: how can lectures and learning materials be delivered to students?
- What is the teacher’s responsibility if a pupil’s work infringes copyrights of third parties?

Some challenges related to copyright law or the copyright system more generally were also reported:

- Issues related to the long-term preservation of materials should be clarified. These challenges can relate to the preservation of recordings of lectures or to students’ learning portfolios including copyright-protected materials.
- The interpretation of the public/private dichotomy is unclear in schools at the moment. Teaching is considered public, and schools acquire licenses for show-

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<sup>a</sup> Statements 2015:12 and 2017:01 of the Copyright Council clarify the interpretation of the Copyright Act regarding the protection cinematographic works.

ing television programs in classes. On the other hand, students are allowed to make derivative works, for example in music, foreign language and mother tongue classes, which is permitted only by the limitation regarding reproduction for private use.

- More information should be provided on Creative Commons licenses. The licenses are already widely used worldwide and should be part of teachers' and students' general knowledge.

## **2.2. Access to copyrighted works for follow-on creation<sup>56</sup>**

The use of existing works in the creation of new works plays an important role in both artistic and scientific practices. One aspect in the functioning of the copyright system is its ability to encourage follow-on creation while simultaneously protecting the rights in the pre-existing works. An efficient copyright system encourages creativity in general but also provides a framework for the functioning of the markets for derivative works. Technological development has recently facilitated new types of follow-on creation that open new questions related to copyright. Access to copyrighted works for follow-on creation is closely connected to the implementation of fundamental rights such as protection of property (section 15 of the Constitution of Finland), freedom of expression and right of access to information (section 12 of the Constitution of Finland), and freedom of science, arts and higher education (section 16 of the Constitution of Finland).

### **2.2.1. Regulatory framework**

Access to copyrighted works for follow-on creation is influenced mainly by the following three aspects: 1) the scope and term of copyright protection, 2) the limitations provided by copyright legislation and 3) the available licensing arrangements facilitating the use of existing works in derivative works.

Copyright protects literary and artistic expressions meeting the originality requirement. As a result, there is no limit to the use for follow-on creation of works or pieces of them that do not fall in the scope and term of copyright protection, in particular the following:

- Ideas, procedures, methods of operation and mathematical concepts; the results of mere mechanical work can be freely used in follow-on creation.
- Copyright protects only expressions meeting the threshold of originality. The Copyright Act does not explicitly provide the criteria for evaluating the originality of works, but the preparatory works of the Copyright Act indicate that internationally accepted requirements are to be followed. A work must be independently created and a result of the creative expression of the author.
- The importance of the common cultural heritage in the creation of new works is acknowledged in section 4(2) of the Finnish Copyright Act: if a person, in free

association with a work, creates a new and independent work, his or her copyright shall not be subject to the rights in the original work.

- The protection term lasts 70 years after the death of the last surviving author, after which copyrighted works fall into the public domain and can be freely used in follow-on creation. This time limit also concerns the subject matters protected as a whole and in part by neighboring rights, including audio recordings (70 years), video recordings (50 years), performances (50 or 70 years), catalogues and databases (15 years), photographs (50 years) and press reports (12 hours).

On the other hand, some follow-on uses are subject to specific limitations:

- Publishing derivative works, such as translations, adaptations and compilations require permissions from original copyright holders (section 4(1) and section 5 of the Copyright Act). The threshold of originality is applied to derivative works as well. Therefore, mechanically produced word-for-word translations, for example, are not protected by copyright.
- Moral rights provided by section 3 of the Finnish Copyright Act forbid the alteration of the work in a manner which is prejudicial to the author's literary or artistic reputation, and requires stating the name of the author in a manner required by proper usage.
- Section 53 allows an authority designated by a decree to prohibit the use of classic works in a manner that violates cultural interests. The provision applies also to works whose term of protection has ended or which were never protected by copyright. It is exercised by the Ministry of Education and Culture.

Certain types of follow-on uses of copyrighted works (including the subject matter protected by neighboring rights) are allowed by the limitations of the Copyright Act. These limitations include reproduction for private use, quotation, reproduction of works of art in pictorial form, reproduction of a permanently sold or transferred work and inclusion of a work in a news report. Certain preconditions must be met for follow-on uses to be allowed by these limitations.

When follow-on creation is based on a work protected by copyright and cannot benefit from the limitations presented above, a license has to be obtained. There are different kinds of practices for licensing the use of copyrighted content in derivative works. Collective management organizations may have been mandated to license some areas of follow-on uses, or they provide help in identifying and contacting the original copyright holders. Licenses for derivative works may also be negotiated directly between the follow-on creators and the copyright holders of the original works. Open knowledge communities (such as Wikipedia) and remix communities (such as CCMixer) often use different kinds of open licenses (e.g. Creative Commons licenses, GNU Free Documentation Licenses and Open Database Licenses), which provide other users with broad rights to use, modify and distribute the content.

## 2.2.2. Opinions on issues related to the access of copyrighted works for follow-on creation

The use of existing works in the creation of new works has played a central role in the history of arts. Recent decades have seen the development of new creative practices based on copying, borrowing and imitation, such as sampling in different styles of music (e.g. hip-hop, electronic and pop music), copy art (or Xerox art), photorealism, digital poetry, fan fiction and “Let’s Play” videos<sup>a</sup>, which have all fostered discussion on the relationship between copyright and follow-on creativity. To understand whether the copyright system creates problems for follow-on creation, the opinions of authors and performers, the public at large and researchers were analyzed.

During the piloting of the methodology for assessing copyright and related rights systems, opinions of authors and performers on the access to copyrighted works for follow-on creation were examined through the case example of Finnish hip-hop producers, who are the creators of commercially distributed musical works and use sampling as a method of creation. The results show that there is uncertainty about the copyright rules concerning digital sampling among hip-hop producers. The acquisition of licenses is common only in high budget productions. The producers’ willingness to attribute and/or remunerate original copyright holders depends on how strongly the new works are characterized by the contexts of the original works. When using small sections of existing works, it is common for producers to approach the new works as their own compositions. When using longer segments under certain circumstances, the producers would be willing to attribute and/or remunerate the original copyright holders, but there is uncertainty about the scope of the quotation right, and licensing practices are considered very complicated, with low chances of succeeding. It seems that legal uncertainty and difficulties in licensing may have negative impacts on the creative process of some hip-hop producers. This is indicated by the reduced use of sampling, avoidance of certain sources, unpublished songs and the use of various methods, such as editing and replays, for avoiding copyright problems.<sup>b</sup>

Opinions of the public at large, analyzed through statements issued by the Finnish Competition and Consumer Authority (FCCA) and the European Copyright Society (ECS), show that there is uncertainty about how copyright rules are applied to different forms of user-generated content (UGC). The European Copyright Society stresses that because copyright limitations in the different countries of the European Union are not tailored for user-generated content, it is virtually impossible to know whether certain kinds of uses fall within the scope of national limitations.

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<sup>a</sup> Let’s Play (LP) refers to a style of video in which a video game is played through, usually accompanied with the commentary of the gamer. For more information, see [https://en.wikipedia.org/wiki/Let%27s\\_Play](https://en.wikipedia.org/wiki/Let%27s_Play).

<sup>b</sup> Statement 2017:11 of the Copyright Council concerning a short segment of a melody clarifies the interpretation of the Copyright Act regarding the protection of musical compositions.



Opinions of researchers have been studied by Cupore in the pilot phase of the project on assessing the operation of copyright and related rights systems, as well as in connection with the piloting of WIPO's Guidelines on Assessing the Economic, Social and Cultural Impact of Copyright on the Creative Economy (ESCIA).<sup>a</sup> According to the results, major copyright-related challenges in the research field at the moment are not related to conducting research as such, but to the preservation and distribution of research data and results. The problems that have occurred have been mainly related to uncertainty in the interpretation of the copyright rules, in the use of text and data mining (TDM) in human sciences and in publishing audiovisual works as attachments to research reports. Researchers do not generally have a good knowledge of copyright issues, and there would be a need for additional education and training.

### **2.3. Challenges regarding access to copyrighted works**

The Finnish copyright system includes a wide spectrum of provisions and arrangements that aim at promoting access to copyrighted works by the public. These include limitations and extended collective licenses concerning the use of works in libraries, archives and museums, education and businesses. Moreover, the needs of special interest groups are widely acknowledged in Finnish copyright legislation. A further look at the operation of libraries, museums and archives indicates that these institutions are currently able to serve the public without any insurmountable barriers caused by copyright, although the access to works for scientific research could be further studied. Access could, however, be facilitated in these institutions by developing copyright-related legislation or policies, especially in the area of online distribution. Finnish copyright legislation is however bound by the legislation of the European Union and by international copyright treaties, which might limit the possibilities for action in this area at the national level. It seems that the biggest access-related challenges are currently experienced in education, in which there are challenges related to the use of copyrighted materials in the online environment, including questions such as the use of internet videos in teaching, copying materials to virtual learning platforms, and long-term preservation of digital materials. The interpretation of the public/private dichotomy in copyright law is also problematic at the moment.

Although the numbers of domestically produced and imported copyrighted goods show that there is a wide offering of cultural products in the Finnish markets, it should be further examined how different aspects such as the development of business models on digital distribution, price levels, the use of DRM methods, geo-blocking or delays in release in Finland influence the availability and access to copyrighted products from the end-user perspective.

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<sup>a</sup> More information on this project is available at <https://www.cupore.fi/en/research/previous-researches/wipo-guidelines-on-assessing-the-economic-social-and-cultural-impact-of-copyright-escia>.

The copyright system aims at reaching a fair balance between the interests of follow-on creators and holders of copyright in pre-existing works. Because the follow-on uses of protected works do not often compete with the original works, the uses can benefit both parties and provide new works for the society.

The biggest challenges of follow-on creativity for all examined groups (authors and performers, public at large and researchers) are currently related to legal uncertainty, mainly in the context of new practices made possible by the development of digital technology and the online environment. Legal certainty could be improved by clarifying the scope of copyright protection and limitations, facilitating licensing arrangements, and enhancing the dissemination of information. Different forms of follow-on creation, their relationship to copyright legislation, and mandates of collective management organizations to license these uses could be analyzed in the future to get a more comprehensive picture of the field.

Finally, it should be recognized that access to copyrighted works by the public and for follow-on creation are not mutually exclusive categories. For example, access provided by libraries and archives has a direct impact on scientific research in Finland. Moreover, the rules of follow-on creation have an influence on how copyrighted works can be used in education and scientific research. Schools, libraries and archives are institutions in which the aspects of both access to copyrighted works in general and access for follow-on creation should be considered.

## IN SHORT

- In order to allow all members of society to access copyrighted works, the copyright system includes limitations and other arrangements for
  - certain types of uses, for example private use, or to facilitate the operation of licensing markets
  - certain actors, such as educators and researchers
  - certain organizations, such as libraries, archives and museums
  - certain categories of users, for example people with disabilities.
- Access to copyrighted works through libraries, archives and museums in Finland
  - is organized through a regulatory framework including specific provisions facilitating the collection, preservation and availability of works, as well as extended collective licensing schemes
  - does not suffer from insurmountable copyright-related barriers preventing these institutions from providing access to works to the public
  - faces challenges related to rights of copying or digitizing works, orphan works, equal access to works across the country, and online distribution of works.

- Access to copyrighted works in education
  - is organized through limitations in the Finnish Copyright Act, providing for access in educational activities and through licensing arranged by collective management organizations
  - does not require a large amount of administrative work by schools and educators
  - faces challenges related to the use of copyrighted material in the online environment, long-term preservation of material, interpretation of the public/private dichotomy in copyright law, and sometimes the lack of knowledge of teachers on copyright issues.
- The use of copyrighted works for follow-on creation
  - is made possible by the scope and term of copyright protection, the limitations on copyright, and the licensing arrangements facilitating the use of existing works in derivative works
  - faces challenges related to uncertainty on copyright rules, concerning in particular the new ways of producing content enabled by the development of digital technology and the internet. More research on the different forms of follow-on creativity is needed.
- Altogether, the Finnish copyright system includes a wide spectrum of provisions and arrangements that aim at promoting access to copyrighted works by the public and special interest groups, but in some areas, especially concerning new practices made possible by the development of digital technology and the online environment, the scope and rules of copyright protection should be clarified and the adoption of new licensing arrangements could be facilitated.

### **3. Infringement, opinions and public acceptance**

In physical form, copyright is infringed by copying and distributing works embedded in a physical object, such as a CD or a DVD, without the authorization of right holders, which is a form of counterfeiting. In digital form, works are illegally copied and exchanged without a physical transfer, usually through the internet, an activity often called “digital piracy.” New technologies have facilitated the exchange of unauthorized copies and challenged the efficiency of copyright protection. It is important to evaluate the extent of the phenomenon, its evolution and its effect on the legal markets. Moreover, copyright infringement is related to the attitudes and opinions on copyright rules: if the role and rules of copyright are poorly understood or accepted, compliance is likely to diminish.

## **3.1. Infringement**

### **3.1.1. Unauthorized use in physical form<sup>57</sup>**

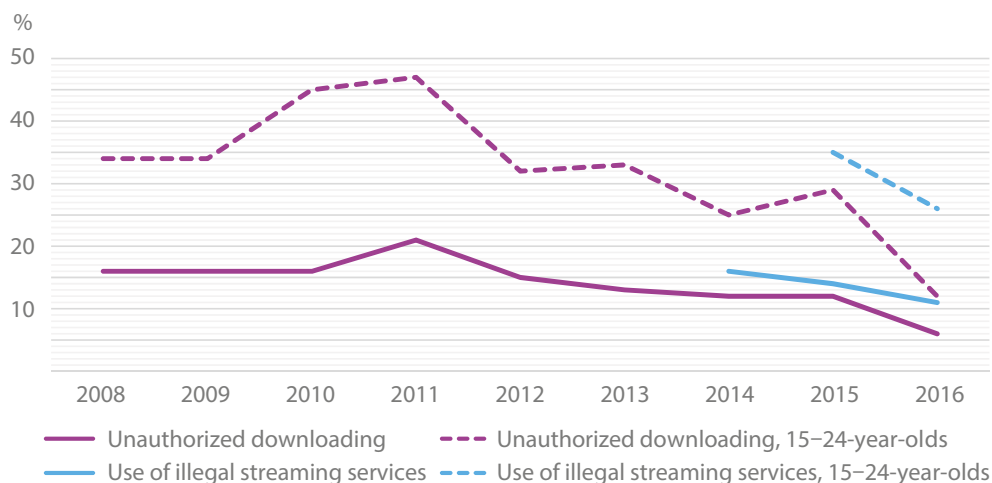
In order to assess the level of copyright infringement in physical form in Finland, two sources have been used when implementing the methodology for assessing copyright and related rights systems. The first is the Copyright Barometer (*Tekijänoikeusbarometri*) poll on copyright and unauthorized use commissioned annually by Lyhty (Luovan työn tekijät ja yrittäjät), a cooperation project of the Finnish creative industries. The latest available information concerning the level of unauthorized use in physical form is from 2015 and indicates that 1% of studied households (and 4% of young people between 15 and 24) admitted to possessing pirated discs, movies or computer games bought in the last year in Finland, and 2% (2% of young people) had such items bought abroad.<sup>58</sup> These figures had been decreasing since 2008.

The second source are the statistics of the Finnish Customs on the number of confiscated products and the number of exposed copyright offences and violations. These statistics were collected as part of the piloting of the methodology framework in 2013, and the latest available figures date back to 2012. Between 2008 and 2012, the Customs retained on average around 800 articles per year because of copyright infringement. In the same period, the number of copyright offences and violations that have come to the knowledge of the Customs decreased from 59 to 13. For the purposes of comparison, the number of customs clearances for audiovisual recordings and software went from 6,234 in 2009 to 2,896 in 2012.

As a result, it seems that copyright infringement in physical form has been very limited and decreasing since 2008.

### **3.1.2. Unauthorized use in digital form<sup>59</sup>**

The annual Copyright Barometer poll is also the main source of information on the level of unauthorized use in digital form in Finland. To the question “Have you or has a member of your family downloaded unauthorized music, movies or computer games from the internet (during the last year)?”, the percentage of respondents who answered positively decreased since 2011, both among the general population and among respondents between 15 and 24 years old. The drop is particularly sharp between 2015 and 2016, when the percentage of respondents who admitted to downloading copyright-protected works without authorization was halved for the general population and even dropped from 29% to 12% for 15–24-year-olds. Concerning the number of respondents who answered positively to the question “Have you or your



**Figure 5.** Self-reported unauthorized use in digital form (Copyright Barometers by Lyhty).

family member watched, listened or played films, music or games that are available in illegal online services?”,<sup>a</sup> the same downward trend was recorded.<sup>b</sup>

Another series of surveys including questions on copyright infringement are the studies on self-reporting juvenile delinquency in Finland, which questioned 9th grade students (15 to 16 years old) on their experience of unauthorized downloading. These studies, conducted in 2008 and 2012 by the Institute of Criminology and Legal Policy<sup>c</sup>, found a larger percentage of infringement in this age group than the Copyright Barometers (69% in 2008 and 71% in 2012). Further studies would be required in the area to examine the potential factors behind the discrepancy between the results of the Copyright Barometers and the juvenile delinquency studies concerning the level of copyright infringement among younger people.

Altogether, it seems that unauthorized use and exchange of copyrighted works is much more common in digital form than in physical form and has been generally widespread, but it has been decreasing during the last decade. More recently, right holders have had to face new challenges resulting from the use of illegal streaming services. Unfortunately, no precise data was found on the frequency of online purchases of copyrighted contents by Finnish citizens to compare the size of the lawful digital markets with the level of unauthorized exchange. However, information on the use of lawful private copying of copyrighted works and of lawful streaming services, as well as figures concerning the development of digital business models in Fin-

<sup>a</sup> In Finnish: “Itse tai perheenjäseneni ovat katselleet, kuunnelleet tai pelanneet internetin laittomissa palveluissa luvatta tarjolla olevaa musiikkia, elokuvaa tai videopeliä.”

<sup>b</sup> The question of whether streaming protected works from an unauthorized source constitutes copyright infringement on the part of the users has been disputed, based on the fact that only temporary and partial copies of the works are necessary for the streaming process. The Court of Justice of the European Union has recently ruled, in Case C 527/15 of 26 April 2017, that “acts of temporary reproduction, on a multimedia player, such as that at issue in the main proceedings, of a copyright-protected work obtained by streaming from a website belonging to a third party offering that work without the consent of the copyright holder” constitutes copyright infringement according to Directive 2001/29/EC.

<sup>c</sup> Formerly National Research Institute of Legal Policy. The Institute is part of the University of Helsinki.

land seem to indicate that, generally speaking, legal markets for copyrighted products are now sufficiently developed to compete with unauthorized use.

As a matter of fact, one possible reason for the decrease in unauthorized exchange of copyrighted works during the last years could be the increased availability and attractiveness of legal offers, either through downloading or streaming.<sup>a</sup> Past surveys conducted in Finland on the reasons for engaging in copyright infringement online have highlighted as key factors the lack of availability of works (in good quality and easy to access format) on the legal markets, as well as the price of acquiring the works.

On the other hand, Finnish citizens seem to be well aware of the laws they break when involved in unauthorized exchange of copyrighted works, indicating that education and information on copyright is indeed efficient. In a 2007 survey, respondents generally considered the risks of getting caught insignificant, but this state of affairs might have changed since right holders have started contacting alleged infringers directly.<sup>b</sup> This increase in enforcement activities might also partly explain the drop in self-reported copyright infringement in recent years.

### 3.2. End-users' opinions on the copyright system<sup>60</sup>

In order to thoroughly study the opinions of end-users and stakeholders on copyright and the functioning of the copyright system, an extensive survey would be necessary.<sup>c</sup> So far, the only survey that included questions on opinions concerning the operation of the copyright system is again the annual Copyright Barometer, which concerns the public at large. The survey of 2011 included a broader set of questions than those of other years. Respondents at the time seemed to be divided in their opinions on the biggest beneficiaries of copyright remunerations, an aspect that might lack transparency. On the other hand, a majority of respondents considered that copyright remunerations had a positive effect on domestic culture and that their current method of collection was mainly right, findings that were largely replicated in the Barometer of 2016.<sup>d</sup> However, in 2011, only a minority of respondents considered the amount of the remuneration to be reasonable in relation to the financial situation of those acquiring copyrighted content, and as much as 29% considered that copyright remunerations increase the prices of products too much. This would support the hypothesis

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<sup>a</sup> In the music field, for example, the market share of digital sales of members of the International Federation of the Phonographic Industry (IFPI) increased rapidly until 2012; source: <http://www.ifpi.fi/tilastot/vuosimyynti/>.

<sup>b</sup> See above Section 2, Chapter 3.4, "Efficiency of Enforcement."

<sup>c</sup> This type of survey has been selected as part of a future continuous assessment of the Finnish copyright system. For more information, see Tiina Kautio, *Indicators for a continuous monitoring of the operation of the Finnish copyright system*, Cupore working papers 5, available at <http://www.cupore.fi/en/publications/cupore-s-publications/indicators-for-a-continuous-monitoring-of-the-operation-of-the-finnish-copyright-system>.

The opinions of stakeholders have been collected as part of the pilot studies with a focus on the literature and book publishing industry; the findings are presented in the next section.

<sup>d</sup> 78% of respondents in 2011 and 72% in 2016 agreed or somewhat agreed with the statement "Copyright remunerations are good for domestic culture"; 63% of respondents in 2011 and 64% in 2016 agreed or somewhat agreed with the statement "Collecting copyright remunerations in the current way is mainly right." Source: <https://lyhtyprojekti.fi>.

that the high level of copyright infringement at the time could be partly explained by the price of cultural goods being considered as too high by some of the public.

Some questions of the Copyright Barometers concerned the opinions of the public on collective management organizations. In 2016, a majority of respondents considered that CMOs work for a good cause and that they were necessary, while 6% considered that CMOs were harmful to development.<sup>a</sup> It is interesting to note that young adults (25–34 years of age) are more critical towards copyright organizations and copyright than other age groups; organizations are considered more often than average to be wrong, unnecessary, and detrimental to development. However, a trend seems to have started in 2015 towards a decrease in the number of criticisms.

Another source of information on end-users' opinions on the copyright system are the statements on the subject by groups representing end-users' interests. The Finnish Competition and Consumer Authority and the Consumer Ombudsman have, among other opinions, expressed the need for a better or easier access of end-users to copyrighted goods. Electronic Frontier Finland, an organization defending the rights of Finnish citizens in the information society, has argued that the interests of end-users are not always properly taken into account in the development of copyright law and policy. End-users' opinions are also reflected in public initiatives concerning the evolution of the copyright system. The Pirate Party's program seems to indicate that a part of the population considers that licensing should be simplified and harmonized internationally, that the fair compensation system is considered by some as unfounded, and that current sanctions proposed by law for non-commercial unauthorized exchange of protected content are unreasonable. Finally, in 2014, a citizens' initiative proposed to lighten the punishment for copyright infringement by making the individual downloading of copyright-protected content punishable as copyright misdemeanor, while still retaining the graver form, copyright crime.

Altogether, insufficient information is available so far to draw general conclusions on the attitudes of citizens concerning the copyright system. Further surveys conducted independently from stakeholder organizations could offer a better understanding of this issue. Based on the information currently available, it seems that Finnish end-users have a good understanding of the necessity for the copyright system and quite positive opinions on its functioning, even though the system for collecting and distributing remunerations is not fully understood. The main topics that have been the subject of public criticism in the past are related to the access of works (including their price) and the severity of copyright infringement penalties. However, the principle of copyright and its rules are not generally challenged, and it is more

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<sup>a</sup> To the question "Do you consider CMOs to be working for a right cause or a wrong cause?" 66% answered "for a right cause" or "for a somehow right cause." To the question "Do you consider CMOs to be needed or unneeded?" 66% answered "needed" or "somewhat needed." To the question "Do you consider CMOs to be beneficial to progress or, on the contrary, counterproductive?" 6% answered "counterproductive," while 45% answered "beneficial" or "somewhat beneficial."

likely that the variations in the level of infringement are related to the attractiveness of the legal and illegal offer and the increase of actions taken by stakeholders to enforce their rights.

### **IN SHORT**

- Copyright infringement in physical form (unauthorized copying and distribution of works embedded in a physical object such as a CD or a DVD) has been very limited and decreasing since 2008.
- Copyright infringement in digital form is much more common and has been generally widespread, but it has been decreasing in the last decade.
- Generally speaking, legal markets for copyrighted products seem to be sufficiently developed to compete with unauthorized use.
- More research needs to be done on the attitudes of citizens concerning copyright rules and copyright infringement, but it seems that
  - the principle of copyright and its rules are not generally challenged
  - variations in the level of infringement are mainly related to the attractiveness of the legal and illegal offer, and the increase in enforcement activities by right holders.

## **4. An industry example: the book publishing industry**

During the piloting of the methodology for assessing copyright and related rights systems, six indicators were implemented with a focus on the literature and publishing industry. These indicators concerned the following topics:

- the markets for copyrighted products and services
- the individual exercise of rights
- the efficiency of copyright as an incentive to create and invest in creative works
- the transaction costs in transfer and licensing of rights
- the terms for transfer and licensing of rights
- the stakeholders' opinions on the copyright system.

These studies were conducted between April 2014 and January 2015. The subjective data concerning the experiences and opinions of stakeholders was collected through expert interviews and focus group discussions. A desktop study was first conducted to identify the relevant stakeholder organizations in the industry, and their representatives were invited to take part in the study as a part of two separate groups:



the stakeholder group of authors<sup>a</sup> and the stakeholder group of publishers<sup>b</sup>. The participants were then sent questionnaires to fill in, and their answers were the basis of discussions during later separate focus group meetings.<sup>c</sup> The current section is based on the findings of these studies.

#### **4.1. The market and actors<sup>61</sup>**

Finnish people are among the most enthusiastic readers in the European Union.<sup>d</sup> In 2016, the estimated number of physical copies of books sold per adult was 3.4<sup>62</sup> and the average Finnish citizen borrowed around 16 items from the public libraries<sup>63</sup>. The scale of publishing activities in Finland is, however, relatively small in the global context. The small population of Finland, as well as the relatively small number of speakers of the two national languages, Finnish and Swedish, limit the size of the Finnish markets. Books written in these languages must usually be translated when sold abroad, and because of the language barrier, they are consumed mainly in Finland. However, sales of Finnish books in foreign markets have increased significantly during the last years. This trend is reflected in the increased incomes from sales of rights as well as in the royalties received from abroad, which almost doubled between the years 2014 and 2016.<sup>64</sup> A high number of translated foreign works are also published in Finland in every year.<sup>65</sup>

In 2014, 1587 people were working in enterprises engaged in book publishing.<sup>66</sup> Although the number of small, specialized publishers has increased because of the decreased production costs, Finnish contemporary literature is mainly published by larger publishing companies. The biggest literature publishers in Finland are media companies, which conduct a wide variety of publishing activities in several areas. Digital sales of books increased between 2007 and 2016, but still represented only 9.9% of total book sales.<sup>67</sup> The price level of books in Finland is generally high with the average price being fifth highest among 30 European countries analyzed by the European Council in 2014.<sup>68</sup> According to representatives of the book publishing industry consulted in 2014, the Finnish e-book market is not yet as developed as the English-language market.<sup>69</sup>

The Finnish book publishing industry is strongly organized when considering the size of the markets. There is a wide variety of organizations representing the authors, publishers, and other stakeholders, as well as organizations aiming at promoting do-

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<sup>a</sup> The stakeholder group of authors included representatives of the following organizations: The Finnish Association of Translators and Interpreters, Finlands Svenska Författareföreningen, The Union of Finnish Writers, The Finnish Association of Non-Fiction Writers, The Finnish Comics Professionals.

<sup>b</sup> The stakeholder group included representatives of the following organizations: The Finnish Book Publishers Association, Otava Publishing Company Ltd, Arkinen Banaani, Finnish Literature Society, Werner Söderström Corporation/Bonnier Books Finland.

<sup>c</sup> More information on the methodology is presented in each pilot report.

<sup>d</sup> The statistics concerning the year 2011 show that 73% of the Finnish population had read at least one book in the last 12 months. Source: Eurostat (2016): Cultural statistics, available at <http://ec.europa.eu/eurostat/documents/3217494/7551543/KS-04-15-737-EN-N.pdf/648072f3-63c4-47d8-905a-6fdc742b8605>. Pages 116–120.

mestic literature in Finland and abroad. The collective management organizations Kopiosto, Sanasto and Kuvasto are responsible for collective management of rights in the field.<sup>a</sup>

## **4.2. Significance of copyright to right holders in the book publishing industry<sup>70</sup>**

When looking at the economic importance of copyright to authors and translators in the book publishing industry, it becomes evident that the types of incomes, as well as the share of copyright revenues in the income, vary greatly among the stakeholders. The study found that only 15% (450 persons) of the Finnish Association of Non-Fiction Writers, a third of the Finnish Comic Professionals (around 30 persons), and around 20% of the Finnish Association of Translators and Interpreters (80 persons) were working full-time in their creative profession at the time of conducting the study. In contrast, the Union of Finnish Writers and the Society of Swedish Authors in Finland (FSF) reported that 80% (around 700 persons) of their members were working as full-time writers. Therefore, it seems that the share of people working full-time in activities represented by the organizations is higher among fiction writers. However, it should be acknowledged that there is also a significant number of authors and translators who are not members of these organizations. For example, the condition for the membership of the Union of Finnish Writers is at least two published works, which partially results in the higher number of professional writers in the organization. Moreover, although the number of authors working as full-time non-fiction writers may seem low, it could be assumed that many of them work as full-time researchers in universities or research institutes, and therefore publishing books forms only a source of secondary income for them.

Examining the share of copyright revenues in the incomes of individual authors and translators shows that only 15% of the incomes of fiction writers were comprised of copyright revenues. The share was much higher among translators (around 60%) and comic professionals (around 80%).<sup>b</sup> Therefore, it seems that the incomes of authors and translators come from several sources at the same time and copyright revenue is only one economic incentive among many types of income such as public and private grants, awards and prizes.

However, the representatives of authors' organizations considered economic incentives provided by copyright important or extremely important for their members and felt that the system is essential for individual authors to monetize their creations and work professionally as authors. The representatives of authors' organizations also highlighted the meaning of copyright revenues in the psychological sense. They not-

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<sup>a</sup> For more information on these organizations' roles in the publishing industry, see below (Part I, Section 3, Chapter 4.3).

<sup>b</sup> The share of copyright revenues in all incomes of non-fiction writers was not estimated.

ed, however, that it is difficult to estimate the influence of the economic incentives in the creative process; authors would probably write even if the copyright system did not exist at all. Moral rights provisions guaranteed by copyright legislation were also considered important or highly important motivators behind the creative work. Some of the representatives highlighted that these also serve the interests of consumers as the name of the author indicates quality. Moreover, there are several factors other than those stemming from copyright, such as self-fulfillment, public recognition or influencing people, which motivate the work of authors and translators.

The representatives of publishers consider copyright as a prerequisite for their publishing activities. Without copyright protection, they would not be able to prevent the unauthorized use of the works they have produced. Publishers' representatives also highlight the importance of the possibility of rights transfer, as the publisher is the one producing the end product and investing in the monetization of the works. Publishers may also publish works in the public domain, which are often non-profitable in economic terms. According to representatives of publishers, the motivating factor behind this kind of publication is the publishers' willingness to support research or education in some specific field or preserve culture for example by publishing classics of literature.

### **4.3. Individual and collective exercise of rights<sup>71</sup>**

The most common license contracts in the book publishing industry include publishing contracts, translation contracts and adaptation contracts. These contracts are negotiated between copyright owners and users without the involvement of collective management organizations. The Copyright Act includes provisions regulating these contracts. Section 27 of the Copyright Act provides that copyright can be transferred as a whole or partially. According to section 29 of the Copyright Act, unreasonable conditions in contracts can be adjusted or ignored. The assessment of reasonability of the condition is based on the evaluation of the entire content of the contract and the positions of the different parties. The section also includes a reference to section 36 of the Contracts Act (228/1929), which includes further provisions on the adjustment.

By concluding a publishing contract, an author provides the publisher with the rights to reproduce and to publish a literary work as a printed, recorded or digital book in exchange for remuneration. The remuneration can be either a flat fee or a percentage of the profits (usually between 21% and 26% in Finland).<sup>72</sup> The Finnish Copyright Act imposes specific requirements concerning publishing contracts. These provisions concern the size of editions of published books (section 32), the publisher's obligations such as publishing the works within a reasonable time and providing the author with information regarding the publication (sections 33 to 36) and the provision prohibiting an author from publishing the work until the editions that the publisher has the right to publish have been sold out (section 37). There are no com-

pulsory model contracts or framework agreements used in the industry, because they would probably be considered an infringement of competition law. However, examples of publishing contracts do exist, and the organizations representing authors and publishers have prepared lists of good practices and essential conditions for publishing contracts.

Concerning translation contracts, section 2(1) of the Finnish Copyright Act provides that the authors' exclusive rights concern translations of the work and therefore the permission from the copyright holder is needed. Translation rights are often sold or licensed by the author, publisher or literary agency. When concluding a publishing contract, the author may decide whether he or she transfers translation rights to the publisher, or it can be agreed that both of them have the right to sell translation rights to third parties. Publishers typically sell translation rights to suitable foreign publishers at international book fairs, and these contracts can also be arranged by literary agencies, which can represent both authors and publishers.

Adaptation rights concern, for example, theatre dramatizations or movies based on books. Adaptation rights are not usually transferred to the publisher in the publishing contracts. Therefore, adaptations usually require the permission of the original author for publication. Literary works may also be used as parts of musical works, and in these cases a music publishing contract is concluded. Well-known authors may also provide texts for newspapers and periodicals, which are subject to the terms and conditions of freelance contracts. In these contracts, the authors may provide the publishers with a different set of rights, including the right for the first publication of the work (the most common term in contracts), continuous right for publishing the work several times (the freelancer retains the right for parallel use), exclusive right for publishing the work (the freelancer is prohibited from making the work available to third parties), or they can transfer all economic rights to the publisher.<sup>73</sup>

The market on e-books has only recently started to emerge in Finland. When e-books are sold directly to the end-user, the consumer usually accepts an End-User License Agreement (EULA), which specifies the terms and conditions of use. DRM (Digital Rights Management) technologies may be used by the publishers to protect licensed e-books, but in order to enhance the user experience, industry organizations have started to encourage using digital watermarks instead. Libraries also buy rights from publishers to provide access to e-books for their customers by streaming or downloading a DRM-protected copy to a personal computer.

Concerning collective management in the field of literature, the collective management organization Sanasto is responsible for administering the extended collective licensing schemes on the use of literary works in archives, libraries and museums (sections 16d and 16e), the use of literary works in original radio and television transmissions (section 25f) and ephemeral recording for radio and television transmission of literary works (section 25f). Sanasto also administers special remuneration and

compensation schemes in the areas of textbooks for the print disabled (section 17) and public lending right for written works (section 19). The collective management organization Kopiosto is responsible for the extended collective licensing scheme on photocopying (section 13), use for internal communication (section 13a), use of works and other material included in a radio or television program for educational activities or scientific research (section 14) and the use of digital works in education (section 14).<sup>74</sup> Kopiosto also collects remunerations on the use of illustrations in literary works, which are distributed to the authors through Kopiosto's member organizations.<sup>a</sup>

#### **4.4. Functioning of the markets for rights<sup>75</sup>**

The representatives of authors' and publishers' organizations have very different views on the balance of bargaining power between different actors in the book publishing industry. Almost all representatives of authors and translators considered that they are holding a weaker position in negotiations, while the representatives of publishers considered the position of authors actually stronger because of the exclusive right provided by copyright. The respondents of both groups noted that the negotiations have become more complex and that authors and publishers must nowadays also compete with large publishing houses and international media and IT corporations. Both groups also stated that there is a common belief that larger publishers are less willing to negotiate over individual terms of contracts.

The bargaining position of translators was mentioned as especially weak by the authors' organizations, because publishers are able to choose to whom the work is offered, which is not the case when publishing original works. On the other hand, the publishers stated that translators often hold a strong position when e-book rights for older books (already translated) are negotiated.

The representatives of authors and translators considered that the bargaining process in the field of literature publishing is generally working in a more balanced way than for example in the press industry. However, all authors' organizations have encountered or heard of cases in which terms or conditions of contracts have been unfair towards authors. The representatives of publishers felt that contracting practices in the book publishing industry are working generally well. Authors' representatives felt that problems encountered could be solved by regulation concerning the fair terms of contracts<sup>b</sup> and collective bargaining, while publishers considered that the general provisions of the Contract Act (228/1929) are able to guarantee the fairness of contracts as they provide a possibility for adjusting the terms in court.

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<sup>a</sup> The collective management organization Teosto is also involved in the collective management of rights concerning the publication of music-related literary works (music sheets, lyric books, etc.).

<sup>b</sup> Regulation concerning the fair terms of contracts was introduced in the Finnish Copyright Act in 2015. According to section 29 of the Copyright Act, unreasonable conditions in contracts can be adjusted or ignored.

All authors' organizations reported situations where authors had felt that their works were not appropriately remunerated. The respondents also reported a general fall in the royalty levels of authors experienced in the years before 2014. Some of the respondents considered that problems with remunerations are mainly related to the changes in the operational environment, not to the operation of the copyright system as such. The respondents mentioned that the increased number of channels for using and accessing content may have resulted in a situation where the beneficiaries are often different types of intermediaries and technology providers, not authors and translators.<sup>76</sup>

According to authors' organizations, royalty levels may also be low in the following cases:

- Where there is a higher number of right holders involved in a work. For example, royalty levels received by the authors of children's books (who often share the total remuneration with illustrators) may be smaller compared to other authors.
- Rewards of translators have been considered low, and the level of remuneration may be tied to possible grants.
- Authors of comics have also encountered situations where their work had been used in different kinds of online services or learning materials without authorization or remuneration paid to the author.
- Sometimes, unreasonable levels of remuneration have occurred in situations where the author has transferred his or her rights against a lump sum. These cases have been encountered, for example, when selling film rights, short stories for anthologies, and writings for newspapers and magazines.
- Sometimes an unreasonable level of remuneration may have been the result of a lack of clarity regarding authors' duties or the rights transferred by contract.
- Sometimes remunerations paid by publishers whose core business is not publishing may have been unreasonably low.
- Researchers may also face situations where they are expected to publish their work for free (e.g. authors of learning materials).

The representatives of publishers also reported situations where they considered the remuneration for the use of an e-book unreasonably low. These were cases in which the negotiating partner was a large retailer of books or an internet service provider. In general, it seems that the differences between the economic powers of the parties may result in situations where the smaller party may feel forced to sign agreements with unfair conditions.

Transaction costs related to contracting or exercising rights can result for example from the need to identify and contact negotiating partners or from costs related to negotiating and bargaining. The levels of these costs vary greatly between individual authors and companies. However, neither the representatives of authors' organiza-

tions nor publishers' organizations see transaction costs as considerably high, but rather as an inevitable part of the operation of the markets for rights. Both groups agree that the cost in time spent is a more significant cost than the financial costs. Rights management has, however, become more complicated because publishing contracts deal with a wider range of rights and the industry has stopped using model contracts. The time spent on transactions by authors has not yet increased, because it is common for publishers to acquire more rights with one contract and they are less willing to negotiate on individual terms. From the publishers' point of view, transaction costs can increase when the number of right holders involved in the publication increases. Transaction costs can also rise considerably in cases where rights related to older works or works under an alias are to be cleared. All authors' organizations were satisfied with CMOs' efforts to diminish transactions costs, whereas only one representative of the publishers' organizations considered the efforts of CMOs to diminish costs of rights holders and professional copyright users sufficient. The representatives of publishers explained that CMOs do not have enough up-to-date information on the right holders to decrease the transaction costs of publishers. This difference in the views could be explained, at least partially, by the fact that authors do not need to put so much work into finding right holders and therefore their transaction costs are naturally more limited.

#### **4.5. Right holders' opinions on the copyright system**

The majority of representatives of both groups considered that Finnish copyright policy is coherent with regard to generally accepted values and principles in the society. However, certain inconsistencies in the policy were mentioned by some representatives of the publishers: the system provides neighboring rights for only some categories of producers of works, and public library remunerations are paid only to authors of works and not to publishers of works. One representative of publishers also noted that the originality of photographs has been assessed inconsistently in Finland. Also, the process of selecting the licensing organizations in charge of the extended collective licenses was not considered open or transparent by one of the representatives. The opinions on the coherence of copyright legislation varied in both groups: most of the respondents in both groups felt that the rules are coherent, but there were also those who considered there are actually contradictions between different rules and provisions.

The respondents of both groups considered that the Finnish Copyright Act and the system itself is working properly, but there were still varying opinions on the balance of rights. The authors' organizations felt that the system protects the rights of publishers and private users well or very well, whereas the publishers felt that the system protects the rights of authors and users well or very well. Both groups stated that the imbalances are especially related to the functioning of the markets for rights and the

digital environment. The representatives of the publishers also highlighted that the challenges in the digital environment force them to acquire as wide a scope of rights as possible. Representatives of both groups were of the opinion that the rights of different categories of users are well or very well protected by the system.

Opinions on the clarity of the copyright system (copyright rules, policies and enforcement) varied greatly between the stakeholders; some of them considered the system very complex, others very simple and the rest as something in-between. The majority of both groups stated that non-governmental actors provide enough information on copyright issues. However, the representatives of authors hoped that public authorities, which are currently providing information on a very general level, would also provide more focused information, for example on the interpretation of individual provisions in practice.

Some members in both groups considered that the Finnish copyright system has adapted well to digital development, while some disagreed. Some of the representatives of publishers stated that the Finnish copyright system is currently limiting the development of markets for e-books. However, the representatives of publishers stated that the development was also hindered by the high level of value added tax for electronic books and problems occurring at the bookstore level.

#### **4.6. Summary: recommendations for reforms by right holders**

Both groups stated that there is a need for certain reforms in the Finnish copyright system. The representatives of authors and translators proposed the following reforms:

- New regulation on fair remuneration and contract terms, as well as on collective bargaining. According to the authors' organizations, it would be important to have general provisions on publishing contracts because some publishers (especially those that are not members of the national publishers' association) may draft contracts that are imbalanced and unfair from the authors' perspective.<sup>77</sup> Regulation on fair contract terms was introduced in the Finnish Copyright Act in 2015. According to section 29 of the Copyright Act, unreasonable conditions in contracts can be adjusted or ignored.
- Updates of provisions on publishing contracts (sections 31–38 of the Copyright Act), which are outdated to some extent and not applicable to digital publishing. The representatives of publishers proposed the following reforms:<sup>a</sup>
  - Extending the interpretation of old publishing contracts to cover digital publishing. The representatives of publishers felt that the current situation in which the publisher needs to acquire digital publishing right separately if it is

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<sup>a</sup> In addition to these reforms, the representatives stated that no new exceptions or limitations should be included in the Copyright Act.



not explicitly mentioned in the publishing contract is hindering the development of the markets of e-books. Some publishers feel that because of this interpretation, investments made by publishers during the production of books are not properly protected.<sup>78</sup>

- The provision under which the rights in works created in employment are automatically transferred to the employer (section 40b) should be extended to cover also works other than computer programs. It was remarked that this reform could also reduce the transaction costs of the bargaining process.<sup>79</sup>
- The Copyright Act should provide publishers with more legal means to prevent online infringement. Neighboring rights protection could be established for book publishers, which would allow them to react to online infringement in cases where a digital publishing right has not been acquired.
- The length of the protection term could be reassessed. It may cause unnecessary transaction costs for the users of works.<sup>80</sup>
- Section 28 prohibiting parties to whom rights have been transferred from altering the work or transferring the rights to third parties could be revoked in order to support digital publishing (proposed by one representative). The reform could also reduce the transaction costs of the bargaining process.<sup>81</sup>
- Publishers should be better represented in the collective management organization Kopiosto. Currently, there are two members representing Finnish publishing companies on the board of the organization that is responsible for licensing for example photocopying of printed material and their electronic use.

## IN SHORT

- During the piloting of the methodology for assessing copyright and related rights systems, six indicators were implemented with a focus on the literature and publishing industry.
- Concerning the market and its actors,
  - the scale of publishing activities in Finland is relatively small
  - sales of Finnish books in foreign markets have increased significantly during the last years
  - in 2012, just under 1,500 people were working in enterprises engaged in book publishing and the average size of Finnish publishing houses was limited to 5.2 employees
  - the Finnish book publishing industry is strongly organized
  - Kopiosto, Sanasto and Kuvasto are responsible for the collective management of rights in the field.
- Concerning stakeholders' opinions on the operation of the copyright system,
  - right holders in the field consider the economic incentive provided by copyright important

- copyright policy is considered to be coherent with generally accepted values and principles in the society
- the Finnish copyright system is working properly, but the operation of the markets could be improved, especially in the areas of bargaining power balance, terms of contracts and transaction costs.
- Authors and publishers have different recommendations for improving the copyright system and the functioning of the markets for rights in their field.

## Conclusions

Finland has a highly developed copyright system. The country has also been active in developing and renewing the international copyright system. Copyright has been considered by the Finnish government primarily as a part of the operational framework in the information society and as an instrument in creating economic value from intellectual assets. At the practical level, copyright policy has aimed at ensuring the balanced operation of the system, as well as creating conditions for economic activities in the digital environment. The results of the methodology framework tested in Finland during the pilot phase in 2013–2015 provided comprehensive data for assessing the performance of the Finnish copyright system in meeting these goals.

Research on copyright issues is currently conducted extensively in Finnish universities and research institutes. Although additional research would be welcome in some areas,<sup>a</sup> the biggest challenges in policy development are not currently related to the lack of research, but rather to the limited time available for officials to familiarize themselves with existing studies. Scientific research on copyright issues could be made more easily accessible to policy makers for example by a service that would monitor and provide information on published and upcoming copyright-related research in universities and research institutes. The Ministry of Education and Culture currently has enough resources to conduct and commission copyright-related studies on the state of affairs whenever needed. Impact assessment studies have also been conducted, but not in a systematic way. Moreover, cultural impacts are covered very briefly in the guidelines on impact assessment prepared by the Ministry of Justice. Alongside with economic and social impacts, cultural impacts may prove to be essential in the assessment of copyright-related legislation and could therefore be systematically examined at the legislative drafting stage. Consultations conducted at different phases of legislative drafting currently provide policy makers with information from the perspectives of different stakeholder groups, but the proportional share of groups representing end-users has remained low, possibly due to a lower level of or-

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<sup>a</sup> This is highlighted in the analysis of governance of the copyright system; suggestions concerning further research are proposed in Part II, Section 5.

ganization of this category of stakeholders. Therefore, acknowledging the interests of the end-users is particularly important when drafting copyright-related policies and legislation impacting them.

→ To conclude, comprehensive research structures and an information base exist for evidence-based policy making in Finland, but the opportunities of policy makers for making use of scientific research on copyright issues could be facilitated.

The copyright system's goal is to offer incentives for creating and investing by providing an author with an exclusive right to control the work and monetize the creation. This right is secured in Finland through an elaborate system of copyright enforcement, where public and non-governmental actors have their specific roles; there are currently no significant obstacles preventing the use of sanctions and remedies. Copyright-based industries have experienced moderate growth in the past fifteen years (they constituted 5.38% of the Finnish GPD in 2015). This could be perceived as the product of a general societal shift from a traditional industrial society to a post-industrial society, which has led to increased possibilities for value creation from intellectual assets. The copyright system seems to be currently providing economic incentives for creating and investing, which is manifested in the large number of direct copyright revenue streams in Finland. The distribution of revenues, as well as their significance in the total incomes of different stakeholder groups, should however be further studied. As the case example of the book publishing industry indicates, the distribution of remuneration streams between stakeholder groups also depends on factors unrelated to the governance of the copyright system, such as industry practices or bargaining positions.

Copyright does not only protect economic interests, but also offers protection of authorship through moral rights (such as the right to be attributed as the author of the work and the right to the integrity of the work). The example of the book publishing industry indicates that moral rights are considered important motivators for creative work by authors, alongside with other social aspects such as self-fulfillment, public recognition or influencing people.

The copyright system also aims at reaching a fair balance between the interests of follow-on creators and holders of copyright in pre-existing works. The use of copyrighted works in follow-on creation is made possible by the scope and the limited term of copyright protection, the limitations on copyright and the licensing arrangements facilitating the use of pre-existing works in derivative works. Because the follow-on uses of protected works do not often compete with the original works, the uses can benefit both parties and provide new works for society. It is also likely that the licensing of copyrighted works for follow-on creation will have increasing commercial potential in

the future in several industries. The biggest challenge for follow-on creativity is currently related to legal uncertainty, especially regarding the use of new practices made possible by the development of digital technology and the online environment. Legal certainty could be improved by clarifying the scope of copyright protection and the limitations on copyright, as well as by facilitating licensing arrangements, and enhancing the dissemination of information.

Finally, in order for the markets of rights to function, it is essential that professionals in the creative industries have sufficient knowledge on copyright issues. The curricula of vocational schools and higher education institutions in the cultural field, as well as the availability of information and advisory services, seem to indicate that these professionals are currently provided with comprehensive education, but whether this translates into practical knowledge by authors and performers is a different issue that was not assessed.

➔ To conclude, the Finnish copyright system provides authors with economic and moral incentives to create, which are secured through an efficient system of enforcement. However, information is still lacking on the distribution of economic revenues between different stakeholders. The development of digital technology and the online environment have made new ways of follow-on creation possible, but the use of new practices is currently hindered by legal uncertainty

The copyright system aims at facilitating access of all members of society to copyrighted works through different kinds of limitations, licensing arrangements and special provisions facilitating the use of works in institutions such as libraries, archives, museums and schools, as well as for groups with special needs. Finland has an efficient system of collective management including seven CMOs with important roles in facilitating the access to works in these cases. CMOs also facilitate access to copyrighted works by granting licenses to commercial users such as radio and television companies, bars and restaurants. Although access to works could be improved through copyright-related measures, especially by facilitating online distribution by public institutions, the biggest access-related challenges seem not to be related to legislation but rather to the operation of the markets.

Several industries are currently undergoing a transformation from traditional publishing formats to new digital business models, which can be observed for example in the rapid increase of on-demand streaming services in the markets for audiovisual works in recent years. At the same time, the level of unauthorized use has been decreasing and has experienced a significant drop in the last years. This drop has probably been caused by the increasing attractiveness of legal services together with the actions taken by right holders to contact alleged infringers directly. Therefore, it seems that by increasing the risk of facing sanctions, the letters sent by right holders

have decreased the level of unauthorized use in Finland, but they have also sparked much controversy in civil society.

As copyright-related issues are strongly integrated in education and the public seems to be relatively well aware of the rules, the lack of information is unlikely to explain unauthorized use in Finland. Lack of access has been recognized as an influential factor for engaging in unauthorized use in the past, but it is difficult to estimate how much the introduction of new services in the recent years has affected the situation. In any case, access to copyrighted works might be negatively affected by the lack of availability of certain kinds of services or payment models, by high prices, technical restrictions (such as digital right management techniques), regional restrictions (geo-blocking) or delayed release in Finland. On the other hand, copyright infringement could also be motivated by other factors such as the unwillingness to pay, moral considerations (for example related to the distribution of revenues or the perceived harmfulness of piracy) and the influence of the social environment. Although the data on end-users' opinions is currently limited, it seems that the principle of copyright and its rules has not been generally challenged by the public, and criticism towards the system in the past has been mainly targeted at access (including prices) as well as the severity of copyright infringement penalties.

→ To conclude, the Finnish copyright system provides wide access to works without any insurmountable barriers caused by copyright legislation. Several industries are undergoing transformation, which could still result in a lack of access to works in some areas. Unauthorized use of copyrighted works has been generally widespread in Finland, but has been decreasing in the last decade. The public seems to be relatively well aware of copyright rules, and unauthorized use is more likely to be motivated by other factors than lack of education. The principle of copyright and its rules seem not to be questioned by the public, but the opinions of end-users should be further studied.

## List of recommendations

In conclusion, the review indicates that the Finnish copyright system is functioning adequately at the moment, even though some areas need adjustments and improvements. The following list provides recommendations for actions to develop the operation of the Finnish copyright system:

1. Concerning copyright policy development:
  - Consider how to facilitate the possibilities for policy makers to make use of scientific research on copyright issues, e.g. by establishing a well-structured

tured service monitoring information about published and upcoming copyright-related research.<sup>a</sup>

- Consider how cultural impacts could be further acknowledged when assessing impacts of copyright-related initiatives.<sup>b</sup>
- Study past challenges in copyright policy drafting and concrete copyright-related actions undertaken by different governments in order to inform future actions and policy planning.<sup>c</sup>
- Consider how the involvement of end-users in policy development could be facilitated.<sup>d</sup>

## 2. Concerning right holders:

- Study the significance of copyright revenue streams for different stakeholders.<sup>e</sup>
- Consider how the conditions for practicing new forms of follow-on creativity made possible by the development of digital technology could be improved. Clarify the scope of copyright protection and limitations regarding new forms of follow-on creativity. Study licensing in the area of follow-on creation, for example, through collective management of rights or by encouraging the development of industry practices.
- Provide information on copyright rules and industry-specific practices regarding follow-on creation.<sup>f</sup>
- Study whether copyright education provided to professionals in creative industries translates into practical knowledge.<sup>g</sup>
- Consider the possibility of increasing information concerning right holders of specific works in order to decrease transaction costs related to licensing, for example by improving the capacity of CMOs to collect and retain up-to-date information on right holders.<sup>h</sup>

## 3. Concerning the general public:

- Clarify copyright issues related to education (for example, issues regarding long-term preservation of materials). Consider how access to copyrighted works in education could be facilitated, for example by developing licensing arrangements. Increase the awareness of teachers regarding copyright-related issues in education, especially regarding the use of works in the online environment. Consider issues such as the use of online videos in education, the use of virtual learning platforms, the delivery of material in cases of remote

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<sup>a</sup> See above on page 24 – Section 2, chapter 1.3: The process of formulating copyright legislation and involvement of stakeholders.

<sup>b</sup> See above on page 24 – Section 2, chapter 1.3: The process of formulating copyright legislation and involvement of stakeholders.

<sup>c</sup> See above on page 19 – Section 2, Chapter 1.2: Copyright Policy and Administration.

<sup>d</sup> See above on page 24 – Section 2, Chapter 1.3: The process of formulating copyright legislation and involvement of stakeholders.

<sup>e</sup> See above on page 45 – Section 3, Chapter 1.2: Direct copyright revenue streams for different stakeholders.

<sup>f</sup> See above on page 54 – Section 3, Chapter 2.2: Access to copyrighted works for follow-on creation.

<sup>g</sup> See above on page 41 – Section 2, Chapter 4.2: Information targeted at professionals working in creative industries.

<sup>h</sup> See above on page 64 – Section 3, Chapter 4: An Industry Example: The Book Publishing Industry.

learning, the interpretation of the public/private dichotomy, the production of derivative works in schools and the conditions in which a teacher can be held responsible for a copyright infringement by a pupil.<sup>a</sup>

- Consider if access to copyrighted works could be further facilitated, especially regarding online distribution by libraries, archives and museums. In this context, study the access to works in scientific research and take into account copyright questions related to ongoing developments in the field of scientific research (regarding e.g. preservation of material, text and data mining and other types of follow-on creation and reuse).<sup>b</sup>
- Increase public information on the beneficiaries of copyright remunerations and the role of CMOs.<sup>c</sup>
- Study the availability of works in legal markets. Consider issues such as the availability of services corresponding to the different requests of consumers, technical restrictions (digital rights management techniques), regional restrictions (geo-blocking) and delayed release in Finland. Analyze the results together with end-users' opinions on access to copyrighted works (see next recommendation).
- Study the opinions of end-users on the copyright system, including issues such as access, awareness of rights, level and reasons for infringement, and attitudes towards the system.<sup>d</sup>

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<sup>a</sup> See above on page 52 – Section 3, Chapter 2.1.2: Access to works in education, and the pilot report “Access to copyrighted works by the public,” pages 18–19.

<sup>b</sup> See above on page 46 – Section 3, Chapter 2: Access.

<sup>c</sup> See above on page 62 – Section 3, Chapter 3.2: End-users' opinions on the copyright system.

<sup>d</sup> See above on page 62 – Section 3, Chapter 3.2: End-users' opinions on the copyright system.

## PART II

# GOVERNANCE OF THE COPYRIGHT SYSTEM

This part of the analysis is a first implementation of the methodological work titled “Assessing Governance in the Context of Copyright Systems”, published by Cupore in 2018.<sup>82</sup> The document proposes a list of questions for assessing governance in public institutions in charge of the copyright system’s management and in collective management organizations. It is connected to the methodology framework for assessing copyright and related rights systems. Some indicators of this framework can be used to answer questions related to the governance of the copyright system. The analysis below presents the results of the piloting of the methodology as well as information from other relevant sources that can be useful to evaluate the quality of the governance of the copyright system. The research here is however limited in two ways:

1. The scope of the analysis only covers public actors. In the Finnish copyright system, collective management organizations play a crucial role, and the document on which this analysis is based also includes questions to assess their governance, but there is not sufficient data collected as part of the piloting of the methodology framework or already available from other sources to be used for this purpose.
2. The analysis is based only on available data, either collected as part of the piloting phase of the methodology framework, or through other public sources, such as the country profile of Finland in international indexes concerning governance. No new research has been undertaken to collect additional information.

In order to assess the quality of governance in the field of copyright, eight good governance principles applicable to copyright systems have been identified:

1. transparency
2. participation
3. accountability
4. coherence & consistency
5. responsiveness
6. effectiveness & efficiency
7. equity & inclusiveness
8. separation of powers.

Each of them is assessed separately through a set of questions presented below.



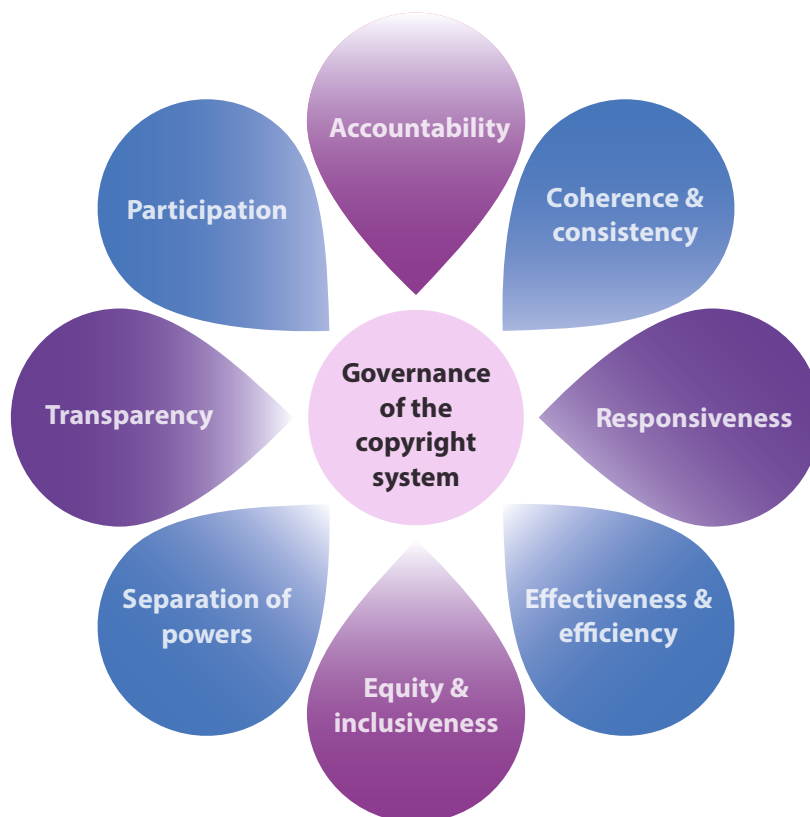


Figure 6. The principles of good governance applicable to the copyright system.

## Section 1. Transparency

### A. Transparency of copyright rules

#### Is information available about the copyright system and copyright rules?

The Rule of Law Index<sup>83</sup> is an initiative of the World Justice Project<sup>a</sup> (WJP) that measures how the rule of law is experienced and perceived by the general public in different countries. It includes the WJP Open Government Index, which uses performance indicators to measure the extent to which governments share information, foster citizen participation in decision-making, and empower people with tools to hold the government accountable. The country profile concerning Finland in the Open Government Index 2015<sup>b</sup> indicates that it ranks 6<sup>th</sup> out of 102 countries in the dimension “Publicized laws and government data”, which “measures whether basic laws and in-

<sup>a</sup> More information at <https://worldjusticeproject.org/>.

<sup>b</sup> Available at <http://data.worldjusticeproject.org/opengov/#/groups/FIN>.

formation on legal rights are publicly available, presented in plain language, and are made accessible in all languages used by significant segments of the population.”<sup>84</sup> The indicator does not focus specifically on copyright laws, but indicates that texts of laws in general (including copyright law) are accessible. Finnish laws are also available online through the search engine finlex.fi.

As described above,<sup>a</sup> copyright issues are strongly integrated in the current national core curriculum for basic education in Finland<sup>b</sup>. Moreover, some organizations are available to answer citizens’ questions concerning copyright rules. Among them, the Copyright Information and Anti-Piracy Centre (CIAPC), the Finnish Anti-Counterfeiting Group (FACG), Lyhty (a joint project of creative sector artists, employees and entrepreneurs in Finland), and Electronic Frontier Finland, are non-governmental organizations whose activities include dissemination of information on copyright. Finally, in cases of specific questions concerning a particular dispute related to copyright ownership, the Finnish Copyright Council, appointed by the Government and comprised of representatives of the most relevant stakeholders, offers authoritative opinions on the application of Finnish copyright law free of charge.

### **What is the level of awareness of copyright rules?**

As indicated in Section 3 of Part I, the level of awareness of copyright rules among the general population has been studied by examining past surveys on the awareness of the public concerning the rights of authors, performers and other right holders, as well as the terms for using copyrighted works.<sup>85</sup> It seems that on a general level the public at large is relatively well aware of the concept of copyright and the limitations concerning the use of copyright protected content, since end-users are able to distinguish between what is allowed by copyright law and what is not allowed. Teaching on copyright is included in the national core curriculum for basic education,<sup>c</sup> and copyright is the subject of regular campaigns for public awareness.<sup>d</sup> However, some categories of copyright stakeholders and users might not be fully aware of the specific rules applying to their activities. For instance, teachers in elementary, secondary and upper secondary schools might not be generally well aware of copyright issues related to the use of teaching material, despite the availability of information sources;<sup>e</sup> this

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<sup>a</sup> See Part I, Section 2, Chapter 4, “Dissemination of knowledge.”

<sup>b</sup> Adopted in schools in autumn of 2016 at latest. The current national core curriculum for basic education is available in Finnish at [http://www.oph.fi/download/163777\\_perusopetuksen\\_opetusuunnitelman\\_perusteet\\_2014.pdf](http://www.oph.fi/download/163777_perusopetuksen_opetusuunnitelman_perusteet_2014.pdf). Visited on 26.7.2017.

<sup>c</sup> The education of citizens on copyright issues was described in the pilot report implementing Description Sheet 14 – *Assessing Copyright and Related Rights Systems: Copyright-related Education for the Public in General. Report on Piloting in Finland*, Cupore webpublications 39:24.

<sup>d</sup> They are presented in the pilot report on Description sheet 13 – *Assessing Copyright and Related Rights Systems: Copyright-related Information Activities. Report on Piloting in Finland*, Cupore webpublications 39:23.

<sup>e</sup> Kopiosto, together with the Ministry of Education and Culture, holds the main responsibility for informing schools on copyright issues. The Kopiosto’s Kopiraitti, The IPR University Center’s Operight and opettajantekijanoikeus.fi are online information sources for teachers on copyright issues. Source: Pilot report Methodology Card 16 – *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland*, Cupore webpublications 39:30.

might be partly due to the fact that some copyright issues related to education still need to be clarified.<sup>a</sup>

## **B. Transparency of the law-making process**

### **Are laws concerning copyright prepared in a transparent way that allows all relevant stakeholders to follow the legislative process?**

The extent to which copyright legislation is advertised during its preparatory stages was not studied directly during the piloting of the methodology framework. However, stakeholders and other relevant experts are involved in the Finnish legislative process at two different stages: first during the preliminary preparation and regulatory drafting stage, when a new bill is prepared by the Government, and secondly at the parliamentary stage, when the bill is discussed in the relevant parliamentary committee. The process is described in more detail above.<sup>b</sup> All relevant stakeholders should be invited to comment on the proposals for legislative change, at least as part of the first stage, and this process seems to ensure that stakeholders are informed of prepared changes in copyright law or policy.

## **Section 2. Participation**

### **Do stakeholders have a chance to participate in the preparation of new legislation and the development of the copyright system?**

There are two stages in the Finnish legislative process where stakeholders and other relevant experts are being heard.<sup>86</sup> First, stakeholders are consulted extensively in the preliminary and regulatory drafting stages. Legislative initiatives are circulated to stakeholders, who are invited to be heard at this point.<sup>c</sup> Secondly, at the stage of committee hearings (parliamentary review), the legislative proposal is examined further, and public consultations are held by parliamentary committees. The committee then hears experts and interest groups to better evaluate the legislative proposal, including a representative of the ministry responsible for the proposals.<sup>87</sup> Each committee decides what experts or interested parties to call in a particular matter. Experts usually give oral statements but the committee can also ask for a written statement.<sup>88</sup>

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<sup>a</sup> Such issues include the definition of “cinematographic works,” the use of virtual learning platforms, the delivery of material in cases of remote learning, the interpretation of the public/private dichotomy, and the extent of the teacher’s responsibility in case of copyright infringement by a pupil. For more information, see pilot report *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland*, Cupore webpublications 39:30, pages 18–19.

<sup>b</sup> See Part I, Section 2, Chapter 1.3.

<sup>c</sup> For more information on this process, see Part I, Section 2, Chapter 1.3.

When analyzing the actors that submitted comments in public consultations concerning copyright-related legislation between 2002 and 2014, it appears that organizations representing different interest groups seem to be heard more often at the earlier stages of the process, while the committee hearings seem to focus more on consulting public authorities and experts not associated with particular stakeholders, such as representatives of universities.

No information was collected specifically on the participation through digital means.

## Section 3.

# Accountability

### **Is there supervision of the activities of public authorities in charge of the public administration of copyright?**

Finland does not have a single agency responsible for the public administration of copyright. The responsibilities are shared between different actors, namely

- the Ministry of Education and Culture, responsible mainly for copyright law development and international cooperation in the field
- the Copyright Council, composed of representatives of different copyright stakeholder groups. The Copyright Council offers opinions on the interpretation of copyright law, which are not legally binding but are generally respected by public authorities.
- the Regional State Administrative Agencies, responsible for the monitoring of obligations relating to the payment of certain remunerations based on the Copyright Act.

The pilot report on Public Administration of Copyright<sup>89</sup> describes the roles of these administrations in the operation of the copyright system. However, it does not provide information on their specific supervisory bodies and the possible procedures of supervision of the activities of these entities in particular.

In general, the Chancellor of Justice is the authority in charge of supervising the lawfulness of the official acts of the Government, the ministries and the President of the Republic. The Chancellor of Justice “also endeavors to ensure that the courts of law, other authorities and civil servants, and other persons or bodies assigned to perform public tasks, comply with the law and fulfill their assigned obligations”.<sup>90</sup> The Chancellor of Justice reports to the Government and to the Parliament. The Parliamentary Ombudsman of Finland also has the task of providing oversight to ensure that authorities, officials and others who perform tasks of a public nature observe the law and carry out their duties. The Ombudsman however focuses on the implementation of fundamen-

tal and human rights. In matters of financial supervision, the National Audit Office (NAO) is an independent body operating in affiliation with the Parliament, which audits the legality and effectiveness of the state's financial management, compliance with the budget, the reliability of the information received by Parliament concerning the state's finances and financial management, as well as fiscal policy rules.

Additional research would be necessary to determine whether there are specific supervision procedures in place concerning the activities of public authorities in charge of copyright administration.

### **Are the outcomes of public actions in the field of copyright assessed a posteriori?**

There is no formal a posteriori impact assessment process in Finland. However, impacts of planned legislative actions are assessed when considering new legislation. The “*Bill Drafting Instructions*” (2004)<sup>a</sup> and the supplementary “*Guidelines for Impact Assessment in Legislative Proposals*” (2007)<sup>b</sup> provide guidelines for impact assessment in the Finnish legislative drafting process. The documents present the categories of economic impact, impact on public administration, environmental impact and social impact. Impact assessments regarding copyright law in Finland in the 2000s have been conducted primarily by officials at the Ministry of Education and Culture, while other ministries, public authorities, experts and representatives of different stakeholder groups have been consulted during the processes.

In addition, the Division for Copyright Policy and Audiovisual Culture of the Ministry of Education and Culture also commissions studies while planning future actions and whenever there is a need for information on the current state of affairs. The European Commission's studies, impact assessments and communications are especially important information sources. The impact assessments and policy documents produced in other states, especially in the United Kingdom, have been useful information sources as well. The problem with foreign studies regarding legislative issues is often that they have been written from the viewpoint of some other state's legislative system and therefore cannot be applied directly to the Finnish system.

To sum up, there is no formal requirement for conducting a posteriori impact assessment studies to evaluate the outcomes of public actions in the field of copyright, but the Division for Copyright Policy and Audiovisual Culture of the Ministry of Education and Culture is able to commission studies (including impact assessment studies) whenever necessary, and also uses impact assessment studies conducted in other

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<sup>a</sup> “Hallituksen esitysten laatimisohteet” in Finnish. The Bill Drafting Instructions are available in English at [http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75937/omju\\_2006\\_3\\_bill\\_drafting\\_instructions.pdf](http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75937/omju_2006_3_bill_drafting_instructions.pdf) and in Finnish at [http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75847/hallituksen\\_esityksen\\_laatimisohteet.pdf](http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75847/hallituksen_esityksen_laatimisohteet.pdf).

<sup>b</sup> “Säädöselädotusten vaikutusten arviointi” in Finnish. The “Guidelines for Impact Assessment in Legislative Proposals” document is available in English at [http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76118/omju\\_2008\\_4.pdf](http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76118/omju_2008_4.pdf) and in Finnish at [http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76082/saadosehdotusten\\_vaikutusten\\_arviointi\\_ohjeet.pdf](http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76082/saadosehdotusten_vaikutusten_arviointi_ohjeet.pdf).

countries to inform Finnish policies, even though their applicability in the Finnish copyright system is limited.

## Section 4.

# Coherence & Consistency

### **Is the copyright system administered in a consistent and coherent way?**

The coherence and consistency of the actions of public authorities in the field of copyright administration can be assessed by answering the following questions:

- Are copyright policies consistently implemented?
- Do different agencies in charge of copyright administration act coherently among themselves and with the rest of the legal system?
- Have the processes to prepare copyright legislation been coherent and consistent over time?

This aspect of copyright law has not been assessed as part of the piloting of the methodology framework, but the processes for preparing copyright policies and legislation have been documented.<sup>91</sup> In Finland, the Ministry of Education and Culture is responsible for preparing copyright policies and legislation, but its work has been supported by permanent bodies: the Copyright Committee (1976–1992), the Copyright Commission (1992–2011) and the Advisory Board on Copyright Issues (since 2012). These bodies have had a prominent role in the preparatory work and in supporting the Ministry's work on legislative drafting and policy development. Their roles and structures have changed over time but their long-term existence provides some continuity in the administration of the copyright system. The coherence and consistency of copyright rules is also strengthened by the strong international component of the copyright system. Finland's copyright policy has been heavily influenced by several international conventions and treaties, such as the WIPO treaties on copyright and the World Trade Organization's TRIPS agreement, as well as European Union legislation on copyright and related rights. These facts indicate a tendency towards coherence and consistency over time in processes to prepare copyright legislation, but more research would be necessary to assess, for example, the consistency in implementing copyright policies.

For a more developed analysis of the coherence of public copyright administration in Finland, further studies would be necessary. For instance, the *Report on the evaluation of the implementation of the IPR strategy*<sup>92</sup> by the Ministry of Economic Affairs and Employment seems to indicate a lack of coordination in the implementation of IPR policy, which could be the subject of analysis. Another topic could be the level of continuity in copyright policy development despite political changes in the long term.

## Section 5.

# Responsiveness

### **Do public authorities in charge of the copyright system's development regularly assess the need for changes to the copyright system due to the evolution of the copyright environment?**

The Division for Copyright Policy and Audiovisual Culture of the Ministry of Education and Culture is in charge of monitoring the copyright system and preparing new legislation in the field. It commissions studies while planning future actions and whenever there is a need for information on the current state of affairs. Such studies include for instance the Methodology for Assessing the Operation of Copyright and Related Rights, on which the present analysis is based and which is intended to serve as a long-term diagnostic tool for monitoring the copyright system.

Interviews with officials of the Ministry indicate that, so far, the Division has had enough resources to commission studies whenever considered necessary. The information sources supporting the development of copyright policy and legislation include studies, reports and communications published by European Union bodies, international organizations, governments, public authorities, commercial and non-commercial organizations, as well as academic monographs, theses and articles produced in universities. The work at the Division for Copyright Policy and Audiovisual Culture is supported by both domestic and foreign research, but the latter forms the majority. The European Commission's studies, impact assessments and communications are especially important information sources. The impact assessments and policy documents produced in other states, especially the United Kingdom, have been useful information sources as well.

Despite the fact that copyright-related research is widely available in Finland and is conducted in universities all over the country,<sup>a</sup> there are often situations where domestic research cannot provide enough information for law drafting or policy development purposes. Among the reasons cited are the facts that the National Research Institute of Legal Policy conducts research primarily for the Ministry of Justice; at universities, copyright-related research in the discipline of law is usually dogmatic (it studies the content and application of current legislation, and the results of those studies do not often provide “*de lege ferenda*” arguments on the substance of copyright law in the future); comparative law studies are not conducted very often because they are particularly complex and time consuming; and research conducted

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<sup>a</sup> See the pilot reports *Assessing Copyright and Related Rights Systems: Research on Copyright-related Topics. Report on Piloting in Finland*, Cupore webpublications 39:27 and *Assessing Copyright and Related Rights Systems: Copyright-related Research and Study Programs in Universities and Research Institutes. Report on Piloting in Finland*, Cupore webpublications 39:28 for more information on copyright-related research in Finland.

in the discipline of law and economics is a relatively new area in Finland. Additional copyright-related research in the field of social sciences would be welcomed too.<sup>a</sup> Additionally, there would be room for improvements in communication between the ministries and universities through a service that would monitor and tag information about published and upcoming research.

### **Are administrative proceedings concerning copyright issues conducted without unreasonable delay?**

The responsiveness of public authorities in the field of copyright also concerns these authorities' capacity to conduct administrative proceedings in a timely manner. The following questions provide an indication in that regard:

- In practice, is it possible to obtain a decision or a judgment of public authorities in the field of copyright within a reasonable time frame?
- In practice, after a decision or agreement is reached, is it possible to enforce the decision within a reasonable time frame?

These questions were not subjects of the indicators of the methodology for assessing the operation of copyright and related rights systems, and data on this topic is not readily available in Finland. The only finding relevant to this issue is that the Copyright Council, a publicly funded institution providing opinions on the interpretation of copyright law,<sup>b</sup> takes between 2 and 12 months to render a decision, with the possibility for an expedited procedure upon request by officials.<sup>93</sup>

Additionally, some information is available on the responsiveness of Finnish public authorities in general through the data collection conducted as part of the World Justice Project's Rule of Law Index.<sup>94</sup> The World Justice Project endeavors to measure the extent to which the rule of law is attained in different countries through an index that comprises 8 aggregated factors and 44 sub-factors or measures.<sup>c</sup> Factor 6 concerns "Regulatory Enforcement", and sub-factor 6.3 verifies that "administrative proceedings are conducted without unreasonable delay." The latest data concerning Finland were collected in 2014 by SIS International Research in Helsinki, Espoo and Tampere, through an online survey with a sample size of 1,050. Finland ranked 7<sup>th</sup> worldwide for factor 6 with a score of 0.83. Its score for sub-factor 6.3 was 0.78, significantly higher than the average for EU and EFTA and North American countries, as well as for high-income countries. These results suggest that public authorities in

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<sup>a</sup> The interviewees mentioned questions for future research regarding the development of the copyright system such as

- copyright issues in teaching and research;
- the concepts related to "communication to the public" and "made available to the public," as well as to radio and television broadcasting, which are about to be clarified in the near future;
- the digitization of materials and issues related to remote access to library resources;

and questions concerning the copyright system in a broader context:

- the system's efficient operation in the digital environment and issues related to media convergence; and
- a potential profound reform of the system.

<sup>b</sup> The Copyright Council's role is described above, Part I, Section 2, Chapter 3.3.

<sup>c</sup> The Index covers a large range of governance issues and results in a portrait of the rule of law in 113 countries.



Finland generally conduct administrative proceedings without unreasonable delay, but further study would be necessary to specifically address the questions above and focus on public authorities in the field of copyright.

## Section 6.

# Effectiveness & Efficiency

The effectiveness and efficiency of public authorities in the field of copyright administration can be assessed by answering the following questions:

- Do authorities involved in the public administration of copyright fulfill their role effectively?
- What amount of funds is allocated to copyright administration in the state budget?
- What requirements are there for reporting on the use of the budget(s) allocated to copyright administration?
- Is the operation of authorities involved in the public administration of copyright submitted to external evaluation?

These topics were not covered in the pilot studies implementing the methodology for assessing copyright and related rights systems, and the necessary data was not available elsewhere. The effectiveness and efficiency of public authorities in the field of copyright administration cannot be reported here, but the topic could be studied in the future on the basis of the questions above.

## Section 7.

# Equity & Inclusiveness

### A. Inclusiveness of the copyright system

#### **Do public authorities contribute to the possibilities for all members of society to acquire enough knowledge of copyright rules to efficiently participate in the copyright system?**

As described above (see Part I, Section 2, Chapter 4, “Dissemination of knowledge”), copyright issues are strongly integrated in the current national core curriculum for basic education in Finland<sup>a</sup>. This education is supplemented with school visits organized by the Copyright Information and Anti-piracy Centre (partly financed by the

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<sup>a</sup> Adopted in schools in autumn of 2016 at the latest. The current national core curriculum for basic education is available in Finnish at [http://www.oph.fi/download/163777\\_perusopetuksen\\_opetussuunnitelman\\_perusteet\\_2014.pdf](http://www.oph.fi/download/163777_perusopetuksen_opetussuunnitelman_perusteet_2014.pdf).

Finnish Ministry of Education and Culture), public awareness campaigns, general information on copyright issues available on the websites of the Ministry of Education and Culture and collective management organizations, and a comprehensive amount of general copyright-related information from several other sources with state support. In 2017, a total of 330,000 euros was distributed by the Government to promote information and training on copyright and the copyright system and to improve the overall functioning of copyright, out of which at least 189,000 euros was specifically granted for information, education and awareness activities on copyright.<sup>95</sup> As a result, it can be acknowledged that Finnish public authorities do contribute to the information of the Finnish public on the functioning of the copyright system, even though up-to-date information on whether this information actually reaches the public in its entirety is currently lacking (see Part II, Section 1, “Transparency”).

## **B. Equity of the copyright system**

### **Do public authorities involved in copyright administration take action to ensure that all stakeholders within the same category<sup>a</sup> are treated equitably in the copyright system?**

The equity of public authorities in the field of copyright administration can be assessed by determining whether there are systems for protecting stakeholders who are in a weak financial situation or bargaining position. Such measures could include, for example, legal protection against abusive clauses in licensing contracts, availability of information on copyright rules, or other types of practical support. This aspect was not included in the indicators of the methodology framework and would require a separate study.

However, the Indicator Framework on Culture and Democracy developed by the Council of Europe covers issues related to freedom and equality in access to culture. In particular, in its component “cultural access and representation,” the framework includes variables related to public measures and programs promoting equality in access to culture. This assessment is “built upon data regarding the existence of government programs for equality and integration of women in the cultural sector, and studies on the level and conditions of women working in the cultural sector.” The data publicly available on the analysis of the situation in Finland only indicates that the country is below average concerning “cultural access and representation” in general, and does not display more detailed information on the results related to the measures promoting equality in the access to culture.<sup>96</sup>

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<sup>a</sup> The categories of stakeholders are defined in the *Methodology Framework for Assessing the Operation of Copyright and Related Rights*, page 21. These categories include authors and performers, professional copyright users, intermediaries and end-users.

## **Do public authorities involved in copyright administration take action to ensure that different categories of stakeholders are treated equitably in the copyright system?**

One way to support equality in the treatment of stakeholders in the copyright system is to conduct impact assessment studies taking this aspect into account when considering new copyright legislation or policies. The “Bill Drafting Instructions” (2004) and the supplementary “Guidelines for Impact Assessment in Legislative Proposals” (2007) provide guidelines for impact assessment in the Finnish legislative drafting process. The documents present the categories of economic impact, impact on public administration, environmental impact and social impact. Impact assessment regarding copyright law in Finland in the 2000s has been conducted primarily by officials at the Ministry of Education and Culture, while other ministries, public authorities, experts and representatives of different stakeholder groups have been consulted during the processes. The Ministry of Education and Culture uses the guidelines of the Ministry of Justice as a framework when assessing the impacts of copyright-related legislative initiatives. The comprehensiveness and quality of impact assessments in the 2000s have varied between the initiatives depending on the available time and resources. Impact assessments studying the impact of proposed actions on the rights and situations of stakeholders have been conducted regarding copyright-related initiatives, but the evaluation has not been systematic.<sup>a</sup>

However, impact assessment studies taking into account the different categories of stakeholders are not sufficient to ensure their equitable treatment, and more information on the topic is necessary. This could include a general analysis on the balance of copyright policies, public consultations, impact assessment procedures, as well as on the representation of stakeholders in working groups and other forums where their rights and situations are monitored and debated.

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<sup>a</sup> Among the social impacts to be assessed according to the guidelines are the impacts on “the status of the citizens and the functioning of the democratic society.” In the context of a legislative initiative concerning illicit file-sharing, impacts related to this category were identified in the following areas: impact on fundamental rights of citizens such as property protection, privacy protection, the confidentiality of communication, the freedom of speech, due process rights of citizens and alleged infringers; impact on values and attitudes towards copyright and piracy; impact on cultural interests; and impacts on employment and the working life, including on the economics of digital network content, electronic commerce, as well as the economic foundation of culture and communication and through this, impact on production, trade and employment rates.

These examples come from the background study “Assessing means for diminishing unauthorized file-sharing” (“Luvattoman verkkojälkelun vähentämiskeinojen arviointia; Selvitykset lainvalmistelun tueksi”), published by the Ministry of Education and Culture in 2013 to support decision making in the legislative drafting process concerning the prevention of unauthorized file-sharing. For more information, see pilot report implementing Description Sheet 6 – *Assessing Copyright and Related Rights Systems: Use of Impact Assessment and Research in Policy Development. Report on Piloting in Finland*, Cupore webpublications 39:12.

## Section 8.

# Separation of Powers

**Is the structure of organization and division of responsibilities among the public authorities in charge of copyright management organized in such a way as to prevent inappropriate decision-making situations?**

The level of separation of powers can be assessed by determining whether the attribution of responsibilities between different authorities in charge of copyright administration is suitable to ensure that the division of powers is guaranteed, in particular by examining whether the legislative, judiciary and executive duties are performed by separate entities. The study could also examine whether the structure leaves a possibility for inappropriate division of power, and in this case, whether there are procedures for identifying and managing potential and actual conflicts of interests. These questions were not subjects of the indicators of the methodology for assessing the operation of copyright and related rights systems, and the necessary data was not available elsewhere. As a result, this aspect cannot currently be assessed.

## Conclusion:

# Is the Finnish copyright system administered in accordance with the principles of good governance?

The compliance of the Finnish copyright system with good governance principles can only be partly assessed on the sole basis of the results of the piloting of the methodology framework for assessing the operation of copyright and related rights systems. Several questions require separate studies to be conducted before they can be adequately answered. However, some useful conclusions can be made based on the data already available.

Concerning the *transparency* of the Finnish copyright system, it seems that information is available concerning copyright rules and the copyright system, that citizens have access to different sources to answer their questions, and that the level of awareness of copyright rules is generally good, even though there is a need for new studies to assess the awareness of specific categories of stakeholders. Laws concerning copyright are also prepared in a transparent manner that allows all stakeholders to follow the legislative process.

Stakeholders also seem to have a fair chance to *participate* in the preparation of new legislation and in the development of the copyright system. Their input is taken

into account both at the stage of preliminary and regulatory drafting by the Government and at the stage of parliamentary review. The possibilities for different categories of stakeholders to participate in the legislative process depend partly on their capacity to organize into interest groups that will be invited and heard during the legislative process.

Additional research will be necessary to assess whether the activities of public authorities in charge of the public administration of copyright are properly supervised, but their level of *accountability* is enhanced by the use of impact assessment studies to evaluate the outcomes of public actions in the field of copyright. There is no formal requirement for conducting such studies a posteriori, but proposed legislation is routinely based on impact assessment studies and consultations of experts and different stakeholder groups, and the Division for Copyright Policy and Audiovisual Culture at the Ministry of Education and Culture is also able to commission a posteriori impact assessment studies whenever necessary.

The *coherence and consistency* of the copyright system's administration will also require further assessment as it has not been a subject in the methodology framework on which the present analysis is based. However, the political processes resulting in copyright laws and policies have been supported by permanent bodies of experts that are likely to increase continuity and coherence over time in the administration of the copyright system.

The level of *responsiveness* of copyright administration can be assessed from two different points of view. Firstly, it seems that public authorities in charge of the copyright system's development regularly assess the need for changes to the copyright system and the evolution of the copyright environment in order to design up-to-date copyright policies. This assessment is based on studies commissioned whenever there is a need for information on the current state of affairs or when planning future actions. Copyright-related research is widely available in Finland, but there are situations when domestic research cannot provide enough information for law drafting or policy development purposes, and there might be room for improvements in the access of policymakers to copyright-related scientific research. Secondly, the responsiveness of administrative proceedings concerning copyright and whether they are conducted without unreasonable delay still need to be assessed. Studies based on the World Justice Project's Rule of Law Index indicate that public authorities in Finland generally conduct administrative proceedings in a timely manner, but further study would be necessary to assess the situation with a focus on public authorities in the field of copyright.

The level of *effectiveness and efficiency* of public authorities in the field of copyright could not be assessed due to lack of available data. Studies could be conducted to determine whether authorities involved in the public administration of copyright fulfill their role effectively; future studies could also cover the requirements for reporting

on the use of the budget(s) allocated to copyright administration, and whether the operation of authorities involved in the public administration of copyright is submitted to external evaluation.

The copyright system's administration seems to be rather *inclusive* since it contributes to the possibilities of all members of society to acquire a knowledge of copyright rules sufficient to participate in the copyright system, in particular through the inclusion of copyright issues in the national core curriculum for basic education in Finland, and through financing education and awareness campaigns provided by different non-governmental actors. The *equity* of the copyright system is more difficult to measure. The equity of the system towards stakeholders of different categories is one of the aspects taken into account when measuring the social impacts of legislative initiatives concerning copyright. There is however no current data on the actions taken by public authorities to facilitate equal treatment of all stakeholders within the same stakeholder category.

Finally, the level of *separation of powers* between public authorities in the field of copyright could not be assessed due to lack of data. Studies could be conducted to determine whether the attribution of responsibilities between different authorities in charge of copyright administration is suitable to ensure that the division of powers is guaranteed, and whether there are procedures for avoiding, identifying and managing potential and actual conflicts of interests.

To sum up, there is not at this stage sufficient information to make a thorough and complete assessment of the compliance of the Finnish copyright system with good governance principles. However, the data collected during the pilot phase of the methodology framework for assessing the operation of copyright and related rights systems, as well as other available information sources, offer an important insight in the copyright system's public governance. No crucial lack in the compliance of the copyright system with the principles of good governance has been identified, but several areas could be improved. Further studies could be conducted in the future to provide a more up-to-date and complete assessment, which could result in a list of recommendations for improving the governance of the Finnish copyright system.

## IN SHORT

- The Finnish copyright system is rather transparent:
  - information on copyright rules and on the system is available
  - laws and policies are prepared in a transparent manner.
- The Finnish copyright system allows for participation of stakeholders in its development, depending partly on the stakeholders' capacity to organize into interest groups.
- The level of responsiveness of copyright administration depends on
  - whether public authorities in charge of the copyright system's development

regularly assess the need for changes to the copyright system and the evolution of the copyright environment, which is the case in Finland

- whether administrative proceedings concerning copyright are conducted without unreasonable delay, which still needs to be assessed.
- The copyright system’s administration seems to be rather inclusive, since it contributes to the possibilities for all members of society to acquire a knowledge of copyright sufficient to participate in the system, but its equity could not be measured.
- The level of accountability of authorities in charge of the public administration of copyright, the coherence and consistency of the Finnish copyright system’s administration, the effectiveness and efficiency and the separation of powers of public authorities in the field of copyright could not be assessed.
- Altogether, there is not at this stage sufficient information to make a thorough assessment of the compliance of the Finnish copyright system with good governance principles; so far no crucial lack has been identified, but several areas could be subject to improvement.

# Afterword

The methodology for assessing copyright and related rights systems was created for the purpose of supporting the development of fact-based copyright policies. Its implementation in Finland provides a first test of its use at national level.

As the current document demonstrates, the methodology framework has proven its efficiency as a diagnostic and analysis tool able to examine a copyright system in its entirety. Each report implementing one of its indicators provided an in-depth review of an element or area of the Finnish copyright system; when compiled, the data collected can effectively be analyzed to provide a comprehensive diagnostic of the system's functioning. The operation of a national copyright system is always unique, and the methodology offers an objective framework to assess the efficiency of its internal balance. This review of the Finnish copyright system highlights the system's strengths and weaknesses, proposes suggestions for improvement and development, and indicates areas that need further study or monitoring. The review was designed to be useful as an information tool and as a support in the development of further copyright-related policies and research. As such, it will hopefully increase the transparency and efficiency of the Finnish copyright system.

The methodology framework was also designed to be modular, and this aspect has been tested, in particular concerning the part of the assessment focusing on literature and the book publishing industry. Methods for data collection were tested and they proved efficient, as the analysis resulted in a new understanding of the industry's operation and the opinions of its actors. In the future, other industries could be analyzed using the same methods. The current review also highlighted some areas of the Finnish copyright system that would need closer monitoring in the years to come, and separate studies have been designed for this purpose.<sup>a</sup>

This review also endeavors to assess the governance of the Finnish copyright system by public authorities. The data collected during the implementation of the methodology framework is not entirely sufficient in this respect, but the analysis resulted in useful conclusions and delineates questions and studies necessary for a complete assessment.

In the future, the methodology framework could benefit from new experiences of its use. It was designed to be applicable in any national copyright system; its implementation in different legal, cultural and economic environments would be useful to test it from that point of view and possibly improve it further. Using the methodology in different countries would also document different possible solutions to

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<sup>a</sup> See Tiina Kautio (2017), *Indicators for a continuous monitoring of the operation of the Finnish copyright system*, Cupore working papers 5, available at <http://www.cupore.fi/en/publications/cupore-s-publications/indicators-for-a-continuous-monitoring-of-the-operation-of-the-finnish-copyright-system>.



copyright-related problems that are common around the world, such as improving the efficiency of the markets for rights or limiting copyright infringement. There is a strong incentive for different national systems to learn from each other and the methodology was designed to support this possibility. Hopefully, the methodology will contribute to improve the operation of not only the Finnish copyright system, but of copyright systems around the world.

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*Assessing Copyright and Related Rights Systems: Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland*, Cupore webpublications 39:16.

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*Assessing Copyright and Related Rights Systems: Application of Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland*, Cupore webpublications 39:17.

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# Endnotes

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  - Pilot report implementing Methodology Card 4 – *Assessing Copyright and Related Rights Systems: Development of Digital Business Models and Income Based on Digital Distribution. Report on Piloting in Finland*. Cupore webpublications 39:8.
  - Pilot report implementing Methodology Card 16 – *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland*. Cupore webpublications 39:30.
- 16 Source: Grönlund, M., Ranti, T., Pönni, V., Sinervo, P. (2017). *Economic Contribution of Copyright-based Industries in Finland 2013–2015*. Publications of the Ministry of Education and Culture, Finland, 2017:47. Available at <http://julkaisut.valtioneuvosto.fi/handle/10024/160328>.
- 17 Source: Grönlund, M., Ranti, T., Pönni, V., Sinervo, P. (2017). *Economic Contribution of Copyright-based Industries in Finland 2013–2015*. Publications of the Ministry of Education and Culture, Finland 2017:47. Available at <http://julkaisut.valtioneuvosto.fi/handle/10024/160328>.
- 18 Source: Sinervo & Toivonen (2012). *The Capital Value of Copyright Assets in Finland*. The Finnish Copyright Institute & Cupore. F@S Articles and Studies No 1 – April 2012. Cuporen verkkojulkaisu II. Available at <http://www.cupore.fi/fi/julkaisut/cuporen-julkaisut/the-capital-value-of-copyright-assets-in-finland-120149-14122016>.
- 19 Source: Pilot report implementing Methodology Card 1 – *Assessing Copyright and Related Rights Systems: Macroeconomic Importance of Copyright Industries. Report on Piloting in Finland*, Cupore webpublications 39:4.
- 20 Source: Pilot report implementing Methodology Card 4 – *Assessing Copyright and Related Rights Systems: Development of Digital Business Models and Income Based on Digital Distribution. Report on Piloting in Finland*, Cupore webpublications 39:8.
- 21 Sources: Pilot report implementing Methodology Card 2 – *Assessing Copyright and Related Rights Systems: Volume of Domestic Production of Copyrighted Products and Services. Report on Piloting in Finland*, Cupore webpublications 39:6. Games: <https://www.neogames.fi/tietoa-toimialasta/>, Software: <http://www.softwareindustriysurvey.fi/>.
- 22 Sources: Pilot report implementing Methodology Card 2 – *Assessing Copyright and Related Rights Systems: Volume of Domestic Production of Copyrighted Products and Services. Report on Piloting in Finland*, Cupore webpublications 39:6, and The Finnish Film Foundation, <http://ses.fi/en/statistics/yearly-statistics/>.
- 23 Source: Mass media statistics by Statistics Finland at <http://www.stat.fi/>.
- 24 Source: IFPI Finland: Statistics, available at <http://www.ifpi.fi/in-english/>.
- 25 Source: Mass media statistics by Statistics Finland at <http://www.stat.fi/>. The National Library of Finland, Legal Deposit and Publisher Statistics, available at <https://www.kansalliskirjasto.fi/en/legal-deposit-and-publisher-statistics>, and the Statistics of the Finnish Book Publishers Association, available at <https://tilastointi.kustantajat.fi/PublicReporting/Yearly.aspx?language=ENG>.

- <sup>26</sup> Source: Pilot report implementing Methodology Card 2 – *Assessing Copyright and Related Rights Systems: Volume of Domestic Production of Copyrighted Products and Services. Report on Piloting in Finland*, Cupore webpublications 39:6.
- <sup>27</sup> Source: Mass media statistics by Statistics Finland at <http://www.stat.fi/>.
- <sup>28</sup> Source: Music Finland at <https://musicfinland.fi/fi/tutkimukset/musiikkialan-talous-ja-vienti-2016>.
- <sup>29</sup> Source: Pilot report implementing Methodology Card 3 – *Assessing Copyright and Related Rights Systems: Volume of Exported and Imported Copyrighted Products and Services. Report on Piloting in Finland*, Cupore webpublications 39:7.
- <sup>30</sup> This section is mainly based on the following pilot reports:
- Pilot report implementing Description Sheet 5 – *Assessing Copyright and Related Rights Systems: Copyright Law. Report on Piloting in Finland*. Cupore webpublications 39:9.
  - Pilot report implementing Description Sheet 2 – *Assessing Copyright and Related Rights Systems: International and Regional Context. Report on Piloting in Finland*. Cupore webpublications 39:2.
  - Pilot report implementing Description Sheet 6 – *Assessing Copyright and Related Rights Systems: Copyright Policy. Report on Piloting in Finland*. Cupore webpublications 39:10.
  - Pilot report implementing Methodology Card 17 – *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works for Follow-on Creation. Report on Piloting in Finland*. Cupore webpublications 39:31.
- <sup>31</sup> This section is mainly based on the following pilot reports:
- Pilot report implementing Description Sheet 6 – *Assessing Copyright and Related Rights Systems: Copyright Policy. Report on Piloting in Finland*. Cupore webpublications 39:10.
  - Pilot report implementing Description Sheet 7 – *Assessing Copyright and Related Rights Systems: Public Administration of Copyright. Report on Piloting in Finland*. Cupore webpublications 39:13.
  - Pilot report implementing Description Sheet 10 – *Assessing Copyright and Related Rights Systems: Availability of Alternative Dispute Resolution Mechanisms. Report on Piloting in Finland*. Cupore webpublications 39:18.
- <sup>32</sup> This section is mainly based on the pilot report implementing Description Sheet 6 – *Assessing Copyright and Related Rights Systems: Copyright Policy. Report on Piloting in Finland*. Cupore webpublications 39:10.
- <sup>33</sup> This section is mainly based on the pilot report implementing Methodology Card 5 – *Assessing Copyright and Related Rights Systems: Public Consultation on Law Proposals. Report on Piloting in Finland*. Cupore webpublications 39:11, and on the pilot report implementing Methodology Card 6 – *Assessing Copyright and Related Rights Systems: Use of Impact Assessment and Research in Policy Development. Report on Piloting in Finland*. Cupore webpublications 39:12.
- <sup>34</sup> This section is mainly based on the following pilot reports:
- Pilot report implementing Description Sheet 5 – *Assessing Copyright and Related Rights Systems: Copyright Law. Report on Piloting in Finland*. Cupore webpublications 39:9.
  - Pilot report implementing Description Sheet 11 – *Assessing Copyright and Related Rights Systems: Individual Exercise of Rights. Report on Piloting in Finland*. Cupore webpublications 39:20.
  - Pilot report implementing Description Sheet 12 – *Assessing Copyright and Related Rights Systems: Collective Management of Rights. Report on Piloting in Finland*. Cupore webpublications 39:21.
- <sup>35</sup> This section is mainly based on the pilot report implementing Description Sheet 12 – *Assessing Copyright and Related Rights Systems: Collective Management of Rights. Report on Piloting in Finland*. Cupore webpublications 39:21.
- <sup>36</sup> Source: The government proposal (119/2016) for the Act on Collective Management of Copyright. Available in Finnish at [https://www.eduskunta.fi/FI/vaski/Kasittelytiedot/Valtiopaivaasia/Sivut/HE\\_119+2016.aspx](https://www.eduskunta.fi/FI/vaski/Kasittelytiedot/Valtiopaivaasia/Sivut/HE_119+2016.aspx).
- <sup>37</sup> This section is mainly based on the pilot report implementing Description Sheet 12 – *Assessing Copyright and Related Rights Systems: Collective Management of Rights. Report on Piloting in Finland*. Cupore webpublications 39:21, and on the pilot report implementing Methodology Card 9 – *Assessing Copyright and Related Rights Systems: Efficiency of Collective Management Organizations. Report on Piloting in Finland*. Cupore webpublications 39:22.
- <sup>38</sup> This section is mainly based on the pilot report implementing Description Sheet 8 – *Assessing Copyright and Related Rights Systems: Enforcement by Public and Private Actors – Focus: Public Authorities. Report on Piloting in Finland*. Cupore webpublications 39:14.
- <sup>39</sup> This section is mainly based on the pilot report implementing Description Sheet 8 – *Assessing Copyright and Related Rights Systems: Enforcement by Public and Private Actors – Focus: Private Actors. Report on Piloting in Finland*. Cupore webpublications 39:15.
- <sup>40</sup> This section is mainly based on the pilot report implementing Description Sheet 9 – *Assessing Copyright and Related Rights Systems: Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland*. Cupore webpublications 39:16, and on the pilot report implementing Methodology Card 7 – *Assessing Copyright and Related Rights Systems: Application of Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland*. Cupore webpublications 39:17.
- <sup>41</sup> Source: Statistics Finland.
- <sup>42</sup> This section is based on the pilot report implementing Description Sheet 9 – *Assessing Copyright and Related Rights Systems: Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland*. Cupore webpublications 39:16, and on the pilot report implementing Methodology Card 7 – *Assessing Copyright and Related Rights Systems: Application of Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland*. Cupore webpublications 39:17.
- <sup>43</sup> This section is mainly based on the following pilot reports:
- Pilot report implementing Description Sheet 14 – *Assessing Copyright and Related Rights Systems: Copyright-related Education for the Public in General. Report on Piloting in Finland*. Cupore webpublications 39:24.
  - Pilot report implementing Description Sheet 13 – *Assessing Copyright and Related Rights Systems: Copyright-related Information Activities. Report on Piloting in Finland*. Cupore webpublications 39:23.
  - Pilot report implementing Description Sheet 16 – *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland*. Cupore webpublications 39:30.
  - Pilot report implementing Methodology Card 10 – *Assessing Copyright and Related Rights Systems: Public Awareness of the Rights. Report on Piloting in Finland*, Cupore webpublications 39:25.
- <sup>44</sup> Source: Project Manager Juha Rislakki, CIAPC, information provided by email on 16.3.2018.

- <sup>45</sup> Source: the grant decisions of the Ministry of Education and Culture in the time frame of 2006–2012, analyzed when piloting the methodology, and the grant decisions in the time frame of 2015–2017, available on the website of the Ministry of Education and Culture at [http://minedu.fi/avustukset/avustus/-/asset\\_publisher/avustukset-valtakunnallisille-hankkeille-tekJanoikeusjarjestelman-kehittamiseksi](http://minedu.fi/avustukset/avustus/-/asset_publisher/avustukset-valtakunnallisille-hankkeille-tekJanoikeusjarjestelman-kehittamiseksi).
- <sup>46</sup> This section is mainly based on the pilot report implementing Methodology Card 11 – *Assessing Copyright and Related Rights Systems: Copyright-related Education as part of the Education of Professional for Creative Industries. Report on Piloting in Finland*. Cupore webpublications 39:26.
- <sup>47</sup> Source: Pilot report implementing Description Sheet 13 – *Assessing Copyright and Related Rights Systems: Copyright-related Information Activities. Report on Piloting in Finland*. Cupore webpublications 39:23.
- <sup>48</sup> This section is mainly based on the pilot report implementing Description Sheet 15 – *Assessing Copyright and Related Rights Systems: Research on Copyright-related Topics. Report on Piloting in Finland*. Cupore webpublications 39:27, and on the pilot report implementing Methodology Card 12 – *Assessing Copyright and Related Rights Systems: Copyright-related Research and Study Programs in Universities and Research Institutes. Report on Piloting in Finland*. Cupore webpublications 39:28.
- <sup>49</sup> Source: Pilot report implementing Methodology Card 6 – *Assessing Copyright and Related Rights Systems: Use of Impact Assessment and Research in Policy Development. Report on Piloting in Finland*. Cupore webpublications 39:12.
- <sup>50</sup> Source: Kautio T., Lefever N. & Määttä M., *Assessing the Operation of Copyright and Related Rights Systems: Methodology Framework*, Cupore publications 26 / Cupore webpublications 37, pages 18 and 108–111.
- <sup>51</sup> This section is mainly based on the following pilot reports:
- Pilot report implementing Methodology Card 16 – *Assessing Copyright and Related Rights Systems: Access to - Copyrighted Works by the Public. Report on Piloting in Finland*. Cupore webpublications 39:30.
  - Pilot report implementing Description Sheet 5 – *Assessing Copyright and Related Rights Systems: Copyright Law*. Cupore webpublications 39:9.
  - Pilot report implementing Description Sheet 12 – *Assessing Copyright and Related Rights Systems: Collective management of Rights*. Report on Piloting in Finland. Cupore webpublications 39:21.
- <sup>52</sup> Source: Pilot report implementing Methodology Card 16 – *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland*. Cupore webpublications 39:30.
- <sup>53</sup> Source: Pilot report implementing Methodology Card 16 – *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland*. Cupore webpublications 39:30.
- <sup>54</sup> Source: Pilot report implementing Methodology Card 16 – *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works by the Public. Report on Piloting in Finland*. Cupore webpublications 39:30.
- <sup>55</sup> Source: Website of Kuvasto, available at <http://kuvasto.fi/kansallisgalleria-sopimus>.
- <sup>56</sup> This section is mainly based on the following pilot reports:
- Pilot report implementing Methodology Card 17 – *Assessing Copyright and Related Rights Systems: Access to Copyrighted Works for Follow-on Creation. Report on Piloting in Finland*. Cupore webpublications 39:31.
  - Pilot report implementing Description Sheet 5 – *Assessing Copyright and Related Rights Systems: Copyright Law. Report on Piloting in Finland*, Cupore webpublications 39:9.
- <sup>57</sup> Main source for this section: Pilot report implementing Methodology Card 20 – *Assessing Copyright and Related Rights Systems: Unauthorized Use of Copyrighted Works in Physical Form. Report on Piloting in Finland*. Cupore webpublications 39:34.
- <sup>58</sup> Source: Lyhty at <https://lyhtyprojekti.fi/ajankohtaista/uutiset/tekJanoikeusbarometri-2015-striimaus-yleisin-piratismimuoto/>.
- <sup>59</sup> Main source for this section: Pilot report implementing Methodology Card 21 – *Assessing Copyright and Related Rights Systems: Unauthorized Use of Copyrighted Works in Digital Form. Report on 18 Piloting in Finland*, Cupore webpublications 39:35. The information has been updated whenever possible.
- <sup>60</sup> Main source for this section: Pilot report implementing Methodology Card 22 – *Assessing Copyright and Related Rights Systems: Analysis of Stakeholders' Opinions on the Copyright System – Focus: End-users. Report on Piloting in Finland*, Cupore webpublications 39:37. The information has been updated whenever possible.
- <sup>61</sup> This section is based on the following pilot reports:
- Pilot report implementing Description Sheet 4 – *Assessing Copyright and Related Rights Systems: Markets for Copyrighted Products and Services – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:5.
  - Pilot report implementing Methodology Card 4 – *Assessing Copyright and Related Rights Systems: Development of Digital Business Models and Income Based on Digital Distribution. Report on Piloting in Finland*. Cupore webpublications 39:8.
  - Pilot report implementing Methodology Card 15 – *Assessing Copyright and Related Rights Systems: 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 39:29.
- <sup>62</sup> Calculation based on the statistics of the Finnish Book Publishers Association, available at <http://tilastointi.kustantajat.fi/PublicReporting/Yearly.aspx?language=ENG>.
- <sup>63</sup> Source: The Finnish Library Statistics, 2016. Available at [https://www.kirjastot.fi/uutiset/ajankohtaista/yleisten-kirjastojen-toimintatilastot2016valmistuneet-78923?language\\_content\\_entity=fi2](https://www.kirjastot.fi/uutiset/ajankohtaista/yleisten-kirjastojen-toimintatilastot2016valmistuneet-78923?language_content_entity=fi2).
- <sup>64</sup> Source: The report on market value of Finnish literature exports by the Finnish Literature Exchange FILLI, available in Finnish at <http://www.finlit.fi/fili/suomalaisen-kirjallisuusviennin-markkina-arvo-2016/>.
- <sup>65</sup> Source: Pilot report implementing Description Sheet 4 – *Assessing Copyright and Related Rights Systems: Markets for Copyrighted Products and Services – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*, Cupore webpublications 39:5.
- <sup>66</sup> Source: Statistics Finland (cultural statistics).
- <sup>67</sup> Source: Finnish Book Publishers Association's statistics at <http://tilastointi.kustantajat.fi/PublicReporting/Yearly.aspx?language=FIN>.
- <sup>68</sup> Source: CUPIX – Cultural Price Index on Goods and Services, 2014, available at <http://www.culturalpolicies.net/web/statistics-markets.php?aid=289&cid=76>.

- <sup>69</sup> Source: Pilot report implementing Methodology Card 15 – *Assessing Copyright and Related Rights Systems: 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 39:29.
- <sup>70</sup> This section is based on the following pilot reports:
- Pilot report implementing Methodology Card 15 – *Assessing Copyright and Related Rights Systems: 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 39:29.
  - Pilot report implementing Methodology Card 22 – *Assessing Copyright and Related Rights Systems: Analysis of Stakeholders’ Opinions on the Copyright System – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:36.
- <sup>71</sup> This section is based on the following pilot reports:
- Pilot report implementing Description Sheet 4 – *Assessing Copyright and Related Rights Systems: Markets for Copyrighted Products and Services – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:5.
  - Pilot report implementing Description Sheet 11 – *Assessing Copyright and Related Rights Systems: Individual Exercise of Rights. Report on Piloting in Finland*. Cupore webpublications 39:20.
  - Pilot report implementing Methodology Card 18 – *Assessing Copyright and Related Rights Systems: Transaction Costs in Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:32.
- <sup>72</sup> Source: Union of Finnish Writers’ Kustannussopimus: <http://www.kirjailijaliitto.fi/kirjailijan-tyo/kustannussopimus/>.
- <sup>73</sup> Source: “Näin ostat free-työtä” on the website of the Association of Freelance Journalists in Finland (AFJ), available at <http://www.freet.fi/freetyon-ostajan-opas>.
- <sup>74</sup> Source: “Sopimuslisenssijärjestöt ja niiden hyväksyminen” on the website of the Ministry of Education and Culture, available at <http://minedu.fi/sopimuslisenssit>.
- <sup>75</sup> This section is based on the following pilot reports:
- Pilot report implementing Methodology Card 18 – *Assessing Copyright and Related Rights Systems: Transaction Costs in Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:32.
  - Pilot report implementing Methodology Card 19 – *Assessing Copyright and Related Rights Systems: Terms for Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:33.
- <sup>76</sup> Source: Pilot report implementing Methodology Card 15 – *Assessing Copyright and Related Rights Systems: 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 39:29.
- <sup>77</sup> Source: Pilot report implementing Methodology Card 19 – *Assessing Copyright and Related Rights Systems: Terms for Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:33.
- <sup>78</sup> Source: Pilot report implementing Methodology Card 15 – *Assessing Copyright and Related Rights Systems: 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 39:29.
- <sup>79</sup> Source: Pilot report implementing Methodology Card 18 – *Assessing Copyright and Related Rights Systems: Transaction Costs in Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:32.
- <sup>80</sup> Source: Pilot report implementing Methodology Card 18 – *Assessing Copyright and Related Rights Systems: Transaction Costs in Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:32.
- <sup>81</sup> Source: Pilot report implementing Methodology Card 18 – *Assessing Copyright and Related Rights Systems: Transaction Costs in Transfer and Licensing of Rights – Focus: Literature (Book Publishing Industry). Report on Piloting in Finland*. Cupore webpublications 39:32.
- <sup>82</sup> Tiina Kautio & Nathalie Lefever 2017. *Assessing Governance in the Context of Copyright Systems – Second Edition*. Cupore webpublications 45. Available at <http://www.cupore.fi/en/publications/cupore-s-publications/assessing-governance-in-the-context-of-copyright-systems>.
- <sup>83</sup> See information at <https://worldjusticeproject.org/our-work/wjp-rule-law-index>.
- <sup>84</sup> See <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-open-government-index/dimensions-wjp-open-government-index>.
- <sup>85</sup> This issue was studied in the pilot report implementing Methodology Card 10 – *Assessing Copyright and Related Rights Systems: Public Awareness of the Rights. Report on Piloting in Finland*. Cupore webpublications 39:25.
- <sup>86</sup> This data was collected as part of the pilot study implementing Methodology Card 5 – *Assessing Copyright and Related Rights Systems: Public Consultation on Law Proposals. Report on Piloting in Finland*. Cupore webpublications 39:11.
- <sup>87</sup> Source: <http://lainvalmistelu.finlex.fi/en/>, see stage 6, “Parliamentary review”.
- <sup>88</sup> Source: Website of the Finnish Parliament at <https://www.eduskunta.fi/EN/lakiensaaminen/valiokunnat/Pages/default.aspx>.
- <sup>89</sup> *Assessing Copyright and Related Rights Systems: Public Administration of Copyright. Report on Piloting in Finland*. Cupore webpublications 39:13.
- <sup>90</sup> Source: Office of the Chancellor of Justice’s website at <https://www.okv.fi/en/>.
- <sup>91</sup> See pilot report implementing Description Sheet 6 – *Assessing Copyright and Related Rights Systems: Copyright Policy. Report on Piloting in Finland*. Cupore webpublications 39:10.
- <sup>92</sup> Työ- ja elinkeinoministeriö, Työelämä- ja markkinaosasto, *IPR-strategian arvioinnista* (Ministry of Economic Affairs and Employment, Labour and Trade Department, *Report on the evaluation of the implementation of the IPR strategy*), 20.1.2012. Available at [https://www.iprinfo.com/tietopalvelut/uutisarkisto/uutiset-2012/fi\\_FI/jos-muutosta-halutaan/\\_files/88736046155498702/default/TEMraportti\\_1\\_2012.pdf](https://www.iprinfo.com/tietopalvelut/uutisarkisto/uutiset-2012/fi_FI/jos-muutosta-halutaan/_files/88736046155498702/default/TEMraportti_1_2012.pdf).

- <sup>93</sup> Source: Pilot report implementing Methodology Card 8 – *Assessing Copyright and Related Rights Systems: Use of Alternative Resolution Mechanisms for Solving Copyright Disputes. Report on Piloting in Finland*. Cupore webpublications 39:19, page 12. The information was originally provided by Marco Grönroos, from the Ministry of Education and Culture, consulted on 11.9.2014.
- <sup>94</sup> The information of this section is based on the World Justice Project's *Rule of Law Index 2016*, available at [http://worldjusticeproject.org/sites/default/files/media/wjp\\_rule\\_of\\_law\\_index\\_2016.pdf](http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf).
- <sup>95</sup> The grant decisions are available at [http://minedu.fi/documents/1410845/3874500/2017\\_Tekij%C3%A4noikeushankkeet\\_my%C3%B6nn%C3%B6t.pdf/3d9b0512-22fe-40c3-adf6-e35f8e29b8b0](http://minedu.fi/documents/1410845/3874500/2017_Tekij%C3%A4noikeushankkeet_my%C3%B6nn%C3%B6t.pdf/3d9b0512-22fe-40c3-adf6-e35f8e29b8b0).
- <sup>96</sup> Source: The indicator framework's data, available at <http://www.governancereport.org/ifcd/#>.



# Evidence for the Future

## A REVIEW OF THE FINNISH COPYRIGHT SYSTEM

The copyright system is a complex balance of sometimes opposed, sometimes converging interests, and it comprises many actors, policies, processes and rules. Its success in achieving its goals will depend on its capacity to respond to various needs and adapt to the evolution of cultural and societal processes. In order to meet these challenges, a methodology framework for a systematic assessment of national copyright and related rights systems was published in 2016 by the Centre for Cultural Policy Research (Cupore).

This document assembles and analyzes the results of the pilot studies conducted in 2013–2015 to implement the methodology in Finland. The goal is to offer a general review of the Finnish copyright system’s operation and performance, present it in a compact form, and conclude with a list of recommendations for improvements. Additionally, the same information is used to assess the governance of the Finnish copyright system by public authorities, and to verify whether their organizational structure and actions comply with generally accepted principles of good governance.

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