

cupore

Assessing the Operation of Copyright and Related Rights Systems

Methodology Framework

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Foundation for Cultural Policy Research (Cupore)
Cupore webpublications 37

cupore

Cupore publications 26 and Cupore webpublications 37

Kulttuuripoliittisen tutkimuksen edistämissäätiö (Cupore)

Foundation for Cultural Policy Research (Cupore)

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Graphic design: Oy Graaf Ab

ISBN 978-952-5573-70-1 (pdf)

ISSN 1796-9263 (pdf)

May 2016

Links presented in the document were visited on 15.4.2016.

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Foreword and Acknowledgements

● The methodology presented here aims at providing guidelines and tools for making a systematic assessment of the functioning, performance and balanced operation of national copyright and related rights systems. It is presented here as a framework intended for international use.

The methodology, such as it is outlined in the framework, can serve as a basis for the formulation of copyright and related rights policies and strategies at the national level. It can therefore facilitate further development of the copyright system. The methodology framework consists of relevant key indicators that are useful in identifying trends and good practices while acknowledging the different contexts in which the national copyright systems operate. Assessing the operation of the copyright system increases transparency and provides an information base for public discussion on copyright policy.

The development of the methodology was launched as a national project in Finland in the beginning of May 2009. The Finnish Ministry of Education and Culture accorded a financial appropriation for the carrying out of this project to the Foundation for Cultural Policy Research (Cupore). The project was carried out in two stages: at the first stage, a methodology framework for assessing the operation of national copyright systems was established and documented in the form of a methodology handbook. At the second stage of the project, the methodology was piloted in Finland. A prototype of the methodology handbook presenting the assessment framework was published at the end of the first stage of the project in 2012. In addition to the methodology handbook, a toolkit of 12 questionnaires was drafted to provide more detailed instructions for collecting data. During the pilot phase of the project, carried out in 2013–2015, the assessment framework was put into practice. In the present version of the methodology handbook the feedback concerning the application of the framework and experiences from the pilot phase have been taken into account.

The core project team comprised Project Manager Tiina Kautio and Researcher Nathalie Lefever from Cupore. During the pilot phase of the project, the team was complemented by Project Researchers Jukka Kortelainen and Milla Määttä. In addi-

tion, several pilot studies were carried out by a group of students from the universities of Helsinki, Jyväskylä and Turku. Researcher Mikko Karaiste worked as a member of the project group for three months in 2010. The steering group of the project comprised Jukka Liedes (Director at the Finnish Ministry of Education and Culture until 2014), Jorma Waldén (Director at the Finnish Ministry of Education and Culture), Marjo Mäenpää (Director of Cupore), Pasi Saukkonen (Director of Cupore between 2014 and 2015), Ritva Mitchell (Research Director of Cupore until 2014) and Jaakko Eskola (Ombudsman of Cupore). The project was led by the consulting company Accenture for its initial five months' stage in 2009.

In the process of developing the methodology framework, two expert groups were established to support and comment the work. The Scientific Board was composed of experts in assessment methodology and was chaired by Ritva Mitchell. The Expert Group on Copyright Matters, chaired by Jukka Liedes, was composed of Finnish copyright professionals. Additionally, there has been continuous participation of copyright officials from the Finnish Ministry of Education and Culture in the project. Several experts representing different stakeholder categories or having relevant expertise have been consulted. The Finnish Copyright Society has provided a forum for debates on the methodological work. The draft methodology handbook has also been commented by international experts from different governments, intergovernmental organizations, universities and professional organizations in the field of copyright.

In order to better acknowledge the international aspects of this national project, a contact with the secretariat of the World Intellectual Property Organization (WIPO) was established at its early stages. The project organization has followed the work carried out in the context of the WIPO ESCIA (Economic, Social and Cultural Impact Assessment) project¹, which is closely linked to the assessment of the functioning, performance and operational balance of the copyright system.

The architecture of the project organization is illustrated in Appendix 1.

May 2016

¹ The development of the ESCIA (Economic, Social and Cultural Impact Assessment) Guidelines aims at facilitating greater precision and objectivity in the development of laws and policies through the assessment of the impacts of copyright-related regulatory and policy decisions. The *WIPO Draft Guidelines on Assessing the Economic, Social and Cultural Impact of Copyright on the Creative Economy* are available on the website of WIPO at <http://www.wipo.int/copyright/en/performance/>.

Executive Summary

● A project aiming at providing a methodology for a systematic assessment of the functioning, performance and balanced operation of national copyright and related rights systems was initiated by the Finnish Ministry of Education and Culture in 2009 and conducted by The Foundation for Cultural Policy Research Cupore between 2009 and 2016. Its results are presented here as a framework that is intended to be used in different countries.

The methodology framework helps build a profound understanding of the copyright system, its different elements and different aspects of its operation, therefore serving as a tool in the formulation of copyright policies and strategies. It can facilitate the development of the copyright system by helping to identify areas and solutions for improvements and by monitoring the effectiveness of particular elements. It can also be used as a framework for communication, a tool in education and information activities, and a stimulant for research on copyright issues. When applied in different countries, the methodology can help identify commendable practices while acknowledging national contexts. It also pertains to the transparency of the system and can serve the interests of different stakeholders and society at large by providing an information base for discussions on copyright policy.

In the methodology, the assessment of the copyright and related rights system is determined through 15 description sheets and 22 methodology cards. The description sheets constitute guidelines to produce a comprehensive presentation and description of a country's copyright and related rights system and its operating environment. The methodology cards propose the collection of specific sets of data, either quantitative, descriptive or qualitative, that will be used as indicators of the functioning, performance and balanced operation of the system. Description sheets and methodology cards are accompanied by detailed information on the data to be collected, as well as analysis guidelines that will help connect them to each other.

Collecting the data, analyzing it according to the proposed interpretation guidelines and applying analysis tools will provide meaningful information for a thorough description and assessment of the system. The data to be collected was selected on the basis of its relevance, neutrality and availability as well as its anticipated validity in the assessment of copyright systems' operation on a world-wide scale, its

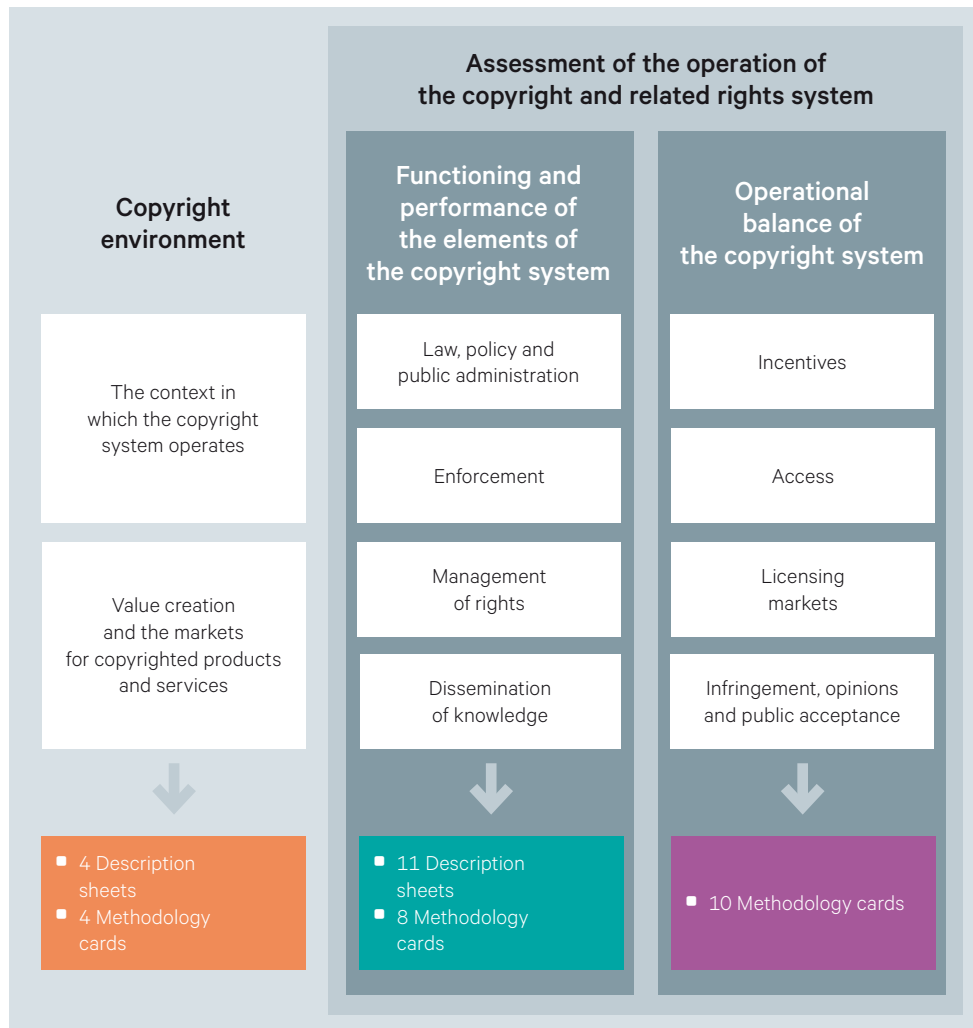
availability, and the relevance of the information it provides. Sometimes the data can be gathered as a desktop study using available statistical or other sources and in other cases the data is to be collected through interviews, focus group study or survey-based research. More detailed directions for collecting such data can be found in a toolkit of model questionnaires presented in a separate document.

The framework is divided into three pillars that can be implemented one at a time, as sequential phases or using only specific elements or aspects of interest:

- Methods for describing and analyzing the copyright environment (*The Context in Which the Copyright System Operates* and *Value Creation and the Markets for Copyrighted Products and Services*),
- Methods for describing and assessing different elements of the copyright system as divided under four particular areas (*Law, Policy and Public Administration; Enforcement; Management of Rights; and Dissemination of Knowledge*) and
- Methods for assessing the operative balance of the copyright system through four separate aspects (*Incentives; Access; Licensing Markets; and Infringement, Opinions and Public Acceptance*).

The methodology is designed to be modular: besides offering methods for undertaking a comprehensive analysis of the system as a whole, it allows for a detailed analysis of its elements and aspects separately. It also suggests different possible ways of making an assessment and interpreting the results. According to the focus of research, it can be utilized as a diagnostic tool for the purposes of identifying development areas in a particular component of the copyright system, as well as for continuous assessment of the operation of the system in its entirety. Examples of modular application of the methodology are presented in Appendix 4.

The Different Parts of the Methodology Framework



Overview of the Indicators

COPYRIGHT ENVIRONMENT

The Context in Which the Copyright System Operates

- Description Sheet 1. National Context
- Description Sheet 2. International and Regional Context
- Description Sheet 3. Technological Development
- Methodology Card 1. Macroeconomic Importance of Copyright Industries

Value Creation and the Markets for Copyrighted Products and Services

- Description Sheet 4. Markets for Copyrighted Products and Services
- Methodology Card 2. Volume of Domestic Production of Copyrighted Products and Services
- Methodology Card 3. Volume of Exported and Imported Copyrighted Products and Services
- Methodology Card 4. Development of Digital Business Models and Income Based on Digital Distribution

FUNCTIONING AND PERFORMANCE OF THE ELEMENTS OF THE COPYRIGHT SYSTEM

Law, Policy and Public Administration

- Description Sheet 5. Copyright Law
- Description Sheet 6. Copyright Policy
- Methodology Card 5. Public Consultation on Law Proposals
- Methodology Card 6. Use of Impact Assessment and Research in Policy Development
- Description Sheet 7. Public Administration of Copyright

Enforcement

- Description Sheet 8. Enforcement by Public and Private Actors
- Description Sheet 9. Sanctions and Remedies for Copyright Infringement
- Methodology Card 7. Application of Sanctions and Remedies for Copyright Infringement
- Description Sheet 10. Availability of Alternative Dispute Resolution Mechanisms
- Methodology Card 8. Use of Alternative Resolution Mechanisms for Solving Copyright Disputes

Management of Rights

- Description Sheet 11. Individual Exercise of Rights
- Description Sheet 12. Collective Management of Rights
- Methodology Card 9. Efficiency of Collective Management Organizations

Dissemination of Knowledge

- Description Sheet 13. Copyright-related Information Activities
- Description Sheet 14. Copyright-related Education for the Public in General
- Methodology Card 10. Public Awareness of the Rights
- Methodology Card 11. Copyright-related Education as Part of the Education of Professionals for Creative Industries
- Description Sheet 15. Research on Copyright-related Topics
- Methodology Card 12. Copyright-related Research and Study Programs in Universities and Research Institutes

OPERATIONAL BALANCE OF THE COPYRIGHT SYSTEM

Incentives

- Methodology Card 13. Direct Copyright Revenue Streams for Different Stakeholders
- Methodology Card 14. Return on Investment for Copyrighted Products and Services
- Methodology Card 15. Stakeholders' Opinions Concerning the Incentive Function of the Copyright System

Access

- Methodology Card 16. Access to Copyrighted Works by the Public
- Methodology Card 17. Access to Copyrighted Works for Follow-on Creation

Licensing Markets

- Methodology Card 18. Transaction Costs in Transfer and Licensing of Rights
- Methodology Card 19. Terms for Transfer and Licensing of Rights

Infringement, Opinions and Public Acceptance

- Methodology Card 20. Unauthorized Use of Copyrighted Works in Physical Form
- Methodology Card 21. Unauthorized Use of Copyrighted Works in Digital Form
- Methodology Card 22. Stakeholders' Opinions on the Copyright System

Introduction: Towards Assessing and Improving Copyright and Related Rights Systems

● A solid information base and continuous assessment are crucial assets in the formulation of policies and strategies and for developing coherent copyright and related rights systems on the national and international level. Efficient copyright policies are based on a profound understanding of the copyright system's operation and the context in which the system operates.

The methodology presented in this document provides a comprehensive set of guidelines to assess the operation of national copyright and related rights systems. The purpose is to propose a toolkit that supports national governments when designing new measures for improving the operation of the copyright system. The methodology can help legislators make decisions and better understand the impacts the decisions will have on different stakeholders. As an operational policy tool, continuous assessment can help identify bottlenecks for the overall functioning of the copyright system and facilitate its effective and balanced operation in the long term. This methodology can also support the process of regularly monitoring the system's operation. Figure 1 presents an illustration of the revision of copyright strategies and policies based on continuous assessment.

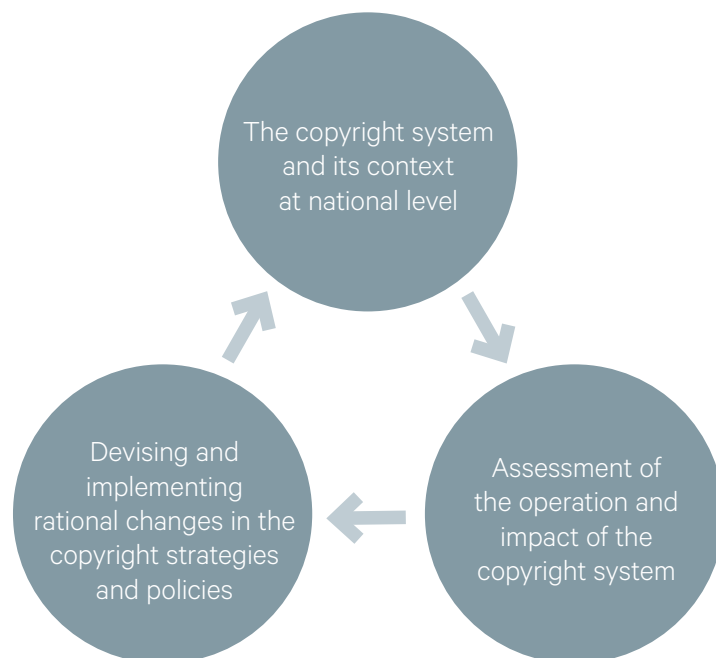


Figure 1. Description of the revision cycle for copyright strategies and policies

The methodology framework consists of a set of indicators which have been designed to facilitate the assessment of different characteristics of a system operating in a balanced manner. The framework incorporates different types of approaches and methods and proposes selections of parameters to study certain key questions reflecting these objectives. However, the indicators featured in this methodology should not be interpreted as proposing a single design for a well-operating copyright system or its assessment. Only a broad of the methodology implementation and thorough analysis of the results will effectively test any assumption. This methodology should be deemed as a prototype that will be subject to further development through its application in different countries. The framework has been piloted in its full scale in Finland in 2013-2015 and developed further on the basis of this experience.

Both assessing the copyright system as well as formulating and implementing copyright policies have a vast potential for international cooperation. The use of this methodology framework will help identify good practices at national level, while acknowledging the local traditions and specificities as much as possible. Analyzing different copyright and related rights systems using similar methodological tools allows for the benchmarking of some of their relevant features.

The results of studies applying this methodology also have the potential of reinforcing good governance by helping to identify development areas in public administration of copyright matters. Some of the indicators are designed for the assessment of certain aspects of copyright management or processes in copyright governance, and will also tell about the respect of generally recognized good governance principles.

Although the methodology has been designed primarily as a policy and strategy tool, it can also be useful as a framework for communication, as a tool in education and information activities, and as a stimulant to research on copyright issues. The implementation of the framework offers a thorough description of the system which adds to its transparency. This brings about new possibilities for the various stakeholders to discuss copyright policies and build informed opinions. The assessment of functioning, performance and balanced operation can clarify the scope for reform to benefit the society at large and to serve the interests of authors and performers, other right holders, copyright industries, intermediaries and end-users in a balanced manner.

This handbook is divided into different chapters. The first chapter clarifies, in a few words, the objects of the assessment: the copyright system and its goals, copyright industries, value creation processes and stakeholder categories. The second chapter presents the methodology framework: its structure and characteristics, the principles used in its conception, guidelines for the implementation of the assessment and for the analysis of data, as well as the methodology's limitations and outcomes. The next three chapters provide a detailed presentation of the methodology framework and its constituting indicators, which are divided under three pillars. The final chapter provides insights on possible future applications of the methodology.

Understanding the Operation of the Copyright System

● Before describing the methodology framework in detail, this introductory chapter endeavors to present the objects of the assessment: the copyright system, copyright industries, value creation processes and stakeholder categories. The purpose is to clarify the conceptual basis on which the methodology framework is built.

The Copyright System and its Goals

This methodology has been developed to assess one segment of the intellectual property system, namely, the copyright and related rights system. Copyright is an essential part of intellectual property rights that protects the rights of authors, who are the creators of original works in the field of literature and the arts (including written works, musical compositions, works of visual arts and other creations of the mind). In a broader sense, copyright also includes the so-called related or neighboring rights: the rights of performers, producers of phonograms or films, and creators of computer programs or databases. The right holders, or those to whom the rights have been transferred, have the exclusivity on some uses of the works defined by law, in particular copying and distribution.²

Copyright is born at the moment of creation and is not dependent on the quality of the work.³ The rights granted can be divided into economic and moral rights. Economic rights refer to copyright holders' exclusive right to copy, distribute and adapt the work.⁴ Moral rights include most importantly the right to claim authorship and the right to integrity.⁵ Copyright law allows certain limitations on economic rights for balancing the interests between copyright holders and society in general. The limitations to copyright provide for the use of protected works without the authorization of the copyright holder, with or without payment of compensations.⁶

² International treaties and agreements provide for international protection of rights. The duration of copyright protection is set by international agreements for most literary and artistic works.

³ This is the case for all countries adhering to the Berne Convention for the Protection of Literary and Artistic Works. As stated in Article 2 of the WIPO Copyright Treaty, copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

⁴ The exclusive rights of authors include the right of reproduction; the right of translation; the rights of adaptation, arrangement, and other alteration; the right of public performance; the right of broadcasting; the right of communicating to the public; the right of distribution; and the right of rental. See the *WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)*, pp. 23–25, available at http://www.wipo.int/edocs/pubdocs/en/copyright/893/wipo_pub_893.pdf.

⁵ The right to claim authorship is the right to be identified as the author of a work. The right to integrity refers to the protection against adaptation, alteration or modification of a work or communicating it to the public in a form or context that is injurious to the author or performer. See Description Sheet 5 – *Copyright Law*.

⁶ These limitations or exceptions vary according to the countries and often cover, among others, private use of copyrighted work, public use for parody, news reporting, teaching, quotations, etc. For more information on the limitations and exceptions to copyright, see the WIPO website at <http://www.wipo.int/copyright/en/limitations/>.

The framework presented in this handbook reflects certain generally recognized goals and characteristics of a well-functioning and balanced copyright system and is designed to assess the system's capacity and efficiency at meeting its objectives. It is broadly accepted that the purpose of copyright is to encourage creativity and ensure the availability of creative works. This is achieved by enabling authors to control and to obtain reward from the use of their creative work, and to prohibit unauthorized use of it: by providing possibilities to make a living from creative work, copyright offers incentive to create. In comparison with grants, awards and scholarships to artists, the incentives created by copyright are market-based. When enforced effectively, copyright also functions as an incentive to invest as it secures returns from the market to reward investors' risk-taking. The growing economic importance of copyright industries has been acknowledged in many countries.⁷

The copyright system seeks to foster the interest of the public at large by determining the level of protection so that it would support the availability, abundance and diversity of culture through its incentive function, and at the same time encourage further creativity and innovation as well as access to works. Copyright also has an impact on the functioning of markets and the accumulation of cultural and social capital.⁸

Copyright Industries

Copyright provides a legal basis for the creation of economic value through creative products and services. It can ensure economic benefits for copyright holders who expect rewards from the transfer of rights and the exploitation or the sales of their works, as a compensation for their creative or monetary investments.

Since various kinds of products and services are protected by copyright, studies focusing on economic aspects of copyright and analysis of the markets often need to examine different industries separately. It is also necessary to define the industries that depend on the copyright system in order to measure its economic impact. The *WIPO Guide on Surveying the Economic Contribution of Copyright Industries* proposes the term "copyright industries" to cover those industries which function under the protection of copyright and related rights.⁹ This methodology is designed to

⁷ See the WIPO series of National Studies on Assessing the Economic Contribution of Copyright-Based Industries at <http://www.wipo.int/publications/en/details.jsp?id=370>.

⁸ Therefore, copyright must be set to maximize positive social, cultural and economic impact, and minimize negative impact, taking into account the interest of authors and performers, other right holders and users, intermediaries, consumers and the public at large. The applicability of indicators developed in this framework for the purposes of impact assessment is discussed in "Further Applications of the Methodology" on p. 139.

⁹ See the *WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)*, p. 30, available at http://www.wipo.int/edocs/pubdocs/en/copyright/893/wipo_pub_893.pdf.

apply to industries corresponding to this definition¹⁰ and in particular those listed in the box below.

THIS METHODOLOGY IS DESIGNED TO APPLY TO THE FOLLOWING COPYRIGHT INDUSTRIES¹¹:

- Press and Literature
- Music, Theatrical Productions, Operas
- Motion Picture and Video
- Radio and Television
- Photography
- Software, Databases and Computer Games
- Visual and Graphic Arts
- Advertising Services

Box 1. Copyright industries

Value Creation Processes

In today's copyright environment the processes of creation, production, distribution and end-use are often interconnected, and stakeholders are involved in two or more functions of the value creation process. Figure 2 presents a general representation of a number of different value creation processes in creative industries. The figure represents an open system where value is created in various forms of interaction and where the steps between content creation and end-use are not sequential phases of value creation.

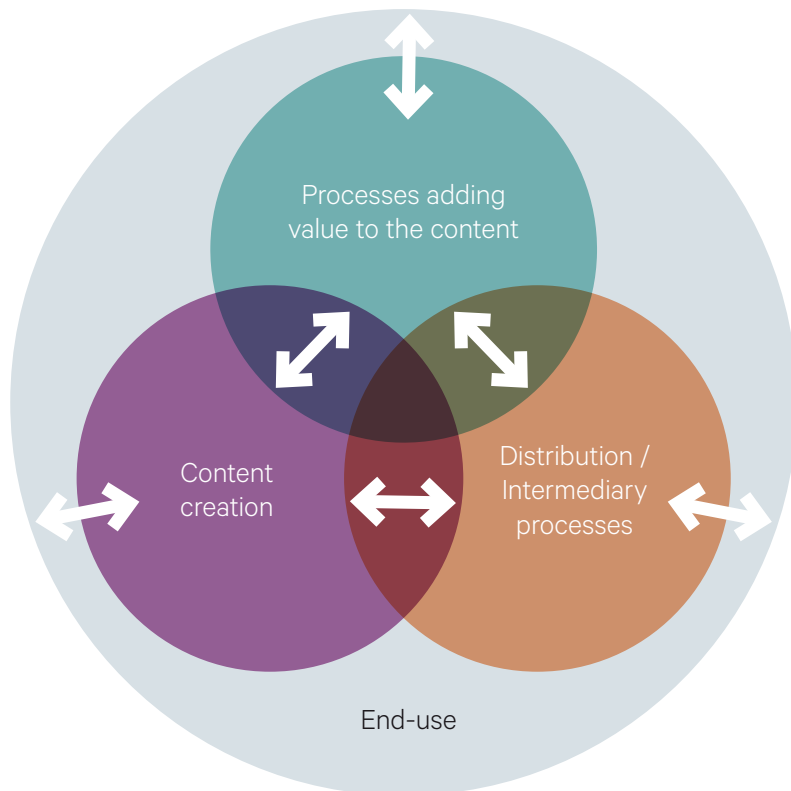


Figure 2. Schematic illustration of the value creation processes for copyright-protected content

¹⁰ The WIPO definition of copyright industries is presented in detail in Appendix 3.

¹¹ List based on WIPO definition of core copyright industries. For a full definition of copyright industries by WIPO, see Appendix 3.

Stakeholder Categories

For the purposes of this methodology, it is necessary to define stakeholder categories that will be the subject of data collection. Establishing definitive stakeholder categories is however impossible, considering the variety of value creation processes, commercial arrangements and business activities across the different kinds of subject matter. Instead, four stakeholder *roles* have been tentatively established. Each one covers a type of activity in the copyright field resulting in specific rights and interests. A specific actor (whether organization or individual) can fulfill various roles corresponding to different protected works, or when taking part in several value creation processes concerning the same work. As a result, although these roles are not completely separate, they can be used as a basis for categorizing the actors that will be the subjects of data collection based on this methodology framework.

- **Authors and performers** are original owners of copyright and related rights on the protected subject matter. Authors are the initial creators of the work,¹² and as such, their economic and moral rights are protected by copyright legislation;¹³ performers bring creative input while performing, granting them with separate economic and moral rights.¹⁴ In addition to content creation, authors and performers might be involved in the other value creation processes depicted above.
- **Professional copyright users** can be individual professionals as well as small, medium-sized or large organizations using the protected subject matter in their operation to a significant degree. They add value to the creative products and services through investment. Their activities are often based on rights acquired from authors and performers, but certain professional copyright users are original right holders of their own related rights (such as producers of phonograms and films or broadcasting organizations¹⁵). These categories should be considered separately whenever necessary. Professional copyright users are most likely to be involved in processes that add value to the copyrighted work or content but might as well take part in other processes in the value chain.

¹² As a result, “authors” are often referred to as “creators” in contexts where they are presented as a social group and not in relation to a particular work or specific rights. The same terminology is used throughout this handbook.

¹³ In some countries, creators of particular types of works, such as creators of databases, have been granted rights related to copyright. See for instance: Mark J. Davidson, *The Legal Protection of Databases*, Cambridge Studies in Intellectual Property Rights (2008).

¹⁴ At the international level, performers were granted rights by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (articles 7-9), the WIPO Performances and Phonograms Treaty, and the WIPO Beijing Treaty on Audiovisual Performances. For more information, see the WIPO website, *Performers’ Rights – Background Brief*, at <http://www.wipo.int/pressroom/en/briefs/performers.html>.

¹⁵ Producers of phonograms and films and broadcasting organizations are granted rights related to copyright by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, article 10 (producers of phonograms) and article 13 (broadcasting organisations).

- **Intermediaries** are distributors, teleoperators and other actors whose primary purpose is to disseminate products and services protected by copyright, including the intermediaries that provide the infrastructure for the dissemination of works. Compared to copyright users, intermediaries do not take any part in the creation process, neither through work nor investment. Whenever they hold rights to the works, those are acquired through licensing arrangements, except for some cases where the rights and responsibilities are determined by law (such might be, for example, the responsibilities of internet service providers regarding unauthorized content).
- **End-users** of creative products and services are individual consumers as well as organizations and institutions both in the public and private sectors. They are not granted any specific rights by law, although they might benefit from copyright exceptions. Some end-users might be considered by law as a special public, enticing them with particular privileges. Organizational end-users may be any organization using copyrighted material for commercial or non-commercial purposes as support for its main activities (e.g. restaurants, hotels, churches or educational institutes).

Collective management organizations (CMOs) are considered as agents for the right holders¹⁶ and, therefore, are not deemed to be a separate stakeholder category. Similarly, unions, consortia or collaboration forums are considered part of the category of the stakeholders they represent.

¹⁶ According to WIPO, collective management refers to “the exercise of copyright and related rights by organizations acting in the interest and on behalf of the owners of rights” (see the WIPO website at <http://www.wipo.int/copyright/en/management/>).

CATEGORIZATION OF STAKEHOLDERS ACCORDING TO THEIR ROLES

Authors and performers

- the original creators of the work
- performing artists

Professional copyright users, including right holder-users

Examples of actors fulfilling this role:

- music recording labels, phonogram producers
- book publishers
- film producers
- broadcasting organizations
- database producers

Intermediaries

Examples of actors fulfilling this role:

- teleoperators
- libraries, archives, museums, exhibition organizers
- internet service providers

End-users

- individual citizens
- organizational end-users

Box 2. Categorization of stakeholders according to different roles in value creation processes

At times, the assessment may need other kinds of definitions of different stakeholder groups or audiences. Stakeholders can also be further categorized according to the type of subject matter or genres in the production of which they take part. Sometimes it is reasonable to distinguish between different groups of actors based on the size of their operation. The categorization of stakeholders into different groups should be made case by case as a first step of the assessment process.

Presentation of the Methodology Framework

- This chapter presents in details the characteristics, development and structure of the methodology framework, offers recommendations concerning its operationalization and analysis of data, and provides an overview of the limitations of the methodology and the outcomes of its implementation.

Characteristics of the Framework

A Set of Tools to Analyze the Copyright System at Country Level

Once the need for an assessment of the operation of a national copyright system in view of its goals is recognized, the challenge is to design a methodological tool fit for these purposes. This framework drew inspiration from already existing models to study the importance of intellectual property protection in creative, cultural or copyright industries as well as the impacts of creativity and innovation on society.¹⁷ It is also intended to provide input for further international development. The aim of such development work would be to establish an assessment methodology that the World Intellectual Property Organization could offer as one of its services to its member states.

As a result of these considerations, the methodology framework was designed to respond to the following requirements.

Relevance

The purpose of this framework is to produce new and relevant information. In order to achieve this goal, the framework proposes a list of indicators on which to base the assessment of the functioning, performance and operational balance of the copyright system. The relevance of the framework in fulfilling its goals was a crucial consideration when drafting it: the methodology is designed to produce information that will cover every important aspect of a copyright system and that will be able to answer important questions concerning its functioning.

¹⁷ Such frameworks include *Gowers Review of Intellectual Property* (2006), where the main objective was to provide recommendations for developing public policies and strategies; *Digital Opportunity – A Review on Intellectual Property and Growth* (2011, An Independent Report by Professor Ian Hargreaves), building on the findings of the Gowers Review; and the *WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)*, which has also been used as a reference point for industry definitions in this methodology.

Adaptability

The methodology is not meant to be a readily set body of guidelines, but rather a toolkit that should remain meaningful while being applied at different periods of time and in different contexts. It is intended to evolve with time; after gaining experience of its use, the methodology can be further modified to answer future changes in technology and society. Moreover, since the methodology should be implemented at national level, involving experts, research institutions and professionals in the field, the methods for analysis are to be decided in each country separately. The methodology will need to be adapted in order to meet the particular conditions and challenges in different countries.

Comparability

Some parts of the methodology framework provide instructions for the collection of data that can be comparable in different countries, based on an assessment using the same indicators. Certain elements of the national environment both related and unrelated to the copyright system might, however, heavily influence the results and therefore render the comparison less meaningful. In order to mitigate this limitation, the methodology includes indicators specifically designed to describe and present the national legal, economic, social and cultural context, and uses this background information in the analysis of the information collected when implementing other indicators.

Impartiality

The research environment should not be affected by external influences and preconceptions on the functioning of the copyright system. Impartiality is important in order to obtain reliable results that reflect different aspects of the studied elements or phenomena in a balanced way. The methodology is intended to be as neutral as possible and to take the needs of different stakeholder categories into account in a balanced way.

Coherence and Consistency

The data collected should be meaningful for the assessment of separate elements of the copyright system as well as for building a clear overview of the system as a whole, its operation, and its capacity to meet its goals. As a result, the framework is built to follow a coherent and consistent structure that ensures both a thorough assessment of every individual element of the system, and a global overview of its capacity to meet its goals. Every indicator is presented in a similar way, including suggestions for data collection methods, guidelines for analysis of the data and references to international data sources.

In order to ensure the framework's coherence, the indicators were also organized into three pillars: the first one covers information on the country context and the national markets for copyright products and services that is necessary in order to understand the background in which a national copyright system is set; the second pillar focuses on the functioning and performance of the different elements of the copyright system separately; the third pillar takes the broader stance of assessing the operational balance of the copyright system from the points of view of four interconnected aspects. The pillars and their constituting elements are presented in more details in the section "Structure of the Methodology" on page 29.

A Menu of Options

The methodology as a whole is designed to result in an exhaustive assessment of a copyright system, in order, for example, to diagnose its strengths and weaknesses. However, the framework can also be applied in parts when the scope of the research is more limited. The methodology is modular, i.e. it allows several meaningful ways to implement it at country level. In other words, the methodology can be seen as an array of tools that should be selected according to the needs of its users.

The methodology is therefore a menu of options that can be applied in its relevant parts, depending on the needs, context and resources available. Examples of possible partial uses of the methodology are presented in Appendix 4. The modularity of the methodology makes it applicable to research carried out at different levels and studies focusing on particular aspects of the copyright system, particular subject matter, or specific policy questions. It also enables the evaluation of a copyright system's compliance to generally recognized good governance principles. Sections of this methodology can also be used as a part of larger impact analysis practices and studies. These aspects are subject to further development and are not discussed in this handbook (see "Further Applications of the Methodology" on page 139).

When circumstances call for a partial implementation of the framework, determining the most important issues to study should constitute a starting point. The selection of the indicators to be applied will be based on specific assessment needs and policy objectives which differ in time and between countries. The relevant indicators always need to be carefully chosen and analyzed, some of them being essential in the research while some others providing useful but not indispensable information for a better understanding of the subject matter.

Building up a Set of Indicators

Conditions for Relevant and Valid Indicators

When developing the framework, certain conditions concerning the indicators and data to be collected were identified in order for the resulting assessment guidelines to be coherent and relevant as a whole. The following objectives formed the basis for the process of identifying and evaluating potential indicators:

- It should be possible to use the data to guide the development of national copyright systems. The methodology encourages evidence-based policy making. Collecting meaningful data forms a basis for making proposals for actions to improve the functioning of the various elements of the copyright system. The methodology should enable observing development of the copyright system over time.
- The data needs to be sufficiently available internationally to allow the examination of the copyright systems in different countries and help in improving them. The methodology can be expected to facilitate in identifying and benchmarking good practices.
- The data should be analyzed as objectively as possible in order to provide new possibilities to examine the copyright system from the points of view of all relevant stakeholder categories in a balanced manner. The impartiality of data is an important aspect of the methodology in order for it to be widely acceptable.
- The data collected while implementing different parts of this methodology should be interpreted in a consistent manner. The methodology should not guide the interpretation of the results in a way that would be based on assumptions concerning good or bad practices but should orient the researchers towards conducting their analysis in a consistent manner while taking into account relevant background information, such as information on the national context.
- The compilation of relevant data should result in the creation of new information. It should not just describe the system but allow a new view of it. It should also link the information collected in different indicators so that possible impacts of new regulations, arrangements and institutional changes can be foreseen.

The Process of Identifying and Evaluating Potential Indicators

The work of identifying and evaluating the indicators started with drawing up a long list of key questions and possible indicators to answer them. The aim was to focus on key elements of the copyright system. The relevance of the key questions and the validity of the preliminary set of indicators in answering the questions outlined were evaluated by two expert groups commenting the project (the Expert Group on Copyright Matters and the Scientific Board).

The key questions were then filtered by the core project team based on their relevance (whether they corresponded to the most important aspects and elements of the copyright system that need to be assessed), their thoroughness (whether all the important elements and areas were covered), and on their international applicability. The filtered list of key questions gave birth to an updated list of potential indicators including descriptive, numerical and qualitative data sets. Each indicator was then evaluated to assess its validity (whether it answers the key question), objectivity (whether it follows an objective approach in collecting and interpreting the data), coherence (whether it integrates into the logical structure of the framework), feasibility (whether the data it requires is available or could be collected) and time-consistency (whether the data is comparable over time).

So-called description sheets and methodology cards were created to outline the operating environment and different elements of a national copyright system, and to describe certain parameters to assess the system's operation from the perspectives of different elements and aspects. Some indicators were designed to be implemented separately concerning different interest groups, varieties of protected subject matter or industries. This is necessary because terms of protection vary with the types of subject matter, and different conditions prevail in different industries.

Figure 3 depicts the process of evaluating and prioritizing the key questions and potential indicators.

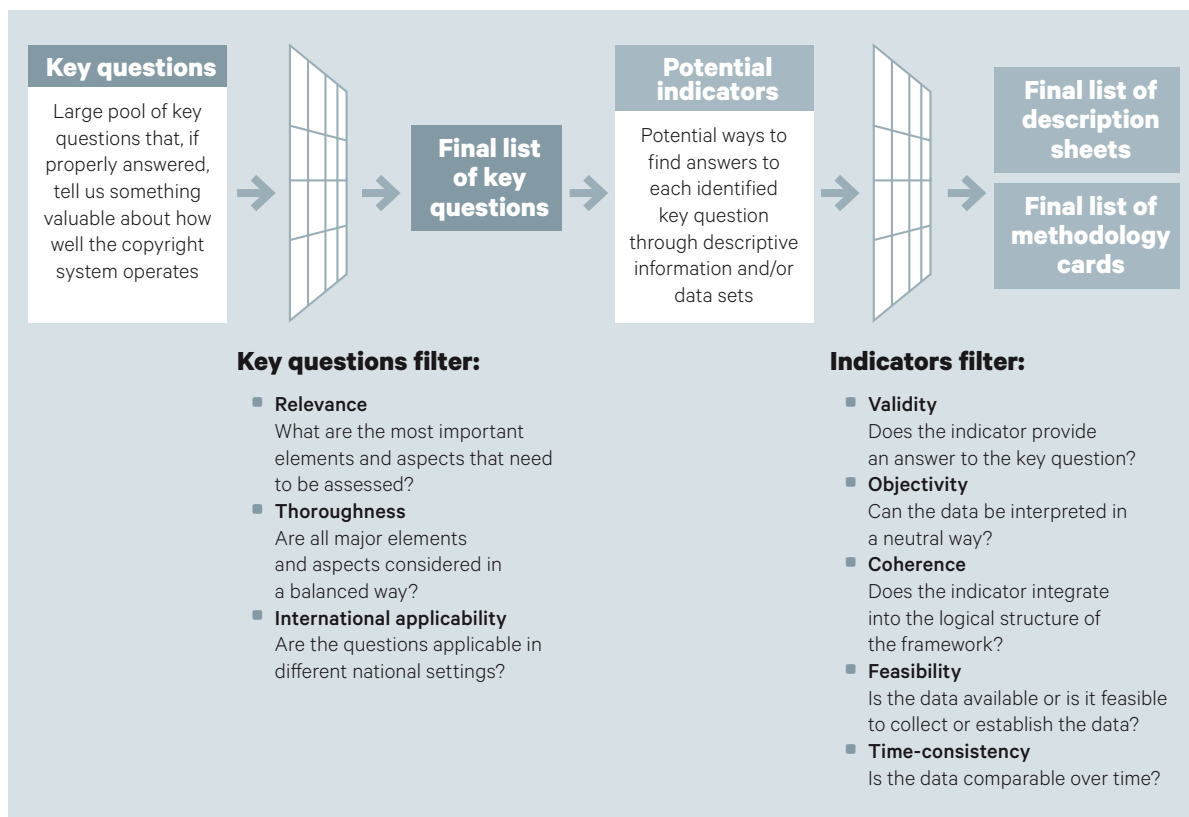


Figure 3. Identifying and evaluating key questions and potential indicators

Structure of the Methodology

Three Constituting Pillars

As mentioned before, the methodology framework is divided into three pillars that consist of selected research areas and indicators. While the first pillar provides useful background information, the core of the methodology to assess the operation of the copyright and related rights system is characterized in the last two pillars.

THE METHODOLOGY FRAMEWORK IS DIVIDED INTO THREE PILLARS:

Pillar I	The first pillar forms a background for analysis. It describes the copyright environment, i.e. <i>The Context in Which the Copyright System Operates</i> as well as <i>Value Creation and the Markets for Copyrighted Products and Services</i> . These aspects should be studied when considered relevant for the interpretation of the results of research based on the other parts of the methodology.
Pillar II	The second pillar of the methodology consists of a description of the elements of the copyright system (divided into the following areas: <i>Law, Policy and Public Administration; Enforcement; Management of Rights; and Dissemination of Knowledge</i>), and a set of methodology cards to assess the functioning and performance of these elements.
Pillar III	The third pillar of the methodology consists of indicators to assess the overall functioning of the copyright system, and its operational balance in delivering the outcomes that the national system is presumed to bring about in a given context. The four aspects for making this assessment are <i>Incentives; Access; Licensing Markets; and Infringement, Opinions and Public Acceptance</i> .

Box 3. The three pillars of the methodology framework

Figure 4 illustrates the construction of the methodology framework.

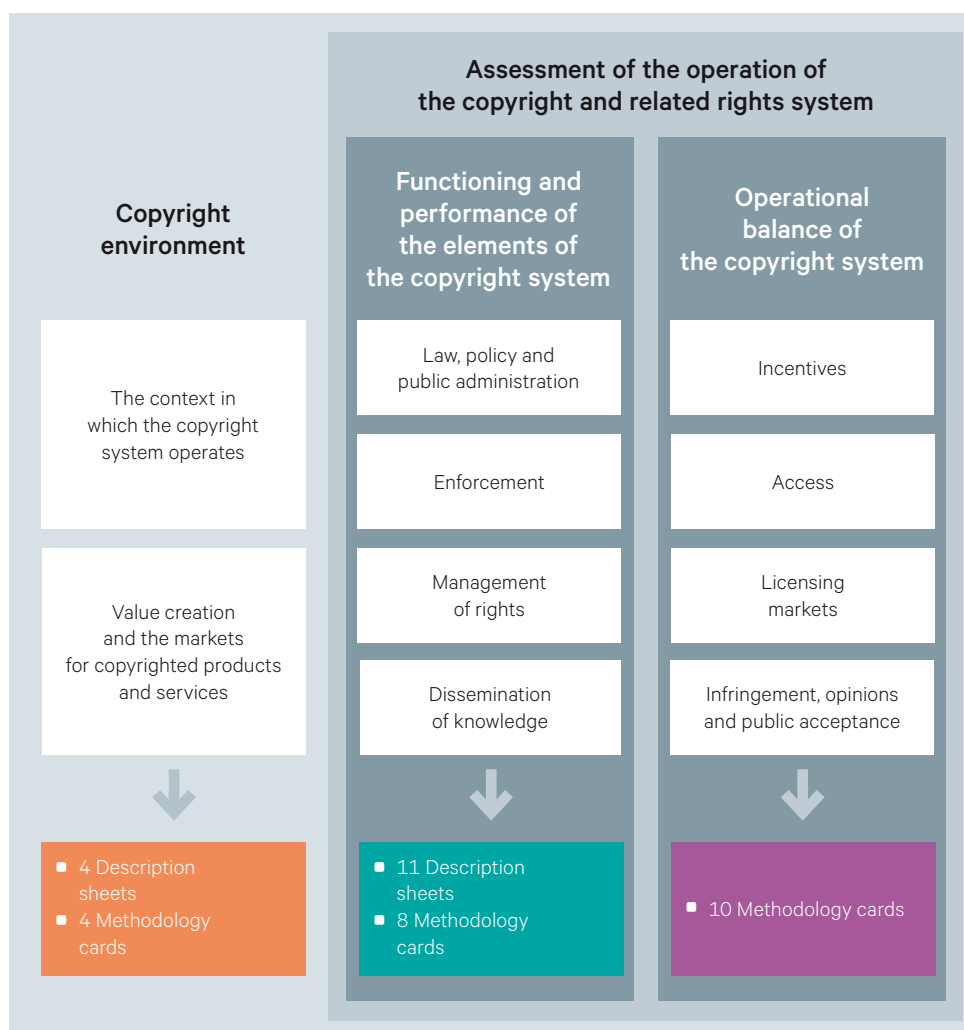


Figure 4. Framework for the assessment of national copyright and related rights systems

Different Types of Indicators

The methodology constitutes of description sheets and methodology cards that outline the parameters and methods to describe and assess the operation of a national copyright system. In most cases, the main topic has been divided into parameters concerning different issues to be analyzed. The modular structure based on this division allows for different alternative or complementary ways to implement the assessment.

Description Sheets

A comprehensive presentation and description of the national copyright systems provides a basis for the assessment. This is why it is intended that, as the first step of implementing the methodology, the copyright system and the context in which it operates are described in detail. The description should be thorough enough in order to reflect the national characteristics.

For the purpose of presenting a background picture of the copyright system, altogether 15 description sheets have been developed and are presented in Pillars I and II. The description sheets specify the descriptive data that will provide a factual basis for further analysis and interpretation of the other indicators. Each description sheet includes a list of elements suggested to be included in the study, accompanied with instructions for data collection, definitions of the key terms used and a list of possible limitations.

The contents of a description sheet

NUMBER AND NAME OF THE DESCRIPTION SHEET	
<i>The different pillars of the framework are distinguished by different background colors.</i>	
Definition of the possible elements to be included in the study based on the description sheet	
Guidelines for data collection	Instructions for collecting the data: definition of alternative methods and possible national and international information sources
Definitions	<i>Definitions of the key terms used in the indicator</i>
Limitations	Identified limitations of the indicator

Methodology Cards

In addition to the description sheets, the assessment of the system's operation is achieved through 22 methodology cards. Each of them includes an in-depth description of parameters to measure, limitations of the indicator and suggestions on methods to collect data. Additional information that might shed a brighter light on the description and assessment of these elements, but has not been considered as essential in the assessment process, is sometimes provided as a suggestion.

The contents of a methodology card

NUMBER AND NAME OF THE METHODOLOGY CARD	
<i>The different pillars of the framework are distinguished by different background colors.</i>	
Key question	Key question(s) in assessing the functioning and performance of the element(s) or the operational balance of the copyright and related rights system
Description	Description of the indicator In some cases, precisions on the data to be collected or the area of research applicable to all the parameters.
Parameters to measure	One or more parameter(s) Each parameter corresponds to a specific type of data to be collected. They are designed to be analyzed together and the combination of the information collected provides an answer to the key question.
Guidelines for data collection	Instructions for collecting the data: indications concerning the most appropriate research methods and data sources as well as recommendations concerning the extent of data collection (see Appendix 5 for a list of international data sources for each indicator)
Definitions	<i>Definitions of the key terms used in the indicator</i>
Limitations	Identified limitations of the indicator

Some methodology cards have been built to test a certain hypothesis or set of questions which can be studied following detailed and transparent assessment criteria. In these cases, the data analyzed and the results of the study can be expressed numerically, and possibly represented as a proportion of another figure (percentages).¹⁸ The datasets utilized may either be already existing and available (for example statistics), or collected by the researchers themselves, for example through surveys or observation. The methods utilized should be systematic and based on the process of measurement.

The various benefits and costs cannot always be measured in quantitative terms. It is sometimes necessary to look beyond numerical data and assess the ways things operate and affect individuals and institutions in everyday life. Certain methodology cards employ qualitative methods aimed at interpreting phenomena and exploring the meanings behind different kinds of behavior, as well as looking at phenomena from individual actors' perspectives.¹⁹ They can be used to study different opinions, perspectives and beliefs as well as changes in behavior and action. In these cases, data may be collected using existing materials, such as different types of documents and literature, or gathered for example through interviews or focus group studies.

Quantitative and qualitative data collection and analysis methods can complement each other, and the methods to be used need to be decided case by case.²⁰ Combining quantitative and qualitative approaches can be a key to revealing connections between different effects and their possible causal relations. Sometimes it can be useful to make an initial quantitative assessment first in order to highlight the areas of interest that need a deeper qualitative study.

When no data at the aggregate level is available or if more detailed information is needed on certain topics, studies following the methodology cards may focus on one or a few cases. Case studies can help build a holistic picture of certain phenomena or cover contextual data that can provide new insights into the study. The case study approach allows for a combination of various data collection and analysis methods.

¹⁸ For more information on quantitative research methods, see for example Mark Balnaves & Peter Caputi, *Introduction to Quantitative Research Methods. An Investigative Approach*, SAGE (2001); Robert M. Groves, Floyd J. Fowler, Jr., Mick P. Couper, James M. Lepkowski, Eleanor Singer & Roger Tourangeau, *Survey Methodology (2nd Edition)*, Wiley, Hoboken (2009); Elazar J. Pedhazur & Liora Pedhazur Schmelkin, *Measurement, Design, and Analysis: An Integrated Approach*, Psychology Press (1991); and W. Paul Vogt (Ed.), *SAGE quantitative research methods*, Thousand Oaks, CA: SAGE Publications, Inc. (2011).

¹⁹ For a broader discussion on qualitative research methods, see for example Allan Bryman, *Social research methods*, Oxford University Press (2015); Amir Marvasti, *Qualitative Research in Sociology*, Sage, London (2004); Darin Weinberg, *Qualitative Research Methods*, Wiley-Blackwell (2002); David Silverman, *Interpreting Qualitative Data: Methods for Analyzing Talk, Text and Interaction*, Sage, London (1993); Bruce Lawrence Berg & Howard Lune, *Qualitative Research Methods for the Social Sciences (8th Edition)*, Pearson (2011); Anselm L. Strauss, *Qualitative Analysis for Social Scientists*, Cambridge University Press (1987); David Silverman, *Qualitative Methodology and Sociology. Describing the Social World*, Gower Pub. Co. (1985); Robert Bogdan and Steven J. Taylor, *Introduction to Qualitative Research Methods. A phenomenological Approach to the Social Sciences*, John Wiley & Son (1975).

²⁰ For information on mixed methods approaches for data collection, see for example John Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches, 4th Edition*, SAGE (2013).

Toolkit of Questionnaires for Surveys, Interviews and Focus Group Studies

The methodology framework is complemented with a separate toolkit of questionnaires presenting possible questions to support the implementation of description sheets or methodology cards requiring the use of interviews, focus groups or surveys. This toolkit is available on the Cupore website at www.cupore.fi.

The questionnaire toolkit has been specially designed to support studies based on the indicators of the methodology framework. It consists of 12 questionnaires designed for different audiences:

- authors and performers,
- professional copyright users,
- libraries,
- archives,
- museums,
- arts schools and institutions teaching professionals for creative industries,
- institutions offering teacher training,
- elementary and secondary schools,
- researchers and research institutes,
- organizations in software or other industry basing their offering on open licensing,
- intermediaries and other parties interested in copyright issues, and
- the public at large.

Each questionnaire covers different topics corresponding to various indicators. They follow a modular structure and are designed to be used either as a whole or in parts according to the indicators applied. The toolkit also includes instructions for the implementation of the questionnaires and information on research methodology.

Implementation of the Framework

Conducting the Research

Implementation of the assessment based on this methodology can be followed through by different actors. As the results should reflect the operation of the system from the viewpoint of different stakeholder categories, impartiality of the actors performing the evaluation is essential. The assessment can be conducted by an independent research organization, a group of independent researchers or by different non-governmental actors such as an expert consultant or a group of experts. The assessment can also be conducted by public sector representatives, such as a state auditor or a governmental body.

The description of the national copyright system according to the description sheets forms the basis for the analysis of the current situation. It can be undertaken as a part of the overall implementation of the methodology by the expert team designated for the task. It can also be conducted as a separate educational or research project.

Objective Evidence

Many of the indicators in this methodology focus on the assessment of the technical functioning of the copyright system, or on facts, conditions and phenomena the measurement of which is not influenced by the study subjects' personal opinions and beliefs. Other indicators in this methodology are based on the collection of subjective views. In all the cases, the purpose is to provide objective evidence on the topics at hand.

The operation of the copyright system can be studied from the perspectives of different stakeholders with varying interests. As a result, some parts of the methodology are likely to be best implemented by collecting a number of subjective views on a given topic. The needs of the different stakeholder groups should be taken into account in a balanced manner.

Some of the indicators of this methodology framework are divided into questions concerning different stakeholder categories. Those indicators offer guidelines for understanding and making comparisons between their interests and points of view. Different stakeholder categories are defined on page 21.

Model questionnaires for interviews, focus group studies and surveys are presented in a separate toolkit (see page 33).

Data Sources

Different methods can be used to collect the data. It is useful to start with desktop research on available statistical and other databases as well as existing literature and studies. The data from national and international statistics services²¹ and na-

²¹ Examples of international organizations providing statistical services:

- United Nations Statistics Division (<http://unstats.un.org>)
- Specialized, autonomous agencies of the United Nations:
 - UNESCO Institute for Statistics (www.uis.unesco.org)
 - World Intellectual Property Organization (<http://www.wipo.int/ipstats/en/>)
 - International Labour Organization (www.ilo.org/stat)
 - International Monetary Fund (<http://www.imf.org/external/data.htm>)
 - United Nations Industrial Development Organization (<http://www.unido.org/>)
- United Nations programmes and funds:
 - United Nations Conference on Trade and Development (<http://www.unctad.org/>)
 - United Nations Development Programme (Human development data can be found on the UNDP website: <http://www.undp.org/>)
- OECD Statistics Division (www.oecd.org/statistics)
- Eurostat (<http://ec.europa.eu/eurostat>)
- World Bank (<http://data.worldbank.org/>)
- World Trade Organization (<http://stat.wto.org>)

tional accounts can provide interesting information on copyright-based industries, consumer behavior and institutional aspects.

The already available data can include official and other statistics, such as national and regional accounts, industry statistics and satellite accounts, as well as public and private databases, relevant survey data and other similar information sources. In addition, statistical and other data from both national and international organizations and communities can be used. International convergence of the industrial and other statistical classifications makes it possible to make international comparisons with some indicators. Since the methodology is designed to be internationally implemented, it is important to use sources which are official or widely recognized.

Most indicators require gathering of new data, as for many topics and areas, no useful existing datasets are available. In the context of this methodology, survey methods, interviews and focus group studies are proposed as different ways to collect data directly from stakeholders. A separate toolkit of questionnaires is provided as a support for this purpose (see page 33). Other methods that can be used to analyze certain issues include observational studies²² and qualitative analysis of content found in mass media, internet discussions and blogs, or other sources.²³

Case studies can be based on any combination of qualitative and quantitative evidence. In addition to in-depth evaluation concentrating on single cases, cross-case evaluation²⁴ can be applicable in certain situations. More specific guidelines have already been developed for the evaluation of direct copyright revenue streams for different stakeholders (Methodology Card 13).

It is important that the data is accurate, comprehensive and current. Guidelines for defining the population and sampling are given in a separate toolkit of questionnaires, and the possible limitations of the indicators concerning data quality are described in the methodology cards presented in Pillars I, II and III.

The methodology framework has been tested through a first set of pilot studies conducted in Finland in 2013–2015.²⁵ A preliminary list of international data sources for collecting the data is provided in Appendix 5. The list should ideally be updated when the methodology gains in experience through its application in various countries. Such information on sources will be highly valuable in rendering the methodology as easily applicable as possible.

²² In observational studies the researcher systematically observes behavior in order to investigate correlations of, and predictabilities among variables (for example the effects of policy choices and government interventions on people). This method is applicable in situations where it is not possible (for practical reasons or because of the rarity of the effect or ethical considerations) to make a controlled experiment.

²³ Content analysis can embed issues that go beyond the scope of the methodology framework and might be useful in revealing unforeseen phenomena.

²⁴ In cross-case analysis the data is divided by type across all cases investigated. The researcher then examines the data of a specific type thoroughly.

²⁵ See the Cupore website at www.cupore.fi.

Analysis of the Data

The interpretation of the results must be made in a methodologically guided way. The figures and the data should not be used as such, but they should be compared to other sets of data. A thorough analysis of the results will contribute to the evidence base that can be used in formulating copyright policies and strategies. As emphasized earlier, this methodology should not only describe the system but also allow a new view of it. An analysis based on two or more interconnected indicators can reveal new areas of development for copyright policies.

As stated earlier, this methodology intends not only to help draft an accurate description of the operation of a national copyright system, but also to offer a basis for analyzing its strengths and weaknesses. Therefore, the description sheets and methodology cards are accompanied by guidelines on how to interpret the data obtained to create new and relevant observations for that purpose. The goal of each indicator and the interpretation of the data are discussed in the guidelines. Explanations are given on why the indicator has been considered relevant and on the kinds of information it will provide after analysis.

The suggestions for analyzing the indicators are based on different techniques.

Comparative Analysis Within the Framework

The interpretation tool that was favored in this methodology is one that relies on connections and comparisons with results based on other methodology cards and description sheets, when such comparison will be able to provide a new perspective. The goal is to make this methodology as self-sufficient as possible and for it to constitute a complete set of tools for analyzing national copyright systems. Accordingly, connections between elements are underlined and accompanied with hypotheses of causal relationships between different aspects of the functioning of a copyright system. This interpretation method also allows to analyze the possible effects of policy measures on different elements of the copyright system or different aspects of the system's operation. It should be recognized however that the complexity of different legal, cultural and economic aspects cannot easily be mapped, and that the relations between the copyright system's elements are difficult to predict. Users of this methodology will therefore need to search for extra connections that have not been described.

Comparative Analysis Referring to External Data

A second interpretation tool used in this methodology is the reference to external data, such as economic figures, political information or other available sets of data that are deemed to have a certain level of influence on the results of the analysis

based on indicators. The results should be mirrored with country-specific information on issues like the nature and development of the legal system, contracting and court practices, and the present state of copyright-based industries in the country. The connections underlined in that case often point at factors that are not considered as part of the copyright system. This information on the copyright system's operating environment helps to understand the differences between national copyright systems and to make correct interpretations of the results.

Statistical Parameters: Measures of Central Tendency and Dispersion

When collecting statistical data in application of this handbook, the use of statistical measures needs to be determined case by case. Researchers should focus on the measures that will serve the analysis and interpretation of the set of observations in question. When there are limited resources, the interpretation can focus on a few measures that are considered the most relevant. The following box lists some basic statistical measures that can be used in the analysis of data: measures of central tendency (mean, median and mode) and measures of dispersion (minimum and maximum, percentile, quartiles, standard deviation and variance).

It should be considered which measures of central tendency are most suitable for presenting the data set in question. For example, when the distribution of data is highly skewed, the mean will not be the best measure of central tendency as it will be affected by extreme values. In these cases, median should be considered as the first option. It is also worth considering whether data on minimum and maximum figures is the most interesting information, or is it necessary to look at percentile figures and standard deviation instead. These decisions should always be based on the characteristics of the set of data but also depend on the audience of the study.

BASIC STATISTICAL MEASURES FOR THE ANALYSIS OF DATA:	
(Arithmetic) mean	The sum of the observations divided by the number of observations (there are also other types of average figures such as the geometric mean which can be used if considered relevant)
Median	When all observations are sorted from lowest to highest, median value is the value in the middle of the range
Minimum and maximum	The lowest and the highest observation in the data set
Mode	The most common value in the set of all observations
Percentile	The value below which a certain percentage of observations fall (consider relevant pairs of percentiles, such as 10th and 90th percentile)
Quartiles (also 25th and 75th percentile)	When all observations are sorted from lowest to highest, quartiles of 25 % and 75 % divide the list of values into quarters
Standard deviation and variance	Standard deviation and variance tell how spread the values are in the set of all observations (i.e. how close to the mean the values are). Standard deviation is calculated as the square root of variance, and variance is defined as the average of the squared differences from the mean value.

Box 4. Statistical measures of central tendency and dispersion

Value Network Analysis

The interpretation of the data collected through some indicators requires a thorough understanding of value creation processes in different industries. In order to get a deeper understanding of value creation in a particular industry (or different ways of creating value in the public sphere outside of any industry definitions), the structure and operation of value networks can be analyzed. If needed, the analysis can focus on the characteristics of different value creation processes, the different stakeholders involved in them, and the interaction of stakeholders at their different stages.

The possible objectives of a value network analysis focusing on copyright-related activities are:

- Understanding different activities in and processes of value creation
- Identifying the parties involved in creation, production, distribution and end-use of copyrighted works and understanding their connections to and influence on each other
- Obtaining information about the motives behind different value creation processes such as their economic importance to different parties involved
- Understanding the ways in which copyright operates in these value creation processes.

The connections of the interlinked or sequential activities that add value to the product or service should be specified as clearly as possible and where relevant, the research should cover the revenues and costs for different parties involved in the value creation process. As suggested by Sinervo and Picard²⁶, data collected from a sample group of individuals and organizations can be used as a basis of the value networks analysis. The scope of the value network analysis should take into account the objectives of the study and the resources available.

Risk Assessment and Cost-benefit Analysis

The methodology framework can be used to analyze the current copyright system as well as the impacts of possible future actions. When interpreting the data with the purpose of assessing possible policy changes, cost-benefit analysis can be used to identify the results of alternative future actions and risk assessment can be made to study the magnitude and likelihood of possible future consequences of certain policy choices. These methods can help comparing different alternative courses of action and getting early warning of problems that may arise at a later time.

²⁶ Petteri Sinervo & Robert G. Picard, *The Economic Importance of Copyright Industries in Finland*, The Finnish Copyright Society & The Finnish Copyright Institute, Helsinki (2000).

Lack of Scaling and Numerical Thresholds

The guidelines for analysis do not include any scaling or numerical threshold, since the functioning of a system will more likely depend on its unique balance. Copyright is strongly connected to cultural aspects that vary in different parts of the world, and copyright systems are rooted in very different legal environments. The assessment of the system's balanced operation should be based on an understanding of the context in which the copyright system operates. This methodology aims at being as universal as possible, and therefore fixed criteria of a well-functioning or efficient copyright system are not suitable.

Limitations of the Methodology

The purpose of the methodology is to assess the copyright system as a whole and to be used in different countries and at different times. However, in the changing environment and in a world where copyright provides more or less different protection in different countries, it is impossible to create an all-embracing and time-resistant set of indicators. The modularity of the methodology can offer a solution to this issue.

The use of this framework will provide an understanding of the current state of a copyright system. However, it does not focus on the possible future impacts of policy proposals. Therefore, this methodology framework should be complemented with impact assessment studies when a change of law or major changes in policy or infrastructure are planned. In this context, the assessment of future impacts of these changes should be based on the actual current situation and be studied from the perspectives of the relevant stakeholders. This methodology framework will, in this case, work as a tool for outlining the structure of the current copyright system, and thereby, some possible follow-on impacts. The indicators defined in Pillars I, II and III of this handbook can be used to measure the economic, cultural and social impacts of the copyright system to a certain extent (see the chapter concerning future applications of the methodology).

It is difficult to compare national elements of the copyright system at the international level. Studies covering certain elements can be compared between countries but even then the differences between the countries and their copyright systems need to be taken into account. The context always needs to be studied when analyzing the results. Descriptive data sets concerning the elements of a national copyright system and its operating environment facilitate the analysis of the data sets collected through the indicators, and, when considered relevant, also help in making meaningful comparisons between the results concerning different countries. As this methodology is applicable to different countries, researchers making an assessment

at national level should adapt and complement the indicators presented according to the context in which the national copyright system operates.

All the indicators presented in this handbook are to a different extent connected to each other and they often represent useful contextual information. It is, however, difficult to detect all the issues and elements that will affect the results of the studies. It also can be challenging to distinguish the effects of the copyright system from those of other forces influencing the markets. In many cases, in-depth analysis is needed to understand the potentially complex causal chains.

Despite the fact that this methodology has many descriptive elements, the results of the assessment should not be limited to a description of the copyright system. Research should aim at discovering the effects of the system's operation on different stakeholders, whether potential or already realized. However, another challenge concerns the thoroughness of both the description and the interpretation of the data collected. There should be a balance between gathering a relevant amount of data and remaining sufficiently compact.

Finally, some figures are not easily accessible from undisputed or objective sources. The data sources and the methods for collecting information should always be carefully chosen.

Outcomes of the Methodology's Implementation

Box 5 presents different possible outcomes of the use of the methodology framework.

IMPLEMENTING THE METHODOLOGY WILL PROVIDE:

- a thorough picture of the copyright system as a whole and in details,
- a deeper understanding of the national and international context in which the copyright system operates and of the operation of the markets,
- a deeper understanding of the effects of policy decisions on different stakeholder categories,
- the identification of the weaknesses of the copyright system and of their causes,
- data for the purposes of monitoring the efficiency of separate elements of the copyright system, and
- the identification of good practices and alternative courses of action (when applied in several countries).

Box 5. Outcomes of the methodology's implementation

A summary of the description sheets and methodology cards in Pillars I, II and III is presented in Appendix 2.

PILLAR I

Copyright Environment

● In order to analyze the operation of a copyright system, it is crucial to determine the forces that are driving its evolution today, both in the national and international context. The particularities of the system cannot be fully understood without taking into account the characteristics of the society and culture in which it is rooted, as well as the markets in which it operates. Therefore, before undertaking an assessment of the operation of a national copyright system, it is advisable to describe its environment: the characteristics of the markets and the national and international context where the copyright system operates. The first pillar of this methodology presents methods for collecting data describing the copyright environment that will be relevant for the interpretation of the results from studies using the second and third pillars of the framework.

This pillar is divided in two areas. The first area lists some trends in the copyright environment and some important data to be collected in order to provide an overview of the context in which the copyright system operates, both at national and international level. It includes instructions to gather meaningful data on the national, international and regional contexts, the technological development of the country and the macroeconomic importance of its copyright industries. The second area concerns value creation and the markets for copyrighted products and services. Besides describing the characteristics of the markets, methodology cards in this area aim at evaluating the volume of domestic production and international trade

of copyrighted products and services as well as the development of digital business models and income based on digital distribution.

The following table provides an overview of the indicators included in the first pillar of the framework.

COPYRIGHT ENVIRONMENT	
The Context in Which the Copyright System Operates	
Description Sheet 1.	National Context
Description Sheet 2.	International and Regional Context
Description Sheet 3.	Technological Development
Methodology Card 1.	Macroeconomic Importance of Copyright Industries
Value Creation and the Markets for Copyrighted Products and Services	
Description Sheet 4.	Markets for Copyrighted Products and Services
Methodology Card 2.	Volume of Domestic Production of Copyrighted Products and Services
Methodology Card 3.	Volume of Exported and Imported Copyrighted Products and Services
Methodology Card 4.	Development of Digital Business Models and Income Based on Digital Distribution

Summary table 1. Contents of Pillar I

The Context in Which the Copyright System Operates

The first area of Pillar I aims at describing the general background of the copyright system, both at national and international level. It proposes the collection of data concerning the national context in which the system is rooted including its cultural, political, economic and legal backgrounds (Description Sheet 1), the level of international cooperation in the area of copyright through the ratification and adherence to key treaties (Description Sheet 2), the level of technological development in the country represented by the use of information and communications technologies (Description Sheet 3) and the economic importance of copyright industries in the country (Methodology Card 1). This set of general facts and figures will provide a background for the interpretation of data concerning the copyright system of the country analyzed.

INDICATORS CONCERNING THE AREA THE CONTEXT IN WHICH THE COPYRIGHT SYSTEM OPERATES	
Description Sheet 1.	National Context
Description Sheet 2.	International and Regional Context
Description Sheet 3.	Technological Development
Methodology Card 1.	Macroeconomic Importance of Copyright Industries

Box 6. Indicators concerning Pillar I, area “The Context in Which the Copyright System Operates”

Description Sheet 1. National Context

A general description of the national context, used as a basis for analyzing the copyright system, should include information on the economic, political and other factors likely to influence the markets for copyrighted products and services. The description can comprise both numerical data and descriptive information.

The research should be limited to the factors that are likely to influence the copyright system. In addition to key figures (such as population, GDP, cost of living and consumer prices) and other basic facts on the country (main languages, economic and political system, educational system, level of education and literacy), a thorough examination of a country profile includes a description of a wider set of factors affecting the markets for copyrighted products and services (such as rules on taxation, national laws likely to influence the operation of the copyright system, financial support and compensation mechanisms for creative activities), and other characteristics of the country (consider issues such as sustainable development, social welfare, the general economic landscape and national creative traditions).

The data should be analyzed to offer a thorough set of background information on the country context. If the study concentrates only on the operation of a certain element or aspect of the copyright system, Description Sheet 1 can be applied in its relevant parts.

DESCRIPTION SHEET 1. NATIONAL CONTEXT

Description of the national context of the copyright system; consider the following topics:

- Population: number of inhabitants of the country
- Languages: list of main languages spoken in the country and estimation of the number of speakers
- Economic system²⁷
- Gross Domestic Product: aggregate value and value per capita
- Cost of living and consumer prices
- Political system and system of government (especially regarding the decisional process concerning issues related to copyright)
- Description of the educational system and level of education²⁸
- Level of literacy
- Sustainable development, social welfare and the general economic landscape²⁹
- National creative traditions
- Specific factors likely to influence the markets for copyrighted products and services (such as geographical, or cultural or ethnic borders inside the country)
- National laws likely to influence the operation of the copyright system: consider for example the other intellectual property rights, contract law, competition and antitrust law, information and communication law, labor law, consumer law, personal data law, fundamental rights such as freedom of expression, and other branches of law balancing the impacts of the exclusivity of copyright law
- Grants, subsidies, prizes, and other public or private support for creative activities³⁰
- Compensation mechanisms supporting creativity, such as copyright levies or remunerations for public lending
- Possible special rules for the taxation of copyright revenue
- Taxes on different kinds of creative products and services

Guidelines for data collection	The data can be collected as a desktop study using available national and international statistical and other data sources. The availability of data will depend on the existence of relevant databases. Wherever available data does not exist, or in the cases where such data is not easy to interpret, it might be useful to conduct expert interviews.	
Definitions	<i>National creative traditions</i>	Original creative activities, cultural traditions or folklore that are part of the national culture.
	<i>Social welfare</i>	Well-being and quality of life in a society as a whole, measured through factors such as life expectancy, level of education, standard of living, quality of the environment, availability of essential social services, religious and spiritual aspects of life, etc.
	<i>Sustainable development</i>	“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs” ³¹ .
Limitations	The information collected through this description sheet gives a general picture of the national context in which the system is rooted and will only become meaningful in the context of this methodology when it is used to provide background information for other indicators.	

²⁷ For instance: market economy, mixed economy, planned economy, etc. See Robert L. Heilbroner & Peter J. Boettke, “Economic Systems” in *The New Encyclopædia Britannica*, v. 17 (2007), pp. 908–15.

²⁸ Consider for example the following issues likely to affect the ways of experiencing culture: percentage of the population continuing their studies after basic education, accessing upper level education or holding a degree at various levels (and, if possible, divided by age groups).

²⁹ To facilitate the analysis of the operation of national copyright systems and benchmarking, it can be meaningful to collect information on the social and economic landscape of the country as well as different aspects of sustainable development. Therefore, as one element of the analysis of national context, one could look at the indexes constructed to measure human development, poverty, sustainable economic welfare, the level of corruption as well as the environmental and social perspectives of the development. The levels of innovativeness, competitiveness and economic freedom will provide important information on the economic landscape. Consider for example the international indexes listed in Appendix 5.

³⁰ Consider all relevant financial and material support for creative activities. Information concerning the mechanisms and levels of taxation of grants could also be provided, as these will have an influence on the revenues. If considered relevant, the study could also take the artists’ social security and pension arrangements into account.

³¹ Definition from the United Nations’ *Report of the World Commission on Environment and Development* (General Assembly Resolution 42/187, 11 December 1987), available at <http://www.un.org/documents/ga/res/42/ares42-187.htm>.

Description Sheet 2. International and Regional Context

The trend towards global interdependency and integration of economies, interaction between cultures and the development of information technologies require increasing international cooperation in copyright policy. The development of global value networks, distribution channels and consumer markets, and the growing geographic reach of multinational organizations affect the global balance of economic power and thus require adapted copyright policies. Government policies concerning economic openness and trade liberalization can have large societal impacts and affect the operation of national markets. Moreover, the emergence of transborder copyright infringement calls for international cooperation in countering it. In this context, international treaties³² aim at bringing a high level of harmonization of laws and policies across the world and providing a common platform that enables international trade in creative products and services.

According to the Vienna Convention on the Law of Treaties (1969), a treaty is “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”³³. Various international treaties have set minimum standards of protection but are also designed to provide adequate policy space for governments to optimize national copyright systems from their domestic perspectives. The more detailed and the stricter provisions of treaties are, the less they leave room for manoeuvre for policy making at country level.

The following box includes a list of international treaties in the field copyright.

³² Here the word treaty includes all international agreements concerning the regulation of copyright and the application of copyright enforcement.

³³ Article 2(1)(a).

THE MAIN COPYRIGHT TREATIES³⁴:

Berne Convention for the Protection of Literary and Artistic Works, 1886	The Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886 was the first international agreement to bring copyright rules across different countries into line. It required its signatories to recognize the copyright of works of authors from other signatory countries in the same way as it recognizes the copyright of its own nationals, therefore establishing a system of equal treatment that internationalized copyright amongst signatories. The Convention also required member states to provide strong minimum standards for copyright law.
Buenos Aires Convention, 1910	<i>“The Buenos Aires Convention governed copyright relations between the United States and most of the countries of Latin America until the early 1960s, at which point most of its members had become parties to the U.C.C.”³⁵</i> Since 2000, all parties to the Buenos Aires Convention are also part of the Berne Convention or the UCC, but their participation in this much earlier agreement tells about the country’s history of international cooperation in the field of copyright. The Buenos Aires Convention remains technically in force.
Universal Copyright Convention, UNESCO, 1952	The Universal Copyright Convention (or UCC) was adopted in Geneva in 1952 and revised in Paris on 24 July 1971 (“Paris text” or “UCC Paris”). It was developed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as an alternative to the Berne Convention for those states that did not agree with the extensive uniformization of intellectual property rights granted by the Berne Convention but which still wanted to participate in some level of international copyright protection. The Berne Convention states also became party to the UCC, so that their copyrights would exist in non-Berne Convention states. The UCC has since been rendered obsolete by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to which all UCC signatories are now conforming.
Rome convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961	The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations was signed by members of BIRPI (Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle), the predecessor to the modern World Intellectual Property Organization, on 26 October 1961. It is the first agreement extending copyright protection to the creators and other owners of particular kinds of physical manifestations of intellectual property.
World Trade Organization’s (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 (TRIPS)³⁶	The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property regulation, including copyright. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994. Ratification of TRIPS is a compulsory requirement of World Trade Organization membership, and as a result, TRIPS is the most important multilateral instrument for the globalization of intellectual property laws. Unlike other agreements on intellectual property, TRIPS has a powerful enforcement mechanism: the WTO’s dispute settlement mechanism.
WIPO Copyright Treaty (WCT), 1996	The World Intellectual Property Organization’s Copyright Treaty, abbreviated as the WIPO Copyright Treaty or WCT, was adopted by the member states of the World Intellectual Property Organization (WIPO) in Geneva on 20 December 1996, and came into force on 6 March 2002.
WIPO Performances and Phonograms Treaty (WPPT), 1996	The WIPO Performances and Phonograms Treaty (or WPPT) is an international treaty signed by the member states of the World Intellectual Property Organization, which was adopted in Geneva on December 20, 1996 and came into force in 2002. This treaty does not disturb the existing obligations that contracting parties have to each other under the Rome Convention.
WIPO Beijing Treaty on Audiovisual Performances, 2012	The Beijing Treaty on Audiovisual Performances is a multilateral treaty which regulates copyright for audiovisual performances and expands the performers’ rights. It was adopted on 26 June 2012 by the Diplomatic Conference on the Protection of Audiovisual Performances of the World Intellectual Property Organization, in which 156 WIPO member states, six intergovernmental and six non-governmental organizations participated. The treaty will not enter into force until it has been ratified by at least 30 eligible parties.

WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh VIP Treaty), 2013	<p>The Marrakesh VIP Treaty aims to facilitate the availability of works through access to works in alternative format for persons who are blind, visually impaired or otherwise print disabled. It was adopted on 28 June 2013 by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities. The treaty will not enter into force until at least 20 eligible parties have deposited their instruments of ratification or accession.</p>
Other treaties to be considered:	
Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, 29 October 1971)	<p>The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, 29 October 1971) provides for the obligation of each contracting State to protect a producer of phonograms who is a national of another contracting State against the making of duplicates without the consent of the producer, against the importation of such duplicates, where the making or importation is for the purposes of distribution to the public, and against the distribution of such duplicates to the public. Altogether 78 States are parties to this treaty which came into force on 17 April 1973. The Treaty is still in force but the more recent and comprehensive WIPO Performances and Phonograms Treaty of 1996 now covers the same area of copyright-related rights.</p>
Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, 1974	<p>The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels, 21 May 1974) provides for the obligation of each contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme-carrying signal transmitted by satellite. It is open to any State that is a member of the United Nations or of any of the agencies belonging to the United Nations system of organizations.</p>

Box 7. Main copyright treaties

The background information for a thorough assessment of a national copyright system should therefore include a description of the international cooperation through the ratification and accession to key treaties. The way in which these treaties are implemented in the national legislation,³⁷ the reservations made in their application, or the reasons why they have not been adhered to, constitute useful information to understand the level of international cooperation in the field of copyright.

Moreover, this indicator includes “regional legislations, agreements and arrangements” which can be issued by international organizations and are not treaties.³⁸ They are included in this research because they represent bodies of rules which in some cases strongly influence the national legislation of states to which they apply.

³⁴ Information on the WIPO-administered international treaties as well as the legislative texts can be found on the WIPO website at <http://www.wipo.org/treaties>.

³⁵ Source: Aaron Schwabach, *Internet and the Law: Technology, Society, and Compromises*, ABC-CLIO (2005), p. 19. The text of the Convention is available here: http://ipmall.info/hosted_resources/lipa/copyrights/The%20Buenos%20Aires%20Convention.pdf.

³⁶ The text of the agreement is available on the World Trade Organization’s website: http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm.

³⁷ Two different approaches exist concerning the implementation of treaties in national legislations: the monist/monistic and dualist/dualistic systems. “The essence of the monist approach is that a treaty may, without legislation, become part of domestic law once it has been concluded in accordance with the constitution and has entered into force for the state. When legislation is not needed such treaties are commonly described as ‘self-executing’. (...) Under the dualist approach, the constitution of the state accords no special status to treaties; the rights and obligations created by them have no effect in domestic law unless legislation is in force to give effect to them. When the legislation is specifically made for this purpose, the rights and obligations are then said to be ‘incorporated’ into domestic law.” Source: Anthony Aust, *Modern Treaty Law and Practice*, second edition, Cambridge University Press (2007), p. 183 and 187-188.

³⁸ This category includes, for example, EU directives in the field of copyright and related rights.

Studies based on this description sheet will shed light on the international orientation of a national copyright system, its compliance to international regulations and its cooperation with other national systems. The dates of ratification of the treaties will indicate the country's history of international cooperation in the copyright field. This is also the reason why some treaties, which are not anymore in force or have been replaced by other international instruments, are included in the list of treaties to be considered. International trade of copyright industries and the international aspects in copyright enforcement and management of rights are discussed in other indicators.

DESCRIPTION SHEET 2. INTERNATIONAL AND REGIONAL CONTEXT

Description of the international and regional context of the copyright system; consider the adherence to treaties and other international instruments dealing with copyright protection, as well as regional-level legislation, agreements and arrangements:

Concerning the national treaty adherence process:

- Is the copyright system monist/monistic or dualist/dualistic?
- In case of a dualist system: for each treaty ratified, please indicate the date when national laws were brought into concordance with the treaty.

Concerning the treaties and other international instruments listed hereunder:

- The year of adherence to the treaties
- When the treaties have not been adhered to, the reasons for it
- Reservations and declarations that have been made
- Actions considered or penalties applied for infringement
- Possible issues not related to copyright preventing a country's ratification of or accession to a treaty.

International and regional instruments to be considered:

International level:

- Berne convention
- Buenos Aires Convention
- Universal Copyright Convention
- Rome convention
- WTO / TRIPS agreement³⁹
- WIPO Copyright Treaty
- WIPO Performances and Phonograms Treaty
- Beijing Treaty on Audiovisual Performances
- Marrakesh VIP Treaty
- Copyright-related bilateral agreements, including Free Trade Agreements

Other treaties to be considered (if relevant):

- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite

Regional level:

- Copyright-related regional legislation
- Regional agreements and arrangements (for example regional trade agreements) including copyright aspects

Guidelines for data collection	The information can be collected as a desktop study using available national and international databases. ⁴⁰ Wherever available data does not exist, or in cases where such data is not easy to interpret, it might be useful to conduct expert interviews.	
Definitions⁴¹	<i>Accession</i>	An act which has the same effect as ratification but is not preceded by signature
	<i>Declaration to a treaty</i>	Some treaties allow optional or mandatory declarations by which member states may limit their interpretations of the treaty's rules; it is for example the case in the Rome Convention (see article 6(2)).
	<i>Dualist/dualistic</i>	Legal system where national laws are brought into concordance with the treaties
	<i>Monist/monistic</i>	Legal system where treaties are considered self-executing
	<i>Ratification</i>	The act by which, following signature, a state expresses its consent to be bound by a treaty
	<i>Reservations to a treaty</i>	Unilateral statement, however phrased or named, made by a state when consenting to be bound by a treaty by which it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state. ⁴²
	<i>Treaty</i>	An international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. ⁴³
	<i>Treaty adherence</i>	A generic term to express the fact that a state consents to be bound by a treaty, whether by signature and ratification or by accession.
Limitations	It is not always possible, especially concerning older treaties, to find information concerning the legislative process leading to ratification and the political discussions that resulted in possible reservations and delays in the implementation of the treaties.	

Description Sheet 3. Technological Development

Several macro-level trends such as digitalization and the fast development of information and communications technologies have transformed the copyright system's operating environment. Digital technology has changed the ways to create, use and distribute copyrighted works. It has brought about new kinds of value networks with new ways of interacting, making works available and enjoying culture. This new environment for creation also enables end-users to become user-creators. On the other hand, copyright infringement has become easier than before. The level of technological development is therefore an important aspect of the context in which a copyright system operates.

³⁹ The TRIPS Agreement is an integral part of the Marrakesh Agreement Establishing the World Trade Organization. It is contained in the Annex 1C of that agreement.

⁴⁰ Most of the raw data can be found in the legislative databases of the country or in the databases kept by international organizations. The time needed for studying these issues at national level will depend on the availability of data and the extent of the country's history in international collaboration in the field of copyright.

⁴¹ Based on the definitions of key terms relating to treaty adherence by The Geneva Academy of International Humanitarian Law and Human Rights available at <http://www.geneva-academy.ch/RULAC/pdf/Key-definitions-relating-to-treaty-adherence.pdf> and on Anthony Aust, *Modern Treaty Law and Practice*, second edition, Cambridge University Press (2007).

⁴² See Article 2(1)(b) of the Vienna Convention on the Law of Treaties (1969). See also Anthony Aust, *Modern Treaty Law and Practice*, second edition, Cambridge University Press (2007), Chapter 8.

⁴³ Definition from the Vienna Convention on the Law of Treaties (1969), article 2(1)(a).

The following description sheet aims at studying the development and the use of information and communications technology (ICT) in the country whose copyright system is under analysis.

The description sheet proposes to collect two sets of data. The first set is composed of key statistical figures that would help evaluate the general level of availability of information and communication technologies in the country. The assessment here is based on a selection of international indexes concerning ICT development.⁴⁴ The topics concern the use of computers and telecommunications equipment, telephony, broadcast media, as well as audio and video processing and transmission. The level of access to ICT technologies is likely to influence the level of access to copyrighted products and services, in particular those that are distributed or shared through the Internet or as radio or television broadcasts.

As a result, for most countries, statistical data on ICT access is widely available. The question is to select the indicators most representative and best fit for the purposes of the study. The data collected according to the description sheet can be complemented with other data relevant to the country context. In addition, relevant global ICT indexes can be used as information sources.

The second data set concerns organizations promoting or supporting the use of digital business models. This data will be particularly useful when interpreting the findings of Methodology Card 4 concerning digital business models and digital distribution. There are different options for presenting the data: it can be divided between public and private organizations, between organizations focusing primarily on digital business models and organizations where the topic is a minor part of their area of expertise, or between publicly or privately funded organizations. The list can include organizations conducting research, providing information services or being active in the promotion of digital business models, organizations offering operational support for businesses using digital business models, organizations involved in the promotion of open source solutions, and ministries involved in the promotion of digital business models.

⁴⁴ Some international organizations (such as the Partnership on Measuring ICT for Development, the International Telecommunication Union, OECD, the World Bank, Eurostat, UNCTAD, the UNESCO Institute for Statistics and the UN's Population Division) have provided datasets and indicators designed to offer an overview of the level of ICT development in a country. A collection of international sources of data useful for analyzing the level of ICT development in various countries has been listed in Appendix 5.

DESCRIPTION SHEET 3. TECHNOLOGICAL DEVELOPMENT

Description of the level of technological development in the country; consider the following information concerning the availability of, access to and utilization of digital communication technologies:

Concerning individuals and households:

- Levels of TV and radio access and use (percentage of households equipped with a TV set, percentage of cable/satellite TV subscriptions, percentage of the population listening to the radio, etc.)
- Levels of access to computers and to internet-connected mobile devices (number of computers per 100 inhabitants, percentage of households with access to a computer, percentage of mobile phone users, etc.)
- Level of access to the internet (number of internet connections, percentage of households with access to an internet connection, number of broadband connections, etc.)
- Level of use of the internet (how often, frequency of online shopping, etc.)

Concerning businesses:

- Level of access to the Internet (percentage of businesses with access to computers and other ICT devices, internet access, etc.)
- Level of use of Internet (web presence of businesses, online sales, etc.)

Complementary data:

- international indexes developed for the purpose of assessing the ICT development of various countries

Description of organizations supporting or promoting the use of digital business models, including business models based on open licensing:

The data can be collected separately for:

- public and private organizations,
- different types of organizations (such as associations of stakeholders, public organizations, universities and private businesses),
- organizations focusing primarily on digital business models and organizations where the topic is a minor part of their area of expertise, or
- publicly and privately funded organizations.

When considered relevant, the data can include private consulting services focused on digital businesses, research concerning digital business models, as well as forums, courses, seminars, etc. in the field.

Guidelines for data collection	The information can be collected as a desktop study using available national and international statistical and other databases. Statistical databases in the field will be of particular relevance.	
Definitions	<i>ICT</i>	Information and communications technology
Limitations	The technologies available as well as the level of ICT use tend to evolve rapidly over time and as a result, ICT indicators might be quickly outdated.	

Methodology Card 1. Macroeconomic Importance of Copyright Industries

A study of the national context of the copyright system should also include information on the relative size and importance of copyright industries (those which function under the protection of copyright and related rights⁴⁵) in the economy as a whole. Figures on the economic contribution of copyright industries at macro-level will tell about the role these industries play in the national economy. Box 8 presents a few standard measures used to quantify the economic contribution of copyright industries.

⁴⁵ Definition from the *WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)*, p. 30, available at http://www.wipo.int/edocs/pubdocs/en/copyright/893/wipo_pub_893.pdf.

EXAMPLES OF STANDARD MEASURES TO QUANTIFY THE CONTRIBUTION OF COPYRIGHT INDUSTRIES TO THE NATIONAL ECONOMY:

- The *WIPO Guide on Surveying the Economic Contribution of the Copyright-Based Industries* (2003) provided recommendations for measuring the value added (percentage of the Gross Domestic Product) of the copyright industries, their share of foreign trade, and their number of employees. A new version of the Guide, published in 2015, updates the guidelines based on the experience accumulated through their use in different countries in order to provide “comprehensive, integrated, and internationally agreed recommendations for the measurement and analysis of economic activity”.⁴⁶

National studies adopting the WIPO Guidelines have been published by WIPO in the series “National Studies on Assessing the Economic Contribution of the Copyright-Based Industries”.⁴⁷ Up to date, WIPO guidelines have been implemented in over 40 countries. In order to facilitate further research, WIPO has published a report presenting the data from those national studies finalized until December 2013.⁴⁸

- The UNESCO Institute of Statistics has published a report discussing methodological approaches and practices for measuring the economic contribution of cultural industries.⁴⁹
- Satellite accounts can be used as an extension of the System of National Accounts in order to observe economic activities in specific sectors or industries, such as household production, tourism sector or the cultural sector. Cultural satellite accounts are statistical frameworks for describing the economic contribution of culture. They have been compiled in different countries with industry selections varying to some extent. They can include different sets of data such as figures on value added, employment, output, exports and imports, and consumption expenditure.⁵⁰
- Another example here is the Hong Kong Study on Creativity Index, which also covers the economic contribution of e-commerce by including the measurement of the percentage of business receipts from selling products, services or information through electronic means.⁵¹

Box 8. Examples of standard measures to quantify the contribution of copyright industries to the national economy

This methodology card outlines certain measurables to estimate the economic importance of industries that are likely to be highly affected by copyright.⁵² These include value added, the number of employees as well as the value of exports and imports in copyright industries. Alternatively, the research can focus on cultural or creative industries⁵³, or take a more limited approach by including only the so-called core copy-

⁴⁶ See the *WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)*, p. 43, available at http://www.wipo.int/edocs/pubdocs/en/copyright/893/wipo_pub_893.pdf.

⁴⁷ Volume 1: WIPO Publication No 624 (E), Volume 2: WIPO Publication No 1009 (E), Volume 3: WIPO Publication No 1017 (E), Volume 4: WIPO Publication No 1024 (E), Volume 5: WIPO Publication No 1032 (E), and Volume 6 – WIPO Publication No. 1036 (E).

⁴⁸ The report *WIPO Studies on the Economic Contribution of the Copyright Industries – Overview* (2014) is available at http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/economic_contribution_analysis_2014.pdf.

⁴⁹ See the report by Hristina Mikić (UNESCO Institute for Statistics), *Measuring the Economic Contribution of Cultural Industries: A Review and Assessment of Current Methodological Approaches*, 2009 UNESCO Framework for Cultural Statistics Handbook No. 1 (2012), available at <http://www.uis.unesco.org/culture/Documents/FCS-handbook-1-economic-contribution-culture-en-web.pdf>.

⁵⁰ For more information, see discussion and a proposal for a culture satellite account framework by OECD: John Gordon & Helen Beilby-Orrin, *International measurement of economic and social importance of culture*, OECD Statistics Working Papers, No. 2007/03, OECD Publishing, Paris (2007), available at [http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=std/nafs\(2007\)1](http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=std/nafs(2007)1), pp. 20–25.

⁵¹ For more information, see *Hong Kong Study on Creativity Index*, Home Affairs Bureau, The Hong Kong Special Administrative Region Government (2005), p. 43, available at <http://www.uis.unesco.org/culture/Documents/Hui.pdf>.

⁵² Or “those which function under the protection of copyright and related rights”, as defined in the *WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)*, p. 30, available at http://www.wipo.int/edocs/pubdocs/en/copyright/893/wipo_pub_893.pdf.

⁵³ A definition of cultural industries is specified in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by UNESCO in 2005, Article 4: “industries producing and distributing cultural goods or services” which are defined as “those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have.” See the website of UNESCO at http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html.

The creative industries approach has been adopted for example by the Department for Culture, Media and Sport (DCMS) in the UK. The Creative Industries were defined in the 2001 *Creative Industries Mapping Document* as “those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property”. The document is available at <https://www.gov.uk/government/publications/creative-industries-mapping-documents-2001>.

right industries.⁵⁴ For the purposes of interpreting the results, these figures can be proportioned to other macroeconomic figures, such as gross domestic product, total national foreign trade and the total employed labor force. The figures can be estimated through information available in national and international statistical databases and, when necessary, complemented with industry data.

The last element of the methodology card comprises an estimation of the capital value of national copyright assets. As one method for determining its value, the amount of future income flows of national copyright assets can be studied. For an evaluation model and an example of making such estimation, see a report by Sinervo & Toivonen (2012).⁵⁵

It should be noted that these figures will only provide an estimation of the economic contribution of certain industries. They are limited to those industries that are defined as copyright industries and do not measure all activities in the economy that are affected by copyright, such as activities depending on exceptions and limitations to copyright or that are not reported in national statistics. For example, they do not show the value of voluntary work and user-generated content. Therefore, they can not as such be interpreted as indicating the economic impact of copyright. The data is likely to be affected by economic trends as well as changes in markets and the industry structure. Concerning international comparability of the results, it should be remembered that there are differences in national statistics in terms of the definition of industry categories as well as the methods and frequency of data collection.

The next area of Pillar I, *Value Creation and the Markets for Copyrighted Products and Services* (page 54), will focus on different industries. It includes methods for studying their operation from the perspectives of industry structure, business models and the level of production. The copyright revenue in different industries is discussed in Pillar III under the area *Incentives* (page 108).

⁵⁴ A definition of core copyright industries as specified in the *WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)*, p. 51: "The core copyright industries are industries which are wholly engaged in the creation, production and manufacture, performance, broadcasting, communication and exhibition, or distribution and sale of works and other protected subject matter."

⁵⁵ Sinervo and Toivonen discuss three traditionally used approaches to calculate the monetary value of intellectual property: the cost, market and income approaches, and use the Discounted Cash Flow (DCF) method in order to calculate the present value of future earnings from a portfolio of copyright assets in Finland. This calculation is based on three variables: the earnings to be discounted, the discount rate, and the time span. See Petteri Sinervo & Timo E. Toivonen, *The Capital Value of Copyright Assets in Finland*, Cupore & The Finnish Copyright Society (2012), available online at <http://www.cupore.fi>.

The study concentrates only on the repertoire which is in active use. Complementary approaches are needed to analyze the asset value of protected subject matter that is not in active use or creating money flows, and the value of works in the public domain.

METHODOLOGY CARD 1. MACROECONOMIC IMPORTANCE OF COPYRIGHT INDUSTRIES

Key question	What is the overall importance of copyright industries in the national economy?	
Description	The relative economic contribution or significance of those industries that are substantially dependant on copyright in the national economy, as compared to other macroeconomic figures such as gross domestic product, total national foreign trade and the total employed labor force.	
Parameters to measure	<ol style="list-style-type: none"> 1. Value added of copyright industries as a share of GDP 2. Number of employees in copyright industries as a share of the total employed labor force 3. Value of exports and imports in copyright industries as a percentage of total national foreign trade 4. Capital value of copyright assets: an estimation of the amount of future income flows of national copyright assets (at present value) 	
Guidelines for data collection	<p>The data can be collected as a desktop study using available national and international statistics and industry databases.</p> <p>Detailed instructions for studies based on parameters 1, 2 and 3 can be found in the <i>WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)</i>.⁵⁶ A method for evaluating the capital value of copyright assets (parameter 4) is described in a separate study by Sinervo and Toivonen (2012).</p>	
Definitions	<i>Copyright asset</i>	Intangible right based on copyright that is owned by one or several copyright holders and has economic value
	<i>Copyright industries</i>	Industries that “function under the protection of copyright and related rights” ⁵⁷
	<i>GDP</i>	Gross Domestic Product
Limitations	The data will only offer information on the relative importance of copyright industries in the whole economy which can be affected to a large extent by economic trends as well as the industry structure.	

Value Creation and the Markets for Copyrighted Products and Services

The copyright system creates conditions for the efficient operation of national markets for copyrighted products and services. Therefore it is important to understand the nature and the characteristics of the markets when assessing a copyright system’s operation. Describing the markets will especially make sense if the framework is applied to study the operation of copyright on a specific industry.

The second area of Pillar I therefore focuses on the markets for copyrighted products and services from different aspects, such as the characteristics of the markets and processes of value creation in different industries (Description Sheet 4), the volume of both domestic production (Methodology Card 2) and international trade (Methodology Card 3), and the development of digital business models (Methodology Card 4). Licensing markets will be discussed separately under Pillar III of the framework on page 125.

⁵⁶ WIPO publication No 893 E, available at <http://www.wipo.int/copyright/en/performance/>.

⁵⁷ Definition from the WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition), p. 30.

Description Sheet 4. Markets for Copyrighted Products and Services
Methodology Card 2. Volume of Domestic Production of Copyrighted Products and Services
Methodology Card 3. Volume of Exported and Imported Copyrighted Products and Services
Methodology Card 4. Development of Digital Business Models and Income Based on Digital Distribution

Box 9. Indicators concerning Pillar I, area “Value Creation and Markets for Copyrighted Products and Services”

Description Sheet 4. Markets for Copyrighted Products and Services

The economic value of copyright derives from end-user markets. Therefore, in order to understand the operation of a copyright system, one has to understand the nature of the markets for copyrighted products and services.

Some descriptive information is necessary in order to grasp not only the sizes of the markets, but also their factual characteristics and the infrastructure surrounding them. The study can focus on the structures of particular industries and the organizations representing different actors such as unions and other organized groups.⁵⁸ Data on competition will indirectly tell about the stability and profitability in the industry. Other elements to include are the degree of internationalization of the industry, the level of participation and consumption by end-users and a description of the most common business models. The scope of this indicator will depend on the relevance of the data in interpreting the results of studies based on Pillars II and III of the methodology framework.

The structure of the markets as well as the architecture of value creation differ and therefore different types of creative activities and industries should be analyzed separately. An applicable tool for examining these features of particular industries is value network analysis (see page 38), a method for identifying the characteristics of different value creation processes and for understanding the interaction of different stakeholders involved.

In addition to the categories of descriptive data listed in this description sheet, some numerical data can be useful. Methodology Cards 2, 3 and 4 will allow an assessment of the size of the market for copyrighted products and services. Furthermore, a description of the most common digital business models based on this description sheet can be utilized and analyzed further when assessing the actual extent of use of different digital and open licensing business models and the income flows based on them (see Methodology Card 4 – *Development of Digital Business Models and Income Based on Digital Distribution*).

⁵⁸ Different stakeholder roles have been categorized in the chapter *Understanding the operation of the copyright system* (see p. 21).

DESCRIPTION SHEET 4. MARKETS FOR COPYRIGHTED PRODUCTS AND SERVICES

Description and characterization of the markets with a focus on different industries separately; consider the following topics:

- The existence of organized groups commenting on copyright policy and administration
- The level of organization inside the industry: existence of organized groups representing certain categories of stakeholders (such as unions and lobbying groups) and description of their activities
- Competition in the industry and the concentration of the markets: for each industry, information on the total number of businesses, the numbers of businesses of relative sizes (consider for example the mean and median values together with the values of lower and upper quartile), the number of businesses that have a significant market coverage (for example a minimum of 5 % of the total), the number of new businesses (entry rate) and closed businesses (exit rate) as well as a list of main actors
- The level of internationalization of the markets (consider for example the number of foreign businesses operating on the national market and/or the number of international co-productions)⁵⁹
- The level of cultural participation and/or end-use of cultural products and services⁶⁰ (consider a division by age group, gender and socio-economic status)
- Average prices of cultural products (as compared to the general price level in the country)

Description of the most common business models used in each industry. If applicable, consider digital business models separately. Possible digital business models to consider:

- Individual purchases
- Subscription services
- E-rental
- Free on Demand (FOD)
- E-lending
- Catch up services
- Pre-review services
- Bundling

Guidelines for data collection	The information can be collected as a desktop study using available national and international information sources, such as statistics and industry databases. The data can be complemented with expert interviews, focus group studies or surveys.	
Definitions	<i>Bundling</i>	The content being sold together with other products or content such as a device needed for experiencing the content or a package including various types of contents and means of access
	<i>Catch up services</i>	Getting access to content for a limited time period after a live broadcast, usually by the audience of, or the subscribers to the original content
	<i>E-lending (Electronic lending)</i>	Distributing digital content, sometimes for a limited period of time, as part of a general lending service (for example certain services of public libraries)
	<i>E-rental (Electronic rental)</i>	Getting access to specific content for a limited time period against payment (for example Video on Demand (VOD) services)
	<i>Free on Demand (FOD)</i>	Services offering access to content on demand for free, funded by other means than payments from consumers such as advertising revenue ⁶¹
	<i>Individual (digital) purchases (also called as Electronic Sell-Through and Download-to-own)</i>	Acquiring and downloading a digital copy of an individual work against a fee
	<i>Pre-review services</i>	Getting access to content before its public broadcast against a fee
	<i>Subscription services</i>	Getting unlimited or limited access to content on the basis of a continuous subscription fee
Limitations	The technologies available tend to evolve rapidly over time and as a result, data concerning digital business models can be quickly outdated.	

⁵⁹ The volume of exported and imported copyrighted products and services is the topic of Methodology Card 3.

⁶⁰ Cultural participation has for example been studied by Eurostat through modules analyzing trends and patterns relating to cinema and live performances attendance, visits to cultural sites, involvement in amateur cultural activities and reading. End-use of cultural goods can be measured through figures such as the number of movie tickets sold per capita or the number of books sold per capita.

⁶¹ Besides FOD services, content can also be offered for free by the right holders themselves, directly available from their website or other platform.

Methodology Card 2. Volume of Domestic Production of Copyrighted Products and Services

Evaluating the volume of domestic production of copyrighted products and services is a key element to define the economic importance of copyright industries. As proposed in this methodology card, such analysis can focus on certain categories of products and services. Examples include newspapers and magazines, books, films, broadcasting services, games, phonograms and computer programs. Other relevant subject matter can be included in the study when necessary.

The methodology card proposes potential parameters to measure the volume of domestic production, such as the number of domestic titles, productions, and radio and television channels. The volume of the production of computer programs could be estimated through the turnover of the software industry. However, other measures of the volume of domestic production could be used. It is suggested to collect time-series data. The figures can be based on official statistics or databases of branch organizations.

The data collected using this methodology card will provide background information relevant in the interpretation of several description sheets and methodology cards in the other pillars of the methodology framework. The results will particularly support the interpretation of the elements *Enforcement* and *Management of Rights* in Pillar II.

The volume of production of cultural products and services is affected by many other factors than copyright, in particular by the general economic situation. The analysis can be further developed by comparing the results of this indicator with data on the sizes of businesses in the studied industries and on the level of actual use of cultural products and services (see Description Sheet 4). This information is especially interesting when monitoring the effects of changes in the law or in other elements of the copyright system.

METHODOLOGY CARD 2. VOLUME OF DOMESTIC PRODUCTION OF COPYRIGHTED PRODUCTS AND SERVICES

Key question	How many copyrighted products and services are produced in the country?	
Description	Domestic production of copyrighted products and services (by category of works), in terms of number, turnover, value of sales or other possible parameters.	
Parameters to measure	<p>Volume of domestic production of copyrighted products and services; consider for example the following categories:</p> <ol style="list-style-type: none"> 1. Newspapers and magazines <ul style="list-style-type: none"> • Number of domestic newspaper titles • Number of domestic magazine titles 2. Books <ul style="list-style-type: none"> • Number of domestic books (titles) published • Number of translated books (titles) published 3. Films <ul style="list-style-type: none"> • Number of domestic films produced • Number of domestic feature films produced 4. Broadcasting <ul style="list-style-type: none"> • Number of domestic radio channels • Number of domestic television channels 5. Games <ul style="list-style-type: none"> • Number of domestic games produced 6. Phonograms / Audio recordings <ul style="list-style-type: none"> • Number of domestic audio recordings (titles) produced 7. Computer programs / Software <ul style="list-style-type: none"> • Volume of domestic production in terms of turnover of the software industry 	
Guidelines for data collection	<p>The data can be collected through available national and international statistics and industry databases, such as the databases of branch organizations and official statistics.</p> <p>Consider relevant sub-classifications of products and services when suitable. A distinction can be made between digital and physical products if considered relevant. The data should be collected over a period allowing meaningful analysis, for example 5 years.</p> <p>In addition to the parameters proposed in the methodology card, other measures of the volume of domestic production may be used when feasible.</p>	
Definitions	<i>Domestic production</i>	A major part of the production takes place within the nation's borders
Limitations	The volume of domestic production can be heavily influenced by several other factors than copyright.	

Methodology Card 3. Volume of Exported and Imported Copyrighted Products and Services

For a thorough description of the markets of copyrighted products and services, the data on the volume of domestic production (collected according to Methodology Card 2) can be complemented with the volume of imported and exported products and services. The data will provide an overview of the origin of copyrighted products and services available in the country, as well as the balance between imported and exported products and services by category. Furthermore, this data, combined with the data on the domestic production collected in Methodology Card 2, will provide an indication of the size of the markets for copyrighted products and services.

The methodology card proposes potential parameters to measure the volume of exports and imports, such as the number of titles, productions, and radio and television channels. The volume of exported and imported computer programs could be estimated through the revenues generated. However, other measures could be used.

Methodology Cards 2 and 3 are both designed to allow either individual analysis for different types of copyrighted products and services, or an assessment of the markets in general. When data is available over a longer period, a description of the markets' evolution over time can be made. This evolution can be related to relevant events such as changes in relevant legislation or policies.

METHODOLOGY CARD 3. VOLUME OF EXPORTED AND IMPORTED COPYRIGHTED PRODUCTS AND SERVICES

Key question	What is the volume of exports and imports of copyrighted products and services?	
Description	Volumes of exported and imported copyrighted products and services (by category of works), in terms of number, turnover, value of sales or other possible parameters.	
Parameters to measure	<p>Volume of exports and imports of copyrighted products and services; consider for example the following categories:</p> <ol style="list-style-type: none"> 1. Newspapers and magazines <ul style="list-style-type: none"> • Number of exported and imported newspaper titles • Number of exported and imported magazine titles 2. Books <ul style="list-style-type: none"> • Number of foreign books (titles) made available for the first time in the country • Number of domestic books (titles) made available for the first time abroad 3. Films <ul style="list-style-type: none"> • Number of foreign films made available for the first time in the country • Number of domestic films made available for the first time abroad (whether by selling copies or by display in movie theaters) 4. Broadcasting <ul style="list-style-type: none"> • Number of foreign radio channels made available in the country • Number of domestic radio channels made available in other countries • Number of foreign television channels made available in the country • Number of local television channels made available in other countries • Share of foreign content broadcasted on national radio and television channels 5. Games <ul style="list-style-type: none"> • Number of foreign games made available for the first time in the country • Number of games produced in the country and made available for the first time abroad 6. Phonograms / Audio recordings <ul style="list-style-type: none"> • Number of foreign audio recordings (titles) made available for the first time in the country • Number of audio recordings (titles) produced in the country and made available for the first time abroad 7. Computer programs / Software <ul style="list-style-type: none"> • Volume of exported and imported computer programs in terms of the revenues generated 	
Guidelines for data collection	<p>The data can be collected as a desktop study using available national and international statistics and industry databases, such as the databases of branch organizations and official statistics.⁶²</p> <p>Consider relevant sub-classifications of products and services when suitable. A distinction can be made between digital and physical products if considered relevant. The data should be collected over a period allowing meaningful analysis, for example 5 years.</p> <p>In addition to the parameters proposed in the methodology card, other measures of the volume of domestic production may be used when feasible.</p>	
Definitions	<i>Exported</i>	A major part of the production takes place in the country but the commercialization takes place outside the nation's borders
	<i>Imported</i>	A major part of the production takes place outside the nation's borders but the commercialization takes place in the country
Limitations	In certain cases, industry-level data can be difficult to obtain.	

⁶² See for example UNCTADstat (UNCTAD calculations based on IMF Balance of Payments Statistics) with data on the exports and imports of creative services by category and the annual average growth rates of creative services exports and imports for individual countries and selected country groupings, available at <http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=14774>.

Data on the international trade of creative services is presented and analyzed in UNCTAD's *Creative Economy Report 2010*, available at http://unctad.org/en/Docs/ditctab20103_en.pdf.

Methodology Card 4. Development of Digital Business Models and Income Based on Digital Distribution

Discovering new ways of doing business promotes economic development and the availability of culture. This indicator aims to assess the markets for copyrighted products and services that base their offering on digital business models or digital distribution. The purpose is to evaluate how the existing markets have adapted to the opportunities and challenges brought forward by the development of information and communications technology (ICT). The methodology card focuses on digital business models, the extent of their use, and their ability to generate income flows.

New information and communications technologies have created new opportunities for the development of user-generated content and digital distribution. User-generated content is commonly licensed under open license.⁶³ Open licenses enable content creation in communities without the restrictions of proprietary rights. On the other hand, companies can create new business models based on open licensed content, such as content provided by user communities, as demonstrated in software industries where this type of license is most commonly used for commercial purposes. The essential difference between open licensing and other digital business models is in the ownership of works.

The assessment of the development of digital business models and income based on digital distribution is founded on two parameters. The first parameter concerns the share of digital sales in all sales in different copyright industries. The analysis can be based on the list of digital business models used in the country presented in Description Sheet 4 – *Markets for Copyrighted Products and Services*. The data collected according to the second parameter concentrates on the number of businesses basing their offering on open licensing and their turnover.

The level of use of digital business models can be compared to the popularity of other business models considered traditional. The adoption of new business models and orientation to digital distribution by existing and new companies affect the dynamics of the markets. It can also affect the level of copyright infringement if companies succeed in providing attractive services to customers. The results will be partially influenced by the existence of legal provisions concerning the use of new technologies in copyrighted works, information captured with Description Sheet 1. The existence of organizations supporting or promoting the utilization of digital business models is a topic of Description Sheet 3.

⁶³ Open licensing aims to avoid the possible restrictions copyright regulation may generate to free access and to the possibility to modify the works. However, while open licensing is used to govern user-generated work, copyright protects the moral rights of the authors and prevents infringements of open licenses. Digital business models that are based on owning the rights lean heavily on copyright protection, whereas the businesses basing their operations on open licenses often avoid it. However, copyright protection and enforcement may be needed by those offering open licenses, especially in terms of violation of license and protection of moral rights. Works under the regimes of public domain and open license enable modification of the works (depending on the extent of the license), while the term open access means only the possibility to access the works or content.

METHODOLOGY CARD 4. DEVELOPMENT OF DIGITAL BUSINESS MODELS AND INCOME BASED ON DIGITAL DISTRIBUTION

Key question	Are digital distribution and open licensing business models being used in copyright industries? How successful digital business models are in economic terms?	
Description	Income flows based on digital distribution and open licensing business models in copyright industries (in particular the industries listed in Box 1 on page 20). ⁶⁴	
Parameters to measure	<p>1. The market share of digital sales (as a % of all sales) in copyright industries</p> <p>2. Number and turnover of companies in the software industry or other copyright industries basing their offering on open licensing or utilizing open licensing to a notable degree</p> <p>Consider open source business models and other business models utilizing open licensing, such as:</p> <ul style="list-style-type: none"> – Association of open licensed content to commercial services – Implementation of open licensed content to proprietary software and hardware – Open licensing financed through advertising, product placement and service placement – Dual licensing 	
Guidelines for data collection	<p>The data can be collected as a desktop study using available national and international information sources such as official statistics and industry statistics and databases. Alternatively, a survey focusing on different industries separately may be conducted.</p> <p>Studies concerning digital distribution could focus on internet radio, e-book stores, online gaming, streaming audio and video on demand (VOD).</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i></p>	
Definitions	<i>Digital distribution</i>	Distribution of copyrighted material through the Internet, mobile networks or cable connection
	<i>Dual licensing</i>	A business model where software is available under both open licensing and proprietary licensing. Open licensing offers the support of the community of developers while proprietary licensing offers customer the possibility to develop the software without having to release the source codes (MySQL).
	<i>Open license</i>	License that with few or no restrictions grants permission to access to content (any kind of artistic and literary works) and provides the possibility to modify and redistribute it as long as attribution is given to the authors. Most common open licenses are: GPL 2.0 (GNU General Public License), LGPL (GNU Lesser General Public License), BSD License, MIT License, MPL 1.1 (Mozilla Public License), Apache 2.0 (Apache License), X11 (X11 License), CC (Creative Commons).
	<i>Open source business model</i>	Business model based on the use of user-generated open licensed software. Open source business models are based on offering services associated to open source software and its development (i.e. training, updating and maintenance services).
Limitations	<ul style="list-style-type: none"> • The data concerning the revenues of individual companies can be confidential. • Concerning the first parameter, there can be various types of sales figures available, such as turnover, revenue and sales at end user level. In addition, the figures can concern either the wholesale prices or the retail prices of products and services. It can therefore be difficult to compare the figures concerning different industries. 	

⁶⁴ For a list of copyright industries as defined by WIPO, see Appendix 3.

PILLAR II

Functioning and Performance of the Elements of the Copyright System

● In order to build a profound understanding of the operation of the copyright system and to diagnose the areas in need of a reform, it is necessary to assess the separate elements of the system. Besides offering methods for undertaking a comprehensive analysis of the copyright system as a whole, thanks to its modular design, the framework can be utilized when there is a need to assess and develop only certain elements and aspects of the system. This pillar aims to provide structured instructions on how to describe the individual elements of the system and how to assess their functioning and performance. Moreover, the assessment of the functioning and performance of each element will support the evaluation of the operational balance of the copyright system based on the guidelines laid down in Pillar III of the methodology framework.

The elements and their corresponding indicators are grouped under four areas: *Law, Policy and Public Administration* (including national copyright policies and strategies, copyright legislation, and public administration by government agencies); *Enforcement* (including work against copyright infringement by public and private parties and dispute resolution); *Management of Rights* (including individual exercise of rights and collective management of rights); and *Dissemination of Knowledge* (including education, research and other information activities).

In the context of this methodology, all the areas are of great importance and no area is substantially more important than the others: copyright law and policy form the ground on which the other elements are founded, while public administration, enforcement procedures, licensing infrastructure, and the awareness and understanding of citizens of their rights and obligations all contribute to the efficiency of copyright law and the functioning of the markets. Although the four areas clearly overlap, this division is made in order to cover the elements of the copyright system separately and, at the same time, to keep the framework systematic as a whole.

The following table provides an overview of the indicators included in the second pillar of the framework.

FUNCTIONING AND PERFORMANCE OF THE ELEMENTS OF THE COPYRIGHT SYSTEM	
Law, Policy and Public Administration	
Description Sheet 5.	Copyright Law
Description Sheet 6.	Copyright Policy
Methodology Card 5.	Public Consultation on Law Proposals
Methodology Card 6.	Use of Impact Assessment and Research in Policy Development
Description Sheet 7.	Public Administration of Copyright
Enforcement	
Description Sheet 8.	Enforcement by Public and Private Actors
Description Sheet 9.	Sanctions and Remedies for Copyright Infringement
Methodology Card 7.	Application of Sanctions and Remedies for Copyright Infringement
Description Sheet 10.	Availability of Alternative Dispute Resolution Mechanisms
Methodology Card 8.	Use of Alternative Resolution Mechanisms for Solving Copyright Disputes
Management of Rights	
Description Sheet 11.	Individual Exercise of Rights
Description Sheet 12.	Collective Management of Rights
Methodology Card 9.	Efficiency of Collective Management Organizations
Dissemination of Knowledge	
Description Sheet 13.	Copyright-related Information Activities
Description Sheet 14.	Copyright-related Education for the Public in General
Methodology Card 10.	Public Awareness of the Rights
Methodology Card 11.	Copyright-related Education as Part of the Education of Professionals for Creative Industries
Description Sheet 15.	Research on Copyright-related Topics
Methodology Card 12.	Copyright-related Study and Research Programs in Universities and Research Institutes

Summary table 2. Contents of Pillar II

Law, Policy and Public Administration

The first area of Pillar II includes guidelines for describing and assessing the functioning of copyright law, copyright policy, and public administration by government agencies. The operation of law, policies and strategies at government level should be continuously monitored in order to develop them with respect to changes in their national and international environment. Public administration and national practices in the formulation of copyright strategies and legislation contribute to the efficiency of laws and policies and therefore are among the key elements of this area.

Copyright law and policy form the ground on which the other elements of the copyright system are founded. Hence, the mapping and describing of copyright laws and policies in the country will provide a basis for the interpretation of the set of indicators presented in this framework and should therefore seek to offer thorough background information presented in a compact manner. When made in several countries, this description can also help understand the characteristics of and differences in national copyright systems. The study of these elements is guided by Description Sheet 5 – *Copyright Law* and Description Sheet 6 – *Copyright Policy*.

The methodology also proposes ways to analyze the degree to which objective evidence is taken into account when preparing law proposals or changes to law, and when adopting new policies, strategies and programs. The two methodology cards *Public Consultation on Law Proposals* (Methodology Card 5) and *Use of Impact Assessment and Research in Policy Development* (Methodology Card 6) are designed to assess the scope of the preparation of law proposals and the development of copyright policies. This information will provide indications on the compliance to generally recognized good governance principles, such as equity and inclusiveness, participation, consensus orientation, transparency and strategic vision.⁶⁵

Another important aspect when assessing the functioning of copyright laws and policies is a clear understanding of the responsibilities and main operations of the government agencies involved in the public administration of copyright matters. Description Sheet 7 – *Public Administration of Copyright* also covers the registration or recordation bodies and systems used in the country, the description of which will tell about the availability of public information on the repertoire of copyrighted works protected in the country.

INDICATORS CONCERNING THE AREA LAW, POLICY AND PUBLIC ADMINISTRATION:

Description Sheet 5.	Copyright Law
Description Sheet 6.	Copyright Policy
Methodology Card 5.	Public Consultation on Law Proposals
Methodology Card 6.	Use of Impact Assessment and Research in Policy Development
Description Sheet 7.	Public Administration of Copyright

Box 10. Indicators concerning Pillar II, area “Law, Policy and Public Administration”

⁶⁵ See “Further Applications of the Methodology” on p. 117.

Description Sheet 5. Copyright Law

Description Sheet 5 comprises a presentation of the national copyright law and its connections to international agreements and treaties, significant case law, other relevant national laws, as well as other possible mechanisms that are important in determining the interpretation and scope of copyright legislation. In this context, copyright law concerns all copyright-related provisions in all branches of national law. The description should include a list of all the acts and government decrees that form national copyright legislation, other legal documents relevant in the field of copyright as well as regulations and relevant decisions by national bodies. As the purpose of the description is to provide a broad overview of all copyright-related provisions, relevant case law and the special features of the national copyright system should also be introduced. The description may be supported by a brief introduction to the history of copyright legislation and the hierarchy of legal norms in the country.

The key provisions to be covered concern the criteria for protection (including provisions on registration of works), the exclusive rights granted, duration of rights, exceptions, exemptions and limitations to copyright⁶⁶, transfer of rights and the rights to remuneration and compensation. The description should also include provisions concerning traditional cultural expressions and folklore. Furthermore, the adaptability and neutrality of the copyright system to new technologies can be examined by presenting the legal provisions concerning digital works, technological protection measures and liability of Internet service providers.

Interpretation of the results of the study should take into account the possible influence of regional legislation and international agreements as well as other fields of national legislation relevant for the functioning of the system. Therefore, it is suggested that the descriptive information on the national laws likely to influence the operation of the copyright system (Description Sheet 1 – *National Context*) and on the international treaties and regional agreements on copyright protection (Description Sheet 2 – *International and Regional Context*) is taken into account in the analysis of the data collected through this indicator.

Sanctions and remedies available by law in cases of copyright infringement are covered in Description Sheet 9 – *Sanctions and Remedies for Copyright Infringement*.

⁶⁶ The relevant international copyright treaties and agreements such as the Berne Convention, WCT, WPPT, TRIPS Agreement and the EU Copyright Directive include a clause with three requirements for national limitations and exceptions. This “Berne three-step test” imposes on the limitations and exceptions to confine to 1) certain special cases which 2) are not in conflict with a normal exploitation of the work and 3) do not unreasonably prejudice the legitimate interests of the right holder.

DESCRIPTION SHEET 5. COPYRIGHT LAW

Description of the national copyright laws (consider all copyright-related provisions in all branches of national law):

- Legislative acts and government decrees that form national copyright legislation and other legal documents relevant to the field of copyright
- Exclusive rights and their duration; consider the following topics:
 - Protected works
 - Criteria for protection (creativity, originality, expression)
 - Rights guaranteed (economic rights, moral rights⁶⁷, related/neighborly rights)
 - Term of protection
- Exceptions, exemptions and/or limitations to copyright; consider for example:
 - Fair use / fair dealing / private use
 - Exhaustion of copyright
 - Reproduction for private use
 - Quotation right
 - Rights concerning transformative/secondary works such as caricatures, parodies and pastiches
 - 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
 - Use of copyrighted works in libraries, archives and museums
 - Use of copyrighted works for educational activities, scientific research, and other similar limitations
 - Use of copyrighted works by persons with disabilities
 - Re-broadcasting
 - Must carry
 - User-generated content
 - Text and data mining
- Provisions on transfer of rights
 - Authorship
 - Transfer of rights
 - Ownership of copyright on works made by employees
 - Other legislative solutions facilitating the licensing of rights
- Provisions on remuneration and compensation
- Adaptability and neutrality of the copyright system to new technologies; consider for example:
 - Legal provisions concerning digital works
 - Legal protection on the use of Technological Protection Measures (TPM), Digital Rights Management (DRM) and Rights Management Information (RMI)
 - Internet service providers' liability provisions
- Provisions concerning registration of works
- Provisions concerning traditional cultural expressions and/or folklore
- Other relevant provisions
- Special features of the national copyright system

If relevant, description of

- the history of the national copyright legislation, and
- the hierarchy of legal norms: consider for example the division of the sources of law⁶⁸ (from the courts' perspective) into strongly binding, weakly binding and informative

Guidelines for data collection	The information can be collected as a desktop study using available national and international information sources, such as legislative texts, court decisions, treaties and conventions.	
Definitions	<i>Limitations, exceptions, exemptions</i>	Provisions in copyright law which allow for copyrighted works to be used without a license from the copyright owner.
	<i>Technological Protection Measures, Digital Rights Management and Rights Management Information</i>	Technological measures designed to prevent or restrict acts not authorised by the right holders of any copyright or related rights.
Limitations	The description is limited to the national context and should be considered alongside information on regional legislation and international agreements.	

Description Sheet 6. Copyright Policy

This description sheet suggests a presentation of policies directly related to copyright. The purpose of this description sheet is to provide an overview of all public policies, strategies and programs likely to influence the future of the national copyright system. Besides policies in areas closely related to copyright, such as intellectual property rights and culture, other policy areas that could have an influence on the copyright system, such as competition and innovation, can be taken into account. All administrative levels (including national, regional, provincial and others) should be considered.

⁶⁷ Moral rights of copyright might include the following:

- Right to attribution (requirement to acknowledge or credit the author of a work which is used or appears in another work) or right to claim authorship
- Right to the integrity of the work (forbids any alternation, distortion or mutilation of the work that may detract from the artist's relationship with the work)
- Right to the respect of the author's honor and reputation (forbids for instance the use of one's name on any work the author did not create or on a work distorted, altered or mutilated in a way that would be prejudicial to the author's honor or reputation)
- Right to have a work published anonymously or pseudonymously.

⁶⁸ Possible sources of law to consider: acts, government decrees, customary law, legal precedents, government proposals, parliamentary committee statements, other institutional sources, legal literature, and arguments of comparative law.

DESCRIPTION SHEET 6. COPYRIGHT POLICY

Description of the public policies, strategies and programs that are directly related to copyright; consider for example the following policy areas:

- Intellectual property rights
- Culture
- Competition
- Innovation
- Information and communication
- Electronic commerce
- Data protection
- Freedom of speech and other fundamental rights
- Employment

Guidelines for data collection	The information can be collected as a desktop study using available national information sources and complemented with expert interviews. Identifying the relevant programs and strategies can start with interviewing government officials and analyzing the national policy, strategy or program documents (such as government programs) that mention copyright as a topic. The data should be collected over a period allowing meaningful analysis and providing a correct representation of public activity in the field, for example 5 years.	
Definitions	<i>Public policies, strategies and programs</i>	Policies, strategies and programs decided and conducted by public actors, either at the national level (by the government) or by lower public authorities (such as regions, provinces or states) with responsibilities related to copyright.
Limitations	<ul style="list-style-type: none">• It might be difficult to determine which policies are directly related to copyright, and therefore, defining the scope of the description can be challenging.• If copyright policies are very detailed or defined in a wide range of various national policy documents, it might be time-consuming to conduct an exhaustive analysis.	

Methodology Card 5. Public Consultation on Law Proposals

The same policy measures affect different interest groups in dissimilar and often unpredictable ways. The benefits of a policy measure to one group can often come at the expense of other stakeholders with different interests. It is important that different interest groups have a possibility to comment copyright policy and law and to be heard when developing the copyright system. Public debate both before the parliamentary readings and as a continuous dialogue has a potential to increase the acceptance, balance and efficiency of new legislations.

Methodology Card 5 proposes to measure the extent to which law proposals are submitted to comments. It is also suggested to collect data on the amount of consultation and negotiation with different interest groups. In addition, the comments of different stakeholder categories on law proposals can be analyzed case by case. Organizing discussions and hearings with different stakeholder groups and circulating relevant documents for comments are essential characteristics of good governance. The existence of organized consultations with stakeholders will tell about the opportunities for public debate on planned changes in the law. Such debate can

also be independent from any organized consultation but this aspect is not assessed in this indicator.⁶⁹

The fact that public dialogue has been opened indicates a commitment by authorities to take into account stakeholders' points of view. As a result, this indicator will help understanding the processes leading to new legislation as well as issues that can affect the public acceptance of legal measures. A more thorough assessment could concern each possible successive phase of public consultations separately, and include both the number of hearings and negotiations and the overall number of comments submitted by different stakeholder categories. The analysis could also take a broader perspective by including consultations on relevant policy and strategy documents. The study can be based on a certain time period or, alternatively, focus on one or a few specified law proposals only.

In the analysis of the results, the level of organization of the industry could be taken into account (see Description Sheet 4 – *Markets for Copyrighted Products and Services*). On the other hand, the possibility of a stronger position for powerful lobbying parties should be kept in mind when analyzing the data. This could be assessed by comparing how often representatives of different stakeholder categories were consulted. Although the methodology card does not take into consideration to what extent the comments have been taken into account, an additional evaluation of the proportion of comments (for each individual law proposal or globally for all the legislative action over a given period) that have been directly translated into law or that have been totally left unanswered would support the assessment of this element.

⁶⁹ See Methodology Card 22 for a method for assessing stakeholders' opinions on the copyright system.

METHODOLOGY CARD 5. PUBLIC CONSULTATION ON LAW PROPOSALS

Key question	Are law proposals concerning copyright open to debate to different interest groups?	
Description	Extent of public consultation and communication with different stakeholders as well as independent experts	
Parameters to measure	<p>1. Are the law proposals concerning copyright submitted to comments?</p> <p>If yes:</p> <ul style="list-style-type: none"> • Proportion of law proposals submitted to comments • Stakeholders that have submitted written comments • Overall number of submissions from different stakeholder categories <p>2. Number of hearings and negotiations with stakeholders</p>	
Guidelines for data collection	<p>The information can be collected as a desktop study using available national information sources, complemented with expert interviews. If no existing datasets are available, statistics can be compiled by examining preparatory documents and other textual materials concerning individual law drafting processes.</p> <p>The data should be collected over a period allowing meaningful analysis and providing a representative overview of law proposals, and presented as yearly figures (for example the last 5 or 10 years). When possible, law proposals can be analyzed case by case.</p> <p>A definition of the different stakeholder categories can be found on page 21. Alternatively, other divisions of different interest groups that will better serve the purposes of the study can be used.</p>	
Definitions	<i>Hearings and negotiations</i>	Hearings and negotiations organized by the ministry/ government department, preparatory body or parliamentary committee responsible for copyright matters among the stakeholders most affected by the legislative work
	<i>Proposal</i>	Government or parliamentary proposals directly affecting the copyright system, either in the pre-parliamentary phase or after being submitted to the parliament
Limitations	<ul style="list-style-type: none"> • The indicator does not take into consideration to what extent the comments were taken into account. • In some cases it might be difficult to define to which stakeholder group a given comment belongs. • The indicator does not measure the actual existence of a free debate. • The indicator concentrates on the public debate on planned changes through organized consultations only. 	

Methodology Card 6. Use of Impact Assessment and Research in Policy Development

The assessment of the impacts of and changes in copyright policy and law, and the use of research in the development of copyright policy are essential aspects of a well-functioning copyright system. Methodology Card 6 provides guidelines for studying the existence of impact assessment regarding copyright policy and law which will tell about commitment to objectivity in decisions. Undertaking regular impact assessment will help to foresee effects that might counteract the purposes of legislative and policy choices and is therefore an important tool in the hands of legislators and policy makers.

The first parameter of this indicator recommends evaluating the existence and frequency of impact assessment studies concerning legislative initiatives. The existence of impact assessment will underline the authorities' commitment in carefully planning legislations and evaluating legislative systems. The second part of the indicator focuses on the number of academic papers and other studies referenced as sources in public copyright policy documents. This can be studied by analyzing official documents in order to identify research references as well as by listing these references or qualifying them by their amount or their extent. The results will tell about the use of different types of research evidence in policy development and when preparing law proposals. The results will complement the data concerning public consultation on law proposals provided through Methodology Card 5.

The results of this indicator could be interpreted with the support of the description of the copyright law and policy (Description Sheets 5 and 6). Impact assessment studies can also be seen as a tool in informing the public in general as well as different interest groups about the reasons for and the outcomes of different policy choices (see Methodology Card 10 – *Public Awareness of the Rights*).

The needs for research evidence and impact assessment will depend on the current legislative and policy agenda and the topics of possible law proposals under preparation. Therefore, the scope of each impact assessment will depend on the goals of each policy or legislative initiative. Furthermore, the results of Parameter 2 are likely to depend on the general availability of scientific and other relevant publications.⁷⁰

⁷⁰ Research on copyright-related issues conducted in universities and research institutes is the topic of Description Sheet 15 – *Research on Copyright-related Topics* and Methodology Card 12 – *Copyright-related Research and Study Programs in Universities and Research Institutes*.

METHODOLOGY CARD 6. USE OF IMPACT ASSESSMENT AND RESEARCH IN POLICY DEVELOPMENT

Key question	How much do the policy development and legislative processes take into account impact assessment studies and research data?	
Description	Existence of studies evaluating the impact of changes in copyright policies and laws, and use of academic and other research in the development of copyright policy.	
Parameters to measure	<p>1. Impact assessment studies regarding copyright policy and copyright law</p> <ol style="list-style-type: none"> Have impact assessment studies regarding copyright policy and copyright law been carried out (commissioned by the government)? To what proportion of copyright legislative initiatives has impact assessment been made? Description of different kinds of impacts that have been assessed (regarding each of the commissioned impact assessment studies and copyright legislative initiatives separately) <p>2. The use of research in policy development: to what extent have academic or other studies been referred to in public copyright policy documents?</p> <p>If possible, consider separately:</p> <ul style="list-style-type: none"> Academic research (such as scientific articles, other academic papers, monographs, doctoral theses and licentiate theses), and Other studies (such as studies conducted in research institutions, by individual experts or researchers, and by private organizations) 	
Guidelines for data collection	<p>The information can be collected as a desktop study covering all copyright policy and legislative initiatives made over a certain time period. Expert interviews can be used as a complementary source of information. Alternatively, a case study can be conducted to investigate specific policy or legislative initiatives separately. If no existing datasets are available, statistics can be compiled by examining preparatory documents and other textual materials concerning individual law drafting and policy development processes.</p> <p>The data should be collected over a period allowing meaningful analysis, for example 5 or 10 years.</p>	
Definitions	<i>Impact assessment</i>	Assessment evaluating the possible impacts of a specified, current or proposed action. Depending on the subject matter and the objectives of the assessment, the focus can be on different kinds of impacts such as social impact, cultural impact, economic impact, impacts for different stakeholders, technological impact, and environmental impact.
	<i>Legislative initiative</i>	Legal changes proposed by and to legislators
Limitations	<ul style="list-style-type: none"> The indicator does not address the quality and comprehensiveness of the impact assessment studies. The indicator focuses on studies commissioned or used by the government and does not take into account relevant research commissioned by the industry or other groups. The results of parameter 2 are likely to depend on the general availability of research publications. Moreover, government officials may be familiar with the existing research but they do not necessarily mention it in the policy documents themselves. 	

Description Sheet 7. Public Administration of Copyright

Description Sheet 7 suggests to define the responsibilities and main operations of each relevant public organization administering copyright matters, the services they offer and, when possible, the extent to which their services are used. In addition, the authorities to whom they are accountable as well as their relations to other relevant departments, agencies and other public actors are mapped. The public organizations in question could be government departments or agencies responsible for copyright matters, or other public actors, such as a copyright board or a similar advisory organization, or a registration body or other public agency involved in public administration of copyright matters.⁷¹ The description can also cover more detailed information on specific units dealing with copyright-related issues.

The description sheet also proposes to study the availability of public information on the repertoire of copyrighted works by looking at the registration or recordation bodies and systems used. Both the national and the international systems of registration or recordation could be covered.

A thorough assessment could also include information on the public expenditure on the administration of copyright and the number of personnel (in full time equivalents) working for that purpose. The administrative capacity can be assessed through the level of personnel's training in copyright matters in public organizations administering copyright issues.

The government agencies and their tasks should be clearly defined and cover the application of all legislative measures. The results should be analyzed together with data concerning copyright law and policy (Description Sheets 5 and 6). Other relevant actors that should be taken into account in order to get a full understanding of the execution of copyright legislation are discussed in Description Sheet 8 concerning enforcement by public authorities and in Description Sheet 12 concerning collective management organizations.

⁷¹ For example, when there exists no agency specifically responsible for copyright questions, the study can focus on other public bodies or public actors that share these responsibilities.

DESCRIPTION SHEET 7. PUBLIC ADMINISTRATION OF COPYRIGHT

Description of government departments, government agencies and other public actors responsible for the public administration of copyright matters or otherwise involved in the public administration of copyright matters:

For each department, agency or other actor define

- their responsibilities and main operations regarding copyright,
- the authorities they are accountable to,
- their relations to other relevant departments, agencies and other public actors,
- the services they offer, and
- when possible, the extent to which their services are used.

Description of registration or recordation bodies and systems used in the country⁷²

Guidelines for data collection	The information can be collected as a desktop study using available information sources, complemented with expert interviews.	
Definitions	<i>Public actors</i>	Actors with responsibilities in public governance of copyright-related matters at the national and other administrative levels (such as regions, provinces or states)
	<i>Registration / recordation body</i>	Public body recording or registering the creation of copyrighted works in order to establish evidence of authorship
Limitations	The description does not provide information on the level of use of public actors' services or registration or recordation bodies and systems.	

Enforcement

Enforcement is a key area to consider when measuring the efficiency of the copyright system as a whole; a well-organized enforcement system will enhance the efficiency of copyright law. With growing possibilities for easy exchange of copyrighted works in digital form, copyright infringement has taken new forms in the 21st century. In this context, evaluating the operation of official copyright enforcement procedures is a crucial step in finding solutions for possible updates of the copyright enforcement system.

The acts of enforcement cover three steps that follow a lack of compliance to regulations: firstly, the search for infractions and for information concerning them; secondly, the search for remedies through courts or other methods of dispute resolution; and thirdly, the carrying out of executive or judicial orders. Each step can involve both public authorities (police forces, custom officers, courts, etc.) and private parties (infringers and injured parties, private advisors or arbitrators). Each of these steps also includes costs incurred by the actors involved: public authorities will bear costs related to the search for infractions and setting up and maintaining law courts while private parties will incur costs when pursuing remedies.

⁷² For more information on registration and recordation systems in WIPO Member States, see the WIPO summary of the responses to a questionnaire for survey on copyright registration and deposit systems (2010), available at http://www.wipo.int/export/sites/www/copyright/en/registration/pdf/registration_summary_responses.pdf.

The efficiency of copyright enforcement can be assessed through the costs and benefits of enforcement procedures, both for society as a whole and for individual actors. Parties will estimate costs and benefits before determining whether or not to take the steps towards enforcement of copyright rules. If this analysis encourages them to renounce enforcing their rights, copyright law will lose most of its efficiency. Although cost-benefit analysis is not directly addressed in the indicators concerning the functioning of copyright enforcement, they have all been designed while keeping it in mind and aim at addressing it indirectly.

This area discusses enforcement of copyright laws and policies by public authorities, covering their role in the search for infractions and for remedies, as well as work against copyright infringements by private parties and alternative methods of dispute resolution, focusing on the private search for remedies in and out of court. The third step of enforcement, the carrying out of judicial order, is not evaluated here as it is not specific to copyright enforcement. However, a separate study evaluating the efficiency of authorities to carrying out judicial orders would be a useful complement to studies based on this methodology.

A description of public copyright enforcement actors and the procedures at their disposal realized according to Description Sheet 8, together with information on the existence of non-governmental organizations working against copyright infringement, will offer an overview of the responsibilities, tasks and the operations of public and private actors taking part in the enforcement of copyright. In addition to a description of enforcement procedures, information should be gathered on sanctions and remedies available in cases of copyright infringement: Description Sheet 9 – *Sanctions and Remedies for Copyright Infringement* aims to map the sanctions and remedies available by law, and Methodology Card 7 – *Application of Sanctions and Remedies for Copyright Infringement* provides a basis for the analysis of the actual application of these sanctions and remedies.

Besides public enforcement procedures, some legal systems offer the possibility to settle copyright disputes without resorting to litigation in court. The availability and use of alternative dispute resolution mechanisms in cases of copyright infringement as well as the procedures connected to them are covered in Description Sheet 10 – *Availability of Alternative Dispute Resolution Mechanisms* and Methodology Card 8 – *Use of Alternative Resolution Mechanisms for Solving Copyright Disputes*. The analysis based on these indicators may also support the understanding of the reasons for the use of different types of out-of-court dispute resolution mechanisms in copyright disputes.

INDICATORS CONCERNING THE AREA ENFORCEMENT:

Description Sheet 8.	Enforcement by Public and Private Actors
Description Sheet 9.	Sanctions and Remedies for Copyright Infringement
Methodology Card 7.	Application of Sanctions and Remedies for Copyright Infringement
Description Sheet 10.	Availability of Alternative Dispute Resolution Mechanisms
Methodology Card 8.	Use of Alternative Resolution Mechanisms for Solving Copyright Disputes

Box 11. Indicators concerning Pillar II, area “Enforcement”

Description Sheet 8. Enforcement by Public and Private Actors

The following description sheet covers enforcement procedures in cases of copyright infringement and is divided according to different actors involved in enforcement processes. This primarily concerns public authorities: courts, prosecutors, customs, police, or other organizations like public supervisory or anti-piracy bodies. A description of public copyright enforcement actors and the procedures at their disposal will offer an overview of the responsibilities, tasks and operation of public authorities. This part could be complemented with more specific information on the training of public authorities in copyright issues as well as on the existence of special institutions or units for handling copyright issues.

Alongside public authorities fulfilling their roles determined by legislation, private actors have a role in creating the conditions for efficient enforcement of copyright. For example, individual right holders might be able to organize themselves with the purpose of monitoring their rights, following the development of copyright law, acting for the prevention of copyright infringement, informing the public on copyright rules, etc. Describing the work against copyright infringements by non-governmental organizations requires clarifying the existence, size (number of members, operative budgets, etc.), role and operation of such private organizations. The data could concern the possible support of the government for the right holders' anti-piracy and other organizations in their work against copyright infringement, possible requirements for reporting from the organizations that receive financial support from government about the effects, outcomes and costs of their activities, as well as their cooperation at the international level. The description could be broadened to include any anti-piracy measures and campaigns organized by the private sector.

Description Sheet 8 also covers cooperation between authorities and anti-piracy bodies of different countries, which is important in preventing unauthorized production, dissemination and use of copyrighted works at an international level.⁷³ Another important aspect of the work of private parties in the fight against copyright infringement is the use of technological protection measures (technological tools

⁷³ The importance of creative goods in world exports render necessary international collaboration in investigation and proceedings concerning unauthorized copyright transactions. The amount of cases where international cooperation between police or customs takes place, and the international cooperation of copyright organizations and anti-piracy organizations will therefore provide useful information concerning the efficiency of copyright enforcement.

with the purpose to prevent infringement of copyright, in particular unauthorized copying and exchange of copyrighted content in digital form). This description sheet recommends listing the main types of technological protection measures implemented by right holders in different industries and providing statistics on their use. Other recent trends in copyright enforcement, such as the responsiveness of public action against copyright infringement, could also be examined as part of this study.

Analysis of the sanctions and remedies used by right holders (see the other description sheets and methodology cards of the *Enforcement* area) will tell about the effectiveness of the work of private parties against copyright infringement.⁷⁴ In addition, the amount of legal expenses in court cases for different parties represents the risks connected to taking cases to court. Possible further studies could cover the issues that affect taking cases to court, such as the ease of pressing charges and identifying infringers, and the typical duration and costs of criminal and civil proceedings.

DESCRIPTION SHEET 8. ENFORCEMENT BY PUBLIC AND PRIVATE ACTORS

Description of the operation of the authorities in charge of copyright enforcement, as well as the (legal) provisions determining the enforcement by public authorities. Consider the following actors/institutions:

- Courts
 - Main principles of national court proceedings
 - Types of proceedings: civil proceedings, criminal proceedings, special proceedings, out-of-court proceedings (briefly)⁷⁵
 - Composition of the court: options available, qualification requirements for judges
 - Possible centralization of intellectual property matters in specialized courts
 - Appealing a decision of the court
- Prosecutors
 - Organization and general duties of the prosecution service
 - Prosecutor's jurisdiction
 - Prosecutor's role and duties during criminal proceedings: prosecutor's role in the pre-trial investigation, penal order proceedings, consideration of charges and court proceedings, prosecutor's right to bring charges
- Police
 - Pre-trial investigation and coercive measures (such as seizure and home search) available to the police
 - Existence of a special unit in the police force for handling IP/copyright issues
- Customs
 - Tasks and organization
 - Measures under the national law
 - Measures under regional or international law
- Public supervisory or anti-piracy bodies
 - Tasks and organization
 - Coercive and searching methods available to these bodies

⁷⁴ The analysis could be further extended with the issues of general access to justice, i.e. the right of equal access to an independent and impartial court, tribunal and other dispute resolution mechanisms for the determination of civil disputes or criminal charges. The analysis could also cover the possibilities for preliminary rulings.

Information on the existence of non-governmental organizations working against copyright infringement (such as anti-piracy centers), including:

- Name, description and activities of such organizations
- Possible role/mandate in national legislation for anti-piracy bodies (yes/no, description)
- Support from the government for rights owners' organizations in their work against piracy (amount and proportion in the organization's operational budget), as well as possible requirement for reporting from the subsidized organizations (yes/no)
- The amount of right holders represented by private anti-piracy bodies

Description of the international cooperation in the work against piracy (steps taken at an international level to lower the amount of unauthorized sharing and distribution of copyrighted works)⁷⁶:

- Amount of copyright enforcement cases requiring international cooperation between police or customs per year
- International cooperation of private copyright organizations and anti-piracy organizations in the enforcement of copyright (yes/no)
- Other cooperation with the authorities of other countries in the work against piracy (yes/no, between whom?)

Description of the recent trends in enforcement, including:

- Level of use of technological protection measures (digital right management devices, holograms, etc.), including the list and description of technological protection measures used in different industries and statistics concerning the use of each type of technological protection measures
- Information on how responsive and fast is the public enforcement action.

Definitions	<i>Civil case</i>	A case handled in a civil procedure, normally concerning a dispute between two or more private parties. Civil procedures are always initiated by the plaintiff with no involvement of public prosecutors.
	<i>Criminal case</i>	A case in which the defendant is accused of a breach of law by a prosecutor. The case may also involve victims seeking compensation.
	<i>Non-contentious civil case</i>	Non-contentious civil cases are instigated with an application in which the court is requested to confirm an action or record a matter in a public register.
	<i>Public supervisory anti-piracy bodies</i>	Publicly financed organizations specialized in copyright enforcement or the search for copyright infringement
	<i>Special proceedings</i>	Proceedings such as certain summary proceedings (both civil and criminal) like the penal order procedure, and proceedings concerning the granting of precautionary measures.
	<i>Technological protection measures</i>	Technological tools that effectively control the access and use of a copyrighted work, such as Digital Rights Management devices, anti-copying devices, etc.
Guidelines for data collection	The information can be collected as a desktop study complemented with expert interviews with the actors/institutions listed above.	
Limitations	Specific sets of data concerning the level of use of technological protection measures and enforcement of copyright by public authorities might not be available.	

⁷⁵ This last type of proceedings will be analyzed in details as part of Description Sheet 10 – *Availability of Alternative Dispute Resolution Mechanisms*.

⁷⁶ This international work can take place on the basis of bilateral agreements or multilateral treaties, whether they are specifically designed for copyright enforcement or are part of general judiciary cooperation. This is in some cases connected to the data of Description Sheet 1 – *International and Regional Context*. Both sets of data will indicate a general tendency for, or lack of, international cooperation. The amount of copyright enforcement cases can be compared to the number of requests for investigation and court cases required in the next indicator, in order to evaluate the importance of international cooperation at the scale of a country's general copyright enforcement procedures.

Description Sheet 9. Sanctions and Remedies for Copyright Infringement

The sanctions and remedies available in cases of copyright infringement are at the core of copyright enforcement. They are presented here in two parts: first, a description of sanctions and remedies for copyright infringement available by law; second, an analysis of the level of enforcement of copyright law through the actual application of these sanctions and remedies.

It should be remembered however that copyright infringement can be divided into different classes of unlawful acts: commercial violation, infringement facilitation (for instance, websites facilitating the search for unlawful copies), and individual infringement by end-users. These acts are subject to major differences in enforcement costs, effectiveness of enforcement as a deterrent and actual penalties. Since the conditions for enforcement decisions are distinct in these three cases, they should be dealt with separately.

The purpose of Description Sheet 9 is to map the sanctions for copyright as well as the remedies available to the victims. For this purpose, the maximum penalty mentioned in the law for copyright infringement is likely to provide indication concerning the deterrent effect of copyright law against piracy, and as such enlighten the overall functioning of enforcement.⁷⁷ The severity of penalties for copyright infringement can be analyzed by comparing it to other crimes with the same level of penalties. It is also recommended to provide, if possible, a description of the evolution in time of penalties and remedies available, in order to understand legislative trends concerning copyright enforcement. Another important aspect of copyright enforcement is the choice of procedure by the victims; when both civil and penal procedures are available, it is useful to understand the preferences of stakeholders and their reasons in order to assess the efficiency of both solutions.

Description Sheet 9 should be understood both as a complement of Description Sheet 8 in its description of enforcement procedures and actors, and as a basis for interpreting the results of Methodology Card 7 which provides information on the actual use of sanctions and remedies in cases of copyright infringement. Furthermore, the description should cover copyright infringement sanctions in a wide sense, taking into account provisions such as sanctions against circumvention of technological protection measures (if criminalized in the country in question). General provisions concerning the legal protection of technological protection measures, digital rights management and rights management information are covered in Description Sheet 5 – *Copyright Law*.

⁷⁷ However, when the maximum penalty is never used in practice, this parameter might only describe the criminal policy of the country. The application of sanctions and remedies for copyright infringement are assessed through Methodology Card 7.

DESCRIPTION SHEET 9. SANCTIONS AND REMEDIES FOR COPYRIGHT INFRINGEMENT

Description of the sanctions and remedies available by law in cases of copyright infringement; consider the following categories:

- Penalties for copyright infringement
 - Types of penalties available (such as community service, fines or prison) for each type of copyright infringement and their conditions of application
 - Maximum penalties available (in each type of penalties)
- Remedies and calculation of damages
 - Types of remedies available to the victims of copyright infringement
 - Types of damages subject to compensation in cases of copyright infringement
 - Rules for calculating the amount of damages

Description of the recent trends in the award of sanctions and compensations in cases of copyright infringement:

- Evolution of the penalties and remedies available over time
- Preference of different actors concerning the procedure to be followed (Do victims prefer to initiate civil or penal proceedings? For what reasons? Are these choices different when the victim is an organization or a private person?)

Definitions	<i>Remedy</i>	Remedies are the ways in which a right is enforced, satisfied or compensated for by a court after its breach inflicted some harm or injury to a victim. Remedies include damages, restitution, coercive remedies and declaratory remedies.
Guidelines for data collection	The information can be collected as a desktop study using available databases, online information sources and literature, complemented with expert interviews with the actors and institutions concerned.	
Limitations	Information concerning the maximum penalty mentioned in the law for copyright infringement will only tell about actual copyright enforcement as long as these maximum penalties are used in practice; if it is never the case, this parameter only provides information on the criminal policy of the country.	

Methodology Card 7. Application of Sanctions and Remedies for Copyright Infringement

Even when the law grants efficient procedures as well as high penalties and reasonable compensations in cases of copyright infringement, the actual enforcement of copyright will depend on their use by the parties to a dispute and by judges. This methodology card measures the average penalty given by judges (which directly tells about the application of sanctions in court), the number of requests for investigation, and the number of court cases, as part of both criminal and civil procedures.

The data collected through this methodology card will therefore be analyzed on the basis of comparisons: a large number of requests for investigations leading to a significantly lower number of court cases might be a sign of malfunctioning of the enforcement system; the average level of penalties could be compared over time to the number of court cases and requests for investigation in order to assess the deterrent effect of these penalties; etc. Those figures analyzed side by side should point at anomalies in the use of sanctions and remedies for copyright infringement. The results will be further clarified by the information concerning out-of-court dispute resolution discussed in connection with Description Sheet 10 – *Availability of Alternative Dispute Resolution Mechanisms*.

In addition to the parameters presented, the topic could also be studied by calculating the number and proportion of court decisions resulting in legal sanctions. Furthermore, the figures collected through this indicator could be compared to penalties for other crimes (such as industrial rights offences) to better understand the relative severity with which copyright-related crimes are considered in the legal system.

METHODOLOGY CARD 7. APPLICATION OF SANCTIONS AND REMEDIES FOR COPYRIGHT INFRINGEMENT

Key questions	How are legal sanctions and remedies applied in cases of copyright infringement? Are public procedures efficient at enforcing copyright?	
Description	Analysis of the average penalties given in cases of copyright infringement, and comparison between the number of requests for investigation and the number of court cases	
Parameters to measure	<p>1. Penalties for copyright infringement</p> <ul style="list-style-type: none"> • The average penalty given by judges <p>2. Requests for investigation</p> <ul style="list-style-type: none"> • Number of requests for investigation • Parties to the request and subject matter in question • The number of pressed charges / investigations <p>3. Court cases, criminal procedure</p> <ul style="list-style-type: none"> • Number of court cases, criminal procedure • Proportion of court decisions contested in higher level courts • Average length of procedure <p>4. Court cases, civil procedure</p> <ul style="list-style-type: none"> • Number of court cases, civil procedure • Proportion of court decisions contested in higher level courts • Average length of procedure 	
Definitions	<i>Request for investigation</i>	Steps that will induce an official investigation in a supposed breach of copyright law
Guidelines for data collection	<p>The data can be collected as a desktop study using available statistics and other national and international information sources, complemented with expert interviews.</p> <p>The data should be collected over a period allowing meaningful analysis and calculation of averages, for example 5 years. The analysis should distinguish between commercial violation of copyright, infringement facilitation and individual consumer infringement.</p>	
Limitations	<ul style="list-style-type: none"> • The absolute number of court cases might as well tell about the general level of litigiousness of the society, or be a sign of abuse of copyright law. • The costs of procedure incurred by the parties are likely to affect the willingness to go to court; however, the costs are difficult to measure and can be influenced by several factors unrelated to copyright enforcement. • Receiving precise data concerning Parameter 2 (requests for investigation) is not possible if the police do not keep (public) statistical records of requests for investigation. • Many cases where infringement of copyright is involved are not necessarily cases based primarily on copyright. Statistical data (on charges pressed by the prosecutor) might be based on the primary crime only. • Statistical data might not be separately available for commercial violations, infringement facilitation and individual consumer infringement. 	

Description Sheet 10. Availability of Alternative Dispute Resolution Mechanisms

The description of alternative dispute resolution mechanisms, as specified in Description Sheet 10, includes information on the types of alternative dispute resolution mechanisms available as an alternative to litigation and the availability of assistance from third parties like organizations, bodies or lawyers with activities linked to dispute resolution on copyright issues. It also describes the procedures connected to each available mechanism. The purpose of this description is to map and present the dispute resolution mechanisms that will be the subject of Methodology Card 8. It will also support the understanding of the reasons for the level of use of each alternative dispute resolution mechanisms in copyright disputes.

Alternative resolution mechanisms for solving copyright disputes can be defined as processes and techniques that act as a means for disagreeing parties to settle disputes without resorting to litigation in traditional courts. These mechanisms include mediation, conciliation, arbitration, recommendation and any other method designed to achieve a settlement with the help of a third party. They are also called “external dispute resolution” methods in some countries. Negotiation is another alternative dispute resolution method where the parties reach an understanding without the help of a third party. However, disputes resolved solely through negotiation are not usually publicly documented and as a result this type of dispute resolution mechanism is not covered by the description sheet.

The data should be analyzed while taking into account information on the legal framework set for the use of dispute settlement instruments (see Description Sheet 5 – *Copyright Law*).

DESCRIPTION SHEET 10. AVAILABILITY OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

Description of the alternative dispute resolution mechanisms available in the country; consider the following topics:

- Types of alternative dispute resolution mechanisms available
- Rules and procedures connected to each available dispute resolution mechanism
- Availability of assistance from third parties: organizations, bodies or lawyers with activities linked to dispute resolution on copyright issues
- Enforceability of each available dispute resolution mechanism

Definitions	<i>Alternative dispute resolution mechanisms</i>	Processes and techniques that act as a means for disagreeing parties to settle disputes without resorting to litigation in traditional courts. These mechanisms include negotiation, mediation, conciliation, arbitration and recommendation. Also known as <i>External dispute resolution</i> in some countries.
	<i>Arbitration</i>	Alternative dispute resolution method where the disputing parties involved present their disagreement to one or a panel of private, independent and qualified third party arbitrators. The arbitrator(s) determine the outcome of the case through a decision called an "award".
	<i>Conciliation</i>	Alternative dispute resolution process similar to mediation where a (sometimes court-appointed) conciliator seeks to identify a right that has been violated and searches in collaboration with the parties to find the optimal solution. Contrary to mediation, it is the conciliator, not the parties, who often develops and proposes the terms of settlement.
	<i>Copyright disputes</i>	Disputes where the main issue or one of the basic issues is based on copyright legislation.
	<i>Mediation</i>	Alternative dispute resolution method where a neutral and impartial third party, the mediator, facilitates dialogue in a structured process to help parties reach a conclusive and mutually satisfactory agreement. Contrary to informal negotiation, mediation has a structure and timetable and the process is private and confidential. A successful mediation process ends with a written agreement that binds the parties contractually.
	<i>Recommendation</i>	Alternative dispute resolution process where the parties bring their dispute in front of a (group of) specialized expert(s) that will provide them with an opinion on their case. Recommendations are not binding but may be very useful in offering authoritative answers concerning specific disputed questions.
Guidelines for data collection	The information can be collected as a desktop study using available national and international information sources. It can be complemented with expert interviews or case studies.	
Limitations	The indicator does not take into account the cases where parties reached a settlement without the help of a third party (through negotiation), considering that those cases are not publicly documented.	

Methodology Card 8. Use of Alternative Resolution Mechanisms for Solving Copyright Disputes

The goal of this indicator is to study the level of use of the alternative dispute resolution mechanisms presented in application of Description Sheet 10. Numerical data on the number of copyright disputes that are resolved out of court is collected and compared to the numbers of cases taken to court (see Methodology Card 7 – *Application of Sanctions and Remedies for Copyright Infringement*). When available, data on the duration of the dispute resolution proceedings and the costs incurred by the parties could also be analyzed. Altogether, the results will show whether copyright litigation in a particular legal system is resolved rather in or out of court.

An additional case study could be made on the use of alternative dispute resolution clauses in copyright-related contracts. It would mainly provide descriptive information on the types of contractual dispute settlement clauses used and the alternative dispute resolution mechanisms preferred by parties in copyright-related contracts.

The interpretation of this indicator will depend on the general legal enforcement policy of a country. A low level of out-of-court dispute resolution might be a sign of satisfaction with the court system for the defense of rights, but it might also indicate that stakeholders are not sufficiently informed on alternative dispute resolution mechanisms. The value of monetary claims and the length and cost of the alternative procedures available can help identify the reasons behind the level of use of each dispute resolution mechanism.

Moreover, the use of dispute resolution mechanisms as well as all methods of copyright enforcement by private parties (in and out of court) can be influenced by the level of stakeholders' awareness on their rights or indicate a lack of trust in both in-court and out-of-court dispute resolution mechanisms. The results based on this indicator should therefore be compared to information on the number of litigations settled in court (see Methodology Card 7 – *Application of Sanctions and Remedies for Copyright Infringement*).⁷⁸

⁷⁸ In order to get information on the awareness of their rights by the stakeholders, a comparison can be made to the results of Methodology Card 11 – *Copyright-related Education as Part of the Education of Professionals for Creative Industries*. The results can also be compared to data on the unauthorized use of copyrighted works in physical form (Methodology Card 20) for determining whether a large number of unauthorized uses will end up in litigation. Other comparative information could concern the use of technical means by right holders to monitor the use of their works (see Description Sheet 11 – *Individual Exercise of Rights* on the use of DRM technologies).

METHODOLOGY CARD 8. USE OF ALTERNATIVE RESOLUTION MECHANISMS FOR SOLVING COPYRIGHT DISPUTES

Key question	How often are copyright disputes or litigations resolved through alternative dispute resolution mechanisms?	
Description	Level of use of alternative dispute resolution mechanisms in copyright disputes, as opposed to the use of copyright enforcement	
Parameters to measure	<p>1. Number of copyright-related cases solved through each type of alternative dispute resolution mechanisms available</p> <ul style="list-style-type: none"> • If possible, compare to the number of cases solved through litigation <p>2. Length and cost of the alternative dispute resolution procedures</p> <ul style="list-style-type: none"> • Length and cost of the procedure for each type of alternative dispute resolution mechanisms⁷⁹ (if relevant, applicable rules concerning length and cost of procedure) • Value of monetary claims: typical value range of claims made through each ADR mechanism 	
Definitions	<i>Alternative dispute resolution mechanisms</i>	Processes and techniques that act as a means for disagreeing parties to settle disputes without resorting to litigation in traditional courts. These mechanisms include negotiation, mediation, conciliation, arbitration and recommendation. Also known as <i>External dispute resolution</i> in some countries.
	<i>Arbitration</i>	Alternative dispute resolution method where the disputing parties involved present their disagreement to one or a panel of private, independent and qualified third party arbitrators. The arbitrator(s) determine the outcome of the case through a decision called an “award”.
	<i>Conciliation</i>	Alternative dispute resolution process similar to mediation where a (sometimes court-appointed) conciliator seeks to identify a right that has been violated and searches in collaboration with the parties to find the optimal solution. Contrary to mediation, it is the conciliator, not the parties, who often develops and proposes the terms of settlement.
	<i>Copyright disputes</i>	Disputes where the main issue or one of the basic issues is based on copyright legislation.
	<i>Mediation</i>	Alternative dispute resolution method where a neutral and impartial third party, the mediator, facilitates dialogue in a structured process to help parties reach a conclusive and mutually satisfactory agreement. Contrary to informal negotiation, mediation has a structure and timetable and the process is private and confidential. A successful mediation process ends with a written agreement that binds the parties contractually.
	<i>Recommendation</i>	Alternative dispute resolution process where the parties bring their dispute in front of a (group of) specialized expert(s) that will provide them with an opinion on their case. Recommendations are not binding but may be very useful in offering authoritative answers concerning specific disputed questions.
Guidelines for data collection	<p>The data can be collected as a desktop study using available national and international information sources, complemented with interviews with organizations, bodies or lawyers with activities linked to dispute resolution on copyright issues.</p> <p>The data should be collected over a period allowing meaningful analysis, for example 5 years. The use of appropriate measures of central tendency (mean, median and/or mode) and measures of dispersion (such as minimum and maximum values) can be meaningful; see instructions in the subchapter “Analysis of Data” on page 36.</p> <p>When data is not available, a case study could be made with a focus on the types of clauses promoting alternative dispute resolution methods in copyright-related contracts and alternative dispute resolution methods most often used.</p>	
Limitations	The indicator does not take into account the cases where parties reached a settlement without the help of a third party (through negotiation), considering that those cases are not publicly documented. In many other cases, precise statistical data might not be available, or it might not be possible to distinguish data concerning copyright disputes from other types of disputes submitted to alternative dispute resolution methods.	

⁷⁹ In addition to legal fees, the costs of litigation include the costs of time spent and attention given. These costs might in particular affect the decisions of SMEs as compared to large companies that have better financial means to meet litigation costs.

Management of Rights

Copyright will provide revenue only as the rights are efficiently exercised. The area *Management of Rights* covers both individual exercise and collective management of rights, and suggests methods for assessing the operation of the copyright system from these perspectives. This includes mapping those elements of the national copyright system that facilitate contract-making and licensing, thoroughly describing the system of collective management of rights in the country and specifying the rights to remuneration and compensations.

Both legal and other arrangements will have an effect on the exercise of rights by individual right holders. A description of the most commonly used licensing models in different industries, complemented by a review of public and private measures to facilitate the functioning of the markets and distribution of creative works internationally, will constitute a basis for understanding the operation of licensing markets and the markets for copyrighted products and services. Description Sheet 11 – *Individual Exercise of Rights* provides guidelines for the assessment of this element of the system.

The costs associated with transfer of rights on an individual basis can vary to a high degree, and arrangements for collective management of rights can be the most efficient solution in many situations.⁸⁰ Therefore, the systematic assessment of management of rights in the country also requires a thorough description of the judicial framework concerning collective management of copyrights and the collective management organizations (CMOs) operating in the country, based on Description Sheet 12 – *Collective Management of Rights*. This information can be complemented with an assessment of the volume of the operations as well as the efficiency of the CMOs considered, following Methodology Card 9 – *Efficiency of Collective Management Organizations*.

INDICATORS CONCERNING THE AREA MANAGEMENT OF RIGHTS:

Description Sheet 11. Individual Exercise of Rights

Description Sheet 12. Collective Management of Rights

Methodology Card 9. Efficiency of Collective Management Organizations

Box 12. Indicators concerning Pillar II, area “Management of Rights”

⁸⁰ The justification of collective management of rights has its basis in diminishing transaction costs (costs incurred in the process of making an economic exchange), which will be discussed later in Methodology Card 18 – *Transaction Costs in Transfer and Licensing of Rights*.

The economic, social and cultural values of collective management are highlighted in a study by KEA European Affairs, *The Collective Management of Rights in Europe – The Quest for Efficiency* (2006), available at http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/study-collective-management-rights-/study-collective-management-rights-en.pdf

Description Sheet 11. Individual Exercise of Rights

Description Sheet 11 suggests to gather information on individual contract making and licensing as well as on the legal and other arrangements to facilitate the functioning of the markets for rights. The purpose is to map the available tools for the individual exercise of rights in order to get a general understanding of this particular element of the copyright system's operation. The focus will be on the arrangements made in the country to facilitate individual licensing. This description will also constitute a basis for understanding the operation of licensing markets and the markets for copyrighted products and services.

The first area of the description sheet discusses individual contract-making and licensing by mapping the most commonly used licensing models in different industries. The analysis can cover different situations where direct licensing has been used (licensing contracts negotiated and concluded between copyright owner and licensee without the intermediary of collective management organizations). When relevant, the description can also include information on the use of digital rights management (DRM) technologies for managing the rights in particular industries.⁸¹ Although DRM technologies are globally available, there might be preferences at national level for some types of DRM technologies or infrastructures, barriers for the use of DRM due to commercial policy or other factors, as well as institutional or legal incentives for their use (such as anti-circumvention measures). The descriptive information collected here can provide an understanding of these issues.⁸²

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

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

⁸¹ Digital rights management (DRM) technologies are technical tools that can be used in content recognition, for expressing the terms and conditions for use, for monitoring the use, and for preventing unauthorized use. DRM systems can include one or more technological protection measures (TPMs), rights management information (RMI) or end user licensing agreements (EULAs). Some legal systems include provisions related to TPMs and RMI. The WIPO Internet Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) require to prohibit circumventing of TPMs and tampering with, removing or altering RMI.

⁸² Further research concerning digital rights management could cover the types of DRM technologies and infrastructures available concerning different types of works, the industries in which DRM technologies and infrastructures are used, and the incentives and barriers for the use of DRMs due to commercial policy or some other factors. Such topics are included in Description Sheet 8, which focuses on the use of DRM technologies in the work against copyright infringement.

Finally, Description Sheet 11 also covers the use of national or international standards for identification of rights, the existence of organizations and other arrangements facilitating distribution of creative works internationally, and the availability of other arrangements or services facilitating the individual exercise of rights. These specific arrangements could be connected to particular licensing models such as pooling (copyright owners pooling their rights in order to gain a stronger position on the market when contracting licenses), brokering (use of licenses brokers' services by copyright owners) or open licensing (the right holder decides to use his/her rights by allowing others to use works freely, with certain reservations cited in the license).⁸³

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

⁸³ For instance, the Creative Commons web-based licensing service (Creative Commons Inc.[™]) represents an example of an arrangement facilitating individual licensing with open licensing. For more information, see <https://creativecommons.org/>.

DESCRIPTION SHEET 11. INDIVIDUAL EXERCISE OF RIGHTS

Description of individual contract-making and licensing:

- The most commonly used licensing models in different industries
- The use of DRM technologies for managing the rights

Description of the measures taken by public authorities to facilitate the functioning of the markets for rights in different industries; consider for example:

- Compulsory, statutory and extended collective licenses (if applicable, include information on license rates and terms of licenses)
- Limitations of rights
- Provisions on contractual arrangement in legislation; consider for example the specific legal provisions concerning rights to works created within an employment relationship and corrective measures and remedy mechanisms in favor of weaker parties
- Solutions provided by the competition law regime
- Solutions provided by the consumer protection regime

Description of the measures taken by the right holders' and users' organizations (including trade unions, professional associations or guilds) to facilitate the functioning of the markets for rights; consider for example:

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

Description of the use of standards or symbols for identification of rights.

Description of the organizations and other arrangements that facilitate distribution of creative works internationally.

Description of other arrangements and services facilitating individual exercise of rights (for instance pooling, brokering and open licensing).

Guidelines for data collection	The information can be collected as a desktop study using available national and international information sources. It can be complemented with expert interviews. The analysis can focus also on different industries or categories of subject matter.	
Definitions	<i>Brokering</i>	The use of intermediary functions or agents helping to reach an agreement
	<i>Compulsory/Statutory licensing</i>	Situations where specific uses of copyrighted works are to be organized without the possibility for right holders to refuse granting the right to use his work.
	<i>Extended collective licensing</i>	System where the law extends the effect of the agreements concluded between CMOs and users in a way that allows the user to use, on conditions laid down in the agreement, also works by authors whom the organization does not represent.
	<i>Framework agreements</i>	Agreements with concerning parties (government, right holders' or users' organizations), which set out terms and conditions under which specific actions (in the markets for rights) concur throughout the term of the agreement.
	<i>Model contracts and clauses</i>	Models of ready-made contracts or contract clauses that can be used by private parties as examples
	<i>Open license</i>	License that with few or no restrictions grants permission to access to content (any kind of artistic and literary works) and provides the possibility to modify and redistribute it as long as attribution is given to the authors.
	<i>Pooling</i>	Voluntary collaborative licensing model using aggregated resources or property and subjecting them as a common pool for the purposes of management of rights.
Limitations	The results will neither tell about the awareness on the measures described nor the level of their use.	

Description Sheet 12. Collective Management of Rights

This description sheet aims at providing a thorough description of collective management of copyrights and the collective management organizations operating in the country. It covers the judicial framework concerning collective management of rights, as well as the operation, representativeness and territorial coverage of national Collective Management Organizations (CMOs). Information on trans-border management of rights and on the existence of representation agreements between collective management organizations will give a general overview of management of rights at the international level.

The description should cover the different rights that are managed collectively in the country. An exemplary list of different rights to be included in the analysis is provided in Box 13.

EXAMPLES OF RIGHTS AND OTHER AREAS SUBJECT TO COLLECTIVE MANAGEMENT:

- Reproduction rights, including
 - Mechanical reproduction rights in musical works
 - The right of reprographic reproduction (photocopying)
 - Visual artists' reproduction right
- Performing rights, including
 - Public performance of artists' performances,
 - Public performance of audiovisual works,
 - Public performance of phonograms (producers)
 - Grand rights (theatrical)
 - Music performing rights (authors)
- Transformation (adaptation) rights
- Rights of communication to the public, including
 - Distribution rights
 - Making available on demand
 - Possible other ways of communication to the public
- Broadcasting rights, including
 - Broadcasting through television or radio
 - Cablecasting
 - Webcasting
 - Simulcasting
- Secondary use of radio or television broadcasts, including
 - Cable retransmission
 - Other secondary uses of radio and television broadcasts
- Rental and lending rights, including compensation for public lending
- Related rights (rights of performers and producers of phonograms)
- Compensations or remunerations related to copyright exemptions for the benefit of special interest groups
- Compensation for private copying
- Droit de suite

Box 13. Different rights potentially subject to collective management

Information collected through this description sheet is closely connected to Methodology Card 9 focusing on the effectiveness of CMOs as well as to Description Sheet 5

which presents the national copyright law. It however provides a more detailed overview of the judicial framework concerning collective management of rights, including detailed information on both copyright law and other laws determining the operation of CMOs, such as competition law and laws governing non-profit associations. It focuses on issues specific to collective management, including statutory or compulsory licensing, compensation and remuneration systems as well as special national regimes such as extended collective licensing.

In addition to the information specified in this description sheet, a possible further step to analyze the topic would be to clarify the proportion of copyright revenue streams that are managed by CMOs from the total of all copyright revenue streams (including individual management of rights). A method for studying the total of direct copyright revenue streams in a country is presented in Methodology Card 13 – *Direct Copyright Revenue Streams for Different Stakeholders*.

DESCRIPTION SHEET 12. COLLECTIVE MANAGEMENT OF RIGHTS

Description of the organizational aspects of collective management of rights:

- The judicial framework concerning collective management of rights, including the following issues:
 - Conditions and rules applicable to CMOs
 - Collective management arrangements based on law, including:
 - Statutory/compulsory licenses
 - Provisions on fair compensation or remuneration for uses that are covered by limitations or exceptions to copyright⁸⁴
 - Extended collective licenses
 - Legal presumption as a way to address and monitor non-members' rights
- Other organizational aspects of CMOs
 - Transparency of the operation of CMOs: for example, are annual reports available and do they provide detailed break-downs of different sources of revenue and distribution to various right holders, are price lists for users easily accessible and are accounts published?
 - Is there a body approving CMOs or supervising their operation?
 - Is competition law applicable to the operations of CMOs and how do they comply with it?
 - Have there been significant court cases concerning the operation of CMOs?

Description of each collective management organization (CMOs) with information on:

- Its year of establishment
- The industries/right holder categories represented
- The rights collectively managed
- The number of CMOs competing on the same rights or markets
- The number of right holders represented
- Collection processes; consider the following sets of information:
 - Applicable rules
 - Types and characteristics of the contracts between right holders and CMOs, for example concerning possible exclusivity clauses and restrictions on the transfer of rights
 - Types and characteristics of the licenses between users and CMOs⁸⁵
- Distribution processes; consider the following sets of information:
 - Applicable rules
 - Keys or agreed formulas determining the distribution of revenues
- The total amount of remuneration collected during the last year
- Activities supporting different social uses or contributing to culture

Description of the territorial coverage of the operations of CMOs:

- Are trans-border uses collectively managed?
- Is there international cooperation between CMOs? Consider the following issues:
 - The existence of reciprocal representation contracts
 - The existence of representation arrangements through international agreements
 - The amount of remunerations collected abroad by each CMO as a result of these agreements, and its proportion in the amount of royalties collected as a whole
 - Membership to organizations arranging collective management of rights internationally (umbrella organizations)
 - International standards in management of rights applied by CMOs

Guidelines for data collection	The information can be collected as a desktop study using available national and international information sources. In order to get a comprehensive picture of the operation of each organization, the information is advised to be complemented with expert interviews.	
	See Box 13 for a list of rights potentially subject to collective management.	
Definitions	<i>Collective management organization (CMO, or collecting society)</i>	Organization representing a group of copyright and related rights holders mainly for the purposes of arranging licenses and collecting remunerations on their behalf.
	<i>Compulsory/Statutory licensing</i>	Situations where specific uses of copyrighted works are to be organized without the possibility for right holders to refuse granting the right to use his work.
	<i>Extended collective licensing</i>	System where the law extends the effect of the agreements concluded between CMOs and users in a way that allows the user to use, on conditions laid down in the agreement, also works by authors whom the organization does not represent.
	<i>Fair compensation</i>	Copyright owners are entitled to “fair compensation” in some cases where their works are used in application of a copyright limitation, exception or exemption (for example, in cases of private use).
	<i>Reciprocal representation contracts</i>	Contracts through which the contracting CMOs agree to represent the other party’s repertoire in their own countries or to administer and distribute remunerations for the use of works of right holders represented by the other organization.
	<i>Umbrella organization</i>	Organization arranging the cooperation between collective management organizations and managing specific categories of rights in different countries.
Limitations	The availability of the information necessary for this description sheet will depend in part on the amount of information made available by CMOs themselves.	

Methodology Card 9. Efficiency of Collective Management Organizations

Methodology Card 9 aims at evaluating the operation of CMOs by measuring the amounts of remunerations and compensations administered and distributed in both nominal and real (inflation-corrected) terms. The second parameter proposes the measurement of the administration costs of the CMOs in proportion with the total of remunerations administered. The administration costs cover the oper-

⁸⁴ Such provisions include cases of compensation for private copying, remuneration for acts of resale of works of fine art (droit de suite), and other instances of remuneration without licensing which can be managed by CMOs.

⁸⁵ Consider for example blanket licenses, which allow the use of a catalog of works under preset terms. It covers all works of a defined group without the need for individual negotiation for each use.

ating expenses such as employee salaries and office administration costs. The third topic covered in this indicator is the use of the collected funds for social or cultural purposes, such as pension funds or promotional funds.⁸⁶ Altogether, the data will provide an overview of the efficiency of the CMOs' operations.

It is important to keep in mind that the results of this indicator will depend on the transparency of collective management organizations' operation, demonstrated by the availability of accurate financial data. Moreover, the results are affected, among other things, by the age and the services offered by the CMOs, the characteristics of different industries where collective management of rights is used, as well as the level of use of collective management.

The operation of CMOs could also be assessed from other perspectives than that of financial efficiency. For example, right holders' opinions on the role and the activities of CMOs could be studied in order to get a picture of the collective management organizations' ability to represent them (see Methodology Card 22 – *Stakeholders' Opinions on the Copyright System*). The number of right holders affiliated to CMOs is another indication of their perceived efficiency. Altogether, the results should be analyzed in the light of information collected through Description Sheet 12 – *Collective Management of Rights*.

⁸⁶ It is normally considered good practice to distribute collected funds after deduction of costs in as close alignment with the actual use of the works, performances, etc., as possible. However, it is also generally accepted that in certain cases limited funds may be used for social and cultural purposes, notably when the administrative costs connected with an individual distribution would be unproportionally high, or when collective distribution has been agreed on by the right owners themselves or their duly elected representatives. See further Mihály Ficsor, *Collective Management of Copyright and Related Rights*, WIPO publication No. 855(E) (2002), pp. 148 et seq.

METHODOLOGY CARD 9. EFFICIENCY OF COLLECTIVE MANAGEMENT ORGANIZATIONS

Key question	What is the amount of remunerations and compensations administered and distributed by CMOs? How efficient are the collective management organizations in their operations?	
Description	The efficiency of each CMO, as measured through the amounts of remunerations and compensations administered and distributed, and through analysis of the administration costs and the income distributed for cultural or social purposes	
Parameters to measure	<ol style="list-style-type: none"> 1. The amounts of remunerations and compensations a) administered and b) distributed by each CMO 2. The amount of administration costs and their share in the remunerations and compensations administered by each CMO 3. The amount of possible remunerations and compensations directed to cultural and social uses by each CMO 	
Guidelines for data collection	<p>The data can be collected as a desktop study using the annual reports and financial statements of the organizations as well as other relevant documents. In addition, representatives of each CMO should be interviewed in order to complement the data collected through desktop research and to identify the issues affecting the figures.</p> <p>The data should be collected over a period allowing for meaningful analysis and presented as yearly figures in both nominal and real values (corrected for inflation); consider for example a period of 5 or 10 years. The data should be presented and analysed separately for each collective management organization operating in the country.</p>	
Definitions	<i>Administration costs</i>	Operating expenses of the CMO, such as employee salaries, office administration costs etc.
	<i>Amounts administered</i>	Remunerations collected by the a CMO itself and other types of copyright revenue the CMO is in charge of distributing to its members, such as remunerations collected abroad on behalf of national right holders according to the terms of reciprocal representation contracts, compensations funded from the state budget or from specific levies, etc.
	<i>Amounts distributed</i>	Remunerations distributed directly to right holders, excluding the operating expenses of the CMO as well as the amounts benefiting right holders through indirect means (such as those allocated to cultural and social uses).
	<i>Cultural uses</i>	Special funds or activities organized or financed by a CMO with the purpose of developing and promoting culture in the fields of activity of the CMO's clients and members.
	<i>Remunerations and compensations</i>	All types of revenue collected, administered and distributed by a CMO on behalf of right holders for the use of their works.
	<i>Social uses</i>	Special funds or activities organized or financed by a CMO with the purpose of supporting the social needs of the CMO's clients and members, such as pension funds.
Limitations	<ul style="list-style-type: none"> • The results concerning each collective management organization are likely to be affected by several external factors including the organization's experience, the industry in which it operates, the types of subject matter administered, the level of use of collective management, and the economic situation in the country. Comparisons should not be made between the efficiency of collective management organizations operating in different environments. • The transparency and accountability of the services of CMOs is not taken into consideration. 	

Dissemination of Knowledge

The indicators of the area *Dissemination of Knowledge* focus on assessing the effectiveness of the measures aimed at enhancing the awareness on copyright law and the use of rights. The law should be coherent and its main functions thoroughly understood in order to avoid misconceptions. It is also important that authors, performers and other professionals in creative industries have the necessary information and knowledge to use their rights and respect those of others. Therefore, the access of the public at large to information on their rights and obligations is a crucial prerequisite for the functioning of copyright law.

Description Sheet 13 – *Copyright-related Information Activities* addresses the existence and content of information activities and public awareness campaigns concerning copyright. A description of the existence and availability of professional advice, information services and recommendations for stakeholders and copyright practitioners will provide an overview of the comprehensiveness of the information on rights and duties concerning protected works. This information supports the analysis of public behavior, copyright infringement and public acceptance of copyright rules.

Education is covered in the methodology framework through the examination of copyright-related teaching for the public at large (Description Sheet 14 – *Copyright-related Education for the Public in General*) and for artists and other professionals in copyright-based industries (Methodology Card 11 – *Copyright-related Education as Part of the Education of Professionals for Creative Industries*). This analysis is supported by the results of Methodology Card 10 – *Public Awareness of the Rights* which aims to measure the level of understanding of the concept of copyright by the public in general. Assessment based on this area will help to identify possible topics requiring more education or information activities, and in recognizing a potential lack of uniform principles for curricula.

Research on copyright-related issues will help to understand the different facets of the copyright system and to develop its operation. Description Sheet 15 – *Research on Copyright-related Topics* suggests describing the universities and research institutes directly involved in copyright-related research, and the research programs and projects on copyright-related topics in the country. The goal of Methodology Card 12 – *Copyright-related Research and Study Programs in Universities and Research Institutes* is to provide an overview of the amount of research on copyright conducted at universities and research institutes as well as of study programs focusing on copyright-related issues in the country.

INDICATORS CONCERNING THE AREA *DISSEMINATION OF KNOWLEDGE*:

- Description Sheet 13. Copyright-related Information Activities
Description Sheet 14. Copyright-related Education for the Public in General
Methodology Card 10. Public Awareness of the Rights
Methodology Card 11. Copyright-related Education as Part of the Education of Professionals for Creative Industries
Description Sheet 15. Research on Copyright-related Topics
Methodology Card 12. Copyright-related Study and Research Programs in Universities and Research Institutes

Box 14. Indicators concerning Pillar II, area “Dissemination of Knowledge”

Description Sheet 13. Copyright-related Information Activities

Description Sheet 13 addresses the existence and content of information activities and public awareness campaigns concerning copyright. This information tells about the availability of information on rights and duties concerning protected works.

The description sheet is divided according to two categories of copyright-related information activities. The first category concerns information activities relevant to all citizens on topics such as subject matter of copyright, rights and obligations, unauthorized use and collective management of rights. This type of information can be provided by public or private actors, and can take the form of targeted information or public awareness campaigns. The second category covers information activities targeted at authors, performers and other professionals in copyright industries, which can be provided by organizations representing or supporting professionals in copyright industries, or by other actors in the field. This information can take the form of guidebooks, contractual information and other documents specifically designed for different stakeholder groups.

The success of information activities can be measured by surveying the awareness of citizens on copyright rules and the copyright system’s goals, which is the subject of Methodology Card 10.

DESCRIPTION SHEET 13. COPYRIGHT-RELATED INFORMATION ACTIVITIES

Description of copyright-related information activities targeting the public in general:

- Information services provided by public bodies, copyright-related organizations, information, education and research institutions, and other actors
- Public awareness campaigns:
 - The celebration of World Book and Copyright Day (UNESCO) and World Intellectual Property Day (WIPO)
 - National anti-piracy campaigns; if possible, description of their activities and their results
 - Campaigns promoting consumers' or users' rights

Description of copyright-related information activities targeted at authors, performers and other professionals in copyright-based activities:

- Information services provided by organizations representing or supporting professionals in copyright industries, including a list of organizations offering these services and the availability of the services to non-members
- Information services provided by other actors (consider for example projects, networks, foundations, information, expert and export organizations)

Guidelines for data collection	The information can be collected as a desktop study, complemented with expert interviews. When analyzing the information publicly available, such as websites or news articles, the research can be based on a pre-set list of keywords and assessment criteria. The research concerning information activities targeted at professionals can be conducted separately for each industry.	
Definitions	<i>Information services</i>	Services such as webpages, hotlines, expert consultations, magazines, guidebooks, libraries and other information sources on copyright issues. This does not include practical support such as dispute settlement or negotiation services.
Limitations	<ul style="list-style-type: none"> • Information on services provided by private organizations may not be publicly available. • Studies following this description sheet will only describe the availability of information services and will not tell about their comprehensiveness or quality. 	

Description Sheet 14. Copyright-related Education for the Public in General

This description sheet aims at providing an overview of the education on copyright available to the public at large. Copyright-related education can be provided by including it in study programs of elementary, secondary or vocational schools, polytechnics and universities. The education on copyright issues as part of teachers' training is of particular relevance, since they must be capable of passing on accurate information. Copyright education can also be provided by public bodies, educational organizations, enterprises, projects and centers, as well as by professional organizations.

Please note that the applicability of the indicators in this section will depend on the general level of education and the availability of higher level education in the country. The necessary background information is presented in Description Sheet 1 – *National Context*. However, if this description sheet can be implemented, it can offer a method for evaluating the public awareness of the rights, which can complement the data collected through Methodology Card 10 – *Public Awareness of the Rights*.

DESCRIPTION SHEET 14. COPYRIGHT-RELATED EDUCATION FOR THE PUBLIC IN GENERAL

Information on the existence and the extent of:

- Copyright-related teaching at different education levels:
 - elementary school
 - secondary school
 - upper secondary schools
 - vocational schools
 - polytechnics / universities of applied sciences
 - universities
- Copyright-related education in teacher training
- Public bodies, educational organizations, enterprises and projects, professional organizations and adult education centers offering copyright-related education

Guidelines for data collection	<p>The information can be collected as a desktop study, complemented with expert interviews. Both the principles of curricula (made at national or regional level) and the curricula of the schools may be used as source material. Compulsory and non-compulsory education, as well as general and other curricula, could be considered separately. Information on the education provided by educational and professional organizations can be searched for through national (or if applicable, international) financing sources. Copyright-related teaching at universities is also a topic of Methodology cards 11 and 12.</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i></p>	
Definitions	<i>Copyright-related education/teaching</i>	Education on copyright issues, including teaching-related copyright issues. This type of education can be offered during courses, for example on method studies, as well as part of the education provided by libraries or other units.
	<i>General curricula</i>	General education provided to all students of the school or university, by opposition to education provided as part of vocational modules or major subject studies.
Limitations	Copyright-related education might not be apparent from the course descriptions in curricula.	

Methodology Card 10. Public Awareness of the Rights

In order for the copyright system to operate efficiently, the public at large needs to be aware of the rights of authors, performers and other right holders, as well as of the extent of the legal uses of copyrighted works. This indicator aims to measure the level of understanding of the concept of copyright by the public in general.

If the public at large is not sufficiently aware of the obligations and rights stemming from the copyright system, it could indicate that the copyright law and system are difficult to comprehend, or that there is a need for more activities to enhance awareness and knowledge. Furthermore, the results can indicate issues that the public in general is well aware of and issues that would require more education and information activities.

Besides the assessment based on this methodology card, the awareness of the public at large on copyright legislation can also be measured indirectly through the analysis of copyright-related education in the country. If the education of teachers or the education in elementary or secondary schools covers copyright questions, it

can be deduced that citizens are made familiar at an early age with the concepts of copyright protection and the extent of the legal uses of copyrighted works. These topics are the subject of Description Sheet 14 – *Copyright-related Education for the Public in General*. In addition, the data collected according to this methodology card can be compared to the results of studies applying Methodology Card 11 – *Copyright-related Education as Part of the Education of Professionals for Creative Industries* and Methodology Card 12 – *Copyright-related Study and Research Programs in Universities and Research Institutions*.

Data on the level of awareness and knowledge on copyright is essential in the assessment of the copyright system’s public acceptance (see Methodology Card 22 – *Stakeholders’ Opinions on the Copyright System*). Furthermore, the results can be compared to those of Methodology Cards 20 – *Unauthorized Use of Copyrighted Works in Physical Form* and 21 – *Unauthorized Use of Copyrighted Works in Digital Form*, which tell about the level of copyright infringement in the country.

METHODOLOGY CARD 10. PUBLIC AWARENESS OF THE RIGHTS

Key question	Is the concept of copyright understood by the public at large? Are end-users aware of the rights of authors, performers and other right holders, as well as of the extent of the legal uses of copyrighted works?	
Description	The awareness of the public at large of copyright law and the rationale behind the copyright system	
Parameters to measure	<p>1. Public awareness on the purposes and the operation of the copyright system (consider issues such as incentives to create and invest, the role of copyright in the access to culture, and the role of collective management organizations)</p> <p>2. Public awareness on copyright rules (consider issues such as authors’ and performers’ rights, conditions for use, and exceptions and limitations to copyright)</p>	
Guidelines for data collection	The data can be collected through surveys or interviews directed at the public at large. <i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i>	
Definitions	<i>End-users</i>	In this methodology card, members of the public at large are considered as potential end-users.
Limitations	The comprehensiveness of the results will depend on the topics selected in the questionnaire.	

Methodology Card 11. Copyright-related Education as a Part of the Education of Professionals for Creative Industries

Education on copyright issues is required especially in disciplines based on creative activities in vocational schools, polytechnics, art universities and other schools or educational organizations and projects teaching the future workers of the creative field and other future professionals likely to need copyright-related knowledge. The professionals dealing with copyright-related issues need to understand the copyright system, know how to use their rights, and know how to respect the rights of others.

This indicator aims at acquiring information on professional level education concerning copyright-related matters. The topic can be studied by examining the curricula and course descriptions, but additional methods for recognizing copyright-related issues in the activities of schools offering professional level education can also be found. The study could include study programs or schools in the fields of media and communication, business, culture (production, photography, audiovisual culture, multimedia, fine arts and design, music and performing arts), as well as IT and data processing. In addition to the topics covered in the methodology card, the study could also analyze the ways in which copyright-related issues are taken into consideration in the operation of schools offering postgraduate education.

A lack of copyright-related teaching in professional level education can indicate a limited awareness of copyright in the country examined. The results of this indicator should be compared to those of the description sheets and methodology cards in the area of *Dissemination of Knowledge*. In addition, the results of the areas *Licensing Markets* and *Infringement, Opinions and Public Acceptance* in Pillar III are likely to be affected by the awareness and knowledge of professionals dealing with copyrighted works. Therefore, the results of these areas should be studied alongside with those of this indicator.

New business models, brought forward by the development of ICT, have resulted in both challenges and opportunities for copyright industries. Hence it can be beneficial to look into Methodology Card 4 – *Development of Digital Business Models and Income Based on Digital Distribution* to examine whether these changes are reflected in professional level education.

Quality and comprehensiveness of the education are not taken into consideration in this indicator. It should also be noted that a lack of copyright-related education can indicate insufficient resources available to the education system. The quality of the education is difficult to evaluate but it could be interesting to study the information sources on copyright issues available to teachers in vocational schools, other professional schools, polytechnics/universities of applied sciences and universities. However, the education on copyright issues reflects the awareness and knowledge of the professionals.

METHODOLOGY CARD 11. COPYRIGHT-RELATED EDUCATION AS PART OF THE EDUCATION OF PROFESSIONALS FOR CREATIVE INDUSTRIES

Key question	Is there education regarding copyright as part of the education of professionals in creative industries?	
Description	Copyright-related education at university faculties and schools offering professional level education <ul style="list-style-type: none"> • as a special qualifier / credit for a degree • or as integrated in the different themes in the curriculum 	
Parameters to measure	<p>1. Inclusion of copyright-related education in curriculum in vocational schools, other professional schools and polytechnics / universities of applied sciences offering education in the following fields:</p> <ol style="list-style-type: none"> Media / communication Business Culture Photography, audiovisual, multimedia Fine arts and design Music and performing arts Arts management Information technology and data processing <p>2. Inclusion of copyright-related education in curriculum in university-level education in the following fields:</p> <ol style="list-style-type: none"> art universities the faculties specialized in the areas of information technology the faculties of media and human sciences (consider for example digital media, communications theory, mass media, libraries and journalism) <p>3. Copyright-related education to professionals in creative industries, including education provided by professional organizations, educational enterprises or organizations, educational projects and collective management organizations</p>	
Guidelines for data collection	<p>The data can be collected through a combination of a desktop study, surveys and interviews with schools' representatives.</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i></p>	
Definitions	<i>Copyright-related education</i>	Education of copyright is required especially in creative disciplines in vocational schools, polytechnics/universities of applied sciences, universities and other schools teaching the future workers of the creative field and other future professionals likely to need copyright-related knowledge.
Limitations	<ul style="list-style-type: none"> • Quality and comprehensiveness of the education are not taken into consideration. • In some countries, professionals for copyright industries are educated abroad. This indicator does not take this aspect into account. 	

Description Sheet 15. Research on Copyright-related Topics

This description sheet suggests to list university faculties and research institutes conducting research on copyright-related issues with information on their main objectives and areas of expertise. This information can be complemented with descriptive information on the main sources of financing for the university or the research institute as a whole. In addition, the main objectives of the relevant research groups and research networks are proposed to be listed. The description sheet also covers the research programs and projects on copyright-related topics in universities and research institutes, with information on their main objectives.

This descriptive information on universities and research institutes conducting copyright-related research will constitute a basis for interpreting the results of Methodology Card 12 – *Copyright-related Research and Study Programs in Universities and Research Institutes*, covering issues related to the amount of copyright-related research and study programs focusing on copyright issues.

DESCRIPTION SHEET 15. RESEARCH ON COPYRIGHT-RELATED TOPICS

Description of copyright-related research conducted in universities and research institutes:

- Universities and research institutes directly involved in copyright-related research
 - Main objectives of the research institutes
 - Relevant disciplines in the universities
 - Main sources of financing for the university / research institute as a whole
 - Main objectives of the relevant research groups and research networks
- Research programs / projects on copyright-related topics
 - Main objectives of the relevant programs / projects

Guidelines for data collection	The information can be collected as a desktop study, complemented with expert interviews.	
	The analysis should include all faculties and schools in the relevant fields, including all faculties and schools of information technology, law, business, media and communication, as well as social sciences. The research could start with a key-words search of published copyright-related research and dissertations.	
Definitions	<i>Copyright-related</i>	Issues directly concerning copyright form an essential part of the research or study program (definition of the amount needs to be made by the researcher on the basis of desktop research or estimations given by the interviewees)
Limitations	It might be difficult to define what research and study programs can be considered as copyright-related.	

Methodology Card 12. Copyright-related Research and Study Programs in Universities and Research Institutes

Research on copyright-related issues will help to understand and develop the copyright system and its operation. This methodology card aims at assessing the amount of copyright-related research conducted in universities and research institutes through the numbers of copyright-related doctoral theses, licentiate theses, scientific articles and monographs published in the country as well as the number of ongoing research programs and projects. This information is complemented with data on the main sources and amount of research financing, as well as the number of chairs and researchers directly involved in research related to copyright. As additional information, time series data on the amount of public financing for copyright-related research at universities can be collected.

In addition to research on copyright-related issues, this indicator includes data on copyright-related education in universities in most relevant degree programs. The issues to be studied are the existence of study programs on copyright-related issues in the faculties of law and business, and the inclusion of copyright-related

education in curriculum in other relevant faculties such as those of social sciences. The number of chairs and researchers directly involved in teaching related to copyright can be measured to complement the picture.

The amount of copyright-related research and education in universities and research institutes should be compared to the results of the other description sheets and methodology cards in the area *Dissemination of Knowledge*. The results of the areas *Licensing Markets* and *Infringement, Opinions and Public Acceptance* (see Pillar III of the methodology framework) are also likely to be affected by the awareness and knowledge on copyright-related issues, and therefore, these results should be mirrored to each other.

A low amount of research might be a result of causes not related to the copyright system itself, such as a general lack of funding for basic research. In addition, the quality of research is not taken into consideration in the methodology card. Despite the limitations of the indicator, it can be argued that the existence of research and education will tell about the awareness and knowledge on copyright-related issues in the country. Furthermore, the amount of funding for copyright-related research and education is likely to indicate how important copyright is considered in society.

METHODOLOGY CARD 12. COPYRIGHT-RELATED RESEARCH AND STUDY PROGRAMS IN UNIVERSITIES AND RESEARCH INSTITUTES

Key question	What is the amount of research on copyright conducted at universities and research institutes? Are there study programs focusing on copyright issues?	
Description	Copyright-related education and research in universities and research institutes	
Parameters to measure	<p>1. Copyright-related research in universities and research institutes</p> <ul style="list-style-type: none"> • Numbers of copyright-related a) doctoral theses and b) licentiate theses published (made available to the research community) in the country • Numbers of copyright-related a) scientific articles and b) monographs made in universities and research institutes • Number of copyright-related research programs / projects in universities • Number of copyright-related research programs / projects in research institutes • Estimate of the share of copyright issues in each research program / project, % • The main sources of financing for each research program / project on copyright-related issues (If possible, provide information on a) the total amount of financing as well as b) the share of public financing in %) <p>2. Copyright-related study programs in universities</p> <p>a. Faculties of law: inclusion of copyright-related education as a separate study program or as an essential part of a larger study program (for example a program concerning intellectual property rights)</p> <p>b. Faculties of business: inclusion of copyright-related education as a separate study program or as an essential part of a larger study program (for example a program concerning intellectual property rights)</p> <p>c. Other faculties: inclusion of copyright-related education in curriculum: the word “copyright” mentioned in the academic curricula</p> <p>3. Number of a) chairs and b) researchers directly involved in research and/or teaching related to copyright (If possible, estimate the number of FTEs involved in each research program / project separately)</p>	
Guidelines for data collection	<p>The number of copyright-related doctoral dissertations, licentiate theses as well as scientific books and other publications can be studied using library catalogues and databases. Information on ongoing separately funded research projects including copyright-related research areas can be found from major funding sources. Information on copyright-related education in universities can be collected by analyzing the study guides of the faculties or schools providing education in law, business or other relevant fields. Each of these types of data can be verified and complemented through interviews with researchers and university staff.</p> <p>The data should be collected over a period allowing meaningful analysis and presented as yearly figures (consider for example the last 1, 5 or 10 years). The numbers of employees or other work force should be counted as full-time equivalents. The figures should include only those directly involved in research related to copyright.</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i></p>	
Definitions	<i>Academic curricula</i>	Formal document defining the study program / courses and other education involved in a specific field of study or an educational organization
	<i>Chair</i>	Professor of an equivalent position such as research director
	<i>Copyright-related</i>	Issues directly concerning copyright form an essential part of the research or study program (definition of the amount needs to be made by the researcher on the basis of desktop research or estimations given by the interviewees)
	<i>Full-time equivalent (FTE)</i>	Total number of working hours of one full-time employee during a fixed time period
	<i>Monograph</i>	Scientific publication presenting primary research on a single subject in more length than a scientific article
	<i>Researcher</i>	Researcher, research assistant or an equivalent position (consider separately post-graduate students conducting research)
	<i>Scientific article</i>	Scientific research paper that has been peer-reviewed in an independent scrutiny by other qualified scientific experts before its publication
Limitations	<ul style="list-style-type: none"> • The quality of the results of the research in universities and research institutes is not taken into consideration. • It might be difficult to define what research and study programs can be considered as copyright-related. 	

PILLAR III

Operational Balance of the Copyright System

● While the indicators presented in Pillar II focused on describing and measuring the functioning and performance of the different elements of the copyright system, this pillar of the methodology presents alternative methods for the assessment of the operational balance of the copyright system as a whole. Indicators in this part of the methodology will, therefore, provide answers to the question “Is the copyright system fit for its purpose?”, and from this standpoint help identify new areas where changes in copyright law or improvements of the copyright system’s operation might be needed.

The third pillar of the methodology framework is designed to study different aspects of the copyright system’s operation: the functioning of the copyright system as an incentive mechanism, the effects of the copyright system on the access to copyrighted works by the public and by follow-on creators, the functioning of the licensing markets as well as the level of copyright infringement, and opinions on the copyright system. The indicators are therefore grouped under four areas: *Incentives; Access; Licensing Markets; and Infringement, Opinions and Public Acceptance.*

Studies concerning each area of this pillar will offer useful information on specific aspects of the copyright system’s purposes, but in order to produce an overview of the operational balance of the copyright system as a whole, the four areas should be analyzed together. When studying the operational balance of the copyright sys-

tem, the analysis of the results should take into account the interests of all relevant stakeholder groups in an equal manner, and the available data should be interpreted objectively (see page 21 for a definition of relevant stakeholder categories).

This pillar of the methodology framework does not include description sheets as the operational balance of the copyright system is assessed through the collection of specific sets of data presented in methodology cards. The following table provides an overview of the indicators included in the third pillar of the framework.

OPERATIONAL BALANCE OF THE COPYRIGHT SYSTEM	
Incentives	
Methodology Card 13. Direct Copyright Revenue Streams for Different Stakeholders	
Methodology Card 14. Return on Investment for Copyrighted Products and Services	
Methodology Card 15. Stakeholders' Opinions Concerning the Incentive Function of the Copyright System	
Access	
Methodology Card 16. Access to Copyrighted Works by the Public	
Methodology Card 17. Access to Copyrighted Works for Follow-on Creation	
Licensing Markets	
Methodology Card 18. Transaction Costs in Transfer and Licensing of Rights	
Methodology Card 19. Terms for Transfer and Licensing of Rights	
Infringement, Opinions and Public Acceptance	
Methodology Card 20. Unauthorized Use of Copyrighted Works in Physical Form	
Methodology Card 21. Unauthorized Use of Copyrighted Works in Digital Form	
Methodology Card 22. Stakeholders' Opinions on the Copyright System	

Summary table 3. Contents of Pillar III

Incentives

One of the main objectives of copyright is to create incentives for artistic efforts and the production of new creative works, therefore benefiting society. An efficient copyright system should offer incentives for creation, investment and the dissemination of creative works by providing a safe legal environment, securing income for authors, performers and other right holders and assuring recognition of moral rights. The copyright system should ensure that authors and performers have control of their creative work and are rewarded for it, while balancing their interests with the need to keep culture accessible to the public.

In the context of this methodology, an incentive can be understood as an expected potential of reward, either material (such as income) or immaterial, from creative work, activities adding value to creative inputs (such as production and distribution processes), and investments in copyright-based activities. In order to build a complete picture of the issues motivating creative and other work as well as investment in copyright industries, other incentives than those generated by copyright could also be studied.

This section focuses on the incentive function of copyright, while the following section aims at assessing the access to copyrighted works by the public as well as access to copyrighted works for follow-on creation. These two aspects can be seen as equally significant and heavily influencing each other. The indicators of the incentives and access areas should be studied together in order to reveal the balance in a country's copyright system with respect to the interests of different stakeholder categories.

The capability of a copyright system to yield incentives for creative activities as well as investment can be measured by evaluating the economic significance of copyright to different stakeholders. In this methodology, the functioning of the copyright system as an incentive mechanism is analyzed using indicators concerning the amount of direct copyright revenue for different stakeholders (Methodology Card 13), return on investment for copyrighted products and services (Methodology Card 14), and stakeholders' opinions concerning the copyright system as an incentive mechanism (Methodology Card 15).

INDICATORS CONCERNING THE AREA INCENTIVES:

Methodology Card 13. Direct Copyright Revenue Streams for Different Stakeholders

Methodology Card 14. Return on Investment for Copyrighted Products and Services

Methodology Card 15. Stakeholders' Opinions Concerning the Incentive Function of the Copyright System

Box 15. Indicators concerning Pillar III, area "Incentives"

Methodology Card 13. Direct Copyright Revenue Streams for Different Stakeholders

One possible method for studying the economic incentives stemming from the copyright system is to look at the levels of copyright revenue for different stakeholders. This methodology card follows an evaluation model developed by Koskinen-Olsson (2010).⁸⁷ The purpose of the model is to identify the income streams that can be classified as direct copyright revenue. The model suggests an evaluation of different copyright industries separately and focuses on the core copyright industries as defined in the WIPO Guide on Surveying the Economic Contribution of Copyright Industries.⁸⁸

⁸⁷ The evaluation model *Direct Copyright Revenue Streams in Creative Industries in Finland: Evaluation model* was published by the Finnish Copyright Society in 2010 (Finnish Copyright Society Publications No 30 (2010), available at http://www.copyrightsociety.fi/ci/TU1005_Direct-net.pdf). An updated version of the model, presenting figures from the year 2012, was published in 2014 by the Finnish Copyright Society (Tarja Koskinen-Olsson & Jari Muikku, *Direct Copyright Revenue Streams in creative industries in Finland: An Evaluation*, Finnish Copyright Society Publications No 31 (2014), available at http://www.copyrightsociety.fi/TU1302_Direct%20Copyright%20Revenue%20Streams_final%20%282%29.pdf).

⁸⁸ The *WIPO Guide on Surveying the Economic Contribution of the Copyright-Based Industries* (2003) presented four categories of copyright industries: core copyright industries, interdependent copyright industries, partial copyright industries and non-dedicated support industries. A revised version of the WIPO Guide was published in 2015. For more information see the website of WIPO at <http://www.wipo.int/copyright/en/performance/>.

A list of core copyright industries can be found in Appendix 3 of this handbook.

The methodology card presents an indicator which comprises four sequential steps. The first step is to map the different types of revenue in the industry under analysis. The possible generic revenue types that could be considered are royalty, salary, fee, license, right, remuneration and other revenue. This data should also clarify the directions of revenue streams in the value networks. The second step aims at defining a calculation basis for estimating the amount of copyright revenue. The calculation basis can for example be based on the amount of revenue or the average royalty rates in a given industry. The third step in the process consists in defining the share of copyright revenue in the calculation basis figures. In the model developed by Koskinen-Olsson (2010), royalties to creators as well as revenue collected by CMOs are evaluated as 100 % direct copyright revenue. All rights-based exploitations, such as permissions and licenses to use material protected by copyright, fees to freelancers and salaries to employed authors, can involve different shares of copyright revenue. On the other hand, the sale of physical goods does not constitute direct copyright revenue in the model. Finally, the last step in the process will be to establish an estimation of the amount of copyright revenue in monetary terms for each copyright industry. These figures are derived from the calculation basis and copyright share figures.

The interpretation of the results needs to be based on contextual information regarding the industry under analysis. Therefore, the analysis is preferably supplemented with data specified in Pillar I of the framework, such as an analysis of the market structure, the characteristics of value networks⁸⁹ in the industries covered, the number of stakeholders, key findings illustrating end-use and user habits, and other relevant market figures (see in particular Description Sheet 4 – *Markets for Copyrighted Products and Services*).

This methodology card is connected to the areas *Management of Rights* (Pillar II) and *Licensing Markets* (Pillar III). Even though the model will only provide estimates of the levels of copyright revenue in different industries, the method can however be used to get an overview of the copyright revenue streams in different steps of value chains.

⁸⁹ Value network analysis is presented on p. 38.

METHODOLOGY CARD 13. DIRECT COPYRIGHT REVENUE STREAMS FOR DIFFERENT STAKEHOLDERS

Key question	What is the amount of direct copyright revenue for different stakeholders?
Description	<p><i>This methodology card is based on an evaluation model developed by Koskinen-Olsson (2010) and updated by Koskinen-Olsson & Muikku in 2014.</i></p> <p>Identification of direct copyright revenue streams for the different actors involved in the processes of</p> <ul style="list-style-type: none"> • creation, including performances, • production and manufacturing, • performance, broadcast, communication and exhibition, and • distribution and sales.⁹⁰ <p>The study can cover in particular the core copyright industries, as defined in the WIPO Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition).</p>
Parameters to measure	<p>1. The amount of copyright revenue in different copyright industries</p> <p>The assessment process should include the following sequential steps:</p> <ul style="list-style-type: none"> • Definition of different types of revenue sources for different stakeholder groups in a specific industry. Consider the following generic revenue types: royalty, salary, fee, license, right, remuneration and other revenue. • Establishing a calculation basis for evaluating the level of copyright revenue (such as the total amount of revenue or the average royalty rates in the industry) • Estimating the share of copyright revenue from the total of revenues in the industry (“copyright share”) • Establishing the amount of direct copyright revenue for every stakeholder category.
Guidelines for data collection	<p>The data can be collected as a desktop study using available national and international information sources, such as available statistics and other public data, information from organizations representing stakeholders (collective management organizations and stakeholders’ associations and unions) or estimates (with a description of the underlying information and assessment basis).</p> <p>Prior to the analysis the different stakeholder groups in the industry under scrutiny are identified. Expert interviews may be conducted in order to establish a comprehensive understanding of the different types and the directions of revenue streams in the value networks of each industry.</p> <p>When the share of direct copyright revenue is difficult to evaluate, it can be interpreted as low, medium or high.</p> <p><i>For detailed guidelines, see Koskinen-Olsson (2010) and Koskinen-Olsson & Muikku (2014).</i></p>
Definitions	<p><i>Direct copyright revenue</i> Revenue resulting from transactions directly based on copyright (the scope of the research must be decided by the researcher on the basis of desktop research or as an estimation based on consultations with industry representatives)</p>
Limitations	<ul style="list-style-type: none"> • The share of direct copyright revenue from the different types of revenue might be difficult to judge and sometimes could simply be interpreted as low, medium or high. • The figures can be affected by a variety of issues and should only be used as estimates of the levels of copyright revenue in different industries.

⁹⁰ See Koskinen-Olsson (2010), p. 6.

Methodology Card 14. Return on Investment for Copyrighted Products and Services

Historically, the first justification for copyright protection concerned the protection of the investment made by publishers in the printing of books. Although moral rights of authors are now also considered as an essential rationale for copyright protection, economic considerations related to the investment of authors and other stakeholders in the production of creative products and services are still crucial in justifying their copyright privileges. In particular, the rationale for protection granted by related rights is purely economic in nature.⁹¹

This methodology card aims at calculating the amount of investment in copyrighted products and services and comparing it to the level of revenues from copyrighted products and services. The result is a ratio that will allow an evaluation of the profitability of investing in different copyright industries.

Analysis on the return on investment (ROI) in activities of copyright industries is at the core of the incentive function of a national copyright system. When sufficient return on investment cannot be attained, the incentive for investing can be expected to decrease. If this is the case in certain industries, there might be a need for a reassessment of the legal framework or policies in the field. However, it should be taken into account that several other issues unrelated to the copyright system can affect revenue levels.

The first step in the assessment based on this indicator is to estimate the amount of investment in the production of copyrighted products and services. This can be made by the means of a survey or as an estimation based on statistical data or data collected from relevant organizations. An example for the evaluation of investment in artistic asset creation can be found in the methodology developed in the UK by Peter Goodridge and Jonathan Haskel (2011),⁹² complemented with software investment data.⁹³ If investment in time is evaluated, it should be converted in monetary terms.

The amount of investment is next compared to the total amount of revenue from the industry in question⁹⁴ in order to evaluate the level of return on investment

⁹¹ See Annette Kur & Thomas Dreier, *European Intellectual Property Law – Text, cases & materials*, Edward Elgar, Cheltenham – Northampton (2013), p. 241.

⁹² Peter Goodridge & Jonathan Haskel, *Film, Television & Radio, Books, Music and Art: UK Investment in Artistic Originals*, Intellectual Property Office, 2011/3 (2011).

⁹³ Concerning the evaluation of investment in copyrighted softwares, see Graeme Chamberlin, Tony Clayton & Shikeb Farooqui, *New measures of UK private sector software investment*, Economic and Labour Market Review, Vol. 1, No. 5, pp.17-28. For a complete application of this methodology for evaluating investment in copyright, see in Shikeb Farooqui, Peter Goodridge & Jonathan Haskel, *The Role of Intellectual Property Rights in the UK Market Sector*, Intellectual Property Office, 2011/2 (2011). This work builds on a similar methodology developed in the US by Rachel Soloveichik and David Wasshausen, *Copyright-Protected Assets in the National Accounts* (2013), available at http://www.bea.gov/papers/pdf/copyright_protected_assets_in_the_national_accounts.pdf.

⁹⁴ An example for estimating the copyright revenue is presented in Methodology Card 13 – *Direct Copyright Revenue Streams for Different Stakeholders*. A method for assessing the capital value of copyright assets, as discussed in the part concerning the context in which the copyright system operates (Methodology Card 1) can also be used to obtain useful information for the analysis of ROI.

in each particular industry.⁹⁵ The total amount of revenues is used as a basis for estimating the level of return from investment but it could be replaced by the calculation of profits or net income. It can be expected that no investment will take place if the expected ROI is negative, or if other opportunities yield a higher ROI.

However, obtaining reliable figures for the assessment at industry level will heavily depend on the level of precision of the available statistical data. An alternative way to evaluate the level of return on investment would be to conduct a survey and to first estimate the ROI for each respondent separately, and then make an estimation at industry level. This method would allow an analysis of the levels of ROI among different types of organizations. Another method that could be used when statistical figures are unavailable would be to replace the calculation presented here with a case study on the return of investment for a small set of organizations. The organizations selected for the case study should represent the industry in question as well as possible.

⁹⁵ In order to determine the return on investment, the following formulas can be used: *Return on investment (ROI) = (Gain from investment - Cost of investment) / Cost of investment*. The amount of gains from investment refers to the revenue produced by the creative products and services in the industry analyzed. The simple ROI calculation is less accurate when the investments and benefits from them involve many years; in this case, a discounted return on investment calculation method can be used: *Discounted ROI = Net present value of the total amount of benefits / Present value of total costs*.

METHODOLOGY CARD 14. RETURN ON INVESTMENT FOR COPYRIGHTED PRODUCTS AND SERVICES

Key question	How does the amount of revenue from copyrighted products and services compare with the amount of investment in their creation and production?	
Description	Estimation of investment in the production of copyrighted products and services and comparison of this investment to the amount of revenue these products and services generate, in the industries defined on page 19 and in Appendix 3.	
Parameters to measure	<p>1. Calculation of the return on investment, by industry</p> <p>The assessment process includes the following sequential steps:</p> <ul style="list-style-type: none"> • Estimation of the amount of investment in the production of copyrighted products and services in the country, by industry • Estimation of the total amount of revenues from copyrighted products and services, by industry • Calculation of the return on investment, by industry 	
Guidelines for data collection	<p>The data can be collected as a desktop study using available national and international information sources, such as available statistics and other public data, information from organizations representing stakeholders (collective management organizations and stakeholders' associations and unions) or estimates (with a description of the underlying information and assessment basis). If no existing datasets are available, a survey on the investment activities of individual actors may be conducted in order to make an estimation of the total amount of investments and revenue at industry level. Alternatively, a case study focusing on the return on investment for a small set of organizations can be conducted.</p> <p>The data can be further categorized by type of products and services. The data should be collected over a period allowing meaningful presentation and analysis, for example 1, 5 or 10 years.</p>	
Definitions	<i>Return on investment (ROI)</i>	Measure of profitability; in this case, the ratio of the net income from the investment (revenue less investment) and the investment.
	<i>Discounted return on investment</i>	ROI calculation where the net present value of future revenue is used; in this calculation the time value of money is taken into account.
Limitations	<ul style="list-style-type: none"> • The figures necessary for a calculation of investment in each industry are not always available. In some cases, the figures need to be estimated. • The investments might come from other countries and Parameter 1 only concerns the amount of investment in the country. • Other incentive mechanisms such as public support (for example, grants for creation) will affect the results. 	

Methodology Card 15. Stakeholders' Opinions Concerning the Incentive Function of the Copyright System

The role of copyright as a motivator to create could be also studied by collecting stakeholders' opinions on the subject. This methodology card can be used to assess whether copyright is considered by stakeholders as an effective incentive for the creation of different kinds of products and services, for the production in copyright industries, and for the use of copyrighted works in follow-on creation. The information will tell about the importance of copyright and related rights for authors and performers as well as commercial copyright users.

Incentives stemming from the copyright system could be studied by surveying the expected potential of income from creative efforts or stakeholders' opinions on the significance of different copyright provisions in creating economic incentives.

On the other hand, the incentives created by copyright might be other than economic, relating for example to the recognition of artists' and performers' work and to the protection of their moral rights.⁹⁶ Parameters 1 and 2 concern stakeholders' opinions on the significance of the copyright system and especially the economic and moral rights provisions in motivating their work. Parameters 3 and 4 cover other incentives than those generated by copyright and their importance in motivating creative and other work in copyright industries. Their results can be compared to those of Parameters 1 and 2 in order to reveal the relative importance of copyright-related incentives.

The data described in this methodology card can be collected by the means of a survey, stakeholder interviews or a focus group study. Initial desktop analysis is needed to identify the relevant stakeholders in the industries considered, and the elements of the copyright law and system that are most likely to affect these stakeholders. The desktop study will also be useful in selecting the representatives of each stakeholder category. There might however be large differences between individuals in creating stimulus to creative activity through monetary and other incentives.

The sources of motivation as well as the architecture of value creation differ between industries. For this reason, the different types of activities and industries should be analysed separately. In the analysis of the results it should also be kept in mind that there can be large differences in the stakeholders' experiences and beliefs. The incentives could be addressed in terms of a cost-benefit analysis of specific characteristics and elements of the copyright system, such as different terms of copyright protection or different sets of exceptions to copyright.⁹⁷

⁹⁶ When the economic rights of copyright generate extrinsic reward, the moral rights bring rewards that are almost entirely intrinsic, that is, based on motivation driven by the own interest and enjoyment of an individual (see for example Ruth Towse, *Creativity, copyright and the creative industries paradigm*, *Kyklos* Vol. 63, Issue 3 (August 2010), pp. 461-478, and Bruno S. Frey & Reto Jegen, *Motivation Crowding Theory*, *Journal of Economic Surveys* Vol 15, No. 5 (2001), pp. 589-611). Analyzing both the extrinsic and intrinsic motivation will give an overall picture of the incentives generated by economic and moral rights.

⁹⁷ In a report prepared by PricewaterhouseCoopers for the Gowers Review of Intellectual Property on the impact of copyright extension for sound recordings in the UK (report prepared for the British Phonographic Industry in 2006), the financial impacts were estimated in terms of record companies' and performers' revenues (absolute nominal estimates and discounted values), funds available for artist and repertoire investment, and share prices. The market impacts are also presented in the report in terms of the price and availability of recorded music.

METHODOLOGY CARD 15. STAKEHOLDERS' OPINIONS CONCERNING THE INCENTIVE FUNCTION OF THE COPYRIGHT SYSTEM

Key question	What are the opinions of the different stakeholders concerning the efficiency of the copyright system in providing incentives for the creation of different kinds of products and services, for the production in copyright industries, and for the use of copyrighted works in follow-on creation?	
Description	Analysis of stakeholders' opinions concerning the incentive function of the copyright system, covering the following stakeholder categories ⁹⁸ : <ul style="list-style-type: none"> • authors • performers • professional copyright users that are granted specific rights by law (such as producers of phonograms and films or broadcasting organizations) • professional copyright users without specific rights granted by law 	
Parameters to measure	<p>1. Efficiency of the copyright system in creating economic incentives: opinions of the different categories of stakeholders</p> <p>2. Significance of moral rights provisions in motivating creative work: opinions of authors and performers</p> <p>Additional information:</p> <p>3. Support (financial or otherwise) from the state and other parties as an incentive for creative work: opinions of the different categories of stakeholders on the efficiency</p> <p>4. Other incentives than those generated by copyright: stakeholders' opinions on their significance in motivating creative work or other work in copyright industries (consider for example the recognition of artists' and performers' work, the feelings of self-fulfillment and satisfaction of working in a specific profession or industry)</p>	
Guidelines for data collection	The data can be collected by the means of a survey, stakeholder interviews or focus group studies. a preliminary desktop study may be needed to identify the relevant stakeholders and the elements of the system most likely to affect these stakeholders. <i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i>	
Definitions	<i>Moral rights</i>	Rights created by copyright that do not result in economic advantage and that are not transferable. Moral rights include for example the right of attribution, the right to have a work published anonymously or pseudonymously, and the right to integrity.
	<i>Economic incentives generated by copyright</i>	Expected potential of income or other award from creative effort, or from the investment in creative activity or in production of goods protected by copyright; a temporary, limited monopoly on reproduction, public performance, distribution and communication to the public (including broadcasting) stemming from copyright enables the copyright holder to appropriate the reward of his efforts or other inputs through a price that is higher than the price that would be charged in a perfectly competitive market.
	<i>Incentives, other than economic, generated by copyright</i>	Incentives relating to recognition of artists' and performers' work and protection of their moral rights; when the economic rights of copyright generate extrinsic reward, the moral rights bring rewards that are almost entirely intrinsic, based on motivation driven by the own interest and enjoyment of an individual.
Limitations	There might be large differences between individuals in creating stimulus to creative activity through monetary and other incentives. It might also be difficult for authors or for their representatives (in cases of focus groups) to estimate the importance of the different types of incentives motivating their creative work.	

⁹⁸ For definitions of these different stakeholder roles, see p. 21.

Access

The copyright system is designed to contribute to the abundance of culture, cultural diversity and social capital. It might however create barriers upon the creation of new works and reduce the access to culture. A well-functioning copyright system is built to take both the incentive aspect (as explained in the first area of Pillar III) and the access to works into account in a balanced manner.

Creative works are expressions of ideas that as such have characteristics of public goods: they are non-excludable and non-rival in consumption. Once a work is made public, no consumer can be effectively prevented from accessing it. Moreover, as the use of the work by one individual does not reduce the availability of the work to others, these intangible expressions of ideas may be consumed at the same time by an infinite number of users. These effects are compounded by the fact that the marginal cost of works in digital form is practically zero. However, copyright creates an exclusion mechanism to limit the ability of individuals to exploit the works. In order for the ideas themselves to remain public, the scope of these restrictions have to be carefully adjusted.

The term and the scope of copyright should be set so that the system ensures reward from creative work without excessively diminishing the welfare of other stakeholders or the general welfare in society. For that purpose, there is a need to understand the ways in which the system affects the availability and accessibility of lawful content. This way it is possible to determine whether the access to copyrighted works balances the exclusive rights granted to authors and other stakeholders. The issue of balance can be viewed from two main perspectives:

- the balance between authors' interests to extract economic value from the results of their creative work and users' interest to have effective and affordable access to those works; and
- the balance between the interests of authors of pre-existing works to benefit from protection and the ability of follow-on creators to build on pre-existing materials in their creative work.

In a well-functioning copyright system, these two kinds of balance are established by a carefully defined scope of protectable subject matter, a limited term of protection, and appropriate limitations, exceptions and exemptions that allow certain uses without authorization by the right holder either for free or against compensation. These issues are analyzed through Methodology Card 16, which includes methods to assess the level of access to copyrighted works from the points of view of the public at large as well as different audiences, and Methodology Card 17, which focuses on

the provisions and other solutions regarding copyright as well as other policy areas that are likely to affect the creation of new works.

INDICATORS CONCERNING THE AREA ACCESS:

Methodology Card 16. Access to Copyrighted Works by the Public

Methodology Card 17. Access to Copyrighted Works for Follow-on Creation

Box 16. Indicators concerning Pillar III, area “Access”

Methodology Card 16. Access to Copyrighted Works by the Public

This indicator aims at determining whether the copyright system creates sufficient conditions for a balance between the protection of copyrighted works and the access to these works by the public, including special interest groups. For this purpose, legislative and other solutions, data on the availability of works and experiences of stakeholders taking part in the dissemination of works in the society are analyzed. The study could also be used to identify and analyze the possible barriers to the availability and diversity of works.

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

Archives, museums and libraries have large collections of culturally relevant material. These institutions preserve cultural heritage and promote the access to culture. In addition to a description of special provisions such as library privileges in the country’s legislation (see Description Sheet 5), it is suggested to survey the use of copyrighted works in libraries, archives and museums. The set of questions to be studied should cover the functioning of licensing between libraries and the right holders. Issues such as the amount of administrative work when dealing with a large amount of copyrighted content or works can also be surveyed. Archives, museums and libraries provide access to culture and often have to deal with large number of

contracts. Copyright-related questions concerning them need to be given special attention during the implementation of this parameter.

The question of access to copyrighted material by the general public could also include a study on the use of copyrighted material for educational purposes. This topic can be analyzed through the experiences in educational institutions on the access to copyrighted material or content and the use of copyrighted works for educational purposes.

The second parameter of this indicator aims at providing information on the access to copyrighted works by special interest groups, including the persons with print or other disabilities. The existence of provisions facilitating access to copyrighted works by these groups indicates whether fair access to all members of society has been taken into account in the national copyright system.⁹⁹

The third parameter of the indicator proposes to describe the solutions made at national level to the problems in identifying copyright holders. Issues to consider include the level of development of CMOs' services, the existence of public databases and the level of development of right holder databases. These tools complement the solutions implemented in the national legislation (see Description Sheet 5 – *Copyright Law*). Public regulations, policies and other measures to facilitate access to protected works for follow-on creation are examined in more detail in Methodology Card 17 – *Access to Copyrighted Works for Follow-on Creation*. Additionally, interviews, focus group studies or a survey could be conducted to map the difficulties faced by certain actors.¹⁰⁰

The data collected through this indicator should be read in connection with the description of legal exceptions and limitations to copyright presented in Description Sheet 5 – *Copyright Law*. The analysis should also take into account the public awareness of rights (Methodology Card 10) and the provisions on private use in national law (Description Sheet 5). A low level of access or discontent users might be a sign of a need for legislative or other measures facilitating access, or of a lack of knowledge of such measures by users.

A lack of access to copyrighted works could also be explained by a malfunctioning market for copyrighted products and services. Studies based on the indicators in the area *Licensing Markets* presented below will be useful to ascertain this causality. Moreover, this indicator might be connected to those assessing the level of unauthorized use, since a lack of legal access will encourage users to look for other sources of content (see Methodology Cards 20 and 21).

⁹⁹ Examples of such measures in different countries have been gathered by WIPO: see WIPO Standing Committee on Copyright and Related Rights, *Examples of Practices and Other Measures for the Benefit of Persons with Print Disabilities*, SCCR/20/5, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=133681.

¹⁰⁰ This situation should be distinguished from the case of neglected works, whose right holders are known but that are impossible to license (for example, because of multiple right holders).

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

METHODOLOGY CARD 16. ACCESS TO COPYRIGHTED WORKS BY THE PUBLIC

Key questions	Is the access to copyrighted works by the public as well as different audiences assured? Do the markets function from the consumers' point of view? Are there difficulties in identifying the copyright holders when seeking permission to use copyrighted works? What kind of problems are there regarding access?
Description	<p>Assessment of the influence of the copyright system on the access to culture through an analysis of:</p> <ul style="list-style-type: none"> • Access to material in analogue and digital form by the public in general • Access to material governed by licensing or granted through exceptions and/or limitations • Access to material included in the collections or outside the collections of libraries, archives and museums
Parameters to measure	<p>1. Access to copyrighted works – Public interest focus:</p> <ol style="list-style-type: none"> a. Availability of works on legal markets (to be distinguished by subject matter, and if applicable, by format and/or channel of distribution): <ul style="list-style-type: none"> • Estimation of the number of published works (titles) available in physical form in the country • Estimation of the number of published works (titles) available in digital form through legal services b. Experiences of libraries (public libraries as well as scientific and special libraries), museums and exhibition organizers, and archives: consider issues such as the functioning of licensing, the amount of administrative work, access to digital material, and the effects of copyright on the extent of services c. Experiences of educational organizations concerning the reproduction, distribution, communication to the public, and public performance of copyrighted works for educational purposes: consider issues such as the functioning of licensing, the amount of administrative work, access to digital material, and the effects of copyright on access <p>2. Access to copyrighted works – Special interest groups focus:</p> <ol style="list-style-type: none"> a. Existence of regulations or provisions on the access to copyrighted works for persons with visual impairments or with other print disabilities b. Existence of regulations or provisions on the access to copyrighted works for persons with other disabilities c. Existence of regulations or provisions on the access to copyrighted works for other special interest groups <p>3. Access to copyrighted works – Identifying copyright owners:</p> <ol style="list-style-type: none"> a. Solutions made in the country to the problems in identifying the copyright holders, consider for example: <ul style="list-style-type: none"> • Level of development of the CMOs' services concerning the identification of copyright owners • Level of development of right holder databases • Legislative solutions, e.g. extended collective licensing b. Experiences of libraries, archives, museums, educational organizations, research organizations or other user organizations concerning difficulties in identifying copyright holders

Guidelines for data collection	<p>Data for Parameter 1 can be collected through desktop studies, surveys or interviews focusing on the interest groups in question. Information for Parameter 2 can be found in legislative texts. Data for Parameter 3 can be collected from national data sources as a desktop study as well as through expert interviews.</p> <p>The study can be conducted for different categories of subject matter separately (see for instance the WIPO list of copyright industries in Appendix 3).</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i></p>	
Definitions	<p><i>Visual impairment or other print disability</i></p>	<p>According to the WIPO Marrakesh Treaty¹⁰¹, a person who is visually impaired or otherwise print disabled is a person who:</p> <p>(...) (b) <i>has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or</i></p> <p>(c) <i>is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.</i></p>
Limitations	<p>It is not always possible to clearly evaluate the causality between the operation of the copyright system and access, i.e. to identify the problems connected to copyright and the problems connected to pricing or other business solutions.</p>	

Methodology Card 17. Access to Copyrighted Works for Follow-on Creation

As an exclusive right, copyright might create barriers to the creation of new works. One aspect in a copyright system's operation is the ability of the system to encourage follow-on creation while at the same time protecting rights to existing works. Access to protected works for follow-on creation is also closely connected with freedom of expression. This indicator aims at evaluating whether the level of access to protected works sufficiently encourages follow-on creation.

From a legal point of view, the access to protected material for follow-on creation is affected by a number of factors. Firstly, it is influenced by whether the *scope of protection* clearly distinguishes between expressions that can be protected (provided that they reach an adequate level of originality) and information and ideas that remain free for all to use. A related matter is whether any policies primarily intended to maintain and promote common cultural heritage would excessively limit authors' freedom to build on that heritage. A second factor is the setting of an appropriate *term of protection*, after which even protectable elements of a work are free for all to use in follow-on creation. A third influencing factor is the availability of exceptions and/or limitations that allow quotations, reporting, parodies and other similar uses of protectable expression even during the term of protection. Such limitations, together

¹⁰¹ WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013), full text available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=245323.

with an appropriate scope of copyright protection, should permit transformative uses of protected material that do not compete with original works. A proper regulation of these three factors should ensure that copyright promotes rather than hinders freedom of expression and the availability of information.¹⁰²

The first parameter of this indicator aims at providing descriptive information on public policies and regulations in the country to facilitate access for follow-on creation, in particular various provisions in copyright law aimed at enhancing the robustness of the public domain. It also includes a description of other arrangements made in the country to facilitate creative activities based on existing works such as arrangements supporting or promoting open licensing and the use of open access models¹⁰³ (for more discussion on these topics, see Methodology Card 4). The level of development of CMOs' services, which is primarily assessed in the area *Management of Rights* (Pillar II), also has a role to play in this issue. Other relevant policy areas include cultural policies aimed at maintaining and promoting cultural heritage; artists' freedom to use and reinterpret traditional cultural expressions (TCE) and/or folklore as part of their creative work could also be analyzed. The impact of other relevant non-copyright policy areas such as competition policy, consumer protection and specific regulations on freedom of expression should also be considered.

Another kind of situation where copyright might limit the access is the case where a potential user is unable to obtain a license over a particular work. This can be a result of ineffective use of copyrights and licensing. It might also be a sign of malfunction of the licensing system. This question is dealt with through the second parameter of this indicator, which proposes to consult the opinions of authors and performers, members of the public at large engaging in follow-on creation as well as researchers using copyrighted material in their scientific work. These issues are also discussed in the areas *Management of Rights* (Pillar II) and *Licensing Markets* (Pillar III). Another related issue is the case of orphan works, situations where the owners of the work are unknown or cannot be contacted (discussed in Methodology Card 16). The problem in this setting is, on the one hand, that it prevents the right holder from benefitting from the work, and on the other hand that

¹⁰² For an analysis on the effects of copyright law on freedom of expression, see for example Graham Smith, *Copyright and freedom of expression in the online world*, *Journal of Intellectual Property Law & Practice*, 5 (2) (2010), pp. 88-95.

¹⁰³ Public domain, open access and open licenses enable access and the possibility to use works without separately agreeing on, and without paying for each use. In the copyright field, the public domain traditionally refers to subject matter which is excluded from protection, and thus may be accessed and used without permission. A work becomes part of the public domain after the term of copyright has ended or when an author has assigned his work for free use. Open access denotes a policy derived from the open access movement in academia. It aims for the scholarly publications or public interest data to be accessible to anyone to read and to use free of charge and without restrictions on the internet. Open licensing is one way for right holders to enable access to a work and in some cases the modification of the work with certain reservations cited in the license.

the work cannot be used in creation of derivative or other works due to the risk of infringing copyright.¹⁰⁴

This topic is connected to many other parts of the methodology framework. Data on the availability of works in different forms and through different channels is discussed in Description Sheet 4, Methodology Cards 2, 3 and 4 (Parameter 1), Description Sheet 12 and Methodology Card 16. Part of the data can be found in the descriptions of copyright law (Description Sheet 5) and copyright policy (Description Sheet 6).

In order to study the balance between the level of protection and access, the results should be analyzed together with data on the incentive function of the copyright system. It is advised to refer to data collected as a result of Methodology Card 16 in the assessment as no exact division can be made between the two indicators specified in this framework for analyzing access to works. Furthermore, the issue of open access is discussed in Methodology Card 4 – *Development of Digital Business Models and Income Based on Digital Distribution*.

This indicator has many aspects in common with Methodology Card 18 – *Transaction Costs in Transfer and Licensing of Rights* since both indicators focus on the difficulties in and solutions for accessing and licensing rights on existing works. It is therefore recommendable to analyze the data of these two indicators together. The results concerning Parameter 2 will be influenced by the awareness and knowledge on copyright issues among those engaging in follow-on creation. This aspect is studied in Pillar II of the methodology framework.

¹⁰⁴ According to Rufus Pollock, "Access and preservation of older copyrighted works is a significant problem and should be addressed. This could be done in several, potentially complementary ways, including introduction of a registration requirement, orphan works provisions, and a reduction in copyright term." (*The Value of the Public Domain*, Cambridge University & the Open Knowledge Foundation, published by the IPPR 2006-07-14 (2006), licensed under Creative Commons Attribution v2.5, available at http://www.rufuspollock.org/economics/papers/value_of_the_public_domain.html)
The UK's *Review on Intellectual Property and Growth* by Professor Ian Hargreaves (2011, p.8) recommends that "The Government should legislate to enable licensing of orphan works. This should establish extended collective licensing for mass licensing of orphan works, and a clearance procedure for use of individual works. In both cases, a work should only be treated as an orphan if it cannot be found by search of the databases involved in the proposed Digital Copyright Exchange."

METHODOLOGY CARD 17. ACCESS TO COPYRIGHTED WORKS FOR FOLLOW-ON CREATION

Key questions	Does the copyright system ensure the access to protected works for follow-on creation while at the same time protecting the rights of authors, performers and other copyright holders? How does the copyright system affect the creation of follow-on works?	
Description	Evaluation of the effects of the copyright system on the freedom to create through the description of public regulations and policies aiming at facilitating the access to protected works for follow-on creation and through an assessment of the opinions of creators on the availability of protected works for follow-on creation.	
Parameters to measure	<p>1. Description of public regulations, policies and other measures facilitating the access to protected works for follow-on creation Consider for example:</p> <ul style="list-style-type: none"> • Scope of protection: effective implementation of the idea/expression dichotomy in copyright law, and the required level of originality • Term of protection: when does a work become part of the public domain? • Limitations and exceptions in copyright law and/or jurisprudence allowing transformative uses (such as quotations, news reporting and parodies) • Limitations and exceptions in copyright law and/or jurisprudence facilitating the use of copyrighted material in scientific research • Cultural policies aimed at maintaining and promoting traditional cultural expressions (TCE) and/or folklore, and the extent to which they affect authors' freedom to reinterpret and build on such heritage • Provisions or other measures to address any abuses of copyright by copyright holders, including measures taken in other relevant policy areas (such as regulations and measures regarding freedom of expression, consumer protection and competition) • Other provisions or measures to facilitate follow-on creation (such as arrangements supporting or promoting open licensing and open access) <p>2. Opinions on issues related to the access to copyrighted works for follow-on creation Consider for example the following topics:</p> <ul style="list-style-type: none"> • Do authors and performers always acquire licenses when necessary for the re-use of copyrighted works for follow-on creation? • Are there particular difficulties (such as difficulties in identifying copyright owners, in contacting them, in negotiating licenses) when seeking to acquire licenses for follow-on creation? • What are the difficulties faced by researchers when using copyrighted material as part of their scientific research? 	
Guidelines for data collection	<p>The information for the first parameter can be gathered as a desktop study. Some of the information can be collected using Description Sheet 5 in Pillar II. Data for the second parameter can be collected through focus group studies, surveys and/or interviews.</p> <p>When studying the second parameter, different categories of authors using copyrighted material for follow-on creation, for instance professional authors or performers (monetizing their creation), members of the public at large engaging in creation limited to the private sphere, etc. may be distinguished. Depending on the objectives of the study, the focus can be on different types of copyrighted subject matter or on different copyright industries¹⁰⁵.</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i></p>	
Definitions	<i>Follow-on creation</i>	Umbrella term including all kinds of creations using any elements of existing works to support the creation of new works. Therefore, "follow-on creation" can either result in a new and independent work or a derivative works subject to the rights of the original copyright holders.
	<i>Abuse of copyright</i>	Use of copyright by the copyright holder in order to cause intentional harm
Limitations	The concept of follow-on creation is difficult to define precisely.	

¹⁰⁵ Alternatively, other definitions such as cultural or creative industries, or a more focused approach including only core or primary copyright industries, or major or direct activities related to copyright can be used. For the WIPO definition of core copyright industries, see Appendix 3.

Licensing Markets

A balanced and well-functioning copyright system supports a fair bargaining position for each stakeholder and at the same time seeks to minimize transaction costs. It contributes to the efficient allocation of resources and fair distribution of income. It should also adapt to changes in society, for example the changes in technology and in the markets. The purpose of Pillar III is to analyze the operation of licensing markets in order to verify whether these goals are met.

When studying the operation of the markets, it should be kept in mind that favoring efficiency does not always achieve fairness. It should be recognized that these two features may not be achievable only through the markets but will require government intervention. An assessment of the functioning of the markets for rights can be implemented by evaluating the measures taken in the country to improve the operation of the markets for rights as well as by studying the experiences of stakeholders regarding licensing of rights.¹⁰⁶ It can alternatively take the form of case studies analyzing various instances of transfer of copyright, such as licensing and transfer of rights within an employment relationship.

In order to build a broader picture of the operation of the markets, the results can be mirrored against the findings of Pillar II of this methodology. Furthermore, it should be noted that internationally enforced rules diminish the risks faced in the global markets; the international aspect is considered particularly within Description Sheet 2 – *International and Regional Context* and Description Sheet 12 – *Collective Management of Rights* in Pillars I and II.

The topics to be analyzed under this area of Pillar III are transaction costs (Methodology Card 18) and the bargaining power of authors, performers and professional copyright users (Methodology Card 19). These matters can be regarded as key indicators of the operation of the markets that should be taken into account when developing the copyright system.

INDICATORS CONCERNING THE AREA LICENSING MARKETS:

Methodology Card 18. Transaction Costs in Transfer and Licensing of Rights
Methodology Card 19. Terms for Transfer and Licensing of Rights

Box 17. Indicators concerning Pillar III, area “Licensing Markets”

¹⁰⁶ According to Gowers (*Gowers Review of Intellectual Property*, 2006), the use and enforcement of copyright need to be efficiently administered so that the copyright system facilitates the selling, buying, licensing and observing of the copyright both within the country and abroad.

Methodology Card 18. Transaction Costs in Transfer and Licensing of Rights

Copyright is exercised contractually, and therefore, the costs of contract making, exercising rights and acquiring rights represent an important aspect in assessing the functioning of the copyright system. High transaction costs may have negative impacts on the efficient operation of the markets and on the access to copyrighted works.¹⁰⁷ The issues to consider in the study could include the costs of identifying and contacting potential negotiating partners and of negotiations regarding transfer and licensing of copyrights.

In the context of this methodology card, the transaction costs that occur when acquiring rights for the use of copyrighted works, and the costs borne by the right owner when selling, licensing, otherwise exchanging, or enforcing the rights are studied separately. Below is a list of different types of possible transaction costs incurred as a result of these processes:

TRANSACTION COSTS IN TRANSFER AND LICENSING OF RIGHTS:

Transaction costs incurred when using copyrighted works in an artist's or performer's own work or performance:

- costs of searching for goods, their possible suppliers, and possible other necessary information on the goods, and
- costs of negotiating and acquiring the rights for the use of copyrighted works.

Transaction costs incurred when selling, licensing or otherwise exchanging an artist's or performer's own work or performance:

- costs of searching for potential users and buyers, and possible other necessary information,
- costs of negotiating and acquiring when selling or licensing copyrighted works or performances, and
- costs of enforcing the rights.

Transaction costs can be measured either in monetary terms or in terms of time consumed or efforts made.

Box 18. Transaction costs in transfer and licensing of rights

The rights of the parties and their contractual situation will differ according to their status in law; hence, authors, performers, professional copyright users owning related rights and other kinds of professional copyright users should be the subjects of distinct analysis.¹⁰⁸ The licensing channels as well as the architecture of value creation differ between industries; for this reason, the different types of activities and industries should be analyzed separately. The data could be gathered from different stakeholder categories using interviews, focus groups and surveys or, alternatively, case study approaches.

¹⁰⁷ Further discussion on transaction costs can be found for example in Ruth Towse & Richard Watt, *Recent Trends in the Economics of Copyright*, Edward Elgar (2008); Arthur Snow & Richard Watt, *Risk Sharing and the Distribution of Copyright Collective Income*, in Lisa N. Takeyama, Wendy J. Gordon & Ruth Towse (eds), *Developments in the Economics of Copyright*, Edward Elgar (2005), Chapter 2, pp. 23-36; and William Landes & Richard Posner, *Indefinitely Renewable Copyright*, University of Chicago Law Review, 70 (2), Spring (2003), pp. 471-518.

¹⁰⁸ Different stakeholder roles have been categorized on p. 21.

This methodology card has connections to several other parts of the methodology framework. Description Sheet 11 – *Individual Exercise of Rights* includes a description of the available model contracts and framework agreements. These are examples of how a copyright system can facilitate efficient bargaining, and they could give an indication of the bargaining costs. Methodology Card 19 discusses the terms of contracts on transfer and licensing of rights, and the balance in negotiating power between contracting parties. Methodology Cards 16 – *Access to Copyrighted Works by the Public* and 17 – *Access to Copyrighted Works for Follow-on Creation* cover problems in identifying the copyright owners. Copyright is managed either by individual licensing contracts or by collective licensing practices, which can effectively reduce transaction costs. Collective management of rights is covered in Description Sheet 12 and Methodology Card 9 (see Pillar II).

Moreover, the study could focus on issues related to the influence of the copyright system in creating a favorable environment for the use of different distribution channels, including problems faced by companies focusing on digital distribution when acquiring copyright licenses, or issues related to the licensing of digital content. This kind of analysis would shed light on the technological neutrality of copyright law and on how the copyright system affects the generation of new business models. Useful information for the interpretation of these results can be found through Description Sheet 5 – *Copyright Law* (and its part on adaptability and neutrality of the copyright system to new technologies) and Methodology Card 4 – *Development of Digital Business Models and Income Based on Digital Distribution* with its parameters concerning digital sales and open licensing of works.

METHODOLOGY CARD 18. TRANSACTION COSTS IN TRANSFER AND LICENSING OF RIGHTS

Key question	What kinds of costs are borne by the negotiating parties when transferring and licensing copyrights?	
Description	<p>Analysis of the transaction costs that occur when acquiring or selling licenses, and when enforcing rights based on the experiences of the following stakeholder categories¹⁰⁹:</p> <ul style="list-style-type: none"> • authors • performers • professional copyright users that are granted specific rights by law (such as producers of phonograms and films or broadcasting organizations) • professional copyright users without specific rights granted by law 	
Parameters to measure	<p>1. Experiences of stakeholders on transaction costs:</p> <ul style="list-style-type: none"> • Costs of identifying and contacting copyright holders or copyright users (search and information costs) • Costs of negotiating and bargaining for selling or acquiring rights • Costs of enforcing the rights <p>2. Opinions of stakeholders on the influence of the copyright system on these costs: are the copyright system and its actors (such as the government, CMOs) able to lower transaction costs (for example, by lowering legal and administrative requirements, or by providing model contracts)?</p>	
Guidelines for data collection	<p>The data can be collected by the means of a focus group study, surveys and/or interviews. Alternatively, the analysis can be based on a case study concerning specific organizations or transactions.</p> <p>Different industries should be analyzed separately when necessary (see for instance the WIPO list of copyright industries in Appendix 3). The costs related to physical and digital works can be studied separately.</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i></p>	
Definitions	<i>Individual licensing</i>	License contracts negotiated and signed between copyright owner and license seeker without the intermediary of CMOs
	<i>Transaction costs</i>	Costs incurred in the process of making an economic exchange (either monetary, but also of other kinds, such as costs caused by the time consumed and the efforts made)
Limitations	<ul style="list-style-type: none"> • Transaction costs can be difficult to assess; they are affected by various elements other than the copyright system and can vary extensively among individuals. It might also be difficult to distinguish their origin. • Negotiation procedures can take distinct forms, which makes it challenging to observe the contracts that have been made and to study the operation of copyright as an asset in contract-making. 	

Methodology Card 19. Terms for Transfer and Licensing of Rights

This indicator aims at assessing stakeholders' experiences on licensing contracts. The purpose is to discover the effects of copyright on negotiation processes when transferring rights as well as on the bargaining power of different stakeholders. The data may be gathered through surveys, focus group studies or interviews.

The analysis should take into account different types of contracts, with a focus on their length, scope and exclusivity as well as the terms of compensations. The parties'

¹⁰⁹ Different stakeholder roles have been categorized on p. 21.

perceptions on their bargaining positions during contract negotiations should also be a subject of analysis, in regard with the types and perceived fairness and legality of terms of contracts encountered. The barriers for licensing experienced by stakeholders, both within the country borders and internationally, should be also included in the research. The analysis can concentrate on the contractual environment and contract making, and the ways in which copyright affects them. It should also take into account the knowledge of negotiating parties on copyright issues (studied in the area *Dissemination of Knowledge* in Pillar II).

The contracting practices, the terms and the scope of protection as well as the architecture of value creation differ between industries. For this reason, different types of activities and industries should be analyzed separately. The balance between the negotiating power of different stakeholders is one important aspect of the functioning of the markets for rights. The possible concentration of market power in a particular industry has implications for the bargaining power of the negotiating parties and the terms and conditions of contracts and if relevant, the results can be analyzed in this light. Information on the level of concentration of the markets is collected in the context of Description Sheet 4 – *Markets for Copyrighted Products and Services*.

Moreover, in order to detect possible reasons for inefficiencies in the licensing market, other factors possibly influencing the functioning of the individual exercise of rights, such as the levels of taxation and the general functioning of the legal system, should be taken into account. For this purpose, the data should be analyzed in the light of the description of copyright law (Description Sheet 5), as well as other relevant areas of law (Description Sheet 1). The results should also be mirrored to relevant data concerning the collective management of rights in the country, which is covered in Description Sheet 12 and Methodology Card 9 in Pillar II.

METHODOLOGY CARD 19. TERMS FOR TRANSFER AND LICENSING OF RIGHTS

Key question	What kind of terms and conditions of licensing contracts have stakeholders experienced?	
Description	<p>Analysis of the experiences of licensing parties on terms for transfer and licensing of rights in a specified industry or group of industries, focusing on the perceived fairness of the terms and the effects of the copyright system on the negotiation processes and bargaining power of the following stakeholder categories¹¹⁰:</p> <ul style="list-style-type: none"> • authors • performers • professional copyright users that are granted specific rights by law (such as producers of phonograms and films or broadcasting organizations) • professional copyright users without specific rights granted by law 	
Parameters to measure	<p>1. Experiences of stakeholders on a) the use of different licensing channels (individual or collective) and b) the barriers for licensing stemming from the copyright system</p> <p>2. Experiences of stakeholders on the perceived balance in bargaining power</p> <p>3. Experiences of stakeholders on the perceived fairness and legality of terms of contracts</p> <p>The following terms should be subject to analysis:</p> <ul style="list-style-type: none"> • The length of the contract • The scope of the contract (for example the different types of uses of the work¹¹¹ and different rights and obligations by the parties) • The exclusivity of the contract (transfer of exclusive right or possibility to sell other licenses on the same work) • Terms of compensation: <ul style="list-style-type: none"> – level of compensation and the methods for its determination – type of compensation: monetary (such as lump sum, royalty, reward or salary) or other (consider also the possible coupling of the compensation from the license with compensations from other transactions) – terms of payment 	
Guidelines for data collection	<p>The data can be collected by the means of a focus group study, surveys and/or interviews.</p> <p>Different industries should be analyzed separately when necessary (see for instance the WIPO list of copyright industries in Appendix 3).</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (see page 33).</i></p>	
Definitions	<i>Licensing contract</i>	All kinds of agreements on transfer of copyright, including such agreements included in employment contracts.
	<i>Individual licensing</i>	Licensing contracts negotiated and signed/concluded between copyright owner and license seeker without the intermediary of CMOs
	<i>Terms of contract</i>	Terms concerning the deliverables, price, responsibilities, rights, obligations, schedules, etc.
Limitations	<ul style="list-style-type: none"> • The exercise of rights and the negotiation procedures can take distinct forms, which makes it challenging to observe the licensing contracts in general and to study the operation of copyright as an asset in contract-making. • The information provided by the participants to surveys or focus groups are based on their individual opinions and experiences. This methodology card was not designed to offer an objective overview of, for instance, the differences in the remuneration levels of stakeholders. 	

¹¹⁰ For definitions of these different stakeholder categories, see p. 21.

¹¹¹ Consider for example different channels of distribution and different ways of performing to the public.

Infringement, Opinions and Public Acceptance

As the fourth aspect of balanced operation of the copyright system, the unauthorized use of copyrighted works, public acceptance towards copyright as well as stakeholders' opinions on the copyright system are addressed. A high level of copyright infringement might be a signal of poor functioning of certain elements of the copyright system, inadequate access, unequal bargaining power or excessive transaction costs. The topic is therefore connected to several other indicators in the methodology framework. Copyright infringement can also sometimes be explained by a lack of public support towards copyright rules and permissive attitudes in society towards unauthorized use, which are also assessed in this section. The examination of the stakeholders' opinions on the copyright system will provide information on the perceived legitimacy of the copyright system among different stakeholder categories and also on the neutrality, clarity and consistency of the system, possibly indicating specific areas in need of reform.

The assessment of the level of copyright infringement presented here is divided between physical and digital unauthorized use (Methodology Cards 20 and 21). This distinction has been chosen because it allows to present copyright infringement taking place in two different and clearly identifiable realms, and also because the data regarding these two areas is usually collected with different methods. An additional distinction could be made between illegal activities committed for the purposes of commercial gain and those taking place for the benefit of the infringer only, but this distinction proves difficult to make in practice since it is based on the intent of the infringer. In any case, the amount of unauthorized use that could be related to a commercial purpose should be separately assessed when possible.

Methodology Card 22 proposes to collect stakeholders' opinions on the different aspects of the copyright system's operation, including neutrality of the copyright system, clarity and consistency of copyright rules, the copyright system's capacity to adapt and the need for reforms. The purpose is to provide a general overview of the opinions of different stakeholder categories concerning the functioning, performance and operational balance of the copyright system.

INDICATORS CONCERNING THE AREA *INFRINGEMENT, OPINIONS AND PUBLIC ACCEPTANCE*:

Methodology Card 20. Unauthorized Use of Copyrighted Works in Physical Form

Methodology Card 21. Unauthorized Use of Copyrighted Works in Digital Form

Methodology Card 22. Stakeholders' Opinions on the Copyright System

Box 19. Indicators concerning Pillar III, area "Infringement, Opinions and Public Acceptance"

Methodology Card 20. Unauthorized Use of Copyrighted Works in Physical Form

The first methodology card to evaluate the level of copyright infringement in the country addresses the volume of unauthorized physical copies. It suggests collecting data on the confiscations of unlawful products both inside the country as well as at customs. The analysis should include the main forms of physical piracy: pirate copies, counterfeits and bootlegs. When possible, the evolution of the level of unauthorized use could be studied through time-series data.

Moreover, in order to identify how acute the problem of unauthorized use is for the suppliers of the copyrighted goods, the data should be compared to the size of the lawful markets (data collected using Methodology Cards 2 and 3); for example, a large amount of confiscated goods compared to the amount of copyrighted goods imported in the country could be related to a lack of actual court convictions or too low sanctions lacking exemplary effect.

METHODOLOGY CARD 20. UNAUTHORIZED USE OF COPYRIGHTED WORKS IN PHYSICAL FORM

Key question	What is the volume of unauthorized use of copyrighted works in physical form?	
Description	<p>Estimation of the volume of unauthorized use of copyrighted works in physical form (such as physical pirate copies, counterfeits and bootlegs), covering the following subject matters:</p> <ul style="list-style-type: none"> • Phonograms (CDs, discs, cassettes, etc) • Films (DVDs, blu-rays, VHS cassettes, etc) • Games • Computer programs (on physical supports) 	
Parameters to measure	<p>1. Estimation of the amount of unlawful products (pirate copies, counterfeits and bootlegs, in physical form) confiscated at customs, compared to the amount of copyrighted goods imported in the country</p> <p>2. Estimation of the amount of unlawful products (pirate copies, counterfeits and bootlegs, in physical form) confiscated inside the country, compared to the amount of copyrighted goods legally available in the country</p>	
Guidelines for data collection	<p>The data can be collected as a desktop study using available national and international information sources. It can be complemented with expert interviews.</p> <p>The data should be collected over a period allowing meaningful analysis and calculation of averages, for example 1, 5 or 10 years.</p> <p>Data on the size of the lawful markets and imports used for comparison is collected in application of Methodology Cards 1, 2 and 3.</p>	
Definitions	<i>Bootleg</i>	Unauthorized recording of live or broadcast performance duplicated and sold without the permission of the artist, composer or record company ¹¹²
	<i>Counterfeit</i>	Recording made without required permission, which is packaged to resemble the original as closely as possible and is likely to mislead the consumer into believing that they are buying a genuine legitimate product ¹¹³
	<i>Unauthorized physical copy</i>	A copy made or distributed on physical carriers without the permission of the right holder(s)
	<i>Unauthorized use</i>	Reproducing and/or making available to the public copyrighted works without authorization from the right holder(s)
Limitations	<ul style="list-style-type: none"> • The results will depend on the amount of effort and resources that is put into work against copyright infringement at customs. • It might not always be possible to clearly distinguish between a pirate copy, a counterfeit and a bootleg from the data. • Some of the infringements remain unnoticed by enforcement bodies. • If the compilation of statistics on IPR enforcement is not well developed or centralized, gathering sufficient data for the purposes of this indicator might be difficult. • Certain aspects of copyright infringement such as abuses of copyright exceptions or limitations, or unintentional infringements are not directly covered but the information collected through the indicator can shed light on these phenomena as well. 	

¹¹² IFPI Greece, *Piracy and its forms*, available online at http://www.ifpi.gr/piracytypes_en.html.

¹¹³ Idem.

Methodology Card 21. Unauthorized Use of Copyrighted Works in Digital Form

As the volume of physical pirate copies can be the most relevant indicator of the level of unauthorized use of copyrighted works in some countries, the unauthorized use in digital form can be another crucial indicator especially in countries where the level of technological development is high. File-sharing through the internet provides the means for the exchange of large amounts of copyrighted material without intermediaries, at the same time creating new markets for other kinds of businesses, such as online distribution platforms. This methodology card aims at evaluating the volume of unauthorized use of digital works through data on the share of the population acquiring and using unlawful content.

The first parameter of this indicator concerns the collection of data on the extent of unauthorized use of copyrighted works in digital form. It is also suggested to compare this data to the level of authorized end-use of copyrighted content online.¹¹⁴ Comparison of the levels of authorized and unauthorized use of copyrighted works online can also be used to assess the impacts of unauthorized use on the legal markets.¹¹⁵ Possible factors likely to affect the results include the attitudes of the general public towards unauthorized file sharing as well as the availability, price and characteristics of legal and illegal products and services. The extent of unauthorized file sharing is also connected to the level of enforcement in the country and the perceived risks of file sharing (e.g. legal sanctions and reputational costs of an infringer).

In order to achieve a comprehensive analysis of the data, the different reasons for engaging in copyright infringement need to be studied, for example through a survey with detailed as well as open-ended questions (see Parameter 2). In the context of open source data and open licenses, some see copyright not as a facilitator for but as

¹¹⁴ In a setting where a lot of services are available online for free (remunerated through advertising or collection of personal data, for instance) and where unauthorized copies of copyrighted content are widely spread, consumers might be less willing to pay for digital works.

¹¹⁵ Some studies report negative impacts of unauthorized use on the sales of legal products and services, and a consequent reduction in investment in creative works (see e.g. Stan J. Liebowitz, *Pitfalls in Measuring the Impact of File-sharing on the Sound Recording Market*, CESifo Economic Studies 51 (2-3) (2005), pp. 435-473 and IFPI *Digital Music Report 2014* (2014), available at <http://www.ifpi.org/downloads/Digital-Music-Report-2014.pdf>). However, other studies suggest that unauthorized file sharing for non-commercial purposes might have positive effects on the markets for copyrighted products and services. For example, unauthorized file sharing might help consumers make more informed buying decisions and increase the consumer willingness to pay (see e.g. Martin Peitz & Patrick Walbroeck, *Why the music industry may gain from free downloading – The role of sampling*, International Journal of Industrial Organization 24 (2006), pp. 907-913), it might have a positive effect on the sales of complementary products and services (see e.g. Amit Gayer & Oz Shy, *Publishers, artists and copyright enforcement*, Information Economics and Policy, 18 (2006), pp. 374-384; Felix Oberholzer-Gee & Koleman Strumpf, *The Effect of File Sharing on Record Sales: An Empirical Analysis*, Journal of Political Economy, 115(1) (2007), pp. 1-42; and Julie Holland Mortimer, Chris Nosko & Alan Sorensen, *Supply Responses to Digital Distribution: Recorded Music and Live Performances*, NBER Working Paper No. 16507 (2010)), and it might enlarge the network of users and help suppliers in segmenting the buyers according to their willingness to pay (see e.g. Lisa Takeyama, *The welfare implications of unauthorized reproduction of intellectual property in the presence of demand network externalities*, The Journal of Industrial Economics 42 (2004), pp. 155-166; Stephen King & Ryan Lampe, *Network externalities, price discrimination and profitable piracy*, Information economics and policy 15 (2003), pp. 271-290; and Oz Shy & Jacques-Francois Thisse, *A Strategic Approach to Software Protection*, Journal of Economics & Management Strategy 8(2) (1999), pp. 163-190). Both positive and negative impacts of unauthorized use on the legal markets should be considered in the assessment.

a constraint on the free dissemination of knowledge.¹¹⁶ Moreover, the public legitimacy of copyright has been questioned as the technological development has blurred the interfaces of different value creation processes that earlier used to involve only certain stakeholder categories.¹¹⁷ The legitimacy of copyright, i.e. the sense of fairness of copyright perceived by the public is likely to affect levels of non-compliance.¹¹⁸ The level of acceptance of copyright rules and of the copyright system in general is the topic of Methodology Card 22 – *Stakeholders' Opinions on the Copyright System*.

The third parameter proposes to collect information on financial aspects of copyright infringement online. Such information could include estimates on the number of websites and hosting sites facilitating copyright infringement and analysis on their most common sources of revenue and payment methods. This parameter is designed to shed light on the activities of the intermediaries facilitating copyright infringement. However, due to the complexity of the phenomenon, all the stakeholders that might be involved in copyright infringement are not directly covered in the methodology card. For example, it does not address the liability of internet service providers.

For collecting the data concerning Parameters 1 and 2, a survey directed at the public at large is proposed as a primary method. The data can alternatively be gathered through a desktop analysis, which can either be based on already published survey studies on the subjective views of end-users, or on objective data on the levels of unauthorized use in different industries, such as official statistics or estimates from industry organizations. Data concerning Parameter 3 can be collected through a desktop study utilizing existing studies and statistics.

The results of this methodology card are connected to all the other areas of Pillar III of the methodology (*Incentives, Access and Licensing Markets*) and can be used in the interpretation of their results. The results of this methodology card can also be studied in the light of several indicators of Pillars I and II: Description Sheet 3 on the level of the availability of information and communications technologies in the country, Description Sheet 4 focusing on prices of cultural products and the business models used, Methodology Card 4 describing the development of business models in the digital environment, and Description Sheets 8 and 9 covering enforcement by public and private actors and the sanctions and remedies for copyright

¹¹⁶ Gowers (*Gowers Review of Intellectual Property*, 2006, p. 39) argues that this is principally a problem of “a lack of flexibility to accommodate certain uses that a large proportion of the population regards as legitimate and which do not damage the interests of right holders”.

¹¹⁷ Access to copyrighted works for follow-on creation is the topic of Methodology Card 17.

¹¹⁸ The Gowers Review (2006, p. 39) found that in the UK, copyright law is perceived to be complex and overly restrictive. See also The UK government's *Strategy for Copyright in the Digital Age – © the way ahead* (Intellectual Property Office & Department for Business, Innovation and Skills, 2009) based on previous documents *The Gowers Review* (2006), *Creative Britain: New Talents for the New Economy* (2008), and *Digital Britain* (2009). This document assesses that “the complexity of copyright derives from the historical accretion of rights, more complicated business models and value chains and the interactions of right holders.”

infringement. Methodology Card 7 discusses penalties for copyright infringement and the number of court cases which will provide an indication of the deterrent effect of copyright enforcement. Moreover, the results of this methodology card can be influenced by the complexity of the copyright rules and the public awareness on what is allowed and what is not (see Description Sheet 13 – *Copyright-related Information Activities* and its information on anti-piracy campaigns, Methodology Card 10 – *Public Awareness of the Rights* and Description Sheet 14 – *Copyright-related Education for the Public in General*).

METHODOLOGY CARD 21. UNAUTHORIZED USE OF COPYRIGHTED WORKS IN DIGITAL FORM

Key question	How widespread is the unauthorized use of copyrighted content in digital form? What are end-users' opinions on copyright infringement?	
Description	Analysis of the volume of unauthorized use of works in digital form, as compared to the use of legally acquired content, analysis of the reasons for engaging in infringing activities, and information on financial aspects of copyright infringement online	
Parameters to measure	<p>1. The extent of unauthorized use of copyrighted works in digital form: estimates on the level of unauthorized use of copyrighted content online; compare with the size of the digital markets (estimates on the level of authorized end-use of copyrighted content online)</p> <p>2. The reasons for engaging in copyright infringement: data on the possible motivations behind copyright infringement online. Topics to be considered include:</p> <ul style="list-style-type: none"> • Do people find copyright infringement wrong or shameful? • How much are those consumers that use illegal content influenced by the availability, price and characteristics of legal products and services? <p>3. Information on financial aspects of copyright infringement online: for example, estimates on the number of websites and hosting sites facilitating copyright infringement, the most common sources of revenue and payment methods used, etc.</p>	
Guidelines for data collection	<p>The data can be collected by the means of a survey or interviews, or alternatively through desktop studies utilizing existing statistical or other data.</p> <p>The data should be collected among the public at large and can be categorized by relevant statistical divisions, such as age and gender. The study can focus on selected industries or subject matters.</p> <p>The data concerning the use of copyrighted content should relate to a period allowing meaningful analysis, for example 1, 5 or 10 years.</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (for more information, see page 33).</i></p>	
Definitions	<i>Digital content</i>	Content stored in digital (as opposed to analog) form. The term is used here as a reference to a digital "end product", such as digital video, digital audio, or digital art, without a specific connection to a single physical support.
	<i>Unauthorized use</i>	Reproducing and/or making available to the public copyrighted works without authorization from the right holder(s)
Limitations	<ul style="list-style-type: none"> • Unauthorized use and distribution of copyrighted works on the internet is based on constantly evolving technologies that all have to be taken into account. • Certain aspects of copyright infringement such as abuses of copyright exceptions or limitations, or unintentional infringements are not directly covered but the information collected through the indicator can shed light on these phenomena as well. 	

Methodology Card 22. Stakeholders' Opinions on the Copyright System

Methodology Cards 15, 16, 18, and 19 propose to assess stakeholders' opinions concerning specified topics whereas the purpose of this methodology card is to get an overall picture of the opinions concerning the functioning, performance and operational balance of the copyright system. Issues to consider in the analysis could include the functioning of the copyright system as a whole or through its individual elements and characteristics, the neutrality of the system or the access to copyrighted works. The data will also tell about the perceived legitimacy of the copyright system among different stakeholder categories. The analysis could focus on the changes in the working environment concerning especially the characteristics of the information society, and on stakeholders' opinions concerning the necessity to update the copyright system in this respect.

The data can be collected by means of a survey, focus group study or stakeholder interviews. All the actors in the industry should be properly represented while keeping the research feasible and the interviews and surveys manageable. Alternatively, qualitative assessment could focus on the opinions expressed publicly, for example in relevant journals, newspapers, internet discussion forums and blogs.

If considered relevant, the study can concentrate on certain areas of interest or on certain industries only. Since the architecture of value creation differs between industries, the opinions of stakeholders in different creative activities and industries should be analyzed separately (see definitions of stakeholder categories on page 21). When relevant, the opinions of actors representing other interest groups (such as archives, libraries, museums, research institutes and educational organizations) can be collected.

The results of this indicator are influenced by the public awareness of the rights (see Methodology Card 10) which is the result of activities aiming at disseminating knowledge concerning copyright (see Description Sheets 13 and 14).

METHODOLOGY CARD 22. STAKEHOLDERS' OPINIONS ON THE COPYRIGHT SYSTEM

Key question	What are the opinions of the different stakeholders concerning the functioning and performance of the copyright system?
Description	<p>Analysis of stakeholders' opinions on the copyright system: its functioning, defects, and legitimacy, covering the following stakeholder categories¹¹⁹:</p> <ul style="list-style-type: none"> • authors • performers • professional copyright users that are granted specific rights by law (such as producers of phonograms and films or broadcasting organizations) • professional copyright users without specific rights granted by law • end-users • other experts in the copyright field • intermediaries
Parameters to measure	<p>1. Stakeholders' opinions on the functioning of the copyright system:</p> <ul style="list-style-type: none"> • The clarity and consistency of its rules, as well as the availability of information on copyright rules • The copyright system's capacity to adapt • The current need for reforms – how urgent, subjects of reforms • The efficiency of CMOs, police and customs, unions and organizations of representatives, as well as courts and tribunals in their work within the copyright system <p>2. Stakeholders' opinions on the neutrality of the copyright system: do its rules favor a certain category of stakeholders?</p> <p>3. Stakeholders' opinions on the access to copyrighted works: does copyright affect the availability of (certain kinds of) copyrighted works? In what way? How could it be remedied? This topic can also cover the availability of copyright licenses.</p>
Guidelines for data collection	<p>The data can be collected through surveys, interviews or focus group studies covering certain areas of interest. Qualitative studies on the opinions expressed in relevant journals and newspapers, Internet discussion forums and blogs may also be conducted when considered relevant.</p> <p><i>Model questionnaires for surveys, focus group studies and interviews are presented in a separate toolkit (for more information, see page 33).</i></p>
Limitations	The information provided by the participants to surveys, focus groups and interviews is based on individual opinions and experiences. The subjective quality of the answers can create challenges when interpreting the results.

¹¹⁹ For definitions of these different stakeholder categories, see p. 21.

Further Applications of the Methodology

● The methodology offers means for an assessment of the operation of national copyright and related right systems. The indicators described in Pillars I, II and III can be used to find commendable policy practices, to formulate copyright and related rights strategies, and to develop the copyright and related rights system at the national and international level. The methodology also comprises a framework for a comprehensive presentation and description of a national copyright system.

It should be clear that the functioning, performance and operational balance of the copyright system will not be directly measured by the data collected through the indicators, but through interpretation of the data. The methodology offers a basis for information gathering at country level. Analysis of the data will give a deeper understanding of specific elements of the copyright system, and add to the understanding of the operation of the copyright system in a broader sense.

This methodology should be considered as a prototype that can be used for different purposes. The guidelines should be specified and updated to respond to the present and future needs for policy information. Below are presented four axes along which the methodology can be further applied.

Use of the Indicators to Assess the Impacts of a Copyright System

A further step in the application of the indicators presented in Pillars I, II and III could be to undertake an analysis of the economic, social and cultural impacts of a copyright system. This means broadening the assessment of the operation of the system focusing on inputs, processes, outputs and medium-term outcomes (as presented in this framework) into the potential and realized long-term results of specific choices. Such impact assessment could focus on the welfare in society, on certain interest groups and audiences, or on different processes and institutions.¹²⁰ WIPO has produced Economic, Social and Cultural Impact Assessment (ESCIA) Guidelines that fulfill this purpose by providing a framework for systematic, evidence-based inquiry and evaluation of the societal impact of copyright on the creative economy.¹²¹

The indicators and study areas presented in this handbook can be used in assessing the impacts of the current copyright and related rights system and the policy and regulatory measures in force. They are also useful in analyzing the impacts of planned changes to the copyright system, as they will provide a solid information base on the current situation as well as a coherent set of parameters useful in building an outline for an assessment of potential and unforeseen impacts. Although the contents of this methodology are not sufficient to create a comprehensive impact assessment tool, data collected for some of its indicators could constitute relevant material for impact analysis processes.

Use of the Indicators to Assess the Compliance of a Copyright System to Good Governance Principles

In addition to the assessment of the operation or the impacts of a copyright system, the indicators defined in this handbook can be used as a basis for the evaluation of the copyright system's compliance to generally recognized good governance principles. This could be done by proposing a comprehensive set of good governance principles based on definitions from international organizations that particularly apply to the copyright system, and then using selected key indicators identified in this methodology framework to verify the compliance of the system to these principles.

¹²⁰ When assessing wider impacts of policy choices, the research should concern both direct and indirect effects, as well as the effects of alternative actions and those of no action at all. The uncertainties should be taken into account as well as possible.

¹²¹ The ESCIA Guidelines aim at assessing the impacts of copyright-related regulatory and policy decisions. Compared to this methodology, the goal of the ESCIA Guidelines is to study the impacts of specific, planned or realized policy and legislative measures. The ESCIA methodology is outlined in the publication *WIPO Draft Guidelines on Assessing the Economic, Social and Cultural Impact of Copyright on the Creative Economy*, available on the WIPO website at <http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/escia.pdf>.

An assessment of the compliance of the system to good governance principles could complement the analysis of the impacts of the copyright system.

The realization of good governance principles could be assessed separately concerning the different categories of institutional actors responsible for copyright policies and their application. At a first level, the main actors are states, government agencies and legislators (in their actions for drafting copyright policies, implementing them through laws, regulations and other measures), and public actors in charge of copyright enforcement. Their compliance to good governance principles could be assessed taking into account the input of private actors. Collective management organizations, whose activities can be crucial for the functioning of the copyright system, constitute a second level of actors to be subject to good governance analysis. Evaluating the governance of CMOs is the object of the TAG of Excellence project, initiated by WIPO in 2013, which seeks to increase collective management organizations' transparency, accountability and good governance.¹²²

International Application

This framework can be applied to study the operation of national copyright systems in different countries. It is most useful as a tool in developing national copyright policies. For this purpose, the methodology has been designed to be relevant in the widest possible range of national contexts. When implemented in various settings, it might need to be adapted to the characteristics of the country, its legislation and its creative industries in order to provide as fine-tuned a picture of the copyright system as possible. The decision on the extent of an assessment needs to be made at country level after estimating the needs and resources at national level.

The methodology framework aims at supporting studies at national level that can also be meaningful in an international context. The information collected will be most useful for this purpose if it is sufficiently standardized. However, as noted earlier, the diversity of national environments is a challenge, and many indicators compare weakly in the international context. Nevertheless, a set methodology framework will offer guidelines for the assessment and support the establishment of good practices. Time and experience will help improve the indicators in that direction.

¹²² For more information, see Olav Stokkmo, *Transparency, Accountability, Good Governance of CMOs*, presentation at the WIPO Ministerial Conference, 4 November 2015, Dakar, available at http://www.wipo.int/edocs/mdocs/africa/en/ompi_pi_dak_15/ompi_pi_dak_15_cluster_ii_11.pdf.

Modular Application

The modular structure of the methodology will enable the separate assessment of one or several elements of the copyright system, depending on the particular purposes of the research. The methodology can be applied for instance with a focus on specific actors, types of data, industries, subject matter, or operational aspects of the copyright system. With many possibilities for use, future creative implementations of this methodology will likely enrich the experience on its usability. New examples of studies using selected indicators for particular purposes will accumulate in the future and complement the examples listed in Appendix 4. The methodology as a whole can also profit from these experiences of modular implementation and be further developed accordingly.

Involvement of Stakeholders

The roles of the different stakeholder categories vary in their nature depending on the industry they are part of. As a result, the application of the methodology will likely require separate analysis of different industries. In the future, the framework can be further developed to better represent the different needs in assessing the copyright system's operation.

Besides providing an assessment tool to study the operation of the copyright system at national level, the framework can also be used by stakeholders in different industries to assess the operation of the system in their own environment and the ways in which copyright affects their own work. Based on such experiences, the methodology can be further developed so that its efficiency in studying the system's operation at industry level would be improved. This work could also include a more detailed analysis of value networks. The modularity of the methodology will facilitate separate studies adapted to the environments and specific characteristics of different industries.

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Legal instruments

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- Beijing Treaty on Audiovisual Performances (WIPO, 2012)
- Berne Convention for the Protection of Literary and Artistic Works (1886)
- Buenos Aires Convention (1910)
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971)
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005)
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974)
- Copyright Treaty (WIPO, 1996)
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Official Journal L 167, 22.6.2001, pp. 10–19.
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (WIPO, 2013)
- Performances and Phonograms Treaty (WIPO, 1996)
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961)
- Universal Copyright Convention (1952)
- Vienna Convention on the Law of Treaties (1969)

Online resources

Creative Commons Inc.™ at <https://creativecommons.org/>

Eurostat at <http://ec.europa.eu/eurostat>

Foundation for Cultural Policy Research Cupore at www.cupore.fi

IFPI Greece, *Piracy and its forms* at http://www.ifpi.gr/piracytypes_en.html

International Labour Organization at www.ilo.org/stat

International Monetary Fund at <http://www.imf.org/external/data.htm>

OECD Statistics Division at www.oecd.org/statistics

UNCTADstat (UNCTAD calculations based on IMF Balance of Payments Statistics) at <http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=14774>

UNESCO Institute for Statistics at www.uis.unesco.org

United Nations Conference on Trade and Development at <http://www.unctad.org/>

United Nations Development Programme at <http://www.undp.org/>

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World Trade Organization at <http://stat.wto.org>

List of Acronyms

ADR	Alternative Dispute Resolution
BIRPI	Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (United International Bureaux for the Protection of Intellectual Property)
BSD	Berkeley Software Distribution
CC	Creative Commons
CMO	Collective Management Organization
Cupore	Foundation for Cultural Policy Research (Helsinki, Finland)
DCF	Discounted Cash Flow
DRM	Digital Rights Management
DVD	Digital Versatile Disc or Digital Video Disc
EC	European Community
ESCIA	World Intellectual Property Organization's Economic, Social and Cultural Impact Assessment project
EU	European Union
EULA	End User Licensing Agreement
FOD	Free on Demand
FTE	Full Time Equivalent
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GPL	GNU General Public License
ICT	Information and Communications Technology
IFPI	International Federation of the Phonographic Industry
IMF	International Monetary Fund
IP	Intellectual Property
IPPR	Institute for Public Policy Research (UK)
IPR	Intellectual Property Rights
LGPL	GNU Lesser General Public License
MIT	Massachusetts Institute of Technology
MPL	Mozilla Public License
OECD	Organization for Economic Cooperation and Development
RMI	Rights Management Information
ROI	Return On Investment
SMEs	Small and Medium-sized Enterprises
TAG	Transparency, Accountability, Good Governance
TCE	Traditional Cultural Expressions
TPM	Technological Protection Measures
TRIPS	World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights
UCC	Universal Copyright Convention
UCC Paris	Universal Copyright Convention as revised in Paris in 1971
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations' Development Program
UNESCO	United Nations' Educational, Scientific and Cultural Organization
VOD	Video On Demand
WCT	World Intellectual Property Organization's Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	World Intellectual Property Organization's Performances and Phonograms Treaty
WTO	World Trade Organization

Appendices

- Appendix 1: Organizational Structure for the Project
- Appendix 2: Overview of the Methodology Cards and Description Sheets
- Appendix 3: The WIPO Definition of Copyright Industries
- Appendix 4: Modular Application of the Methodology
- Appendix 5: List of Information Sources for National Studies

Appendix 1. Organizational Structure for the Project

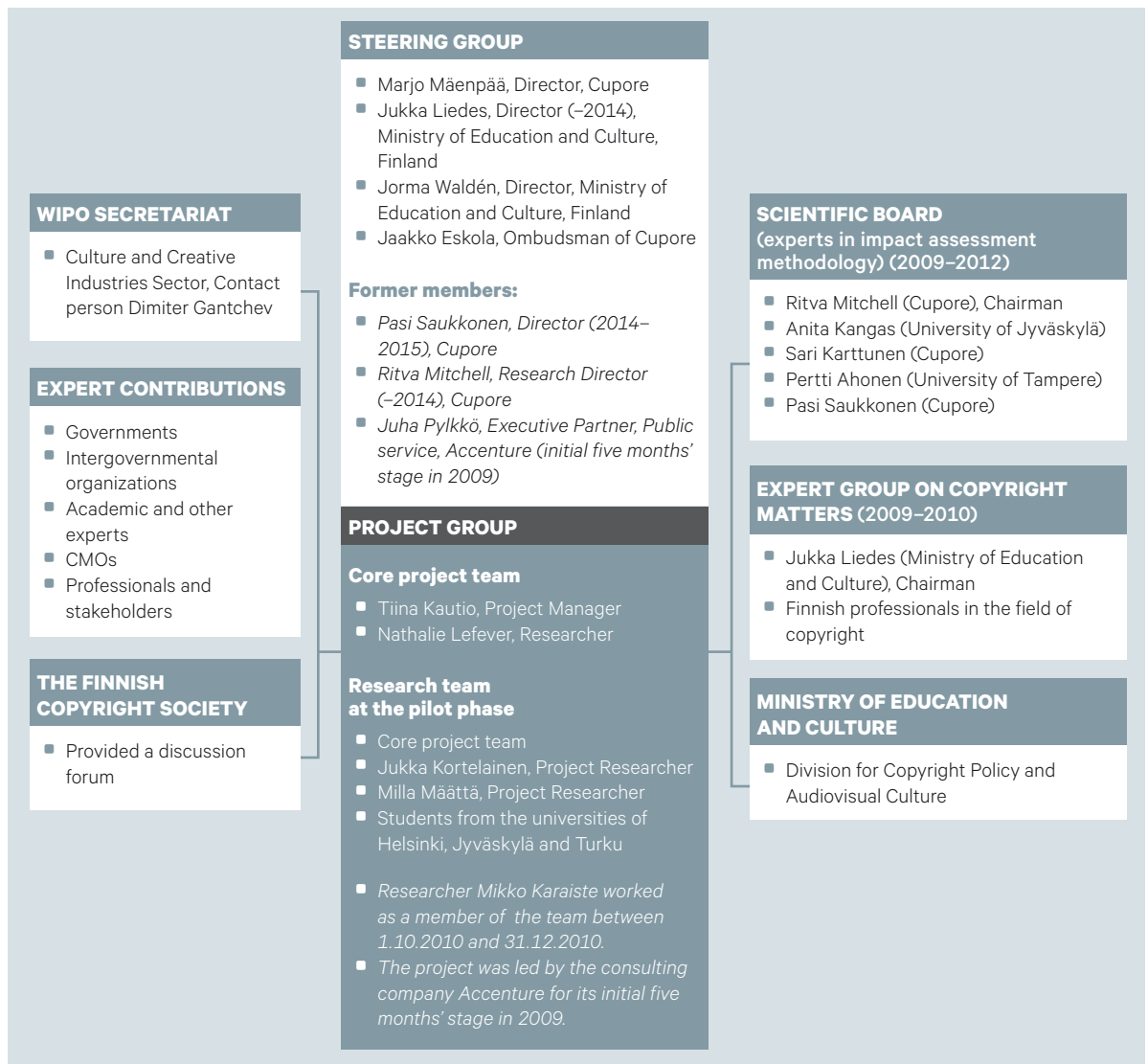


Figure 5. The organizational structure for the project

Appendix 2. Overview of the Methodology Cards and Description Sheets

COPYRIGHT ENVIRONMENT

The Context in Which the Copyright System Operates

- Description Sheet 1. National Context
- Description Sheet 2. International and Regional Context
- Description Sheet 3. Technological Development
- Methodology Card 1. Macroeconomic Importance of Copyright Industries

Value Creation and the Markets for Copyrighted Products and Services

- Description Sheet 4. Markets for Copyrighted Products and Services
- Methodology Card 2. Volume of Domestic Production of Copyrighted Products and Services
- Methodology Card 3. Volume of Exported and Imported Copyrighted Products and Services
- Methodology Card 4. Development of Digital Business Models and Income Based on Digital Distribution

FUNCTIONING AND PERFORMANCE OF THE ELEMENTS OF THE COPYRIGHT SYSTEM

Law, Policy and Public Administration

- Description Sheet 5. Copyright Law
- Description Sheet 6. Copyright Policy
- Methodology Card 5. Public Consultation on Law Proposals
- Methodology Card 6. Use of Impact Assessment and Research in Policy Development
- Description Sheet 7. Public Administration of Copyright

Enforcement

- Description Sheet 8. Enforcement by Public and Private Actors
- Description Sheet 9. Sanctions and Remedies for Copyright Infringement
- Methodology Card 7. Application of Sanctions and Remedies for Copyright Infringement
- Description Sheet 10. Availability of Alternative Dispute Resolution Mechanisms
- Methodology Card 8. Use of Alternative Resolution Mechanisms for Solving Copyright Disputes

Management of Rights

- Description Sheet 11. Individual Exercise of Rights
- Description Sheet 12. Collective Management of Rights
- Methodology Card 9. Efficiency of Collective Management Organizations

Dissemination of Knowledge

- Description Sheet 13. Copyright-related Information Activities
- Description Sheet 14. Copyright-related Education for the Public in General
- Methodology Card 10. Public Awareness of the Rights
- Methodology Card 11. Copyright-related Education as Part of the Education of Professionals for Creative Industries
- Description Sheet 15. Research on Copyright-related Topics
- Methodology Card 12. Copyright-related Research and Study Programs in Universities and Research Institutes

OPERATIONAL BALANCE OF THE COPYRIGHT SYSTEM

Incentives

- Methodology Card 13. Direct Copyright Revenue Streams for Different Stakeholders
- Methodology Card 14. Return on Investment for Copyrighted Products and Services
- Methodology Card 15. Stakeholders' Opinions Concerning the Incentive Function of the Copyright System

Access

- Methodology Card 16. Access to Copyrighted Works by the Public
- Methodology Card 17. Access to Copyrighted Works for Follow-on Creation

Licensing Markets

- Methodology Card 18. Transaction Costs in Transfer and Licensing of Rights
- Methodology Card 19. Terms for Transfer and Licensing of Rights

Infringement, Opinions and Public Acceptance

- Methodology Card 20. Unauthorized Use of Copyrighted Works in Physical Form
- Methodology Card 21. Unauthorized Use of Copyrighted Works in Digital Form
- Methodology Card 22. Stakeholders' Opinions on the Copyright System

Summary table 4. Overview of the methodology cards and description sheets of the framework

Appendix 3. The WIPO Definition of Copyright Industries

Source: WIPO, *Guide on Surveying the Economic Contribution of Copyright Industries – 2015 Revised Edition*, Publication No. 893 E (2015), pp. 49–63, 155–156.

CORE COPYRIGHT INDUSTRIES:

Industries wholly engaged in the creation, production and manufacture, performance, broadcasting, communication and exhibition, or distribution and sale of works and other protected subject matter.

- Press and Literature
- Music, Theatrical Productions, Operas
- Motion Picture and Video
- Radio and Television
- Photography
- Software, Databases and Computer Games
- Visual and Graphic Arts
- Advertising Services
- Copyright Collective Management Societies

PARTIAL COPYRIGHT INDUSTRIES:

Industries engaged in the production, manufacture and sale, and renting or leasing of equipment; function wholly or primarily to facilitate the creation, production, or use of works and other protected subject matter.

- Apparel, Textiles and Footwear
- Jewelry and Coins
- Other Crafts
- Furniture
- Household Goods, China and Glass
- Wall Coverings and Carpets
- Toys and Games
- Architecture, Engineering, Surveying
- Interior Design
- Museums

INTERDEPENDENT COPYRIGHT INDUSTRIES:

Industries in which a portion of the activities is related to works and other protected subject matter; may involve creation, production and manufacture, performance, broadcasting, communication and exhibition, and distribution and sales.

- TV Sets, Radios, CD-DVD-Blue-Ray Players, Electronic Game Equipment, and Other Similar Equipment
- Computers and Equipment
- Tablets and Smartphones
- Musical Instruments
- Photographic and Cinematographic Instruments
- Photocopiers
- Blank Recording Material
- Paper

NON-DEDICATED SUPPORT INDUSTRIES:

Industries in which a portion of the activities is related to facilitating broadcast communication and the distribution or sale of works and other protected subject matter whose activities have not been included in the core copyright industries.

- General Wholesale and Retail
- General Transportation
- Information and Communication (including wired, wireless, satellite, and internet)

AN IN-DEPTH DESCRIPTION OF THE CORE COPYRIGHT INDUSTRIES (WIPO 2015)

Press and Literature

- Authors, writers, translators
- Newspapers
- News and feature agencies
- Magazines and periodicals
- Book publishing
- Cards and maps, directories and other published material
- Pre-press, printing and post-press of books, magazines, newspapers
- Advertising materials
- Wholesale and retail of press and literature (bookstores, news-stands, etc.)
- Libraries

Motion Picture and Video

- Writers, directors, actors etc.
- Motion picture and video production and distribution
- Motion picture exhibition
- Video rentals and sales, video on demand
- Allied services

Software, Databases, and Computer Games

- Programming, development and design, manufacturing
- Wholesale and retail prepackaged software (business programs, video games, educational programs, etc.)
- Database processing and publishing

Photography

- Studios and commercial photography
- Photo agencies and libraries

Music, Theatrical Productions, Operas

- Composers, lyricists, arrangers, choreographers, directors, performers and other personnel
- Printing and publishing of music
- Production/manufacturing of recorded music
- Wholesale and retail of recorded music (sale and rental)
- Artistic and literary creation and interpretation
- Performances and allied agencies (bookings, ticket agencies, etc.)

Radio and Television

- National radio and television broadcasting companies
- Other radio and television broadcasters
- Independent producers
- Cable television (systems and channels)
- Satellite television
- Allied services

Visual and Graphic Arts

- Artists
- Art galleries, other wholesale and retail
- Picture framing and other allied services
- Graphic design

Advertising services

- Agencies, buying services

Copyright Collective Management Societies

Appendix 4. Modular Application of the Methodology

The methodology for assessing national copyright and related rights systems provides recommendations for the formulation of policies and strategies and for developing the copyright system at national and international level. As a whole, the methodology aims at presenting a thorough and comprehensive picture of a national copyright system. This result will be achieved when collecting the information described in the methodology cards and description sheets outlined in this handbook.

However, the methodology has also been designed to allow a modular application. This means that research focusing on particular aspects of the copyright system can be carried out using only the most relevant methodology cards and description sheets and yet trigger meaningful results. Modularity makes it possible to assess particular operational aspects of the copyright system, to focus on a particular subject matter or industry, or to study a specific policy question. For these purposes, the relevant description sheets and methodology cards need to be carefully chosen; some of them will be essential in the research while some others will provide complementary information for a better understanding of the matter at hand.

In this appendix, four examples of such partial application of the methodology are presented.

Example 1. A Basic Assessment of the Operation of a Copyright System

The methodology cards and description sheets outlined in the methodology handbook constitute a consistent framework for the evaluation of the operation of national copyright systems. However, a full implementation of the methodology represents an important investment in time and money. This is one of the reasons why it has been designed to allow a partial implementation with more focused areas of study.

For the same reason, this section provides an example of a selective implementation of the methodology aimed at offering a smaller scale and yet comprehensive overview of the operation of a copyright system. In this prospect, an exemplary selection of methodology cards constituting the core of the assessment procedure has been made, and all the description sheets have been left out. Limiting the research to these methodology cards will of course narrow the analysis of the copyright system and there is a higher risk that some connections will be misunderstood or some problems will be missed. It also implies that researchers undertaking the analysis already have a sufficient knowledge of the copyright system and the context in which it operates to compensate for the absence of descriptive information. However, such a smaller-scale analysis can constitute a basis on which to build further research focused on the issues it might unravel.

Selected Indicators

Pillar I – Copyright Environment

Area: *The Context in Which the Copyright System Operates*

Pillar I is designed to present the environment in which the copyright system is set but it also includes information concerning the importance of industries based on copyright in the national economy. This is the subject of Methodology Card 1 – *Macroeconomic Importance of Copyright Industries*.

Area: *Value Creation and the Markets for Copyrighted Products and Services*

The volume of production of copyrighted products and services in the country, studied through Methodology Card 2, will complement the information on the economic contribution of copyright-based industries.

Area: Law, Policy and Public Administration

Among the two methodology cards and three description sheets presented for the assessment of the area *Law, Policy and Public Administration*, Methodology Card 6 – *Use of Impact Assessment and Research in Policy Development* seems to be the most relevant when searching for a quick assessment of the functioning of this area. It will not in itself assess the quality of the national copyright legislation and policy, but it will reveal a commitment in analyzing and communicating to the public the impacts of copyright policy and law. If impact assessment studies are regularly undertaken, and if policy decisions are based on research evidence, it is likely that copyright policies and laws better correspond to actual needs in society.

Area: Enforcement

Methodology Card 7 – *Application of Sanctions and Remedies for Copyright Infringement* provides data on the number of requests for investigations and the number of civil or criminal court cases, as well as on the average penalties given by judges in the application of copyright legislation. Piloting of this methodology card in Finland has indicated that data specifically related to copyright cases might be difficult to acquire and the interpretation of the data might be delicate as it depends on several factors such as the importance of the copyrighted goods market in the country, the general level of litigiousness of the society, or the functioning of the court system and the importance of alternative dispute resolution mechanisms. However, if available, such data will shed light on the propensity of citizens to seek copyright enforcement and on the severity of penalties in copyright cases.

Area: Management of Rights

While the private administration of copyright is difficult to assess, the crucial role of collective management organizations is evaluated in Methodology Card 9 – *Efficiency of Collective Management Organizations*. CMOs demonstrating a high level of effectiveness in collecting and distributing copyright revenues will in many cases add a significant value to the market and will increase its overall efficiency.

Area: Dissemination of Knowledge

This methodology proposes three methodology cards to study the awareness and knowledge on copyright issues. Among these, Methodology Card 10 – *Public Awareness of the Rights* offers the broadest picture since it aims at assessing citizens' knowledge of the rights of authors, performers and other right holders, as well as their own rights and duties. However, collecting such data might prove costly and time-consuming. In

this case, Methodology Card 11 – *Copyright-related Education as Part of the Education of Professionals for Creative Industries* might be a good substitute. A good knowledge of copyright issues by professionals in creative industries would indicate that copyright rules are at least well understood by those whose revenues are based on copyright.

Pillar III – Operational Balance of the Copyright System

Aspect: Incentives

Methodology Card 13 – *Direct Copyright Revenue Streams for Different Stakeholders* would provide a first-level analysis of the economic incentives stemming from the copyright system. It describes direct copyright revenue streams by different types of revenue and forms a basis for an analysis of the breakup of direct copyright revenue between different stakeholder groups.

Aspect: Access

Methodology Card 16 – *Access to Copyrighted Works by the Public* measures the accessibility of copyrighted works by the general public as well as by special interest groups. The results will provide a basis to estimate whether the accessibility is balanced with the incentive function of the copyright system.

Aspect: Licensing Markets

The extent to which the copyright system influences the balance of bargaining power and the fairness of terms of contracts is a major issue to focus on when evaluating the functioning of the copyright system. Methodology Card 19 – *Terms for Transfer and Licensing of Rights* is based on assessing stakeholders' opinions on these topics. However, it should be taken into account that the data provided by this indicator might be heavily affected by other factors influencing the bargaining power of the stakeholders. It should also be noted that Methodology Cards 18 – *Transaction Costs in Transfer and Licensing of Rights* recommends collecting stakeholders' opinions on a topic very close to that of Methodology Card 19 and both indicators are likely to be implemented at the same time.

Aspect: Infringement, Opinions and Public Acceptance

The level of copyright infringement can be studied through two aspects: unauthorized use of copyrighted works in physical form (measured by Methodology Card 20), and unauthorized exchange of copyrighted material by private individuals in digital form, assessed by Methodology Card 21. Unauthorized use of copyrighted works in physical form might have a large economic impact, while digital piracy is likely to demonstrate a general level of respect for copyright legislation by citizens. Therefore, the research may either focus on the indicator likely to represent the most impor-

tant part of piracy in the country depending on the particularities of its economy, or implement them both.

Summary

For a basic assessment of a copyright system, use of the following indicators is suggested:

Pillar I – Copyright Environment

- Methodology Card 1 – *Macroeconomic Importance of Copyright Industries*
- Methodology Card 2 – *Volume of Domestic Production of Copyrighted Products and Services*

Pillar I – Functioning and Performance of the Elements of the Copyright System

- Methodology Card 6 – *Use of Impact Assessment and Research in Policy Development*
- Methodology Card 7 – *Application of Sanctions and Remedies for Copyright Infringement*
- Methodology Card 9 – *Efficiency of Collective Management Organizations*
- Methodology Card 10 – *Public Awareness of the Rights* or Methodology Card 11 – *Copyright-related Education as Part of the Education of Professionals for Creative Industries*

Pillar III – Operational Balance of the Copyright System

- Methodology Card 13 – *Direct Copyright Revenue Streams for Different Stakeholders*
- Methodology Card 16 – *Access to Copyrighted Works by the Public*
- Methodology Card 18 – *Transaction Costs in Transfer and Licensing of Rights*
- Methodology Card 20 – *Unauthorized Use of Copyrighted Works in Physical Form* and/or Methodology Card 21 – *Unauthorized Use of Copyrighted Works in Digital Form*

Example 2. Copyright Questions in a Specific Industry: Literature and Book Publishing

This methodology is designed to cover the whole copyright system and encompass its application to all kinds of copyrighted works. However, it can also be used with a focus on one particular industry or type of works in order to measure whether the system fulfills its goals in that particular field.

As an example of this type of modular implementation of the methodology, during the piloting process that took place in Finland in 2014 some indicators were implemented with a focus on literature and the book publishing industry. The area covered both a specific subject matter and a particular industry. The subject matter selected, “literature”, included both fiction and non-fiction books published in Finland. It did not include news publications, journals and periodicals. When the analysis concerned the creation and publication processes, the focus was on the book publishing industry and its actors, including writers, translators and publishers.

Six pilot studies were made with a focus on literature and the book publishing industry, implementing the following indicators:

- Description Sheet 4 – *Markets for Copyrighted Products and Services*
- Description Sheet 11 – *Individual Exercise of Rights*
- Methodology Card 15 – *Stakeholders’ Opinions Concerning the Incentive Function of the Copyright System*
- Methodology Card 18 – *Transaction Costs in Transfer and Licensing of Rights*
- Methodology Card 19 – *Terms for Transfer and Licensing of Rights*
- Methodology Card 22 – *Stakeholders’ Opinions on the Copyright System.*

These pilot studies constitute a practical example of using the methodology with a focus on a particular industry.¹²³

Most of the methodology cards and description sheets could be implemented with a focus on literature and the book publishing industry only. For example, Description Sheet 1 – *National Context* could emphasize the information on the level of literacy, the cost of consumer prices for literature and the taxes on books; Methodology Card 1 – *Macroeconomic Importance of Copyright Industries* could provide economic data on the importance of the publishing industry; Methodology Card 2 – *Volume of Domestic Production of Copyrighted Products and Services* could be limited to studying data related to books (Parameters 4 and 5); and Description Sheet 5 – *Copyright Law* could focus on the interpretation of copyright law and its exceptions and limitations that specifically apply to works of literature.

¹²³ The reports presenting the outcome of these studies are available on the Cupore website at <http://www.cupore.fi>.

Example 3. The Operation of a Particular Element of the Copyright System: Enforcement

A third type of modular application could focus on a particular element of the copyright system. Four sets of elements have been identified in Pillar II of the methodology:

- *Law, Policy and Public Administration*
- *Enforcement*
- *Management of Rights*
- *Dissemination of Knowledge.*

Each of these four areas represents a particular entity the functioning and performance of which could be evaluated individually. For example, the area *Enforcement* includes five indicators:

- Description Sheet 8 – *Enforcement by Public and Private Actors*
- Description Sheet 9 – *Sanctions and Remedies for Copyright Infringement*
- Methodology Card 7 – *Application of Sanction and Remedies for Copyright Infringement*
- Description Sheet 10 – *Availability of Alternative Dispute Resolution Mechanisms*
- Methodology Card 8 – *Use of Alternative Resolution Mechanisms for Solving Copyright Disputes*

These indicators were designed to complement each other and to cover different areas of copyright enforcement. Description Sheet 8 describes the operation of the authorities in charge of copyright enforcement and the legal provisions associated, in order to offer a thorough overview of the actors involved in copyright enforcement. Description Sheet 9 complements this description by listing the sanctions and remedies for copyright infringement. These two indicators will be crucial in interpreting the results of Methodology Card 7, which is designed to offer numerical data on the actual application of sanctions and remedies in cases of copyright infringement. However, copyright disputes might also be solved out of courts; this possibility is recognized through the combination of Description Sheet 10 and Methodology Card 8 which describe the availability and level of use of alternative resolution mechanisms in cases of copyright disputes.

In conclusion, the combination of descriptive and statistical information proposed in the five indicators that constitute the area *Enforcement* has been specifically designed to function as a roadmap to cover the essential aspects of the question.

Example 4. Study of a Particular Question: The Impact of Copyright Legislation on Access to Scientific Data

The modularity of the methodology also makes it suitable for the analysis of very particular questions. This requires a careful selection of the applicable indicators and possibly their adaptation to ensure their relevance. As an example, the framework could be used to study the impacts of copyright legislation on access to scientific data. This study would focus both on a particular subject matter (scientific data) and a particular goal of the copyright system (access to copyrighted works).

The core indicators for measuring the impact of copyright legislation on the access to scientific data are:

Description Sheet 5 – Copyright Law

As a first step, a description of copyright legislation will be necessary. It should focus on legislation concerning the use of copyrighted works in scientific research, determining to what extent it is covered by copyright legislation and if it is the subject of specific exceptions or limitations. Provisions particularly affecting scientific research, such as those concerning quotation or open access, have to be described with particular care. In order to broaden the picture the same kind of focused description of copyright policies could be carried out through application of Description Sheet 6 – *Copyright Policy*.

Methodology Card 16 – Access to Copyrighted Works by the Public

This methodology card can be used to study questions concerning scientific research and covers, among other parameters, the access to copyrighted works through specialized libraries and archives. It also proposes the collection of opinions of researchers on the access to copyrighted material or content, which will be particularly useful in identifying possible bottlenecks in access to research results and research data created by the legislation as described in Description Sheet 5. The question of orphan works is also covered in this indicator.

Methodology Card 17 – Access to Copyrighted Works for Follow-on Creation

This methodology card will also be relevant since it describes the solutions made in the country to enhance the robustness of the public domain, to facilitate follow-on creativity and to protect free speech.

In order to provide information on the efficient access to scientific data, the application of Methodology Card 2 – *Volume of Domestic Production of Copyrighted Products and Services* might prove useful. Assuming that a better access to scientific data will increase the production of new research results, assessing the volume of domestic

publication of scientific data in periodicals, journals or books will provide interesting related information for analysis. However, it should be remembered that the amount of scientific research in a country is determined by several other factors than the access to scientific data.

Researchers' awareness and knowledge of copyright questions can be examined through Description Sheet 13 – *Copyright-related Information Activities* which covers information services and public awareness campaigns, and Description Sheet 14 – *Copyright-related Education for the Public in General* including description of copyright-related teaching at universities. These description sheets could be implemented with a focus on information and education provided specifically to scientific researchers.

Summary

The impact of copyright legislation on access to scientific data could be evaluated using the following indicators:

Core indicators:

- Description Sheet 5 – *Copyright Law*
- Methodology Card 16 – *Access to Copyrighted Works by the Public*
- Methodology Card 17 – *Access to Copyrighted Works for Follow-on Creation*

Related indicators useful for a better understanding of the results:

- Description Sheet 6 – *Copyright Policy*
- Methodology Card 2 – *Volume of Domestic Production of Copyrighted Products and Services*
- Description Sheet 13 – *Copyright-related Information Activities*
- Description Sheet 14 – *Copyright-related Education for the Public in General*

Appendix 5. List of Information Sources for National Studies

In the course of piloting of the methodology framework in Finland in 2013–2015, a number of useful international sources for the implementation of the indicators were discovered. This appendix presents them with the purpose of facilitating further use of this methodology in other countries.

Please note that the following list has last been compiled in the course of finalizing the handbook in April 2016, and the sources provided might have been updated or become unavailable.

Description sheets

DESCRIPTION SHEET 1. NATIONAL CONTEXT	
Statistics and databases	
Corruption Perceptions Index (CPI) of Transparency International	http://www.transparency.org/research/cpi/overview
Council of Europe/ERICarts, Compendium of Cultural Policies and Trends in Europe	http://www.culturalpolicies.net/web/index.php
European Commission, <i>Special Eurobarometer: Europeans and their Languages, 243 / Wave 64.3 – TNS Opinion & Social (2006)</i>	http://ec.europa.eu/public_opinion/archives/ebs/ebs_243_en.pdf
Eurostat	http://ec.europa.eu/eurostat
Global Competitiveness Index of the World Economic Forum	http://reports.weforum.org/global-competitiveness-report-2015-2016/
Global Corruption Barometer of Transparency International	http://www.transparency.org/research/gcb/
Global Innovation Index (GII)	https://www.globalinnovationindex.org/content/page/GII-Home
Happy Planet Index, a project of New Economics Foundation	http://www.happyplanetindex.org/
Heritage Foundation's Index of Economic Freedom	http://www.heritage.org/index/
Human Development Index (HDI) of the United Nations Development Programme (UNDP)	http://hdr.undp.org/en/content/human-development-index-hdi
Human development report of the United Nations Development Programme	http://hdr.undp.org/en
OECD statistics on monthly comparative price levels	http://stats.oecd.org/Index.aspx?DataSetCode=CPL
UN Data World Statistics (country profiles)	http://data.un.org
UNESCO Institute for Statistics, <i>The 2009 UNESCO Framework for Cultural Statistics (2009)</i>	http://www.uis.unesco.org/culture/Documents/framework-cultural-statistics-culture-2009-en.pdf
WIPO's Intergovernmental Committee	http://www.wipo.int/tk/en/igc/
World Development Indicators Database of the World Bank	http://databank.worldbank.org/ddp/home.do?Step=12&id=4&CNO=2
World Values Survey	http://www.worldvaluessurvey.org/
Other sources	
European Commission: European Structural and Investment Funds	http://ec.europa.eu/regional_policy/en/funding/
European Heritage Network (HEREIN)	http://www.coe.int/t/dg4/cultureheritage/heritage/Herein/Default_en.asp
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: National Context. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi

International Association for the Evaluation of Educational Achievement (IEA): The IEA Reading Literacy Study	http://www.iea.nl/data.html
OECD International Adult Literacy Survey	http://www.oecd.org/edu/educationeconomyandsociety/adultliteracy.htm
UNESCO Lists of Intangible Cultural Heritage	http://www.unesco.org/culture/ich/index.php?pg=00011
World Intellectual Property Organization (WIPO)	http://www.wipo.int/portal/en/

DESCRIPTION SHEET 2. INTERNATIONAL AND REGIONAL CONTEXT

European Union

European Commission, <i>How economic partnership agreements benefit both consumers and producers in Europe and developing countries</i> (brochure)	http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151010.pdf
European Commission, <i>The EU's free trade agreements – where are we?</i> , MEMO/13/282 (2013)	http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150129.pdf
European Commission: Economic partnerships	http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/index_en.htm
European Commission: The EU Single Market – Intellectual property	http://ec.europa.eu/internal_market/top_layer/index_52_en.htm
Legislation of the European Union	http://eur-lex.europa.eu/homepage.html
Official Documents from EU Institutions, Agencies and Other Bodies	http://europa.eu/documentation/official-docs/index_en.htm
Search Engine on the transposition of EU Directives	http://ec.europa.eu/atwork/applying-eu-law/implementation-monitoring/index_en.htm

OECD

OECD, <i>Innovation and Growth – Rationale for an Innovation Strategy</i> (2007)	http://www.oecd.org/dataoecd/2/31/39374789.pdf
OECD, <i>Intellectual Property Rights (IPR), Innovation and Economic Performance</i> (2003)	http://www.oecd.org/dataoecd/12/28/2498379.pdf

United Nations

Ratification status of the Rome Convention	http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XIV-3&chapter=14&lang=en
United Nations, Treaty Series, Vol. 1324	http://treaties.un.org/doc/publication/UNTS/Volume%201324/v1324.pdf

United Nations Conference on Trade and Development (UNCTAD)

Data dissemination platform UNCTADstat	http://unctadstat.unctad.org/EN/
UNCTAD, <i>Creative Economy Report. Creative Economy: A Feasible Development Option</i> (2010)	http://www.unctad.org/en/docs/ditctab20103_en.pdf

United Nations Educational, Scientific and Cultural Organization (UNESCO)

Universal Copyright Convention (including signatories)	http://portal.unesco.org/en/ev.php-URL_ID=15241&URL_DO=DO_TOPIC&URL_SECTION=201.html
Updated text of the Rome Convention, section “Declarations and Reservations”	http://portal.unesco.org/en/ev.php-URL_ID=13645&URL_DO=DO_TOPIC&URL_SECTION=201.html

World Intellectual Property Organization (WIPO)

Information on WIPO-administered treaties, national IP legislation, contact details of IP Offices, country profile, and more	http://www.wipo.org/treaties
Other IP-related multilateral, regional and bilateral treaties	http://www.wipo.int/wipolex/en/other_treaties/
WIPO member states	http://www.wipo.int/members/en/

World Trade Organization (WTO)	
Agreement on Trade-related Aspects of Intellectual Property Rights TRIPS	https://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm
Index of disputes issues concerning TRIPS	http://www.wto.int/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#trips
Other sources	
Council of Europe/ERICarts, Compendium of Cultural Policies and Trends in Europe	http://www.culturalpolicies.net/web/index.php
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: International and Regional Context. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
Geneva Academy of International Humanitarian Law and Human Rights: Key terms of treaty adherence	http://www.geneva-academy.ch/RULAC/pdf/Key-definitions-relating-to-treaty-adherence.pdf

DESCRIPTION SHEET 3. TECHNOLOGICAL DEVELOPMENT	
Eurostat Community Surveys on ICT usage (Information society statistics)	http://ec.europa.eu/eurostat/web/information-society/data/database
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Technological Development. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
Global Information Technology Report 2015 of the World Economic Forum	http://reports.weforum.org/global-information-technology-report-2015/
OECD Broadband Portal	http://www.oecd.org/sti/ieconomy/oecdbroadbandportal.htm
OECD Key ICT Indicators	http://www.oecd.org/Internet/broadbandandtelecom/oecdkeyictindicators.htm
Publications of the International Telecommunication Union (ITU)	http://www.itu.int/en/ITU-D/Statistics/Pages/publications/default.aspx
Statistics of the International Telecommunication Union (ITU)	https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx
United Nations, <i>Core ICT Indicators – Partnership on Measuring ICT for Development (2005)</i>	http://www.itu.int/ITU-D/ict/partnership/material/CoreICTIndicators.pdf
World Bank Databases	http://databank.worldbank.org/data/databases.aspx
World Bank development indicators	http://data.worldbank.org/indicator/all

DESCRIPTION SHEET 4. MARKETS FOR COPYRIGHTED PRODUCTS AND SERVICES	
Council of Europe/ERICarts Compendium of Cultural Policies and Trends in Europe: CUPIX – Cultural Price Index on Goods and Services	http://www.culturalpolicies.net/web/statistics-markets.php
European Cultural Statistics: Publications	http://ec.europa.eu/eurostat/web/culture/publications
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Markets for Copyrighted Products and Services. Report on piloting in Finland (2016)</i>	http://www.cupore.fi

DESCRIPTION SHEET 5. COPYRIGHT LAW

Council of Europe/ERICarts, Compendium of Cultural Policies and Trends in Europe	http://www.culturalpolicies.net/web/index.php
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Copyright Law. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
Information on WIPO-administered treaties, national IP legislation, contact details of IP Offices, country profile, and more	http://www.wipo.org/treaties
UNESCO's Collection of National Copyright Laws	http://portal.unesco.org/culture/en/ev.php-URL_ID=14076&URL_DO=DO_TOPIC&URL_SECTION=201.html

DESCRIPTION SHEET 6. COPYRIGHT POLICY

Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Copyright policy. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
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DESCRIPTION SHEET 7. PUBLIC ADMINISTRATION OF COPYRIGHT

European Commission, <i>Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive</i> , SMART 2009/0001 (Regulations of audio-visual markets: information in the country profiles)	http://ec.europa.eu/avpolicy/info_centre/library/studies/index_en.htm
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Public Administration of Copyright. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
WIPO's listing of National Intellectual Property Offices	http://www.wipo.int/directory/en/urls.jsp

DESCRIPTION SHEET 8. ENFORCEMENT BY PUBLIC AND PRIVATE ACTORS

Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Enforcement by Public and Private Actors – Focus: Private Actors. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Enforcement by Public and Private Actors – Focus: Public Authorities. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi/documents/140114Publication_PilotreportDS8_Enforcementbypublicandprivateactors.pdf
Vrins, O. & Schneider, M. (eds.), <i>Enforcement of Intellectual Property Rights through Border Measures. Law and Practice in the EU. Second edition</i> . Oxford University Press (2012)	

DESCRIPTION SHEET 9. SANCTIONS AND REMEDIES FOR COPYRIGHT INFRINGEMENT

Bridy, A., <i>ACTA and the specter of graduated response</i> , American University International Law Review (2011), pp. 559–578.	http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1708&context=auilr
Commission of the European Communities: Proposal for the European Parliament and Council Directive, 18.11.1998, COM(1998) 586	
DeBeer, J., <i>Constitutional Jurisdiction Over Paracopyright Laws</i> , Irwin Law Journal (2005), pp. 89–124	http://papers.ssrn.com/sol3/papers.cfm?abstract_id=814074
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi

DESCRIPTION SHEET 10. AVAILABILITY OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

European IPR Helpdesk, <i>Efficient resolution of disputes in R&D collaborations, licensing and other technology transfer</i> (Fact Sheet) (2012)	http://www.iprhelpdesk.eu/sites/default/files/newsdocuments/Alternative_Dispute_Resolution_Mechanisms.pdf
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Availability of Alternative Dispute Resolution Mechanisms. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi
Lundblad C., Taivalkoski P., Knuts G. & Fieber H., <i>Roschier Disputes Index 2012 – Facts and trends in international dispute resolution, a nordic perspective</i> (2012)	http://www.roschier.com/sites/default/files/Roschier%20Disputes%20Index_0.pdf
Smith M., <i>Mediation as an Alternative to Litigation in Patent Infringement Disputes</i> , ADR Bulletin, Vol. 11, No. 6, Article 1	http://epublications.bond.edu.au/adr/vol11/iss6/1
WIPO, <i>Intellectual Property on the Internet: A Survey of Issues</i> (2002) (especially Ch. IV: <i>The Role of Private International Law and Alternative Dispute Resolution</i>)	http://www.wipo.int/edocs/pubdocs/en/intproperty/856/wipo_pub_856.pdf

Dispute resolution centres

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

DESCRIPTION SHEET 11. INDIVIDUAL EXERCISE OF RIGHTS

Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Individual Exercise of Rights. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi
IPA Global Publishing Statistics	http://www.internationalpublishers.org/market-insights/data-and-statistics

DESCRIPTION SHEET 12. COLLECTIVE MANAGEMENT OF RIGHTS

Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Collective management of rights. Report on piloting in Finland (2016)</i>	http://www.cupore.fi
International Confederation of Societies of Authors and Composers CISAC	http://www.cisac.org/CisacPortal/security.do;jsessionid=86D75C09C912CF84892572D139EE2923?method=beforeAuthenticate
Preparatory works for the Directive on collective management of copyright (country information)	http://ec.europa.eu/internal_market/copyright/management/index_en.htm
World Intellectual Property Organization (WIPO): Collective management of copyright and related rights	http://www.wipo.int/about-ip/en/collective_mngt.html

DESCRIPTION SHEET 13. COPYRIGHT-RELATED INFORMATION ACTIVITIES

European IPR Helpdesk	http://www.iprhelpdesk.eu/
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Copyright-related Information Activities. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
United Nations: World Book and Copyright Day	http://www.un.org/en/events/bookday/index.shtml
WIPO: World Intellectual Property Day	http://www.wipo.int/ip-outreach/en/ipday/

DESCRIPTION SHEET 14. COPYRIGHT-RELATED EDUCATION FOR THE PUBLIC IN GENERAL

Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Copyright-related Education for the Public in General. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
Office for Harmonization in the Internal Market, <i>Intellectual Property and Education in Europe. Study on IP Education in School Curricula in the EU Member States with Additional International Comparisons (2015)</i>	https://oami.europa.eu/ohimportal/documents/11370/80606/IP+and+Education+final+report+September+2015

DESCRIPTION SHEET 15. RESEARCH ON COPYRIGHT-RELATED TOPICS

Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Research on Copyright-related Topics. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
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Methodology cards

METHODOLOGY CARD 1. MACROECONOMIC IMPORTANCE OF COPYRIGHT INDUSTRIES

Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Macroeconomic Importance of Copyright Industries. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi
Häkkinen L., <i>Keeping Count of Culture, Creativity and Copyright – A comparison of approaches assessing the economic contribution of copyright, creative and cultural industries</i> , Finnish Copyright Society / Finnish Copyright Institute, F©S Articles and Studies No. 3 (2013)	http://www.copyrightsociety.fi/ci/KEEPING_COUNT_OF_CULTURE_CREATIVITY_AND_COPYRIGHT.pdf
UK Department for Culture, Media & Sport: Creative Industries Mapping Documents 2001	https://www.gov.uk/government/publications/creative-industries-mapping-documents-2001
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html
WIPO, <i>Guide on Surveying the Economic Contribution of Copyright Industries (2015 Revised Edition)</i> , WIPO publication No 893 E	http://www.wipo.int/copyright/en/performance/
WIPO, <i>Studies on the Economic Contribution of the Copyright Industries – Overview</i> (2014)	http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/economic_contribution_analysis_2014.pdf

METHODOLOGY CARD 2. VOLUME OF DOMESTIC PRODUCTION OF COPYRIGHTED PRODUCTS AND SERVICES

European Cultural Statistics: Publications	http://ec.europa.eu/eurostat/web/culture/publications
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Volume of Domestic Production of Copyrighted Products and Services. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi
UNCTADstat	http://unctadstat.unctad.org/EN/Index.html
Unesco Institutes for Statistics: Culture	http://www.uis.unesco.org/Culture/Pages/default.aspx

METHODOLOGY CARD 3. VOLUME OF EXPORTED AND IMPORTED COPYRIGHTED PRODUCTS AND SERVICES

European Cultural Statistics: Publications	http://ec.europa.eu/eurostat/web/culture/publications
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Volume of Exported and Imported Copyrighted Products and Services. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi
UNCTADstat	http://unctadstat.unctad.org/EN/Index.html

METHODOLOGY CARD 4. DEVELOPMENT OF DIGITAL BUSINESS MODELS AND INCOME BASED ON DIGITAL DISTRIBUTION

Eurostat: E-commerce statistics (features data on the share of enterprises' turnover on e-commerce, per country)	http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Development of Digital Business Models and Income Based on Digital Distribution. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
The UK Intellectual Property Office: Changing Business Models in the Creative Industries	https://www.gov.uk/government/publications/changing-business-models-in-the-creative-industries

METHODOLOGY CARD 5. PUBLIC CONSULTATION ON LAW PROPOSALS

OECD, <i>Recommendation of the Council on Regulatory Policy and Governance (2012)</i>	http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm
OECD, Regulatory Policy by Country	http://www.oecd.org/gov/regulatory-policy/by-country.htm
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Public Consultation on Law Proposals. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi

METHODOLOGY CARD 6. USE OF IMPACT ASSESSMENT AND RESEARCH IN POLICY DEVELOPMENT

European Commission's Impact Assessment Guidelines	http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm
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METHODOLOGY CARD 7. APPLICATION OF SANCTIONS AND REMEDIES FOR COPYRIGHT INFRINGEMENT

Bridy, A., <i>ACTA and the specter of graduated response</i> , American University International Law Review (2011), pp. 559–578.	http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1708&context=auilr
Commission of the European Communities: Proposal for the European Parliament and Council Directive, 18.11.1998, COM(1998) 586	
DeBeer, J., <i>Constitutional Jurisdiction Over Paracopyright Laws</i> , Irwin Law Journal (2005), pp. 89–124	http://papers.ssrn.com/sol3/papers.cfm?abstract_id=814074
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METHODOLOGY CARD 8. USE OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS FOR SOLVING COPYRIGHT DISPUTES

European E-Justice Portal: Mediation in EU members states	https://e-justice.europa.eu/content_mediation_in_member_states-64-en.do
European IPR Helpdesk, <i>Efficient resolution of disputes in R&D collaborations, licensing and other technology transfer</i> (Fact Sheet) (2012)	http://www.iprhelpdesk.eu/sites/default/files/newsdocuments/Alternative_Dispute_Resolution_Mechanisms.pdf
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Use of Resolution Mechanisms for Solving Copyright Disputes. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi
Lundblad C., Taivalkoski P., Knuts G. & Fieber H., <i>Roschier Disputes Index 2012 – Facts and trends in international dispute resolution, a nordic perspective</i> (2012)	http://www.roschier.com/sites/default/files/Roschier%20Disputes%20Index_0.pdf
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WIPO, <i>Intellectual Property on the Internet: A Survey of Issues</i> (2002) (especially Ch. IV: <i>The Role of Private International Law and Alternative Dispute Resolution</i>)	http://www.wipo.int/edocs/pubdocs/en/intproperty/856/wipo_pub_856.pdf
Dispute resolution centres	
International Dispute Resolution Centre (UK)	http://www.idrc.co.uk
International Institute for Conflicts Prevention and Resolution	http://www.cpradr.org
WIPO Arbitration and Mediation Center	http://www.wipo.int/amc/en/

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<i>Intellectual Property Consumer Surveys – Literature review</i> , Edelman Berland (10th June, 2013)	https://www.lrpv.gov.lv/sites/default/files/media/Observatorija/Intellectual_Property_Consumer_Surveys.pdf
EU Office for Harmonization in the Internal Market, <i>European Citizens and Intellectual Property: Perceptions, Awareness and Behaviour</i> (2013)	https://euipo.europa.eu/ohimportal/en/web/observatory/ip_perception

METHODOLOGY CARD 11. COPYRIGHT-RELATED EDUCATION AS PART OF THE EDUCATION OF PROFESSIONALS FOR CREATIVE INDUSTRIES

Description of European Credit Transfer and Accumulation System	http://ec.europa.eu/education/lifelong-learning-policy/ects_en.htm
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Copyright-related Education as Part of the Education of Professionals for Creative Industries. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi
International Society for Education through Art	http://www.insea.org/
List of organizations concerning art teaching	http://www.insea.org/resources/networks
The European League of Institutes of Art	http://www.elia-artschools.org/

METHODOLOGY CARD 12. COPYRIGHT-RELATED RESEARCH AND STUDY PROGRAMS IN UNIVERSITIES AND RESEARCH INSTITUTES

Description of European Credit Transfer and Accumulation System	http://ec.europa.eu/education/lifelong-learning-policy/ects_en.htm
Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Copyright-related Research and Study Programs in Universities and Research Institutes. Report on Piloting in Finland (2016)</i>	http://www.cupore.fi

METHODOLOGY CARD 13. DIRECT COPYRIGHT REVENUE STREAMS FOR DIFFERENT STAKEHOLDERS

Koskinen-Olsson T. & Muikku J., <i>Direct Copyright Revenue Streams in Creative Industries in Finland: An Evaluation</i> , The Finnish Copyright Society / The Finnish Copyright Institute Publications No 31 (2014)	http://www.copyrightsociety.fi/TU1302_Direct%20Copyright%20Revenue%20Streams_final%20(2).pdf
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METHODOLOGY CARD 14. RETURN ON INVESTMENT FOR COPYRIGHTED PRODUCTS AND SERVICES

Examples for the evaluation of the level of investment in copyrighted products and services

Chamberlin G., Clayton T., & Farooqui S., <i>New measures of UK private sector software investment</i> , Economic and Labour Market Review, Vol. 1, No. 5, May 2007, pp. 17–28	http://www.ons.gov.uk/ons/rel/elmr/economic-and-labour-market-review/no--5--may-2007/new-measures-of-uk-private-sector-software-investment.pdf
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Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Efficiency of Copyright as an Incentive to Create and Invest in Creative Works. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi
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METHODOLOGY CARD 16. ACCESS TO COPYRIGHTED WORKS BY THE PUBLIC

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WIPO Standing Committee on Copyright and Related Rights, <i>Examples of Practices and Other Measures for the Benefit of Persons with Print Disabilities</i> , SCCR/20/5 (2010)	http://www.wipo.int/meetings/fr/doc_details.jsp?doc_id=133681

METHODOLOGY CARD 17. ACCESS TO COPYRIGHTED WORKS FOR FOLLOW-ON CREATION

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OECD, <i>Participative Web: User-generated Content</i> , Working party of the Information Economy (2007)	http://www.oecd.org/sti/38393115.pdf

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Foundation for Cultural Policy Research Cupore, <i>Assessing Copyright and Related Rights Systems: Transaction Costs in Transfer and Licensing of Rights. Report on Piloting in Finland</i> (2016)	http://www.cupore.fi
KEA European Affairs, <i>Licensing music works and transaction costs in Europe</i> (September 2012)	http://www.keanet.eu/docs/music%20licensing%20and%20transaction%20costs%20-%20full.pdf
Towse R. & Watt R., <i>Recent Trends in the Economics of Copyright</i> , Edward Elgar 2008	

METHODOLOGY CARD 19. TERMS FOR TRANSFER AND LICENSING OF RIGHTS

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Assessing the Operation of Copyright and Related Rights Systems

Methodology Framework

● A solid information base is a crucial asset in the development of coherent copyright and related rights systems. Efficient copyright policies are based on a profound understanding of the copyright system's operation and the context in which it operates.

This handbook provides a comprehensive set of guidelines to assess the operation of national copyright and related rights systems. Instructions for making a detailed presentation of a national copyright system and for assessing its operation from different points of view are provided in a structured methodology framework. The methodology presented in this handbook has the potential to increase transparency and provide an information base for public discussion on copyright policy. Its main purpose is to support national governments when designing new measures for improving the operation of the copyright system.

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ISBN 978-952-5573-70-1
ISSN 1796-9263