



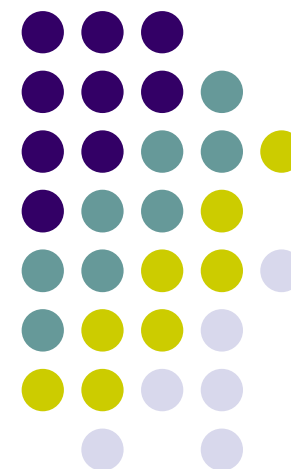
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E-kirjat - kansainväliset sopimukset ja kansallinen käyttö

E-kirjat ja lainsäädäntö Tieteiden talolla, Helsingissä

28 October 2011

Harald Müller





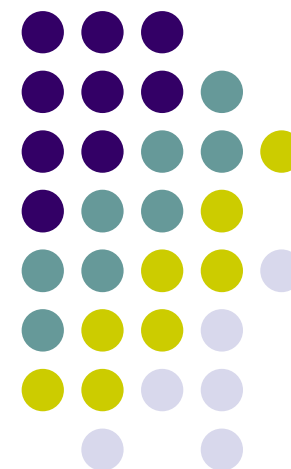
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E-books - international agreements and national use

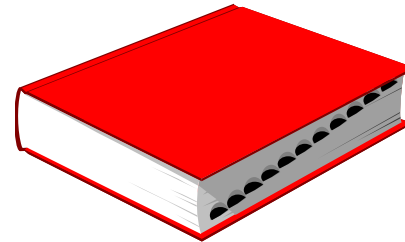
E-kirjat ja lainsäädäntö Tieteiden talolla, Helsingissä

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Library book loan



- Book – tangible object
- It moves from library to user & back
- Distribution
- Book = a copyright protected work

Canada: Copyright Act R.S.C., 1985, c. C-42



Definitions

2. In this Act,

“*book*” means a volume or a part or division of a volume, **in printed form**, but does not include

- (a) a pamphlet,
- (b) a newspaper, review, magazine or other periodical,
- (c) a map, chart, plan or sheet music where the map, chart, plan or sheet music is separately published, and
- (d) an instruction or repair manual that accompanies a product or that is supplied as an accessory to a service;

WIPO Copyright Treaty (WCT)

(adopted in Geneva on December 20, 1996)



Article 6 Right of Distribution

- (1) Authors of literary and artistic works shall enjoy the **exclusive right** of authorizing the **making available to the public** of the original and copies of their works **through sale** or other transfer of ownership.
- (2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the **exhaustion of the right** in paragraph (1) applies **after the first sale** or other transfer of ownership of the original or a copy of the work with the authorization of the author.

Right of Distribution



- Is **NOT** eternal
- Exhaustion doctrine (Europe)
- First-sale doctrine (USA)
- Copyright owner will lose or exhaust the right of distribution after first sale
- = **No permission needed for book loan**

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

Article 4

Distribution right

1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of **distribution** to the public by sale or otherwise.
2. The distribution right shall not be **exhausted** within the Community in respect of the original or copies of the work, **except** where the **first sale** or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.

Tekijänoikeuslaki 8.7.1961/404



Teoksen kappaleiden levittäminen 19 § (24.3.1995/446)

Kun teoksen kappale on tekijän suostumuksella ensimmäisen kerran myyty tai muutoin pysyvästi luovutettu Euroopan talousalueella, kappaleen saa levittää edelleen.
(14.10.2005/821)

Mitä 1 momentissa säädetään, ei koske teoksen kappaleen saattamista yleisön saataviin vuokraamalla tai siihen verrattavalla oikeustoimella. Rakennustaiteen, taidekäsityön tai taideteollisuuden tuotteen saa kuitenkin vuokrata yleisölle.

Mitä 1 momentissa säädetään, ei koske elokuvateoksen tai tietokoneella luettavassa muodossa olevan tietokoneohjelman kappaleen saattamista yleisön saataviin lainaamalla.

...

Teoksen kappaleen, joka on tekijän suostumuksella ensimmäisen kerran myyty tai muutoin pysyvästi luovutettu Euroopan talousalueen ulkopuolella, saa 1 momentin mukaisesti 3 momentissa olevin rajoituksin:

- 1) saattaa yleisön saataviin lainaamalla;
- 2) ...

Upphovsrättslag 8.7.1961/404



Spridning av exemplar av verk (14.10.2005/821)

19 § (24.3.1995/446)

När ett exemplar av ett verk med upphovsmannens samtycke första gången har sålts eller på annat sätt varaktigt överlåtits inom Europeiska ekonomiska samarbetsområdet får exemplaret spridas vidare. (14.10.2005/821)

Vad 1 mom. stadgar gäller inte rätten att göra exemplar av ett verk tillgängliga för allmänheten genom uthyrning eller jämförbara rättshandlingar. Alster av byggnadskonst, konsthantverk eller konstindustri får dock hyras ut till allmänheten.

Vad 1 mom. stadgar gäller inte rätten att göra exemplar av filmverk eller datorprogram i maskinläsbar form tillgängliga för allmänheten genom utlåning.

...

Ett exemplar av ett verk som med upphovsmannens samtycke första gången har sålts eller på annat sätt varaktigt överlåtits utanför Europeiska ekonomiska samarbetsområdet får i enlighet med 1 mom. och med de begränsningar som följer av 3 mom.

- 1) göras tillgängligt för allmänheten genom utlåning,
- 2) ...

Tekijänoikeuslaki 8.7.1961/404



Distribution of copies of a work (24.3.1995/446)

Section 19 (24.3.1995/446)

- (1) When a copy of a work has been sold or otherwise permanently transferred with the consent of the author within the European Economic Area, the copy may be further distributed. (14.10.2005/821)
- (2) The provisions of subsection 1 shall not apply to making a copy of a work available to the public by rental or by a comparable legal transaction. However, a product of architecture, artistic handicraft or industrial art may be rented to the public.
- (3) The provisions of subsection 1 shall not apply to making a copy of a cinematographic work or of computer-readable computer program available to the public by lending.
- (4) ... <remuneration> ...
- (5) A copy of a work which has, with the consent of the author, been sold or otherwise permanently transferred outside the European Economic Area may in accordance with the provisions of subsection 1, under the conditions laid down in subsection 3, be:
 1. made available to the public by lending;
 2. ...

Germany: Copyright Act



§ 17 Right of distribution

- (1) The right of distribution is the right to offer the original of a work to the public or to place them on the market.
- (2) If the original or copies of a work have been placed on the market within the territory of the European Union or another Contracting State to the Agreement on the European Economic Area by way of **sale** with the consent of the party entitled to the right of distribution, their **further distribution shall be admissible** except for the hiring out of the original or copies thereof.
- (3) ...

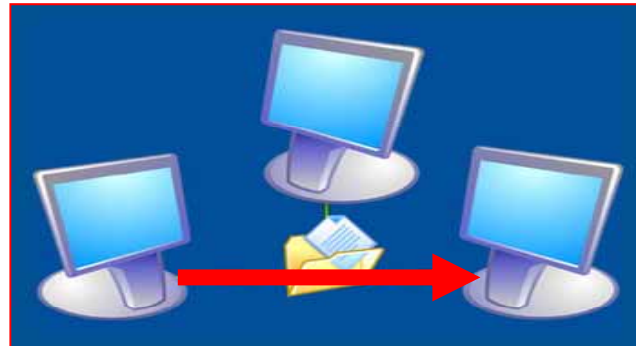
US Code TITLE 17 > CHAPTER 1 >

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord



a) Notwithstanding the provisions of section 106 (3), the **owner** of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, **is entitled**, without the authority of the copyright owner, to sell or **otherwise dispose** of the possession of that copy or phonorecord.

Library E-book lending



- E-Book – digital file (EPUB, PDF etc.)
- It gets **copied** from library to user, but **not back**
- Reproduction
- Exhaustion / first sale doctrine **nonapplicable**

WIPO Copyright Treaty (WCT)

(adopted in Geneva on December 20, 1996)



Article 6 Right of Distribution

- (1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.
- (2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.[6](#)

[6](#) **Agreed statements concerning Articles 6 and 7:** As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer **exclusively** to fixed copies that can be put into circulation as **tangible objects**.

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

(Recital 29) The question of **exhaustion does not arise** in the case of services and **on-line services** in particular. This also applies with regard to a material copy of a work or other subject-matter made by a user of such a service with the consent of the rightholder. Therefore, the same applies to rental and **lending of** the original and **copies** of works or other subject-matter which are services by nature. Unlike CD-ROM or CD-I, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which should be subject to **authorisation** where the copyright or related right so provides.

Authorisation = licensing



The screenshot shows a Mozilla Firefox browser window with the address bar at <http://www.onleihe.net/>. The website features the 'onleihe' logo and a navigation menu with links: Home, Was ist die Onleihe?, Wie funktioniert die Onleihe?, Wo gibt es die Onleihe?, and Über Uns. The main content area includes a breadcrumb trail 'Sie befinden sich hier: Onleihe', a sidebar with navigation links, a central text block about digital media, a map of Germany with state labels (Bremen, Hamburg, Schleswig-Holstein, Mecklenburg-Vorpommern, Brandenburg, Berlin, Sachsen, Niedersachsen), and a right sidebar with social media and app information. The bottom of the browser shows the Windows taskbar with various open applications and the system clock at 11:03.

onleihe

Home | Was ist die Onleihe? | Wie funktioniert die Onleihe? | Wo gibt es die Onleihe? | Über Uns

Sie befinden sich hier: Onleihe

- Was ist die Onleihe?
- Wie funktioniert die Onleihe?
- Wo gibt es die Onleihe?
- Über uns

Testen Sie die Medienangebote

Möchten Sie einen Vorgeschmack auf das Medienangebot der Onleihe? Dann geht es hier weiter

Erleben Sie die digitale Ausleihe – die Onleihe – live!
Viele Bibliotheken sind bereits dabei.

Tauchen Sie ein in die Welt der digitalen Medien.
Über die „Onleihe“ Ihrer Bibliothek können Sie Hörbücher, E-Books, E-Paper, E-Musik und E-Videos online herunterladen und innerhalb eines bestimmten Zeitraums nutzen. Ohne Rückgabe, ohne Mahngebühren!

Klicken Sie auf Ihr Bundesland:
dann sehen Sie alle Städte/Bibliotheken, die bereits eine Onleihe anbieten.

Folgen Sie uns auf Twitter

Die Onleihe-App!
Für Android und iPhone

Im Android Market sowie im Apple iTunes Store können Sie die Onleihe-App kostenlos herunterladen.

Neue Onleihen

- 12.07.2011 Onleihe Singen
- 22.06.2011 Wiesbaden - OnleiheVerbundHessen
- 03.06.2011 eBib Gelsenkirchen

Warten auf www.onleihe.net...

Authorisation = licensing



http://publiclibraryonline.wordpress.com/ - Microsoft Internet Explorer bereitgestellt von MPIL.DE

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Home Get Started News UNITED KINGDOM UNITED STATES CANADA AUSTRALIA NEW ZEALAND GERMANY DENMARK

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New bookshelves are added all the time so take a look at what titles are available in your country of residence. Choose from:

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- RT @WomensInstitute: Do you love libraries? The WTs petition in support of local libraries has just gone live, sign it here: <http://t.co/6tAbudo> posted 1 hour ago
- And check out our brilliant short story shelf for a taste - free to subscribing libraries and their members: <http://t.co/6tAbudo> posted 3 days ago

Follow @library_info

Start http://publiclib... Eblida2011 - Mi... Microsoft Power... 13:58

„Libraries and universities underline the complexity and fragmentation of the current system of licensing agreements with publishers. A typical European university is required to sign a hundred or more licenses governing the use of digital research material supplied by various publishers. Examining what each of these individual licenses permit with respect to e.g. access, printing, storage and copying is a cumbersome process.“

COMMUNICATION FROM THE COMMISSION

Copyright in the Knowledge Economy

Next steps

The licensing burden encountered by a typical European university should be reduced. The Commission will consult relevant stakeholders on best practices available to overcome the fragmented way by which universities acquire usage rights to scientific journals.



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Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives

In 2004, Chile recommended that the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organisation (WIPO) undertake a review of the current state of exceptions and limitations within the larger realm of intellectual property regimes. This recommendation was adopted by WIPO in 2005, and WIPO subsequently initiated a series of studies on exceptions and limitations in specific sectors.

Particularly relevant to the work of IFLA was the study commissioned by WIPO from Professor Kenneth Crews, "[Study on Limitations and Exceptions for Libraries and Archives](#)," which WIPO published in 2008. The results of this study revealed that numerous Member States had either no exceptions or limitations for libraries and archives in their national copyright legislation, or had only minimal, general provisions.

To examine the issues and what should be done for the benefit of libraries and archives worldwide, in April 2009 IFLA and EIFL convened a workshop at the British Library comprising librarians, intellectual property specialists, the World Blind Union, and

RELATED CONTENT

[Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives](#)

WIPO Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives (April 2011)



Article 6 Library Lending

- 1) It shall be permissible for a library to lend a **lawfully acquired copyrighted work**, or **matter subject to related rights**, to a person, or to another library for subsequent loan to a person, by any means. It is understood that lending that gives rise to a payment the amount of which does not go beyond what is necessary to cover the operational costs is a non-commercial service.
- 2) Notwithstanding the provisions of paragraph (1), any Contracting Party which, at the time of becoming party to this Treaty, expressly provides for a public lending right subject to remuneration, may keep such right, provided that such Contracting Party, at the time of depositing its instrument of ratification, acceptance, approval or accession, as the case may be, notify the Director General of WIPO accordingly. The same Contracting Party may, at any time, withdraw the said notification.

WIPO Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives (April 2011)



Article 6 Library Lending

Explanatory Note – Article 6

Library lending is essential for education, learning, research, and culture. It promotes access to information and it furthers social and economic development. It is in the public interest that lending be unrestricted by a public lending right in national legislation or by contractual provisions.

This Treaty is not intended to override public lending rights implemented in national laws prior to signature of this Treaty. **New technologies enable digital lending and parallels lending of physical books.**

As Article 2 already specifies the exclusion of commercial uses in this Treaty, it is not further incorporated into this Article. However, clarification is provided that fees paid to the library for cost recovery purposes do not constitute commercial lending. The wording is modelled from a recital in the European Directive on rental and lending right (Council Directive 92/100/EEC).

WIPO Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives (April 2011)



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Suggested readings



1.  **First Sale Doctrine.**
<http://www.aallnet.org/main-menu/Advocacy/copyright/firstsale.html>
2. **Paul Whitney: EBooks and Public Lending Right in Canada.**
<http://www.plr.ca/PLR/documents/FinalreportinEnglish.pdf>
3. **Barbara Schleihagen : E-books in German Public Libraries.**
<http://www.slideshare.net/fesabid/1200-1215-h-barbara-schleihagen>

Conclusion



- E-book lending not regulated by copyright law
- Authorisation from rights holders required
- Licence contracts are a burden for libraries
- Libraries need a statutory solution

National and European solutions

Libraries request national and European authorities to monitor the efforts of stakeholders to find reasonable solutions; to make workable agreements, and/or to publish a Directive/legislation to guarantee libraries their work in a digital environment. **Wilma Mossink & Marian Koren, info@fobid.nl**



THANK YOU VERY MUCH FOR YOUR ATTENTION !