



Legislative amendments to copyright in Belgium in 2005 and 2006

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2005 and 2006 marked a major turning point in terms of copyright. In 2005, the Parliament radically amended the Belgian Law of 30 June 1994 on copyright and related rights in order to adapt it to European law. In 2006, it immediately revised the law to adapt Directive 2001/84/EC of 27 September 2001.

Revision of the law on copyright and related rights

The Law of 22 May 2005 [1] amended the law relating to copyright and related rights, the law relating to databases as well as the legal code, in order to adapt Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (hereafter "the directive"). In this contribution, only the copyright-related amendments are broached.

Exceptions

◆ Exceptions to reproduction rights

After having clarified the content of the reproduction and communication rights to the public by repeating the provisions in the directive, the law introduced the so-called mandatory exception of technical reproduction in favour of operators of computer networks, as well as exceptions in favour of the handicapped, various social and penitentiary institutions and broadcasting bodies, and finally, public exhibitions and sales of artistic works.

Furthermore, it amended several existing exceptions. Therefore, the so-called exceptions of private copies and reprography are no longer distinguished according to the medium on which the copied work is recorded, but according to the medium used to make the copy. In the case of reproductions on paper, a distinction must be made between reproductions made for private use and those made for the purposes of teaching and scientific research. In the case of reproduction on another medium, the law distinguishes between reproduction carried out within the family circle or for the purposes of teaching and scientific research. Thus, for instance, scanning a protected work will not fall under the scope of a legal licence for reprography but, instead, under the scope of a legal licence for private copying, which subsequently excludes scanning in companies, as the exception of private copying is limited to the family circle.

In order to include the reproduction of artistic works, the condition of brevity regarding the quotation was withdrawn and it is now compulsory to mention the author and the source unless this turns out to be impossible.

The exception in favour of the Royal Film Archive of Belgium, in view of protecting cultural and scientific heritage, was extended to museums, publicly accessible libraries and archives. However, it is not applicable to uses made within the framework of providing protected works online.

◆ Exceptions to the right of communication to the public

The exceptions concerning reproduction for educational and research purposes were extended in order to permit the communication of works to the public for the purpose of illustration for teaching or scientific research by public establishments created for this purpose. Furthermore, communication must take place through the establishment's closed transmission networks (with login and password).

Another amendment aims to allow communication on site in teaching and research establishments, museums, libraries accessible to the public or archives. It applies to communication to private individuals for the purpose of research or private study through special terminals accessible in the establishment's premises. The works or services in question must not be subject to purchase or licensing terms and have to be contained in the institutions' collections; moreover, no economic or commercial benefit may be sought through the communication operation.

The mandatory nature of all the exceptions was maintained. However, in order to comply with Article 6 § 4, paragraph 4 of the directive, the Belgian legislator provided for the fact that under agreed contractual terms the exceptions do not apply as regards works accessible on demand (online).

Furthermore, certain exceptions partially include the three step test stated in Article 5 § 5 of the directive insofar as they cannot conflict with the normal exploitation of the work, or, in certain cases, cause unreasonable prejudice to the legitimate interests of the author (this particularly concerns exceptions in reprography, reproduction with the aim of protecting heritage, communication to the public for the purpose of teaching or scientific research, etc.).

The involuntary licences system (remuneration rights)

As in the past, the exceptions of private copies, reprography for private or educational purposes, reproductions onto a medium other than paper for the purposes of teaching and research and public loan include the remuneration of the right holder. Remuneration has also been provided for the communication to the public of works for the purpose of teaching or research and for the reproduction of broadcasts by hospitals, prisons, youth centres and centres for the handicapped.

Moreover, the involuntary licensing system has been subject to other amendments, here and there, in particular to take into account the evolution in the exceptions. Concerning public loan (no amendment has been made to this exception), publishers are the co-beneficiaries of the legal remuneration alongside the authors. Furthermore, it is specified that this remuneration can take the form of a fixed fee per person registered in the loaning establishment.

The protection of technological measures and rights-management information

In order to comply with the directive, the law has established the circumvention of any effective technological measure as an offence. The law also punishes the commercialisation of means (products or services) that allow or facilitate the circumvention of a technological measure.

Acts of circumvention may also be punished civilly.

Furthermore, the right holders must take the appropriate voluntary measures in order to allow users to effectively benefit from the exceptions (besides private copying). If necessary, an appeal may be made to the president of the county court [2], who would give a summary ruling. However, this system does not apply to works or services made available to the public on demand according to the contractual provisions between the parties.

The law also protects rights-management information by criminally prosecuting the removal or alteration of information, on the one hand, and certain acts of exploiting works or services where information has been removed or altered, on the other.

Revision of the law on resale rights

In 2006, a law adapting Directive 2001/84/EC to Belgian law, relating to the resale rights for the benefit of the author of an original work, was adopted [3].

This law essentially concerns professionals in the art market including, in certain cases, museums. Among other amendments, it extends the resale right to works of graphic art and abandons the condition of a public sale in order to benefit from the resale right, which will now be due for each resale which involves a professional from the art market as a seller, buyer or intermediary, with this resale right now being digressive.

1. Law of 22 May 2005 adapting to Belgian law the Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, M.B., 27.05.2005
2. Since 1st November 2007, the case may as well be brought before the president of the commercial court (cf. Law of 10 May 2007 on judicial aspects of the protection of intellectual property rights, M.B. 10.05.2007)
3. Law of 4 December 2006 adapting to Belgian law the Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, M.B., 23.01.2007

LIBER EBLIDA Workshop on digitization of library material in Europe

By Andrew Cranfield

From the 24th to the 26th of October 2007 LIBER and EBLIDA hosted their first joint conference focusing on digitisation challenges and initiatives in Europe today. With just under a hundred delegates and many thought provoking presentations there was ample possibility for discussion and reflection on how to move forward. Opening the conference the Director General of the Royal Library, Mr. Erland Kolding Nielsen, addressed some of the problems, obstacles and perspectives that libraries face at the moment. While there have been digitisation projects across Europe at the national level, these have only really scratched at the surface of what needs to be done and it is clear that with so few books digitised from the 20th century there remains a huge task ahead. Hans Petschar, from the Austrian National Library, reported from a survey among CENL members to investigate the availability of digital content for a European digital library highlighting the types of materials that have been digitised (newspapers being the most digitised type of material) and the level of digitisation in each country and their expectations for 2012.

The workshop also focused on a number of other issues, such as copyright (including orphan works), funding (and whether it will be possible to convince the Commission to directly fund digitisation projects in Europe), registries of digital masters, interoperability etc. The workshop ended with group discussions on the formulation of a set of recommendations to forward to the European Commission, focusing on three areas:

- ◆ EDL architecture
- ◆ Copyright/IPR
- ◆ Standards and policies (metadata, business models and digital preservation)

These will be published on the EBLIDA website as soon as they have been forwarded to the European Commission. Both EBLIDA and LIBER hope that these recommendations will give us an agenda for future discussions in the joint EBLIDA/LIBER expert group on digitization and online access which will have its first meeting at the beginning of next year and also in our future dialogue with representatives from the European Commission.

Presentations from the workshop are available at <http://www.eblida.org>.