

Latest developments in copyright

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Why is copyright important for archives ?

- For the traditional work of archives, copyright is a minor issue. No archivist ever went to jail for breaking copyright laws
- Archives which want to open their collections to the wider public need to know about copyright. On the web, they will be treated as competitors of streaming services and other service providers
- Copyright law is constantly changing. It is important for archives to present their own viewpoint. Often changes are possible if we present a convincing argument
- Rights owners also want to make their works available

The rights of authors are harmonized in the European Union, and the law is constantly evolving

- **The main trend is stronger protection**
 - Harmonization according to highest national rule
 - Stronger laws against pirates
 - Longer terms of protection for authors, performers and producers (50 to 70 years)
 - New rules for copyright management organizations
- **But there is a growing willingness to hear the users**
 - Orphan works directive
 - Text and data mining
 - Resolve the problem of "geoblocking"
 - The exceptions are not harmonized (the rights of archives and libraries)

Copyright: the person or persons who have created an original artistic or literary work have an exclusive right in the work

- ©
- Copyright lasts for 70 years p.m.a. (after the death of the author)
- Copyright is "a bouquet of rights". The author can divide his rights in different ways (reproduction right, performance right etc)
- Basic principle: contracts with individual authors
- In music, performance rights (including streaming and broadcasting) are usually assigned to copyright management organizations. "Blanket licensing" is standard practice
- Special rules for cinematographic works and photographs

Sound recordings = neighboring rights

- (P)
- Rights in sound recordings belong jointly to performers and producers (= record companies, broadcasters)
- Lasts 70 years from first publication (or recording), but **does not apply to recordings first published before 1963**
- The role of CMOs is smaller than in copyrights: record companies want to control their rights themselves
- Most (many) sound recordings are also recordings of protected works. These rights are independent of each other

The rights of authors and "neighboring rights" are independent of each other. **All combinations are possible.** Who are the rights owners here?

- A recording of a J. S. Bach composition made by Fritz Kreisler in 1925 for His Master's Voice and reissued on CD
- A recording of the Sibelius violin concerto made by Estonian radio in 1955.
- A recording of the Sibelius violin concerto made by Finlandia Records in 1985
- A recording of a Latvian author reading his own works in 2005, made by the author himself
- A recording of bird songs made by a Lithuanian archive in 1970
- A recording made by Eesti Raadio in 1975 of a radio play based on "Elu ja armastus", a novel by A. H. Tammsaare

Public domain ?

- If the recording was first published (or recorded) before 1963, the neighboring rights have expired. It is in public domain ("free")
- If the author(s) died before 1945, their rights have also expired
- The largest body of public domain sound recordings consists of pre-1963 classical music recordings
- Sometimes we do not know the dates, or even the names of the authors. Orphan works (and orphan recordings) ?
- For sound archives, the orphan works directive has relatively few applications, but it is an option

A small number of rights owners ?

- There are collections with only one rights owner, or a limited number of owners. For example:
- Wildlife recordings, sound effects recorded by institutions = one owner
- Recordings of a narrow and well-known target group, e. g. interviews with famous authors
- **Individual contracts are a real alternative**
- Items which cannot be cleared will just have to be left out

Collective management ?

- The rights of composers and lyricists are almost universally represented by **copyright management organizations** (**CMOs**, "collecting societies") like GEMA, Teosto and EAÜ
- An example would be pre-1963 recordings of copyright-protected music: a single organization can grant a **blanket license**
- Typically CMOs have **territorial rights** only (one country)
- EU is trying to create "Licences for Europe", but the new policy may create new problems. What should be the position of archives?
- Exists also for other types of works (literature, visual arts etc)

Too many rights owners?

- Although there are CMOs representing broadcasting rights for recorded music, record companies usually want to control the web rights themselves
- In many fields there are no CMOs, individual agreements only
- It is unlikely that there will ever be a "one-shop" system for licensing all types of copyrights
- Obtaining rights from a large number of sources may be possible, but it takes a lot of time and you have to be prepared for refusals

Exceptions for limited use?

- In many countries, copyright laws allow libraries and archives certain acts without the permission of rights owner. "Three-point test"
- **Free online access** inside selected institutions
- **Extended legal licenses** for a larger number of institutions (limited use for a set fee). CMOs have a legal mandate to represent also non-members. An better alternative to the orphan works directive?
- Territoriality still a problem?
- Campaign for the harmonization of exceptions?
- EU:s plan for text and data mining is an exception of copyright

Cooperation with commercial services ?

- Copyright is complicated, but commercial music downloading and streaming services (iTunes, Spotify, Apple Music etc) have a working system for licensing millions of works
- **The French national library BnF is working with commercial music platforms to present its collection of 40,000 pre-1963 vinyl records on the web. Available on 200 platforms worldwide**
- Users pay a standard fee for unlimited access (c. 10 euros/month), no cost to the library
- Free online access inside the library

Could the BnF model work elsewhere ?

- The BnF model could work for all pre-1963 music recordings
- The archive is responsible for digitization and metadata
- An "aggregator" delivers the materials to streaming services
- The streaming services charge users and pay rights owners
- The archive could (potentially) receive the royalty usually paid to the record company
- Not possible for post-1963 recordings
- Ethical and political questions?

What to do today ?

- Long-term policy: decide what you would like to do in the long term, and tell it to politicians and rights owners. What would we really like to have in Europeana Sounds?
- Create test cases: "we could not do it because..."
- Keep an eye on EU and national legislation and make yourself heard. What do sound archives think of EU:s "Licenses for Europe" ?
- **Thank you!**
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