The French 2012 legislation on the digital exploitation of the 20th century out-of-commerce books

WIPO-HIPO subregional seminar
Copyright in the digital age
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The origins of the French legislation

2004 : *Google book search* project
=> actions in the US and in France

2008 : Proposal for a settlement
=> interventions of France and Germany

2009 : The French national library considers making a partnership with Google
=> national debate

The principles

There is general interest in making possible a mass-scale digitisation project out-of commerce books :
- heritage preservation ;
- renewed access to works, in particular for people with print disabilities.

If nothing is done, some actors will soon use it as an argument to obtain an exception to copyright to their profit.

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The French national library cannot cope alone with the financial burden of such a project.

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If a partnership had to be made between the French national library and some private actors, it had to be in priority with organisations and companies of the book sector, esp. with rightsholders.

A mass-scale digitisation program could not be reasonably conducted without collective management of the digital exploitation rights => a law was necessary to organise it.

The mechanism of the French legislation

The French law basically organises the conditions of the transfer of the exercise of the digital exploitation rights to a CMO.

It may be analysed as a « statutory mandate ».

In some cases, original publishers own the digital exploitation rights on out-of-commerce books. In other cases, the autors do.

=> choice of a collective management organisation the governance of which is shared equally between authors and publishers

The mechanism of the French legislation

Scope of the French law :

- Books
- Have been published in France during the 20th century
- Have actually been commercialised and are not available anymore (cannot be ordered and purchased anymore).

The mechanism of the French legislation

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Process of the French law :

- Step 1 : scientific committee establishes the yearly list
- Step 2 : publication of the list and media campaign
- Step 3 : how the CMO should exercise the digital rights

The mechanism of the French legislation

Opting out of collective management / changing conditions

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The author may put an end to the exercise of the digital rights on his book by the CMO at any time, without having to provide another explanation than the fact that this exercise harms his « honour and reputation ».

The author may also put an end to any privilege or remuneration given to the original publisher, if that publisher does not hold the digital rights on the book.

The author and the original publisher may, altogether, declare that they want to put an end to the collective management of the digital rights on the books and go on with a classical publishing contract.

The author, finally, may alone put an end to the collective management on the digital rights on his book if he still holds those rights.

The Soulier & Doke judgment

- prior consent, even implicit => authors should be individually informed in advance

- the decision of the author should not be dependent on the will of the publisher if the publisher does not hold the digital rights

- the author should not have to prove anything (prohibited formality)

The proposal for a directive on copyright in the DSM : a very welcome initiative.

The judgment not ony affects the French law but also weakens many collective management instruments in Europe.

The initiative of the Commission to tackle the issue of out-of-commerce works in its proposal for a directive on copyright in the digital single market is hence very welcome.

The proposal for a directive on copyright in the DSM : a very welcome initiative, but...

… the French system does not fit in the proposal as it is.

The French authorities, together with the French organisations of authors and publishers, are particularilly attached to the fact that the legal system they have built together and that was unanimously voted by the French Parliament remain possible under the EU law.

The proposal for a directive on copyright in the DSM : why keeping a place for the French system ?

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1- Cultural diversity : the works should be distributed through as many channels as possible (in all the bookstores and the public libraries, with a complete freedom of selection). The proposal as it is only permits the making available by cultural heritage institutions.

The proposal for a directive on copyright in the DSM : why keeping a place for the French system ?

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2- Remuneration of authors : the more the users, the better the remuneration ; if the author initially whished for his work to be sold and have a profit of it, why limiting the digital exploitation to non profit uses ?

The proposal for a directive on copyright in the DSM : why keeping a place for the French system ?

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3- E-books vs digitised books : cultural heritage institutions make available digitised images of the books whereas the industry uses XML standards that can be read by the blind.

The proposal for a directive on copyright in the DSM : why keeping a place for the French system ?

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4- industrial policy : if we want the European publishing industry to remain strong, it is better to give them a kind of preference upon the north American internet companies => exclusive licences, when justified by an industrial policy and balanced by strict responsabilities for the licencees, should not be ruled out.