Project Acronym:	**pro-iBiosphere**
Project Full Title:	**Coordination & policy development in preparation for a European Open Biodiversity Knowledge Management System, addressing Acquisition, Curation, Synthesis, Interoperability & Dissemination**
Grant Agreement:	**312848**
Project Duration:	**24 months (Sep. 2012 - Aug. 2014)**

D2.4.1 Draft policy on Open Access for data and information (1)

Deliverable Status:	**Final**
File Name:	**pro-iBiosphere_WP2_Plazi_D2.4.1_VFFa_29082013.pdf**
Due Date:	**31 August 2013 (M12)**
Submission Date:	**30 August 2013 (M12)**
Dissemination Level:	**Public**
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Sigma	Sigma Orionis	France
RBGK	The Royal Botanic Gardens Kew	United Kingdom
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Museum für Naturkunde Berlin	Museum für Naturkunde Berlin	Germany

Revision Control

Version	Author	Date	Status
1.0	Willi Egloff, Donat Agosti (Plazi)	22 August 2013	Draft
2.0	Peter Hovenkamp, Eva Kralt (Naturalis), Daniel Mietchen (MfN), Alan Paton (RBGK), Anton Güntsch (FUB-BGBM)	23 August 2013	Draft
3.0	Soraya Sierra (Naturalis)	24 August 2013	Draft
4.0	David Patterson (Maple Ferryman and Plazi)	25 August 2013	Draft
5.0	Daniel Mietchen (MfN)	26 August 2013	Draft
6.0	Eva Kralt (Naturalis)	27 August 2013	Draft formatted
7.0	Alan Paton (RBGK), James Macklin (AAFC)	28 August 2013	Draft additions
8.0	Willi Egloff (Plazi), Donat Agosti (Plazi), Soraya Sierra (Naturalis)	28 August 2013	Draft reviewed
9.0	Willi Egloff, Donat Agosti (Plazi), Soraya Sierra (Naturalis)	29 August 2013	Draft reviewed
FF	Willi Egloff (Plazi)	29 August 2013	Final draft

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Executive summary

The present document is a deliverable of the pro-iBiosphere project, funded by the European Commission's Directorate-General Information Society and Media (DG INFSO), under its 7th EU Framework Programme for Research and Technological Development (FP7).

The vision of the pro-iBiosphere project is to prepare the ground for an integrating global system for the intelligent management of biodiversity knowledge (i-Biosphere). Such system needs to:

- Offer a robust service-oriented architecture for distributed taxon-level information
- Include a central registry of sources and services, with documentation, so that they can be discovered
- Provide open and free access to all names and taxonomic information from a single source to all persons who need biodiversity data, without legal barriers, copyright and database protection rights, nor requiring the consent of other individuals or institutions (WP2)
- Facilitate the re-use of biodiversity data and information
- Be interoperable with closely related initiatives
- Be fully aware of user requirements so that it serves the community as a whole (WP2)
- Have a solid long term sustainability plan to maintain the infrastructure and the services (WP6)

In order to fulfil this vision, technical and semantic interoperability challenges need to be addressed (WP4); user requirements need to be known (WP2); sustainability plans need to be developed (WP6); and basic requirements like allowing open and free access to data and information and re-usability for legitimate purposes need to be in place (WP2). At present, these basic requirements are hampered by numerous factual, technical, economic, sociological and other factors as well as by putative or real legal barriers, in particular, copyright and database protection rights.

The present draft policy aims to address these legal factors that have to be overcome while building an integrative system for the management of biodiversity knowledge. The document describes the needs for access to documents and data in order to synthesise disparate information and to facilitate data mining (or similar research techniques). It develops some aspects of copyright and database protection that might have influence on access to and re-use of biodiversity data and information. It refers to exceptions and limitations of copyright or database protection provided for within the relevant EU Directives and illustrates the transformation of these exceptions and limitations into national legislation within some EU member states. This presentation is based on a questionnaire that was sent in June 2013 to legal experts in the different countries (see Annex).

The document will be followed by a second policy draft consisting of an analysis of the legal situation in further EU-countries in order to explain in which aspects these situations do, or not do, correspond to the defined needs. From this comparison a list of proposals to adapt the EU copyright framework in research matters will be submitted to the EC in July 2014 for discussion.

The document illustrates that national provisions on copyright and database protection regarding exceptions and limitations for research purposes differ not only in certain details but in substance. There is no coherence between national legislations and no harmonisation, despite of Directive 2001/29/EC. Scientists within the EU working with copyright protected works or with protected databases have to be aware that regulations may vary considerably from country to country. This fact can result in a major stumbling block to international collaboration in science.

We conclude that the legal situation within the EU is unsatisfactory and, hence, the building of an integrative system for management of biodiversity knowledge will be hampered by copyright or by database protection. This hurdle should be removed by unifying exceptions and limitations for research purposes in a binding, Europe-wide regulation.

We suggest the following recommendations for promoting free and open access to and a free re-use of biodiversity data and information at the level of institutions, the EU, and its member states:

A. On the level of institutions

- Publicly funded institutions should refrain from claiming intellectual property rights for biodiversity data and information collected and/or published by them. All content should be openly accessible without any form of authorisation.

- Re-utilization of biodiversity data and information for research purposes should be allowed without any form of authorisation. The only legitimate claims at least from publicly funded institutions with regard to the re-utilization of material collected and/or published by them refer to the attribution of the source.

- As far as publicly funded institutions' own material which is protected by copyright or by database rights are concerned, they should dedicate these works or these databases to the public domain by publishing them under a CC0-License.

B. On the level of the European Union (EU) and the European Economic Area (EEA)

- The EU should revise the Directive 2001/29/EC so that the provision of a copyright exception for scientific research is compulsory for all member states. They should not refer to commercial or non-commercial scientific research as this distinction is neither useful nor applicable in practice. They should neither refer to the place where, nor the technical mode how, works are accessed, as such technical restrictions hamper the research process.

- The EU should revise the Directive 96/9/EC so that the re-utilization of protected databases for scientific research is legalized by a compulsory exception to database right.

C. On the level of Member States of the European Union or the European Economic Area

- Member states of the EU or the EEA should introduce or, where it already exists, extend a copyright exception for the use of works for scientific research. This exception should not refer to commercial or non-commercial scientific research as this distinction is neither useful nor applicable in practice. It should neither refer to the place where, nor the technical mode how, works are accessed, as such technical restrictions hamper the research process.

Member states of the EU or the EEA should introduce or, where it already exists, extend an exception of database protection for the use of databases for scientific research.

Introduction

Biodiversity data and information constitute an important source of knowledge for many disciplines. The core of such knowledge is composed of information on species and specimens. A wealth of biodiversity knowledge has been assembled in taxonomic literature over hundreds of years, by and in natural history institutions, herbaria, botanic gardens, and increasingly through ongoing biodiversity monitoring programs. A great part of this literature is produced and held in European institutions (cf. Annex 1- pro-iBiosphere Description of Work).

Scientific names of organisms serve as identifiers for biodiversity data and information. Since the 1750s, these names have been formed in a standard way that includes the latinisation of words and the use of a binomial name for species. Names are usually organised in hierarchical classifications that serve as the scientific community's tally of how much biodiversity has been described.

Given the rapid expansion of digital environments through which we share our knowledge, scientific names and other taxonomic information can play a crucial role in the discovery, indexing and organisation of information and knowledge about biodiversity. A names-based infrastructure needs to have access to all the names (including spelling variations and errors) that have ever been used. It must overcome the problems of homonyms and of the many variations of names for each taxon, so that content on the same species can be linked together. It must use names and other biodiversity data in consistent formats that can be understood by both humans and computers.

The vision of the pro-iBiosphere project is to prepare the ground for an integrating global system for the intelligent management of biodiversity knowledge (i-Biosphere). Such system needs to:

- Offer a robust service-oriented architecture for distributed taxon-level information
- Include a central registry of sources and services, with documentation, so that they can be discovered
- Provide open and free access to all names and taxonomic information from a single source to all persons who need biodiversity data, without legal barriers, copyright and database protection rights, nor requiring the consent of other individuals or institutions (WP2)
- Facilitate the re-use of biodiversity data and information
- Be interoperable with closely related initiatives
- Be fully aware of user requirements so that it serves the community as a whole (WP2)
- Have a solid long term sustainability plan to maintain the infrastructure and the services (WP6)

An integrative system for intelligent management of biodiversity knowledge, , must therefore provide access to all names and taxonomic information from a single source or a distributed integrated system to all whose activity requires the use of biodiversity data. This access must be open, free and independent of the consent of other individuals or institutions. The system must allow all possible re-uses of data and information for legitimate purposes, again without any special authorisation by other individuals and institutions.

At present, the open and free access as well as the re-use of biodiversity data and information is hampered by numerous factual, technical, economic, sociological and other factors. Furthermore, many compilers of taxonomic content claim that, or act as if, they hold intellectual property rights over their data and information, erecting legal barriers for the access and the re-use of this content. In order to assure an open and free access to biodiversity data and information as well as the free re-use of this knowledge, these barriers must be removed. No legal provisions related to copyright should prevent persons whose activity is based on biodiversity data from freely accessing and re-utilizing biodiversity data and information from the place and at the time of their choice as well as in the technical form they prefer. To this end, the present draft policy aims to address relevant legal factors that have to be overcome while building an integrative system for the management of biodiversity knowledge.

I. On some aspects of copyright

Copyright protects works that are original, individual, new creations with respect of their form of presentation. It gives the owner the exclusive right to reproduce the work, to distribute it, to communicate it to the public, to make derivative versions, to transfer rights to others as well as several other rights. Copyright does not protect content. It refers to the form of expression, which means that copyright protection applies only if the content is expressed in an original way. If the same content is presented in a pre-existing, familiar or standardized form, a publication does not qualify as work in the sense of copyright.

Scientific names of species follow a standardized format developed within a scientific tradition more than 250 years old. Even when a name is new, the form of expression follows that well-established pattern. The same can be said about taxonomic treatments and much other taxonomic information: they are expressed in a standardized form and use a standardized language. This helps other scientists to understand taxonomic treatments, as well as making treatments comparable with each other and therefore useful for scientific work, but it also means that they cannot be subject to copyright.

Numerous copyright statements dealing with taxonomic information referring to the ownership and re-use of content on websites lack therefore legal foundation. There is no copyright on this material because the presented data and information do not qualify as works in the sense of copyright, and there are, as a consequence, no legitimate restrictions related to copyright on the re-use of such information. The missing qualification as work cannot be substituted by individual attribution: A non-copyrightable publication remains non-copyrightable even if the author or others choose to mark it with a copyright statement or with a Creative Commons license.

However, biodiversity data and information are rarely presented as unembellished flat lists. They are part of websites, articles, monographs and other forms of publications. Even if the single data or information is not copyrightable, the website or monograph may qualify as work and therefore be copyright protected. If the process of re-use requires the reproduction of copyright protected parts of the source, then this process may be hampered by the necessity of requiring an authorisation of the copyright holder for the act of reproduction.

European copyright legislation is well aware of the fact that copyright may act as a barrier to scientific work. The EU-Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:167:0010:0019:EN:PDF) addresses the challenge and puts considerable weight on the importance of facilitating the pursuit of scientific purposes by providing for exceptions and limitations to

copyright. Recital 34 to the Directive provides for exceptions and limitations for "educational and scientific purposes". Recital 40 refers to exceptions and limitations "for the benefit of certain non-profit making establishments such as publicly accessible libraries and equivalent institutions, as well as archives".

The Directive 2001/29/EC therefore gives member states the option of providing for the following exceptions and limitations:

> Paragraph 5.2.
> "Member States may provide for exceptions and limitations to the reproduction right provided for in Article 2 in the following cases:
> (...)
> c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage.
> (...)"
>
> Paragraph 5.3
> Member States may provide for exceptions and limitations to the rights provided for in Article 2 and 3 in the following cases:
> a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purposes to be achieved;
> (...)
> n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter no subject to purchase or licensing terms which are contained in their collections;
> (…)"

These exceptions and limitations are only applicable if transformed into national law by the single member states of the EU. This transformation results in provisions that are different from country to country. Therefore, scientists in different EU member states have to be aware of a quite different legal framework as far as copyright legislation is concerned. The EU commission, in the Communication on “Copyright in the Knowledge Economy” considers this situation with good reasons as a major stumbling block to international scientific cooperation within the EU and declares that “limiting teaching and research to a specific location is considered to be contrary to the realities of modern life” (COM [2009] 532 final, p. 6; http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/20091019_532_en.pdf).

II. On some aspects of database right

In 1996, the European Union introduced a special legal protection of databases (Directive 96/9/EC on the legal protection of databases). It applies to databases which show "that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents" (art. 7 of the Directive 96/9/EC). It allows preventing extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the content of a database. The concept is unique to the EU. No similar rights exist in the U.S. or in European non-member states of the EU or the EEA.

As the European Court of Justice pointed out in several judgments, the database protection concerns the creation of databases out of already existing material, but does not deal with the creation of data as such. The expression "investment in the obtaining of the contents" refers therefore to the resources used to seek out existing independent materials and collect them in the database, and not to the resources used for the creation as such of independent materials. The expression "investment in the verification of the contents" refers to the resources used to monitor the accuracy of the materials collected when the database was created and during its operation, but does not refer to the resources used for verification during the stage of creation of materials. The expression "investment in the presentation of the contents" concerns the resources used for the purpose of giving the database its function of processing information.

According to the 48th recital of the preamble to Directive 96/9/EC, database protection has an economic justification, which is to afford protection to the maker of a database and guarantee a return on the investment in the creation and maintenance of the database. "Investment" refers only to the private investment of own resources, but not to the use of public funding. In consequence, the protection applies exclusively to private commercial databases. As most databases with relevant taxonomic information are publicly funded, the importance of database protection for publicly accessible databases containing relevant biodiversity data and information is quite restricted.

Database protection does not deal with individual data elements, but with the structure of databases. Accordingly, the database protection concerns exclusively the creation of databases but does not deal with the protection of data as such. It only prevents from the extraction and re-utilization of substantial parts of a database. It can therefore not restrict the access to data, but only, in very restricted cases, the re-use of the whole or a substantial part of a database.

According to art. 9 (b) of the Directive 96/9/EC, member states may stipulate that lawful users of a database may extract or re-utilize a substantial part of its contents for the purposes of scientific research. This exception is only applicable if transformed

into national law by the single member states of the EU. Therefore, scientists in different EU member states have to be aware of a quite different legal framework as far as database legislation is concerned.

III. On some national regulations on copyright and database protection

As exposed in the previous paragraphs, exceptions and limitations to copyright and database protection do only apply if transformed into national law of the member states of the EU or the EEA. This national legislation differs from country to country. The following list serves to illustrate this diversity.

France

Copyright and database protection in France is ruled on in the 1st part of the "Code de la propriété intellectuelle" (L. n° 92-597 du 1er juillet 1992). The exceptions and limitations provided for in Directive 2001/29/EC and Directive 96/9/EC have been transformed into the following articles:

Art. L 122-5-8° (referring to paragraph 5.2.c of Directive 2001/29/EC:

> "Lorsque l'oeuvre a été divulguée, l'auteur ne peut interdire:
> (…)
> 8°La reproduction d'une œuvre et sa représentation effectués à des fins de conservation ou destinées à préserver les conditions de sa consultation à des fins de recherche ou d'études privées par des particuliers, dans les locaux de l'établissement et sur des terminaux dédiés par des bibliothèques accessibles au public, par des musées ou par des services d'archives, sous réserve que ceux-ci ne recherchent aucun avantage économique ou commercial;
> (…)»

Art. L 122-5-3° (referring to paragraph 5.3.a of Directive 2001/29/EC)

> "Lorsque l'oeuvre a été divulguée, l'auteur ne peut interdire:
> (…)
> 3°Sous réserve que soient indiqués clairement le nom de l'auteur et la source :
> (…)
> e) La représentation ou la reproduction d'extraits d'œuvres, sous réserve des oeuvres conçues à des fins pédagogiques, des partitions de musique et des œuvres réalisés pour une édition numérique de l'écrit, à des fins exclusives d'illustration dans le cadre de l'enseignement et de la recherche, à l'exclusion de toute activité ludique ou récréative, dès lors que le public auquel cette représentation ou cette reproduction est destinée est composé majoritairement d'élèves, d'étudiants,

d'enseignants ou de chercheurs directement concernées, que l'utilisation de cette représentation ou cette reproduction ne donne lieu à aucune exploitation commerciale (…)
(…) »

Germany

Copyright and database protection in Germany is ruled on in the "Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz – UrhG) vom 9. September 1965". The exceptions and limitations provided for in Directive 2001/29/EC and Directive 96/9/EC have been transformed into the following articles:

§ 52b UrhG (referring to paragraph 5.2.c of Directive 2001/29/EC)

"Zulässig ist, veröffentlichte Werke aus dem Bestand öffentlich zugänglicher Bibliotheken, Museen oder Archive, die keinen unmittelbar oder mittelbar wirtschaftlichen oder Erwerbszweck verfolgen, ausschliesslich in den Räumen der jeweiligen Einrichtung an eigens dafür eingerichteten elektronischen Leseplätzen zur Forschung und für private Studien zugänglich zu machen, soweit dem keine vertraglichen Regeln entgegenstehen. Es dürfen grundsätzlich nicht mehr Exemplare eines Werkes an den eingerichteten elektronischen Leseplätzen gleichzeitig zugänglich gemacht werden, als der Bestand der Einrichtung umfasst. Für die Zugänglichmachung ist eine angemessene Vergütung zu zahlen. (...)"

§52a UrhG (referring to paragraph 5.3.a of Directive 2001/29/EC)

"(1) Zulässig ist,
1. veröffentlichte kleine Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften zur Veranschaulichung im Unterricht an Schulen, Hochschulen, nichtgewerblichen Einrichtungen der Aus- und Weiterbildung sowie an Einrichtungen der Berufsbildung ausschliesslich für den bestimmt abgegrenzten Kreis von Unterrichtsteilnehmern oder
2. veröffentlichte Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften ausschliesslich für einen bestimmt abgegrenzten Kreis von Personen für deren eigene wissenschaftliche Forschung öffentlich zugänglich zu machen, soweit dies zu dem jeweiligen Zweck geboten und zur Verfolgung nicht kommerzieller Zwecke gerechtfertigt ist.
(2) Die öffentliche Zugänglichmachung eines für den Unterrichtsgebrauch an Schulen bestimmten Werkes ist stets nur mit Einwilligung des Berechtigten zulässig. Die öffentliche Zugänglichmachung eines Filmwerkes ist vor Ablauf von zwei Jahren nach Beginn der üblichen regulären Auswertung in Filmtheatern im Geltungsbereich dieses Gesetzes stets nur mit Einwilligung des Berechtigten zulässig.

(...)“

§53 UrhG (referring to paragraph 5.3.a of Directive 2001/29/EC)

“(…)
(2) Zulässig ist, einzelne Vervielfältigungsstücke eines Werkes herzustellen oder herstellen zu lassen
1. zum eigenen wissenschaftlichen Gebrauch, wenn und soweit die Vervielfältigung zu diesem Zweck geboten ist und sie keinen gewerblichen Zwecken dient,
2. (...)
(3) Zulässig ist, Vervielfältigungsstücke von kleinen Teilen eines Werkes, von Werken von geringem Umfang oder von einzelnen Beiträgen, die in Zeitungen oder Zeitschriften erschienen und öffentlich zugänglich gemacht worden sind, zum eigenen Gebrauch
1. zur Veranschaulichung des Unterrichts in Schulen, in nichtgewerblichen Einrichtungen der Aus- und Weiterbildung sowie in Einrichtungen der Berufsbildung in der für die Unterrichtsteilnehmer erforderlichen Anzahl oder
2. für staatliche Prüfungen und Prüfungen in Schulen, Hochschulen, in nichtgewerblichen Einrichtungen der Aus- und Weiterbildung sowie in der Berufsbildung in der erforderlichen Anzahl
herzustellen oder herstellen zu lassen, wenn und soweit die Vervielfältigung zu diesem Zweck geboten ist. Die Vervielfältigung eines Werkes, das für den Unterrichtsgebrauch bestimmt ist, ist stets nur mit Einwilligung des Berechtigten zulässig.
(...)“

§53a (referring to paragraph 5.3.n of Directive 2001/29/EC)

1) Zulässig ist auf Einzelbestellung die Vervielfältigung und Übermittlung einzelner in Zeitungen und Zeitschriften erschienener Beträge sowie kleiner Teile eines erschienenen Werkes im Wege des Post- oder Faxversands durch öffentliche Bibliotheken, sofern die Nutzung durch den Besteller nach § 53 zulässig ist. Die Vervielfältigung und Übermittlung in sonstiger elektronischer Form ist ausschliesslich als grafische Datei und zur Veranschaulichung des Unterrichts oder für Zwecke der wissenschaftlichen Forschung zulässig, soweit dies zur Verfolgung nicht gewerblicher Zwecke gerechtfertigt ist. Die Vervielfältigung und Übermittlung in sonstiger elektronischer Form ist ferner nur dann zulässig, wenn der Zugang zu den Beiträgen oder kleinen Teilen eines Werkes den Mitgliedern der Öffentlichkeit nicht offensichtlich von Orten und Zeiten ihrer Wahl mittels einer vertraglichen Vereinbarung zu angemessenen Bedingungen ermöglicht wird.
(...)“

§87c (referring to art. 9(b) of Directive 96/9/EC)

(1) Die Vervielfältigung eines nach Art oder Umfang wesentlichen Teils einer Datenbank ist zulässig
1. (...)
2. zum eigenen wissenschaftlichen Gebrauch, wenn und soweit die Vervielfältigung zu diesem Zweck geboten ist und der wissenschaftliche Gebrauch nicht zu gewerblichen Zwecken erfolgt,
3. für die Benutzung zur Veranschaulichung des Unterrichts, sofern sie nicht zu gewerblichen Zwecken erfolgt.
In den Fällen der Nummern 2 und 3 ist die Quelle deutlich anzugeben.
(...)“

Sweden

Copyright and database protection in Sweden is ruled on in the “Lag (1960:729) om upphovsrätt till litterära och künstnärliga verk“. The exceptions and limitations provided for in Directive 2001/29/EC and Directive 96/9/EC have been transformed into the following articles:

16 § (referring to paragraph 5.2.c of Directive 2001/29/EC)

De arkiv och bibliotek som avses I tredje och fjärde styckena har rätt att framställa exemplar av verk, dock inte datorprogram,
1. för bevarende-, kompletterings- eller forskningsändamål,
2. för att tillgodose lånesökandes önskemål om enskilda artiklar eller korta avsnitt eller om material som av säkerketsskäl inte bör lämnas ut ioriginal, eller
3. för användning i läsapparater.
(...)
Rätt till exemplarframställning och spridning enligt denna paragraf har
1. de statliga och kommunala arkivmyndigheterna,
2. Statens ljud- och bildarkiv,
3. de vetenskapeliga bibliotek och fackbibliotek som drivs av det allmänna samt
4. folkbiblioteken.
(...)”

In addition, libraries and certain other institutions have the possibility to make their collection available to the public on the base of a so called extended licence (“avtalelicens”, 42 a – 42 f §§). An extended licence is an agreement between a qualified

user (the library) and a national collecting society which represents a considerable number of swedish rightholders, which rules certain uses of protected works. The agreement applies not only to the use of works of represented authors but also for the use of any other work of the same kind:

> "En avtalelicens som avses i 42 b-42 f §§ gäller för utnyttjande av verk på visst sätt, när ett avtal har ingåtts om utnyttjande av verk påsådant sätt med en organisation som företräder ett flertal svenska upphovsmän på området. Avtalelicensen ger användaren rätt att utnytta verk av det slag som avses med avtalet trots att verkens upphovsmän inte företräds av organisationen."

Further examples will be added in the final policy draft.

Conclusion

This short overview illustrates that national provisions on copyright and database protection regarding exceptions and limitations for research purposes differ not only in certain details but in substance. There is no coherence between national legislations and no harmonisation, despite of Directive 2001/29/EC. Scientists within the EU working with copyright protected works or with protected databases have to be aware that regulations may vary considerably from country to country. This fact can be a major stumbling block to international collaboration in science.

It seems that most national regulations are oriented to a rather outdated idea of scientific work. Provisions that link copyright exceptions to the premises of certain institutions (Art. L. 122-5-8° / § 52b UrhG) are incompatible with the requisitions of scientific collaboration between institutions. Provisions that allow for the printing out of copies but not storage on digital devices, or that forbid the sharing of documents (§ 52b UrhG) are means to hamper the efficiency of scientific work and confine researchers to outdated working methods.

Regulations that link exceptions and limitations to defined qualifications of single works make modern research techniques as automated text and data mining difficult. It is not possible to search or analyze automatically a defined body of documents if there is no general rule about what can and cannot be done with all the documents. In the interests of efficient scientific research, exceptions and limitations of copyright and database protection should, therefore, apply to every object that is of interest for the research purpose.

There is no clear distinction between commercial and non-commercial research. Public-private partnerships render this distinction obsolete. No institution can guarantee that the results of their research will not partly be commercialized either by themselves or by third persons. The distinction is therefore neither applicable nor useful and should be abandoned.

The building of an integrative system for the management of biodiversity knowledge will therefore be hampered by copyright or by database protection. This hurdle should be removed by unifying exceptions and limitations for research purposes in a binding, Europe-wide regulation.

Recommendations

In order to promote the free and open access to and the free re-use of biodiversity data and information necessary to the building of an integrative system for the management of biodiversity knowledge, we recommend the following steps:

A. On the level of institutions:

- Publicly funded institutions should refrain from claiming intellectual property rights for biodiversity data and information collected and/or published by them. All content should be openly accessible without any form of authorisation.

- Re-utilization of biodiversity data and information for research purposes should be allowed without any form of authorisation. The only legitimate claims at least from publicly funded institutions with regard to the re-utilization of material collected and/or published by them refer to the attribution of the source.

- As far as a publicly funded institutions' own material which is protected by copyright or by database rights, they should dedicate these works or these databases to the public domain by publishing them under a CC0-License.

B. On the level of the European Union:

- The EU should revise the Directive 2001/29/EC so that the provision of a copyright exception for scientific research is compulsory for all member states. They should not refer to commercial or non-commercial scientific research as this distinction is neither useful nor applicable in practice. They should neither refer to the place where, nor the technical mode how, works are accessed as such technical restrictions hamper the research process.

- The EU should revise the Directive 96/9/EC so that the re-utilization of protected databases for scientific research is legalized by a compulsory exception to database right.

C. On the level of Member States of the EU or the EEA:

- Member states of the EU or the EEA should introduce or, where it already exists, extend a copyright exception for the use of works for scientific research. This exception should not refer to commercial or non-commercial scientific research as this distinction is neither useful nor applicable in practice. It should neither refer to the place where, nor the technical mode how, works are accessed as such technical restrictions hamper the research process.

- Member states of the EU or the EEA should introduce or, where it already exists, extend an exception of database protection for the use of databases for scientific research.

References

1. http://creativecommons.org/choose/zero/
2. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:167:0010:0019:EN:PDF
3. http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/20091019_532_en.pdf
4. http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=31996L0009&model=guichett&lg=en

Annex

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Questionnaire on scientific research in copyright law

A. What we seek to discover

Core biodiversity data and information constitutes an important source of knowledge for many disciplines. In order to facilitate access to this knowledge, technical, semantic and legal interoperability barriers need to be addressed. This is the objective of the EU-project "Coordination and policy development in preparation for a European Open Biodiversity Knowledge Management System, addressing Acquisition, Curation, Synthesis, Interoperability and Dissemination (pro-iBiosphere)", set up within the 7th Framework Programme (http://www.pro-ibiosphere.eu/).

One aim of this project is to clarify the legal issues around data acquisition, curation and dissemination. The legal aspects of accessing and sharing of biodiversity data seem to be major stumbling blocks towards realizing an open knowledge management environment. A Europe-wide integrative system for intelligent management biodiversity knowledge can only be fully operational if it offers open and free access to the content and a free data flow to all partners. However, information policies of scientific institutions as well as copyright legislation do not necessarily contribute to this aim. Our goal is to elaborate a proposal for an Open-Access in Research-Policy, which could work as a Code of conduct for a European Biodiversity Knowledge Management System. To this end, we aim to analyze the legal situation relating to intellectual property rights in scientific data and information in the individual EU-member states.

B. Scientific research in EU-copyright law

The Directive 2001/29/EC puts considerable weight on the importance of facilitating scientific purposes by providing for exceptions and limitations to copyright. Recital 34 to the Directive provides for exceptions and limitations for "educational and scientific purposes", recital 40 refers to exceptions and limitations "for the benefit of certain non-profit making establishments such as publicly accessible libraries and equivalent institutions, as well as archives". Recital 42 makes it clear that the non-commercial nature of educational and

scientific purposes "should be determined by that activity as such", while "the organisational structure and the means of funding are not decisive factors in this respect".

The Directive therefore gives member states the option of providing for the following exceptions and limitations:

> Paragraph 5.2.
>
> "Member States may provide for exceptions and limitations to the reproduction right provided for in Article 2 in the following cases:
>
> (...)
>
> c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage.
>
> (...)"

> Paragraph 5.3
>
> Member States may provide for exceptions and limitations to the rights provided for in Article 2 and 3 in the following cases:
>
> a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purposes to be achieved;
>
> (...)
>
> n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter non subject to purchase or licensing terms which are contained in their collections;
>
> (...)"

C. Scientific research in your national copyright legislation

We would like you to assist us by sharing your knowledge of how these exceptions and limitations to copyright are implemented in your national law. Please answer to the following questions:

1. Does an exception exist in your national copyright law that implements paragraph 5.2.c? If yes, what is the exact wording of the statute?
2. Does an exception exist in your national copyright law that implements paragraph 5.3.a? If yes, what is the exact wording of the statute?
3. Does an exception exist in your national copyright law that implements paragraph 5.3.n? If yes, what is the exact wording of the statute?

4. Are there other exceptions and limitations in your national copyright law that refer to scientific purposes? If yes, what is the exact legal wording of these exceptions and limitations?
5. Do the exceptions and limitations mentioned under points 1 to 4 also apply to the sui-generis-right for databases, provided for in Directive 96/9EC on the legal protection of databases? If not, are there special exceptions and limitations to this sui-generis-right for database protection facilitating scientific purposes in your national law?

Please cite all articles of law referred to in the original language. You may add English translations where there are official translations of the legal texts.

D. Scientific research in your national copyright jurisdiction

We are also interested in court rulings that deal with copyright protection or database protection with respect to scientific data.

1. Are there court rulings in your country that refer to copyright protection of scientific data?
2. Are there court rulings in your country that refer to copyright exceptions and limitations mentioned in section C.?
3. Are there court decisions in your country regarding the sui-generis-right for databases that refer to scientific data or compilations of scientific data?

Please provide bibliographic data of such rulings or, if available, links to original sources. Please cite all sources in the original language.

E. Other initiatives

Are you aware of initiatives, organizations or persons in your country covering issues of copyright and scientific research? Please list names and, if possible, contact details.

F. Further proceedings

It would be very helpful, if you could send the information required by June 21st, 2013. Please do not hesitate to contact us if you have any question or need any clarification.

If you wish to be informed about the progress of our work please let us know. Thank you very much for your valuable collaboration.

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