

Oliver Hinte

Lehrbeauftragter für  
Bibliotheksrecht  
an der TH Köln

Member of  
EBLIDA EGIL

Köln, den 23.02.2017

Bundesministerium der Justiz und  
für Verbraucherschutz  
Referat III B 3  
**nur mit elektronischer Post –**

[Referat-III B3@bmjv.bund.de](mailto:Referat-III B3@bmjv.bund.de)

## **Bildungs- und Wissenschaftsschranke**

**1.) Referentenentwurf eines Gesetzes zur Angleichung des Urheberrechts an die aktuellen Erfordernisse der Wissensgesellschaft (Urheberrechts-Wissensgesellschafts-Gesetz – UrhWissG - RefE)**

**2.) Verleih von E-Books durch Bibliotheken (sog. „E-Lending)**

**Beteiligung der an urheberrechtlichen Fragen interessierten Verbände und Institutionen sowie sonstigen Beteiligten**

### **Anlage: Stellungnahme**

Sehr geehrte Damen und Herren,

hiermit möchte ich mich für die Möglichkeit zur Stellungnahme zum o. g. Referentenentwurf und zur Frage des Verleihs von E-Books durch Bibliotheken sehr herzlich bedanken.

Sie finden meine Stellungnahme als Anlage.

Mit freundlichen Grüßen

gez.  
Oliver Hinte

Wuppertaler Str. 21  
51145 Köln

## **1.) Zum Referentenentwurf für ein Urheberrechts-Wissenschafts-Gesetz-UrhWissG-RefE**

Zu Frage 1 schließe ich mich dem Votum des Verbands der Bibliotheken des Landes NRW e.V. vom 21.02.2017 vollumfänglich an.

## **2.) Verleih von E-Books durch Bibliotheken (sog. „E-Lending“)**

Zu Frage 2 nehme ich wie folgt Stellung:

### **I. Results from the ECJ Ruling Leenrecht**

The case shows, that despite the ruling is done, legal certainty is not yet a given, and it doesn't solve lots of questions such as remote access, or contract override.

For more information please read: <http://www.eblida.org/news/eblida-briefing-on-the-e-lending-judgement-of-the-cjeu.html>

### **II. Advantages and problems on the current procedere to licence E-books and other digital media from rightholders**

- The entire catalogue of titles is not available for purchase (contrary to the paper book catalogue) so impacting the free constitution of library catalogues fit to their users need.
- Prices for libraries are higher than on the market;
- Each publisher is setting different terms creating a jungle of provision that mean different e-book titles = different possibility of use by the readers (e.g. some would authorise taking notes, other won't, some will authorise partial copy, other won't etc...).
- Contract terms impeding the benefits of exceptions and limitations enshrined in the law;
- TPMs impeding the benefits of exceptions and limitations enshrined in the law;
- Offers in bundle forcing the libraries to "buy" content they are not primary interested with.

### **III. Advantages and disadvantages of a legal term on E-Lending**

- The recognition of an exception for e-lending would create legal certainty for libraries and would apply at national/EU level;
- A law would help making access to content through physical and digital means seamless;
- The law should allow for remote e-lending of e-books to library patrons by streaming and/or download as on the premises e-book lending is an incomplete service, contrary to the notion of a services in the digital age;
- The law would also clarify how authors are remunerated and would clarify the question of the cost for purchasing content. One of the argument being now that e-books are more expensive because it covers the cost authors would receive for their content to be placed on a library/3<sup>rd</sup> party server for lending.
- It would protect from contract override and abusive contract clauses.

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- It would help working towards full access of publishers catalogues.
- I think a law would also help smaller publishers to better grab the situation and protect their rights, whereas in a licensing only environment, they are, as libraries, the weaker part.

I don't see any real disadvantage but the time it would take to be completed. However, discussions on e-lending are already on-going for years.

#### **IV. Alternatives to a legal permission for E-Lending**

A concept of air licensing to comply with the 2012 [EBLIDA Key principles of acquisition of and access to e-books by libraries](#) that would result with a compulsory licensing could be an alternative.

#### **V. Possible variations of rules and consequent changes of existing law**

At EU level either the currently under discussion DSM Directive on copyright would include an article (and recitals) on e-lending with updates of relevant directives (Lending + infosoc).

Or the lending directive itself would have to be updated to accommodate the question of remote access.

Alternatively a reopening of the Infosoc could be a final (unlikely) option.

Mit freundlichen Grüßen

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