

Transnational Copyright: Organization, Mobilisation, and Law

National Copyrights vs. Worldwide Access

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- **Worldwide Access**
 - An everyday experience
 - Academia
 - Education
 - Political information and participation
 - Consumer information, entertainment, etc.
 - The global dimension

- **Reservations: risks of worldwide access**
- **In particular: worldwide access as a threat to copyright holders**
 - Expansion of copyright since the 1990ies
 - Applied to the internet:
 - One internet, but 164+ national copyright laws
 - Jurisdiction of courts at the place of infringement
 - Application of the law of the state where the download occurs to foreign uploads
 - Result: Upload of content has to comply with 164+ Berne copyright laws/copyrights

- **The mosaic solution**
- From the point of view of right holders
 - Fragmentation of markets and price discrimination
 - Problem: how to exploit and enforce 164+ rights?
- From the point of view of users
 - Territorially limited, licensed services (databases, download services)
 - No licensed service available

- **The mosaic solution**
 - From the point of view of service providers
 - Acquire worldwide rights
 - Offer territorially limited services
 - Civil actions around the world (Google)
- **Consequence: Re-Territorialization of the internet**
 - E.g. Google Book Settlement: applies only to US copyrights for uses on US territory

- **Exit No. 1: A new copyright order**
 - Cyberlaw?
 - Harmonization?
 - A uniform world copyright law?
 - Choice of law: consolidation of jurisdiction and applicable law (law of the closest connection)
 - http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=79
 - <http://www.cl-ip.eu>

- **Exit No. 2: Contracts**

- First alternative: A worldwide online-platform with central access control
 - The „normal“ approach under international copyright law (three step test)
 - Barriers
 - National tradition: collecting societies
 - Languages
 - Payment systems, currencies
 - Access costs and de facto exclusion
 - Developed countries
 - Developing countries

- **Exit No. 2: Contracts**

- Second alternative: License systems enabling access (Open Source, Creative Commons, etc.)

- Pros:

- Enforce openness and access on the basis of copyright (Open/Free Source)
- Access and some rights reserved (CC)

- Cons:

- Costs of implementation
- Complexity of licensing schemes due to differences in national copyright contract law (e.g. German copyright not assignable)

- **Exit No. 2: Contracts**

- Third alternative: „pure“ online publication without further explanations
 - Consequences
 - German copyright law: implicit, free of charge, non-exclusive license for everyone
 - Other laws: copyright (partly) waived
 - Users may
 - Copy, distribute, make available, etc. for non-commercial purposes
 - Users may not
 - Directly commercialize the content (e.g. publish as a book)
 - Infringe moral/personality rights
 - Hard cases
 - E.g. thumbnails in search engines

- **„Pure“ online publication and global standards of copyright-compliant uses on the internet**
- Transnational contractual networks instead of national exclusive rights
- Flexibility
 - No international nor EU law in the field of licensing
- From mosaic to one law:
 - Contract law of the licensor (author) decides about the reach of the implied license/waiver for all countries
- Global uniform standards
 - Courts interpret „pure“ online publication and decide about the reach of the implied license/waiver
 - Comparative and internationalist attitude required to develop global uniform standards