

**Expert Workshop**  
**“Copyright and Open Access book publishing”**

Amsterdam 15. Feb 2010

**Foundation of ENCES**

Rainer Kuhlen

University of Konstanz and Humboldt University, Berlin



<http://creativecommons.org/licenses/by/3.0/deed.en>

In Germany, the Coalition for Action "Copyright for Education and Research", based on the Göttingen Declaration on Copyright for Education and Research from 2004, was founded because the interest of science and education was neglected and ignored in the process of adapting the EU Copyright Directive from 2001 to the German copyright law (Urheberrecht) in 2003.

In the hearings of the German Bundestag, where I was invited as an expert from science (among 20 experts including lawyers who mainly represented the interests of publishing companies and of the ICT industry), we experienced the powerlessness of single experts and even of single scientific copyright institutions, although they present their best arguments in public hearings before executive or legislative committees.

The voice of science and education could no longer be ignored and neglected when in 2004 the Coalition for Copyright in Science and Education was founded – supported by the major German science organizations, by some three hundred learned societies and many thousands of individuals from science, education, and information infrastructure, altogether up to today more than 7500 signees of the Goettingen Declaration.

Since then the Aktionsbuendnis has been continuously in its attempts to persuade the public and in particular the German Bundestag that a science- and education-friendly copyright is not an end in itself but lies in the interest of society and economy in general. We have to admit that this fight has not been particularly successful. The lobbying power of the publishing industry was too strong and thus very successful in convincing the majority in the Bundestag that a strong copyright lies in the interest of society and economy (in reality, supporting the interests of exploiters – to a lesser extent those of the creators themselves, let alone those of the users).

This failure has caused many people to ask whether copyright is still an appropriate means for achieving public goals in education and science. Open access, an initiative from science itself, is on its way to becoming the dominant scientific publishing model, making possible free access to knowledge for all. But one still has to take into account commercial publication markets, also in science and education (increasingly in e-learning), which promise to hold their own in the foreseeable future. And these markets are strongly influenced by copyright regulation.

In addition, there is still a need to modify the copyright law in order to make the paradigm shift to open access easier and to set a legal framework also in copyright in order to give

authors back their freedom of publishing and making their research results publicly available as soon as possible. There are many other dimensions with respect to what needs to be done from a legal point of view to further and ease the process of open access publishing. This is the subject of our workshop – in particular with respect to Open Access book publishing.

One has to admit that the success of national initiatives in Europe is very limited, and will be so in the future. Copyright is a concern and in the responsibility of the respective national legislative power of the states in the EU, but is highly dependent on directives from the EU, in this case, among others, the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society.

In order to achieve an education- and science-friendly copyright, science and education need to be present on the European level (and in the future, also in international arenas, such as WTO and WIPO).

This is the main purpose of ENCES (European Network for Copyright in favor of Education and Science): to provide a platform for organizations and individuals who are working towards improving the European and respective members' national copyright legislation. It is hoped that ENCES will serve not only as a platform for lobbying work at the EU level and for supporting comparable national efforts in EU member countries but also as a forum for the development of a copyright understanding that both goes back to its roots and takes into account the free potentials of electronic environments for the production, distribution and usage of knowledge and information.

ENCES intends to pursue a twofold strategy, on the basic assumption that knowledge and information in its digital form should be made available to everyone from everywhere and at any time under fair conditions. This is particularly true in science and education, where access to knowledge and information is indispensable:

- ENCES will make concrete proposals in the public interest concerning science and education for the evaluation and the improvement of the EU directives related to copyright. These proposals will hopefully also have an impact on legislation at the different national levels.
- What is really needed is a fundamental change, a paradigm shift in the way all aspects of the production, dissemination, and usage of knowledge and information are organized in the information society, taking into account the value-building potential of information and communication technology.

Since the first conference on perspectives for an education- and science-friendly copyright, in Berlin November 13-14, 2008, we have learned that a more formal organization structure is needed to achieve ENCES' goals.

This is necessary both to be accepted as an organization and lobbying group in the interest of science and education on the EU level and to be able to file applications for research grants on the respective national but above all on the EU level.

Without any financial backing the objectives of ENCES cannot be achieved. Our workshop is an example for this. Many more participants wanted to join this workshop. We are grateful for the financial support from OAPEN and from the Amsterdam Institute for Information Law (IviR) but it was far from meeting the needs of many experts from EU countries. Other activities also need infrastructure and financial strength – e.g. making the ENCES website even more attractive and more informative in order, to provide appropriate tools for communication; making and providing all kinds of informational material: brochures, proposals for copyright regulation, press releases; organizing press conferences etc. etc.

Tonight, after this workshop has come to an end, you are invited to join a meeting where we would like to come to a decision concerning which legal form is appropriate for an organization such as ENCES. Unfortunately, there is no EU-wide default solution for this problem.

ENCES will continue to organize and help organize other workshops at the intersection between copyright and open access. Meetings are in the pipeline, for instance the next in Budapest (23<sup>rd</sup> of March, 2010), London, in the Baltic countries, Finland and in Portugal.

But for now, I wish this workshop much success and for all of us helpful suggestions for our future work with respect to Open Access book publishing. My special gratitude goes to the organizers of this event, to Lucie Guibault (Institute of Information Law, University of Amsterdam) , to Saskia de Vries (OAPEN - *Open Access Publishing in European Networks*) and to their organizations for having financially supported this workshop, and to Karin Ludewig (IUWIS, Humboldt University, Berlin, and ENCES).