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Digital possibilities in international interlibrary lending - with or despite German copyright law

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Abstract:

The German interlibrary loan service is a good and solid basic solution for the supply of literature between libraries within Germany and some other countries. It has proven itself both nationally and internationally. But recent changes to Germany's copyright law raise questions about what form it will take in the future. This paper will look at which digital possibilities the new law offers our users regarding delivery or electronic media. Copyright law in Germany promises to have the right answers to the demands of modern digital working and studying. But does the copyright law also make this possible for German interlibrary lending? German libraries have the advantage that only a few countries worldwide have a copyright that contains a special section for interlibrary lending. However, this positive effect does not make it easier for foreign libraries.

Keywords: Interlibrary loan, German copyright law, electronic delivery, digital lending

1. Legal Basis

The Copyright Knowledge Society Act (UrhWissG) came into force in Germany on 01 March 2018. The previous legislation was often very detailed and spread across several different laws. In addition, digitisation and networked computing have changed the possibilities of creating, distributing and using copyrighted content.¹ This was insufficiently reflected in the previous Copyright Act. The reform was intended to sufficiently cover these deficits by creating new regulations on the legally permitted use (barriers). *"The core of the reform is the new subsection 4 - Legally permitted uses for teaching, science and institutions: §§ 60a to 60h UrhG in the draft version (UrhG-E) comprise the provisions on teaching,*

¹ Cf. Drucksache 18/12329 (2017)

*science and institutions such as libraries, including a new provision for so-called text and data mining, the software-based analysis of large amounts of data. In future, each group of users will therefore have its own set of facts with concrete information on the type and scope of the legally permitted uses. At the same time, various provisions that previously existed for them will be dropped either completely (§§ 47, 52a, 52b, 53a UrhG) or partially (e.g. in § 46 UrhG as well as in the ‘private copying barrier’ of § 53 UrhG)”.*²

For interlibrary loan and document delivery in Germany, the UrhWissG not only brings advantages and clear guidelines but also restrictions compared to the previous rules. Particularly in an international context, these rules give rise to questions and confusion. This is probably due to the fact that the German Copyright Act has little in common with the Guidelines on International Interlibrary Loans³. The most important points for interlibrary lending and document delivery within Germany are regulated in §60e (5) UrhG.

- individual request for non-commercial purposes
- copies of up to 10% of a published work
- copies of individual articles from scientific journals
- no limitation to certain types of publication originals (print or digital)
- no restriction to certain delivery routes
- requires appropriate individual remuneration by a collecting society (cf. §60h Abs.3-4 UrhG)

The UrhG is directly targeted at copy delivery within German domestic interlibrary loan⁴. International lending is not dealt with separately. However, the regulations still apply to international interlibrary loan with German libraries, as they are binding for German libraries.

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1.1 Individual request for non-commercial purposes

The legally permitted use is basically limited to non-commercial use. This must be proven by the user in the form of a self-disclosure. In the national context, this is done across the library networks by a checkbox, which must be activated by the user for each individual transaction.⁵ The library has no active obligation to verify non-commercial use by the patron.⁶ In the international context, the German lending library should check in advance whether commercial orders can be placed via the international ordering system and, if necessary, verify with the user that the request serves non-commercial purposes by filling in a form.

² Drucksache 18/12329 (2017, p. 2-3)

³ International Federation of Library Associations and Institutions (2009), (2015)

⁴ Interlibrary loan between libraries in Germany is regulated by National Interlibrary Loan Regulations.

⁵ Cf. Willwerth/Wulle (2018b)

⁶ Katzenberger (2018, p. 685)

1.2 Scope limitation to 10% of a monograph

The delivery of copies from monographs is clearly regulated by law and limited to 10% of the work. Previous legislation allowed the delivery of a "small part" as a copy. In common practice, this small part corresponded to 15%. Since the specified 10% must be strictly enforced by the libraries, this requires more work for the libraries. This check cannot be done automatically by the ordering system.

In addition, the lending library should ensure that it does not process several, directly consecutive requests of the same user, as it could mean that they exceed the legally permitted maximum of 10%. As an alternative, of course, there is book lending, but this, especially in an international context, has the disadvantage of lengthy and expensive transport.

1.3 Article requests from scientific journals

A major change in the law is the restriction of the delivery of copies from scientific journals. Newspapers and journals for the general public may no longer be used for the delivery of copies. However, the law does not contain a definition of journals for the general public in comparison to professional and scientific journals. The blacklist of subito⁷ and the categorization of professional journals on buchhandel.de⁸ serve as guides for libraries.

Public magazines are aimed at a broad audience and are preferably read in leisure time. In comparison, scientific journals are aimed at a specialist audience and contain subject-related articles.⁹ In practice, the differentiation is sometimes difficult and must be made individually by each library. There is currently no uniform national reference system for differentiation between professional journals and public magazines.

1.4 Publication form and delivery options

The elimination of restrictions on the publication format (print or digital) and the acceptance of electronic transmission to the user as the standard delivery option are the most far-reaching changes brought by §60e UrhG compared with the previous §53a.

The examination of appropriate offers from publishers and the mandatory use of graphic files have been eliminated.¹⁰ However, the practical implementation of these positive changes is only possible to a small extent. The unrestricted use of e-resources applies only to license

⁷ Homann (2018, p.4)

⁸ <http://www.buchhandel.de/fachzeitschrift> (accessed 15 July 2019)

⁹ Page „Wissenschaftliche Fachzeitschrift“. In: Wikipedia, the free encyclopedia. Processing status 20.08.2018. https://de.wikipedia.org/w/index.php?title=Wissenschaftliche_Fachzeitschrift&oldid=180179456 (accessed 17 July 2019)

¹⁰ Grenzebach (2018, p. 68)

agreements concluded after March 1, 2018.¹¹ Moreover, electronic transmission to users is not part of the agreements with collecting societies and therefore cannot yet be implemented. During contract negotiations with the VG Wort on the new amount of the fee for the individual case remuneration no agreement could be reached that included electronic transmission.

2. International ordering systems and German library stocks

The German interlibrary loan system consists of several standardised interlibrary loan platforms which cooperate across different networks. The basis for this is the National Interlibrary Loan Regulation¹². Interlibrary loan is primarily used to supply research and therefore mainly refers to scientific literature. This kind of interlibrary loan takes place between academic libraries. An exception is the interlibrary loan of fiction and academic literature between public libraries. However, this represents only a small percentage of interlibrary loan in Germany.

The National Interlibrary Loan Regulations prescribe the regional principle distribution network. Libraries do not choose a favourite supplying library. Instead, the nearest library with the required stock receives the request automatically through the interlibrary loan system. Interlibrary loan within Germany includes:

- the electronic transfer of copies from scientific journals and monographs between libraries (not to the end-user)
- the lending of collections (monographs, journals, special collections such as microfiche, newspapers)
- the lending of e-books¹³

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In addition, subito e.V.¹⁴ is a cooperative direct delivery service of libraries from Germany, Austria and Switzerland. In contrast to (inter-)national interlibrary loans, this service allows direct delivery to users and requests from commercial users and private individuals. Orders via subito are more expensive than national interlibrary loans. The libraries serve different target groups via subito than via national interlibrary loan.

In the international context, there are various ways of ordering interlibrary loans from German libraries.

- International Interlibrary Loan (ILL, IFLA-Voucher)

11 Gillitzer (2018, p. 625), Grenzbaach (2018,p. 66)

12 Leihverkehrsordnung (2003)

13 Gillitzer (2014)

14 www.subito-doc.de (accessed 16 July 2019)

- Bavarian International Interlibrary Loan¹⁵
- subito library service
- WorldShare ILL

The breakdown of incoming interlibrary loan requests at the ZBW is as follows:

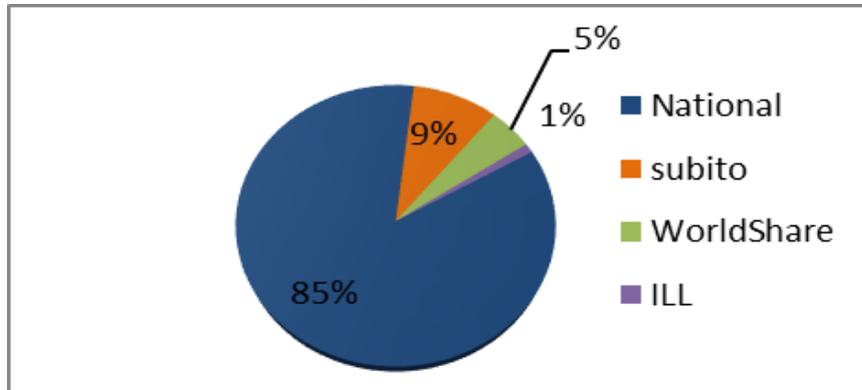


Figure 1: Incoming ILL requests of the ZBW, distribution in 2018

Correlations between country and chosen ordering system can be identified if you analyse the requests of the libraries ordering from the ZBW. The majority of requests for conventional interlibrary loans are received from European countries and increasingly from Eastern European countries. The subito library service is heavily used by European countries, while US libraries order from the ZBW via WorldShare ILL. Australian and Asian libraries choose between the subito library service and WorldShare ILL according to their needs.



Figure 2: ILL incoming requests at ZBW by city and order system¹⁶

¹⁵ Bavarian Library Network, https://www.bsb-muenchen.de/fileadmin/pdf/benutzung/fernleihe_international_anleitung_engl_201709.pdf (accessed 16 July 2019)

¹⁶ The map is based on an internal ZBW analysis of all international ILL requests. Purple = WorldShare, green = subito library service, red = ILL (IFLA Voucher)

2.1 International Interlibrary Loan

Conventional interlibrary loan requests can be submitted directly to the lending library by e-mail, fax or post. The copy or the loan of the book will be sent by post. The accounting is done via the standardized IFLA Voucher System.¹⁷ This form of international interlibrary loan is the most common procedure and can be used for orders from most German libraries.

2.2 subito library service

International, publicly financed libraries can use the subito library service to order books and articles from German libraries. This applies to all libraries worldwide, with the exception of the USA and Great Britain.¹⁸ At subito, research and ordering takes place in one system. At subito, unlike conventional interlibrary loan, copies from licensed journals can be sent by e-mail using the Digital Rights Management System.¹⁹

The services offered (delivery of copies, lending) and the associated prices are determined individually by the supplying libraries.²⁰ Please note that not all subito supplier libraries offer the lending of books. The average prices in the subito library service are higher than the voucher costs in conventional international interlibrary loan. For this purpose, billing takes place centrally via the subito office in the form of collective invoices.²¹

2.3 WorldShare ILL

Orders via OCLC WorldShare ILL are a good alternative for libraries from the USA and Great Britain. Please note, however, that only a few libraries in Germany participate actively in the WorldShare ILL interlibrary loan system,²² whereas it can be regarded as the standard interlibrary loan system of the USA and is used internationally in 57 countries and by over 10,000 libraries.²³

The services offered (delivery of copies, lending) and the associated prices are determined individually by the supplying libraries. The average prices at OCLC WorldShare ILL are higher than the voucher costs for conventional international interlibrary loan. Analogous to subito, you can choose the supplier library yourself. Billing is done centrally via OCLC's IFM management system.

Several German supplier libraries use ImageWare's MyBib electronic reading room as a complement to OCLC's WorldShare ILL interlibrary loan system to provide digital copies of

17 <https://www.ifla.org/voucher-scheme> (accessed 16 July 2019)

18 <https://www.subito-doc.de/Benutzergruppen/KG-SLS-SLI?lang=en> (accessed 16 July 2019)

19 <https://www.subito-doc.de/DRM?lang=en> (accessed 16 July 2019))

20 An overview of the services and supplier libraries can be found on the subito website (<https://www.subito-doc.de/suppinfo>, accessed 16 July 2019).

21 <https://www.subito-doc.de/Zentralregulierung> (accessed 16 July 2019)

22 2018 these were ZBW Kiel/Hamburg, TIB Hannover, SUB Göttingen, SPK Berlin, BSB München.

23 <https://www.oclc.org/de/worldshare-ill/statistics.html> (accessed 16 July 2019)

articles.²⁴ The requesting libraries can call up and print the ordered article via a link in the electronic reading room. There is no direct delivery as pdf or to the user. The electronic reading room enables a copyright-compliant compromise between modern, technical possibilities and the copyright requirements for German libraries.

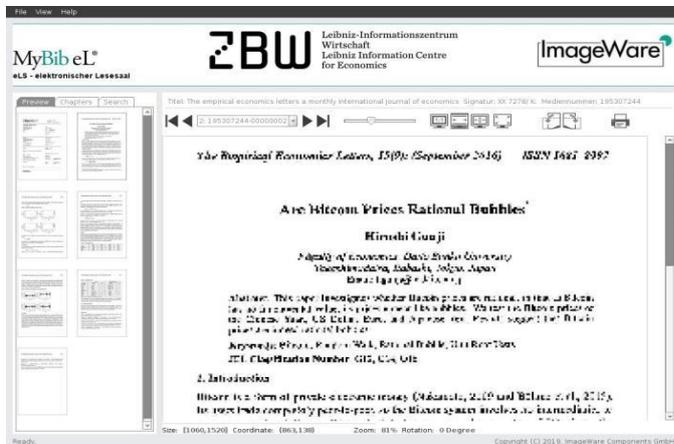


Figure 3: Electronic reading room ZBW, pixelated display

3. Conclusion and perspective

On the one hand, the possibilities of the new Copyright Act for national and international interlibrary lending are not yet fully realized. For example, the legally permissible direct mailing to users is currently not applied due to the valid collective agreement. How this will affect the next legislative negotiations cannot yet be foreseen.²⁵ On the other hand, §60 e of the Copyright Act contains various restrictions, such as the limitation to 10% and the exclusion of newspapers, public magazines and commercial use. In the national and international context, this means a step backwards in the supply of literature via interlibrary loan by German libraries.

If one assumes that international interlibrary loan mainly orders literature that is not available in one's own library and in one's own country, it can be seen as a deterioration that certain holdings of German libraries are not generally available for (inter)national interlibrary loan. Particularly in the field of newspapers and periodicals for the general public, most orders will not be for current articles, but rather for individual articles from recent decades.²⁶ The supply of literature of this kind is therefore limited.

24 Cf. Clasen (2015)

25 The UrhG is limited to 2023.

26 Articles in the public domain are excluded from the exclusion. However, this does not apply until 70 years after the death of the author or in the case of anonymous works.

At the ZBW, the percentage of requests that cannot be supplied has increased.²⁷ At the same time, the share of borrowed media in unfilled request has fallen. This suggests that the share of titles that cannot be borrowed in the total number of incoming requests has increased since the new Copyright Act came into force.

By offering various ordering systems in the international field, German libraries have found good opportunities to offer and deliver their stock to international libraries in accordance with copyright law and, ideally, quickly and easily.

But what about the future development of interlibrary loan systems? For the most part, common forms of publication such as e-books or e-journals cannot be offered easily or conveniently. There are many reasons for this, ranging from copyright restrictions to technical difficulties.²⁸

How can CC licenses and Open Access publications be integrated into the ordering systems? Do the current search options correspond to the wishes and requirements of the users? Voice-controlled search options or the input of DOIs, for example, can be imagined as user requests.

²⁷ from 19,7% in 2017 to 22,2% in 2018

²⁸ Cf. Gillitzer (2014)

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