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Theme One, Topic 3
Copyright and Related Rights in the Digital Environment
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Good afternoon, ladies and gentlemen, distinguished delegates. I am very pleased to address you today on the topic of Copyright and Related Rights in the Digital Environment. I would like to thank WIPO and the co-organisers for the opportunity to present the library perspective in this important debate.

Electronic Information for Libraries, known as eIFL¹, is an international foundation which advocates for the wide availability of electronic information for libraries in developing countries. Our global network embraces nearly 4,000 leading libraries serving millions of users in 50 countries in Africa, Asia, Eastern Europe, former Soviet Union and the Middle East. We work closely on international copyright matters at WIPO with IFLA: the International Federation of Library Associations² and my paper today outlines our joint views.

I will illustrate how libraries work in the digital environment; outline key concerns relating to copyright in the provision of modern library services; and conclude with our views of the Development Agenda proposals currently under discussion here at WIPO.

I'll start by making a couple of general remarks.

Firstly, libraries in developed countries accompany citizens through all stages of life such as:

- Bookstart for Babies³ programmes in the local public library;
- Help with Homework clubs in the school library;

¹www.eifl.net

² IFLA Copyright and other Legal Matters Committee <http://www.ifla.org/III/clm/copyr.htm>

³ e.g. Australia <http://www.library.act.gov.au/locandhrs/bookstart.html>

-as a student, logging in to the university library web portal from home for research material;

-later as a professional, having access on your desktop to the latest market research reports from the in-house company library.

Furthermore, publicly funded libraries often have special responsibilities defined in law e.g. a public library may have a legal requirement to promote education and cultural activity⁴. A national library may have a mandate to collect, preserve and promote national cultural heritage.

Libraries of all types however have one thing in common. They facilitate sound democratic governance and the development of society by providing access to information, knowledge and learning resources. Through their vast collections and variety of media, they provide opportunities for leisure and lifelong learning. As evidenced by the most developed countries, a strong library infrastructure is integral to a nation's development.

Secondly, libraries are major contributors to the publishing sector and are the main purchasers of important and expensive reference works, online databases and electronic journals. Without libraries, many publishers and database providers simply wouldn't have a market for their products. Libraries are a showcase for authors' works, including the work of musicians and performers, and often lead to further primary sales.

By increasing literacy rates and encouraging reading habits, libraries in developing countries are fostering the long-term development of a market for information products, especially for local content industries and are contributing to national development by supporting education and training. In the short term, libraries are using their purchasing power to support and encourage these industries.

Thirdly, libraries exist to serve the public. Professional librarians are explicitly committed to freedom of access to information with a special obligation to ensure the free flow of information and ideas to present and future generations⁵. Unlike many of the other

⁴ Act on Library Services, Danish Ministry of Culture 2000 <http://www.ifla.org/V/cdoc/danish.htm>

⁵ e.g. ALA Code of Ethics <http://www.ala.org/ala/oif/statementspols/codeofethics/codeethics.htm>

protagonists in the IP debate, librarians providing services in the public, educational and cultural sectors have no direct commercial or economic motive. Librarians are thus true custodians of the public interest.

We recognise the need for effective copyright laws and the right of creators and other copyright owners to safeguard their moral rights and to obtain a fair economic return for their work. Libraries are the interface between rightholders and users and we seek fair play for both.

This can only be achieved through balanced copyright laws that provide effective protection for the interests of rightholders, as well as reasonable access in order to encourage innovation, research and further creativity.⁶

How libraries work in the digital environment

Library services have changed dramatically over the last 20 years. ICTs offer libraries wonderful new ways of providing access to global resources in a local setting and opportunities to develop new services. Recent examples are:

- the British Library opening its treasures to the world in the Turning the Pages project⁷ ;
- a project by the National Library of Uganda and Books Anywhere which provides a digital bookmobile and print-on-demand centre for primary health care information⁸ ;
- academic and research libraries in the 50 eIFL member countries are benefiting from access to dozens of major databases in humanities & literature, science & technology and business information.

In future, students in Dakar or Phnom Penh can have access to the same resources as a student in Oxford or Harvard through their libraries. The digital environment has the potential to transform access and use, especially for those disadvantaged by distance or economic circumstance.

⁶IFLA Position on Copyright in the Digital Environment <http://www.ifla.org/V/press/copydig.htm>

⁷ <http://www.bl.uk/onlinegallery/ttp/digitisation6.html>

⁸ <http://www.anywherebooks.org/home.php>

So what's the problem? As the world switches to digital technologies to create and distribute knowledge and culture, questions of digital copyright become central. While there are new opportunities, users now have less rights in the digital environment than in the analogue world. The traditional copyright balance has been severely eroded in the digital environment, where rightholders have clear rights but unclear responsibilities. This constant whittling away of the 'fair use' exceptions and limitations to copyright is deeply damaging to the development of society since the future is ever increasingly digital.

The Agreed Statement⁹ to Article 10 in the 1996 WIPO Copyright Treaty (WCT) confirmed that existing exceptions and limitations may be extended to the digital environment. In reality however where librarians have lobbied to extend traditional copyright exceptions, they have met with stiff opposition from rightholders and with varying degrees of success. We call for global minimum mandatory exceptions to ensure that libraries and their users get a fair deal in future.

Key concerns relating to copyright and related rights in the provision of modern library services

I will look at four key concerns in the provision of modern library services.

1. New layers of rights on information

Database right

In 1996 the European Union introduced a *sui generis* right on the arrangement of data in non-original databases with a renewable 15 year term. This *sui generis* or 'database' right applies to both electronic and paper-based databases¹⁰. Its introduction has not resulted in increased investment in the European database industry, but instead has led to confusion and uncertainty for libraries which often have to ask permission from multiple owners to use the content. This can make access to information unaffordable in terms of administration and cost.

⁹ <http://www.wipo.int/treaties/en/ip/wct/statements.html>

¹⁰ http://europa.eu.int/comm/internal_market/copyright/prot-databases/prot-databases_en.htm

Draft 'casting' Treaty

A draft Treaty on the Protection of Broadcasting Organisations is currently under discussion here at WIPO¹¹. This would introduce new protection for the signal and the fixation of the signal impacting both on the rights of the copyright holder and the public at large, in particular content in the public domain. As currently drafted, the term of protection is a massive 50 years and includes webcasting, however that might be defined.

2. The erosion of the public domain

A rich and robust public domain provides the raw material for future creativity, innovation and research. Increases in the term of copyright protection, in the name of harmonisation, have removed access to a huge range of content from millions of people around the globe who need it for research, for study or for educational purposes.

This hits developing countries particularly hard where the issue of accessing information is a key determinant for their development. Information that traditionally belonged to everybody is removed from collective ownership with serious consequences for education and innovation. Worse still, the retroactive extension of the term of protection in some jurisdictions is in my opinion a betrayal of the copyright bargain between rightholders and society.

3. Restrictions imposed by technology

The success of the Information Society depends on digital content being accessible. The legal protection of Technological Protection Measures introduced by the WCT¹² creates a conflict with copyright exceptions. Anti-circumvention laws can prevent libraries from availing of lawful exceptions under national copyright laws. This can prevent or place restrictions on sharing material, current awareness services, book reviews, and access for people with disabilities.

Instead libraries are having to negotiate special agreements with individual rightholders to

¹¹http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=33545

¹²Article 11 WIPO Copyright Treaty obligates Members to “provide adequate legal protection and

obtain TPM-free material or permission to circumvent in restricted circumstances. This is an option realistically enjoyed only by the largest and best resourced libraries¹³. Under-resourced libraries lacking the technical expertise or those in underprivileged communities, ironically the very ones standing to benefit most from digital technologies, will lose out on their statutory rights creating a digital divide Mark Two.

Libraries, archives and museums act as the world's repositories. Some also have a legal mandate, not only to preserve, but to make available our cultural and scientific heritage to current and future generations. TPMs jeopardise this role as they have the potential to lock away protected material forever. There is no clock that releases material into the public domain once the term of protection has expired. There is a great risk that the public record of the future may be distorted or will contain gaps because of TPMs. Libraries therefore must be allowed to circumvent a TPM to make a non-infringing use of a work.

4. Restrictions imposed by contract

In contrast to print material, electronic resources in a library are usually acquired via a licence or contract. The library is only buying access and the terms of the licence govern what the library can and cannot do with the material. The problem here is that in most legal systems, contracts are in most cases allowed to override the legal exceptions and limitations to copyright.

In many cases, there is no opportunity to negotiate the standard licence particularly where the library is a small customer. Where the licence *is* negotiated, the relative bargaining power between the library, which requires access to essential resources, and the publisher which holds the monopoly rights, is grossly uneven. In an attempt to redress the balance, groups of libraries co-operate to negotiate multi-site or multi-country licences with publishers for major resources.

Compulsory licences

effective legal remedies against the circumvention of effective technological measures”

¹³ Deutsche Bibliothek Joint Press Release, 18 January 2005 “Music industry and book branch sign an agreement with the German National Library upon the duplication of material protected by technical measures” http://www.ddb.de/news/pressemitte_vervielfaeltigung_e.htm

Many changes to IP laws are being driven by the music, software and mass entertainment industries but they impact directly on libraries. Like all global businesses, the journal and book publishing sector has seen its fair share of mergers and takeovers over the years¹⁴. Together with convergence in the distribution process¹⁵, the result is that more information is in the control of fewer hands. Libraries and archives need protection from concentrated or uncompetitive markets. This can be done through statutory compulsory licensing schemes.

Compulsory licences would enable libraries to negotiate on equal terms, for example, to gain perpetual access to material already paid for. This is because the digital age has turned publishers into the holders of the digital archives. Libraries in future could be empty unless they are able to negotiate reasonable access to the archives.

National copyright legislation must provide that licences and contracts of this kind cannot override statutory copyright exceptions.

The WIPO Development Agenda

We welcome the current debate at WIPO for a Development Agenda. All the issues I have raised today impact adversely on libraries round the world, but do so even more severely on developing country libraries which are being prevented by these restrictions from achieving their full potential. Unbalanced and disproportionate copyright laws further inhibit access to resources or impose unrealistic costs on already disadvantaged societies.

We believe that the current "one size fits all" approach to copyright law is unjust and inequitable. It is simply unfair that developing countries are expected to adhere to very strict regimes which developed countries did not have to when they were in the developing stage. Furthermore, free trade agreements should not impose higher IP standards on developing countries if they wish to trade with richer nations.

¹⁴http://www.competition-commission.org.uk/rep_pub/reports/2001/457reed.htm#summary

¹⁵http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/00/1145|0|AGED&lg=EN&

We support the proposals of the 14 member states of the Friends of Development Group. In particular we support the idea of Impact Assessments to measure the benefits and costs to education, development and society before higher IP standards are introduced.

We support the development of alternative models such as open access journal publishing which offers great benefits to developing countries¹⁶. We believe that an international Treaty on Access to Knowledge and Technology would be a valuable first step in taking the concerns of the library community further.

Conclusion

Our generation is witnessing the transition from the analogue to the digital world. It would be a great shame that as countries develop and their infrastructure improves, as it will, libraries in the future were to find themselves unable to provide new services because of unbalanced copyright laws.

Over protection of copyright stifles creativity. Librarians are committed to seeing fair play for our users as well as for rightholders. This can only be achieved through fairness and balance in the digital environment.

I thank you for your attention.

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