



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

2014 STATEMENTS BY EIFL

WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

28th Session: Geneva, 30 June – 4 July 2014

Agenda item 6: Limitations and exceptions for libraries and archives

Topic:

PRINCIPLE: EXCEPTIONS AND LIMITATIONS IN A DIGITAL ENVIRONMENT

I am speaking on behalf of Electronic Information for Libraries (EIFL) that works with libraries and library consortia in 60 developing and transition economy countries in Africa, Asia, Europe and Latin America.

We thank the US for its document SCCR/26/8 Objectives and Principles for Exceptions and Limitations for Libraries and Archives. We strongly support the need for exceptions and limitations for libraries and archives to enable preservation and to provide support for research and human development. We agree firmly on the adoption of national exceptions, and exceptions and limitations that apply in a digital environment. Indeed, this is why we have come to WIPO to ask for your help so that libraries and archives in every part of the world have exceptions to carry out their institutional mandate in fulfillment of public policies set by governments – policies on national cultural heritage, education and research, literacy and social inclusion, economic development and employment. And to fulfill these policies in the digital environment.

The Crews study commissioned by WIPO showed that libraries in more than half of the world's countries lack legal certainty in their ability to perform activities essential to their missions, and many more lack certainty in handling digital information at all. In many countries, exceptions for core activities such as preservation, lending and inter-library document supply apply only to print materials. Where there are exceptions, these can be taken away by contract terms in licensed digital resources.

For example, in 2012, the British Library's copyright-based document supply service to overseas libraries was replaced with a publisher licensing arrangement. The new

licensed service has resulted in a marked disimprovement for libraries, and a reduction in the availability of information to end users for scholarship and research.

Some articles needed by scholars are no longer available, or only at unaffordable commercial rates e.g. the price of some items increased from \$20 per article to \$87 per article. As you can imagine, these costs are out of the question for libraries in developing countries. New administrative obligations and conditions of use that vary from publisher to publisher are unworkable. As a result, in Malawi for example, the inflexible delivery options to end users are no longer practical for local conditions. And a major academic library in south-eastern Europe, had been using the service since the 1980s, has been forced to abandon it.

Digital content has opened up vast opportunities, especially for people in developing countries, and those living in rural and remote areas. The question is how can access be achieved in a meaningful, effective and timely way? We need a solution that will deliver equally and on time for people and society.

In a speech yesterday, Neelie Kroes, Vice-President of the European Commission responsible for the Digital Agenda, started from the principle: “What should a sound EU copyright system do?”, and concluded that action is needed to align current practices with what most people in the EU are already doing. Otherwise copyright risks becoming an irrelevance. We would add that this solution is needed not only for people in the EU. This is why we must establish a basic international standard that enables libraries and archives to fulfil their mission for people everywhere.

Thank you for your attention.



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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Agenda item 7: Limitations and exceptions for education for persons with other disabilities

On behalf of Electronic Information for Libraries (EIFL), that partners with libraries and library consortia in more than 60 developing and transition economy countries, we would like to comment on the issue of Limitations and Exceptions for persons with other disabilities.

Mr. Chairman, EIFL was in the room on the last evening of SCCR/21 in 2010 when persons with other disabilities e.g. deaf people were excluded from the negotiations on a treaty for persons with print disabilities. Many of us who were that night were dismayed that a marginalized group – so marginalized that they weren't even there – were removed from the negotiations that led to the adoption of the Marrakesh Treaty.

Deafness is described as an invisible disability because you can't see it in the same way as someone who has a physical disability. But that doesn't make life any easier for those affected. The major barrier for deaf people is trying to communicate like everyone else does. Because of this communication difficulty, deaf people tend to rely on technologies such as subtitles and captioning for essential communication and interactions.

Many delegations have rightly described the Marrakesh Treaty, and the issue of access to accessible reading materials, as a humanitarian issue. Yet the copyright issues that occur in creating accessible format copies for deaf people, such as adding subtitles and captions to material, raise similar issues to those addressed in the Marrakesh Treaty.

EIFL respectfully suggests that the Committee would consider making a recommendation or agreed principle to the General Assemblies that the provisions of the Marrakesh Treaty apply *mutatis mutandis* to persons with other disabilities, so that the equal treatment is granted to all persons regardless of their disability.

Thank you for your attention.



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

27th Session: Geneva, 28 April – 2 May 2014

Agenda item 5: Protection of Broadcasting Organizations

Statement by EIFL

Thank you, Mr Chairman. I am speaking on behalf of Electronic Information for Libraries (EIFL) and the International Federation of Library Associations and Institutions (IFLA).

As stated at previous sessions of the Committee, we see no compelling public policy reason for a new international instrument on the protection of broadcasting organizations, because piracy of broadcast signals is already adequately dealt with under existing laws and treaties, as outlined in the statement of KEI.

And the creation of a new layer of rights that affects access to content is of great concern to librarians, because it imposes an additional barrier to access to knowledge, especially to content in the public domain.

As stated by the delegation of Ecuador, a new layer of rights will, in addition to creating problems for users, create problems for rightsholders of content (that will impact on their ability to freely license their works).

Libraries have practical experience of such over protection caused by multiple layers of rights. For example, a library in northern Europe wanted to publish a sound recording from their archive that was originally broadcast in the 1950s. The recording was taken from a re-broadcast in the 1980s. Although the performers' rights had expired, and the author's heirs waived their fees due to the "cultural importance of the work", the library had to pay the broadcast organization approximately \$10,000 for permission to use the recording, because the signal protection applied also to the re-transmission. For many libraries, such costs are out of the question. As a result, socially valuable works remain inaccessible in libraries and archives, depriving the public of their enjoyment of the work.

Distinguished delegates, please consider the costs to tax payers and society, as well as the perceived benefits of this proposed treaty.

Thank you for your attention.



knowledge without boundaries

WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

27th Session: Geneva, 28 April – 2 May 2014

Agenda item 6: Limitations and exceptions for libraries and archives

Topic 6 Cross-border uses

On behalf of Electronic Information for Libraries (EIFL), that partners with libraries and library consortia in more than 60 developing and transition economy countries, we thank the Committee for the opportunity to speak on cross-border uses.

We thank the African Group, Ecuador and India for proposals on this topic.

The collections of libraries and archives in one country often contain materials of unique cultural and historical significance to people in other countries due to national border changes, mass emigration, shared common languages, research interests and a host of other reasons. These materials collectively contribute to the cultural heritage of humankind and the building of intercultural understanding.

Take, for example, an Italian scholar researching the lives of the Quechua people in South America. Should they only have access to research materials in Italian libraries? They will get resources in libraries in Italy, but for the most part, the materials are only available elsewhere e.g. in Peru, Bolivia, Ecuador.

Likewise, a person in the US studying Antonio Gramsci, the Italian politician and philosopher would certainly find material in US libraries, but just as certainly would need to consult many other materials by and about Antonio Gramsci held solely in Italian libraries.

A recent survey by IFLA's CLM showed that libraries receive requests for access to specialized items in their collection from a wide variety of countries. For example, libraries in Senegal get requests from Morocco, France, Guinea, Burkina Faso among others. Colombian libraries get requests for materials from Mexico, USA, Peru, France, Spain, Brazil, Argentina, Costa Rica, Uruguay and Venezuela.

In many countries, however, copyright exceptions stop at the border. They don't permit libraries to legally provide copies of documents to overseas libraries at the request of an end user.

I will provide one concrete example of a cross-border use. A PhD student in Estonia was undertaking comparative research in five Baltic and Nordic countries on historiographical narratives i.e. a critical analysis of authentic source materials used in

the writing of history. The student needed to consult articles and book chapters from c. 1920 that are not available in Estonia. The university library sent electronic requests to libraries in Iceland and Norway that had the materials in their collections. But, due to copyright and licensing restrictions, the requests were refused.

How do we explain to today's generation that they must get on an aeroplane to consult, for bona fide research purposes, a chapter from a book published 90 years ago? Or that copyright exists to actually encourage research and creativity?

Finally we note that despite extensive schemes in Nordic countries, licensing did not facilitate this straightforward request. In addition, libraries in Denmark and Norway reported in the recent EU consultation on copyright, that cross-border access is not permitted under their Extended Collective Licensing schemes. In its comments, the National Library of Norway that has an Extended Collective Licence to provide online access to Norwegian literature said that "the cross-border effect is halted as the cross-border effect is not compatible with EU-law".

We need an international solution to an international problem.

Thank you for your attention.



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Topic 7 Retracted and withdrawn works

I am speaking on behalf of Electronic Information for Libraries (EIFL). We thank the African Group, Ecuador and India for proposals on this topic.

Libraries and archives have a mission to preserve the public record for posterity. In the analogue environment, exhaustion to the distribution right ensured the operation of this function. In the digital environment, there are no such safeguards.

This provision would provide an exception to the communication to the public right for the purposes of preserving, and providing a permanent record of a digital work

that has been removed from the public realm, for example, due to plagiarism, or because the author has changed their views on a subject.

We thank the distinguished delegate from Ecuador for the reminder that the right of retraction concerns moral rights, that is covered in paragraph 2 of the proposals from the African Group and Ecuador. We respect moral rights, of course.

We also support the comments of the distinguished delegate of India with regard to the contours and restrictions of this provision. We acknowledge the provision in the African Group proposal, that libraries can use the work, except as otherwise provided by national law or through the decision of a court in relation to a specific work.

I will give an example of a retracted work from a controversy that is known as the MMR vaccine controversy that occurred in the UK in 1998. This controversy centered around the publication of a research paper in a medical journal, the Lancet, that claimed that colitis and autism spectrum disorders could be caused by the combined measles, mumps, and Rubella vaccine, known as MMR.

The claim was widely reported in the mainstream media. As a result, vaccination rates in the UK and in the neighboring Ireland dropped sharply, leading to significantly increased cases of measles and mumps among children, resulting in deaths and permanent injuries.

The medical claims that were published in the journal were subsequently discredited, and the research paper was partially retracted by the journal, The Lancet, in 2004 and fully retracted in 2010. Future researchers undertaking epidemiological research will want to have access to that paper. If the article was published in print journal, a print version of The Lancet, it will be available in a library. If it was only published online, it might not.

Libraries and archives have a societal duty to ensure that the public record is intact. If libraries and archives cannot do this in the electronic environment, no one else is caring for it. Future historians and researchers will be at a loss because a complete and accurate public record cannot be guaranteed.

The electronic environment is global, so we need a global solution.

Thank you for your attention.