

**Information Meeting on
Educational Content and Copyright in the Digital Age**

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Learning with Libraries and Copyright Issues

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INTRODUCTION

Good morning ladies and gentlemen, distinguished delegates. I would like to thank the WIPO Secretariat for inviting me to take part in this Information Meeting and to address you on the topic of Learning with Libraries and Copyright Issues.

The International Federation of Library Associations (IFLA) and Electronic Information for Libraries (eIFL) are membership organisations representing libraries throughout the world. Since 1927, IFLA has represented the world's major libraries and library associations in 150 countries. eIFL speaks for 4,000 leading libraries in 50 least developed, developing and transition countries.

I will briefly cover the role of libraries and education, development and copyright; how copyright law affects library services and education and I will put forward a basic, minimum set of exceptions and limitations compliant with existing international agreements.

ROLE OF LIBRARIES

Library and information services are gateways to knowledge and culture. Libraries of all types are "people's universities" and provide access to knowledge, learning and ideas; an essential component to fostering a creative and innovative society. It is not surprising that the two countries ranking number one in the UN Human Development Index over the last ten years, Norway and Canada¹, both have strong library infrastructures.

Libraries are not just shelves of books or collections of databases. Resources are carefully selected and organised by trained professionals. The unique role of libraries is that we

¹ http://en.wikipedia.org/wiki/Human_Development_Index

provide personalised information because we respond to the particular questions and *individual* needs of citizens. This complements the *general* transmission of knowledge by the media, and makes libraries vital to the creation of a well informed citizenry and a democratic and open information society².

LIBRARIES AND EDUCATION

Libraries and education are synonymous. A library has no meaning if it cannot impart knowledge. Good education cannot exist without access to quality information resources, to support teaching, learning and research activities³. This is reflected in education policies worldwide. The Education Commission of the States, a US policy think-tank, says:

“Research has indicated that high-quality school libraries [...] are linked with higher scores on state reading tests⁴.”

The National Policy of Education (1998) in Nigeria states:

“As libraries are one of the most important educational services, proprietors of schools shall provide functional libraries in all their educational institutions...⁵.”

The quality of the library service is one of the criteria applied when an institution seeks accreditation as a university and is part of the benchmarking in the ranking of universities.

In other words, the effectiveness of educational institutions in turning out successful students, quality graduates for the labour market and the most highly skilled researchers depends on the provision of quality learning support services provided by libraries. What would Cambridge or Harvard universities be without their libraries?

LIBRARIES AND DEVELOPMENT

The greatest resource for development is the human resource. In the information society, this means that an educated population is essential to economic progress. A basic building block for a well educated population is a literate population. Literacy rates correspond to the level of development of a country. In turn, there is a direct correlation between literacy rates and library holdings. Countries with the lowest library holdings per inhabitant have the lowest literacy rates⁶. Libraries build capacity by promoting information literacy and providing support and training for effective use of information resources.

² IFLA Alexandria Manifesto on Libraries, the Information Society in Action. Adopted in Alexandria, Egypt, Bibliotheca Alexandrina, on 11 November 2005 <http://www.ifla.org/III/wsis/AlexandriaManifesto.html>

³ The Role of Libraries in Education, Prof. Dr. K.M. Saiful Islam <http://www.infosciencetoday.org/educa.htm>

⁴ <http://www.ecs.org/html/issue.asp?issueID=223>

⁵ Using libraries in Nigeria as tools for education and national development in the 21st century, Rose B. Okiy, Technical Services Librarian, Delta State University, Abraka <http://www.libr.org/ISC/articles/21/13.pdf>

⁶ The Librarian's Companion by Vladimir F. Wertsman; Greenwood Press, 1996

The Millennium Development Goals are one of the great challenges facing the international community. On reaching these Goals, Kofi Annan says:

"We cannot win overnight...It takes time to train the teachers, nurses and engineers; to build the roads, schools and hospitals; to grow the small and large businesses able to create the jobs and income needed⁷."

Student teachers, nurses and engineers in poor countries often rely entirely on the university library to provide learning and research material for their courses. Developing countries must ensure that learning content is made available to the widest possible base as part of their focus in achieving the Millennium Development Goals⁸.

LIBRARIES AND COPYRIGHT

So where do libraries stand on copyright? Libraries support copyright because we recognise the need for creators to be rewarded for their work and for creative works to be protected from piracy and other unfair exploitation. We uphold copyright laws and encourage our users to respect them.

But copyright is not just about protection for rightholders. Copyright was from its early days meant to balance the need to protect creators with the user's right to access information for teaching, learning and further creative endeavours. The mechanism that makes copyright work is in fact the exceptions and limitations combined with adequate protection of copyright.

International copyright agreements guarantee exclusive rights for authors and other rightholders, but not the exceptions to these monopoly rights. Exceptions are left for national parliaments to decide, while the three step test provides a safeguard against exceptions that might be considered overly wide. Notwithstanding provisions in the Berne Convention for permissive limitations and exceptions, the result is that rightholder rights are international and guaranteed and exceptions are national and optional. This creates an imbalance from the start.

The WIPO Copyright Treaty recognises the need to "maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information⁹." But if there are no national exceptions or only narrow exceptions, how can there be a balance?

If there is no balance, then copyright works against libraries, against learning, against people with disabilities, against access to knowledge and ultimately against development.

⁷ <http://www.un.org/millenniumgoals/>

⁸ www.col.org/programmes/infoknowledge/CopyrightDoc_200505.pdf

⁹ http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#preamble

COPYRIGHT AS A BARRIER TO LIBRARIES AND EDUCATION

Copyright law is increasingly acting as a barrier to libraries and education. At the World Library Congress¹⁰ in Oslo in August 2005, over three hundred librarians from developed and developing countries discussed every day problems they encounter with copyright law.

Common themes were:

- digitisation projects are being hampered because there is no exception for long term preservation. Where the material has been digitised, it is often difficult to get permission to make it available. Negotiations, even for out of print material, can be long and painstaking. If libraries are unable to preserve our cultural heritage, it is lost for future generations;
- libraries are encountering increasing limitations on the use of audio-visual formats, including the right to import, a crucial issue for small and multi-lingual countries;
- different rules apply to different formats, instead all formats should be equal in terms of exceptions which apply to their use;
- masses of content held by libraries is unavailable for digitisation, distance learning programmes, incorporation into course packs and other uses where permission from the rightholder is usually required. This is because the copyright owners are untraceable, so-called orphan works.

I would like to describe a scenario from a library colleague in South Africa¹¹. The print medium is essential for literacy and education. Take a literacy facilitator in a developing country who offers reading lessons to illiterate people in a shanty town. The people in her group have no fixed addresses, so they cannot borrow from the local library. They have no electricity, so they cannot make 'fair use' copies for themselves in accordance with copyright law. Copyright law prohibits the teacher from making multiple copies for them in the local library. It also prevents her from making translations or derivative works appropriate for different age groups and different levels of literacy. The people in her class struggle to pay for food, clothing and medical care. Books are a luxury and paying copyright royalty fees are out of the question. So what choice does she have? Make copies and derivative works to educate or perpetuate illiteracy?

Unless copyright laws are tailored to the stage of a country's development, how will people in the poorest nations ever progress from illiteracy to literacy? How will their countries ever move from the status of 'developing' to 'developed'? How will their people learn to read the copyright act?

¹⁰ <http://www.ifla.org/IV/ifla71/Programme.htm#18August>

¹¹ Denise Nicholson, University of Witwatersrand, South Africa <http://www.ifla.org/IV/ifla71/papers/>

MINIMUM SET OF EXCEPTIONS AND LIMITATIONS

In the digital age, countries cannot have viable modern economies without fair access to knowledge. Over the last ten years, international treaties, supranational directives from the European Union and bilateral trade agreements have worked to erode access to knowledge especially in the digital environment. We need a minimum set of user rights to redress the balance; a pro-active acceptance of agreed norms by rightholders and users. This is why we need a treaty on Access to Knowledge (A2K). Such a treaty would establish an international framework, would enshrine user rights and would set out the norms by which copyright is managed in the digital age.

What can we do now within the existing international frameworks? Ruth Okediji, Professor of Law at the University of Minnesota, USA has undertaken research in this area¹². After analysing the Berne Convention and examining empirical data of exceptions and limitations implemented in national laws, Professor Okediji has drawn up a list of exceptions and limitations permitted by Berne and/or incorporated into the national laws of member states of the WTO¹³.

These are exceptions for:

- Personal use: the most universally accepted limitation to the reproduction right. This may include time-shifting.
- Criticism and review: available in most countries. Article 10 of the Berne Convention allows for short quotations.
- Educational purposes: allows teachers to use extracts of copyrighted works for illustration purposes and on a variety of media, so long as the use is compatible with fair practices. Although the provision is broad enough to include distance learning, according to Professor Okediji, most countries do not avail of it (Article 10(2)).
- Reproduction by the press: countries may determine the circumstances under which copyrighted works, incidental to the reporting of current events, are reproduced (Article 10bis and 10bis (2)).
- Ephemeral recordings: broadcasting organisations may record broadcasts for an official archive (Article 11bis).
- Libraries: reproductions for preservation and replacement and other limited uses. This exception falls under the broad heading of teaching and the role libraries play in this respect.

¹² Draft The International Copyright System: Limitations, Exceptions and Public Interest Considerations for Developing Countries in the Digital Environment by Ruth Okediji
http://www.iprsonline.org/unctadictsd/docs/Okediji_Copyright_2005.pdf

¹³ Most of these exceptions are not subject to compensation, although some countries e.g. in continental Europe, have a levy system on equipment whereby rightowners are indirectly remunerated.

- People with disabilities: There is no explicit limitation in the Berne Convention, but some countries have implemented limitations to copyrights to facilitate access by disabled persons.
- Computer programs and interoperability: There is no explicit limitation in the Berne Convention, but most countries have some provisions that allow computer programs to be copied for the purposes of interoperability.

There is no reason why every country cannot adopt these very basic minimum exceptions and limitations today. It would illustrate a willingness to provide a balance between national copyright laws and public interest concerns, in compliance with international agreements. It is neither ideal nor complete from the library point of view, but it could be a useful starting point for discussion.

CONCLUSION

I don't believe that copyright law has to be a barrier to library or education services. I want copyright to be an enabler of access to knowledge in libraries. I want to see copyright law achieve its original purpose to 'encourage learning', as set out in the world's first copyright law, the English Statute of Anne (1710)¹⁴.

I call on distinguished delegates here today to reflect on the importance of exceptions for libraries and learning on global access to knowledge. In particular, the impact on nations battling with food shortages, the AIDS pandemic and other major infrastructural problems. These nations must be given every support to create learning opportunities for the teachers, nurses and engineers of tomorrow on which the achievement of the Millennium Development Goals so depend.

IFLA and eIFL commend the Committee for including exceptions and limitations on the agenda of this meeting. We look forward to the debates and we are happy to discuss further any issues regarding the library perspective.

Thank you for your attention.

¹⁴ IFLA Limitations and Exceptions to Copyright and Neighbouring Rights in the Digital Environment: An International Library Perspective <http://www.ifla.org/III/clm/p1/ilp.htm>