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Title: Copyright, Libraries and European legislation

My paper today will focus on the EU and copyright and more specifically on library activities and electronic copyright. Firstly I will try to lead you into copyright and show you where problems can arise. Secondly I will give you an overview of the Directives on copyright law adopted by or still under discussion with the EU Council of Ministers. Thirdly I will inform you in what way copyright can affect your activities.

What is copyright?

Copyright is concerned with the rights of authors, composers, artists and other creators in their works. Copyright law grants them the right for a limited period of time, to authorize or prohibit certain uses of their works by others. Most of the materials available in libraries consist of works protected by copyright law. This means that certain kind of uses to those works in libraries must not be made without the authorization from the authors. What are 'those works'? Copyright protects 'literary and artistic works' this includes novels, short stories, scientific writings or manuals, and musical works, works of graphic and plastic arts, films, documentaries, but also computer programs and data bases.

The rights provided by copyright are two fold: economic rights and moral rights.

The main aim of copyright is to provide a stimulus for creativity. This means that the law has to make sure that the author will have an economic return on his creation and that he can protect his creation from being violated in one way or the other. The economic rights include the right to copy or otherwise reproduce the work. They also include the right to translate the work, to transform, to perform it in public or broadcast it.

The moral rights generally include the right of paternity, which is the authors right to claim authorship of his work, for instance by having his or her name mentioned in connection with it. The other moral rights is the right of integrity, which includes the right to object to transformation of the work.

All these rights are exclusive rights, which means that the owner is the only one allowed to give authorization for the use of his work. The owner can be the author or the publisher. The rights last for the author's life plus 70 years (was 50 years) after his death. Economic rights can be transferred or licensed, however moral rights are considered to be inalienable.

Copyright is provided for in national laws. Those laws give protection within the national territory. Since 1886 international protection was provided for with the adoption of the Berne Convention for the protection of literary and artistic works. More than 100 countries signed this Convention and are bound by it. The Berne Convention is based on certain main principles, one of them known as the 'national treatment' principle. This means that a country bound by the Convention must give at least the same protection to the works of authors from all other countries bound by the Convention as it gives to its own authors. This means that foreign authors are in effect assimilated to national authors. The Berne Convention provides minimum rights. The administration of the Berne Convention is the United Nations specialized agency the World Intellectual Property Organization (WIPO) in Geneva.

New phenomena are affecting copyright law, like the new media and information technology. They have changed the international copyright landscape considerably. It allows enormous amounts of material to be stored and endlessly reproduced, without quality loss. The considerable economic interests at stake and the power of the copyright industries have an influence on the development of national and international copyright law and on

library activities. Results of this are the EU Directives. I will give you an overview of the Directives adopted by or under discussion with the EU Council of Ministers;

- computer software (adopted)
- lending and rental rights (adopted)
- duration (adopted)
- legal protection of databases (in discussion)
- personal data (in discussion)
- copying of sound and audiovisual works (in discussion)
- reprography (draft expected in february)

The significance of these Directives is that they have to be implemented into your copyright law. It is most of the times not possible to change the content once the directive has been adopted by the EU Council of Ministers and sent to your country for implementation in your national legislation.

Which library activities can cause copyright infringement?

We can divide seven library activities which infringe copyright.

- copying of written materials in libraries by library users
- copying of written materials by libraries for users and inter library loan
- copying of library materials for purely internal library purposes
- copying of sound and images
- performance and the communication to the public of works
- lending to the public of materials from the library stock
- copying electronic information

1. copying of written materials in libraries by library users.

Customers are allowed to use the library's photocopying equipment to make copies of library

stock for their own personal use. It takes place on the responsibility of the person who makes the copy, but the library does have a certain responsibility for ensuring that the equipment that it makes available is not used for extensive and unlawful copying.

2. copying of written materials for users and inter library loan.

In many cases the legislation of a country concerned contains special provisions under which some copying for the benefit of customers is allowed *without payment and without the authorization from the author*, but subject to certain conditions, for instance that only certain materials can be copied, such as articles from newspapers or short proportions from books or that no more than a certain number of copies can be made.

3. copying of library materials for purely internal library purposes.

One should think in this case on the preservation of fragile or valuable material. Most laws contain provisions on the conditions for such copying.

4. copying of sound and images.

Digital technology has made it possible to copy sound and images without any change in the quality of the material. The ease with which copies can be made and the affects to the industry made and more countries introducing systems of levies on blank tape or recording equipment or both. The proceeds are going to the authors and producers as compensation for this type of use.

5. performance and the communication to the public of works.

In this case one should think of playing CD's and videos in the library. The right to perform a work in public is an economic right of the author. In many countries libraries pay remunerations for this to the authors.

6. lending to the public of materials from the library stock.

The lending of materials from an important part of the activities of any library. In many countries specific compensation schemes for authors have been introduced to give the author an economic return on the lending of his work and to stimulate creativity. The EU Council of Ministers have adopted in November 1992 a Directive which introduced a lending right for each Member State. It is up to the Member States to decide to implement a remuneration right or an exclusive right for the lending by libraries. The difference between the two rights is enormous.

With an exclusive right the author can decide to *prohibit the lending of his work*. With a right to remuneration the author receives only a payment for the lending. A specific paragraph has been included in which libraries can be exempted totally by the *government from paying a remuneration*.

At the moment the Member States of the EU are working on full speed to implement this Directive. EBLIDA has lobbied hard to get a good result for the libraries under this Directive. What we see now is that it goes wrong on the national level. In the Netherlands for example the government will introduce a window-time of 6 months for the lending of audiovisual materials. This means that it is not possible for libraries to lend these materials for the period of 6 months. After 6 months the libraries have to pay a remuneration to the author for every lending.

7. copying electronic information.

Electronic information is information in a machine-readable form. Librarians mainly deal with information from databases - online, floppy disk, CD-ROM or computer programmes, but increasingly also electronic information which is available via national networks and the global Internet.

Electrocopying has not been defined satisfactorily in any legislation. The rights owners organizations

defines the following acts as infringements of electronic copyright:

- using an optical scanner or document image processor to digitize copyright protected works;
- rekeying such works from paper format into a word-processor;
- downloading from an online database, floppy disk or CD-ROM into a paper format;
- downloading from databases directly on to a computer;
- sending copyright electronic material around a local area network;
- sending such works by E-mail or even by fax.

The problem for the rights owners is that it is very difficult to control these kind of activities. This is not only a national problem it is an international problem. Electronic information doesn't stop at the borders. Information can be transferred electronically, via the telecommunication network, all over the world. There are various groups of copyrights owners working on the problem of control. The CITED (Copyright in Transmitted Electronic Documents) project set up under the EC ESPRIT programme seeks to provide a means for controlling, policing and remuneration in respect of works stored in digital form. Some form of technical solution to the problem, an electronic tagging device a means for controlling, policing and remuneration in respect of works stored in digital form. Some form of technical solution to the problem, an electronic tagging device, is being investigated. The project is due to report shortly.

What is allowed?

Access to data bases is governed by contractual arrangements. Downloading from an online data base is permitted only under the terms of the license from the data base owner as part of the contract. How much one is allowed to download differs from database to database and it is impossible to give any strict advice on this. There should not be an objection to going online and download the results

of a search and printing it out for personal use, as otherwise there would be no point in subscribing to the service. Downloading from a database in order to reformat and edit the data is perfectly reasonable and is unlikely to damage rights owners' interests. Keeping it in your own data base for re-use may not be acceptable. There is some controversy over passing results on to users especially if there is a fee involved. Many contracts forbid this even though it is well known that many users of online data bases perform searches for third parties.

Computer programmes and CD-ROMs are protected by copyright as literary works. Although there is fair dealing in literary works, you may not make copies of computer programmes without permission or licence apart from making a back up copy. The downloading, printing and networking of a CD-ROM is allowed only under certain conditions. Please check the supply contact for this.

Generally speaking, if a CD-ROM is purchased outright, downloading to print is subject to fair use. This means that it is reasonable for amounts which are considered not to unfairly prejudice the economic interests to the rights owners.

Downloading from the Internet is a topic which demands a paper all on its own. At present it appears to be fairly free of restrictions but does not mean that librarians should abuse works likely to be in copyright. So, in the absence of any restrictions, it is advisable to use common sense. The network is absolutely going to be the testing ground for future viability of copyright.

EBLIDA will keep an eye on this and will inform its members. To be effective we need your cooperation. I would like to ask you to keep a close watch on the developments of copyright law, both at the national and internationally level and to inform us. WE have to be aware that copyright is not going to infringe library activities.