



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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Agenda item 6: Limitations and exceptions for libraries and archives

Topic 9: Technological measures of protection

466 words

Mr Chairman, I speak for EBLIDA, the association of European library, information and documentation associations.

Three things about technological protection measures, or TPMs:

1. Visually impaired people: Article 7 of the Marrakesh Treaty requires that Contracting Parties must ensure TPMs do not prevent Treaty beneficiaries from enjoying the limitations and exceptions it provides. However, regional implementation of Article 7 can dilute its purpose.

For example, the approach taken in the EU's recent draft Directive to implement Marrakesh¹ makes no specific mention about TPMs not being allowed to interfere with the exceptions and limitations required for implementing the Treaty. Although the Directive's main provisions are mandatory, the proposed Article 3.3 merely provides that Member States' national appeal systems shall apply in cases of interference by TPMs in the context of the Directive. This does nothing to improve the situation for Europe's visually impaired people prevented by TPMs from accessing content in accessible formats. It seems the intention is that they must continue to try to contact the publisher or mount an appeal, wait for it to grind its way for several weeks and months through the national appeal system and meanwhile continue to be significantly disadvantaged compared to fully sighted people.

2. My colleague of IFLA talked about Preservation, and I can only back his example of TPMs often preventing libraries from preserving digital content (legal deposit especially electronic legal deposit and web harvesting programmes).

¹ Draft EU Marrakesh Directive Articles 3.2 and 3.3 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0596>; see also EU Information Society Directive Arts. 5.5 and 6.4 (noting that sub-paragraph 4 is dis-applied) <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0029>

There is a clear public interest in allowing legal deposit libraries to circumvent TPMs in order to preserve digital content. It can be difficult to contact the rightholder since many are small to tiny and often short-lived, unfindable needles in haystacks. Norway sensibly permits its national library to circumvent TPMs to preserve legal deposit copies, but this forward thinking approach is not the norm. Without global action, TPMs will lose us our digital cultural and scientific heritage forever.

3. **Research:** TPMs can prevent researchers in countries with a text and data mining exception from copying the databases to which their academic or research institution libraries subscribe for content mining. Although, publishers need to protect the integrity of their platforms, researchers need to be able to copy entire databases to content mine. They often need to simultaneously search across different publishers' databases to machine analyse sufficient quantities of text and data. If they are restricted by TPMs to mining on publisher platforms, researchers lose control over the conduct of their research which can distort the results.

A solution lies in the circumvention of TPMs in certain specific cases for libraries and archives that would be recognized at international level.

Thank you, Mr Chairman.

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