



Topic 10: Contracts.

436 words

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

The contract override issue is about *protecting* a balanced copyright framework by safeguarding the copyright limitations and exceptions provided by law, on the principle that the prerogative of legislators to determine the extent and operation of copyright limitations and exceptions should be respected.

Various European countries (the UK, Ireland, Belgium and Portugal) have legislated to void any contract *terms* (not the whole contract) that purport to restrict or remove statutory limitations and exceptions. Singapore is considering similar measures as it updates its copyright laws. The EU is making a start at Union level by proposing to protect its new text and data mining exception from being undermined by licence terms.

When the UK legislated for this in 2014¹, it was evident from comments made in Parliamentary committee that the principle of protecting the legislator's vision of its copyright framework was a major driver for protecting limitations and exceptions from predation by licence terms. Until then, as evidenced by a British library study from 2008, more than 90% of licences for digital information resources offered to the Library had prohibited the carrying out of acts permitted by UK copyright law.

Licences for electronic information products often contain terms that restrict or prohibit lawful uses, such as

- Preservation copying
- Copying into accessible formats for visually impaired people
- Copying for judicial or statutory purposes
- Document supply in response to requests from readers or other libraries
- Lending
- Copying for education, for research or private study
- Text and data mining

¹ United Kingdom: Copyright Rights in Performances: The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 No.1372
<http://www.legislation.gov.uk/id/ukdsi/2014/978011112755>

The internet knows no borders: electronic resources are accessible from anywhere in the world, so these international digital licences are offered to libraries *everywhere* with terms that often negate the limitations and exceptions established in the national laws of the subscribing library. Typically, licences offered internationally are governed by the laws of the publisher's chosen legal jurisdiction, so a library managing several hundred licences is operating with the uncertainty of a game of snakes and ladders in a jungle of foreign laws that don't correspond to the national law.

Licence contract terms that trump limitations and exceptions are making a mockery of copyright legislation. The cumulative effect is that licences, often international in nature, are usurping governments' control of the operation of public copyright policy around the world. The solution is simple - provide international measures to void any contract terms that do this.

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