



EBLIDA response to the IPO's Call for Views on Copyright in Europe

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The European Bureau of Library, Information and Documentation Associations (EBLIDA) is an independent umbrella association of library, information, documentation and archive associations and institutions in Europe representing 116 members in all EU member states and other European countries.

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EBLIDA, the European Bureau of Library, Information and Documentation Associations, welcomes the opportunity to submit its comments to the IPO consultation on Copyright in Europe.

It is the task of European politicians to guarantee free access to information, education, culture, leisure, and content for all European citizens via public services.

As they are mainly public institutions, libraries, archive and information services form a public network dedicated to fostering creativity, preserving cultural heritage, building a Knowledge-based Europe and supporting social inclusion and literacy skills.

A recent survey shows that 1 in 4 Europeans (23% of the European population) used a Public Library in the last 12 months¹.

A recent press release from the British Library² shows that *"The economic value that the library delivers is now almost five times its costs, representing a return on investment of 5:1"* and therefore that libraries, archives and information services have an important role to play in boosting the economy. A competitive market can only innovate by relying on well-educated and informed citizens and consistent investment in libraries, archives and information services. This generates a good return on investment and stimulates the economy.

We therefore welcome an investigation into whether the current exceptions and limitations to copyright granted under the Information Society Directive 2001/29/EC (hereafter InfoSoc Directive) need to be updated or harmonised.

¹ http://www.minedu.fi/export/sites/default/OPM/Kirjastot/kansainvaelinen_ja_eu-yhteistyoe/Liitteet/Final_Report_-_Cross-European_Library_Impact.pdf

² <http://pressandpolicy.bl.uk/Press-Releases/British-Library-publishes-updated-economic-evaluation-634.aspx>

1. The European Commission has highlighted a number of areas for consideration in its Intellectual Property Strategy.
 - a. Are there any comments you would like to make on the proposals that have been highlighted?

The Intellectual Property Strategy covers a broad spectrum of issues ranging from patents to copyright. Our main focus is on copyright and the issues related to its harmonisation at the European level.

We very much recommend the report written by Ian Hargreaves and Bernt Hugenholtz [Copyright Reform for Growth and Jobs](#): Modernising the European Copyright Framework – May 2013, highlighting eight proposals. However, in the case of harmonisation, we would highlight the importance of maintaining advanced existing copyright regimes, such as the Nordic Extended Collective Licensing, and we would like to ensure that there is enough flexibility to adapt the legislation to a new environment.

Copyright exists in order to balance the rights of authors and rights holders with those of users³. This balance has been damaged in the past years with only the rights holders benefiting. The main objective of copyright reform at the European level should be to maintain those rights and re-establish a new balance where innovation, research as well as legal access to digital content will be encouraged.

- b. Are there any further steps which need to be taken to complete the Single Market in this area? If so, what?

We maintain that the following revisions to the EU copyright acquis, in particular the InfoSoc Directive, are required to ensure the future success of European culture, education and research and to support the functioning of the Single Market:

- A reduction of term to life plus 50 (see Lisbon Council Paper) is compatible with international treaties and would be one step further to shorter terms;
- Legislative confirmation that the principle of exhaustion applies to sales of all digital materials as indicated by the CJEU's *UsedSoft* ruling in 2012.
- An exception allowing e-books and e-journals to be purchased and loaned virtually through remote downloads, mirroring library loans in the analogue world⁴. It is vitally important that the libraries' collection building policies are consistent and decided by the librarians themselves⁵, not by publishers and vendors, in the digital world just as it is in the analogue world.
- A broad "fair use" type exception to supplement specific exceptions so it is possible to keep up with technology advances. This would avoid the built in obsolescence of an exhaustive list.
- An exception for text and data mining.
- Legislative provision for contracts not overriding copyright limitations and exceptions.
- Research exceptions should not distinguish between commercial and non-commercial research.
- Mandatory research and education exceptions.

³ See Universal Declaration of Human Rights, G.A. Res.217A,(III), U.N.Doc. A/810 at 71(1948): The protection of the labour of authors is guaranteed by Article 27(2): 'Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.' While the right of all to share in the cultural and scientific output of humanity is similarly guaranteed by Article 27(1): 'Every one has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.'

⁴ See <http://www.eblida.org/activities/position-papers/european-libraries-and-the-challenges-of-e-publishing.html>

⁵ Say hello to your new librarian. Svensk Biblioteksörening (Swedish Library Association), [2012]. <http://www.biblioteksforeningen.org/wp-content/uploads/2012/08/Folder-Say-hello-120906.pdf>

- Re-assessment of the Database Directive 96/9/EC.
- An exception allowing the mass digitisation and making available online, without the need for diligent searches, of Out of Commerce Works by libraries, archives and museums for non-commercial purposes.
- Open Access legislation allowing publicly funded / charity funded research to be put on the web for public access X months after its publication irrespective of contracts authors signed for commercial research purposes.

The above changes we wish to see in the European copyright acquis, in particular the InfoSoc Directive, are not, however, an indication of support for a possible introduction of an EU Copyright Regulation. A Copyright Regulation is likely to be too restrictive on Member States, removing their sovereign powers to exercise national discretion in copyright law to address new situations appropriate for their own countries, for example as Germany has done with its recent Open Access law that comes into force on 1st January 2014.⁶

- c. Are there any areas where European copyright law needs amendment to ensure it is keeping pace with technological development? If so, where?

As detailed above in answer to Q. 1(b), we strongly suggest that a review of the InfoSoc Directive along these lines is absolutely necessary.

In particular, a “fair use” exception would ensure that the exceptions and limitations can keep pace with technology. Another vitally important issue is that contracts shall not override limitations and exceptions. Additionally, to address technological change that has already occurred, the revised Directive should include an exception for text and data mining, as well as mandatory research and education exceptions, plus Open Access legislation, and (unlike the Orphan Works Directive) a functional exception for the mass digitisation and making available of Out of Commerce Works by libraries, archives and museums for non-commercial purposes.

2. Of the four areas highlighted by the European Commission for their “Licences for Europe” dialogues, are there particular points that you would like to raise?

Licensing has an important role to play, but cannot solve the issues at stake with a predetermined agenda. There should be enough openness in the discussion to propose alternatives to licensing solutions when market and/or technology-based solutions prove to undermine the users’ rights to access and store digital content.

Copyright law reform at the European level is absolutely necessary to simplify the current complicated regime and the overlapping of different directives. Licensing initiatives alone will not achieve this.

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⁶ Gesetz zu Nutzung verwaister und vergriffener Werke und eine weiteren Änderung des Urheberrechtsgesetzes. Vom 1. Oktober 2013. http://www.gesetzesportal.de/jportal/docs/news_anlage/gportal/bilder/bgbl1/bgbl113s3728.pdf