



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

32nd Session: Geneva, 09 - 13 May 2016

Agenda item 6: Limitations and exceptions for libraries and archives

Cross-border uses

Thank you Mr. Chair. I am speaking for EBLIDA, the independent association of European library, information and documentation associations.

The demand for access to knowledge is not confined to national borders.

Document delivery of analogue copies of journal articles or extracts from books or documents in response to research requests has been a vital part of library and archive cross-border activities for many decades. This national service was made possible by national copyright exceptions for research or study. However, doing this internationally on the same basis has proved more difficult, especially now that digital delivery of soft copies is the norm. Within the European Union, a librarian in a Member State that *has* implemented Article 5(2)(c) of the Information Society Directive 2001¹ may legitimately make copies of copyright works within the terms of that exception, but were the copy to be sent to a researcher in another Member State which has not implemented that Article, that copy would be infringing.²

Then licence terms for electronic content come into play, since in most countries licence terms may override national copyright exceptions and do not usually permit cross-border uses.

Despite existing cross-border licensing schemes in geographically defined area and document delivery platforms such as FIZ Karlsruhe or Subito for Germany, Switzerland and Austria, a student in Freiburg, Germany wanting to consult an e-book held by another regional university library, say in Basel, Switzerland, finds that the e-book's licence prevents the Swiss library from making copies of the required pages and sending them across the border to Germany electronically, or in print, in response to the student's document supply request. Faced with that situation, the student has no choice but to take the train, at significant cost of time and money, to consult the e-book in person at the Swiss library, simply because of the artificial barriers put in place. If it had been a hard-copy book, the whole book could have been obtained as an interlibrary loan and the student could have made copies from it in Freiburg under a German exception.³

¹ 2009/29/EC Art. 5(2)(c)...in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;

² Müller, H., The legal problems of document supply by libraries: an international perspective. In: Interlending & Document Supply 36 (2008) S. 68-73 <http://emeraldinsight.com/10.1108/02641610810878521>

³ Schmundt, Hilmar, The Digital Paradox - How Copyright Laws Keep E-Books Locked Up, Spiegel Online International 28/03/14 <http://www.spiegel.de/international/zeitgeist/how-copyright-laws-prevent-easy-sharing-of-e-books-a-961333.html>

Likewise, licences for electronic content can impose geo-blocking - a problem that the EU is trying to solve by introducing legislation for portability of access to content with regard to certain goods and services, within its internal Digital Single Market programme. For instance, a public library e-book user living in Norway (an EEA member state with access to the EU Internal Market) can access e-books from their local public library service while visiting the UK, but cannot access the Norwegian national collection of digitised Norwegian literature because of the Extended Collective Licensing terms restricting access to people located in Norway.

As far as cross-border uses are concerned, licensing alone clearly does not work for library users. EBLIDA respectfully suggests that SCCR is the appropriate body to establish in the public interest minimum international standards for copyright and cross-border uses of content that are protected from override by contract terms, thereby removing the current restrictions on the legitimate flow of information across international borders via libraries, archives and other research or cultural heritage institutions and permitting those engaged in not-for-profit learning, research and cultural activities to fully exploit the internet's potential.

In addition, EBLIDA supports the organization of Regional meetings with WIPO that would prove useful in making progress on the question of Exceptions and limitations for libraries and archives at global level.

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