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Libraries in the digital age: minimum copyright provisions

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Overview

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About eIFL.net and eIFL-IP

Electronic Information for Libraries (eIFL.net) is a not-for-profit organisation that supports and advocates for the wide availability of electronic resources by library users in developing and transition countries. Its core activities are negotiating affordable subscriptions and the best terms of use on a multi-country consortial basis, supporting the development of national library consortia and building a global knowledge-sharing network.

We have programmes in open access publishing, the creation of institutional repositories of local content, open source software for libraries, and copyright for libraries. eIFL.net is a membership-based organisation with national library consortia in 50 developing and transition countries in Africa, former Soviet Union, central and south-east Europe and south-east Asia.

The eIFL programme “Advocacy for access to knowledge: copyright and libraries”, is known as eIFL-IP. The goal of eIFL-IP is to protect and promote the interests of libraries and their users in eIFL member countries in copyright issues. We have created a network of library copyright specialists nominated by each national library consortium; we provide training and build capacity in copyright issues for libraries across the eIFL.net community; advocate for balanced national and international laws.

Why exceptions and limitations are important for libraries and development

Exceptions and limitations or “users’ rights” are the cornerstone of access to copyrighted content for libraries and other users. Without exceptions and limitations, copyright owners would have a complete monopoly over use of copyrighted materials. Libraries, and the people who use libraries, could only view or read copyrighted materials. All other uses would require permission. This is impractical both for libraries and their users and would threaten the work of libraries. It would hamper the free flow of information in society, and the public interest considerations intended by the copyright system.

Librarians cherish the public policy goals enshrined in the principle of exceptions and limitations, and we insist on their continued applicability in the digital age. Exceptions and limitations are the mechanism which enables copyright to work for libraries and their users.

International treaties contain flexibilities, yet evidence shows that these flexibilities are often not transposed into national law for the public benefit. A 2006 study by Consumers International (CI)¹ found that none of the eleven developing countries surveyed had taken advantage of all the flexibilities available to them under their international treaty obligations. Underused provisions included provisions to make translations, for reproduction, for teaching purposes and to cite quotations.

This means that the copyright laws of some developing countries are more restrictive than the copyright laws of many industrialised countries. Yet access to information and knowledge is critical to the education and training needs of people in poor countries. Education is a fundamental tool for lifting people out of poverty. We must ensure that access to learning content in developing countries is maximised to train, for example, the teachers, doctors and engineers upon which the achievement of the Millennium Development Goals² depends.

Preview of a proposal by eIFL.net for basic, draft provisions on copyright

This is the context in which eIFL makes its proposal for basic, draft provisions in copyright law. It is our contribution to the global debate on exceptions and limitations. This includes some recent important studies e.g. a recommendation for a new international instrument on exceptions and limitations is necessary, cast at least initially in soft law³.

In addition, many eIFL member countries are in the process of changing their copyright laws for a variety of reasons; to update the law for the digital environment, to implement new international treaty obligations or due to bi-lateral trade agreements. Whatever the

¹ <http://www.consumidoresint.org/a2k/>

² <http://www.un.org/millenniumgoals/>

³ P. Bernt Hugenholtz and R.L. Okediji. Conceiving an International Instrument on Limitations and Exceptions to Copyright, 2008.

http://www.ivir.nl/publications/hughholtz/limitations_exceptions_copyright.pdf

reason, it is important that any amendments support library activities and help, rather than hinder, the library role in providing access to knowledge.

Our proposal is a practical guide aimed at government policy makers, an advocacy tool for librarians to initiate dialogue with their copyright officials, and a benchmark against which provisions in national copyright law can be measured. We hope that this will contribute towards an enhanced understanding of the importance of strong rights for libraries in their role supporting teaching, learning, research and the development of informed societies.

The proposal is not only about exceptions and limitations. It is also an attempt to formulate a coherent set of provisions for libraries in legal language, as well as to provide a policy context. It is based on a draft copyright law prepared by the Secretariat of the World Intellectual Property Organization (WIPO), which was previously available online. We have sought to update this text for the digital environment and to improve the provisions for libraries.

We have put a lot of thought into the drafting of each proposal, and have drawn on a range of national copyright laws, as well as copyright experts from the international library and archive communities, and specialists from outside the information world.

For the project we have focused on free uses only. Free uses means exceptions and limitations that are uncompensated and that do not require permission from the rightsholder. In other words, they are permitted by law. We hope that this will enable libraries to provide immediate access to knowledge for library users for a range of common needs. Compensated exceptions can of course be added as appropriate, according to national needs and resources, and can be correspondingly wider in scope.

The provisions are basic, minimum provisions only. We do not suggest that they are all-encompassing. They are not “ideal” copyright provisions. A country may adopt as many exceptions and limitations as are deemed necessary and appropriate. The type and number are a matter of national sovereignty and differ from country to country. Determining factors include legal and cultural traditions, socio-economic factors, as well as national education, research and development policies.

Finally, it is a draft text, a work in progress. We welcome comments and feedback. The text focuses on copyright only and does not cover related rights or general enforcement.

There are two sections. Section One contains the draft text in legal language. This consists of Definitions, Works Protected, Economic and Moral Rights, Free Uses Permitted by Law, specific provisions on Enforcement, General Provisions.

- We have adopted definitions found in international treaties;
- we believe that the suggested provisions are compliant with international treaties;
- the provisions apply fully to the digital environment;

- there is a provision to try and prevent a contract from overriding the exceptions and limitations provided by law, safeguarding library uses in licences for electronic resources;
- the free uses permitted by law are accompanied by an explanatory note. The “Objective and Rationale” describes the policy goal of the provision. The “Effect of the Provision” describes how it might be applied in practice with examples.

There are important provisions for reproduction for private purposes and research; translations and quotations, educational activities, especially in the electronic learning environment e.g. electronic course packs; libraries including backup and preservation, inter-library document supply; provision for orphaned works; public documents and public information purposes, amongst others.

Section Two places the provisions in a policy context, describing the work of libraries, including their mission and role. It covers libraries and digital technologies, and the importance of exceptions and limitations for libraries. We hope that this will help policy makers to better understand the needs of libraries, and why these provisions are necessary for the library function.

It will be published in October 2008 and will be available in hardcopy and freely available online. www.eifl.net

“As mechanisms of access, limitations and exceptions contribute to the dissemination of knowledge, which in turn is essential for a variety of human activities and values, including liberty, the exercise of political power, and economic, social and personal advancement. Appropriately designed limitations and exceptions may alleviate the needs of people around the world who still lack access to books and other educational materials, and also open up rapid advances in information and communication technologies that are fundamentally transforming the processes of production, dissemination and storage of information”.

Conceiving an International Instrument on Limitations and Exceptions to Copyright, P. Bernt Hugenholtz and Ruth L. Okediji, 2008

We hope that the contribution of eIFL to this important global debate will add to the discussion. We hope that it will be of practical benefit, especially in developing and transition countries, in making copyright work for libraries.