

CONFERENCE OF DIRECTORS OF NATIONAL LIBRARIES: ANNUAL MEETING 2011

DISCUSSION WITH TREVOR C. CLARKE, ASSISTANT DIRECTOR GENERAL, CULTURE AND CREATIVE INDUSTRIES SECTOR, WIPO

1. Introduction and purpose of the paper

Mr Trevor C. Clarke, Assistant Director General, Culture and Creative Industries Sector, WIPO, is to be the plenary speaker at this year's IFLA Conference¹ and he has graciously also agreed to join the IFLA delegation attending the Annual CDNL meeting to provide CDNL with the opportunity to discuss directly with him copyright and IP issues of current and future importance to national libraries. The purpose of this short paper is to identify the broad issues of concern in these areas that arise from the unique roles and responsibilities of national libraries.

2. Conference of Directors of National Libraries (CDNL)

The Conference of Directors of National Libraries (CDNL) is an independent association of the chief executives of the world's national libraries, established to facilitate discussion and promote understanding and cooperation on matters of common interest to national libraries worldwide. The world's national libraries share a common mission of collecting, recording, organising, storing, preserving in perpetuity, and providing access to their nation's cultural patrimony and intellectual output in documentary form.

CDNL's Vision for the Global Digital Library states:

"Our long-term vision is the development of a global distributed digital library - comprehensive, open, seamlessly-connected, and universally accessible on the internet - giving ready access to library materials in the collections of all the national libraries of the world in the interests of scholarly research, education and lifelong learning, innovation and economic/social development, and the promotion of international understanding.

National libraries operate at the fulcrum of the copyright balance, i.e. where the public interest requires that an appropriate balance be struck between the private rights of creators and others to be recognised and rewarded for their work and investment and the public right to free and ready access for all to information, knowledge and ideas. National libraries underpin economic development and support innovation, growth, and creativity. An independent economic impact study commissioned by the British Library suggests that the total value added to the UK economy by the Library each year is £363m, or £4.40 for every £1 of public funding.²

¹ See <http://conference.ifla.org/ifla77/news/trevor-c-clarke-plenary-speaker-at-ifla-wlic-2011-puerto-rico>

² *Measuring our Value: Results of an independent economic impact study commissioned by the British Library to measure the Library's direct and indirect value to the UK economy* (December 2003).

3. Copyright and IP issues of current and future importance to national libraries

In this context, CDNL's specific areas of concern in the field of legislative norm setting that arise from the unique roles and responsibilities of national libraries are as follows:

3.1 Legal deposit legislation

The most fundamental objective of national libraries – and the objective that more than any other makes national libraries what they are and differentiates them from other kinds of library - is to acquire, preserve and make accessible in perpetuity the publications of the country. Legal deposit legislation is the means by which this objective is achieved and, increasingly, this includes not only text-based works but also sound, film and digital material such as electronic publications, digital databases, and websites. To avoid a digital black hole opening in the national memory, national libraries are progressively benefiting from e-legal deposit. An international survey conducted by the British Library in 2009³ found that 74% of the 34 countries surveyed had already passed and implemented legal deposit laws to require the deposit of at least one category of electronic publication.

National libraries consider that:

- the access regime for materials received under e-legal deposit should as a minimum not be more restrictive than that for print;
- material received under e-legal deposit should not be subject to restrictions that are disadvantageous in respect of permitted activities under copyright law; and also that
- these permitted activities must not be undermined by forms of private law like contracts, or be overridden by technologies such as a TPM or DRM.

3.2 Mass Digitisation and the Law

The mass digitisation, including by search engines, of material in national library collections (and other significant library collections) represents a significant step towards CDNL's vision for a global distributed digital library, at least for historical out-of-copyright material. National libraries believe that the benefits of facilitating through law solutions for the mass digitisation of in-copyright works are manifold. Not only will legal solutions, such as that proposed for orphan works⁴ or for digitising out of commerce works (as currently being discussed in Brussels⁵) bring financial rewards to authors and creators, but they will also bring wider educational, social and economic benefits to society. For example an application launched by Apple of 1,000 19th century books from the British Library was in the top ten most downloaded apps in the US and UK in June 2011.

3.3 Format-neutral Preservation Limitations and Exceptions

As outlined above, the preservation and provision of access to national library collections in perpetuity performs an extremely important economic and societal function. Therefore it is not only very important that preservation limitations and exceptions are enshrined in copyright and legal deposit law (something very common in developed countries), but also that they are updated to ensure that they cover the norms of the electronic world. An effective preservation exception must ensure that multiple copies can be made of any item in a collection (e.g. the use of mirror servers are a prerequisite of digital preservation), and that format shifting (to address future

³ Stephens, A. & Gibby, R. National implementations of electronic legal deposit. *Alexandria*. In press

⁴ Orphan works are in-copyright works where the rightsholder cannot be identified or located.

⁵ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/333>

obsolescence) and circumvention of technical protection measures are permissible. Other than freely- and publicly-available websites, usage of this material while in-copyright should of course be limited by law to use on library premises.

3.4 Format-neutral Copying Exceptions for Education, Research and Private Study

Exceptions that permit limited copying of in-copyright works for study or research are common in Europe and North America, and in common law countries are covered by the well-established legal principles of “fair dealing” and “fair use.” National libraries consider that it is essential that research copying exceptions keep pace with technology and reflect the multimedia world in which academics and students operate. Research copying exceptions should be format-neutral in terms of the work to be copied, as well as the format in which the copy is made. National libraries consider that limitations and exceptions are extremely important for education, study and research purposes and firmly believe that the availability of clear and appropriate digital exceptions benefits rightsholders as this supports the better enforcement of copyright law. It is also of vital importance that limitations and exceptions, which are key to the flow of knowledge, cannot be undermined by forms of private law like contracts, or be over-ridden by technologies such as TPM or DRM.

4. Draft resolution for consideration

CDNL fully and strongly supports the *Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives* (TLIB) initiative of the international library and archives community represented by IFLA, EIFL, Innovarte and ICA.

CDNL Secretariat
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