

CDNL Annual Meeting, Gothenburg, 12 August 2010**Discussion Group B****Convenor:** Elisabeth Niggemann (German National Library)**Topic:** Copyright and national libraries**Scope note**Issues around copyright:

Copyright law in most countries extends to 'works of a literary, scientific or artistic nature'. But there are questions still not resolved despite years of debate – e.g. what constitutes a work? Is 'sui generis' provision required for databases? Who is the 'author' of a work? Who owns the rights in a 'work made for hire': the employer or the employee? Who owns the rights in works created by several persons or in cinematographic works? Some of these questions are specific to particular jurisdictions (e.g. the US or the EU).

It is generally accepted that protection of IP is a legitimate way of incentivising investment and creativity.

In recent years technology has vastly increased our capacity to disseminate, store and retrieve knowledge, it has opened up new possibilities for access to information which are of great social, cultural and economic benefit; but it can also be used for piracy.

The Google Books Settlement illustrates the difficulty that current copyright law and practice have in dealing with many issues: the potential benefits of technology to users, ownership and exercise of rights (particularly where no owner can be found), digitisation and making available online, and the principles of reward for use of works and control over works. It also sets the wider benefits of access to works against concerns about competition, respect for law and cultural diversity.

There are many firms interested in digitisation, and many institutions (though by no means all) see it as being in their national interest. Large-scale digitisation requires us to address long-standing unresolved questions of principle which are also public policy issues. But at the same time there are many new issues...

New economic and cultural issues:

- how valid is the concept of a 'public domain'? Should it be permissible to bring older works back into copyright just because they have been digitised?

Is this the privatisation of cultural knowledge? Has digitisation now become e-book publishing?

- How to protect 'orphan works'?
- Must intellectual property be fixed in a tangible form in order to be protected? And what about Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE), called 'expressions of folklore' in WIPO terminology?
- Can the rights of indigenous peoples, for whom ownership is often collective rather than individual, be protected by the concept of 'Cultural intellectual property'?
- the purpose of the Web is sharing information: is this amenable to copyright?
- What constitutes an appropriate term of copyright protection, in the digital information society?
- How can we deliver access to a wider range of works more easily (through reproduction and distribution rights, lending and rental rights?)
- Is there a conflict between economic rights and moral rights?

Public policy and equity issues:

How long should copyright protection last? How do we counter online copyright piracy - ie, uploading and downloading? Are Digital Rights Management (DRM) and Technological Protection Measures (TPM) successful? What about licensing agreements and transfer of rights – ie record companies, publishing houses, film producers? What of protection of Neighbouring Rights, ie Performers Rights, Phonogram Producers' Rights, Broadcasters' Rights? Rights-holders need to be able to enforce their rights, and a fair process needs to be available for them to do so.

National Libraries may need to take a very nuanced position, as they may be at one and the same time policy agencies required to give balanced advice to government, and institutions charged with preserving, protecting and providing access to cultural heritage.

National Libraries may be required to provide policy advice on a range of strategic and technical issues, particularly when amendment of legislation is on the agenda:

- adopting alternative concepts of copyright: Creative Commons; 'copyleft';
- ensuring a balance between owners' rights and the right of access to information; ensuring that creators and rights holders receive remuneration; reducing copyright infringement;
- critically examining proposals for ISP liability for infringing acts (who or what is an ISP these days? - national libraries may be ISPs)
- Exceptions for national libraries to allow them to implement e-legal deposit and digital preservation;
- Exceptions for institutions providing access to information by persons with disabilities.
- Should it be permissible to (re)create and (re)use culture? Should non-commercially focused forms of copying be permissible?

Strategic issues for national libraries:

- e-legal deposit, preservation, digital archiving, remote access through the web: these activities require that national libraries be given certain powers, which may be challenged, e.g. the right to unlock TPMs, protection against ISP liability;

- Advocacy for indigenous/cultural intellectual property issues;
- Contributing to national policy briefings, advocating to national delegates to the WIPO SCCR and IGC;
- Supporting IFLA's advocacy to WIPO, to ensure that exceptions and limitations for libraries are included in new international instruments;
- looking ahead to the possible amendment of existing Copyright Treaties, and the proposed Diplomatic Conference in 2011/12.

Discussion in Group B should provide an opportunity to:

- exchange experiences about advocating to governments on issues important for library services, in the context of revisions to national copyright legislation;
- discover which issues have wider validity for the whole membership of CDNL;
- consider whether there are issues of sectoral or regional importance now which may assume wider importance for the whole membership in future;
- consider issues which CDNL might address and make recommendations as appropriate.