

COPYRIGHT : WILL IT STRANGLE INFORMATION ?

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ABSTRACT: The free-flow of information depends on the permission to use copyrighted works. Most countries in the world have copyright laws which allow for limited copying of journal articles or chapters in books for the "public good". Libraries and information centres have depended on those laws to provide a high level of service to their users. Copyright holders - principally but not exclusively commercial publishers - are concerned that the extension of even limited copying privileges into electronic publications will damage their interests, owing to the ease with which an electronic copy can be made. Technological progress has been the friend of libraries in many ways, but in respect of copyright adherence technological developments are creating problems. New copyright legislation is being introduced at both international and national levels to control electronic copying. Very often "innocent" library copying is caught up in legislation to prevent large-scale piracy of audio-visual works. The WIPO Treaties in 1996 resulted in a compromise between public and commercial interests, and to varying degrees the application of this compromise in national legislation has either been threatening or encouraging to libraries. Within Europe two Directives are proving particularly significant, the Database Directive and the draft Copyright Directive. While the United Kingdom Government has been reasonably sympathetic to the interests of libraries in its reaction to these Directives, the same cannot be said of all EU countries, nor of the attitude of the EU Commission. Within the US the struggle to protect the interests of libraries in new legislation is still continuing and there is still a big question-mark over the future of "fair use".

In addition to legislation, copyright issues in electronic publications are being resolved through two other routes: licensing and industry-wide agreements. Licensing appeared at first to be against the interests of libraries but it may prove more of an ally to libraries than legislation in the long-term. Industry-wide agreements were difficult to reach in the US in the CONFU discussions but look more hopeful in the UK in the form of agreements between JISC (the Joint Information Systems Committee) and the Publishers' Association. These agreements will, however, only benefit academic libraries initially. International

pressure from librarians, such as through ICOLC or EBLIDA, will be essential if reasonable copying privileges are to be defended. Whichever way the copyright issues are resolved in each country, it is vital that librarians speak out in the interests of access to information for their users.

I feel like beginning this paper with the slogan : "librarians of the world unite!" The kind of library service we have grown up with is under threat. Some people see the threat to traditional library services from the development of electronic information services which by-pass libraries. The argument runs that electronic sources of information will be so easily available to users that the traditional role of librarians as information intermediaries will not be necessary. It is not my role in presenting this paper to argue that point one way or the other, but there is another way in which libraries are threatened by the electronic revolution, and that is in the area of payment or non-payment for library services. Will people continue to use the services of libraries if libraries are forced to charge? That question has a political question bound up with it, which again I am going to duck today. It is my brief to look at the impact of copyright legislation upon library services, and part of that impact could be that libraries have to charge users for certain services, whatever the political attitude towards charging in principle. If we are forced to make large payments to publishers for viewing on screen or for single copies of documents, we shall have to pass those charges on to users. Therefore the answer to the charging question will have a major effect upon library services and will shape the kind of library service the next generation will receive. Many generations of library users have not had to pay to look at a document, nor to make a single copy for their personal use. If that situation changes with new copyright legislation applied to electronic publications, libraries as we know them will cease to exist. I am sorry if that sounds dramatic, and that is a worst-case scenario, but there are some legislators in some countries who are thinking that way after intense lobbying by commercial interests. What is at stake is not a romantic view of the kind of library service people have enjoyed in the past but a trend towards payment for all information which could jeopardise the future of democracy. The open kind of society most countries in the world enjoy depends on the free flow of information, and copyright legislation which restricts the free flow of information has implications which go wider than the maintenance of good library services. Copyright legislation could strangle the free flow of information. We must all take new copyright legislation seriously.

We must not give the impression that we are against the drafting of new legislation to cover electronic publications. The copyright legislation in most countries was drafted in the context of publication on paper, and it must be modernised. Even if, as librarians hope, we carry the principles of paper copyright forward into electronic legislation, there are examples of electronic situations which need specific mention in new legislation. For example there is the question of shrink-wrapped licences, a question which did not apply to paper publications. Librarians know *how* they want the question of shrink-wrapped licences to be covered. My point is that it is no use taking the line that we are happy with

paper copyright legislation and will stick with that when there are issues like shrink-wrapped licences that have to be addressed. To some extent the detail of electronic copyright legislation will be decided by the courts, through case-law, but the courts themselves need good legislation upon which to base their judgements. Also, whether we like it or not, there are powerful forces advocating new copyright legislation. Some of those powerful forces neither know nor care about libraries. At both an international and national level, new copyright legislation is being requested by the film and television industry, who fear piracy of their products. Very often in looking at new copyright legislation you find that library copying has been caught up in the same net as video copying. We know that they are very different but to a legislator they sometimes look the same. There are also powerful forces who *do* know about libraries, such as international publishing conglomerates. Whichever country you come from, please do not underestimate the lobbying power of the commercial organisations who have the ear of government officials. These are the people pressing for new copyright legislation and they do not often have the interests of libraries at heart.

I can understand the concern of commercial publishers about electronic copying. If I were a publisher I would be very frightened by the ease with which electronic copies can be made. Publishers have been concerned about the effect of photocopying upon their revenues, but that is nothing by comparison with the possible effect of illegal copying of electronic publications. By and large technological advance has been a good friend to librarians, and our services are vastly improved by the availability of networks. But technological advance will *not* be the friend of librarians if it causes legitimate library copying to be caught up in the wish to prevent illegal electronic copying. We have to find a way of distinguishing the two. What was worrying in the early stages of discussion about copyright in electronic publications was that legislators showed no interest in separating legitimate library copying from piracy. Many of them have now modified their attitude but it is still an issue in some countries. And we also have to convince publishers that we are against piracy. In arguing for fair use copying, we are not arguing for legislation which is so liberal that the sale of works in copyright is harmed. But publishers have to understand that we are not going to pay any more to do a reasonable amount of copying when we are already paying exorbitant sums for subscriptions.

I am not sure how far this audience has been following international developments in copyright legislation, so forgive me if I cover ground that is familiar to you, but the story begins with the World Intellectual Property Organization, WIPO, which rightly perceived the need to modernise the Berne Convention. In theory a world-wide look at copyright in electronic copyright could have been in the interests of librarians, as increasingly we work in an international context and consistency in copyright laws across the world would be very beneficial to us. The trouble is that WIPO is not the body to handle the concerns of librarians in a sympathetic way. WIPO is a diplomatic body, each country represented by government officials. It also looks at the big picture, and I suspect that the concerns of librarians looked very trivial by comparison with issues of international trade. For that is how WIPO looked at copyright in electronic publications, as a trade

issue not as a public good issue. WIPO is also concerned with "property", that is ownership, whereas librarians are concerned with use. It is not surprising therefore that the WIPO Treaties agreed in December 1996 are not drafted as librarians would wish them to be drafted. Indeed it is all credit to those library organizations which were able to lobby WIPO - and there are even rules on who can lobby - that they were able to influence the text of the Treaties to the extent that they did. The library lobby found surprising allies in the telecommunications companies, who are generally in favour of liberal communication. So the WIPO Treaties did not favour the needs of libraries but did not hinder those needs as much as they might have done. WIPO is a permanent agency of the United Nations and therefore its work continues. It would be a mistake for librarians to think that WIPO will not make other decisions which will affect library services, and I know that the IFLA Copyright Office is monitoring the ongoing WIPO work.

WIPO Treaties have to be adopted or rejected by national legislative bodies, and this provides scope for national amendments to what has been agreed internationally. In Europe there has not been a great deal of debate about the adoption of the 1996 WIPO Treaties because the issues have been caught up in concern about Directives from the European Commission - about which I shall say more in a moment - but in the United States the adoption of the WIPO Treaties has provided the focus for a major debate on the future of fair use in library copying. There are US librarians here who will know more about that debate than I do, but in summary let me say that the future of fair use copying is still at risk, although effective lobbying of Congress by ARL and other library organizations has secured some protection for libraries in the new legislation. The basic problem in the US as elsewhere in the world is that legislators treat copyright as a trade and commerce issue rather than an educational issue. In the US it is the Department of Commerce which is handling the issue, in the UK it is the Department of Trade and Industry. In order to be effective librarians have had to motivate educational organizations outside government to lobby on behalf of users, because by-and-large the educational organizations *within* government have not understood the educational implications of more restrictive copyright legislation.

This is certainly true of the attitude of the European Commission towards copyright. There have been two important Directives, the Database Directive which has already been approved and adopted by most European countries, and the Copyright Directive which is part way along the long and winding road to approval by the European Parliament. The feelings of many people in the UK about the European Commission are either disapproval or else ignorance. It comes as quite a shock to many British people to realise the extent to which our national legislation is being affected by European legislation, and the copyright area is a good example of that. We are having to wake up to what the bureaucrats in Brussels are proposing, and what they are proposing in the copyright area is not good news for libraries. The early proposals from the European Commission would have allowed publishers to charge for a library user to view a document on a screen and copying would have been very restricted. UK librarians are

also having to learn to lobby, an activity which has not come naturally to us. Fortunately for the UK, librarians in other countries in Europe are less ignorant than we are about the activities of the European Commission and more active in lobbying on behalf of libraries. EBLIDA, the European Bureau of Library, Information and Documentation Associations, has become very important to us as the voice of libraries in the corridors of power in Brussels. Thanks to EBLIDA we are beginning to influence the wording of the EU Copyright Directive and it may be that when it is finalised it will be acceptable to libraries. Even if it is not, we do have a second chance to protect the copying done by library users, and that is at the stage the EU Directives are adopted by national parliaments. As with the WIPO Treaties, national parliaments can introduce exceptions for libraries, although the European Commission tries to prevent this in the interests of what is called "harmonisation". Lobbying by librarians was effective in stopping the worst effects of the EU Database Directive in many European countries, and we shall probably have to rely upon the same process when the EU Copyright Directive is considered by national parliaments. In the UK the present Government is more sympathetic to the concerns of librarians than its predecessor was and is supporting many of our efforts to change the EU Copyright Directive before it is finalised. The issues are too important for us to be complacent, however.

In addition to international or national legislation, there are two other ways in which issues of copyright in electronic publications are being resolved. One is through contract law, that is through the terms of licence agreements, and the second is through agreement between publishers and librarians on general standards. I am calling this last route "industry-wide agreements", which is a misnomer in the sense that such agreements may not involve all publishers or all librarians, but nevertheless they involve enough publishers and librarians for us to be confident that they represent a consensus view. Into this category I would put the agreements in the UK between the Publishers Association and the Joint Information Systems Committee (JISC) and the CONFU discussions in the United States. But let me first cover the question of licensing.

Two years ago the licensing of electronic publications appeared to librarians as a threat, and we were inclined to rely more upon legislation to protect our interests. So much progress has been made on the terms of licences, however, that licensing appears more as an advantage. This is partly because of the uncertainty I have already described about the nature of copyright legislation, and partly because publishers have been willing to change many of the clauses in early electronic licences that librarians found unacceptable. Even the very difficult question of electronic inter-library loan is becoming easier to define in licences for electronic publications. I do not wish to be complacent about this issue, because there are still barriers in licences, such as the barrier to international inter-library loan, which have to be overcome, but the progress made in a relatively short time on the wording of licences does encourage us to continue the negotiation and hope that soon we shall have model licences which incorporate many of the points for which librarians have been pressing.

The good progress that has been made on the wording of electronic licences is due in no small part to the face-to-face meetings that have taken place between publishers and librarians, meetings at which we have been able to explain why we think certain points are very important to our communities. Understanding the other point of view has revealed more common ground than was at first thought. Talking to UK publishers about the question of inter-library loan, for example, it was clear that their knowledge of what actually happens by way of inter-library loan did not correspond with the reality on the ground, and they realised that it was much less harmful to their interests than they had imagined. Likewise, librarians have learned about the publishers' fear of electronic piracy, which is a very understandable fear. In the UK these face-to-face discussions have taken place in the context of several working parties set up by the Publishers Association and the Joint Information Systems Committee, which is the agency channeling government funds into higher education electronic information developments. The most successful of these working parties has been the Fair Dealing Working Party, which has produced guidelines for fair dealing copying in the electronic environment, fair dealing being the UK equivalent of fair use. Another working party has been drafting a model licence for electronic publications, and although its first approach did not prove acceptable to librarians - perhaps because it met too early - its most recent drafts do reflect the progress that has been made on licensing terms in general. We are very hopeful that by next year we shall have a model licence which any UK university could safely accept. The most recent PA/JISC working party has been on the subject of electronic inter-library loan, and even on that difficult subject we are making good progress. The use of electronic delivery seems acceptable to publishers when the electronic copy received is used to print one paper copy and then destroyed. Such use would not have been acceptable to publishers a few months ago. And even on the more difficult question of the retention of an electronic copy by the end-user we are making progress. Sally Morris, the publisher who co-chairs the working party with me, has produced a proposal for an alternative system of supply which would give the publishers some income from what is at present inter-library loan traffic but at a cost no more than UK libraries pay for inter-library loan. So with some imaginative thinking we believe that agreement between publishers and librarians is possible without either side making any impossible sacrifices.

One reason why the PA/JISC discussions have been so successful is that we have met under what are called "Chatham House rules", that is we have met as well-informed individuals rather than as delegates of our communities and we have worked in a very informal way. We have tried to find solutions by looking at practical examples of what we want to achieve and by working around problems. The CONFU discussions in the United States have made some progress but I believe that they have stalled when they have become very formal, with entrenched positions. I do not know how such publisher/librarian discussions have been conducted in other countries, but I would urge that you follow the British example in this respect, and have informal discussions which allow for solutions without sacrificing any principles. It is true that our approach results in agreements which do not have the force of law, but in practice, as they have the

backing of the Publishers Association and the higher education funding bodies, they will be respected and could be used as a defence if any university were to be taken to court by a publisher. Such industry-wide agreements are not a complete substitute for legislation or for licensing, but they provide a framework within which more formal solutions to copyright problems can be addressed. The UK Government, for example, is aware of the PA/JISC agreements, likes those agreements and will I am sure ensure that any future UK copyright legislation is in line with those agreements.

To summarise, the current intense activity in copyright matters is very important for the future of libraries and for the future of the kind of open society which libraries help to sustain. We cannot ignore what is happening at both a national and international level. The revisions to international copyright law are worrying but their worst effects can be neutered at a national level, provided - and this is a huge proviso - that librarians are successful in lobbying national governments and legislators. In many countries the situation is still very precarious and I would urge everybody here to take some action to protect the interests of your users by lobbying for fair use copying and other long-standing library facilities. Licensing is beginning to help us, as are changing attitudes in publisher/librarian discussion, but copyright is so important that no librarian can leave it to somebody else. We must all get involved, or we may find that access to information is strangled by restrictive copyright arrangements promoted by commercial interests.

