THE DEVELOPMENT OF COPYRIGHT WITHIN THE EUROPEAN UNION

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ABSTRACT: The efforts of the European Union to harmonise copyright are caused by two factors

1. The need to adjust copyright to digital technology
2. The creation of an internal market within the European member states

These efforts have resulted in several copyright directives. For libraries the most important directives are the directives on rental- and lending rights, on harmonising the term of protection, and on legal protection of databases. These directives strengthen authors' rights. In the spring of 2001 a new important copyright directive has been adopted. This directive, on the harmonisation of certain aspects of copyright and related rights in the Information Society, attempts to set new standards for authors rights to control the use of their works in respect to reproductions, communication to the public by electronic means, and distribution of hard copies.

Heavy lobbying by the library community had the effect of saving present user and library privileges. However, the list of exceptions to authors rights is now a closed list. No new exceptions are allowed for works on digital media. Therefore, in the future new developments on users' access to information in digital formats have to be dealt with within the framework of licensing agreements. The Commission now contemplates whether there is a need to regulate the activities of the collecting societies.

Introduction

The changes in copyright legislation reflect the transition of the Industrial Society into an Information Society.

In the Industrial Society the main products are goods, i.e. physical objects. Goods are traded and moved around. There are, however, physical limits as to what you can do with them. One of the limits is, that a published book will forever remain available to the public unless all existing copies perish, and this is not likely to happen in countries with legal deposit of printed works. This is due to the simple fact that copies of the book have been spread – sold to whoever wanted to buy them, and once sold, the book is in the public domain.

This fact has been reflected in copyright law. The author has the exclusive right to decide whether a literary work he has produced is to be published or not. But when a book has once been published, the author's legal right to control the distribution has been "consummated" or "exhausted."

In the Information Society the main products or "goods" are immaterial pieces of "information", i.e. literary and artistic works, usually existing also in digital form. A work in digital form is not fixated in the same way as a printed text is. It may be moved via network to any desired place within seconds and at no cost or effort at all, and you may without any effort produce as many copies as you like. The fixation to the medium has become irrelevant. The work can be regarded as a free floating and truly immaterial object.

Instead of publishing a book, you may now choose to publish the same contents electronically in a database accessible via Internet. If you regret it you may at any time unload it from the database. You may also choose to give access only to certain people and not to others. You remain at any time in control of who - if anybody - shall have access to the work.

The difference between what you can do with a physical object, and what you can do with an immaterial object is reflected in the copyright rules concerning authors rights. According to the WIPO Copyright Treaty [i] authors right to control the communication to the public of their works is *not* consummated or exhausted. This means that, in principle, every time you want to access a work published electronically in a database you need the author's permission.

This example highlights what is at stake in the new copyright regimen that is developing on top of the digital technology. It a the question of

- whether the general public in the digital information society shall have freedom of access to published information.
- whether libraries and archives shall have the right to preserve the cultural heritage of digitally published works, and
- whether historical research on the basis of original and undistorted sources can, in the future, be guaranteed.

Below I am going to describe the efforts of the European Union to harmonise copyright legislation, and the impact this may have on these questions.

The Internal Market

The European Union started originally as an European Economic Community. The objective was to establish a free internal market for capital, goods and labour within the member states.

One aim of the EEC was to stimulate the European information industries in an attempt to counter US dominance. A strong copyright protection was seen as a necessary means to achieve this goal. Cultural policy was originally excluded from the EEC- treaties, so copyright was seen only from an economic point of view. The objects of copyright, the literary and artistic works, the "information products", were regarded as tradable commodities.

This starting point has deeply influenced the development of copyright thinking within the Community, and it has not significantly changed since. The reason for this is that the member states do not share the same cultural and democratic values concerning citizens' right to access information. They share some values concerning freedom of speech, but only Sweden has a strong and long standing legal tradition of protecting citizens' rights to information.

Democratic countries provide legal protection of citizens' freedom of expression, but when it comes to the question of *access* to information, it is more a question of lofty ideals than real politics. The conception of freedom of information is often expressed in the official information policy in relation to libraries, and these ideals certainly form an important part of the professional ethics of librarians. But this does not mean that outside the library community there are shared standards specifying citizens right to information.

This has serious implications on the development of copyright in the digital age. When there are no shared cultural or democratic values concerning citizens' right to be informed, there is nothing to counterbalance the interests of authors.

The only quasi legal basis to support citizens rights to information is the Declaration on Human Rights (art. 19):

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

But this is not a strong basis when it comes to fighting the economic interests of the information industries. Only indirectly through legal deposit of printed works the citizens' access to the printed part of the cultural heritage have been secured.

The Directives

After these introductory remarks I will proceed to describe the copyright directives that directly relate to the operations of libraries and the question of freedom of information. Of special interest to libraries are four directives.

- The Directive on rental- and lending rights (1992)[ii]
- The Directive harmonising the term of protection (1993)[iii]
- The Directive on legal protection of databases (1996)[iv]
- The Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (1997)[v]

Initially, however, a few words on the decision making bodies within the European Union:

- The European Commission functions as a kind of European government. It has the right to propose new legislation, directives, and is the executive body.
- The European Council represent the national governments of the member states. All decisions have to be accepted by the European Council.
- The Parliament has only limited power, but in certain types of cases, e.g. copyright issues, the European Council has to take account of the views of the Parliament and, if they disagree, compromise solutions have to be found.

On both national level and European level the library associations try to influence the political process. The views of the European libraries are put forward by the libraries' lobby organisation, EBLIDA, European Bureau of Library, Information and Documentation Associations. (http://www.eblida.org/). The Nordic library organizations are deeply involved in EBLIDA.

The Directive on Rental- and Lending Rights

The Lending Directive specifies the terms for public lending. Traditionally in copyright the so-called "distribution right" is "exhausted" when the book is put for sale. The reason, as mentioned above, is obvious: When the books are sold the author can in fact no longer exert control over them.

The novelty of the Lending Directive is Article 1(4) stating that the authors right to control distribution in the form of rental or lending of copies of their works, is not exhausted when the work is sold or otherwise distributed.

This might have been the end of public libraries, if article 1(4) were not counterbalanced by article 5(1) stating, that member states may restrict authors rights to control public lending, provided authors are remunerated. Member states are, however, free to set up different remuneration schemes, and they might exempt certain types of libraries from the obligation to remunerate. Usually this exemption clause is applied to university and research libraries.

So the result is that within the European Union authors have a right to be remunerated for the public lending of their books. How this right may be exerted in practice is another matter.

The Directive harmonising the term of protection

Within the Community member states had different rules relating to the terms of protection. These obviously needed to be harmonised. The main rule now is that literary and artistic works are protected during the lifetime and 70 years after the death of the author.

Some authors' associations protested against the extension of the period of protection, arguing that this would favour descendants of authors rather than the living ones. The implicit but realistic premise is that there is in every country a lump sum for remuneration purposes to be divided among the rightholders, and the more they are to share this sum, the less everybody gets.

The Directive on Legal Protection of Databases

Databases are important products of the information industry. Often databases contain unprotected information, collected and sorted according to certain principles. Traditionally databases like directories, bibliographies &c. were published in the form of printed books. Therefore it was of no importance if information contained in the book was unprotected and available to the public via other sources. If you wanted to take advantage of how the information was collected and presented in the directory, you had to buy it.

When databases are published electronically, the situation differs, as you may copy the whole or part of the database. As the information contained in the database is often unprotected, no considerations of copyright need to delay your endeavours. When the database is only available online, the vendor might control the use by specifying the terms of use in a contract with the prospective user. In this case the user is bound by the contract. The real problem arises, when databases are distributed as CD-ROM products. Many countries do not accept *shrink-wrap licences*, one-sided declarative agreements you are supposed to accept when you break the seal, and then database vendors stand unprotected.

If database production is to be stimulated, database producers need to have their investments protected. To achieve this the European Commission was inspired by Nordic copyright legislation. Since 1961 databases have been protected in the Nordic countries, and these rules were more or less copied in the Directive. What is protected is the compilation and sorting of the data, not the data *per se*. The duration of protection of the database is 15 years after the production or a substantial update.

This Directive stirred a lot of controversy within the European library community, and when the European Commission tried to have it incorporated in the WIPO Copyright Treaty of December 1996, the library associations became active opponents. The result at the WIPO conference was that the proposal for protection of databases was postponed. It was again discussed at the meeting of the WIPO Standing Committee in Geneva May 1999 and also at the November meeting, but there seems to be no serious interest outside Europe to adopt a treaty on this issue. Third world countries are very sceptical, and US seems now more inclined to settle the matter within the framework of trade agreements.

The main argument against the Directive was that it creates a new protection of otherwise unprotected data. This argument rests on a misunderstanding. It is not the data that are protected, but the collection of the data. If the data are publicly available people are free to collect and compile them in their own databases. The Database Directive does not prevent that. It also seems difficult to argue, that one should be free to profit from the "sweat of the brow" of others by copying any amount of data from a database and making them available in competition with the original producer who made the investment of collecting and compiling them.

A serious problem, however, may arise if the database producer has an exclusive right to collect and distribute the data. This may happen when the institution or firm, who generates the data, gives or sells them to one database producer only.

In the first draft of the Directive there was an article specifying that if a database producer would unduly exploit a monopoly situation compulsory licensing might be enforced. This was later deleted, perhaps because there are other rules to secure free competition and cope with firms who abuse a dominant position.

The Directive contains one novelty of great interest to libraries: Article 15 specifies, that contractual agreements which extend the database producers rights beyond the rights granted in the Directive are null and void.

A rule like this ought to be standard in all copyright law. User privileges granted by law should be minimum standards and not to be overruled by contracts. This might be the best weapon against information vendors trying to abuse a dominant position

In non-European countries there is still no protection of databases, and producers and libraries are left to define their relations by contractual agreements.

The directive on the harmonisation of certain aspects of copyright and related rights in the Information Society

Since December 1997 the *Proposal for a Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society* has been on the political agenda. It was finally adopted in May this year.

With this directive, the European Commission attempted to harmonise authors' rights to control

- use of their works with respect to reproductions;
- communication to the public by electronic means;
- distribution of hard copies.

The Commission also tried to have the main elements of this directive included in the WIPO Copyright Treaty at the Diplomatic conference in December 1996.

The rights specified for authors of intellectual and artistic works do normally also apply to related rights, i.e. the rights of performers, producers of phonograms and films and broadcasting organizations. But in order not to complicate matters I will disregard related rights here, as they are usually of no special importance to libraries.

Reproduction rights

Reproduction rights are dealt with in Article 2 of the draft Directive and the related exceptions in Articles 5(1) and 5(2). Article 2 states that:

- "Member States shall provide for the exclusive right [for authors] to authorise or prohibit direct or indirect, temporary or permanent reproduction [of their works] by any means and in any form, in whole or in part..."

The European Commission tried to have this article incorporated into the WIPO Copyright Treaty. However, telecommunications companies and library associations lobbied heavily against this. The telecommunications companies claimed that this would mean that cache copies would be prohibited and the whole functionality of the Internet would thereby be severely impaired. They also feared incurring liabilities if network traffic passed through a country which had no exceptions for cache copies. The library lobby argued that prohibiting temporary reproduction would prevent any browsing or viewing of protected material on the Internet.

The proposal was eventually rejected at the WIPO Conference. It has now re-emerged in this draft Directive. However, the obligatory exception as specified in Article 5(1) seems to deal with this problem. Article 5(1) makes an exception for:

- "temporary acts of reproduction...whose sole purpose is to enable
- a transmission in a network between third parties by an intermediary or
- a lawful use..."

This exception, however, is the *only* obligatory exception to the authors' right to authorise any kind of reproduction. Other exceptions to the reproduction right are *optional*, and whether they are implemented is to be decided at national level.

One obvious consequence of this is that copyright laws will not be harmonised to any great extent within the European Union. The library lobby have argued that the optional exceptions should be obligatory minimum exceptions, allowing member states to extend user privileges even further if they wish. This view has not been accepted, neither by the Council nor the European Parliament.

The optional exceptions to the reproduction right have changed quite substantially since the first version of the proposal. For libraries, the most important limitations to the authors' exclusive right to control reproduction are the following from Article 5(2):

Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:

a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;

b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;

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;

d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;

e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.

Comments to 5(2)(a): Sheet music appeared for the first time in the amended proposal prepared by the Commission in spring 1999.[vi] The sudden appearance of sheet music in this article demonstrates the powerful influence of the music industry. It will present libraries, researchers and musicians with a problem, albeit a minor one, provided that the national implementation of Article 5(2)(c) will allow libraries to make safety reproductions of rare items, for example, for lending purposes.

Comments to 5(2)(b): before the second reading by the Parliament the wording of this article was: "in respect of reproductions on any medium made for the private use of a natural person and for non-commercial ends, on condition that the rightholders receive fair compensation ..."

Note the difference between the two versions:

- "made **for** the private use of a natural person ..."
- "made **by** a natural person for private use ..."

The first version implies, that the library may assist the patron in making the copy. The second version may be interpreted to imply that patrons have to do it themselves.

In most cases, when it comes to copying material found via the Internet, this is of no importance as researchers often do the searches themselves. But when it comes to inter library lending problems may arise.

In Denmark art. 5(2)(b) has been implemented in such a way, that it will prevent library staff from making digital copies for patrons. In consequence Danish libraries may only send paper copies via surface mail or fax machines until the problem may be solved by some form of collective agreement with the rights owners

I have recently been informed, however, that the Commission in a commentary to the Parliaments decision, has made it clear that – the change of wording notwithstanding – art. 5.2.b. does not preclude library staff in making digital copies for the private use of patrons.

Libraries should be aware of this fact.

There is a general proviso to Articles 5(2)(a-b) that the exceptions to the reproduction rights presuppose that rightholders are remunerated. This may result in additional costs for libraries, depending on how the remuneration schemes are construed in the member states.

The UK is said to have vehemently opposed this proviso, because there is no tradition of collective remuneration in the UK. In the Nordic countries, on the other hand, there is a long tradition of collective remuneration: either the state provides the funds or remunera-

tion is financed by levies. This was not therefore a big issue for Nordic libraries. UK libraries, however, may expect increased costs, all things being equal.

For much of the time during negotiations, libraries were restricted to making reproductions for "archiving or conservation purposes" only, according to Article 5(2)(c). It was important for libraries that this restriction be lifted, because it could prevent libraries from making use of new technological developments in its internal operations.

Communication to the public

Article 3 states that:

- "Member states shall provide authors with the exclusive right to authorise or prohibit any communication to the public of originals and copies of their works..."

- "The rights...shall not be exhausted by any act of communication to the public..." including their being made available to the public.

A paragraph of similar content was proposed and accepted into the WIPO Copyright Treaty. The consequence is that all signatories of the WIPO Copyright Treaty are now obliged to incorporate this article into their national law upon ratifying the Treaty.

The consequences of this article should be seen in conjunction with the related exceptions as stated in Article 5(3):

- "Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

    a) use for the sole purpose of illustration for teaching or scientific research,...to the extent justified by the non-commercial purpose to be achieved;
    b) uses, for the benefit of people with a disability,...
    c) reproduction by the press,...
    d) quotations for purposes such as criticism or review,...
    e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;
    f) use of political speeches as well as extracts of public lectures or similar works...
    g) use during religious or official celebrations organised by a public authority;
    h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;
    i) incidental inclusion of a work or other subject matter in other material;
    j) use for the purpose of advertising the public exhibition or sale of artistic works,...
    k) use for the purpose of caricature, parody or pastiche;
    l) use in connection with demonstration or repair of equipment;

m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;
n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works or other subject matter not subject to purchase or licensing terms which are contained in their collections;
o) use in certain other cases of minor importance where exceptions already exist under national law, provided that they only concern analogue uses..."

This list of exceptions demonstrates that, in reality, the Communication to the Public Right is not harmonised at all, giving member states the option to maintain their existing exceptions.

Apart from the exceptions not being obligatory i.e. being optional, libraries should welcome this development. Instead of the very restrictive first version of the proposal, we have ended up with a text which is decisively more liberal. This may even result in more liberal amendments to national legislation.

Special attention should be given to Article 5(3)(n). The combination of Articles 5(2)(c) and 5(3)(n) will enable libraries to digitise their collections and provide access to these collections on the library premises. A similar exception in Danish copyright law has proved very valuable, particularly for research libraries.

As a whole, the exceptions seem to cover most library needs. A library may provide access to a work, provided the library actually owns a copy of the work in question, unless the work is subject to purchase or licensing terms which prohibit access. But who would buy a work without being allowed to give access? This is hardly conceivable.

However, many libraries are making the move from "collections" to "connections". Instead of acquiring an electronic copy of a work and physically installing the work on the library server, the library simply subscribes to a service accessible via a gateway with an Internet address. This has obvious advantages, but it does remove access control from the hands of the library and places libraries and their patrons at the mercy of suppliers and authors.

It is reasonable to expect that if there is a commercial interest in a work it will remain available. But use of a work may become so rare, that it no longer covers its costs. Many libraries try to overcome this issue by obliging suppliers to guarantee "eternal access". Such guarantees are worthless, however. In the first place, the supplier may not be able to fulfil these obligations, for example, if the supplier goes out of business. Secondly, the author may enforce the communication to the public right and withdraw the work. This may happen, for example, when an author regards an earlier work as a youthful aberration whose contents or quality do not meet the author's present standards. If the work is published in print form, there is nothing the author can do. But if it is published electroni-

cally in a database, the work may simply be removed. The consequences for historical research are obvious.

To prevent such a scenario, the communication to the public right for authors must be balanced by regulations for legal deposit and public access on the library premises to deposited works. The first issue is taken care of by Article 9 and the second issue by Article 5(3)(n). It only remains for member states to implement legal deposit regulations for works published in databases, an issue of the utmost importance.

Finally it should be noted, that all exceptions have to pass the *three step test*, mentioned in art. 5 (4)

- "The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases that do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder."

The wording of this article conforms with Article 10(2) of the Berne Convention, and so is in line with international copyright law. However, whereas the Berne Convention is open to exceptions provided they pass this test, the list of exceptions of the Directive is closed.

The probable consequences of this is that the development of copyright in the digital age may come to a halt, and be replaced by licensing contracts.

This development presents libraries and their patrons with two major practical problems.

1. It may be quite difficult for libraries to manage a great variety of contracts. The terms specified have somehow to fit into the daily routines and the general pattern of access given to patrons.

2. It is usually impossible to get in contact with the author or rightsowner in order to get a permission or make a contract. When it comes to multimedia this gets even worse. A single work may have many authors and other rightsowners. Rights have to be managed by (authorised) collecting societies or clearinghouses, authorised to make collective agreements clear rights even for authors who are not members of the society.

To solve the practical problems of managing copyright there must be developed

- standard licensing contracts and
- collective licensing

Otherwise libraries may not be able to utilise the new technology and rightsowners are not likely to profit from their copyright..

This may be the most important long term consequence of the Directive.

Technical protection

Throughout the negotiations, the question of technical protection measures, e.g. encryption, was an undecided issue. By introducing encryption, rightsowners could prevent users from taking advantage of lawful exceptions as specified in Article 5.

Article 6.4 deals with this issue. The text reads:

- "...Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with Article 5(2)(a), (2)(c), (2)(d), (2)(e), (3)(a), (3)(b) or (3)(e) the means of benefiting from that exception or limitation.."

- "A Member State may also take such measures in respect of a beneficiary of an exception or limitation provided for in accordance with Article 5(2)(b)..."

Note the different use of the words "shall" and "may". This means that member states may force rightsowners to allow digital reproduction of works in digital format, as covered by Article 5(2)(b), but they don't have to.

This highlights the general thrust of the Directive, which leaves it to libraries and other interested parties to argue their case at national level. Libraries should not regret this, after all, it is easier to influence national politicians.

It should also be noted, however, that license agreements may override the exceptions when it comes to on demand services:

- The provisions of the first and second subparagraphs shall not apply to works ... made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

That contracts override the exceptions is quite normal in copyright law. Even if we may regret this it is difficult to complain. The crucial issue here is that even click-on contracts are recognised as being "agreed contractual terms". The libraries fought this, claiming that the provider and the user are not on equal terms in a "click-on situation" - but without success.

The consequence of this is that the exceptions may be of little value.

Distribution right

The rules concerning distribution rights are different in the EU member states, and they must be harmonised. Otherwise there can be no Internal Market for copyrighted works.

Some member states have "national consumption" and others have "universal consumption" of distribution rights.

- National consumption means that the authors' right to control distribution is only exhausted in a particular country, if copies of his work with his consent are sold or otherwise distributed in that country. His right to control distribution in other countries is unaffected.

- Universal or international consumption means, that the authors' right to control distribution is exhausted all over the world after the first sale or distribution with the authors consent no matter in which country the sale or distribution has taken place.

Small-language countries like the Nordic ones, have traditionally been in favour of universal consumption and large-language countries have traditionally favoured national consumption. The reason why is obvious if one thinks in terms of publishers interests. English, French or Spanish publishers clearly have an interest in dividing up the world market into separate countries. This gives them the opportunity of setting the price of their products according to the population's ability and willingness to pay. If this kind of division of the world market shall be possible national or regional consumption of distribution rights is necessary in order to prevent parallel import from countries where the price is lower.

Publishers from small-language countries like Denmark do not care about the world-market, as the only market for Danish books is Denmark. On the other hand, having to rely heavily on foreign literature for research and higher education, small-language countries have a clear interest in being able to import books from wherever they are best and cheapest.

The European Commission opted for regional consumption. This means that if a book is published in any member state of the Community the distribution rights will be exhausted for the whole Community, but not for other countries. This is quite logical as national consumption within the Internal Market of the Community is a contradiction in terms. The European Commission, however, could also have chosen universal or international consumption, and thereby furthered free trade of information products, books and other copyrighted works. As it is the directive gives publishers a very strong position, and prevents consumers from neutralising unreasonable prices by parallel import. The interests of the consumers are disregarded.

One should note that strictly speaking the wording of the article does not prevent anybody from importing copyrighted works. Booksellers may import books from countries

outside the European Union, but they are not allowed to sell them, without the author's consent.

There are within the European Union many ethnic minorities who will be affected by this. Books and other culture products from their original homelands are seldom also published in EU member states, but must be imported directly from the country of origin. In these countries publishing is not organised in a manner that makes it possible to acquire the author's consent. Booksellers, music- and video shops may therefore have difficulties in legally supplying these type of customers. This seems hardly to be in keeping with the Declaration on Human Rights.

In sum: Authors' rights to control distribution will *de facto* if not *de jure* hinder free trade with copyrighted works. As a result ethnic minorities may be discriminated against.

Conclusion

During the last decade, the European Union has launched several directives in an attempt to deal with copyright issues raised by the transition to digital technology and the creation of the internal market. This has resulted a considerable strengthening of authors' rights with respect to:

- remuneration for public lending
- prolongation of the term of protection
- legal protection of databases
- remuneration for reproduction in certain cases
- communication to the public right
- distribution rights

In the political process the library lobby has concentrated its efforts on securing reasonable exceptions to the reproduction and communication to the public right with quite successful results.

The decisive factor, however, in attaining this positive result was that member states were not, in the final analysis, willing to give up exceptions contained in their national legislation. This is hardly surprising. Exceptions to the exclusive right of authors do not usually come out of the blue. Instead, they are the result a long development process, of many years political bargaining and the careful balancing of interests. No government can be expected to easily give up these national positions.

On can conclude that, except for distribution rights, the European Commission did not succeed in harmonising the present laws on copyright. The Member States are allowed to keep their present exceptions.

The harmonising effect will be seen in the future, as no new exceptions are allowed. New uses and technical developments have to be dealt with within the framework of licensing contracts.

There will be a need for

- standard licensing contracts, and
- collective licensing

Otherwise neither libraries nor rightsowners are likely to profit from the new technology.

This may be the most important long term consequence of the directive.

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[i] WIPO Copyright Treaty, December 20, 1996.

The World Intellectual Property Organization (WIPO), is a United Nations organization with headquarters in Geneva, Switzerland. WIPO's objective is the promotion of the protection of intellectual property, and the administration of international treaties dealing with intellectual property, most notably the *Berne Convention* and the *Rome Convention.*

A WIPO conference in Geneva adopted the *WIPO Copyright Treaty* and the *WIPO Performances and Phonograms Treaty* on December 20, 1996. Before becoming binding law the treaties have to be ratified by the member states. It is not mandatory for WIPO member states to ratify the treaties; however, the most important Contracting Parties are expected to do so.

At the WTO (Word Trade Organization) conference in Seattle, 1999, the European Union proposed that the *WIPO Copyright Treaty* and the *WIPO Performances and Phonograms Treaty* are included in a new WTO Treaty.

[ii] Council Directive 92/100/EEC of November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property. (Official Journal L 346, 27/221992 p. 0061 – 0066)

[iii] Council Directive 93/98/EEC of 29 October harmonizing the term of protection of copyright and certain related rights. (Official Journal L290, 24/11/1993 p. 0009 – 0013)

[iv] Directive 96/9/EC of the European parliament and of the Council of 11 March 1996 on the legal protection af databases (Official Journal L 077, 27/03/1996 p. 0020 – 0028)

[v] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (Official Journal L 167 , 22/06/2001 P. 0010 – 0019)

[vi] Amended proposal for a Directive on copyright and related rights in the Information Society. 97/0359/ COD (21 May 1999)