



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

2015 STATEMENTS BY EIFL

WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

31st Session: Geneva, 7 – 11 December 2015

Agenda item 5 Protection of broadcasting organizations

Good afternoon. I'm speaking on behalf of Electronic Information for Libraries that works with libraries in developing and transition economy countries.

I'd like to make a comment on the object of protection that has been under discussion here this afternoon. And the importance of the principle that any new instrument that might be created, limits itself to the object of protection to the signal and not to any underlying content.

The reason for this is because the creation of a new layer of rights that affects access to content is of great concern to libraries, because it imposes additional barrier to access to knowledge especially to content in the public domain.

A new layer of rights will, in addition to creating problems for users, also we believe create problems for rights-holders of content that will impact on their ability to freely license their works.

Libraries have practical experience of such overprotection caused by multiple layers of rights.

A library in Europe wanted to publish a sound recording from their archive that was originally broadcast in the 1950s. The recording was taken from a re-broadcast in the 1980s.

Although the performers' right had expired and the author's heirs waived their fees due to the cultural importance of the work, the library had to pay the broadcast organization approximately \$10,000 for permission to use the recording because the signal protection also applied to the retransmission.

For many libraries such costs are out of the question. As a result, socially valuable works remain inaccessible in libraries and archives, depriving the public of their enjoyment of the work.

Distinguished Delegates, we would ask you, please, to consider the costs to taxpayer and society of any proposed treaty, as well as its perceived benefits.

Thank you for your attention.



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Agenda item 6: Limitations and exceptions for libraries and archives

TOPIC 2 RIGHT OF REPRODUCTION AND SAFEGUARDING COPIES

I am speaking on behalf of Electronic Information for Libraries (EIFL) that works with libraries in developing and transition economy countries on Topic 2 Right of Reproduction and Safeguarding Copies.

An exception to the right of reproduction is a fundamental exception that enables libraries to carry out their public service role of advancing research and knowledge.

The proposals by Member States facilitate three situations in which libraries make copies.

First, a library makes a copy for an end user in response to a specific request for material in the library's collection for the purposes of education, research, or private study.

For example, **the library** may make the copy when:

1. The item is not available on the open shelves because of its age, size, format, value or condition, or
2. The library cannot offer **public** copying facilities because the equipment is too expensive to maintain, and running costs, such as ink and paper, are too high.

The **second reason** why a library makes copies is in response to a request from another library, on behalf of an end user. This has been described by my colleagues in their statements today. In our interventions at SCCR/27, libraries demonstrated the clear cross-border dimension of document supply.

The **third reason** why a library may need to make a copy is for backup purposes to safeguard against loss or damage. For example, the library has bought an expensive Handbook that is in much demand by students. To avoid 'page tearing' (where pages are literally torn from the book) or losing the book altogether, the library may wish to make a safeguarding copy to **use in place of the original**.

What are the conditions attached to the making of such copies by libraries?

Copies must be possible in analogue and digital forms.

The exception should apply to related rights to allow for different types of material, including audio-visual materials.

Requests by end users are usually for the purposes of education, research, or private study. In all cases, the uses are non-commercial.

The copies are made in accordance with international obligations, including the Berne Convention.

The proposal from the African Group uses the standard of 'fair practice'. The WIPO Guide to the Berne Convention explains that fair practice implies an objective appreciation of what is normally considered admissible, and is ultimately a matter for the courts. References to fair practice can be found in several national copyright laws, as well as the Berne Convention.

What is the international dimension of the problem?

According to the Kenneth Crews study, just 11% of countries have an exception for document supply in their national law, and almost no countries have addressed the issue of cross-border transfer of content. Consequently libraries often have to refused requests for information on copyright or licensing grounds.

An international treaty is required to ensure that libraries can legally undertake document supply both within a country and cross-border.

In the two other situations, an international approach is required to ensure that libraries **everywhere** can perform these basic functions, using digital technologies.

We know from the Crews study that 48% of countries surveyed do not explicitly allow libraries to make copies for research or study, and that exceptions in many countries apply only to print formats.

Finally, we thank all member states for their proposals. We welcome the EU Commission's Communication on modernizing copyright issued yesterday which proposes that the EU will work towards "removing obstacles to cross-border access to content and to the circulation of works." Such work is important not only within the EU, but needs to be undertaken internationally as well.

Thank you for your attention.