Chapter 18
Copyright Issues in the Context of the Digital Library

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ABSTRACT

Libraries have a strong role on promoting culture and knowledge as intermediaries between creators and readers. In the analogical world, such usages didn't have relevant effects on the normal exploitation of copyrighted works. However, digitisation had a strong effect on rightholders' interests by facilitating and democratizing access to works, considering that libraries may reproduce them and promote their online accessibility. Litigation regarding the referred actions has dramatically increased in the last years as they may stress the normal exploitation of copyrighted works and the exclusive rights of reproduction and of distributing. Based on the European Union's legislation and jurisprudence, the present chapter analyses the lawfulness of public libraries digitisation of books from their collection in order to make them available to users without the right holder's consent, confronting them with the exclusive right of reproduction and the making available right.

INTRODUCTION

Digital libraries are one of the most central and impressive battlegrounds in the clash between copyright and access to knowledge and culture promoted by digital technology. Digital libraries are organized collections of information stored in digital formats and accessible over a network. The creation of the collection implies, except for works that originally have a digital format, massive operations of digitisation, meaning the "conversion of analogue information in any form to digital form with suitable electronic devices (such as a scanner), so that the information can be processed, stored, and transmitted through digital circuits, equipment and networks" (Lucas-Schloetter. 2011. 159). Digitisation and subsequent transmission of works in a digital support may conflict with core powers granted by copyright law to authors: the exclusive patrimonial rights to reproduce, to distribute or to communicate their works to the public or to authorize such usages by others.

From the perspective of the public interest, the benefits derived from digitisation and from online accessibility of intellectual works are undeniable. Access to works from people with low income, from remote regions or access to rare or out of market works is facilitated, which potentiate the growth of direct knowledge of the works and the creation of new or derivative works based on the former. Large scale initiatives and projects like *Google Books*, the *World Digital Library* or *Europeana* could act like a celestial library allowing users to store copies of works, to reproduce them wherever they have an internet broadband connection or to share it with other people. On a smaller scale, physical libraries may digitise their corporeal collection making it available to their users. Full democratization of knowledge faces, however, the obstacle of copyright infringement, which leads libraries to refrain their activities by making available only works from the public domain or small parts of copyrighted works that don't affect their normal economic exploitation.

As the European Commission declares in the Green paper on Copyright in the Knowledge Economy,

Under the current legal framework, libraries or archives do not enjoy a blanket exception from the right of reproduction. Reproductions are only allowed in specific cases, which arguably would cover certain acts necessary for the preservation of works contained in the libraries' catalogues. On the other hand, the library exception and national rules implementing it are not always clear on issues such as "format-shifting" or the number of copies that can be made under this exception. Detailed regulations in this respect result from legislative policy decisions undertaken at the national level. Some Member States have restrictive rules with respect to reproductions that can be made by libraries. In recent years, libraries and other public interest establishments have become increasingly interested not only in preserving (digitising) works but also in making their collections accessible online. If that were to take place, libraries argue, researchers would no longer have to go to the premises of libraries or archives but would easily be able to find and retrieve the required information on the Internet. Also, publishers state that they are digitising their own catalogues with a view to setting up interactive online databases where this material can be easily retrieved from the user's desktop. These services require payment of a subscription fee. (2008, p. 7)

It is therefore crucial to take into account the benefits of digitisation and the specific nature of digital copies to find an adequate balance between the protection of rights and legitimate interests of creators and the public interest in democratizing access to culture and knowledge by means of digital libraries.

Copyright is today recognized not as a mere economic privilege on the exploitation of intellectual aesthetic creations but as a human right. In Article 27 of the Universal Declaration of Human Rights, after being proclaimed that "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits", it is granted by § 2 that "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".

Similarly, the International Covenant on Economic, Social and Cultural Rights provides in its article 15, § 1, that

States Parties recognize the right of everyone:

1.   *To take part in cultural life;*
2.   *To enjoy the benefits of scientific progress and its applications;*

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