

## Chapter 10

# The Digitization of Contents in Digital Libraries: Moral Right and Limits

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### ABSTRACT

*The present chapter deals with the challenges faced by moral rights in the digital environment, especially as they pertain to digital libraries. It starts with an introduction to issues concerning the legal framework of moral rights, clarifying their position internationally. Furthermore, specific issues regarding infringements of moral rights are addressed, namely: content digitization, practice of linking, alterations of the work during the digitization process etc. In short, the necessity of the digitization of the library's content is elucidated and the societal demand of easy and cheap access to knowledge is presented. The author is of the opinion that moral rights, arising out of the conflict of economical interests, are easier to maintain their legal intensity. Furthermore, in the modern information society, moral rights are prone to an inter-disciplinary approach and thus, they gain intensity in the balance of interest between authors and users. More specifically, moral rights have an intricate interrelationship with social, cultural, economic and philosophical aspects as well as with Fundamental and Human Rights.*

### INTRODUCTION

Libraries preserve and provide access to our cultural, historical and scientific heritage. Libraries, museums and archives<sup>1</sup> as well, face the rapidly evolving digital environment as an opportunity to open their doors to anyone independent of time and place (Tonta, 2008, passim). Digital libraries

are like oxygen for human beings in the information society (Kallinikou/Papadopoulos/Kaponi/Strakatouna, 2009, p. 288). By transforming their material in a digital form, digital libraries achieve two significant goals: (a) they make a digital copy of a book or a film or a picture with the proper preservation strategy guaranteeing its long-term survival for future generations<sup>2</sup> and (b) they give access to knowledge easily and inexpensively for anyone who uses the Internet, supporting strongly

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the social development in culture, science and technology.

Digital libraries include works and other materials that have been digitized, such as digital copies of books or images, or they include works which were produced in digital form from the beginning. To the extent that digitized or inherently digital materials are part of the creative work of an author, libraries ought to respect his property and moral rights so that intellectual property issues will not arise. In February 2006 the European Commission set up a High Level Expert Group on Digital Libraries. The results of the high Level Group, in particular on copyright issues, have been discussed and taken forward with a wider group of stake holders (COM 2008 513 final, p. 10).

Copyright protection begins as soon as the original work is fixed in a perceptible medium of expression.<sup>3</sup> Copyright law distinguishes between the work as an intellectual creation and the physical object – the medium- in which the creation may be embodied. Copyright law protection addresses only the intellectual creation and protects the author's work as its intangible good. Thus, it is possible that the owner of the medium - original or copy- of the work is a different person from the owner of the copyright (Cornish & Llewellyn, 2007, n. 12-01, 12-02). Libraries and other cultural institutions generally own only the physical copies of the works and do not claim any copyright on them. It is precisely this distinction of intangible good and medium from which legal issues arise, i.e. the legitimacy of digitization and further, on line access to the copyright material.

Initially, digitization of the content constitutes just another medium of expression, which is indisputably an integral part of the author's rights. Digitization of the content, regarding any kind of work, actually implies profound and multilateral consequences for the author's rights and it does not seem to be just another technological medium, like television or radio.<sup>4</sup> To make it clear, the exploitation of a work in the digital environment is equal to the work's accessibility and that is

directly connected with its digital reproduction and its digital diffusion (property rights). On the contrary, in analogical environment property rights have never been about regulating access to or use of works after the first sale (Dusollier, 2005, p. 201). Digital technology, however, complicates this distinction. Public accessibility to digital works includes the exercise of an author's reproduction right.

As far as the property rights are concerned, such as the reproduction right or the right of digital dissemination, which are involved in the process of content digitization and accessibility, the solution could be found within the contracts between authors or other right holders and libraries. Thus, due the fact that property rights can be transferred or licensed separately or together, legal contracts can be drafted.

Furthermore, the new policy of creative commons offers, on a different basis, a satisfactory solution for the works' economic exploitation on internet. On the contrary, as far as "moral rights" are concerned the situation is quite different. The moral rights, as it will be mentioned below, are attached to the author and are not transferable at all. Digital libraries and other cultural institutions which intend to digitize their collections ought to clarify the copyright issues and especially in respect to the author's moral rights. This important obligation is guaranteed by the EU policy related to digital libraries.

## **The Moral Right's Legal Framework**

The origin of moral rights can be found in French Law. The work comes from the author's personality and thus, there is a strong bond between the author and his work, which is legally expressed by moral rights. In European continental law, moral rights coexist with property rights in a unified right (monistic theory) or there are two different types of rights, which concur in author protection (dualistic theory) (Fernandez-Molina/Peis, 2001, p. 112). On the other hand, Anglo-Saxon copyright law<sup>5</sup> grants

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