

Provisional Committee on Proposals Related to a WIPO Development Agenda Second Session, Geneva June 26-30, 2006

by IFLA: Barbara Stratton, EIFL: Teresa Hackett and EBLIDA: Andrew Cranfield

IFLA represents the world's major libraries and library associations and through its 1700 member organisations in 150 countries it speaks for hundreds of thousands of professional librarians around the world. EIFL represents leading academic, research and public libraries in 50 developing and transition countries. EBLIDA represents 150 European library and archive associations and institutions.

We wish to comment on a few specific points in Annex 1 to PCDA/1/6/Prov.2: Proposals by Clusters Submitted for a WIPO Development Agenda.

We agree that developing and transition countries need assistance to make the transition to become able to compete more effectively. Libraries are essential partners for the WIPO Partnership Office to enable developing countries to compete in the knowledge economy.

The value and importance of libraries to the knowledge economy has been confirmed by the recent European Commission Communication on the European Digital Library, and by research reports on the British Library and Florida Public Libraries.

Information is the fuel of modern economies. In Europe, content industries total some 5% of Europe's GDP, and ever more organisations depend on access to the right information to take informed decisions. Libraries provide substantial access to this content. A recent study found that the British Library generates some US \$670 million worth of value per annum, both in direct value to the library's users (US \$109 million) and the indirect value to society (US \$561 million). This is 4.4 times the annual government funding of US \$153 million. The British Library study quantifies the Library's value, not only to its direct users but to the public at large who benefit indirectly from access to world class scientific research, creativity and innovation. It also showed that if the Library did not exist, the UK would lose US \$510 million of economic value pa. The Florida study found that the state's public libraries were responsible for an economic return of US \$2.9 billion on the taxpayer investment of US \$449 million per annum and that for every taxpayer dollar spent on public libraries in Florida, wages increase by US \$12.66.

These studies illustrate the tangible benefits to the economy of strong library infrastructures as crucial components of any national strategy of investment in the knowledge economy. An essential feature of a successful knowledge economy is access to education and research. Libraries provide this access. Therefore, the international IP regime needs to incorporate flexibilities to encourage the introduction of exceptions and limitations to copyright on a similar basis to those enjoyed by industrialised countries such as the USA, Canada and Member States of the European Union. This would foster successful knowledge economies in developing and transition countries and would create meaningful access to education by their populations along with the dissemination of knowledge and technology.

Cluster B. Norm-setting, Flexibilities, Public Policy and Public Domain B7. Draw up proposals and models for the protection and identification of, and access to, the contents of the public domain.

B8. Consider the protection of the public domain within WIPO's normative processes.

B21. To ensure that norm-setting activities help identify and maintain a robust public domain in all WIPO's Member States.

Cluster D: Assessments, Evaluation and Impact Studies D9. WIPO should deepen the analysis of the implications and benefits of a rich and accessible public domain.

We support proposals B7, B8, B21 and D9 on the public domain. The public domain is considered to be part of the common cultural and intellectual heritage of humanity. It provides a fertile source on which creators can build new works, as well as a rich source of content for education. It is said that 70-98% of works lack any commercial value 50 years after they are published, but they serve as the basis for new and creative derivative works based upon them.

Works may be in the public domain for a number of reasons. Those works falling into the public domain on expiry of the term of protection or because the work is not subject to copyright in the first place operate as an integral part of the copyright system. This is why the library community believes that it is proper for WIPO to take guardianship of the public domain, protecting it from erosion such as through extended terms of protection and ensuring that public domain content is not rendered inaccessible through Technological Protection Measures (TPMs).

The delegation of Mexico asked about the meaning of having access to the public domain because the public domain is accessible to all and they queried the notion of "protecting" the public domain. The point is that the public domain may not be accessible to all in the digital future if content is subject to a Technological Protection Measure (TPM). A TPM cannot know when the term of protection expires, thus locking the content up in perpetuity even when no rights subsist. Obsolescent TPMs render digital content in the public domain inaccessible to future generations. The result is that there will be damaging gaps in the cultural record. This is unacceptable to libraries charged with preserving our cultural heritage. Great research libraries such as the British Library have expressed their grave concern on the future implications and have called on policy makers to find a solution.

Leaving aside problems created by TPMs, content in the public domain is shrinking because of extended terms of protection, resulting in less content for creators to build upon and less content for the benefit of society. Pioneering projects such as that of Eduvision, providing digital learning materials to the poorest children in Kenya, suffer as a result because they must rely on older out-of-copyright and more out-of-date materials. Academic research is impeded, such as that into the works of the literary great, James Joyce.

Longer terms of protection also exacerbate the problem of orphaned works i.e. copyright works whose owners are difficult or impossible to trace, thus making rights clearance difficult and cumbersome e.g. when libraries need to get permission to undertake digitisation projects. Academic, scholarly material or less known works of no commercial value but important to researchers, historians, architects and other specialists may be disproportionately affected.

We support the proposal of Chile for an obligation to notify works and inventions that fall into the public domain in a global database. Indeed, the notion of maintaining a centralised directory of public domain titles was one element of the U.S. Public Domain Enhancement Bill 2003 (H.R. 2601). The proposal by Chile would provide a single global database that could be easily searched to determine whether or not a particular work remains under copyright protection or is in the public domain. We believe this is a concrete, practical step that would help to provide much-needed certainty for libraries and users alike.

Cluster C: Technology Transfer: Information and Communication Technology (ICT) and Access to Knowledge

C21. To negotiate a multilateral agreement where signatories would place into the public domain, or find other means of sharing at modest cost, the results of largely publicly funded research. The objective would be to set out a mechanism for increasing the international flow of technical information, especially to developing countries, through expansion of the public domain in scientific and technological information, safeguarding, in particular, the public nature of information that is publicly developed and funded without unduly restricting private rights in commercial technologies.

Libraries support the vision of open access to research material, which has been defined as the free availability of peer-reviewed literature on the public internet, permitting any user to read, download, copy, distribute, print, search, or link to the full texts of the articles.

There are two main routes to achieving open access. The first one is through peer reviewed open access journals. The number of such journals has increased enormously in recent years, with some publishers now offering their entire journals on an open access basis, and others offering it for selected items.

The second route is through self-archiving, where authors deposit the final, post peer reviewed, electronic version of their articles in their private archive, an institutional, or subject-based, repository. A growing number of publishers expressly permit self-archiving of the final version of the research output.

Major funding institutions and universities throughout the world have adopted policies or resolutions on open access including in Europe, Latin America and the United States.

The benefits to developing and transition countries are enormous. Not only do they gain access to the best global research, it provides a means by which they can increase the audience for their work thus enabling them to more effectively contribute to the global research community. In December 2005, open access was defined as one of the priorities in national strategy the information society in Ukraine. In addition, eIFL is conducting pilot projects in South Africa, Ukraine, Lithuania and Zimbabwe to develop institutional repositories in third level institutions.

We believe that it is important to distinguish open access from the public domain. Open access is achieved by way of a licence, with the copyrights remaining either with the author or the institution. Access to publicly funded scientific and technological research is increased through an expanded "information commons". In contrast, the public domain consists of material for which the term of protection has expired or which by its nature, is not subject to copyright.

We strongly support the setting out of a mechanism for increasing the international flow of technical information and we believe that open access provides one such working model. We believe that WIPO should raise awareness of the open access model amongst Member States and encourage exchange of policies and practices in this area.

Libraries are a major gateway for citizens to access works of the mind for the purposes of education, research or private study, whether in person or remotely through virtual learning environments, or directly on the Internet through library portals. In the digital age countries can not have viable modern economies and social development without fair access to and re-use of knowledge as expressed in copyright works. In this context fairness requires the proactive acceptance of agreed norms by both rightsholders and users. This is essential for the achievement of universally high standards of education which is the passport to economic success.

All intellectual property initially arises from underlying ideas which are usually first expressed in a format subject to copyright, and it should be recognised that all creators of IP are themselves users of copyright works and will have made use of the exceptions and limitations to copyright for the purposes of education, research or private study.

These exceptions are therefore crucial to assist developing countries and LDCs to catch up with developed countries. However in the last 10 years international treaties, supranational directives from the EU and national legislation have worked to erode the information user's rights to enjoy and use the exceptions and limitations to copyright especially in the digital environment. Copyright is now creating barriers to access and the fair use of knowledge rather than promoting innovation.

This is why mechanisms are needed to establish a proper international framework setting the norms by which copyright should be managed in such a manner which ensures that user rights are established and enshrined with respect to both analogue copying and the digital age. This would counter the trend towards the monopolisation and privatisation of information by ensuring that information remains publicly available to nurture education and innovation.

Access to knowledge is not just an issue for developing countries, but also for developed countries since knowledge is a universal tool and equal access is an important need for all.

We share the vision expressed in the Declaration of Principles adopted by the World Summit on the Information Society in November 2003, which promotes an inclusive society based on the fundamental right of human beings both to access and to express information without restriction and in which everyone will be able to create, access, use and share information and knowledge. To this end we support that WIPO seeks mechanisms, using fair exceptions and limitations fit for the digital age, to achieve a true balance between the rights of owners and users of intellectual property.

Contacts:

IFLA: Barbara Stratton
EIFL: Teresa Hackett
EBLIDA: Andrew Cranfield