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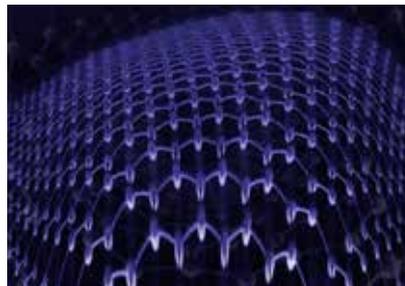
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Time for a single global copyright framework for libraries and archives

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Digital technologies have transformed libraries, archives and access to information. They have revolutionized the information landscape.

Libraries and archives support the work of scientists and scholars, which is increasingly collaborative, interdisciplinary and global in nature. In tandem with the expanding opportunities for search and resource discovery enabled by digital technologies, there is growing demand to access materials held in libraries and archives around the world. Global library spending on print and digital content runs into billions of dollars every year – much of it taxpayer funded. In 2014 this amounted to an estimated USD25.4 billion. But faced with a maze of different copyright laws and licensing conditions, libraries and archives are finding it increasingly difficult to respond to the information needs of the public they serve.

Preserving our documentary heritage, “our memory of the world,” is expensive. To lower these costs, reduce duplication of effort and maximize reach, libraries and archives are exploring ways of using digital technologies to create shared preservation infrastructures both nationally and internationally. This is imperative within the borderless digital arena. As noted by European Commission Vice-President Andrus Ansip, responsible for the Digital Single Market, “the borderless nature of digital technologies means it no longer makes sense for each EU country to have its own rules for telecommunications services, copyright, data protection, or the management of radio spectrum.”

GLOBAL RESOURCES, NATIONAL LAWS

While the operations of libraries and archives are increasingly global, they are bound by national copyright laws. These laws govern many of the core responsibilities of libraries and archives, for example, the preservation of cultural and scientific heritage, providing access to resources in support of education and research, and lending books and other materials.

In many countries, libraries and archives enjoy exceptions under copyright law enabling them to reproduce copyright-protected works under certain circumstances. Examples include private research and study, preservation and replacement of materials, and interlibrary document supply. But these laws can vary considerably from one country to another, as demonstrated in a recent *WIPO Study on*



Photo: Courtesy of the British Library

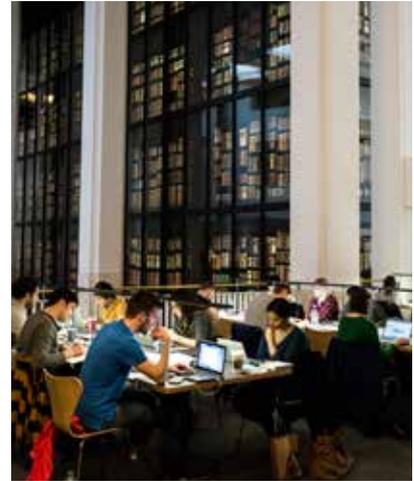


Photo: Courtesy of the British Library

Faced with a maze of different copyright laws and licensing conditions, libraries and archives are finding it increasingly difficult to respond to the information needs of the public they serve.

Copyright Limitations and Exceptions for Libraries and Archives (www.wipo.int/meetings/en/doc_details.jsp?doc_id=306216).

The WIPO study reveals that the majority of member states of the World Intellectual Property Organization (WIPO) – 156 of the 188 countries surveyed (83 percent of them) – have at least one statutory library exception. This is good news. Less good, however, is the fact that 32 countries (17 percent) of those surveyed still have no provision for libraries or archives within their domestic copyright law.

Nearly half of WIPO's member states – 90 of them (48 percent of the total) – do not explicitly allow libraries to make copies for research or study. The situation is even worse for archives, with two-thirds – 126 countries or 67 percent of them – not permitting archives to make copies for research or study purposes. Moreover, 89 countries (47 percent of the total surveyed) do not explicitly allow libraries to make copies for preservation

purposes; and 85 of them (45 percent of the total) do not allow archives to make such copies.

It is possible that this situation will improve as national laws are updated, but the trend regarding digital services suggests otherwise. Where countries have amended their copyright laws in the last five years, digital copying, in some cases even for preservation activities, is expressly barred in over one third of them.

In countries where new anti-circumvention protections (technologies designed to restrict unauthorized access to protected works) have been introduced, while 52 countries have exempted libraries, around half of them have not. In practice, this means that where a technological protection measure is applied to digital content, libraries cannot circumvent it even to make use of an exception under copyright law, and therefore cannot copy the work concerned. In effect, the law is giving with one hand, and taking away with the other.

| Who may copy? | What may be copied? | Under what conditions? | How? |
|---------------------------------------|----------------------------------|-------------------------------------|---|
| Libraries that receive public funding | Published or unpublished works | Library needs | Electronic copies |
| Publicly accessible libraries | Extracts, articles or full works | Research or study only | On any media |
| Public libraries | Extracts, articles or full works | Proof of user's purpose | Reprographic reproduction |
| All libraries | | Commercial availability | Reproduction by photographic or analogous processes |
| Documentation centres | | Making available on the premises | Photocopying or with the aid of other technical means other than publishing |
| Record houses | | After expiration of economic rights | |

Table 1: The WIPO Study reveals the maze of variations in the application of existing exceptions to copyright law across jurisdictions.

The WIPO Study also reveals a further layer of complexity across all statutes, which vary significantly with regard to who may copy, what may be copied, and the purpose and the format of copies. Table 1 (above) illustrates the maze of variations in the application of existing exceptions.

REGULATING ACCESS TO INFORMATION: COPYRIGHT OR LICENSING?

Licenses establishing terms of access and use of digital information have become part of the modern information infrastructure. Libraries support open-access licenses, and see value in arrangements that allow uses beyond those permitted under copyright law. But license restrictions can override copyright exceptions and limitations where they exist and can prevent access to information by the public and scholars. Such restrictions fail libraries and also undermine copyright law.

“Not licensed to fill” is a phrase encountered every day by librarians around the world. It means that a request for a document that is not available in the user’s home library is denied by the supply library because of licensing restrictions.

Interlibrary document supply is a managed system of resource-sharing between libraries. It enables end-users to access specific resources that are not otherwise locally available to them. Interlibrary document supply is vital in meeting the particular information needs of individual researchers, students and scholars. Requests are made on a non-commercial basis taking into account any copyright or licensing conditions.

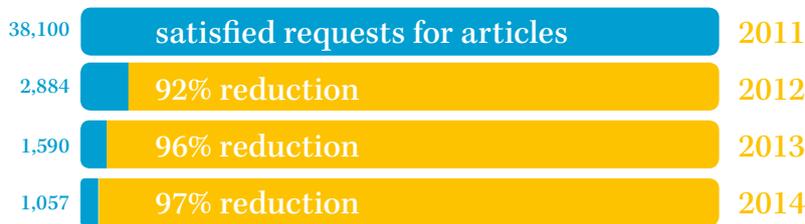
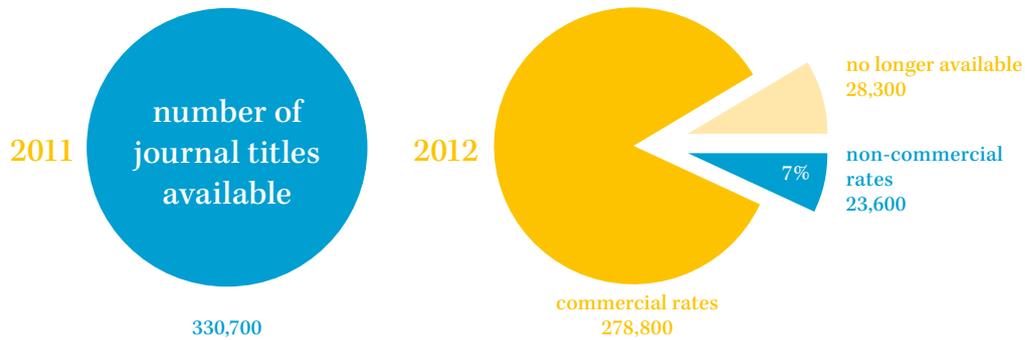
THE CASE OF THE BRITISH LIBRARY

In January 2012, the British Library, one of the world’s largest research libraries, ceased its international document supply service, the Overseas Library Privilege Service, which was supported by a copyright exception. The aim in so doing was to protect the library from claims of copyright infringement. The service was replaced by a publisher-approval licensing arrangement known as the International Non-Commercial Document Supply (INCD) service. These new licensing arrangements have dramatically reduced access to information.

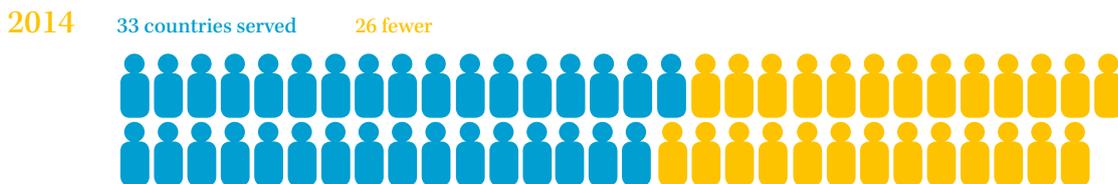
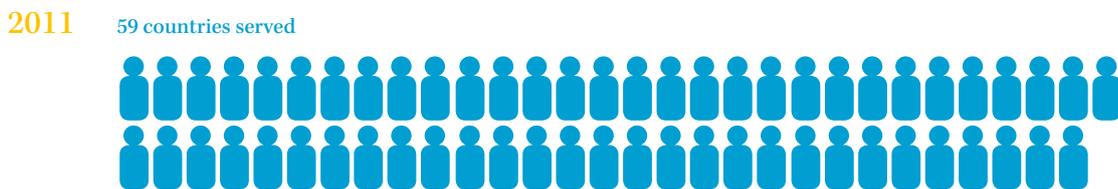
Data obtained from the British Library under a Freedom of Information request show that the number of journal titles available under the INCD service fell by 93 percent, from 330,700 titles in 2011 to 23,600 in 2012. More titles “disappeared” than are available under the non-commercial licenses, and some 28,300 titles are no longer available either at commercial or non-commercial rates.

With its rich, multilingual collections covering a wide range of subjects, the British Library is often used as the “library of last resort”. It is the “go-to” library when an item cannot be found anywhere else. In 2011, the Library provided information to libraries in 59 countries under the copyright-based service. By 2014 under the licensed service, the number of countries served had fallen to 33.

The reduction in journal titles available to non-commercial users appears to be linked to the fact that the majority of titles are now only available at commercial



More requests for information were refused by the British Library in 2012 than were accepted due to licensing restrictions under its new licensing service.



Data obtained from the British Library show that the number of journals available under the new International Non-Commercial Document Supply (INCD) licensing service) fell by 93 percent in 2014. While increasingly common, license restrictions can override copyright exceptions and limitations and can prevent access to information.



rates. One library told me that an article they sought cost USD80. Commercial rates are typically beyond the reach of academic and research library budgets. “We did try the new British Library service a couple of times when nobody else on earth had what we needed, but because of the enormous increase in prices, we dare not even look at the website anymore,” explains the Library of the Lithuanian University of Education Sciences.

In equally dramatic fashion, the number of requests the British Library was able to satisfy under its new scheme, in the first year of its service, fell by 92 percent, from 38,100 to 2,884. Whereas in 2011 the Library would have anticipated fulfilling over 100,000 requests for information during the period 2012-2104, by the end of 2014 the number had fallen to just 1,057, representing a year-on-year reduction of 97 percent. While the Library still has the documents, in many cases it is no longer able to provide them under the new licensing arrangement. In fact, in 2012 more requests for information were refused due to licensing restrictions (2,942) than were satisfied under the new licensing service (2,884).

When the collection of a major library such as the British Library is put beyond the reach of libraries elsewhere, the loss to the global library and research communities is significant. When information for science and scholarship is difficult to obtain due to licensing or copyright restrictions, it sends a strong message that copyright is a barrier to research and learning, when in fact it can be a powerful enabler.

The example from the British Library illustrates the negative consequences associated with replacing a copyright-based library service with one regulated by a license.

HOW CAN THE LAW BECOME WORKABLE FOR LIBRARIANS AND ARCHIVISTS?

Libraries and archives need basic global standards set out in copyright law that cannot be overridden by technological protection measures or licensing terms.

Quality research requires access to a broad range of research materials and an information infrastructure that supports easy access to international research results. Lack of such access means missed opportunities and delayed discoveries.

This is why libraries and archives are asking WIPO’s member states at the Standing Committee on Copyright

and Related Rights for an international treaty to establish basic global standards to ensure equal treatment of digital resources, to protect the ability of libraries and archives to acquire and lend digital collections, and to safeguard our cultural and scientific heritage in the digital environment.

Countries will still have the ability to craft copyright provisions that exceed the basic standards. Licenses will still have an important role to play. But a new international agreement would create a common global understanding that protects access to information as a public good through libraries and archives for the benefit of education, innovation and development. It would take into account the way technology is changing the way people seek information, and libraries and archives respond to those needs. It will enable libraries to negotiate fair terms for public and institutional needs – based on copyright law – to ensure equal access for all.



Photo: Courtesy of the British Library

Libraries and archives need basic global standards set out in copyright law to protect their ability to acquire and lend digital collections.



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